No. 24-___

In the Supreme Court of the United States

ALEJANDRO MARTINEZ,

Petitioner,

v.

CITY OF ROSENBERG, TEXAS; OFFICER R. CANTU; OFFICER R. DONDIEGO; OFFICER JOSH MANRIQUEZ; OFFICER JEREMY REID; OFFICER SHELBY MACHA; OFFICER RAMON GALLEGOS; OFFICER EARNEST TORRES,

Respondents.

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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QUESTION PRESENTED

Is an otherwise unreasonable use of excessive force permitted under the Fourth Amendment so long as it results in no, or only minor, injuries?

RELATED PROCEEDINGS

Direct:

Martinez v. City of Rosenberg, Texas, et al., No. 4:21-cv-00432, United States District Court for the Southern District of Texas. Summary judgment granted to the defendants on September 27, 2023.

Martinez v. City of Rosenberg, Texas, et al., No. 23-20539, United States Court of Appeals for the Fifth Circuit. Affirming District Court's grant of summary judgment to the defendants on December 11, 2024.

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PETITION FOR WRIT OF CERTIORARI

Alejandro Martinez respectfully petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion (Pet. App. 1a-15a) is published at 123 F.4th 285. The District Court's opinion (Pet. App. 16a-26a) is unpublished but available at 2023 WL 7290471.

JURISDICTION

The Fifth Circuit issued its decision on December 11, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

U.S. Const. amend. IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

Police officers threw a visibly disabled elderly man to the ground, then pinned him down and twisted his injured arm while he repeatedly cried out in pain—all because he was walking home on the wrong side of a quiet street in broad daylight. The officers did not believe he was a threat to anyone.

The Fifth Circuit dismissed his excessive force claim over a strong dissent because the panel majority viewed his injuries as insufficiently severe to establish a Fourth Amendment violation. Although the majority acknowledged that the officers' actions inflicted considerable pain, it reaffirmed the Circuit's rule requiring plaintiffs to have suffered injury that is more than de minimis to bring such a claim and concluded that "any injury was de minimis" here. Pet. App. 9a. The majority even viewed the merits as "close," "[p]erhaps" a "tie," yet it held that the officers "should not be held liable for damages when there is no evidence of injury in the record." *Id.* 10a.

The circuits are divided over whether a Fourth Amendment excessive force claim is precluded by lack of injury, even though this Court has twice overturned circuit precedent requiring proof of *any* "'arbitrary quantity of injury'" as a threshold to establish an excessive force claim under the Eighth Amendment. *Wilkins v. Gaddy*, 559 U.S. 34, 39 (2010) (per curiam) (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). The "'core judicial inquiry,'" this Court explained, must focus on "the nature of the force," not "the extent of the injury." *Ibid.* (quoting *Hudson*, 503 U.S. at 7). Thus, a plaintiff may still have a cognizable Eighth Amendment excessive force claim even if he suffered

no "discernible injury." *Id.* at 37-38. The "extent of injury" may be indirect evidence of what happened—for example, as "some indication of the amount of force applied." *Id.* at 37. But an officer's unjustified violence is not rendered constitutional by the fortuity that an otherwise excessive use of force did not result in significant injury.

In the years since *Wilkins*, many circuits have recognized that this principle equally applies in the Fourth Amendment context. These courts properly treat injury evidence as relevant only to establishing the degree or type of force—typically when, unlike here, there is no video evidence of the encounter and the parties dispute what the officer did. Others, including the Fifth Circuit, persist in requiring more than de minimis injury for Fourth Amendment claims and in treating a lack of severe injury as conclusive evidence that law enforcement acted reasonably, whatever level of force they used.

This case presents a clear opportunity to resolve the longstanding circuit conflict and clarify the proper role of injury in excessive force cases.

STATEMENT OF THE CASE

I. Constitutional Background

The Fourth Amendment limits law enforcement to using force that is objectively reasonable under the circumstances. *Graham v. Connor*, 490 U.S. 386, 396 (1989). This case concerns the proper framework for considering an arrestee's resulting injury in analyzing whether officers crossed the constitutional line.

In *Graham v. Connor*, this Court established that whether law enforcement constitutionally used force

against an arrestee turns on the totality of facts and circumstances known to the officials deciding whether and to what degree force is necessary. 490 U.S. at 394-99. The question is not whether a use of force appears justifiable in hindsight, but whether the "officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." *Id.* at 397 (citation omitted). The standard reflects that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Ibid.* *Graham* thus identifies three key factors to consider that would be relevant to a neutral officer deciding whether force is necessary, and if so, how much: "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396.

While this Court focused on what the officers knew and could observe beforehand, some circuits had been imposing an additional requirement that plaintiffs prove they suffered significant injury to bring an excessive force claim. This development may have stemmed from pre-*Graham* decisions holding that "de minimis uses of physical force" rarely violate the Eighth Amendment. *See Hudson v. McMillian*, 503 U.S. 1, 9-10 (1992) (quoting *Whitley v. Albers*, 475 U.S. 312, 327 (1986)) (italics removed herein). Courts distorted this unremarkable proposition into a rule excusing even very substantial and gratuitous uses of force so long as they resulted in only de minimis *injury*. *See ibid.*

Just three years after *Graham*, this Court rejected the "significant injury" requirement in the Eighth Amendment context.[1] In *Hudson v. McMillian*, the Court held that when prison officials use excessive force, the Constitution is violated "whether or not significant injury is evident." 503 U.S. at 9. While affirming that "de minimis uses of physical force" are rarely actionable, the Court held that an officer's excessive use of force is not rendered constitutional if it only causes "'minor'" injuries. *Id.* at 9-10 (citation omitted). "Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury." *Id.* at 9. "Such a result would have been as unacceptable to the drafters of the Eighth Amendment as it is today." *Ibid.*

Many circuits eliminated their injury prerequisites after *Hudson*. *See, e.g.*, *Brooks v. Kyler*, 204 F.3d 102, 104 (3d Cir. 2000); *Oliver v. Keller*, 289 F.3d 623, 628 (9th Cir. 2002); *United States v. LaVallee*, 439 F.3d 670, 688 (10th Cir. 2006). But the Fourth and Fifth Circuits clung to their pre-*Hudson* precedent that an officer's use of force cannot be unconstitutional unless it inflicts a "more than de minimis" injury. *Gomez v. Chandler,* 163 F.3d 921,

[1] While the Fourth and Eighth Amendments prohibit excessive force, the Eighth Amendment adds a subjective consideration (did the officer intend to cause harm), *see Whitley*, 475 U.S. at 320-21, whereas the Fourth Amendment inquiry is purely objective, *Graham*, 490 U.S. at 397 ("An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.").

924 (5th Cir. 1999); *Norman v. Taylor*, 25 F.3d 1259, 1263 (4th Cir. 1994) (en banc) (same), *abrogated by Wilkins v. Gaddy*, 559 U.S. 34, 39 (2010) (per curiam).

So in *Wilkins v. Gaddy*, this Court intervened—summarily rejecting the Fifth Circuit's side of the split without argument or briefing. 559 U.S. at 37. The Court explained that requiring greater than de minimis injury was "at odds with *Hudson*'s direction to decide excessive force claims based on the nature of the force rather than the extent of the injury." *Id.* at 34; *see id.* at 39 n.2 (citing *Gomez*, 163 F.3d at 924, as "indicating [the Fifth Circuit's] agreement with the Fourth Circuit's approach"). *Hudson* did not "merely serve to lower the injury threshold for excessive force claims from 'significant' to 'non-de minimis'—whatever those ill-defined terms might mean." *Id.* at 39. Instead, *Hudson* "aimed to shift the 'core judicial inquiry' from the extent of the injury to the nature of the force." *Ibid.* (quoting 503 U.S. at 7). To conclude that "the absence of 'some arbitrary quantity of injury' requires automatic dismissal of an excessive force claim improperly bypasses this core inquiry." *Ibid.* (quoting *Hudson*, 503 U.S. at 9).

That said, *Wilkins* also explained that injury is not entirely "irrelevant" to the excessive force inquiry. 559 U.S. at 37. "The extent of injury may," for example, "provide some indication of the amount of force applied." *Ibid.* "Injury and force, however, are only imperfectly correlated, and it is the latter that ultimately counts." *Id.* at 38. Summary reversal was warranted in *Wilkins* to correct courts that had been "giving decisive weight to the purportedly de minimis nature of [plaintiffs'] injuries" in Eighth Amendment excessive force cases even after *Hudson*. *Id.* at 38-39.

Most circuits now recognize that the Fourth Amendment does not require any injury threshold for excessive force claims either. *See infra* I.A.2. Many also acknowledge that a lack of severe resulting injury cannot establish that officers acted reasonably, even if such injury might indicate the level of force that officers used. *See infra* I.B.1. The Fifth Circuit and others disagree, holding either that a lack of injury confirms that officials acted constitutionally, *see infra* I.B.2, or worse, that injury remains a prerequisite for every Fourth Amendment excessive force claim regardless of the circumstances or degree of officer violence, *see infra* I.A.1.

II. Factual Background[2]

On a bright afternoon, petitioner Alejandro Martinez was walking home on a quiet residential street without sidewalks. *See* Pet. App. 2a. Martinez is "visibly disabled," *see id.* 15a, and has prior injuries and a "deformity" in his left arm that severely limits his range of motion, *see id.* 10a, 14a. A police officer, Ryan Cantu, saw Martinez briefly walking on the wrong side of the street before crossing within the crosswalk to the correct side. *See id.* 2a. After observing Martinez for "several seconds," Officer Cantu pulled over behind him. *See id.* 8a.

Officer Cantu's "unchallenged affidavit explained that he confronted Martinez not to arrest him but to explain .... that Martinez's action was a threat to himself." *See* Pet. App. 9a. When Officer Cantu called

[2] The Fifth Circuit affirmed summary judgment for the respondents. The facts are thus derived from the record viewed in the light most favorable to the petitioner.

out that he wanted to talk, Martinez "complied." *See id.* 3a. He stopped, turned around, and "approached slowly—with an obvious limp—and with his hands open in incredulity, showing that he did not possess a weapon." *See id.* 13a. Officer Cantu thus successfully "stopped [Martinez] and informed him he was walking on the wrong side of the road," *see id.* 17a, accomplishing his initial objective, *see id.* 9a. But when Martinez replied that he'd done nothing wrong and was simply "crossing the street," Officer Cantu ordered him to "come over here"; "I'm not gonna ask you." D. Ct. Doc. 46, Ex. 2 at 4:35:38–4:35:48.

Officer Cantu claims that he "simply" wanted to "have a brief discussion with the subject and advise him, for his own safety[,] to walk on the other side of the street." D. Ct. Doc. 45-2, Ex. 4 ¶ 4. But because Martinez "at most talked back to the officer, expressed his incredulity, and pulled his arm away," Officer Cantu grabbed Martinez and "slammed him to the ground" without warning him that he was under arrest. *See* Pet. App. 11a, 15a.

Martinez immediately began screaming in pain "'Please! You're hurting my arm!'" *See* Pet. App. 11a. Officer Cantu repeatedly demanded "let me see your hands" or "get fucking tased," but Martinez could only respond "I cannot, you got me down," "please, you're already hurting me man," and "my arm's been broken four times, you're reinjuring my arm." *See* D. Ct. Doc. 46, Ex. 2 at 4:36:55–4:37:18. Still, Officer Cantu kept Martinez facedown and continued to pry his injured arm as he "repeatedly shout[ed] 'Stop! You're hurting me!'" *See* Pet. App. 14a.

Several other officers arrived within minutes and called EMS and the fire department to the scene before eventually taking Martinez to a hospital. *See* Pet. App. 3a. Hospital staff determined that his injuries warranted treatment with opioid narcotics. *See id.* 3a, 14a. But because "he had no broken bones, and he was sufficiently mobile," he was deemed "fit for jail." *See id.* 3a.

Martinez was charged with only misdemeanor offenses that were quickly dismissed by prosecutors. *See* D. Ct. Doc. 30 ¶ 16. For this, respondents forced Martinez to experience "extreme pain," "abrasions, and bruising," and ongoing "anxiety, fear, anger and depression." *See id.* ¶¶ 15, 23, 34.

III. Procedural History

Martinez sued the officers involved in his arrest, alleging they unreasonably used excessive force to seize him in violation of the Fourth Amendment.

1. The District Court granted summary judgment to the officers, holding that Martinez's injuries were insufficiently serious to support an excessive force claim under the Fourth Amendment.

The District Court was bound by Fifth Circuit precedent requiring Martinez to show "'(1) an injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.'" Pet. App. 22a (quoting *Pratt v. Harris Cnty.*, 822 F.3d 174, 181 (5th Cir. 2016)). Beginning with the "injury requirement," the court explained that in the Fifth Circuit, a plaintiff's "'injury must be more than de minimis.'" *Id.* 23a (quoting *Solis v. Serrett*, 31 F.4th 975, 981 (5th

Cir. 2022)). The court did not dispute that the officers caused Martinez extreme pain or that he suffered abrasions, bruises, and ongoing emotional trauma from the encounter. *See ibid.* But the Fifth Circuit had already resolved that injuries such as "'abrasions and bruises,'" and even a plaintiff's "'bloody urine,'" were too negligible to establish a Fourth Amendment violation. *See ibid.* (quoting *Westfall v. Luna*, 903 F.3d 534 (5th Cir. 2018)). Applying this precedent, the court reviewed the video footage and concluded that Martinez "did not appear visibly injured during his arrest or afterward," had "no broken bones, did not appear to have mobility issues," and was declared "fit for jail." *Ibid.*

"Even assuming [Martinez] did suffer more than a de minimis injury," the District Court continued, "such injury is minimal, which 'tends to support a conclusion that the officers acted reasonably.'" Pet. App. 23a (quoting *Solis*, 31 F.4th at 982). The court acknowledged that the first two *Graham* factors favored Martinez, because "the severity of the crime in this case—walking on the wrong side of the road—is low, and [he] presented a minimal threat to the public and the Officers." *Id.* 24a.

Yet the court found that the third factor—"actively resisting arrest or attempting to evade arrest by flight," *Graham*, 490 U.S. at 396—favored the officers. *See* Pet. App. 24a. The court characterized Martinez as "verbally hostile to the Officers and uncooperative" throughout the encounter. *Ibid.*[3] And

[3] The court did not distinguish between the ex ante facts that motivated Officer Cantu to take Martinez to the ground (that he

the court found significant that the "officers took [Martinez] to the ground without punching, kicking, or striking him," considering this "behavior." *Id.* 24a-25a. The court relied on these limited findings—the absence of gratuitous strikes and the "minimal" nature of his injuries—to conclude that the force was "neither excessive nor unreasonable." *Id.* 23a-25a.

2. A divided panel of the Fifth Circuit affirmed in a published opinion over a strongly worded dissent.

The majority agreed that Martinez lacked a sufficiently significant injury to establish a Fourth Amendment violation.

First, the majority reaffirmed and applied the Circuit's longstanding rule that: "'To establish a claim of excessive force under the Fourth Amendment, plaintiffs must demonstrate ... injury.'" Pet. App. 8a & nn.16-17 (quoting *Buehler v. Dear*, 27 F.4th 969, 981 (5th Cir. 2022) (itself quoting *Tarver v. City of Edna*, 410 F.3d 745, 751 (5th Cir. 2005))). While the Fifth Circuit will sometimes deem its injury requirement satisfied in cases where there was admittedly no law enforcement purpose for the use of force, *cf. ibid.*, the majority did not apply that principle here. Instead, the majority applied the Circuit's usual requirement that plaintiffs prove "more than a de minimis injury" to state a cognizable Fourth Amendment claim and affirmed summary judgment for the officers because it "agree[d] with the district court that any injury was

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"at most talked back to the officer, expressed his incredulity, and pulled his arm away from Officer Cantu," *see id.* 15a), and the fact that Martinez was "struggling" in pain thereafter, pleading with the officers as they continued to pin him down and pry his arm, *see id.* 24a; *see also id.* 13a-14a.

de minimis" in this case. *Id.* 8a-9a; *see also id.* 14a ("The majority opinion does not consider the substance of the excessive force claim, concluding that Martinez cannot state a claim at all because his injuries are de minimis").

Second, because the majority agreed that Martinez suffered only de minimis injury, it also agreed that Officer Cantu acted reasonably. Pet. App. 9a-10a. Even though the majority believed the question "remains close," and "perhaps in one sense, it is a tie," it resolved that tie against Martinez because "there is no evidence of injury in the record." *Id.* 10a. The majority thus used the purported lack of sufficiently severe injury both to bar Martinez's claim at the threshold and to deem the officers' actions reasonable in a close case on the merits.[4]

Judge Higginson dissented. In his view: "A jury should be allowed to view this video and hear the evidence" and decide "whether Officer Cantu used excessive force when he brought Martinez to the ground one minute after he stopped him for walking on the incorrect side of a residential street on his way home." Pet. App. 11a-12a.

First, the dissent reasoned that "all three of the *Graham* factors favor Martinez." Pet. App. 14a. Judge Higginson agreed that the first two factors cut in Martinez's favor; he'd "walked on the wrong side of the street—a minor traffic violation," and posed no threat to the officers or "the safety of others." *Id.* 12a-13a. And under the third factor, "pulling one's arm away

[4] The majority also mused in passing that "Qualified Immunity protects the officer's honest mistake," but did not decide the case on those grounds. *See id.* 10a.

from an officer is not 'resistance' sufficient to justify tackling, especially if the officer has no reason to believe that the arrestee is a threat." *Id.* 13a.

Second, the dissent rejected the majority's determination that Martinez did not suffer injury sufficient to establish a Fourth Amendment violation. "Throughout the video of the takedown," Judge Higgenson noted, "Martinez repeatedly shouts 'Stop! You're hurting me!' and tells Officer Cantu that he is hurting his arms, which had been extensively injured" and "had a limited range of motion." Pet. App. 14a. The officers also "accompanied him after the arrest" at the hospital, where they could observe that he "continued to complain of pain to his arms and was prescribed ... hydrocodone." *Ibid.*

Third, the dissent concluded that qualified immunity could not shield the officers' conduct. "Here there was no emergency, no exigency, no serious crime, no threat to anyone's safety"; "Officer Cantu himself admitted that he had no plans to arrest Martinez, and that he just wanted to talk to him"; "Martinez at most talked back to the officer, expressed his incredulity, and pulled his arm away from Officer Cantu." Pet. App. 15a. "Qualified immunity exists to protect from liability government officers who must make tough—but reasonable—judgment calls." *Ibid.* (citing *Graham*, 490 U.S. at 388). Returning to those "first principles," Judge Higgenson concluded that it should be up to a jury whether "an officer reasonably makes a 'split-second judgment' to tackle a visibly disabled, unarmed man whose only offense was walking on the wrong side of a quiet residential street in his own neighborhood." *Ibid.*

REASONS TO GRANT THE PETITION

I. The Circuits Are Deeply Divided On The Question Presented.

Two fundamental disagreements divide the circuits over the Question Presented. First, although this Court has twice rejected any injury requirement for excessive force claims under the Eighth Amendment, some courts, including the Fifth Circuit, continue to require injury for excessive force claims under the Fourth Amendment. Second, some courts, including the Fifth Circuit, continue to use the lack of serious resulting injury to establish the reasonableness of an officer's use of force—no matter how much force the officer used and regardless of whether an objectively reasonable officer would have seen the force as warranted. Others have rejected that view, correctly recognizing that the degree of injury may be probative of the amount of force an officer used but is not relevant to whether the officer's use of that amount of force was reasonable.

A. The Circuits Disagree Whether Plaintiffs Must Meet An Injury Threshold To Establish A Fourth Amendment Violation.

This case implicates a longstanding circuit conflict recognized by the United States and circuit courts over whether plaintiffs must prove that they suffered an injury to claim a Fourth Amendment violation. Brief of United States in Opposition, *Rodella v. United States* ("U.S. *Rodella* BIO"), 137 S. Ct. 36 (2016) (No. 15-1158), 2016 WL 3902679, at *13 (addressing "Fifth Circuit's outlier position"); *e.g.*, *Chambers v. Pennycook*, 641 F.3d 898, 905 n.2 (8th

Cir. 2011) ("whether an excessive force claim may proceed without a showing of 'actual injury' ... apparently has divided the circuits").

1. The Fifth and Eighth Circuits, along with the Mississippi Supreme Court, impose a rigid injury threshold that bars excessive force claims unless the plaintiff can prove they suffered more than de minimis harm.

In this case, the **Fifth Circuit** reaffirmed its rule that to establish a Fourth Amendment violation, "plaintiffs must demonstrate ... injury" that "resulted directly and only from a use of force that was clearly excessive," the "excessiveness of which was clearly unreasonable." Pet. App. 8a & n.16 (quoting *Buehler v. Dear*, 27 F.4th 969, 981 (5th Cir. 2022)); *Tarver v. City of Edna*, 410 F.3d 745, 751 (5th Cir. 2005) (same). In every case, the Fifth Circuit "requires a plaintiff to have 'suffered at least some injury.'" *Ikerd v. Blair*, 101 F.3d 430, 434 (5th Cir. 1996) (quoting *Jackson v. Culbertson*, 984 F.2d 699, 700 (5th Cir. 1993) (a plaintiff "must have suffered at least some injury," even if he "need not show a significant injury" after *Hudson*)); *see Alexander v. City of Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017) (same). And, in fact, the "injury prong requires more than a de minimis injury in most instances." Pet. App. 8a & n.17 (citing *Buehler*, 27 F.4th at 982; *Solis v. Serrett*, 31 F.4th 975, 981 (5th Cir. 2022); *Alexander*, 854 F.3d at 309); *see Solis*, 31 F.4th at 981 ("a de minimis injury is not cognizable" under the Fourth Amendment (quoting *Alexander*, 854 F.3d at 309)).

The **Eighth Circuit** likewise demands that "'actual injury' must be shown to support an excessive

force claim under the Fourth Amendment." *Hanig v. Lee*, 415 F.3d 822, 824 (8th Cir. 2005) (quoting *Dawkins v. Graham*, 50 F.3d 532, 535 (8th Cir. 1995)); *see also Bishop v. Glazier*, 723 F.3d 957, 962 (8th Cir. 2013) (requiring "more than de minimis injury" to overcome qualified immunity).[5] District courts in the Eighth Circuit routinely dismiss excessive force claims that fail to meet this threshold. *See*, *e.g.*, *Challender v. Parmenter*, 2022 WL 1773686, at *5 (D.S.D. June 1, 2022) (dismissing Fourth Amendment excessive force claim because plaintiff did "not allege actual injury"); *Silpot v. Napier*, 2016 WL 6304448, at *4 (W.D. Ark. Oct. 26, 2016) (no "cognizable claim ... for excessive force" because plaintiff "alleged no actual injuries"); *Bailey v. Cnty. of Kittson*, 2009 WL 294229, at *22 (D. Minn. Feb. 5, 2009) (plaintiff's "excessive force claim fails as a matter of law, because he has failed to demonstrate any actual injury—not even a de minimis injury").

The **Mississippi Supreme Court** also requires plaintiffs bringing Fourth Amendment excessive force claims to prove "that the officers' actions caused them injury." *See City of Jackson v. Powell*, 917 So. 2d 59, 72 (Miss. 2005) (quoting *Williams v. Lee Cnty. Sheriff's Dep't,* 744 So. 2d 286, 297 (Miss. 1999)) (cleaned up); *see also Elkins v. McKenzie*, 865 So.2d

[5] After *Wilkins*, the Eighth Circuit recognized that plaintiffs do not have to prove a greater than de minimis injury to establish a Fourth Amendment violation. *Chambers*, 641 F.3d at 906. At the time, the court did not resolve "whether an excessive force claim may proceed without a showing of 'actual injury.'" *Id.* at 906 n.2. The circuit has since reaffirmed that plaintiffs must "show some 'actual injury'" to establish a cognizable Fourth Amendment claim. *See Bishop*, 723 F.3d at 962.

1065, 1083 (Miss. 2003) (with approval, quoting *Bazan ex rel. Bazan v. Hidalgo Cnty.*, 246 F.3d 481, 487 (5th Cir. 2001), for proposition that "to state a claim for excessive force in violation of the Constitution, a plaintiff must allege *(1) an injury*").

2. No other circuit identifies injury as a required element of a Fourth Amendment excessive force claim. *See, e.g.*, *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017) (en banc) (listing elements without requiring proof of injury); *E.W. by & through T.W. v. Dolgos*, 884 F.3d 172, 179 (4th Cir. 2018) (same); *Lee v. Tucker*, 904 F.3d 1145, 1148 (10th Cir. 2018) (same). In fact, most circuits have explicitly rejected any requirement that plaintiffs prove injury to establish a Fourth Amendment violation.

The **Seventh**, **Ninth**, and **Eleventh Circuits** have expressly rejected any injury requirement. An "excessive force claim does not require an injury." *Lanigan v. Vill. of E. Hazel Crest,* 110 F.3d 467, 471 n.3 (7th Cir. 1997). Thus, "force can be unreasonable even without physical blows or injuries." *See Bryan v. MacPherson*, 630 F.3d 805, 824 (9th Cir. 2010); *see, e.g.*, *Wilks v. Reyes*, 5 F.3d 412, 415 (9th Cir. 1993) (officer "violated Wilks' constitutional rights" even when jury "did not believe Wilks suffered injury as a result of the incident"). "To conclude" otherwise "'improperly bypasses the core judicial inquiry,' which is the nature of the force." *Saunders v. Duke*, 766 F.3d 1262, 1270 (11th Cir. 2014) (quoting *Wilkins*, 559 U.S. at 37) (cleaned up). Thus, "a plaintiff claiming excessive force under the Fourth Amendment can

seek nominal damages if he does not have compensable injuries." *See ibid*.[6]

The **Second**, **Fourth**, **Sixth**, and **Tenth Circuits** have rejected claims that plaintiffs must have more than de minimis injury to establish a Fourth Amendment violation. *Ketcham v. City of Mount Vernon*, 992 F.3d 144, 150 (2d Cir. 2021) (rejecting argument that injuries "must be more than merely de minimis" (citation omitted)); *Dolgos*, 884 F.3d at 185 (4th Cir. 2018)) ("Police officers will not be absolved of liability merely because their conduct, however unreasonable, results in only de minimis injury."); *Reed v. Campbell Cnty.*, 80 F.4th 734, 750 (6th Cir. 2023) ("Any force used to accomplish an unlawful detention could be deemed unreasonable under the Fourth Amendment," and "we have never imposed a de minimis injury requirement for Fourth Amendment excessive-force claims."); *Hughey v. Easlick*, 3 F.4th 283, 293 (6th Cir. 2021) (holding that "general excessive-force claims do not require allegations of physical injury"); *United States v. Rodella*, 804 F.3d 1317, 1327 (10th Cir. 2015)

[6] The **D.C. Circuit** seems to have rejected any injury threshold as well. In *DeGraff v. District of Columbia*, 120 F.3d 298 (D.C. Cir. 1997), the court reversed a district court that had granted summary judgment to the officers because their force "resulted in no physical injury" to the plaintiff. *Id.* at 300-02. Despite plaintiff's admission "that she had not suffered any physical injury as a result of the officers' actions," the D.C. Circuit reversed and remanded because, "based solely on her version of the facts, it would be hard to justify [the officers'] actions." *Id.* at 302.

(rejecting claim that "'de minimis injury' requirement is applicable beyond handcuffing-only cases").[7]

B. This Division Reflects A Broader And More Fundamental Dispute Over The Role Of Injury In Excessive Force Cases.

All circuits recognize that the extent of injury is potentially relevant in the excessive force analysis, but they fundamentally disagree over the role that such evidence (or lack thereof) plays.

1. In *Wilkins*, this Court reaffirmed "*Hudson*'s direction to decide excessive force claims based on the nature of the force rather than the extent of the injury." 559 U.S. 34, 37 (2010). For this reason, "the extent of injury" is of limited relevance; it "may," for example, "provide some indication of the amount of force applied." *Id.* at 37. Given this limitation, some circuits hold that the degree of injury is potentially indirect evidence of the extent or kind of force used. The reasonableness of that force is then evaluated without reference to the injury that may have resulted.

Thus, the **Ninth Circuit** begins its excessive force analysis by determining "the severity of the intrusion on the individual's Fourth Amendment

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[7] The Sixth and Tenth Circuits make an exception requiring "some physical injury" for routine handcuffing cases. *See Hughey*, 3 F.4th at 289; *Rodella*, 804 F.3d at 1327; *see also Fisher v. City of Las Cruces*, 584 F.3d 888, 903-04 (10th Cir. 2009) (Gorsuch, J., concurring) ("Are we certain that .... the fortuity of whether an officer chooses to deploy handcuffs should determine the quantum of evidence a plaintiff must marshal to prove a constitutional violation?").

interests." *Andrews v. City of Henderson*, 35 F.4th 710, 715 (9th Cir. 2022) (quotation marks omitted). It does so by "evaluating the type and amount of force inflicted." *Ibid.* Sometimes, the type of force can be evaluated "categorically," as with deadly force, for example. *Seidner v. de Vries*, 39 F.4th 591, 596 (9th Cir. 2022). "Most often, however, quantifying a particular use of force requires consideration of the 'specific factual circumstances.'" *Ibid.* (quoting *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017) (en banc)). To quantify the amount of force used in most cases, "[b]oth 'the nature and degree of physical contact' and the 'risk of harm and the actual harm experienced are relevant.'" *Id*. at 597 (quoting *Williamson v. City of Nat'l City*, 23 F.4th 1146, 1152 (9th Cir. 2022)).

Once the Ninth Circuit determines the type and amount of force used, it then considers whether the officer's decision to use that force was objectively reasonable under the relevant circumstances—without reference to the plaintiff's resulting injuries (if any). *See Lowry*, 858 F.3d at 1257-60. *Compare, e.g.*, *Rice v. Morehouse*, 989 F.3d 1112, 1121, 1123 (9th Cir. 2021) (jury must consider plaintiff's claim, even though takedown caused only pain, because "state had minimal interest in [officers'] use of substantial force" under circumstances), *with Miller v. Clark Cnty.*, 340 F.3d 959, 961, 967-68 (9th Cir. 2003) (summary judgment affirmed for officers who deployed force that "shredded" muscles under plaintiff's elbow "to the bone" because of objectively reasonable law enforcement need to subdue "fleeing" and armed felon).

The **Sixth**, **Eleventh**, and **D.C. Circuits** also understand that while evidence of the extent of injury may be probative of what really occurred, such evidence cannot establish that officials acted reasonably. *See, e.g.*, *Wardlaw v. Pickett*, 1 F.3d 1297, 1304 n.7 (D.C. Cir. 1993) ("Although the severity of [a plaintiff's] injuries is not by itself the basis for deciding whether the force used was excessive, it does provide some indication of the degree of force [an officer] used."); *see also, e.g.*, *Charles v. Johnson*, 18 F.4th 686, 700 (11th Cir. 2021) ("resulting injuries can be evidence of the kind or degree of force that was used by the officer"); *Hughey v. Easlick*, 3 F.4th 283, 287-93 (6th Cir. 2021) (using evidence of injury to determine that genuine dispute of fact existed for jury to resolve as to kind and degree of force used by officer when relevant conduct occurred off camera).

2. Rather than treating injury as only "some indication of the amount of force applied," *Wilkins*, 559 U.S. at 37, other courts hold that an officer's conduct may be deemed objectively reasonable if the officer's use of force causes injuries that are not severe enough.

In the **Fifth Circuit**, the degree of injury suffered by a plaintiff and the reasonableness of an officer's actions are "'directly'" correlated on a "sliding scale." *Buehler v. Dear*, 27 F.4th 969, 982 (5th Cir. 2022) (quoting *Ikerd v. Blair*, 101 F.3d 430, 434-35 (5th Cir. 1996)). "Although a de minimis injury is not cognizable," even after that hurdle is cleared, "the extent of injury necessary to satisfy the injury requirement is directly related to the amount of force that is constitutionally permissible under the circumstances." *Solis v. Serrett*, 31 F.4th 975, 981 (5th

Cir. 2022) (quoting *Alexander v. City of Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017)) (brackets and quotation marks removed). In this case, the panel majority embraced the District Court's reasoning that even if Martinez had cleared the de minimis injury threshold (which it "agree[d] with the district court" he had not), his injuries were at most "minimal," confirming "'that the officers acted reasonably,'" *see* Pet. App. 9a, 23a (quoting *Solis*, 31 F.4th at 982).

The **First Circuit** similarly permits the use of "'evidence that plaintiff's alleged injuries were minor'" to prove "the reasonableness" of an officer's conduct. *Bastien v. Goddard*, 279 F.3d 10, 14 n.5 (1st Cir. 2002) (quoting *Dean v. City of Worchester*, 924 F.2d 364, 639 (1st Cir. 1991)) (cleaned up). The court effectively utilizes the same sliding scale approach as the Fifth Circuit. *See ibid.* (explaining that in *Dean*, the circuit established that "injury" is "one of multiple factors" that may confirm "the reasonableness of the force used," and that "minor injuries" are "insufficient to trigger an inference of excessive force" in "the tense, uncertain, and rapidly evolving circumstances surrounding the reasonably perceived need to subdue an armed felon on a busy street") (cleaned up).

II. Only This Court Can Resolve The Circuit Conflict.

Nearly a decade ago, the United States recognized in *Rodella v. United States* that the Fifth Circuit "has applied a different rule" than other circuits over the role of injury in excessive force cases. U.S. *Rodella* BIO, *supra*, at *8. While opposing certiorari at the time, the Government did not dispute the importance of the conflict. Instead, it suggested

two reasons for delay: first, that the Fifth Circuit might change tack if given time to consider *Wilkins*, as other circuits had done, and second, that *Rodella* was a poor vehicle to address the Fifth Circuit's outlier rule. Neither consideration applies here.

1. In *Rodella*, the United States guessed that "now that [*Wilkins*] has squarely rejected the Fifth Circuit's understanding of *Hudson*, that court might well abandon its injury requirement" in the Fourth Amendment context. U.S. *Rodella* BIO, *supra*, at *14. That prediction, made in 2015, has proven unfounded. In the nearly 15 years since *Wilkins*, the Fifth Circuit has persisted in its outlier position despite repeatedly acknowledging that *Wilkins* calls its injury requirement into question.[8] This recalcitrance comes even as the Fifth Circuit has openly acknowledged that sister courts have abandoned such requirements in *Wilkins*'s wake.[9] *See also* Pet. App. 8a & nn.16-17 (reaffirming injury threshold).

The entrenchment of this split has real consequences. District courts uniformly apply the injury prerequisite in the Fifth Circuit, forced by circuit precedent to view the requirement as

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[8] *See Lincoln v. Turner*, 874 F.3d 833, 846 n.61 (5th Cir. 2017) ("[W]e need not address whether a more than 'de minimis' injury is still required for a Fourth Amendment excessive force claim in the wake of the Supreme Court's decision in *Wilkins* ... ."); *Bone v. Dunnaway*, 657 F. App'x 258, 262 n.3 (5th Cir. 2016) (declining to "address the extent to which the reasoning of *Wilkins* ... , an Eighth Amendment case, may apply to a Fourth Amendment case" (noting cert. proceedings in *Rodella*).

[9] *See Bone*, 657 F. App'x at 262 n.3 (acknowledging shift in *Rodella*, 804 F.3d at 1327-28 (citing *Saunders,* 766 F.3d at 1270 (11th Cir. 2014); *Chambers*, 641 F.3d at 906-07 (8th Cir. 2011))).

consistent with *Wilkins*. *See, e.g.*, *Salazar v. Texas*, 2020 WL 13609390, at *13 n.25 (S.D. Tex. Apr. 23, 2020) ("*Wilkins* expressly acknowledged and left untouched the de minimis standard used by the Fifth Circuit."); *Clark v. Watson*, 2013 WL 3984218, at *2-3 (E.D. La. July 31, 2013) ("Consistent with *Wilkins*, the Fifth Circuit continues to require injury as an element of a Fourth Amendment excessive force claim."); *see also E.R. v. Jasso*, 573 F. Supp. 3d 1117, 1133 n.125 (W.D. Tex. 2021), *aff'd*, 2022 WL 4103621 (5th Cir. Sept. 8, 2022). The result is the systematic dismissal of otherwise viable excessive force claims solely because judges in the Fifth Circuit conclude that the plaintiff has not put forth evidence of a sufficiently severe injury—as happened here.

Just one year before deciding this case, the Fifth Circuit affirmed another district court's dismissal of excessive force claims against officers who, when questioning a potential witness who presented no threat and was not suspected of any crime, "grabbed" her, causing her to fall and "hit[] her head on a car bumper," "dragged" her out onto the road, "then cuffed" her—because there was "no evidence showing that she suffered more than a de minimis injury." *McNeal v. City of Katy*, 2023 WL 186874, at *1, *5 (S.D. Tex. Jan. 13, 2023), *aff'd*, 2023 WL 7921201 (5th Cir. Nov. 16, 2023). Another district court in the Circuit recently dismissed a claim that police violated the Fourth Amendment when the plaintiff—who went to the police station to pick up his brother after officers told his brother they were "not going to arrest [him] and told him to call someone to pick him up"—arrived at the police station and an officer "grabbed [the plaintiff], twisted his arm behind his back," then

"threatened [him], telling [him] that if they kept 'bumping heads, there was going to be a 'killing.'" *Harris v. Dobbins*, 2023 WL 2899994, at *11 (S.D. Miss. Apr. 11, 2023). Why? Because the plaintiff did "not allege that he sustained any injury, more than a de minimis injury, as a result of having his arm twisted." *Id.* at *19.

And only months before the District Court granted summary judgment to respondents in this case, another district court in Texas granted summary judgment to an officer who had twisted the plaintiff's already-handcuffed, already-injured arm, threw him to the ground, and then jumped on his back. *Perkins v. Harris*, 2023 WL 4494784, at *1-7 (N.D. Tex. June 5, 2023), *report and recommendation adopted*, 2023 WL 4497267 (N.D. Tex. July 12, 2023). Although the court acknowledged the plaintiff's "bloody mouth" and "out of place" arm, the court nonetheless held that the officer's use of force was reasonable given the "limited nature" of his injuries. *See ibid.*; *see also Davis v. Chandler*, 2022 WL 17842971, at *4 (W.D. Tex. Nov. 10, 2022) (dismissing because plaintiff "has not shown that he suffered an injury that was more than de minimis").

2. This case presents an unusually clean vehicle for resolving the deep division over the role of injury in Fourth Amendment excessive force cases. *Compare* U.S. *Rodella* BIO, *supra*, at *8, *14-20 (arguing *Rodella* was bad vehicle to resolve split because Officer Rodella "would not be entitled to relief even if this Court" granted his petition and agreed with Fifth Circuit's injury threshold).

Unlike *Rodella*, the answer to the Question Presented is outcome-determinative in this case. The panel majority acknowledged that "the case remains close" at summary judgment and that "perhaps, it is a tie." Pet. App. 10a. But it bypassed the jury and resolved the tie against Martinez because it concluded that there is "no evidence of injury in the record." *Ibid.*

The relevant facts are also undisputed and preserved on video. Unlike many excessive force cases that turn on competing accounts of what happened, this clear factual record allows the Court to focus squarely on the legal Question Presented without getting entangled in factual disputes.

And the case arrives in an ideal posture. The majority did not invoke qualified immunity as an alternative ground for decision; as the dissent explained, the majority concluded only "that Martinez cannot state a claim at all because his injuries are de minimis." Pet. App. 14a. Instead, the majority held that officers can escape liability in "close" or "tie[d]" excessive force cases "when there is no evidence of injury in the record." *Id.* 10a. That is not a qualified immunity analysis; the words "clearly established" appear nowhere in the majority opinion. *See Pearson v. Callahan*, 555 U.S. 223, 227 (2009). Even the most charitable reading of the majority's mention of qualified immunity as a holding would yield an astonishing, unstated proposition: that despite this Court's clear holdings in *Hudson* and *Wilkins*, reasonable officers could still believe the Fourth Amendment permits the use of any amount of physical force regardless of the circumstances, so long as the officers don't cause lasting injury.

III. The Question Presented Is Recurring And Important.

The circuit division over the Question Presented has profound, recurring, real-world consequences.

1. As discussed, district courts regularly and recently have dismissed excessive force claims applying the Fifth and Eighth Circuits' outlier rules. *See supra* pp.16, 23-25. Other circuits would have permitted such claims to proceed. The circuit division results in Americans receiving vastly different constitutional protections depending on where they happen to be in the country when law enforcement physically coerces them to obey.

For example, Martinez was thrown to the ground for a minor traffic violation—conduct the Ninth Circuit has held to violate the Fourth Amendment under indistinguishable circumstances. *Compare Rice v. Morehouse*, 989 F.3d 1112, 1121, 1124 (9th Cir. 2021) (plaintiff's claim that officers violated the Fourth Amendment when they threw him to ground and pinned his hands behind his back for minor traffic violation went to jury "because the right to be free from 'the application of non-trivial force for engaging in mere passive resistance' was clearly established"), *with* Pet. App. 9a-10a (same official conduct did not violate Fourth Amendment) *and Davis v. Chandler*, 2022 WL 17842971, at *1, *4 & n.1 (W.D. Tex. Nov. 10, 2022) (refusing to consider "the objective unreasonableness of [the officers'] use of force" and holding that plaintiff's "excessive-force claim fails as a matter of law," because, to "the extent [the officers] hurt him during the arrest, [he] has not shown that he suffered an injury that was more than de

minimis"). Nothing about Martinez's injuries would have barred his claims in most of the other circuits. *See supra* pp.18-19 & nn.6-7.

The "true foundation of republican government is the equal right of every citizen in his person, & property, & in their management." *See* Thomas Jefferson, Letter to Samuel Kercheval (July 12, 1816), https://tinyurl.com/9nf47c8k. Only this Court's intervention can restore the uniform protection the Constitution promises to all Americans under the Fourth Amendment.

2. Since *Wilkins*, the Department of Justice has identified police departments across the country that continue to routinely deploy non-lethal yet excessive force "likely to cause pain," often "almost immediately in response to low-level, nonviolent offenses." *See, e.g.*, U.S. Dep't of Just., Investigation of the Memphis Police Department and the City of Memphis 14 (Dec. 4, 2024).[10] "Many subjects of excessive force were, at

[10] U.S. Dep't of Just., Investigation of the Louisville Metro Police Department and Louisville Metro Government 12-17 (Mar. 8, 2023) (same); U.S. Dep't of Just., Investigation of the City of Minneapolis and the Minneapolis Police Department 18-22 (June 16, 2023) (same); U.S. Dep't of Just., Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau 10-16 (July 8, 2020); U.S. Dep't of Just., Investigation of the Baltimore City Police Department 85-92 (Aug. 10, 2016) (same); U.S. Dep't of Just., Investigation of the Newark Police Department 24-25 (July 22, 2014) (same); U.S. Dep't of Just., Investigation of the Cleveland Division of Police 3-4 (Dec. 4, 2014) (same); U.S. Dep't of Just., Investigation of the Seattle Police Department 9-11 (Dec. 16, 2011) (same); U.S. Dep't of Just., Investigation of the Puerto Rico Police Department 20-25 (Sept. 5, 2011) (same); U.S. Dep't of Just., Investigation of the New Orleans Police Department 4 (Mar. 16, 2011) (same).

the time of the incident, carrying out ordinary activities or committing minor infractions." *See, e.g.*, Investigation of the Puerto Rico Police Department, *supra*, at 20. These findings document how readily some officers respond to perceived disrespect by inflicting pain to secure a civilian's submission, even in manifestly non-threatening encounters. This case is a perfect illustration: Officer Cantu only wanted to explain that Martinez was endangering "himself," yet he tackled Martinez to the ground instead of "being ignored." *See* Pet. App. 9a.

IV. The Decision Below Is Wrong.

The Fifth Circuit's answer to the Question Presented is incompatible with this Court's jurisprudence. In previous filings before this Court, the United States has agreed. *See* U.S. *Rodella* BIO, *supra*, at *8 ("[A] Fourth Amendment excessive-force claim does not require proof that the victim suffered any particular degree of injury."). And the Fifth Circuit's approach erodes the Fourth Amendment's fundamental protections

A. This Court's Precedent Forecloses The Fifth Circuit's Threshold Injury Requirement.

The Fourth Amendment's touchstone is reasonableness. *Graham v. Connor*, 490 U.S. 386, 396 (1989). In the excessive force context, that means asking whether an officer's "actions are 'objectively reasonable' in light of the facts and circumstances confronting them." *Id.* at 397 (citation omitted). The analysis must be conducted "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396.

That temporal focus is essential because the Fourth Amendment regulates police conduct—it tells officers what force they may use given the circumstances they face. Law enforcement cannot know what injury that force will cause, so a civilian need not suffer injury to establish a claim of government abuse under the Fourth Amendment. The same police action—like throwing someone to the ground—may cause grave injury to one person and barely scratch another for reasons that officers cannot predict, such as an unseen physical vulnerability. Whether a plaintiff like Martinez can vindicate his Fourth Amendment rights should not turn on whether his "deformity" was "unknown" to the officer. *Contra* Pet. App. 10a.

This Court has repeatedly rejected attempts to make injury a prerequisite for excessive force claims. In *Hudson*, the Court held that when officials use excessive force, the Constitution is violated "whether or not significant injury is evident." 503 U.S. 1, 9 (1992). While "de minimis uses of physical force" rarely violate the Eighth Amendment, an otherwise excessive use of force does not become constitutional merely because it results in "minor" injuries. *Id.* at 10 (quotation marks omitted). As the Court explained, allowing that result "would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury." *Id.* at 9.

The Court summarily reaffirmed *Hudson*'s "clear holding" in *Wilkins*, explaining that an injury requirement "improperly bypasses this core inquiry" into the nature and reasonableness of the force used. 559 U.S. 34, 36, 39 (2010). *Hudson* did not "merely

serve to lower the injury threshold for excessive force claims from 'significant' to 'non-de minimis'—whatever those ill-defined terms might mean." *Id.* at 39. Instead, *Hudson* "aimed to shift the 'core judicial inquiry' from the extent of the injury to the nature of the force." *Ibid.* (quoting 503 U.S. at 7).

The Fifth Circuit's continued insistence on a threshold showing of injury under the Fourth Amendment—and its utilization of injury evidence to directly resolve whether force was used reasonably—cannot be reconciled with these precedents. *See* U.S. *Rodella* BIO, *supra*, at *10-11 ("rejection of an injury requirement under the Fourth Amendment is reinforced by this Court's resolution of a parallel issue in the context of Eighth Amendment excessive-force claims," because "both constitutional standards focus on 'the nature of the force rather than the extent of the injury'") (quoting *Wilkins*, 559 U.S. at 34). The question, again, is what a reasonable officer would have done based on his ex ante observations. *Graham*, 490 U.S. at 396-97.

The Fourth Amendment exists to constrain government force; it would make no sense to have its safeguards turn on facts officers can't be expected to know beforehand. That is why this Court has consistently focused the excessive force inquiry on facts and circumstances known and reasonably observable to officers ex ante: "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. And it is why after-the-fact injury does not resolve the constitutional question. *See* U.S.

Rodella BIO, *supra*, at *9 ("As [*Graham*'s] factors make clear, the Fourth Amendment inquiry focuses on 'whether *the force* used to effect a particular seizure is reasonable' – not the extent of any *injury* suffered as a result.") (citation omitted).

B. Violent Force Cannot Be Justified Only Because "Minor" Injuries Resulted.

The Fifth Circuit uses the extent of injury to directly resolve whether law enforcement acted reasonably. *See supra* pp.21-22. This fundamentally misunderstands the role injury can play in excessive force cases.

"Injury and force" are "only imperfectly correlated, and it is the latter that ultimately counts." *Wilkins*, 559 U.S. at 38. An "inmate who is gratuitously beaten by guards," for example, "does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury." *Ibid.* Even the most minor uses of force that result in "no discernible injury" are cognizable if objectively unreasonable. *See ibid.* Thus, *Wilkins* explained that the "extent of injury may" serve a particular evidentiary function: "provid[ing] some indication of the amount of force" used when that historical fact is disputed. *See id.* at 37.[11] If an arrestee claims an officer punched him in the face

[11] In the Eighth Amendment context, where an officer's subjective good faith is relevant, *Wilkins* held that the extent of injury may also shed light on whether the officer "could plausibly have ... thought" the force was "necessary." *See* 559 U.S. at 37 (quoting *Whitley*, 475 U.S. at 321). Again, an officer's intent is irrelevant in the Fourth Amendment context. *Graham*, 490 U.S. at 397.

before placing him in handcuffs and the officer denies it, evidence of a black eye would help a jury to resolve that dispute. But once the type and degree of force are established, courts must focus on the circumstances that prompted the officer to deploy that level of violence.

C. The Fifth Circuit's Rule Erodes The Fourth Amendment's Safeguards Against Official Abuses Of Power.

The Fifth Circuit's injury threshold not only lacks foundation in constitutional text and precedent, but actively undermines the Fourth Amendment's core protections against unreasonable seizures. Its rule arbitrarily privileges certain plaintiffs over others, imposes barriers unrelated to the reasonableness of police conduct, and creates an unworkable standard that fails to guide either courts or officers.

First, as then-Judge Gorsuch observed, an injury requirement privileges "eggshell plaintiffs over more resilient individuals." *See Fisher v. City of Las Cruces*, 584 F.3d 888, 903 (10th Cir. 2009) (Gorsuch, J., concurring). "Are we certain that the Fourth Amendment really prefers, as an injury requirement might, eggshell plaintiffs over more resilient individuals?" *See ibid.*

Second, use-of-force incidents are most common in low-income communities,[12] and the Fifth Circuit's rule disadvantages populations with limited access to medical care or resources to hire expert witnesses. By

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[12] *See, e.g.*, Roland J. Fryer, Jr., *An Empirical Analysis of Racial Differences in Police Use of Force,* 127 J. of Pol. Econ. 1210, 1213, 1219-20 (2019).

requiring evidence of a sufficiently severe injury under its "sliding scale" approach, the Fifth Circuit effectively conditions constitutional rights on an individual's ability to seek immediate medical attention or pay medical experts—considerations unrelated to whether police acted reasonably.

Third, requiring courts to distinguish between "de minimis" and "non-de minimis" injuries creates an unworkable line-drawing problem. These "ill-defined" terms provide little guidance to courts struggling to resolve excessive force disputes. *See Wilkins*, 559 U.S. at 39. Meanwhile, law enforcement officers lack clear guidance about the limits of force they may use.

This is no surprise. Force resulting in a civilian's "abrasions and bruises," "high blood pressure and heart rate," and even "bloody urine" are not actionable in the Fifth Circuit because the court deems such injuries de minimis. *Westfall v. Luna*, 903 F.3d 534, 549-50 (5th Cir. 2018) (affirming summary judgment to officer who "may have ... caused" plaintiff's "abrasions and bruises, bloody urine, and high blood pressure and heart rate," because such injuries were insufficient to establish "greater than de minimis injury"). In turn, police departments have no incentive to develop robust use-of-force policies. One recent study found, for example, that the failure of certain Mississippi police departments to develop clear guidance on tasers stems directly from the fact that "the Fifth Circuit, whose rulings govern Mississippi, contradicted rulings handed down by other courts and decided that officers can shock someone simply for walking away against an officer's orders." *See* Matt Rosenfeld et al., *Where the Police Used a Taser on a Bible-Reading Great-Grandmother*, N.Y. Times (Jan.

15, 2024), https://tinyurl.com/2p6v39xs. The result is a rule that fails to vindicate legitimate constitutional claims while providing no meaningful guidance to officers in the field.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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February 14, 2025

APPENDIX

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APPENDIX A

United States Court of Appeals
For the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 11, 2024

Lyle W. Cayce
Clerk

No. 23-20539

ALEJANDRO MARTINEZ,

Plaintiff—Appellant,

versus

CITY OF ROSENBERG, TEXAS; OFFICER R. CANTU; OFFICER R. DONDIEGO; OFFICER JOSH MANRIQUEZ; OFFICER JEREMY REID; OFFICER SHELBY MACHA; OFFICER RAMON GALLEGOS; OFFICER EARNEST TORRES,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-432

Before HIGGINBOTHAM, STEWART, and HIGGINSON, *Circuit Judges*.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*:

Appellant Alejandro Martinez sued the City of Rosenberg and several of its police officers under 42 U.S.C. § 1983, alleging that they arrested him without probable cause and used excessive force to effectuate the arrest in violation of his Fourth Amendment rights. The district court dismissed Martinez's claim against the City for failure to state a claim of municipal liability under *Monell v. Department of Social Services of the City of New York*. The court also dismissed his claims against the Officers on qualified immunity grounds. Martinez appealed, arguing these orders were erroneous.

We find no error and AFFIRM.

I.

A.

On February 6, 2019, Alejandro Martinez was walking home when Officer Cantu of the City of Rosenberg Police Department stopped him for walking on the wrong side of the street in violation of the Texas Transportation Code.[1] Cantu did not tell Martinez he was under arrest but asked him to "come

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[1] TEX. TRANS. CODE § 552.006(b) ("If a sidewalk is not provided, a pedestrian walking along and on a highway shall walk on the left side of the roadway or the shoulder of the highway facing oncoming traffic, unless the left side of the roadway or the shoulder of the highway facing oncoming traffic is obstructed or unsafe.").

here" several times, purportedly to advise Martinez about safely walking along the road. Martinez originally complied but, after speaking with Cantu for approximately one minute, began to walk away. Cantu did not tackle Martinez but put his arms around Martinez's upper body and neck, and took him to the ground for handcuffing. Dash camera footage captured Martinez complaining of pain.

Officer Dondiego arrived on the scene and helped Cantu handcuff Martinez. Four additional officers—Officers Gallegos, Macha, Reid, and Manriquez—arrived and escorted Martinez to a squad car. Martinez was transferred to Oak Bend Medical Hospital for a medical evaluation. Medical staff reported that Martinez's pain was "chronic," he had no broken bones, and he was sufficiently mobile. After administering pain medicine, the hospital cleared Martinez and deemed him fit for jail.

B.

On February 8, 2021, Martinez brought suit against the City of Rosenberg as well as Officers Cantu, Dondiego, Manriquez, Reid, Macha, Gallegos, and Torres in their individual capacities. As amended and relevant here, the operative complaint asserted claims of (1) municipal liability against the City pursuant to 42 U.S.C. § 1983; (2) unlawful seizure and excessive use of force in violation of the Fourth Amendment against the Officers; and (3) liability for failure to intervene (i.e., bystander liability) against all of the Officers.

The City moved to dismiss Martinez's municipal liability claim under Federal Rule of Civil Procedure

12(b)(6), arguing Martinez failed to state a claim of municipal liability pursuant to *Monell v. Department of Social Services of the City of New York*.[2] The district court granted the motion, first determining that Martinez failed to allege a pattern of unlawful behavior, as his complaint "only offered facts related to the single, isolated incident that is the basis for this suit." The district court went on to explain that Martinez offered only "conclusory statements" regarding the City's use of force policy. Accordingly, the district court dismissed Martinez's claims against the City.

The Officers then filed motions for summary judgment on Martinez's remaining Fourth Amendment claims and provided body-worn and dash camera video footage as support. The district court found the Officers had not violated Martinez's constitutional rights and granted the motion on all counts. Regarding Martinez's unlawful arrest claim, the district court found Cantu had probable cause to stop and arrest Martinez because he was in clear violation of the Texas Transportation Code. The video footage captured Martinez walking with the flow of traffic, on the righthand side of street for "at least ten seconds." Because the Texas Transportation Code requires pedestrians to walk on the lefthand side of the street facing oncoming traffic, this violated Texas law and provided probable cause for the stop and

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[2] *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).

arrest.[3] The district court held that Martinez failed to create a genuine dispute of material fact on his excessive force claim because he offered no evidence that he was injured by the incident. The district court further found that the Officers used reasonable force when effectuating the arrest. Finally, the court granted summary judgment in the Officers' favor on the bystander liability claim, which could not stand absent a constitutional violation.

Martinez now appeals the district court's dismissal of his *Monell* claim against the City, as well as the grant of summary judgment in the Officers' favor.

II.

First, Martinez argues the district court erred by dismissing his claims against the City. This court reviews de novo a district court's grant of a motion to dismiss for failure to state a claim.[4] To survive a motion to dismiss, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face."[5] We accept as true all well-pleaded facts and construe them in the light most favorable to the plaintiff,[6] but

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[3] TEX. TRANS. CODE § 552.006(b).

[4] *Guerra v. Castillo*, 82 F.4th 278, 284 (5th Cir. 2023) (citing *Clyce v. Butler*, 876 F.3d 145, 148 (5th Cir. 2017)).

[5] *Crane v. City of Arlington, Tex.*, 50 F.4th 453, 461 (5th Cir. 2022), *cert. denied sub nom. City of Arlington v. Crane*, 144 S. Ct. 342 (2023), *and cert. denied sub nom. Roper v. Crane*, 144 S. Ct. 342 (2023) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[6] *Id.*

"we do not accept as true legal conclusions, conclusory statements, or naked assertions devoid of further factual enhancement."[7]

Successful *Monell* claims require "that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right."[8] An official policy is evinced by a widespread pattern or practice "that is so common and well-settled as to constitute a custom that fairly represents municipal policy" or, occasionally, when an official with final policymaking authority ratifies a subordinate's unconstitutional conduct.[9]

We affirm the district court's ruling that Martinez failed to state a claim under *Monell*. The operative complaint is conclusory, as it vaguely alleges a pattern of "excessive force and condoning excessive force" without providing factual context or supporting details—such as dates, the officers involved, or the

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[7] *Guerra*, 82 F.4th at 284 (citation omitted).

[8] *Doe v. Burleson Cnty., Tex.*, 86 F.4th 172, 176 (5th Cir. 2023) (citation omitted).

[9] *St. Maron Properties, L.L.C. v. City of Hous.*, 78 F.4th 754, 760 (5th Cir. 2023) (citing *Webb v. Town of Saint Joseph*, 925 F.3d 209, 214–15 (5th Cir. 2019)); *Webb*, 925 F.3d at 217 ("Even when an official with final policymaking authority does not directly act to set policy, a municipality may be liable in 'extreme factual situations' when that official ratifies a subordinate's decision, which requires more than the defense of a decision or action shown to be unconstitutional after the fact.") (citing *Davidson v. City of Stafford*, 848 F.3d 384, 395–96 (5th Cir. 2017), *as revised* (Mar. 31, 2017)).

injuries received. Likewise, the complaint claims that a "lack of proper training" led to the "widespread practice of using and condoning excessive force," but Martinez does not detail the training received (or lack thereof) or explain how it contributed to the "widespread practice" of force. Finally, the complaint fails to state a plausible *Monell* claim on a ratification theory, as it does not identify the specific official involved. At bottom, Martinez's allegations amount to mere "naked assertions devoid of further factual enhancement."[10]

III.

Next, we address whether the district court properly granted summary judgment in the Officers' favor on Martinez's unlawful arrest and excessive use of force claims.

Grants of summary judgment are reviewed de novo.[11] On summary judgment, the movant must show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[12] The court reviews the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in its favor.[13] When a defendant moves for summary judgment on the basis of qualified immunity, "the burden then

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[10] *Guerra*, 82 F.4th at 284.

[11] *Crane*, 50 F.4th at 461 (citation omitted).

[12] FED. R. CIV. P. 56(a); *see also Deville v. Marcantel*, 567 F.3d 156, 163 (5th Cir. 2009) (per curiam).

[13] *Deville*, 567 F.3d at 163–64.

shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law."[14]

"The constitutional claim of false arrest requires a showing of no probable cause."[15] "To establish a claim of excessive force under the Fourth Amendment, plaintiffs must demonstrate: '(1) injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.'" [16] The injury prong requires more than a de minimis injury in most instances.[17]

We have reviewed the briefs, the applicable law, and pertinent parts of the record; we have also heard oral argument. The judgment is AFFIRMED as to both claims, essentially for the reasons stated in the district court's order. Officer Cantu had probable cause to arrest Martinez because the dash camera footage indisputably captured Martinez walking on the righthand side of the road for several seconds, in

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[14] *Crane*, 50 F.4th at 461 (quoting *Aguirre v. City of San Antonio*, 995 F.3d 395, 406 (5th Cir. 2021)).

[15] *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 204 (5th Cir. 2009) (citation omitted).

[16] *Buehler v. Dear*, 27 F.4th 969, 981 (5th Cir. 2022).

[17] *Id.* at 982; *Solis v. Serrett*, 31 F.4th 975, 981 (5th Cir. 2022) ("[a]ny force found to be objectively unreasonable necessarily exceeds the de minimis threshold.") (quoting *Alexander v. City of Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017)).

violation of the Texas Transportation Code.[18] With respect to Martinez's excessive use of force claim, we agree with the district court that any injury was de minimis, and Cantu used reasonable force given the totality of the circumstances. Finally, the district court properly dismissed Martinez's bystander liability claim because it cannot stand absent an underlying constitutional violation.

IV.

With all due respect to the dissent, this is not a jaywalking case. To the contrary, the officer was enforcing a provision of the Texas Transportation Code that requires pedestrians to walk on the side of the roadway facing oncoming traffic. Walking on the side of the road with one's back to traffic poses considerably greater risk than jaywalking where the exposure of the pedestrian is quite different.

The significance accorded this provision by its placement in the Texas Transportation Code provides an important backdrop to the mission of Officer Cantu. His unchallenged affidavit explained that he confronted Martinez not to arrest him but to explain the importance of the provision that forbade Martinez's action. Namely, that Martinez's action was a threat to himself.

Martinez chose not to listen to Officer Cantu and instead walked away from him. Officer Cantu faced the choice of either being ignored or enforcing the statute. Officer Cantu decided to place his arm over

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[18] TEX. TRANS. CODE § 552.006(b).

Martinez's shoulder and bring him to the ground. Based on our review of video evidence, this maneuver would be unlikely to have caused pain to Martinez but for the fact that Martinez had a deformity unknown to Officer Cantu.

That said, this case remains close. Perhaps in one sense, it is a tie. But the officer should not be held liable for damages when there is no evidence of injury in the record and Qualified Immunity protects the officer's honest mistake.

Accordingly, we AFFIRM the district court's judgment.

STEPHEN A. HIGGINSON, *Circuit Judge*, dissenting:

"[J]aywalking is endemic but rarely results in arrest." *Nieves v. Bartlett*, 587 U.S. 391, 407 (2019).

If you watch the video of the interaction at issue here, you will see the following: At 4:35:02 P.M. on February 6, 2019, Alejandro Martinez is walking towards his home in Rosenburg, Texas on a residential street without sidewalks. At 4:35:17 P.M., Officer Ryan Cantu pulls over, jumps out of his car, and calls "let me talk to you" to Martinez, who walks back towards him from about ten feet away. At 4:36:29 P.M., Martinez is on the ground, shouting "Please! You're hurting my arm! You're hurting my arm!" In that brief window of time, Officer Cantu has slammed him to the ground.

Does the law of this country countenance this kind of force from those charged with protecting their communities? Because Martinez was walking on the wrong side of that street, in violation of state law, and because he turned his shoulder slightly, as if to walk away—but did not walk away—the Defendants argue that it does. The majority seems to agree, stating that Officer Cantu's force was "reasonable."

I respectfully dissent.[1]

Summary judgment was inappropriate in this case. A jury should be allowed to view this video and hear the evidence as to whether Officer Cantu used

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[1] I concur with the panel's opinion as to the municipal liability and unlawful arrest claims.

excessive force when he brought Martinez to the ground one minute after he stopped him for walking on the incorrect side of a residential street on his way home. The factors articulated in *Graham v. Connor*, 490 U.S. 386, 396 (1989) and our caselaw suggest that he did.

In determining the objective reasonableness of an officer's use of force, we consider (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the officers or others; and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396.

Here, Martinez's walked on the wrong side of the street—a minor traffic violation.[2] At oral argument, Officer Cantu's counsel admitted that Officer Cantu had no intention to arrest Martinez when he pulled him over. As our court has held on numerous occasions, use of force in such cases is often unreasonable. *See Bagley v. Guillen*, 90 F.4th 799, 803 (5th Cir. 2024) ("To begin with, he was pulled over for failing to use a turn signal. At most, this is a minor traffic violation."); *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (per curiam) ("Deville was stopped for a minor traffic violation—exceeding the 40 mph speed limit by 10mph—making the need for force

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[2] *See* TEX. TRANS. CODE § 552.006(b) ("If a sidewalk is not provided, a pedestrian walking along and on a highway shall walk on the left side of the roadway or the shoulder of the highway facing oncoming traffic, unless the left side of the roadway or the shoulder of the highway facing oncoming traffic is obstructed or unsafe.").

substantially lower than if she had been suspected of a serious crime.").

Second, it would be *un*reasonable for an officer to believe that Martinez posed an immediate threat to the safety of others. When Officer Cantu called him over, Martinez approached slowly—with an obvious limp—and with his hands open in incredulity, showing that he did not possess a weapon. The officers have not claimed they feared for their safety. Although Martinez pulled his arm away from Officer Cantu, pulling one's arm "out of [an officer's] grasp, without more, is insufficient to find an immediate threat to the safety of the officers." *Ramirez v. Martinez*, 716 F.3d 369, 378 (5th Cir. 2013).

And, while the third factor is *closer*, it still favors Martinez. "Officers may consider a suspect's refusal to comply with instructions . . . in assessing whether physical force is needed to effectuate the suspect's compliance." *Deville*, 567 F.3d at 167. However, our circuit has held that pulling one's arm away from an officer is not "resistance" sufficient to justify tackling, especially if the officer has no reason to believe that the arrestee is a threat. *See Trammell v. Fruge*, 868 F.3d 332, 341–42 (5th Cir. 2017) ("[I]t appears that Trammel's only physical resistance prior to being tackled was his attempt to pull his arm away. . . . Trammel was neither aggressive nor violent toward the officers prior to being tackled. . . . It is also unclear whether a reasonable officer would have thought that Trammel posed a danger to himself and others."); *see also Ramirez*, 716 F.3d at 378 (finding *Graham* factors supported finding of unreasonable force when "the

only resistance [Ramirez] offered was pulling his arm out of [the officer's] grasp"); *Goodson v. City of Corpus Christi*, 202 F.3d 730 (5th Cir. 2000) (holding that "Goodson has produced sufficient summary judgment evidence to suggest that he suffered a broken shoulder as a result of being tackled by Gaines and Perez, who lacked reasonable suspicion to detain or frisk him and from whom he was not fleeing" even though he "yanked" or "pulled" his arm away from officers). Because all three of the *Graham* factors favor Martinez, Defendants are not entitled to summary judgment on the excessive force claim.

The majority opinion does not consider the substance of the excessive force claim, concluding that Martinez cannot state a claim at all because his injuries are de minimis.

Martinez's injuries are not de minimis. Throughout the video of the takedown, Martinez repeatedly shouts "Stop! You're hurting me!" and tells Officer Cantu that he is hurting his arms, which had been extensively injured from a prior car accident and had a limited range of motion. At the hospital, where police officers accompanied him after the arrest, Martinez continued to complain of pain to his arms and was prescribed a Lortab—which contains the opioid hydrocodone—for his pain. As our court has observed, "as long as a plaintiff has suffered 'some injury,' even relatively insignificant injuries and purely psychological injuries will prove cognizable when resulting from an officer's unreasonably excessive force." *Solis v. Serrett*, 31 F.4th 975, 982 (5th Cir. 2022) (citation omitted); *see also Bagley*, 90 F.4th

at 804 ("[T]he video evidence permits a jury to conclude that the tasing caused Bagley significant pain. And that's sufficient to state a claim of excessive force.").

Finally, because qualified immunity cases require us to linger in the details of an interaction and its distinctions from previous instances of excessive force, it is important to return to first principles. As the Supreme Court has noted, the reasonable-officer standard exists because "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 388. Qualified immunity exists to protect from liability government officers who must make tough—but reasonable—judgment calls.

Here there was no emergency, no exigency, no serious crime, no threat to anyone's safety. Officer Cantu himself admitted that he had no plans to arrest Martinez, and that he just wanted to talk to him. Martinez at most talked back to the officer, expressed his incredulity, and pulled his arm away from Officer Cantu. Our law correctly casts doubt on the notion that an officer reasonably makes a "split-second judgment" to tackle a visibly disabled, unarmed man whose only offense was walking on the wrong side of a quiet residential street in his own neighborhood.

Accordingly, I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALEJANDRO MARTINEZ,	§	United States District Court Southern District of Texas
	§	
Plaintiff,	§	**ENTERED**
	§	September 27, 2023
VS.	§	Nathan Ochsner, Clerk
	§	
CITY OF ROSENBERG, TEXAS, *et al.*,	§	CIVIL ACTION NO. 4:21-CV-00432
	§	
Defendants	§	

ORDER

Before the Court are Plaintiff Alejandro Martinez's Second Amended Complaint (Doc. #30); Defendant Officers R. Cantu, R. Dondiego, Josh Manriquez, Jeremy Reid, Shelby Macha, Ramon Gallegos, and Earnest Torres's Motion for Summary Judgment (Doc. #45) and submission of additional exhibits (Doc. #46); Plaintiff's Response (Doc. #47); and Defendant Officers' Reply (Doc. #48). Having reviewed the parties' submissions, arguments, and the applicable legal authority, the Court grants Defendant Officers' Motion for Summary Judgment.

I. Background

a. Factual Background

This is a civil rights lawsuit alleging constitutional violations relating to the arrest and use

of force against Alejandro Martinez ("Plaintiff"). Doc. #30. After observing Plaintiff walking alongside the roadway, Officer R. Cantu ("Cantu") stopped Plaintiff and informed him he was walking on the wrong side of the road. Doc. #46, Ex. 2 at 4:35:10–4:35:25. Plaintiff argued with Cantu, claiming he did nothing wrong, and continued walking away. Doc. #46, Ex. 2 at 4:35:25. Cantu told Plaintiff to come to him or he would "grab" Plaintiff. Doc. #46, Ex. 2 at 4:35:45. Plaintiff continued to walk away, so Cantu approached Plaintiff and seized him. Doc. #46, Ex. 2 at 4:36:15. Plaintiff resisted, and Cantu took Plaintiff to the ground, where Plaintiff continued to actively resist and struggle as Cantu attempted to handcuff him. *Id.* Officers R. Dondiego ("Dondiego"), Josh Manriquez ("Manriquez"), Jeremy Reid ("Reid"), Shelby Macha ("Macha"), Ramon Gallegos ("Gallegos"), and Earnest Torres ("Torres") all assisted with the arrest or arrived shortly thereafter. Doc. #41 at 1–2. Throughout the encounter, no officer attempted to kick, punch, or strike Plaintiff. *See* Doc. #46, Ex. 2. [1] Plaintiff continuously yelled obscenities and struggled during the arrest. Doc. #46, Ex. 2 at 4:36:20.

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[1] Plaintiff claims that Torres kicked him while he was on the ground. Doc. #30 ¶ 22. However, this is plainly controverted by video evidence, which shows Torres arriving on the scene and placing one foot on Plaintiff for about one second without apply any weight. Doc. #46, Ex. 2 at 4:38:02.

b. Procedural Background

Martinez filed this action against the City of Rosenberg and each of the seven named police officers ("Defendant Officers") on February 8, 2021. After a series of motions to dismiss and amendments, Plaintiff's Second Amended Complaint, filed on October 12, 2021, is the live pleading at issue. *See* Doc. #12; Doc. #14; Doc. #22; Doc. #24; Doc. #25; Doc. #30. By way of Defendants' Motions to Dismiss (Doc. #31; Doc. #32; Doc. #33), the Court dismissed Plaintiff's 42 U.S.C. § 1983 municipal liability claim against the City of Rosenberg and Fourteenth Amendment claims against Officers Cantu, Dondiego, and Torres. Doc. #41 at 5–7, 9. Defendant Officers now move for summary judgment on Plaintiff's remaining § 1983 excessive force, false arrest, and bystander liability claims brought against them by way of the Fourth Amendment.[2] Doc. #45. Defendant Officers claim they are entitled to qualified immunity.

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[2] Plaintiff claims that the Second Amended Complaint also includes a claim for malicious prosecution, which Defendants did not challenge in their Motion for Summary Judgment. Doc. #47 at 9. The Second Amended Complaint includes one cursory mention of malicious prosecution, which does not render the claim properly before this Court. *See* Doc. #30 ¶ 26 ("They then maliciously prosecuted him until his case was dismissed."). Even if this did amount to a proper claim of malicious prosecution, such a claim fails as a matter of law. Among the several elements of malicious prosecution—which Plaintiff does not even plead in his Second Amended Complaint—is that "the defendants acted without probable cause." *Brown v. Lyford,* 243 F.3d 185, 189 (5th Cir. 2001). The Court finds that Plaintiff has not demonstrated that Defendant Officers acted without probable cause.

II. Legal Standards

a. Summary Judgment

Summary judgment is proper where there is no genuine dispute of material fact and the moving party is entitled to a judgment as a matter of law. FED. R. CIV. P. 56(a). "A genuine dispute as to a material fact exists 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Rogers v. Bromac Title Servs., L.L.C.,* 755 F.3d 347, 350 (5th Cir. 2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "The moving party bears the initial burden on demonstrating the absence of a genuine issue of material fact." *Carnes Funeral Home, Inc. v. Allstate Ins. Co.*, 509 F. Supp. 3d 908, 915 (S.D. Tex. 2020) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If that burden is met, "the burden shifts to the non-moving party to set forth specific facts showing a genuine issue for trial." *Id.* (citing FED. R. CIV. P. 56(e)). Courts must "construe[] 'all facts and inferences in the light most favorable to the nonmoving party.' Summary judgment may not be thwarted by conclusional allegations, unsupported assertions, or presentation of only a scintilla of evidence." *McFaul v. Valenzuela*, 684 F.3d 564, 571 (5th Cir. 2012) (quoting *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir.2010)).

b. Qualified Immunity

Qualified immunity protects government officials sued in their individual capacities "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity is an "immunity from suit rather than a mere defense to liability." *Pearson v. Callahan*, 555 U.S. 223, 237 (2009). Once a defendant has invoked the defense of qualified immunity, the plaintiff carries the burden of demonstrating its inapplicability. *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009).

In *Saucier v. Katz,* the Supreme Court established a two-part framework to determine if a plaintiff has overcome a qualified immunity defense. 533 U.S. 194 (2001). First, the court asks whether, taken in the light most favorable to the injured party, "the facts alleged show the officer's conduct violated a constitutional right." *Id.* at 201. Second, the court considers whether the allegedly violated right was "clearly established." *Id.* at 201. When deciding whether the constitutional right was clearly established, the court asks whether the law so clearly and unambiguously prohibited the conduct such that a reasonable official would understand that what she was doing violated the law. *Wyatt v. Fletcher*, 718 F.3d 496, 503 (5th Cir. 2013). "Answering in the affirmative requires the court to be able to point to controlling authority—or a robust consensus of persuasive authority—that defines the contours of the right in question with a high degree of particularity. This requirement establishes a high bar." *Id.*

Thus, "[t]o overcome the qualified immunity of government officials, [the plaintiff] must show 1) a constitutional violation; 2) of a right clearly established at the time the violation occurred; and 3)

that the defendant actually engaged in conduct that violated the clearly established right." *Brown v. Lyford*, 243 F.3d 185, 189 (5th Cir. 2001).

III. Analysis

a. Plaintiff's False Arrest Claim

Defendant Officers move for summary judgment as to Plaintiff's false arrest claim, arguing that there was probable cause to arrest him and the Officers are thus entitled to qualified immunity. Doc. #45 at 7. The Fourth Amendment requires a warrantless arrest to be supported by probable cause. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). "Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest." *Id.* (citing *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). "The standard for analyzing probable cause is whether, under the totality of the circumstances, there is a 'fair probability' that a crime occurred." *Scott v. City of Mandeville*, 69 F.4th 249, 255 (5th Cir. 2023) (quoting *United States v. Garcia*, 179 F.3d 265, 269 (5th Cir. 1999)). This is an objective inquiry, as "an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause." *Davenpeck*, 543 U.S. at 153.

Video evidence provided via Cantu's dash camera demonstrates probable cause existed to arrest Plaintiff. *See* Doc. #46, Ex. 2. In Texas, "[i]f a sidewalk is not provided, a pedestrian walking along and on a highway shall if possible walk on: (1) the left side of the roadway; or (2) the shoulder of the highway facing oncoming traffic." TEX. TRANS. CODE § 552.006. In

other words, the statute requires pedestrians to walk against the flow of oncoming traffic rather than with it. Plaintiff is shown on video walking on the righthand side of the road, with oncoming traffic, for at least ten seconds. Doc. #46, Ex. 2 at 4:34:42–4:34:52. Thus, Plaintiff was in violation of section 552.006 of the Texas Transportation Code. Based on observation of such a violation, probable cause existed for Plaintiff's arrest. *See Chiles v. Hempstead,* 426 F. App'x 310, 312 (5th Cir. 2011) (affirming grant of qualified immunity where officers arrested the plaintiff after witnessing him violate section 552.006 of the Texas Transportation Code). Because probable cause existed, Plaintiff's constitutional rights were not violated, and Defendant Officers are entitled to qualified immunity with respect to Plaintiff's false arrest claim.

b. Plaintiff's Excessive Force Claim

Defendant Officers also move for summary judgment with respect to Plaintiff's claim that they "used excessive force upon him throughout his arrest and detention." Doc. #30 ¶ 26. The Fourth Amendment protects against use of excessive force during an arrest. *Graham v. O'Connor*, 490 U.S. 386, 394 (1989). The elements of a claim for excessive force are: "(1) an injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Pratt v. Harris Cnty.*, 822 F.3d 174, 181 (5th Cir. 2016).

1. Injury

As to the injury requirement of an excessive force claim, a plaintiff generally "need not demonstrate a significant injury, but the injury must be more than *de minimis*." *Solis v. Serrett*, 31 F.4th 975, 981 (5th Cir. 2022). Examples of *de minimis* injuries include "abrasions and bruises, bloody urine, and high blood pressure and heart rate." *Westfall v. Luna*, 903 F.3d 534, 550 (5th Cir. 2018). Even when a plaintiff demonstrates "some injury," suffering only minimal injuries "tends to support a conclusion that the officers acted reasonably." *Solis,* 31 F.4th at 982. Plaintiff alleges that Defendant Officers caused injuries to his arm and hip. *See* Doc. #30 ¶ 23. During Plaintiff's arrest, he yelled and complained that Defendant Officers were hurting his arm. Doc. #46, Ex 2 at 4:36:25–4:26-50. However, Plaintiff was transported to a hospital after his arrest, where medical staff evaluated him and determined that he had no broken bones, did not appear to have mobility issues, and was fit for jail. Doc. #45, Ex. 4 ¶ 22; Doc. #46, Ex. 1 at 18:25:44–18:26:30. In addition, Plaintiff did not appear visibly injured during his arrest or afterward, as he consistently resisted by flailing and kicking. Doc. #46, Ex. 3 at 16:46:59. Even assuming Plaintiff did suffer more than a *de minimis* injury, such injury is minimal, which "tends to support a conclusion that the officers acted reasonably." *See Solis*, 31 F.4th at 982.

2. Excessive and Unreasonable Force

As to the requirement that Plaintiff's injury results from a use of force that was "clearly excessive," and "unreasonable," the inquiry "depends on 'the facts and circumstances of each particular case.'" *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (quoting *Graham*, 490 U.S. at 396). In determining whether excessive force exists, a court may consider factors such as "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. However, this list of factors is not exhaustive. *Solis*, 31 F.4th at 982. In *Solis*, the Fifth Circuit held that even where an arrestee is detained for a minor crime and presents a minimal threat, an officer can still use reasonable force—such as taking the arrestee to the ground—if the arrestee is backing away from officers, resisting, uncooperative, and hostile. *See id.* at 982–83.

The *Graham* factors here weigh in favor of Defendant Officers. As in *Solis*, the severity of the crime in this case—walking on the wrong side of the road—is low, and Plaintiff presented a minimal threat to the public and the Officers. However, Plaintiff was also verbally hostile to the Officers and uncooperative as he argued and yelled obscenities. Moreover, Plaintiff attempted to walk away from the scene despite Cantu's orders to stay, and actively resisted arrest by struggling and kicking. Finally, the force used by officers was reasonable given Plaintiff's

behavior, as officers took Plaintiff to the ground without punching, kicking, or striking him. Doc. #46, Ex. 2 at 4:36:15. Based on the "totality of the circumstances," the force used by Defendant Officers was neither excessive nor unreasonable. *See Scott*, 69 F.4th at 255. Because there was no excessive force, Plaintiff did not demonstrate a constitutional violation, and Defendant Officers are entitled to qualified immunity with respect to this claim.

c. Plaintiff's Bystander Liability Claim

Plaintiff also alleges that the each of the Defendant Officers are liable as bystanders to either each other's use of excessive force or participation in a false arrest. Doc. #30 ¶ 31–32. "[A]n officer may be liable under § 1983 under a theory of bystander liability where the officer '(1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act.'" *Whitley v. Hanna*, 726 F.3d 631, 646 (5th Cir. 2013) (footnote omitted) (quoting *Randall v. Prince George's Cnty.*, 302 F.3d 188, 204 (4th Cir. 2002)). As discussed, the Court holds Defendant Officers neither falsely arrested Plaintiff nor exercised excessive force, thus there is no constitutional violation. Because Plaintiff's false arrest and excessive force claims fail, so too does his bystander liability claim.

IV. Conclusion

In conclusion, the Court finds that Defendant Officers are entitled to qualified immunity with respect to each of Plaintiff's claims. Plaintiff failed to demonstrate that Defendant Officers lacked probable

cause for his arrest and that Defendant Officers used excessive force. Because Defendant Officers are entitled to qualified immunity with respect to Plaintiff's false arrest and excessive force claims, they are also entitled to immunity with respect to Plaintiff's bystander liability claim. For the foregoing reasons, Defendant Officers' Motion for Summary Judgment (Doc. #45) is hereby GRANTED, and this case is DISMISSED WITH PREJUDICE.

It is so ORDERED.

SEP 27 2023
Date

The Honorable Alfred H. Bennett
United States District Judge