No. 24-892

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

REPLY BRIEF FOR PETITIONER

Randall L. Kallinen
KALLINEN LAW PLLC
511 Broadway Street
Houston, TX 77012

Daniel Woofter
Counsel of Record
Kevin K. Russell
RUSSELL & WOOFTER LLC
1701 Pennsylvania Avenue NW, Suite 200
Washington, DC 20006
(202) 240-8433
dw@russellwoofter.com

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REPLY BRIEF FOR PETITIONER

The petition demonstrated that the circuits are intractably divided over: (1) whether injury is a prerequisite for a Fourth Amendment excessive force violation, and (2) the role injury plays in the Fourth Amendment reasonableness analysis. *See* Pet. 14-22. Respondents concede the first split but ask this Court to let it fester. Their reluctance to defend the Fifth Circuit's "obsolete" rule while urging this Court to leave it in place (BIO 9-14) speaks volumes about the indefensibility of the status quo. Respondents also do not deny the second split or dispute that both conflicts are outcome-determinative in case after case. *See* Pet. 19-22, 27-29; TCRP Amicus Br. 5-12.

Respondents' prediction that the Fifth Circuit will eventually abandon its more-than-de-minimis injury requirement (BIO 11-13) falls flat. Their claim overlooks that a decade has passed since the United States first made the same suggestion, with the Fifth Circuit declining every opportunity to correct course since. *See* Pet. 22-23 & nn.8-9. It also ignores that the Fifth Circuit reaffirmed and applied its requirement that plaintiffs prove "more than a de minimis injury" in the published decision in this very case. Pet. App. 8a-9a. And respondents do not contest that the Eighth Circuit and Mississippi Supreme Court also impose arbitrary injury thresholds with no signs of retreat.

Respondents' only defense on the merits amounts to claiming that this Court's reasonableness standard is so "intentionally-squishy" that anything goes (BIO 13-14)—a remarkable misreading of precedent. The Fourth Amendment demands that courts assess police conduct "from the perspective of a reasonable officer

on the scene, rather than with the 20/20 vision of hindsight." *See Graham v. Connor*, 490 U.S. 386, 396 (1989). It is thus limited to weighing the totality of "facts and events *leading up to* the climactic moment." *See Barnes v. Felix*, 605 U.S. ---- (2025), slip op. 1 (emphasis added). After-the-fact injury has nothing to do with it.

In a final gambit to escape review, respondents try to manufacture vehicle problems where none exist. Petitioner bore no obligation to quixotically tilt at circuit precedent that the district court was bound to follow and the panel was powerless to change. *Contra* BIO 7-9. This Court requires only that the question be "passed upon below," which it was. And the district court's qualified immunity analysis changes nothing. *Contra* BIO 9-11. This Court regularly reviews certworthy Fourth Amendment questions despite lurking immunity defenses, as it did just this Term in *Barnes*. Finally, respondents claim (BIO 1-2, 13-14) that the courts below held in the alternative that, taking lack of injury into account, the use of force was reasonable. But the propriety of that kind of analysis is part of the Question Presented and the uncontested circuit conflict. Respondents' confirmation that the question was squarely presented and decided below is a reason to grant review, not deny it.

ARGUMENT

I. Respondents Do Not Dispute That The Circuits Are Twice Divided Over The Question Presented.

Two undisputed disagreements divide the circuits over the Question Presented. Only this Court can resolve the disputes.

A. The circuit division over the propriety of a threshold injury requirement warrants this Court's review.

Respondents do not deny a deep split among the federal courts of appeals and a state supreme court over whether proof of injury is a prerequisite to a Fourth Amendment excessive force claim. *See* Pet. 14a-19a & n.6 (discussing cases from the Second, Fourth, Sixth, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits rejecting an injury threshold, versus cases from the Fifth and Eighth Circuits and Mississippi Supreme Court imposing arbitrary minimum injury requirements to establish excessive force violations under the Fourth Amendment). Respondents also do not dispute that the issue is recurring and outcome determinative. *See id.* 23-25 (discussing several recent examples of district courts in the Fifth Circuit disposing of excessive force claims because the plaintiff failed to establish a sufficiently serious injury); TCRP Amicus Br. 6-12 (same).

Respondents nonetheless urge the Court to allow the conflict to persist because, they say, "the Fifth Circuit has moved—and continues to move—away from a strict de minimis injury requirement in excessive force cases under the Fourth Amendment." BIO 11 (italics removed herein). The United States made the same prediction nearly ten years ago, but as this case demonstrates, the prediction didn't pan out. *See* Pet. 22-23. To the contrary, the Fifth Circuit knows about its outlier position yet has passed over multiple opportunities to bring its precedent in line with the circuit consensus, as the petition documented. *See id*. 23 & nn.8-9. Even respondents openly acknowledge that the Fifth Circuit has

declined the express invitation to abandon its "obsolete" injury requirement. BIO 9 & n.5 (quoting Appellee's Brief, *Solis v. Serrett*, No. 21-20256 (5th Cir. Dec. 13, 2021), 2021 WL 5982154, at *34).

Respondents' baseless predictions about what the Fifth Circuit may do someday also neglect that the Eighth Circuit and Mississippi Supreme Court have arbitrary injury requirements of their own that regularly thwart otherwise viable Fourth Amendment claims. *See, e.g.*, Pet. 16 (noting several recent examples of district courts in the Eighth Circuit disposing of Fourth Amendment excessive force cases because the plaintiff failed to meet the circuit's minimum injury threshold). Respondents have not argued that those courts are also correcting course. This Court's intervention is sorely needed.

B. The Court's review is warranted to resolve the circuit conflict over whether the minor nature of resulting injury can render an officer's use of force reasonable.

Respondents also make no attempt to dispute the circuit conflict over the use of post hoc injury evidence to determine whether officers acted reasonably ex ante. *See* Pet. 19-22 (Sixth, Ninth, Eleventh, and D.C. Circuits do not permit injury evidence to inform reasonableness analysis, versus First and Fifth Circuits, which do). Indeed, respondents expressly acknowledge that the Fifth Circuit deploys a "sliding scale" in Fourth Amendment cases, by which officers may be deemed to have reasonably used even the most brutal forms of violent force regardless of the facts and circumstances confronting them—so long as the court

views the target's resulting injuries to be minor. *See* BIO 12 (quoting *Buehler v. Dear*, 27 F.4th 969, 982 (5th Cir. 2022); *Alexander v. City of Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017)). And respondents do not debate that other courts have rejected using the lack of injury as any indication that an otherwise unjustified use of force is reasonable. *See* Pet. 19-21.

Respondents *do* claim that this dispute is not worth resolving because, they say, the Fifth Circuit's rule is correct. BIO 13-14. But that is non-responsive. Certiorari is warranted to resolve this circuit conflict regardless of who is right on the merits.

II. Respondents Do Not Defend The Merits.

In any event, respondents offer no convincing defense on the merits of either aspect of the Fifth Circuit's Fourth Amendment jurisprudence.

To start, respondents make no attempt to defend the Fifth Circuit's categorical rule requiring plaintiffs to prove "more than a de minimis injury in most instances." *See* Pet. App. 8a. The most respondents claim is that the circuit no longer applies that rule in every case. BIO 11-13. Respondents' failure to defend the Fifth Circuit's greater-than-de-minimis injury requirement is unsurprising, given that this Court has twice rejected such categorical rules in the Eighth Amendment context for reasons that apply equally to the Fourth Amendment. *See* Pet. 2-7 (discussing *Wilkins v. Gaddy*, 559 U.S. 34, 39 (2010) (per curiam); *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). That is why nearly every circuit that used to require an "arbitrary quantity of injury" has now eliminated any such threshold. *Id.* 5-7, 17-19 & n.6 (quoting *Wilkins*, 559 U.S. at 39, and describing how circuits eliminated

their injury requirements in the Fourth Amendment excessive force context after *Hudson* and *Wilkins*). What is surprising is the Fifth Circuit's recalcitrance, which proves the need for this Court's intervention.

Respondents' unexplained defense of the Fifth Circuit's treatment of the "extent of injury" as "directly" probative of "the amount of force that is constitutionally permissible under the circumstances" also rings hollow. *Contra* BIO 13-14 (quoting *Alexander v. City of Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017)). *Graham* mandates that courts assess "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances *confronting them*"—from "the perspective of a reasonable officer on the scene, rather than with the 20/20 *vision of hindsight*." *Graham v. Connor*, 490 U.S. 386, 396-97 (emphasis added). *Barnes* unanimously confirmed this forward-looking focus, emphasizing that what matters are all the "facts and events *leading up to* the climactic moment." *Barnes v. Felix*, 605 U.S. ---- (2025), slip op. 1 (emphasis added). Respondents provide no theory for how an officer's real-time decisions can be properly evaluated "directly" by reference to injuries that manifested only after the force was used.

III. There Are No Vehicle Problems.

Having no good response to the split and no convincing argument on the merits, respondents put most of their effort into arguing that this case is a poor vehicle for considering the Question Presented. *See* BIO 7-11. Those arguments fail as well.

A. Petitioner did not waive the Question Presented.

Respondents first claim that petitioner waived any right to seek this Court's review of the Fifth Circuit's injury requirement by not contesting that settled circuit precedent before the district court or the Fifth Circuit panel. BIO 7-9. But the district court could not decline to apply circuit precedent, and the panel was powerless to change the circuit's entrenched rule. Respondents cite no authority from this Court requiring parties to raise futile challenges to circuit precedent to preserve an issue for this Court's review.[1] To the contrary, this Court's "traditional rule … precludes a grant of certiorari only when 'the question presented was not pressed or passed upon below.'" *United States v. Williams*, 504 U.S. 36, 41 (1992). The Court explained that "this rule operates (as it is phrased) in the disjunctive, permitting review of an issue not pressed so long as it has been passed upon." *Ibid.*; *see, e.g.*, *Citizens United v. FEC*, 558 U.S. 310, 330 (2010) ("The District Court did not provide much analysis regarding the facial challenge because it could not ignore the controlling Supreme Court decisions …. Even so, the District Court did pass upon the issue.") (cleaned up); *Citizens United v. FEC*, 530 F. Supp. 2d 274, 278 (D.D.C. 2008) (per curiam) (three-judge court) (dispatching claim in

[1] It is well-established that petitioner did not have to seek en banc review to preserve the issue. Sup. Ct. R. 13 (cert. petition may be filed after panel decision); *see, e.g.*, *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1229 n.6 (11th Cir. 2005) (per curiam) ("A petition for rehearing or suggestion for rehearing en banc is not, of course, required before a petition for certiorari may be filed in the United States Supreme Court.").

a single paragraph based on binding precedent). And here the Fifth Circuit indisputably passed on the injury question by reaffirming and applying circuit precedent. *See* Pet. App. 8a-9a (reaffirming injury requirement and "agree[ing] with the district court that any injury was de minimis" in this case).

Respondents suggest that asking the district court or the appellate panel to defy circuit precedent could have helped "sharpen[] ... the issue" or create a "meaningful evidentiary record." *See* BIO 9. But refusing to consider an argument as barred by circuit precedent would be unlikely to sharpen the issue in any meaningful way. And regardless, the question has thoroughly percolated in the lower courts over the past decade and more. In all events, the answer to this purely legal question does not depend on the evidence or degree of injury in any particular case.[2]

B. The Fourth Amendment question is squarely presented.

Respondents argue that the question dividing the circuits is not squarely presented because the district court did not dismiss for lack of injury, but instead on qualified immunity grounds after having "factored" the "lack of ... serious injury" into the "totality of the circumstances" test for reasonableness. BIO 10. That is wrong for at least three reasons.

First, this Court reviews the judgments of courts of appeals, not district courts. And as the petition described, the panel majority did not invoke qualified

[2] And, of course, petitioner already had reason to develop proof of the degree of his injury in order to satisfy the Circuit's de minimis injury test and to establish damages.

immunity as an alternative ground for decision. Pet. 12-13 & n.4. To the contrary, 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 (Higginson, J., dissenting). Respondents do not disagree.[3]

Second, to the extent respondents suggest that the answer to the Question Presented is "not outcome determinative" because qualified immunity may provide an alternative ground for affirmance on remand (see BIO 2), that is no barrier to review either. As the United States often points out, "when an issue resolved by a court of appeals warrants review, the existence of a potential alternative ground to defend the judgment is not a barrier to review—particularly where, as here, that ground ... was not addressed by the court of appeals." *See, e.g.*, Gov't Pet. Reply, *Comm'r v. Estate of Jelke*, No. 07-1582 (U.S. Sept. 3, 2008), 2008 WL 4066478, at *9. Indeed, just this Term, this Court granted certiorari in *Barnes* to review the Fifth Circuit's "moment of threat" Fourth Amendment doctrine over the respondent's objection that even if that rule were incorrect, he "would still be entitled to qualified immunity." Respondent's Brief in Opposition, *Barnes v. Felix*, No. 23-1239 (U.S. Aug. 14, 2024), 2024 WL 3860057, at *14-23; *see also id.* at *23

[3] Although it makes no difference, respondents are also wrong in denying (at BIO 5-6) that the district court applied the Fifth Circuit's de minimis injury requirement. *See* Pet. App. 9a (panel majority holding "we agree with the district court that any injury was de minimis"); *id*. 14a (dissent acknowledging majority's ground for affirming, "concluding that Martinez cannot state a claim at all because his injuries are de minimis"); *contra* BIO 6-7 n.3 (claiming panel decision was "imprecise" in this regard).

("Because the non-liability of Felix is readily established by his entitlement to qualified immunity, there is no compelling reason to take this case on the Fourth Amendment issue and certiorari should be denied."). The Court has done the same in other cases as well. *See, e.g.*, *Thompson v. Clark*, 596 U.S. 36, 49 (2022) (deciding merits of Fourth Amendment Section 1983 question and remanding to consider qualified immunity); *Torres v. Madrid*, 592 U.S. 306, 325 (2021) (deciding merits of Fourth Amendment seizure question and remanding for consideration of qualified immunity defense).

Third, it gets respondents nowhere to claim that the courts below "applied a 'totality of the circumstances' analysis" that "treats the degree of injury as interrelated with and informative of the reasonableness of the officer's use of force in the qualified immunity analysis." *Contra* BIO 1. They acknowledge that "Petitioner is seeking to attack the use of the minor nature of injury as a factor in the reasonableness calculus." BIO 14; *see* Pet. App. 23a (district court reasoning that because it viewed petitioner's injuries as "minimal, [this] 'tends to support a conclusion that the officers acted reasonably'" (quoting *Solis v. Serrett*, 31 F.4th 975, 982 (5th Cir. 2022))). That is the subject of the second uncontested circuit split. While respondents defend the analysis as legally correct, they do not deny that if this Court were to disagree, then the outcome would be different. The majority explained that it viewed the lack of injury evidence as outcome determinative. It saw the case as "close," perhaps "a tie." Pet. App. 10a. It then broke the "tie" for respondents "because there is no evidence of injury in the record." *Ibid*.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

Randall L. Kallinen
KALLINEN LAW PLLC
511 Broadway Street
Houston, TX 77012

Daniel Woofter
Counsel of Record
Kevin K. Russell
RUSSELL & WOOFTER LLC
1701 Pennsylvania
Avenue NW, Suite 200
Washington, DC 20006
(202) 240-8433
dw@russellwoofter.com

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