No. 24-892

In the Supreme Court of the United States

ALEJANDRO MARTINEZ,
Petitioner,

v.

CITY OF ROSENBERG, TEXAS, ET AL.,
Respondents.

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

BRIEF OF THE TEXAS CIVIL RIGHTS PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICUS CURIAE*

The Texas Civil Rights Project ("TCRP") is a nonprofit organization made up of Texas lawyers and advocates who strive to protect and promote the civil rights of all Texans.[1] For more than thirty years, TCRP has sought to advance the rights of the state's most vulnerable populations through advocacy in and out of the courtroom.

TCRP is specially focused on addressing civil rights issues related to the weaponization of police and prisons against disadvantaged populations, including issues that arise during street-level police/civilian interactions in Texas. To that end, TCRP has examined the racial and economic disparities that make everyday interactions with police—like the one at issue in this case—"more dangerous, harmful, and deadly for Black and brown" Texans. TEXAS CIVIL RIGHTS PROJECT, SAFE PASSAGE: TRAFFIC SAFETY & CIVIL RIGHTS 6 (2024) [hereinafter, "SAFE PASSAGE REPORT"]. TCRP's ultimate goal is to enhance public safety while protecting civil rights, addressing systemic biases in policing to create a safer and more equitable environment for all persons, regardless of racial or socioeconomic background.

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from TCRP, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties have received timely notice of TCRP's intent to file an *amicus curiae* brief in support of Petitioner in this matter.

TCRP submits this brief in support of Petitioner because the issue presented—whether an otherwise unreasonable use of excessive force is permissible under the Fourth Amendment so long as it results in only "de minimis" injuries—is of the utmost importance to TCRP's work. The de minimis injury requirement arises frequently in civil rights litigation and undermines the rights of Texans for whom TCRP advocates. TCRP hopes that its perspective on the consequences of the de minimis injury requirement will help the Court decide whether to grant the Petition.

SUMMARY OF ARGUMENT

Interactions between police and the public provide fertile grounds for potential civil rights violations. While these interactions "overwhelmingly end without incident, many result in search, arrest, use of force, or even death." SAFE PASSAGE REPORT, *supra*, at 5. Such interactions therefore require "close supervision and clear rules to direct officers' activity." U.S. DEP'T OF JUST., INVESTIGATION OF THE MEMPHIS POLICE DEPARTMENT AND THE CITY OF MEMPHIS 1 (Dec. 4, 2024). This is particularly true for minority and disadvantaged populations, for whom inequalities are magnified during their interactions with police. SAFE PASSAGE REPORT, *supra*, at 6.

The Fourth Amendment protects all persons from the use of excessive force. When police officers use excessive force, aggrieved persons can seek legal recourse for violation of their Fourth Amendment rights. But the Fifth Circuit's de minimis injury requirement effectively sanctions irresponsible and dangerous police behavior by shielding otherwise viable excessive

force claims from such recourse. Moreover, the de minimis injury requirement disproportionately impacts disadvantaged populations due to existing racial and economic disparities in street-level police practices, and perversely disincentivizes police departments from implementing vital use-of-force policies. TCRP highlights these negative consequences of the Fifth Circuit's de minimis injury requirement here.

First, the Fifth Circuit's imprecise and inconsistently-applied de minimis injury requirement results in systematic dismissal of otherwise viable excessive force claims. Individuals who experience egregious uses of force by police officers seek legal recourse for violations of their constitutional rights, only to have their claims cast aside and dismissed because their injuries were supposedly too minor to satisfy the Fifth Circuit's nebulous de minimis injury requirement. Such instances include police officers repeatedly hitting a mother in the face after she accidentally drove her car into a tree, *see Barnes v. City of El Paso*, 677 F. Supp. 3d 594 (W.D. Tex. 2023), and police officers forcibly dragging a disabled man out of a courthouse for relying on his service animal, *Pena v. Bexar County, Texas*, 726 F. Supp. 2d 675 (W.D. Tex. 2010). As described below, other egregious examples abound. In each case, police officers subjected the plaintiffs to objectively unreasonable force, but courts nonetheless dismissed those plaintiffs' claims, determining that their injuries were too minor to state claims for relief. In so doing, the Fifth Circuit's approach effectively shields police officers from liability, allowing them to use objectively unreasonable force with impunity.

Second, the de minimis injury requirement disproportionately impacts disadvantaged populations due to existing racial and economic disparities in street-level police practices. Social science data confirms what has long been suspected: police/civilian interactions are often "more dangerous, harmful, and deadly" for persons of color. SAFE PASSAGE REPORT, *supra*, at 6. The Fifth Circuit's de minimis injury standard further exacerbates these disparities, affording fewer constitutional protections to these already disadvantaged and disproportionately impacted populations.

Third, a de minimis injury requirement disincentivizes police departments from developing vital use-of-force policies. Police departments nationwide, including in jurisdictions that impose stringent injury requirements, have inadequate accountability, training, supervision, and reporting standards. Police departments also fail to provide officers with sufficient guidance on when to use force and how much force is appropriate in a given situation. As a result, too many officers use force likely to cause injury in response to low-level, nonviolent offenses and often downplay injuries when reporting those incidents. Meanwhile, investigations have found that the de minimis injury requirement provides no incentive or direction to police departments to develop their use-of-force policies. Worse, the requirement incentivizes police officers to continue underreporting injuries to avoid constitutional violations.

TCRP supports Petitioner in full. This Court should grant the Petition and reverse the decision below to clarify the proper role of injury in evaluating

the viability of excessive force claims and make clear that courts must not use a de minimis injury requirement to skirt the judicial inquiry of whether an officer's use of force was objectively reasonable.

ARGUMENT

I. THE DE MINIMIS INJURY REQUIREMENT IS ILL-DEFINED AND RESULTS IN SYSTEMATIC DISMISSAL OF OTHERWISE VIABLE EXCESSIVE FORCE CLAIMS

Under this Court's longstanding precedent, the core judicial inquiry in an excessive force case is whether an officer's use of force was objectively reasonable. *Graham v. Connor*, 490 U.S. 386, 399 (1989). As such, the appropriate analysis "requires careful attention to the facts and circumstances of each particular case, including 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.

Notably, *Graham* is silent regarding what kind of injury, if any, must result from an officer's use of force to render that force objectively unreasonable. But in *Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010), this Court recognized, in the Eighth Amendment context, that "[i]njury and force . . . are only *imperfectly* correlated, and it is the latter that ultimately counts." (Emphasis added.) Thus, while the extent of injury is not entirely irrelevant, a person "who is gratuitously beaten by [police should] not lose his ability to pursue an

excessive force claim merely because he has the good fortune to escape without serious injury." *Id.*

To prevail on an excessive force claim in the Fifth Circuit, a plaintiff must establish: "(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." *Ramirez v. Knoulton*, 542 F.3d 124, 128 (5th Cir. 2008) (quoting *Freeman v. Gore*, 483 F.3d 404, 416 (5th Cir. 2007)). Problematically, however, the Fifth Circuit has interpreted the "injury" element to require that a plaintiff must suffer more than a "de minimis" injury to plead a cognizable excessive force claim. *See, e.g., Alexander v. City of Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017).[2]

In practice, this approach too often leads courts to focus *primarily* on injury. Indeed, in some cases, courts bypass the core judicial inquiry set forth in *Graham* entirely, declining to even consider the objective reasonableness of an officer's use of force if, in the court's view, the plaintiff did not suffer enough of an injury. As one district court in the Fifth Circuit recently held, in the absence of an injury, the "excessive force analysis *stops*." *Spratlen v. Rainey*, No. MO:24-CV-00053-DC-RCG, 2024 WL 5321350, at *8 (W.D. Tex. Dec. 27, 2024) (emphasis added). This perversion

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[2] Notably, courts in other Circuits have recognized that there should be *no* injury requirement. *See, e.g.*, *Lanigan v. Village of E. Hazel Crest*, 110 F.3d 467, 471 n.3 (7th Cir. 1997); *Bryan v. MacPherson*, 630 F.3d 805, 824 (9th Cir. 2010); *Saunders v. Duke*, 766 F.3d 1262, 1270 (11th Cir. 2014); *Wardlaw v. Pickett*, 1 F.3d 1297, 1304 n.7 (D.C. Cir. 1993).

of the relevant inquiry results in routine dismissal of otherwise viable excessive force claims.

Consider, for example, *Barnes v. City of El Paso,* 677 F. Supp. 3d 594, 601 (W.D. Tex. 2023). Anna Barnes was driving with her five children when a gust of wind came through the open driver's side window and blew a lit cigarette onto her arm. *Id.* at 601–02. Ms. Barnes attempted to brush the cigarette from her arm but, while doing so, accidentally drove over a curb and hit a small tree. *Id.* Luckily, no one was injured. *Id.* at 602. Responding officers informed Ms. Barnes that they planned to arrest her for driving while intoxicated, which Ms. Barnes found "quite shocking" given that she was not intoxicated. *Id.* When Ms. Barnes began to cry, one officer used a leg sweep to knock Ms. Barnes to the ground, where she was placed in handcuffs. A second officer then held Ms. Barnes by the shoulder to keep her in place while the first officer struck her in the face over and over again. *Id.* Ms. Barnes ultimately had to be transported to the hospital, where she was diagnosed with multiple nasal fractures and other injuries, including bruises to her hip. *Id.* A blood test confirmed that she was sober. *Id.*

Ms. Barnes brought excessive force claims against both officers. *Id.* But because Ms. Barnes suffered no injury to her shoulder, the district court held that the second officer, in restraining Ms. Barnes, did not use excessive force against her or independently violate her constitutional rights. *Id.* at 604–05. The court did not address any of the factors set forth in *Graham*, nor did the court consider whether the officer's actions—forcibly restraining Ms. Barnes while another officer

repeatedly struck her in the face—were objectively reasonable under the circumstances. *Id.* at 605.

Other courts in the Fifth Circuit have taken a similar approach. *E.g.*, *Lawson v. Martinez*, No. SA-14-CA-164-XR (HJB), 2015 WL 1966069, at *1, 6–8 (W.D. Tex. Mar. 26, 2015) (claim dismissed for insufficient injury where, after citing plaintiff for jaywalking, officer threw a beer can at, choked, handcuffed, and assaulted plaintiff); *Robertson v. Town of Farmerville*, 830 F. Supp. 2d 183, 186 (W.D. La. 2011) (claim dismissed for insufficient injury where officer shoved plaintiff's face into the ground during a traffic stop, notwithstanding court's acknowledgment that "such force appear[ed] unnecessary in the circumstances").

The Fifth Circuit's de minimis injury requirement is also ill-defined and lacks clarity, leading some courts to conclude that "[e]xtreme physical discomfort and pain are fleeting sensations that amount to no more than de minimis injuries." *Goldman v. Williams*, No. H-14-433, 2015 WL 7731413, at *12 (S.D. Tex. Oct. 9, 2015), *report and recommendation adopted*, 2015 WL 7736638 (S.D. Tex. Nov. 30, 2015). In *Westfall v. Luna*, 903 F.3d 534, 540, 49–50 (5th Cir. 2018), for example, the Fifth Circuit held that abrasions, bruises, high blood pressure and heart rate, and even bloody urine did not amount to more than de minimis injury. Similarly, in *Brooks v. City of West Point, Mississippi,* 639 F. App'x 986, 990 (5th Cir. 2016), the Fifth Circuit held that a plaintiff who suffered abrasions to his hands and knees, neck and back pain, problems with his asthma, and exacerbation of symptoms related to his post-traumatic stress disorder failed to proffer

evidence that police officers caused him more than a de minimis injury.

This ambiguity, and its negative impact, is especially evident in the context of individuals with physical or mental disabilities. Disabled individuals may experience pain differently, potentially suffering severe physical and psychological discomfort under conditions that would not similarly affect the non-disabled. *Accord* Jamelia Morgan, *Disability's Fourth Amendment*, 122 COLUM. L. REV. 489, 564–66, 573 (2022) (discussing how policing is entrenched with "normative ideals for how bodyminds should appear and function in public space"). By focusing primarily or only on outward injury, courts in the Fifth Circuit ignore the pain suffered by persons with disabilities at the hands of police officers, even when the officers were aware of those disabilities at the time.

The Petition is illustrative. Alejandro Martinez, a visibly disabled elderly man with a "deformity" in his left arm and limited mobility, was thrown to the ground by a police officer without warning, placed in handcuffs, arrested, and transported to the hospital and then jail. His crime? Briefly walking on the wrong side of the street, in violation of the Texas Transportation Code.[3] Although Mr. Martinez repeatedly cried out in pain and informed the officer that he was hurting Mr. Martinez's arm, which had previously been

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[3] *See* Sec. 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.").

broken multiple times, the Fifth Circuit affirmed the district court's grant of summary judgment in the officer's favor on Mr. Martinez's excessive force claim, concluding that any injury was de minimis and that, as a result, the officer's use of force was reasonable given the totality of the circumstances.

Unfortunately, Mr. Martinez's experience is not unique. Take *Pena v. Bexar County, Texas*, 726 F. Supp. 2d 675 (W.D. Tex. 2010). There, Richard Pena—a visibly disabled man who had impaired sight, balance, and mobility, and who relied on a service animal—visited the Bexar County Courthouse to research his adoption. *Id.* at 679. When Mr. Pena attempted to enter the courthouse, he was detained by a security officer who informed him that dogs were not allowed in the building. *Id.* Mr. Pena explained his disability and requested to sit down, but the officer refused, forcing Mr. Pena to stand for fifteen minutes as he waited for a supervisor. Due to his disability, this amount of time "seemed absolutely interminable" to Mr. Pena. *Id.*

Mr. Pena was ultimately permitted to enter the building with his service animal. *Id.* But thirty minutes later, Mr. Pena was stopped by another officer who told him only blind people could bring service animals into the courthouse. *Id.* Mr. Pena refused to leave. *Id.* In response, the officer grabbed Mr. Pena by his left hand and forcibly dragged him into the hallway, where they encountered a second officer. *Id.* That second officer then grabbed and twisted Mr. Pena's right arm, which was paralyzed, and placed Mr. Pena in handcuffs. *Id.* The two officers then picked Mr. Pena up by his arms and dragged him down the

hallway. *Id.* Three additional officers then assisted in detaining Mr. Pena, one of whom threatened to shoot Mr. Pena's dog, and another of whom threatened to send the dog to animal control to be euthanized. *Id.*

Mr. Pena filed suit, contending that the force used by these five officers to detain a 150-pound, visibly disabled man was objectively unreasonable and therefore excessive. Although the officers' actions "caused him excruciating pain" due to his disability, the district court held that Mr. Pena suffered only de minimis injuries and thus that the force at issue was objectively reasonable. *Id.* at 692.

Again, this result is not an outlier. *See, e.g.*, *Brown v. Coulston*, 463 F. Supp. 3d 762, 768 (E.D. Tex. 2020) (dismissing excessive force claim against officer who used his full body weight to pin down and handcuff a ten-year-old, eighty-five-pound student with autism spectrum disorder, concluding that plaintiff failed to allege more than a de minimis injury); *Glenn v. City of Tyler*, 242 F.3d 307, 311 (5th Cir. 2001) (determining that officer's conduct did not amount to excessive force, even though officer handcuffed plaintiff so tightly that her hand swelled and, ignoring that she had multiple sclerosis, left her in a hot car for almost an hour, causing her to have breathing difficulties and become ill).

* * *

As this Court has recognized, it is wrong for courts to bypass the core judicial inquiry of whether force is objectively reasonable simply because of "the absence of 'some arbitrary quantity of injury.'" *Wilkins*, 559 U.S. at 39 (quoting *Hudson v. McMillian*,

503 U.S. 1, 9 (1992)). The Fifth Circuit's de minimis injury requirement does just that by systematically denying recourse for otherwise viable excessive force claims, effectively sanctioning irresponsible and dangerous police behavior and allowing police officers to use excessive force in violation of the Fourth Amendment so long as no lasting injury results.

II. THE DE MINIMIS INJURY REQUIREMENT DISPROPORTIONATELY IMPACTS DISADVANTAGED POPULATIONS DUE TO EXISTING RACIAL AND ECONOMIC DISPARITIES IN STREET-LEVEL POLICE PRACTICES

The Fifth Circuit's application of a de minimis injury requirement also disproportionately impacts disadvantaged populations—people who are already more likely to be subjected to excessive uses of force by police in response to low-level, nonviolent offenses.

National media sources are replete with stories of Black and brown persons who are seriously injured, and sometimes even killed, at the hands of police officers. *See, e.g.*, *A Look at High-Profile Cases over Killings by US Police*, ASSOCIATED PRESS (June 24, 2021, 1:08 PM), https:// apnews.com/article/us-police-killings-history-39a3bde7d53f9ea523f45e70a271a8d5. While any interaction between police officers and the public poses the risk of a use of excessive force, that risk is all the more substantial during street-level interactions like traffic stops—one of the most common interactions people have with police each year. *See, e.g.*, Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United*

States, 4 NATURE HUM. BEHAV. 736, 736 (2020), https://doi.org/10.1038/s41562-020-0858-1; SAFE PASSAGE REPORT, *supra*, at 3, 5. And, critically, social scientific research on traffic stop data suggests that traffic stops disproportionally affect Black, brown, and low-income populations and are "more dangerous, harmful, and deadly for Black and brown drivers." SAFE PASSAGE REPORT, *supra*, at 6.

For example, a recent analysis conducted by state patrol agencies and municipal police departments over a ten-year span found "that decisions about whom to stop and, subsequently, whom to search are biased against black and Hispanic drivers." Pierson, *supra*, at 740–41. Researchers noted that "among state patrol stops, the annual per-capita stop rate for black drivers was 0.10 compared to 0.07 for white drivers; and among municipal police stops, the annual per-capita stop rate for black drivers was 0.20 compared to 0.14 for white drivers." *Id.* Race also impacts the outcomes of those traffic stops. Black and Latino drivers are (1) more likely to be searched, *see id.* at 737–38; (2) more likely to experience some type of police action during traffic stops, Susannah N. Tapp & Elizabeth J. Davis, *Contacts Between Police and the Public, 2020*, U.S. DEP'T OF JUST. BUREAU OF JUST. STATS. 11 (2022); (3) more likely to experience police misconduct during contact with the police, *id.* at 10; and (4) more likely to experience the threat or use of force, *id.* at 11.

These patterns are borne out at the local level. For example, the Houston Police Department conducted nearly 340,000 traffic stops in 2023, over one-third of which were non-safety traffic stops for vehicle violations like broken taillights, dark tinted windows, or

expired registrations. SAFE PASSAGE REPORT, *supra*, at 3, 8. Black drivers comprised around 38% of those non-safety traffic stops—despite the fact that Black residents make up only 22% of the city's population. *Id.* These disparities are also reflected in rates of arrest, searches, and use of force during such stops: Black drivers suffered the most physical force, comprising 52% of the total incidents. *Id.* Black drivers made up 55% of all searches conducted by police during traffic stops. And Black drivers comprised 49% of all arrests arising from non-safety traffic stops. *Id.*

Moreover, according to the Houston Police Department's own data, Black drivers accounted for 55% of traffic stops in which the department self-reported that "use of force" had taken place in both 2023 and 2024. *See* CITY OF HOUSTON, *City of Houston Police Transparency Hub: Use of Force*, https://mycity.maps.arcgis.com/apps/dashboards/21eac904178c4d12a7dd8e29c0ee238e (last visited Mar. 5, 2025). Hispanic drivers accounted for 30% of such stops, with the remaining 15% of such stops affecting white, Asian, and other drivers combined. *Id.*

Likewise, in San Antonio, police conducted 138,509 traffic stops in 2023, 7,707 of which were non-safety traffic stops. SAFE PASSAGE REPORT, *supra*, at 11. There, Latinos were most likely to be stopped for non-safety violations. *Id.* They also were most likely to experience the use of force (74% of incidents), to be issued a citation (49% of citations), to be arrested (70% of arrests), and to be searched (70% of searches). *Id.*

And in Dallas, Black drivers account for 38% of the uses of force, 35% of the citations, 56% of the arrests, and 54% of the searches resulting from non-

safety traffic stops—despite the fact that Black residents comprise only 24% of the city's population. *Id.* at 14.

This national and local data confirms what has long been suspected: Implicit biases heavily influence with whom police choose to interact, and how those interactions play out. These biases ultimately result in the disproportionate interaction with, arrest of, and use of force against Black, brown, and low-income populations. The Fifth Circuit's de minimis injury requirement further exacerbates such disparities, denying recourse to these already disadvantaged and disproportionately impacted populations for violations of their Fourth Amendment rights. At bottom, the lack of clarity surrounding the de minimis injury standard means that poor Texans and Texans of color are afforded fewer constitutional protections than their white and wealthy counterparts.

III. A DE MINIMIS INJURY REQUIREMENT DISINCENTIVIZES POLICE DEPARTMENTS FROM DEVELOPING VITAL USE-OF-FORCE POLICIES

A. Use-of-force policies across the country are inadequate

Many police departments across the country have inadequate use-of-force policies, leading to excessive uses of force in response to low-level, nonviolent offenses, as occurred in this case.

One example is the Minneapolis Police Department, located in another circuit that, like the Fifth Circuit, imposes a rigid injury requirement. *Bishop v. Glazier*, 723 F.3d 957, 962 (8th Cir. 2013); *Bailey v.*

Cnty. of Kittson, No. 07-1939 (ADM/RLE), 2009 WL 294229, at *22 (D. Minn. Feb. 5, 2009). There, the government found that Minneapolis has deficiencies in its accountability systems, training, supervision, and officer wellness programs, contributing to unjustified excessive uses of force, including deadly force. U.S. DEP'T OF JUST., INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT 1 (June 16, 2023); *see also* MINN. DEP'T OF HUM. RTS., INVESTIGATION INTO THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT: FINDINGS FROM THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS 8 (Apr. 27, 2022) (concluding, following investigation by the state, that the Minneapolis Police Department engaged in a pattern or practice of discriminatory, race-based policing caused primarily by an organizational culture involving deficient training, a paramilitary approach to policing, insufficient and ineffective accountability systems, and lack of collective action to address racial disparities in policing). In one instance, an officer slammed a woman's face into a curb for jaywalking. INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT, *supra*, at 75–76. In another, a man was suspected of breaking a fence on a public sidewalk, and police took him to the ground, punched him several times, grabbed his neck, and tased him eight times because, after complying with orders to put his hands up, he tried to turn around to ask if they were police officers. *Id.* at 17.

Springfield, Massachusetts, located in another circuit permitting evidence of minor injury to prove the reasonableness of an officer's conduct, *Bastien v. Goddard*, 279 F.3d 10, 14 n.5 (1st Cir. 2002); *see also* Pet. for Writ of Cert. 22, faces similar problems. There,

the Department of Justice's investigation revealed that Springfield's "pattern or practice of excessive force is directly attributable to systemic deficiencies in policies, accountability systems, and training." U.S. DEP'T OF JUST., INVESTIGATION OF THE SPRINGFIELD, MASSACHUSETTS POLICE DEPARTMENT'S NARCOTICS BUREAU 2 (July 8, 2020). For example, Springfield's policies do not require officers to report hands-on uses of force, such as punches and kicks. *Id.* Moreover, it is commonplace for Springfield officers to downplay injuries, such as reporting that a man had a small cut under his left eye where photographs showed his eye was nearly swollen shut. *Id.* at 18.

Such policy deficiencies are widespread, extending far beyond just Minneapolis and Springfield. *See generally, e.g.*, INVESTIGATION OF THE MEMPHIS POLICE DEPARTMENT AND THE CITY OF MEMPHIS, *supra*; U.S. DEP'T OF JUST., INVESTIGATION OF THE LOUISVILLE METRO POLICE DEPARTMENT AND LOUISVILLE METRO GOVERNMENT (Mar. 8, 2023); U.S. DEP'T OF JUST., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT (Aug. 10, 2016); U.S. DEP'T OF JUST., INVESTIGATION OF THE NEWARK POLICE DEPARTMENT (July 22, 2014); U.S. DEP'T OF JUST., INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE (Dec. 4, 2014); U.S. DEP'T OF JUST., INVESTIGATION OF THE SEATTLE POLICE DEPARTMENT (Dec. 16, 2011); U.S. DEP'T OF JUST., INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT (Sept. 5, 2011).

By way of example, in Memphis, officers lack clear guidance on the basic legal requirement that force must be proportionate to the severity of the offense and the threat that officers face. INVESTIGATION OF

THE MEMPHIS POLICE DEPARTMENT AND THE CITY OF MEMPHIS, *supra*, at 21, 59. Instead, Memphis's policies suggest that force may be necessary if a person does not immediately follow commands. *Id.* at 21. Meanwhile, Memphis does not have an effective process to develop new policies or update current policies to ensure compliance with the law. *Id.* at 59. These problems have led to Memphis officers resorting "to force likely to cause pain or injury almost immediately in response to low-level, nonviolent offenses, even when people are not aggressive." *Id.* at 14. Officers have even pepper sprayed, kicked, and fired a taser multiple times at an unarmed man with mental illness who tried to take a $2 soft drink from a gas station, even though he abandoned the drink and, after leaving the store, put his hands in the air. *Id.*

Likewise, in Louisville, policies do not provide sufficient guidance about how to choose among different force options, such as when to use a taser. INVESTIGATION OF THE LOUISVILLE METRO POLICE DEPARTMENT AND LOUISVILLE METRO GOVERNMENT, *supra*, at 17. Thus, officers routinely use force disproportionate to the threat or resistance posed, often simply because people do not immediately follow orders, even when those people are not posing a threat to anyone. *Id.* at 13–18. Types of force include neck restraints; use of police dogs; use of tasers; and takedowns, strikes, and other bodily force. *Id.* On one occasion, officers responded to a call about an elderly Black man "dancing in the street." *Id.* at 14. Within seconds of arriving, they grabbed the man and pulled him to the ground by his neck. *Id.* Officers ignored the man's questions about what was going on and sat on his head and neck while another officer tried to handcuff him. *Id.* After

thirty seconds, the first officer got off, turned the man to the side, and pressed his knee against the man's head and neck for nearly two minutes. *Id.* After removing his knee, the officer grabbed the man's neck and pushed his head into the pavement. *Id.*

In short, there is a dire need for many police departments to implement or update use-of-force policies.

B. Despite the clear need, police departments lack incentive or guidance to develop use-of-force policies because discordant courts rule that officers may use excessive force in response to nonviolent behaviors so long as the resulting injury does not exceed a vague "de minimis" level

Historically, doctrinal standards act as barriers to protection under the Fourth Amendment. JOANNA SCHWARTZ, SHIELDED: HOW THE POLICE BECAME UNTOUCHABLE 52–66 (2023). For example, the deferential reasonableness standard for searches and seizures has "opened the gates" for law enforcement to use local laws and policies to justify use of force. *Id.* at 56.

The de minimis injury requirement is another such barrier. Police departments lack appropriate incentives to develop use-of-force policies where courts permit officers to use excessive force against people for low-level, nonviolent offenses. According to an investigation by The New York Times and Mississippi Today, for example, "Mississippi has fallen behind" with respect to safe taser use and related guidelines "because its courts have been less stringent." Nate Rosenfield et

al., *Where the Police Used a Taser on a Bible-Reading Great-Grandmother*, N.Y. TIMES (Jan. 14, 2025), https://www.nytimes.com/2025/01/14/us/abuse-and-injury-result-from-uneven-rules-on-police-taser-use.html. The report notes that the Fifth Circuit allows an officer to tase someone simply for walking away against an officer's orders. *Id.* Thus, police agencies in Mississippi "have held on to vague, outdated policies that allow officers to shock virtually anyone, for any behavior they see as threatening, with little fear of repercussions." *Id.* Meanwhile, police are incentivized to downplay the injuries they caused, as is already commonplace in certain jurisdictions. INVESTIGATION OF THE SPRINGFIELD, MASSACHUSETTS POLICE DEPARTMENT'S NARCOTICS BUREAU, *supra*, at 18. These problems are exacerbated by courts' vague terminology surrounding injury requirements—namely an ill-defined "de minimis" standard that lacks foundation in this Court's precedent and fails to provide sufficient guidance to law enforcement on where to draw the line between appropriate and excessive uses of force. *See Wilkins*, 559 U.S. at 40.

CONCLUSION

For the foregoing reasons, TCRP fully supports the Petition.

Respectfully submitted,

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