In the
Supreme Court of the United States

No. _____

RONALD SMITH,
PETITIONER,

v.

HUNTER SAENZ, JIMMY GONZALEZ,
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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QUESTIONS PRESENTED

Under *Graham v. Connor,* 490 U.S. 386 (1989), the use of force by law enforcement during the course of an arrest, seizure, detention, or search must be "reasonable," and necessary for some law enforcement aim. In other words, the uses of physical and coercive force cannot be gratuitous.

When body camera videos clearly depict relevant events, the images are generally accepted for their truth, *Scott v. Harris* 550 U.S. 372 (2007).

(1) Whether it is "reasonable" under the Fourth Amendment and *Graham v. Connor,* 490 U.S. 386 (1989) for law enforcement to wield deadly force, secondary impact force, and robust physical force against a suspect who is passive, seated, and does not possess a weapon?

(2) Whether any Court is free to disregard the holding in *Scott v. Harris,* 550 U.S. 372 (2007) that clearly depicted video events are taken at face value?

PARTIES TO THE PROCEEDINGS

Petitioner Ronald Smith was the Appellee below. Respondents Deputy Hunter Saenz and Deputy Jimmy Gonzalez were the Appellants below.

RELATED PROCEEDINGS

United States District Court (W.D. Tex.)
Smith v. Guadalupe County, et al.
No. 23-cv-881-OLG, November 21, 2024.

United States Court of Appeals Fifth Circuit
No. 24-50975, August 14, 2025 (Unpublished)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ronald Smith respectfully petitions this Court for a Writ of Certiorari from a Judgment of the Fifth Circuit Court of Appeals in No. 24-50975 which issued on August 14, 2025.

OPINIONS BELOW

The Fifth Circuit **reversed** the Summary Judgment Order of the District Court denying Qualified Immunity in an unpublished Opinion on August 14, 2025, and issued its own Judgment on August 14, 2025.

JURISDICTION

A timely Rehearing was denied on September 15, 2025. The Mandate of the Fifth Circuit was issued and entered on September 22, 2025. This Court has jurisdiction under 28 U.S.C. 1254(1).

I. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. FOURTH AMENDMENT

The Fourth Amendment of our United States Constitution 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 person or things to be seized."

B. DEADLY FORCE UNDER *Tennessee v. Garner*

In 1985, this Court decided the landmark case of *Tennessee v. Garner,* 471 U.S. 1 (1985). In *Garner,* this Court held there is no such thing as "open season" on fleeing felons, felons, or suspects who do not actively resist law enforcement. In particular, 'deadly force' was not to be used unless life and limb were in danger. Deadly force is a degree of force likely to cause serious bodily injury or death. In particular, Police were shooting fleeing felons dead in Tennessee under a state law.

C. 42 U.S.C. §1983

Every person, who under color of statute, ordinance, or regulation, custom, or usage, of any State or Territory of the District of Columbia,

subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress…"

This is a product of the Civil Rights Act of 1871, enacted in the wake of Civil War Reconstruction. Individuals acting under the color of state law can be liable. The 42 U.S.C. 1983 statute does not provide "rights" in itself. It serves as an enforcement vehicle for violations of the U.S. Constitution or federal laws, *West v. Atkins,* 487 U.S. 42 (1988).

D. <u>28 U.S.C. 1291 INTERLOCUTORY APPEALS</u>

Collateral Orders which affect substantial rights and which would evade relief on appeal can be provisionally reviewed, *Cohen v. Beneficial Industrial Loan Co.,* 337 U.S. 549 (1949). A denial of Qualified Immunity is one such appealable Order, *Mitchell v. Forsyth,* 472 U.S. 511 (1985). The basis of such appeals in 42 U.S.C. 1983 are solely issues of law.

II. STATEMENT OF THE CASE

SAENZ, GONZALEZ, & FIFTH CIRCUIT USURPED (1) THE INTERLOCUTORY APPEAL STANDARD

Under *Mitchell v. Forsyth,* 472 U.S. 511 (1985), government officials can appeal the denial of Qualified Immunity through interlocutory appeals. However, this is predicated **on issues of law, not facts.**

The Respondents wouldn't concede the Plaintiffs version of facts, and wouldn't accept the District Court's interpretation of genuine factual disputes. ROA.24-50975.750-751. ROA.24-50975.783-784. See *Johnson v. Jones,* 515 U.S. 304 (1995). This Court held Defendants **may not even appeal** denials of Qualified Immunity based upon genuine factual disputes recognized by the District Court, *Id.* at 313.

Further, Appellate Courts **may not review** conclusions that issues of fact are genuine, *Behrens v. Pelletier,* 516 U.S. 299 (1996).

Below is what the Magistrate penned. ROA.24-50975.750-751. The District Court adopted the Recommendations. ROA.24-50975.783-784.

> *"Defendants Saenz and Gonzalez have not established they are entitled to Qualified Immunity based on the reasonableness of the force employed against Smith. A jury could readily conclude from the video*

evidence in the record that the force used by the defendants was 'clearly excessive' to its need and therefore not reasonable."

"It is undisputed that Saenz and Gonzalez pointed loaded firearms at Smith's body when he was seated in a passive crossed-leg position while holding one empty hand in the air and gripping a cell phone with the other hand. In this position, there was no objective reason to believe that Smith was armed or about to deploy a firearm. Saenz then shot Smith in the face with a pepper ball when Smith did not immediately lie down in response to the officers' screaming orders. Smith was not threatening the officers. Smith was no longer fleeing the officers. Smith was seated passively seated on the ground in a completely defenseless posture."

A. FIFTH CIRCUIT KNEW THAT DEFENDANTS AREN'T ALLOWED TO 'GAME THE SYSTEM'

The Fifth Circuit is well aware of this Court's holdings in *Johnson v. Jones,* 515 U.S. 304 (1995) and *Behrens v. Pelletier,* 516 U.S. 299 (1996). Its case decisions purport to indicate that aggrieved Defendants can't displace genuine factual disputes

denying Summary Judgment. A district court's determination that disputed facts prevent Qualified Qualified Immunity are not issues of law reviewable on interlocutory appeal, *Byrd v. Cornelius,* 52 F. 4th 265 (5th Cir. 2022).

Appeals are dismissed when government Appellants "merely dispute the sufficiency of the Plaintiff's evidence," *Cooley v. Grimm,* 272 F. App'x 386 (5th Cir. 2008). When Qualified Immunity depends upon the resolution of genuine factual disputes, appellate courts cannot entertain the denial of summary judgment on interlocutory appeal, *Wagner v. Bay City,* 227 F.3d 316 (5th Cir. 2000), *Craig v. Martin,* 49 F.4th 404 (5th Cir. 2022).

"A Defendant challenging a motion for summary judgment based upon the denial of qualified immunity must be prepared to concede the best view of the facts to the plaintiff discussing only the legal issues raised by the appeal," *Lytle v. Bexar County,* 560 F.3d 404 (5th Cir. 2009). Defendants contesting the denial of Qualified Immunity must concede the Plaintiff's factual version, *Edwards v. Oliver,* 31 F. 4th 925 (5th Cir. 2022).

An Officer challenges the materiality of genuine factual disputes when he contends, "that **taking all the Plaintiff's factual allegations as true**, no violation of a clearly established Constitutional right was shown," *Reyes v. City of Richmond,* 287 F.3d at 351 (5th Cir. 2002), quoting *Cantu v. Rocha,* 77 F.3d

795 (5th Cir. 1996). The Officers **must concede the facts in the light most favorable to the Plaintiff**, *Reyes v. City of Richmond,* 287 F.3d at 351 (5th Cir. 2002).

When Officers seek to debate facts outside the district court's factual findings, the appeal is a "wolf in sheep's clothing" contesting the genuineness of material factual disputes—and must be dismissed, *Edwards v. Oliver,* 31 F.4th 925 (5th Cir. 2022).

In practice though, the Fifth Circuit actually became **an arbiter of facts**. In No. 24-50975 it stated, "the video was unclear that Saenz and Gonzalez jumped on Smith's back." Smith provided the video(s) and **still images** at Summary Judgment of these acts. ROA.24-50975.587-589.

(2) CHRONOLOGY OF EVENTS AND ABUSE

The following events exist in the case record. The video images capture the most graphic information. ROA.24-50975.96. **(full length).** ROA.24-50975.696. **(Saenz Min. 2:09-4:11**). Under *Scott v. Harris,* 550 U.S. 372 (2007), **the video(s) control.**

(1) On June 27, 2021, Ronald Smith was walking and exercising along the grass easement bordering Highway 46 in Guadalupe County, Texas. Smith was dressed in exercise apparel with shorts, a cotton T-shirt, tennis shoes, and a baseball cap. ROA.24-50975.602-03.

(2) Smith eventually came to rest on the grass easement bordering the Guadalupe Vallery Memorial Park Cemetery. ROA.24-50975.603. He next observed 2 portly Peace Officers approaching him with guns drawn and pointed at him. *Id.*

(3) In taking Smith into custody, **(a)** Saenz and Gonzalez wielded and pointed firearms, **(b)** used an impact pepper round on Smith's head, **(c)** football-smashed Smith into the ground, face-first, **(d)** rested their knees on Smith's head and neck, and **(e)** twisted and contorted Smith on the ground. (Saenz: Min. 2:09-4:11). ROA.24-50975.603-04. ROA.24-50975.696.

(4) (a) Smith was not violent or aggressive against the Deputies, or the public. (Saenz: Min. 2:09-3:30). (**b)** Smith was passive. (Saenz: Min. 2:09-2:52). (**c)** Smith had no weapons, contraband, or dangerous items on his person. ROA.24-50975.603**. (d)** Saenz and Gonzalez pointed loaded firearms at an unarmed and passive Smith. (Saenz: Min. 2:09-2:52). **(e)** At worst, Saenz and Gonzalez thought Smith may have walked across other people's property. (Saenz: Min. 28:36). **(f)** Saenz switched to a "Pepper Gun" and shot Smith on the side of his face, near the temple. (Saenz: Min. 2:34). **(g)** The impact spewed a white powder irritant on Smith's face, causing respiratory distress and pain. (Saenz: Min. 2:52). (Locker: Min. 18:07). ROA.24-50975.606. **(h)** Then,

Gonzalez and Saenz leaped upon Smith's back, pushing him face first on the ground. Both men weighed well over 250 pounds each. (Saenz: Min. 3:22-3:30). **(i)** Gonzalez rested his knee on Smith's head and neck while securing him. (Saenz: Min. 3:22-3:30).

(5) (a) Smith incurred physical injury from the pepper ball round, from being rammed face first onto the grass, from having Saenz and Gonzalez jump on his back, and lingering effects from the chemical irritants. ROA.24-50975.607-08. ROA.24-50975.616-647. **(b)** Smith incurred harm and terror from being assaulted, arrested, and charged with Evading Arrest. ROA.24-50975.607-08. ROA.24-50975.616-647. The case was **dismissed**. ROA.24-50975.570.

(6) See the filed video link below. ROA.24-50975.696. **(Saenz: Min. 2:09-4:11).**

https://www.dropbox.com/scl/fi/504urlatdokug0x892xts/HunterSaenz_202106271958_VHC2016240_66991255_5.mp4?rlkey=vttks3oi5kx3ndlh9trw046l6&st=6x2x6z2k&dl=0

DEPUTY SAENZ' & GONZALEZ' USES OF FORCE WERE EXCESSIVE UNDER *Graham v. Connor* (3)

Deputy Saenz initially claimed he didn't suspect Ronald Smith of any criminality—he "just wanted to check on him walking." (Saenz: Min. 6:42), (Locker: Min. .38). Locker stated Saenz was "checking on your welfare." (Locker: Min. 4:30).

The cornerstone of the Fourth Amendment is "reasonableness." The uses of force, searches, and seizures must be reasonable, and based on objective criteria.

In 1989, this Court cleared up the longstanding question of whether excessive force in an arrest falls under the Fourth Amendment or Substantive Due Process of the Fourteenth Amendment. Under *Graham v. Connor,* 490 U.S. 386 (1989), the use of force is objectively assessed. In other words, any use of force against a citizen or suspect must be **justified**, and commensurate **with any need** for force. Law enforcement don't have an "open season" to bring in suspects "dead or alive," *Tennessee v. Garner,* 471 U.S. 1 (1985). The *Graham* factors include: (1) the severity of the crime at issue; (2) whether the suspect poses a danger to police or the public; and (3) whether the suspect attempts to resist arrest or leave the scene.

It's not reasonable, justified, or necessary to use: (1) deadly force by pointing loaded firearms at a passive citizen sitting on a grass easement. (Saenz: Min. 2:09-2:52). (2) It's not justified to shoot an unarmed, passive citizen sitting on a grass easement with a secondary impact weapon in the temple. (Saenz: Min. 2:52). (3) It's not justified or reasonable for a passive, sitting citizen to be 'football smashed' from behind by 2 portly Deputies weighing over 275 pounds each, leaped upon, and have a knee grinding into their head and neck. (Saenz: Min. 3:22-3:30). In this instance, the impact projectile contained chemical irritants which caused respiratory distress at the event, and years after. ROA.24-50975.617. The pepper projectile can be seen in a still image, on its way. ROA.24-50975.585. The impact (several hundred miles per hour) caused neurological and ocular symptoms. ROA.24-50975.617.

Smith is first observed at (Saenz: Min. 2:09) in a seated Indian style position. Smith has his left arm thrust skyward, and his right hand is working a cell phone calling 911 on Saenz and Gonzalez. **(a)** So, it's obvious Smith is not wielding weapons. **(b)** Smith's seated position with crossed legs constrains any immediate movement. **(c)** At worst, Saenz believed Smith might have cut across a landowner's property. (Saenz: Min. 22:11). Under Texas law, Criminal

Trespassing is a Class B Misdemeanor, and it's a non-violent offense, Tex. Penal Code §30.05.

(4) UNDER *Scott v. Harris*, 550 U.S. 372 (2007), EVENTS MUST BE VIEWED IN LIGHT OF THE VIDEO

For some reason, the Fifth Circuit didn't want to view these images at face value. Smith actually received the videos in criminal discovery, while his case was pending. In fact, Counsel Cano was his successful defense Attorney.

In *Scott v. Harris,* 550 U.S. 372 (2007), this Court examined what occurs when the Summary Judgment standard conflicts with damning evidence. *Scott* was a case where a fleeing felon led law enforcement on a wild, high-speed chase. The Deputies became alarmed the public would be harmed, so they utilized a "ramming maneuver." Harris' car was catapulted off the road, and he was seriously injured. Scott sued under 42 U.S.C. 1983.

At Summary Judgment under the FRCP 56, Courts are to view the facts, law, and evidence in a favorable light to the nonmovant, *Tolan v. Cotton,* 572 U.S. 650 (2014). However, the dash camera video controverted Harris' legal theories. This Court held when video evidence controverts a Plaintiff's position, reviewing Courts don't have to accept their perspective. "The facts are to be viewed in the light of the videotape," *Scott* at 378-80. When two parties

present diametrical accounts, and one is blatantly refuted by a video, the Court must not accept that party's view of the facts, *Scott* at 380.

(5) SAENZ AND GONZALEZ AREN'T ENTITLED TO QUALIFIED IMMUNITY

Qualified Immunity is a judicially created affirmative defense. It has 2 components: (1) whether the Plaintiff has shown a violation of a Constitutional right; and (2) whether the right was clearly established. It does not matter in which order they are analyzed by a District Court, *Pearson v. Callahan,* 555 U.S. 223 (2009). Smith showed: (1) violations of Constitutional rights, *Saucier v. Katz,* 533 U.S. 194 (2001), which were (2) clearly established at the time of the violations, *Scott v. Harris,* 500 U.S. 372 (2007).

It's clear a citizen and suspect have a right under the Fourth Amendment not to suffer excessive force by law enforcement in a seizure, *Graham v. Connor,* 490 U.S. 386 (1989). It's clear citizens and suspects have a Fourth Amendment right not to suffer gratuitous deadly force by law enforcement in a seizure, *Tennessee v. Garner,* 471 U.S. 1 (1985). In deadly force applications by Police, Courts are to examine "the totality of the circumstances," *Id.*

(6) THE CASES, FACTS, AND CASE LAW DON'T HAVE TO BE IDENTICAL TO APPRISE POLICE OF UNLAWFUL CONDUCT

In No. 24-50975, the Fifth Circuit demanded **an exact case with identical circumstances** to show 'clearly established law.' That's not always possible; and it's not required. In Excessive Force claims, Courts must look at the circumstances to assess whether force was required, not the exact circumstances of the situation, locale, etc. In *City of Escondido v. Emmons,* 139 S.Ct. 500 (2019), this Court remanded an Excessive Force case to the Ninth Circuit based upon whether force was required in an alleged domestic dispute scenario. In other words, the focus was not on the minutia of the particular situation. The inquiry was whether force was justified by the actors' conduct.

This Court analogized *United States v. Lanier,* 520 U.S. 259 (1997) with 42 U.S.C. 1983 Qualified Immunity. In *Lanier,* a State Judge was charged with sexual abuse crimes under federal law. His conviction under 18 U.S.C. 242 was vacated by the 6th Circuit who said he couldn't have known his conduct was unlawful. This Court **thought it was absurd** the Judge wouldn't know it was unlawful to rape women in his chambers. There didn't have to be a precedent of sexual abuse to convict him. This Court stated "fair warning" was

enough. Factual scenarios don't have to be "fundamentally similar."

Qualified Immunity is rejected "if the contours of the right violated are sufficiently clear that a reasonable official would understand that he is violating that right," *Anderson v. Creighton,* 483 U.S. at 640 (1987). In *Wilson v. Layne,* 526 U.S. 603 (1999), Police took the media along when implementing a search warrant. The law was muddled at that time. On Certiorari, this Court held the manner in which that "ride a long" was implemented was unlawful. But, it wasn't unreasonable for Police to mistakenly believe the media could have such access to police raids.

It was **unreasonable** to use deadly force, secondary impact force, and physical force against Smith on June 27, 2021. Saenz and Gonzalez **knew** their conduct was illegal**. <u>The proof: the duo drafted no Summary Judgment Affidavits.</u>** Counsel Cano has never been on a 42 U.S.C. 1983 case where the Police Defendants have not drafted and submitted sworn affidavits during litigation.

In *Hope v. Pelzer,* 536 U.S. 730 (2002), Alabama prison officials tortured inmates by shackling them to a hitching post, exposing them to the Sun, and depriving them of sustenance and shelter. The District Court and 11th Circuit "found no materially

similar cases" and rejected Hope's claims. This Supreme Court held some **violations are so obvious**, no similar line of cases is required. This Supreme Court found a cruel infliction of pain and punishment. No penological interests were served. "Officials can be on notice their conduct violates the law even in novel factual circumstances" *Lanier* at 741.

In No. 24-50975, we speak of: (1) the use of deadly force; (2) secondary impact force; and (3) physical force; against (4) an unarmed, passive, nonviolent person. There is nothing unique about those circumstances. It wouldn't matter whether Smith was abused at the Mall, at a park, on a city street, or in front of his house.

What's more, the Fifth Circuit speaks with a forked tongue. Its own cases indicate Qualified Immunity **doesn't require exact facts**, and other Circuits can establish a right. "A lack of an identical fact pattern does not mean a litigant's rights were not clearly established," *Juarez v. Aguilar,* 666 F.3d 325 (5th Cir. 2011). In the absence of controlling authority, a consensus of cases might be sufficient to apprise an officer his actions were unlawful, *McClendon v. City of Columbia,* 305 F.3d 314 (5th Cir. 2002) (en banc). "If there is no directly controlling authority, we may rely on other circuits'

cases," *Shumpert v. City of Toledo,* 905 F.3d 310 (5th Cir. 2018).

(7) VERTICAL *STARE DECISIS* REQUIRES ALL COURTS TO FOLLOW *Connor* AND *Scott*

In the legal realm, all lower courts, Attorneys, parties, and citizens must adhere to rulings by the U.S. Supreme Court. In *State Oil Co. v. Khan,* 522 U.S. 3 (1997), the U.S. Supreme Court overruled some of its holdings in *Albrecht v. Herald Co.,* 390 U.S. 145 (1968). This Supreme Court confirmed its sole right to overrule its own precedents, "the Court of Appeals was correct in applying that principle despite disagreeing with *Albrecht,* for it is this Court's prerogative alone to overrule its own precedents." *Khan* at 20.

The 5th Circuit purports to be a strict *stare decisis* court, *National Coalition for Men v. Selective Service System,* No. 19-20272 (5th Cir. 8/13/2020). The 5th Circuit, "can't ignore a decision from the Supreme Court unless directed to do so by the Court itself," *Ballew v. Continental Airlines, Inc.,* 668 F.3d 777 (5th Cir. 2012). "Following the law as it respects the Supreme Court's singular role in deciding the viability of its own precedents," *Perez v. Stephens,* 745 F.3d 174 (5th Cir. 2014).

Vertical Stare Decisis applies within the 5th Circuit itself. District Courts are bound by 5th Circuit holdings on federal law, *United States v. Tompkins,* 130 F.3d 117 (5th Cir. 1997). Only En Banc panels can overrule prior case law; 3 member panels can't, *Rohner Gehrig Inc. v. Motor Transit,* 950 F.2d 1079 (5th Cir. 1992).

III. REASONS FOR GRANTING THE WRIT

(1) 'THE LIGHT OF THE VIDEO' DEPICTS EXCESSIVE FORCE THROUGH SEVERAL MEANS

Under *Scott v. Harris,* 550 U.S. 372 (2007), Deputy Saenz' body camera video depicts graphic abuse. The events speak for themselves. ROA.24-50975.96. ROA.24-50975.696. This is a perfect case to emphasize that **no Court or Circuit is free to disregard reality**. Clearly captured events on video are not subject to "artistic interpretation."

(A) THE VIDEO DEPICTS DEADLY FORCE

As soon as Smith comes into view in front of the cemetery, Deputy Saenz reaches for his firearm and points it at Smith. (Saenz: Min. 2:09). A few seconds later, Deputy Gonzalez rolls up, and exits his car. (Saenz: Min. 2:23). Deputy Saenz instructs Gonzalez **"to go lethal."** (Saenz: Min. 2:28). Both men point firearms at Smith. (Saenz: Min. 2:09-2:52). This Court and every Circuit to have considered the

subject consider wielding and menacing citizens with firearms constitutes 'deadly force,' *Tennessee v. Garner,* 471 U.S. 1 (1985). This Court emphasized in *Garner* that deadly force must be used with restraint and prudence. *"We must balance the nature and quality of the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion," Garner* 471 U.S. at 8 (1985). The **manner** in which a search or seizure is conducted must be reasonable and constitutional. *Id.*

Even in felony situations, an Officer may not always seize a suspect by killing them. "The intrusiveness of a seizure by means of deadly force is unmatched," *Garner* at 9. *"We are not convinced that the use deadly force is a sufficiently productive means of accomplishing them to justify the killing of nonviolent suspects," Garner* at 10.

"*Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so," Garner* 471 U.S. at 11 (1985).

"An officer's decision to point a gun at an unarmed civilian who poses no threat can certainly sustain a claim of excessive force," *Croom v. Balkwill,* 645 F.3d 1240 (11th Cir. 2011).

Regardless of the circumstances, using deadly force in Smith's seizure was patently unreasonable. Saenz and Gonzalez pointed loaded firearms at an unarmed and passive Smith. (Saenz: Min. 2:09-2:52). It's also in **still images**. ROA.24-50975.581-583. Their response is not unlike that in *Grandstaff v. City of Borger,* 767 F.2d 161 (5th Cir. 1985). In *Grandstaff,* Police resorted to deadly force as an initial response—leading to tragedy.

This Court stated in *United States v. Lanier,* 520 U.S. at 629 (1997), that decisions of the Circuit Courts can delineate cases establishing rights and violations. Thus, clearly established law can be had in the Circuit Courts. In fact, the 5th Circuit has established the use of firearms can violate the Constitution, *Petta v. Rivera,* 143 F.3d 895 (5th Cir. 1998). "Brandishing a cocked gun in front of that citizen's face has laid the building blocks for a section 1983 claim against him," *id.*

It isn't reasonable to point weapons at citizens who pose no physical threat, *Jacobs v. City of Chicago,* 215 F.3d 758 (7th Cir. 2000). Pointing a firearm at passive suspects is the use of deadly force, *Robinson v. Solano County,* 278 F.3d 1007 (9th Cir. 2002).

See *Baker v. Monroe Township,* 50 F.3d 1186 (3rd Cir. 1995). "The use of guns and handcuffs show a very substantial invasion of the Plaintiffs' personal security," *id.* at 1193. In *Baker,* Police terrorized occupants of a home during a drug raid, by pointing firearms at their heads.

It isn't reasonable to point weapons at citizens or suspects who pose no physical threat because the possibility exists the weapons might be discharged, *McDonald v. Haskins,* 966 F.2d 292 (7th Cir. 1992). "The gratuitous menacing display of weapons at persons inescapably involves the immediate use of deadly force," *Holland v. Harrington,* 268 F.3d 1179 (10th Cir. 2001). Police can't gratuitously point firearms at non-hostile citizens, *Mlodzinski v. Lewis,* 648 F.3d 24 (1st Cir. 2011).

Gratuitously pointing firearms at passive suspects is a use of deadly force, *Wright v. City of Euclid,* No. 19-3452 (6th Cir. 2020). Pointing a firearm at a person implies the bearer will shoot them, *Vanderhoef v. Dixon,* 938 F.3d 271 (6th Cir. 2019).

In *Binay v. Bettendorf,* 601 F.3d 640 (6th Cir. 2010), Police menaced residents with guns during a failed drug search. The search produced no contraband, and the occupants were not violent or combative. The Court held it was a jury question

whether excessive force was used. Having no criminal record, posing no threat, and making no attempt to resist arrest were factors weighing against the Police Officer's claims of reasonableness.

Before *Graham v. Connor,* 490 U.S. 386 (1989), Courts held such conduct "shocked the conscience" under the harder 14th Amendment Substantive Due Process Clause standard. See *Black v. Stephens,* 662 F.2d 181 (3rd Cir. 1981), *Rhodes v. Robinson,* 612 F.2d 766 (3rd Cir. 1979). In *Black,* a Police Detective had a "road rage" incident with citizens, who he menaced with a firearm and threatened to shoot.

Physical contact isn't a requirement of a 4th Amendment claim—patently unreasonable conduct is, *Cortez v. McCauley,* 478 F.3d 1108 (10th Cir. 2007). It's also not a requirement of a 14th Amendment claim, see *Petta.* Law enforcement misconduct with firearms can represent shocking tort violations, *Petta v. Rivera,* 143 F.3d 895 (5th Cir. 1998).

The most famous case is *Tennessee v. Garner,* 471 U.S. 1 (1985), with its unlawful statute advocating shooting fleeing felons. Its iteration was successfully resolved for the Plaintiffs, *Garner v. Memphis Police Dept.,* 8 F.3d 358 (6th Cir. 1993).

B. GRATUITOUS IMPACT WEAPONS CAN INFLICT SERIOUS INJURY AND DEATH

Impact weapons convey kinetic force. Pepper rounds are discharged at several hundred miles an hour. Smith captured a **still image** of the projectile on its way to his head. ROA.24-50975.585. Most of the Circuits regard secondary impact weapons as capable of causing death. The case law is clear the use in Smith's situation was unlawful. At (Saenz Min: 2:34), Saenz transitions from his firearm to his Pepper Gun. At (Saenz: Min. 2:52), Saenz discharges his projectile, striking Smith in the left temple.

Even in matters of first impression, Circuit Courts of Appeal have recognized excessive force via uses of pepper ball rounds. In *Fogarty v. Gallegos,* 523 F.3d 1147 (10th Cir. 2008), a citizen was exposed to excessive force prior to and during his arrest. Police bombarded him with pepper ball rounds. Even though it was a matter of first impression in the Tenth Circuit, it affirmed the denial of Qualified Immunity. The Court held that any reasonable peace officer would know it's unlawful to use such force on a peaceful citizen arrested for a petty offense.

Victoria Snelgrove died from a pepper ball round which struck her temple and entered her brain. The City of Boston was sued and paid $5,100,000 to her family. The family also sued the manufacturer of the weapon and won $10,000,000,

Snelgrave v. FMH USA, LLC, No. 05-cv-12004 (D. Mass. 2006).

In *Keup v. Sarpy County,* 8:21-cv-312 (D. Neb. 2023), Adam Keup sued officials based upon his injuries resulting from a wanton discharge of pepper ball rounds. A round struck him in his right eye. The projectile tore his sclera, affecting his visual acuity. The injuries are permanent.

In *Duran v. United Tactical Sys.,* 1:18-cv-01062-MIS/LF (Dist. of N.M. 2022), the estate of an elderly man sued the manufacturer of a Pepper Ball gun. Police discharged multiple pepper ball rounds at the man. These rounds struck his arms, exposed skin, and fractured. The fragments penetrated the skin and caused a massive loss of blood. Duran died from his injuries.

Even the Draconian Fifth Circuit recognizes there are limitations on the uses of impact weapons. The Fifth Circuit found a passive prisoner's rights had been violated under the more stringent Eighth Amendment, *Chambers v. Johnsons,* No. 09-30762 (5th Cir. 2010).

Firing pepper balls at individuals who, at most, are suspected of minor crimes is excessive force, *Nelson v. City of Davis,* 685 F.3d 867 (9th Cir. 2012). In *Nelson,* a student incurred a permanent eye

injury from a pepper round while standing among a crowd of college protestors.

In No. 24-50975, Deputy Saenz claimed to begin his pursuit of Smith based upon the belief Smith was Criminally Trespassing. (Saenz: Min. 22:11). That's a nonviolent Class B Misdemeanor Offense under the Tex. Penal Code §30.05. That is hard to accept. When Deputy Saenz shouts, "Sheriff's Office," **there is no one else in the field**. See the captured still image. ROA.24-50975.694.

Medical professionals have conducted studies which show "less lethal" impact weapons can cause serious injuries to the eyes. Less-lethal Weapons Resulting in Ophthalmic Injuries: A Review and Recent Example of Eye Trauma; National Library of Medicine, Aug. 5, 2020.

Moreover, "impact weapons" can cause serious injuries and death. They can cause the loss of vision, cause hematomas, cause the loss of limbs, cause damage to internal organs, and cause cranial trauma. Death, injury, and disability from kinetic impact projectiles in crowd control settings: a systematic review; National Library of Medicine, Dec. 5, 2017.

Beyond the effects of the kinetic pepper ball round, there are serious consequences from pepper spray itself (Oleoresin Capsicum). In *Duran v. Town*

of Cicero, 653 F.3d 652 (7th Cir. 2011), Police gratuitously sprayed a group with pepper spray. A jury awarded $2.58 million against the city and several officers.

Citizens shot by pepper irritants can develop **Reactive Airway Dysfunction Syndrome** from exposure. Pepper spray can constitute excessive force even against dangerous convicted prisoners, *Walker v. Bowersox,* 526 F.3d 1186 (8th Cir. 2008).

In *Headwaters Forest Def. v. County of Humboldt,* 276 F.3d 1125 (9th Cir. 2002), chemical agents were found to cause severe pain and distress. The recipients of pepper spray developed immediate symptoms and adverse reactions. In fact, the irritants were intended to cause anguish, suffering, and compliance.

In *Young v. County of Los Angeles,* 655 F.3d 1156 (9th Cir. 2011), an Officer was not entitled to Qualified Immunity in using pepper spray during an arrest. Intermediate force was excessive in this situation. The motorist didn't resist arrest, and merely sat on a curb. Plaintiff Ronald Smith is seen sitting down in the video with his left hand up in the air, and his right hand up in the air with a cell phone calling 911 on Deputies Saenz and Gonzalez (Saenz: Min. 2:09).

Minor offenses where there is no physical resistance don't justify the use of chemical agents, *Howell v. Sheriff of Palm Beach County,* No. 09-10940 (11th Cir. 2009). In the absence of resistance or physical threat, Police are not justified in using chemical weapons, *Asociacion de Periodistas de Puerto Rico v. Meuller,* 529 F.3d 522 (1st Cir. 2008).

Police cannot use chemical agents against the public in the absence of provocation, *Duran v. Sirgedas,* 240 Fed. App'x 104 (7th Cir. 2007). "Using pepper spray is excessive force in cases where the arrestee is no threat to the officers or anyone else," *Vinyard v. Wilson,* 311 F.3d 1340 (11th Cir. 2002).

In *Adams v. Metiva,* 31 F.3d 375 (6th Cir. 1994), a citizen was pepper sprayed by Police. They then handcuffed him and continued to pepper spray him. The 6th Circuit reasoned that the continuation of force was gratuitous and unlawful. Plaintiff Smith was (1) threatened with firearms, (2) struck in the face with a pepper ball round, and (3) tackled, smothered, and sat on by Saenz and Gonzalez. (Saenz: Min. 2:09-3:30).

In *Jones v. City of Cincinnati,* 1:04-cv-616 (S.D. Ohio 2011), Police dealt with a disturbed man. There was a physical tussle where Police struck Jones with batons, sprayed him with mace, and took him to the

ground—where he died from positional asphyxia. Qualified Immunity was denied for several Officers.

In *Tatum v. Robinson,* 858 F.3d 544 (8th Cir. 2017), a man was suspected of petty shoplifting at a Dillard's store. Upon exiting, Tatum met Robinson, an off-duty Police Officer working store security. Robinson ended up pepper spraying Tatum, and allegedly choked him too. "Robinson used force on a non-resisting, non-fleeing individual suspected of a non-violent misdemeanor,"—the type of individual against whom the use of force is **least justified.** *Id.* at 549. Pepper spray can cause more than temporary pain, *Peterson v. Kopp,* 754 F.3d at 601 (8th Cir. 2014), *Brown v. City of Golden Valley,* 574 F.3d at 500 n.6 (8th Cir. 2009).

C. TACKLING, JUMPING ON, AND SITTING ON SUSPECTS IS GRATUITOUS EXCESSIVE FORCE

It's generally accepted that tackles, punches, and compression by body weight can be excessive force. Gonzalez and Saenz vigorously shoved Smith to the ground face-first, and leaped on his back. Smith is twisted and contorted, and pressed downward. Gonzalez rests his knee on Smith's head and neck. (Saenz: Min. 3:22-3:30). Both Saenz and Gonzalez are squat, portly men. This tackle came on the heels of the handgun brandishing and pepper ball impact to the head. At (Saenz: Min. 3:29), Smith says, "I

can't breathe." Lest we forget the dangers of knees resting on citizens' heads, there is the landmark tragedy of George Floyd. This knee positioning can cause **positional asphyxia.** The Fifth Circuit stated, "the video is unclear these things happened." Smith included **still images** on Summary Judgment. ROA.24-50975.581-589.

In *Martin v. City of Broadview Heights,* No. 11-4039 (6th Cir. 2013), Police knocked a man to the ground who was having a mental episode. The Officers rested their knees and weight on his body. The man died from asphyxia and the Officers were denied Qualified Immunity.

Gang-tackling citizens and roughhousing them is excessive force. In *Blankenhorn v. City of Orange,* 287 F.3d 846 (9th Cir. 2007), a young man was arrested at a shopping mall. Law enforcement didn't find the citizen to be responsive to their demands. They swarmed and gang-tackled him to the ground, twisted and contorted his limbs, rested their knees on his head and neck, and punched him. Qualified Immunity was reversed and remanded on Summary Judgment.

In *Richman v. Sheehan,* 512 F.3d 876 (7th Cir. 2008), Deputies smothered, pummeled, and sat on a morbidly obese man. While rather large, the decedent was harmless, and could barely move. The

Deputies overwhelmed him, and sat on him, which caused heart failure and asphyxiation. The Deputies were not entitled to Qualified Immunity.

In *Champion v. Outlook Nashville, Inc.,* 380 F.3d 893 (6th Cir. 2004), Police killed a mentally ill man with pepper spray, blows, and positional asphyxia. The Officers rested on Champion's back, causing him to suffocate. A jury awarded $900,000 to the estate.

In *Drummond ex Rel. Drummond v. City of Anaheim,* 343 F.3d 1052 (9th Cir. 2003), Police pummeled a man with a history of mental illness. The Police then used their weight by pinning Drummond to the ground. The Officers placed their knees in Drummond's neck and back. Drummond lost consciousness due to a lack of oxygen and lapsed into a permanent coma.

In *Karels v. Storz,* No. 17-2527 (8th Cir. 2018), the Eighth Circuit found evidence of excessive force when Police 'took down' a petite woman who had been drinking and arguing with her roommate. They arrested her for minor offenses and threw her to the ground face-first. She hit her head on a door and injured her arm.

In *Neal v. Ficcadenti,* No. 17-2633 (8th Cir. 2018), the Eighth Circuit found excessive force when police 'took down' a citizen based upon an inaccurate 911 call about a man with a gun. Mr. Neal was not

aggressive and was compliant, when Officer Ficcadenti took him to the ground face-first. Neal was not the man depicted in the citizen's 911 call.

In *Bryd v. Cornelius,* 52 F.4th 265 (5th Cir. 2022), a high school girl claimed Police used excessive force while evicting her from a basketball game. Police allegedly threw her on the ground, kneed her back, and twisted her arm.

In *Kemp v. Belanger,* No. 21-30752, No. 21-30781 (5th Cir. 2023), a citizen claimed Police used a "leg sweep" to take him to the ground, while serving an arrest warrant.

In *Estate of Williams v. Cline,* No. 17-2603 (7th Cir. 2018), the Seventh Circuit affirmed the denial of Qualified Immunity for 11 Officers. Police chased an unarmed man, tussled with him, and sat on him. Cline complained repeatedly 'he couldn't breathe.' The Officers ignored him and he died. In *Estate of Williams*, just like No. 24-50975, the Defendants denied many factual issues. Smith complained he 'can't breathe' at (Saenz: Min. 3:29), as Saenz is on his back and Gonzalez had his knee on his neck.

In *Fletcher v. Tomlinson,* No. 16-3499 (8th Cir. 2018), a jury awarded Fletcher $600,000 for excessive force. Police beat him on 2 occasions with fists, batons, body compression, and a taser. Police claimed he ran and discarded drugs. The substance

they found was not drugs or contraband. The verdict was affirmed.

In *Spiller v. Harris County,* No. 22-20028 (5th Cir. 2024), the Fifth Circuit found excessive force when a Constable became irritated with Spiller interfering with the questioning of his girlfriend after an accident. Constable Lindsay became enraged and slammed Spiller by his neck onto the hood of a parked car. Spiller landed on his back. Other Peace Officers tussled with Spiller, and tased him.

In *Simpson v. Hines,* 903 F.2d 400 (5th Cir. 1990), Police entered an inmate's cell, put him in a neckhold, and placed pressure on his chest. The inmate died, and Qualified Immunity was denied. The 5th Circuit stated any reasonable officer would know such force was excessive.

Officers were not entitled to Qualified Immunity in *Lanman v. Hinson,* No. 06-2263 (6th Cir. 2008). The Officers chose to restrain him face-first, and sit on his back—killing him.

In *Arce v. Blackwell,* No. 06-17302 (9th Cir. 2008), Officers did not receive Qualified Immunity for subduing a suspect, handcuffing him, and leaving him in a prone position while sitting on his back. The suspect died from positional asphyxia.

(2) <u>IT'S THE PERFECT CASE TO SHOW THE TYPES, HARMS, AND DEGREES OF EXCESSIVE FORCE</u>

The Circuit Courts of Appeal don't always agree on what constitutes force. Further, the Circuits don't always agree on what **form** of force is excessive. This includes the entire array of force from bullets to batons, to punches. This Court can clarify that unwarranted physical responses from law enforcement which produce harm—are necessarily excessive.

While Police might have a short memory, the victims of their force have to live with the aftermath of physical, emotional, and internal injuries. This case would illustrate that victims of excessive force undergo life-altering experiences and effects from Police abuse. The Ronald Smith of 2025 is not the Ronald Smith of 2021. The Smith of 2021 could run full 26.2 mile marathons and beyond. The Smith of 2021 had a zest for life, despite the COVID-19 Pandemic. Petitioner Smith in 2025 still has residual effects from the pepper round blast to his head, has respiratory problems, and has Post Traumatic stress. Inhaling the pepper spray chemicals has altered his circulatory and respiratory functions.

The Petitioner did attach medical record exhibits on Summary Judgment. **<u>ROA.24-50975.616-647.</u>** These depict enduring respiratory symptoms from the chemical pepper spray irritants, residual PTSD

from the terror of being brutalized and nearly shot, the bodily pain of being leaped upon, and the physiological effects related to the PTSD anxiety. Smith avowed the same conditions and effects under oath. ROA.24-50975.607-08.

Carey v. Piphus, 435 U.S. 247 (1978) stated a Plaintiff can be compensated for mental and emotional injuries in §1983 suits.

The Fifth Circuit purports to recognize a variety of injuries and damages from excessive force. In theory, its case law seems quite receptive.

In *Lynch v. Cannatella,* 810 F.2d 1363 (5th Cir. 1987), the Fifth Circuit recognized psychological injuries can result in damages under 42 U.S.C. 1983.

Mental and emotional injuries represent harm under the Fourth Amendment, *Dunn v. Denk,* 79 F.3d 401 (5th Cir. 1996).

In fact, the Fifth Circuit has stated Plaintiffs don't have to produce medical records to document physical injuries and harm, *Benoit v. Bordelon,* No. 13-30733 (5th Cir. 2015). Benoit was a prisoner who sued for injuries from excessive force. He obtained a Judgment of $15,000. The Jail Guards complained on appeal Benoit's injuries weren't confirmed by medical records. The Fifth Circuit held that sworn testimony can substantiate injuries. Benoit testified under oath as to his physical injuries and harms.

Benoit testified about his back pain and sore throat from being choked.

Fifth Circuit cases have held a lack of medical records do not render claims *de minimis* or invalid. In *Grimon v. Collins,* No. 94-40156 (5th Cir. 1994), the Plaintiff's sworn testimony was enough to create a triable issue of fact. The Plaintiff complained of a sore throat and spitting up blood for several days.

"There is no requirement that injury is necessarily *de minimis* unless there is some medical evidence supporting its existence, *Beck v. Alford,* No. 93-4946 (5th Cir. 1994).

Petitioner Smith wasn't erect, didn't have a weapon, and never threatened Deputies Saenz or Gonzalez. Ronald Smith was seated in an Indian style position on the ground, with his legs crossed, one hand in the air, and the other working a cell phone. (Saenz: Min. 2:09-2:52). Saenz and Gonzalez pointed loaded firearms at an unarmed and passive Smith. (Saenz: Min. 2:09-2:52).

Plaintiffs don't have to be hit by bullets, and Police don't have to actually discharge their firearms for Plaintiffs to experience harm. See *Checki v. Webb,* 785 F.2d 534 (5th Cir. 1986), where a Plaintiff could obtain damages from being terrorized by law enforcement with a pointed firearm. A Plaintiff can also obtain relief from being fired at, although not

hit from Police bullets, *Coon v. Ledbetter,* 780 F.2d 1158 (5th Cir. 1986).

Deputy Saenz then transitioned to a pepper ball gun (impact weapon). (Saenz: Min. 2:34). Saenz then discharged the projectile, striking Smith on his left temple. (Saenz: Min. 2:52). The impact spewed a white powder irritant on Smith's face, causing respiratory distress and pain. (Locker: Min. 18:07). ROA.24-50975.606. See *Keyes v. Lauga,* 635 F.2d 330 (5th Cir. 1981) where a Plaintiff could recover for a minor concussion, bruises, and mental injuries.

The next phase of harm was physical force and contact. Gonzalez and Saenz leaped upon Smith's back, pushing him face-first on the ground. Both men weighed well over 250 pounds each. (Saenz: Min. 3:22-3:30). Gonzalez rested his knee on Smith's head and neck while securing Saenz. (Saenz: Min. 3:22-3:30). "Lasting harm" is not a requirement for injury, as a Plaintiff can allege, pain, suffering, and mental anguish to justify compensation, *Foulds v. Corley,* 833 F.2d 52 (5th Cir. 1987).

Smith incurred physical injury from the pepper ball round, from being rammed face-first onto the grass, from having Saenz and Gonzalez jump on his back, and lingering effects from the chemical irritants. ROA.24-50975.607-08. ROA.24-50975.616-

647. Smith incurred emotional harm and terror from being arrested, assaulted, and charged by Saenz and Gonzalez. ROA.24-50975.607-08. ROA.24-50975.616-647. In *Dunn,* the 5th Circuit favorably referenced *Bailey v. Andrews,* 811 F.2d 366 (7th Cir. 1987), where a Plaintiff obtained damages from Police after being kicked, and not seriously injured. Though, the Plaintiff claimed bruises and emotional distress.

The excessive force injury criteria are not hard to meet under the 4th Amendment, *Graham v. Connor,* 490 U.S. 386 (1989). Even under the stricter 14th Amendment standard for pre-trial detainees, the injury requirement isn't hard to meet, *Kingsley v. Hendrickson,* 576 U.S. 389 (2015). Under the most pedantic standard—that for convicted prisoners under the 8th Amendment, the injury standard doesn't require serious injury, *Hudson v. McMillian,* 503 U.S. 1 (1992). This Court has stated that excessive force injuries under the 8th Amendment do not need to "be more than *de minimis,*" *Wilkins v. Gaddy,* 559 U.S. 34 (2010).

Even in circumstances where the individual is alleged to have "resisted" law enforcement in the course of arrest, the use of chemical agents can be excessive force. Particularly, when accompanied by tackling, shoving, and punching by police, *Santini v. Fuentes,* 795 F.3d 410 (3rd Cir. 2015). The use of force is excessive when there is no need for force, as

when someone is not originally suspected of criminal activity, *id.* at 419. Deputy Saenz initially claimed he didn't suspect Ronald Smith of any criminality—he "just wanted to check on him walking." (Saenz: Min. 6:42), (Locker: Min. .38). Locker stated Saenz was "checking on your welfare." (Locker: Min. 4:30).

"It is objectively unreasonable for officers to injure a man whose behavior doesn't rise to the level of active resistance," *Newman v. Guidry,* 703 F.3d 757 (5th Cir. 2012). "Officers engage in excessive force when they physically strike a suspect who is not resisting arrest," *Joseph ex. rel. Estate of Joseph v. Bartlett,* 981 F.3d at 342 (5th Cir. 2020).

"Screaming in agony" upon being tased constituted compensable injury in *Ducksworth v. Landrum,* 62 F.4th 209 (5th Cir. 2023). In *Bagley v. Guillen,* No. 22-20644 (5th Cir. 2024), Officer Guillen claimed the Plaintiff suffered "no lasting injury." The 5th Circuit held the body camera evidence showed Bagley endured injury and pain from his reactions and outcries.

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 (5th Cir. 2022).

In *Williams v. Bramer,* 180 F.3d 699 (5th Cir. 1999), a citizen claimed Police choked him while

searching for drugs. The 5th Circuit found: that choking, fleeting dizziness, and loss of breath were compensable injuries, at 704.

In *Scott v. White,* No. 19-50028 (5th Cir. 2020), a citizen claimed Police threw him to the ground, jumped on him, punched him, and tased him without cause. The 5th Circuit found Scott's injuries **were not** *de minimis* as a matter of law, at n.6.

It's unreasonable for Police to tackle a suspect who isn't resisting arrest, isn't fleeing, and isn't violent, *Goodson v. City of Corpus Christi,* 202 F.3d 730 (5th Cir. 2000). Any force which is unreasonable and unnecessary produces injuries which necessarily exceed the de minimis threshold, *Sam v. Richard,* 887 F.3d 710 (5th Cir. 2018). An officer violates the Constitution when he tases, strikes, or violently slams a citizen who doesn't resist arrest, *Hanks v. Rogers,* 853 F.3d 738 (5th Cir. 2017).

IV. CONCLUSION

The Writ should be granted because the entire spectrum of force was unlawful, excessive, and unwarranted against a passive Smith. Further, no Circuit Court of Appeals can usurp the reality of graphic video evidence under *Scott v. Harris,* 550 U.S. 372 (2007). Finally, this Court could clarify any Circuit split which may exist over the myriad types of deadly, secondary, and physical force.

Respectfully Submitted,

/s/ Andres Cano

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Appendix

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RONALD SMITH,
Plaintiff,

v. **5:23cv881-OLG**

ROBERT LOCKER, et al.,
Defendants.

ORDER

The Court has considered United States Magistrate Judge Elizabeth S. Chestney's ("Judge Chestney") Report and Recommendation (the "Recommendation") (Dkt. No. 36), filed on November 5, 2024, concerning Defendants Robert Locker ("Locker"), Hunter Saenz ("Saenz"), and Jimmy Gonzalez's ("Gonzalez") (collectively, "Defendants") Motion for Summary Judgment (the "Motion for Summary Judgment") (Dkt. No. 31). In the Recommendation, Judge Chestney recommended that the Motion for Summary Judgment be granted in part and denied in part. 0kt. No. 36 at 1, 21-22. Plaintiff Ronald Smith ("Plaintiff') and Defendants each filed objections to the Recommendation. *See* Dkt. Nos. 38-39.

When a party objects to a Magistrate Judge's report and recommendation, the Court conducts a *de novo* review as to those portions of the report and recommendation to which an objection is made. *See* 28 U.S.C. § 636(b)(l); FED. R. CIV. P. 72(b); *United States* v. *Wilson,* 864 F.2d 1219, 1221 (5th Cir. 1989). Frivolous, conclusory, or general objections need not be considered by the district court. *See Battle v. U.S. Parole Comm 'n,* 834 F.2d 419, 421 (5th Cir. 1987). Any portions of the Magistrate Judge's finding or recommendation that were not objected to are reviewed for clear error. *Wilson,* 864 F.2d at 1221.

The Court has conducted a *de novo* review of those portions of the Recommendation objections are without merit as to the ultimate findings of the Magistrate Judge. Accordingly, the objections are **OVERRULED,** the Recommendation (Dkt. No. 36) is **ACCEPTED** and, for the reasons set forth therein, the Motion for Summary Judgment (Dkt. No. 31) is **GRANTED IN PART** and **DENIED IN PART.**

IT IS THEREFORE ORDERED that Plaintiff's malicious subject to the objections and is of the opinion that the Recommendation is correct, and that the prosecution and false arrest claims are **DISMISSED WITH PREJUDICE.** Only

Plaintiff's excessive force claim against Saenz and Gonzalez will proceed to trial.

IT IS SO ORDERED.

Signed this 21st day of November, 2024.

Orlando Garcia
UNITED STATES DISTRICT JUDGE

UNITED STATES
COURT OF APPEAL FOR
THE FIFTH CIRCUIT

No. 24-50975

United States Court of Appeals
Fifth Circuit
FILED
August 14, 2025
Lyle W. Cayce, Clerk

Ronald Smith,
Plaintiff-Appellant,
versus

Hunter Saenz;
Jimmy Gonzalez,
Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-881
Before JONES, GRAVES, *Circuit Judges,* and
RODRIGUEZ *District Judge,*

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[*] Judge Graves concurs in the judgment only.

[†] District Judge of the Southern District of Texas, sitting by designation.

[‡] Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not

precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

After a foot chase through private property and along a state highway, Deputy Saenz used a non-lethal pepperball to subdue Smith and, with Deputy Gonzalez, placed Smith in handcuffs. The district court denied Saenz's and Gonzalez's motions for summary judgment on qualified immunity grounds. Because Saenz's and Gonzalez's conduct was not a clearly established violation of Smith's Constitutional rights, we REVERSE.

I. Background

On June 27, 2021, Plaintiff-Appellee Ronald Smith was running and walking on a public easement along Highway 46 in Guadalupe County, Texas. Defendant-Appellant Deputy Saenz observed Smith on the side of the highway while on patrol and turned around to "check on" him. According to Saenz's Offense Report, Smith "quickly got up and began to walk towards the fence line," and "jumped a barbed wire fence and began running into a field" away from Saenz and onto private property. Based on his experience as an officer, Saenz believed that Smith was "attempting to avoid contact with law enforcement" or was about to commit a crime by trespassing." As the district court observed, the "record contains uncontroverted

evidence that Smith fled from Deputy Saenz . . . and that Smith knew [] Saenz was a law enforcement officer at the time," and Saenz's body camera footage clearly shows Saenz in pursuit while yelling for Smith to stop.

Eventually, Smith stopped running and sat on the shoulder beside Highway 46. Saenz approached Smith on foot at approximately the same time Defendant–Appellant Deputy Gonzalez arrived in his vehicle. Smith, claiming that he was "terrified and frozen with fear," dialed 911. Gonzalez and Saenz drew their firearms, and Saenz repeatedly directed Smith to put his hands up and to show the officers his hands. Smith did not respond. Saenz then holstered his firearm and drew his pepperball gun, while also directing Gonzalez to "go less lethal."

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Saenz and Gonzalez repeatedly directed Smith to lie on his stomach on the ground. Smith, still on the phone with the 911 operator and in a heightened emotional state, remained seated and told both Deputies to "hold on." After a final warning that if he did not lie on his stomach he would be "hit" with a pepperball, Saenz fired his pepperball gun,

striking Smith on the left side of his head. Saenz again directed Smith to lie down multiple times, and Smith remained in the seated position and "scream[ed]" into his phone that people were shooting at him. This continued for roughly thirty seconds until Deputies Saenz and Gonzalez approached Smith and placed him in handcuffs. While being handcuffed, Smith complained that he could not breathe and requested an ambulance. Smith refused to engage with EMS when they arrived, however, and was taken to a nearby hospital for evaluation before being transported to Guadalupe County Jail.

On August 7, 2023, Smith filed his First Amended Original Complaint.[1] The district court granted summary judgment to all defendants and claims, excepting Smith's 42 U.S.C. § 1983 excessive force claim against

[1] Smith's complaint alleged Fourth Amendment deadly force, excessive force, false arrest, malicious prosecution, and supervisory liability claims as well as violations of the Americans with Disabilities Act and Rehabilitation Act against Deputy Saenz, Deputy Gonzales, Deputy Robert Locker, and Guadalupe County.

Saenz and Gonzalez. Saenz and Gonzalez timely appealed.

II. Standard of Review

"Once a government official asserts [qualified immunity], the burden shifts to the plaintiff to 'rebut the defense by establishing that the official's allegedly wrongful conduct violated clearly established law and that genuine issues of material fact exist regarding the reasonableness of the official's conduct.'" *Bourne v. Gunnels*, 921 F.3d 484, 490 (5th Cir. 2019) (quoting *Gates v. Tex. Dep't of Prot've & Reg'y Servs.*, 537 F.3d 404, 419 (5th Cir. 2008)). "Where, as here, the district court finds that genuinely disputed, material fact issues preclude a qualified immunity determination, this court can review only their materiality, not their genuineness." *Manis v. Lawson*, 585 F.3d 839, 842 (5th Cir. 2009). However, "[w]hether there are material issues of fact is reviewed *de novo*." *Id.* at 843. Finally, while "we review the facts in the light most favorable to the non-moving party and draw all reasonable inferences in its favor," we will not accept "a plaintiff's version of the facts . . . for purposes of qualified immunity when it is blatantly contradicted and utterly discredited by video recordings." *Hanks v. Rogers*, 853 F.3d 738, 743–4 (5th Cir. 2017) (internal quotations omitted).

III. Discussion

To overcome Appellants' assertion of qualified immunity, Smith must establish issues of material fact on two points. *Baldwin v. Dorsey*, 964 F.3d 300, 325 (5th Cir. 2020). Smith "must adduce facts to show that [Appellants] violated [his] constitutional rights, and [he] must show that 'the asserted right was clearly established at the time of the alleged misconduct.'" *Id.* (quoting *Cleveland v. Bell*, 938 F.3d 672, 675–76 (5th Cir. 2019)). "A court may consider either condition first, and if either condition does not obtain, then [Appellants are] immune." *Id.* at 326. A right is "clearly established" when its "contours" are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 3037 (1987). A.

To establish a claim of excessive force under the Fourth Amendment, Smith must show "(1) an injury, (2) which resulted directly and only from the use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Ontiveros v. City of Rosenburg*, 564 F.3d 379, 382 (5th Cir. 2009) (citation omitted). "Determining whether the force used was

clearly excessive and clearly unreasonable 'requires careful attention to the facts and circumstances of each particular case, including [1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight.'" *Anderson v. Estrada*, 2025 WL 1672233, at *4 (5th Cir. Jun. 13, 2025) (quoting *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872 (1989)). "A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight," *Kingsley v. Hendrickson*, 576 U.S. 389, 397, 135 S. Ct. 2466, 2473 (2015), considering the "totality of the circumstances." *Barnes v. Felix*, 145 S. Ct. 1353, 1357–58 (2025).

Smith alleges that Appellants used excessive force in violation of his Fourth Amendment rights when Saenz "brandish[ed] and pointed a pepperball gun at [Smith]," and "fired the weapon, striking [Smith] in the head." Additionally, Smith alleges that both Saenz and Gonzalez used excessive force by "jumping on his back," causing Smith's "face to

impact the ground."[2] The district court determined that Smith suffered a cognizable injury resulting from Saenz's and Gonzalez's brandishing of their firearms and Saenz's use of the pepperball gun, resulting in "migraines and psychological injuries in the weeks, months, and years after the incident," which were "not directly contradicted by the proffered video footage or other evidence." Proceeding to the reasonableness inquiry, the court then

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determined that "[a] jury could readily conclude from the video evidence . . . that the force used . . . was clearly excessive."

We need not address whether the officers' force was reasonable because the district court erred by considering the "clearly established" prong at far too high a level of

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[2] On appeal, Smith dedicates a portion of his brief to arguing that Saenz's and Gonzalez's brandishing their firearms constituted "deadly force" in violation of the Fourth Amendment and that there was no lawful basis for Saenz and Gonzalez to stop him in the first place. Because the only issue before us is the district court's denial of qualified immunity on Smith's excessive force claim, we do not address these arguments.

generality. Rather than simply determining that a jury *could* readily conclude that the use force was excessive, Smith must "show the violation of a constitutional right *and* that 'the right at issue was "clearly established" at the time of [the] alleged misconduct.'" *Boyd v. McNamara*, 74 F.4th 662, 667 (5th Cir. 2023) (quoting *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019)) (emphasis added).

"A right is clearly established only if relevant precedent 'ha[s] placed the . . . constitutional question beyond debate." *Morrow*, 917 F.3d at 874 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 2083 (2011). Indeed, "qualified immunity is inappropriate only where the officer had 'fair notice'—'in light of the specific context of the case, not as a broad general proposition'—that his *particular* conduct was unlawful." *Id.* at 875 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S. Ct. 596, 599 (2004) (per curiam)). This is especially true in excessive-force cases, where "police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts as issue." *Kisela v. Hughes*, 584 U.S. 100, 104, 138 S. Ct. 1148, 1153 (2018) (per curiam) (quoting *Mullenix v. Luna*, 577 U.S. 7, 13, 136 S. Ct. 305, 309 (2015)).

In his brief, Smith provides a litany of cases that purportedly put Saenz and Gonzalez on notice that their conduct

constituted a constitutional violation. The cases are inapposite in their facts, issues raised, or both, and

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certainly do not "place[] . . . the constitutional question beyond debate."[3] *Morrow*, 917 F.3d at 874. The district court, while neglecting to say so

[3] The cases Smith cites from this Circuit are not on point factually. *Bush v. Strain*, 513 F.3d 492 (5th Cir. 2018) (finding excessive force where officers slammed a handcuffed plaintiff's face into a vehicle with enough force to break teeth); *Sam v. Richard*, 887 F.3d 710, 714 (5th Cir. 2018) (suspect was fully compliant with officers' orders, lying face down with his hands on his head, and did not flee); *Alexander v. City of Round Rock*, 854 F.2d 298, 309 (5th Cir. 2017) (reversing the dismissal of an excessive force claim where officers threw the plaintiff, who "pose[d] no flight risk," to the ground, kneed him in the

back, and pushed his face into the concrete); *Newman v. Guedry*, 703 F.3d 757, 760 (5th Cir. 2012) (finding excessive force where the plaintiff was struck with a baton thirteen times and tased three times during a nonviolent traffic stop); *Hanks v. Rogers*, 853 F.3d 738, 743, 746 (5th Cir. 2017) (denying qualified immunity at summary judgment where an officer "administered a blow to [plaintiff's] upper back or neck" during a traffic stop, where plaintiff had made "no attempt to flee").

Smith's out of Circuit cases are likewise factually distinct and are not clearly established law in this court such that Smith and Saenz would have "fair notice that [their] conduct was unlawful." *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S. Ct. 596, 599 (2004); *see* Fogarty *v. Gallegos*, 523 F.3d 1147, 1152 (10th Cir. 2008) (finding the combined use of tear gas, pepperballs, and "dragg[ing] [the plaintiff] down the street" excessive when dispersing protesters); *Duran v. Town of Cicero*, 653 F.3d 632 (7th Cir. 2011) (appealing the denial of a Rule 59(e) motion and cross-appeals regarding evidence-spoilation and admittance); *Headwaters Forest Def. v. County of Humboldt*, 276 F.3d 1125, 1129–30 (9th Cir. 2002) (officers who authorized repeated use of pepper spray against stationary protesters were not entitled to qualified immunity); *Young v. County of Los Angeles*, 655 F.3d

1156, 1160 (9th Cir. 2011) (denying qualified immunity where officer used pepper spray and repeatedly struck the plaintiff from behind with a baton during a nonviolent traffic stop); *Howell v. Sheriff of Palm Beach County*, 349 F. App'x 399, 404–06 (11th Cir. 2009) (finding excessive force where officer used pepper spray on a non-violent and stationary suspect while responding to a noise complaint); *Asociacion De Periodistas De Puerto Rico v. Mueller*, 680 F.3d 70 (1st Cir. 2012) (granting qualified immunity to FBI agent's use of pepper spray); *Duran v. Sirgedas*, 240 F. App'x 104, 108–10 (7th Cir. 2007) (discussing use of pepper spray inside a house when suspects were "confined inside"); *Vinyard v. Wilson*, 311 F.3d 1340, 1348 (11th Cir. 2002) (noting that "using pepper spray is excessive force in cases where the crime is a minor infraction, the arrestee surrenders, [and] is secured . . ."); *Duran v. United Tactical Sys.*, 586 F. Supp. 3d 1106 (D. N.M. 2022) (products liability and negligence claim against PepperBall manufacturer); *Abay v. City of Denver*, 445 F. Supp. 3d 1286, 1291–92 (D. Col. 2020) (discussing use of rubber bullets and tears gas against protesters, "specifically aimed at heads and groins"); *Keup v. Sarpy County*, 709 F. Supp. 3d 770, 796

directly, seems to have identified two authorities from this court that "clearly established" a violation of Smith's Constitutional rights under these facts. We disagree.

First, the district court cited *Boyd v. McNamara* to establish that officers cannot use a taser on a "non-threatening, compliant subject." 74 F.4th at 668. In *Boyd*, an officer first tased and then drive stunned a pretrial detainee in the detainee's cell at the McLennan County jail. *Id.* at 664. The detainee was facing away from the officer with his hands behind his back, waiting to be secured in handcuffs as the officer had instructed. *Id.* In this context, we concluded that our precedents "conclusively establish that the use of a taser on a non-threatening and cooperative subject is an unconstitutionally excessive use of force." *Id.* at 663.

The district court's reliance on *Boyd* is misplaced. First, *Boyd* was decided in 2023, and could not have put the Saenz and Gonzalez on notice of any "clearly established" constitutional violations in 2021. Second, the plaintiff in *Boyd* was tased and drive stunned inside his cell after complying with all of the officer's verbal instructions, turning his back towards the officer with his hands ready to be handcuffed. Smith, by contrast, made no attempts to comply with Saenz's and

Gonzalez's repeated and consistent directives to "lay [sic] down," even after Saenz warned Smith that he would use his pepperball gun. Considering the preceding foot chase and Smith's non-compliance, *Boyd* does not "clearly establish" that the use of a pepperball gun violated Smith's Constitutional rights.

Second, the district court cited *Trammel v. Fruge* for the proposition that "[w]here an individual's conduct amounts to mere 'passive resistance,'

(D. Neb. 2023) (holding that the officer was entitled to qualified immunity for the use of pepperballs to disperse protesters).

use of force is not justified." 868 F.3d 332, 341 (5th Cir. 2017). On the contrary, "this court's cases 'do[] not establish that when mere passive resistance is at issue, officers are precluded from using any force, but instead that the amount of reasonable force varies.'" *Anderson*, 2025 WL 1672233, at *7 (quoting *Robles v. Ciarletta*, 797 F. App'x 821, 828 (5th Cir. 2019)). Smith's flight from the officers while Saenz can be heard yelling, "stop,

Sherriff's office," is readily distinguishable from *Trammel*, where there was no indication that the plaintiff "was attempting, or intended, to flee the scene." 868 F.3d at 341. In addition, *Trammel* involved a "headlock" takedown by three officers and multiple knee strikes to the "arms, thighs, and ribs" that resulted in displaced and fractured vertebrae. *Id*. at 337–38. *Trammel* involved neither similar resistance nor similar force, and in no way does it "squarely govern[] the specific facts at issue" here nor place the constitutional question "beyond debate." *Kisela*, 584 U.S. at 104, 138 S. Ct. at 1153 (quotation omitted).

Finally, Smith's arguments that Saenz and Gonzalez used excessive physical force by "vigorously shov[ing] Smith to the ground face-first, and "leap[ing] on his back" are simply incompatible with the video evidence. Saenz and Gonzalez approached Smith while he was sitting cross-legged on the grass. Saenz and Gonzalez first pushed Smith's shoulders forward and down to bring Smith's arms behind his back. At this point, Smith was still seated cross-legged, with his upper body bent forward. Gonzalez then put his knee on the outside of Smith's right arm while Saenz placed the handcuffs. As soon as the handcuffs were secured, Gonzalez and Saenz released Smith and Saenz helped Smith into an upright seated position. Consequently,

Smith has not met his burden to show that any violation of his constitutional rights would be "clearly established." Smith once again identifies no "controlling precedent that renders it beyond debate—such that any reasonable officer would know" that Saenz's and Gonzalez's

conduct violated the Fourth Amendment. *Morrow*, 917 F.3d at 876–77 (quotation omitted).

The judgment of the district court is REVERSED.

UNITED STATES
COURT OF APPEAL FOR
THE FIFTH CIRCUIT

No. 24-50975

United States Court of Appeals
Fifth Circuit
FILED
August 14, 2025
Lyle W. Cayce, Clerk

Ronald Smith,
Plaintiff-Appellant,

versus

Hunter Saenz;
Jimmy Gonzalez,
Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-881

Before JONES, GRAVES, *Circuit Judges,* and RODRIGUEZ *District Judge,*

JUDGMENT

This Cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED AND ADJUDGED that the Judgment of the District Court is REVERSED.

IT IS FURTHER ORDERED that the Appellee pay to Appellants the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

UNITED STATES
COURT OF APPEAL FOR
THE FIFTH CIRCUIT

No. 24-50975

United States Court of Appeals
Fifth Circuit
FILED
September 15, 2025
Lyle W. Cayce, Clerk

Ronald Smith,
Plaintiff-Appellant,

versus

Hunter Saenz;
Jimmy Gonzalez,
Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-881

ON PETITION FOR REHEARING EN BANC

Before JONES and GRAVES *Circuit Judges,*

Per Curiam**

Treating the petition for rehearing en banc as a petition for panel rehearing (5th CIR. R. 40 I.O.P.), the petition for panel rehearing is DENIED. Because no active member of the panel or judge in active service requested that the court be polled on rehearing en banc. (Fed. R. App 40 and 5th CIR. R. 40), the petition for rehearing en banc is DENIED.

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*United States District Judge for the Eastern District of Louisiana, sitting by designation.

VIDEO LINK OF EXCESSIVE FORCE
ROA.24-50975.697.

https://www.dropbox.com/scl/fi/504urlatdokug0x892xts/HunterSaenz_202106271958_VHC2016240_66991255_5.mp4?rlkey=vttks3oi5kx3ndlh9trw046l6&st=6x2x6z2k&dl=0

VIDEO LINK OF ACTUAL HANDCUFFING
ROA.24-50975.700.

https://www.dropbox.com/scl/fi/9itrqgl7rg9ywa0vjiq34/HunterSaenz_202106271958_VHC2016240_66991255_3.mp4?rlkey=px8f4hsbr5y2y0ln8i11f5up2&st=8zwpnxlj&dl=0

VIDEO: DEPUTIES FABRICATING CHARGES ROA.24-50975.702.

https://www.dropbox.com/scl/fi/xuq3kazq6wrbpvdto5sy3/RobertLocker_202106272004_VHC2005767_82316935_6.mp4?rlkey=rn2ecpevkbepzhf0hfllhk7cz&st=gzvfgjd4&dl=0

VIDEO LINK "SUBJECT SMITH WALKING"
ROA.24-50975.698.

https://www.dropbox.com/scl/fi/8pj3git8oyabpgrbccwyv/RobertLocker_202106272004_VHC2005767_82316935_4.mp4?rlkey=0i1behtdnlrpt7svyzn84hnlt&st=ggbmvghh&dl=0

VIDEO LINK OF "WELFARE CHECK SPIEL"
ROA.24-50975.697.

https://www.dropbox.com/scl/fi/sfpvstmywjk3s0y2ucyc8/RobertLocker_202106272004_VHC2005767_82316935_5.mp4?rlkey=lg9clzzdn5n64s9dg0kgasj09&st=o16crvr0&dl=0

AFFIDAVIT OF RONALD SMITH
ROA.24-50975.602-608.

My name is Ronald Smith, I am the Plaintiff in Cause No. 5:23-cv-881 in the Western District of Texas. I am over the age of 18, and I have personal knowledge of these matters. I make the following statements under oath, and I attest to their truthfulness.

(1) On June 27, 2021, the day started like any other day. I intended to pursue my exercise regimen. This often consisted of combination walks/runs which often totaled a distance greater than 26.2 miles total. I lived in Bulverde, Texas. One of the reasons I exercised out of this region was because of harassment from particular community members in the Hidden Trails subdivision. To safeguard my privacy, and to exercise unmolested, I often ventured to neighboring areas to exercise.

(2) It was towards late afternoon on June 27, 2021 when I started my session in earnest. My wife, Natalie, dropped me off at a Circle K convenience store, at Interstate 10 and Highway 46. Highway 46 ran through Comal and Guadalupe Counties. I was dressed in exercise apparel: shorts, running shoes, baseball hat, etc. I carried a bottle of water and my cell phone. For most of my exercise session, it was uneventful. I exercised in the grass public easement, well off Highway 46. At some point, a large suburban

seemed to veer off the road and nearly clipped me with its side mirror. I was surprised, and upset. I displayed the "bird middle finger" to the driver in an outstretched manner. I noticed the cruiser carried the insignia of what appeared to be a law enforcement agency.

(3) I kept on walking, and periodically rested in the easement. I did notice the law enforcement cruiser kept passing by me. I wondered if they took offense to my hand gesture. It was odd because the vehicle made several passes, but didn't stop. I stopped to look at navigation coordinates on my cell phone.

(4) Eventually, I came to rest in front of the Guadalupe Valley Memorial Park Cemetery. I sat down upon the grass public easement off Highway 46. I noticed a portly man with a firearm, coming across the field and the road. He pointed his gun at me. I phoned the Comal County 911 Dispatcher, as I believed I was in Comal County at the time. This portly man was later identified as Guadalupe County Sheriff's Deputy Hunter Saenz. Soon, another cruiser roared up, and stopped in the middle of Highway 46. Another portly man emerged. This man was identified as Guadalupe County Sheriff's Deputy Jimmy Gonzalez. Deputy Gonzalez also pointed a firearm at me. At this point, I was frantic and on the phone with the 911 dispatch. Hunter Saenz shouted words. I was frozen with fear, and

paralyzed by fear. I was seated on the ground, in an Indian style position, with my legs crossed and folded under each other. My buttocks and legs made contact with the ground. In this position, I was incapable of making any kind of rapid or hostile movements. The Deputies never tried to just walk up and talk to me. They never attempted to foster a situation which called for a verbal dialogue. Instead, Deputies Saenz and Gonzalez used varying degrees of force against me.

(5) While seated on the ground in an Indian style position, I held my cell phone in my left hand, and was speaking with the 911 operator. I described a scenario where two men approached me with firearms pointed at me. I was terrified they would shoot me. I held my right arm straight up in the air. It would be obvious I didn't wield or possess a weapon in my hands. My seated posture didn't permit any kind of dynamic movements either.

(6) I tried to assuage the wrath of the two Deputies; I failed. Deputy Hunter Saenz transitioned from brandishing his firearm, to wielding his Pepper Ball Gun against me. Meanwhile, Deputy Jimmy Gonzalez continued to point his firearm at me. Deputy Saenz discharged a pepper ball round. It had an amber plume, and struck me on the left side of my face in the temple region. The kinetic impact caused great pain. The chemical irritants caused a

burning sensation. Immediately, the chemical spray caused labored breathing. I was gasping for air. My face was covered with a white powder.

(7) At this point I was certainly incapacitated. But, Deputies Saenz and Gonzalez now walked up to me and rammed me into the grass—face first. They used their bulk weight to jump on my back while they rammed my face into the ground. I would estimate both men to each weigh 275 pounds or more.

(8) Deputy Saenz was twisting and forcefully contorting my arms behind my back. This caused much physical distress. Deputy Gonzalez rested his knee on my neck and head, causing great pain. Deputy Saenz searched my pockets and person, and threw my phone out of my hand. Incidentally, the 911 distress call to Comal County was still active. Deputy Saenz then proceeded to pick me up like a sack of potatoes, grasping my shorts and T-shirt. Saenz unceremoniously dumped me a few feet away. Deputy Saenz disconnected the 911 call.

(9) At some point, the Deputies stood me upright. About this time, Deputy Supervisor Robert Locker arrived. Saenz was trying to ask me all manner of questions. Saenz then transitioned to reading my Miranda Rights. Deputy Robert Locker then proffered a volley of questions to me. He was incredulous that I could walk and run over 26.2

miles. Saenz stated to Locker that "he wanted to stop and check on me." An innocuous welfare check never occurred. Instead, Saenz and Gonzalez brandished firearms, pepper ball rounds, and physical force against me. Locker stated to me, "you only had to tell Saenz you were okay, and you didn't need his help." I did indeed inform Deputy Saenz his presence was not needed or desired; Saenz did not listen.

(10) My wife, Natalie Smith, arrived at the Guadalupe Valley Cemetery. Supervisor Locker engaged my wife in conversation. Soon, Supervisor Locker directed Deputy Gonzalez to go "talk to the property owners" across the street. I could see Deputy Gonzalez accost two citizens who arrived at a gate across the street. Then, Supervisor Locker ran across the street to join him. My wife Natalie also walked across the street.

(11) There was a group of several people in a crude driveway across Highway 46. It included Locker, Gonzalez, Natalie, and a young couple. Prior to the Deputies' sprint across the street, I heard them talk of "trespassing." Supervisor Locker and Natalie walked back to me. Hunter Saenz had stayed with me.

(12) The result was: no property owner desired to pursue Criminal Trespassing or any other allegation

against me. In fact, the property owners wanted nothing to do with the Guadalupe County Deputies. Locker resumed his dialogue with me. Locker acknowledged that exercising off the side of a highway is not illegal. But, Locker thought it "was weird." According to Locker, "weird" could factor into his analysis of the situation.

(13) The E.M.S. arrived about this time. Instead of treating me, the E.M.S. technicians proffered a battery of questions to me. I informed them I would not answer legal questions. They didn't seem too intent on treating me. I would seek medical help at a Hospital.

(14) About this time, Deputy Saenz and Supervisor Locker engaged in a discussion. Because the property owners didn't want any part of a Criminal Trespassing prosecution, Locker and Saenz started floating alternative criminal theories. Locker and Saenz mused "Evading Arrest" and "Resisting Arrest." Also, Supervisor Locker questioned my sanity. Locker expressed the opinion that exercising far removed from your home indicated some kind of looniness. About this time, Gonzalez returned from across the street. Gonzalez confirmed that no property owner wanted to facilitate Locker's and Saenz' arrest plans.

(15) Periodically through this encounter, Locker would engage my wife, Natalie in conversation. I could overhear portions of their conversation. Essentially, Natalie stated I was exercising and not breaking the law. Locker and Saenz were fixated on arresting me…for some charge. Indeed, Locker and Saenz agreed on the charge of "Evading Arrest." Locker commanded Saenz to go retrieve his cruiser, and take me to the Hospital. My wife, Natalie, departed.

(16) Deputy Saenz transported me to the Regional Hospital in Guadalupe County. I was taken to an examination room. While waiting to be examined, I started to convulse. My body had an adverse reaction to the pepper round. The chemical irritants still affect my breathing. Since June 27, 2021, I have incurred severe Migraine headaches. This correlated to the exact day I was pepper sprayed. There is not much the Doctors can do about them. The Hospital didn't provide much treatment, I still had the white powder from the chemical round on my face.

(17) During this pepper ball incident, I came into contact with three different medical personnel: one at the scene with the ambulance, one at the hospital, and one at the jail. None of these medical staff provided appropriate medical treatment for my injuries, nor did they offer any means to remove the pepper spray chemical from my body. The staff left

me to endure the burning and absorb the effects for over 16 hours. I was finally able to wash off the chemical agents once I returned home.

(18) Additionally, when I was taken to the hospital by Deputy Saenz, he prevented the nurses and doctor from speaking to me. Saenz stated, "He won't talk to you." Another Deputy, who was working security at the hospital and is a K9 Officer for the Guadalupe County Sheriff's Department, joined him. I began convulsing and vomiting as the effects of the chemical absorbing into my body started breaking down my system. The officers remained watching me as my health declined. Not a single one of them called for medical staff, nor did the staff check on me again. All I was given was a trash can to vomit in before being taken back to jail.

(19) I was transported to the Guadalupe County Jail, booked, and made bail. I was charged with Evading Arrest a few months later. Deputy Saenz drafted one or more documents to facilitate that charge. I hired a Mr. Crayshaw for the criminal case; he didn't do very much on the case. So, I hired Mr. Andres Cano on my criminal case in May 2022. Mr. Cano was instrumental in having the criminal charge dismissed on August 11, 2022. Mr. Cano had filed a Motion to Quash the Information, which was heard on August 3, 2022. While the ruling was

pending on that Motion, the State dismissed the case.

(20) During booking, I insisted that I did not want to speak without an attorney present. However, I was informed by the jail staff that I had to answer their questionnaire forms or I would not be allowed to see the judge. I eventually gave in and provided random answers to the jailer just so I could be processed. I had hoped to see the nurse or be able to wipe the chemical off my body.

(21) While being led to the holding cell, I repeatedly informed the officers and jailers that my body was burning and that I was on fire. I needed help to get the chemical off my body. The jail staff's solution to my request was to turn the temperature down as low as possible while I sat in the holding cell. The jail nurse had very little interaction with me. When asking for assistance, I was told they had provided the legal requirement of care.

(22) Weeks after returning home, I continued to suffer from headaches, neck and back pain, burning sensations, skin irritation, and difficulty breathing and swallowing due to the chemical exposure. More than three years after the incident, I still feel the lasting effects, including excruciating migraine headaches, blurred vision, depression,

embarrassment, and PTSD stemming from the incident.

(23) The resulting criminal cause cost me thousands of dollars in Attorney fees, and bail. In fact, about $6000 in total. I became terrified and anti-social for fear of being shot by law enforcement. I became a prisoner in my own home. I no longer ventured outside to exercise. I gained approximately 60 pounds because of that. That portliness started to affect my health. I sought psychological counseling and was diagnosed with PTSD. I still feel the effects from the pepper ball round. It greatly affected my respiration, and made breathing more labored. A prevalent symptom arose from the pepper ball round; it produced constant Migraine headaches. Nothing over the counter can alleviate those symptoms. I felt stark terror from having Deputies Saenz and Gonzalez point firearms at me. I believed they would discharge their weapons and kill me. I felt physical pain from the impact of the pepper round itself. It struck with some velocity around my left temple. Deputies Saenz and Gonzalez used a football maneuver to ram my face directly into the grass. Their heavy bodies smashed me into the ground. Deputy Gonzalez rested his knee on my neck and head, and I started to lose consciousness. This was a full year after the George Floyd tragedy. Deputy Saenz torqued my arms behind my back with

substantial vigor, causing pain. Supervisor Locker and Deputy Saenz were determined to arrest me for "something" on June 27, 2021, and they did. I applied for commercial driving jobs while the Criminal Cause CCL-21-0657 was pending. I was denied employment because the criminal case showed up in a credit and background check.

(24) On June 27, 2021, my only concern and my only activity was to exercise in the fresh air of a rural environment. I didn't break the law by doing so. I did not need the aid of law enforcement, as I was not in distress and I made that known. My training was not the product of looniness, as I had attained a degree of fitness which allowed me to complete full marathon races. I was accosted and arrested on public property, which was the Guadalupe Valley Memorial Park easement off of Highway 46. The Cemetery is open 365 days a year, 24 hours a day.

(25) I have provided and affixed true and correct copies of bills, invoices, medical records, public records, videos, and other evidentiary items which I have obtained, or which I took, and evidentiary items which include and involve me. They are true and correct copies of the originals.

AFFIDAVIT OF NATALIE SMITH
ROA.24-50975.611-614.

My name is Natalie Smith, I am the wife of the Plaintiff in Cause No. 5:23-cv-881 in the Western District of Texas. I am over the age of 18, and I have personal knowledge of these matters. I make the following statements under oath, and I attest to their truthfulness.

(1) My husband, Ronald Smith, routinely exercised for several hours a day in the period of 2021. Ronald had the fitness to run full marathon races of 26.2 miles or longer. Ronald often liked to exercise outside of our residence in Bulverde, Texas. One of the reasons for this was due to harassment he received in our Hidden Trails subdivision. Some community members made it a point to accost Ronald whenever they saw him. Those issues were later addressed. But, on June 27, 2021, they were very prevalent.

(2) So, later in the afternoon on June 27, 2021, Ronald wished to go for a prolonged walk and run in the countryside off Highway 46. I dropped Ronald off near a Circle K convenience store, off the intersection of IH-10 and Highway 46. Highway 46 ran through Comal and Guadalupe Counties.

(3) Meanwhile, I loitered around the Circle K convenience store area. I was taking a vocational

and professional course of study at the time. So, I was reading and drafting my homework assignments while waiting on Ronald to call me and pick him up.

(4) A few hours had passed, when I received a call from Ronald to pick him up. I traveled up Highway 46 and observed a fat Deputy on top of Ronald's back. The location was right in front of the Guadalupe Valley Memorial Cemetery. Apparently, Ronald had just been stopped and arrested. He was handcuffed. I parked, and walked over to a group of Guadalupe County Sheriff's Deputies which included Supervisor Robert Locker, Deputy Hunter Saenz, and Deputy Jimmy Gonzalez. All of these are Defendants in this civil rights case.

(5) I was met by Supervisor Robert Locker. I was not allowed to speak with Ronald. It appeared that Ronald had handcuffs and a white powder on his face. Soon, Deputy Gonzalez and Supervisor Locker walked across the street to speak with neighboring property owners. I followed them. Supervisor Robert Locker and Deputy Gonzalez were trying to persuade a middle-aged property owner to press criminal charges against Ronald. The Deputies suggested "Criminal Trespassing." The Property Owner wanted no part of that business. Locker then walked back across the street to the Cemetery. I followed Locker back across the street.

(6) Locker couldn't believe that Ronald could walk and run a distance of 30 miles or more. Locker didn't want to accept the premise that Ronald liked to exercise in the country. Ronald was dressed in running shorts, sneakers, a cotton T-shirt, and wore a baseball cap. Ronald had taken his cell phone and a bottle of water with him. I repeatedly asked Locker why Ronald had been stopped and arrested. Locker stated that Deputy Saenz was "concerned" about Ronald, and wanted to check on him. Deputy Saenz' explanation didn't make sense because Ronald claimed no distress, and Deputy Saenz kept changing his story of why he needed to speak with Ronald.

(7) The E.M.S. unit arrived. Ronald had the white powder on his face. The E.M.S. technicians seemed more concerned with asking Ronald questions, than treating him. Ronald sent them away and wanted to seek medical treatment at a hospital.

(8) Now, Locker and Saenz kept discussing the specter of arresting Ronald and charging him with some offense. They had already arrested him, because Ronald was handcuffed, and was never free to leave. But, Supervisor Locker and Deputy Saenz realized their Criminal Trespassing charge had no complainant. So, Locker and Saenz kept tossing out potential charges. I heard "Evading Arrest and Resisting Arrest" in passing.

(9) Now, Deputy Gonzalez returned from across the street. Gonzalez emphasized the property owner wanted nothing to do with any criminal charges or law enforcement matters. So, Locker and Saenz orally agreed on asserting the criminal charge of "Evading Arrest" against Ronald.

(10) Locker gave me some of Ronald's personal property and told me Ronald would be transported to the Hospital for medical treatment. Then, Ronald would be transported to the Guadalupe County Jail. I then left the scene.

(11) A couple of months later, Ronald was criminally charged with a Misdemeanor "Evading Arrest" charge. We hired Mr. Crayshaw to contest the charge. He was ineffective, and we hired Andres Cano. Mr. Cano filed some Motions and argued them in a hearing in early August 2022. While the matters were pending, the State dismissed Ronald's criminal case on August 11, 2022.

(12) Since June 27, 2021, I have noticed substantial changes in Ronald's personality. Ronald is afraid to go outside of our home, and Ronald is afraid of law enforcement. Ronald is deathly afraid of being harmed or killed by law enforcement. This fear caused Ronald to stay indoors, and refrain from exercising. As a result, Ronald gained about 60 pounds. It started to affect his health. Additionally,

Ronald had been affected by the pepper ball irritants. Ronald had complained of difficulties in breathing. Ronald complains of constant Migraine headaches which arose after June 27, 2021. Ronald has sought emotional counseling, and has been diagnosed with PTSD from the arrest and use of physical force by these Defendants Deputy Hunter Saenz and Deputy Jimmy Gonzalez. Prior to June 27, 2021, Ronald had a youthful exuberance. After June 27, 2021, Ronald has constant anxiety. It cost us well over $6000 to hire Mr. Crayshaw, and then Mr. Cano to defend the criminal charge. That does not include the cost of bail. Further, Ronald developed severe anxiety after the June 27, 2021 arrest and incident. Ronald purchased a costly home security system which totaled $6,420.78. This security system didn't quell Ronald's anxieties, or provide him with the mental assurance that he was safe from harm.

RONALD SMITH MEDICAL RECORD
ROA.24-50975.617.

Smith, Ronald J. 10/29/1980 Default Progress Note **Visit Date**: Thu, Mar 28, 2024 1:16 pm
Provider: Piedimonte, Nicole, P.A. (Supervisor: Nicola, Matthew W., MD; Assistant: Kubala, Alexis, MA)
Location: Smithson Valley Family Medicine, Spring Branch

Electronically signed by Nicole Piedimonte, P.A. on 03/28/2024 06:02:30 PM
Printed on 05/23/2024 at 11:26 am.

Subjective: CC: Mr. Smith is a 43 year old White male. Medical problems to be addressed today include hypertension. HPI: 43yM NP presents for hypertension. He reports being shot in the head by a police with a pepper ball bullet that did not penetrate but cause the irritant to cover face and ended up inhaling it. He states since then he doesn't leave the house or exercise anymore. He had gained weight. He hasn't been on his BP meds for a long time on.

PSYCHIATRIC: Positive for anxiety. Negative for depression or suicidal thoughts.

RONALD SMITH MEDICAL RECORD
ROA.24-50975.632.

Client: Ronald Smith
DOB: 10/29/1980
Provider: Marie Lewis
Provider License: LPC #82727
Appointment: Individual Appointment on April 13, 2024 3:00 pm - 3:50 pm, 50 min Billing code: 90837 - Psychotherapy, 60 min Subjective Complaint
Diagnosis: F43.10 - Post-traumatic stress disorder, unspecified

SOAP Note

Subjective Complaint
Client reports an incident with the cops in 2021, and has not been able to leave his home. He noted that he is constantly on edge, and fears for his life. Client noted that he is currently gaining weight due to living a sedentary lifestyle.

Objective Findings
Client presents with anxious mood and congruent affect.

Assessment of Progress
Client meets criteria for PTSD severely. Currently, not prescribed medications. Client appears willing to work towards treatment goals. LPC listened empathetically as client told his narrative.

Plans for Next Session

Continue building a rapport with client. F/U is Apr 20 at 3 pm.

RONALD SMITH MEDICAL RECORD
ROA.24-50975.646.

Reason for Appointment

1. Headaches x 6 months.<pt was shot by Guadalupe County Sheriff's Office, on 6/22/21.

History of present illness

Interim history

chronic headaches
ongoing ever since he was shot in June 2021
since that time he has had a headache over the right side of his head, sees flashes of light in that eye, ringing in that ear. Also has a pain in that corner of that eye. Headache constantly there, at its best it is a 2 and at worst a 6 or 7. He takes OTC Tylenol or aspirin which does not make much of a difference.

In June 2021, he was shot with a rubber pepper bullet that exploded on impact on the right side of his face above the eye.

He says he never had any imaging and says he did not have a CT head in the ED when it occurred.

No focal weakness, numbness, tingling.

Assessments
1. Post-concussive syndrome-F07.81 (Primary)
2. Intractable with aura with status migrainosus-G43.111

HUNTER SAENZ' SHERIFF REPORT
ROA.24-50975.576

On June 27, 2021 to ensure the safeguard of private property and the community in general, I Deputy H. Saenz with the Guadalupe County Sheriff's Office, was on patrol in the 3000 block of State Highway (SH) 46, when I observed a male subject, later identified as Ronald Joseph Smith (W/M DOB 10/29/1980), **walking** North on the Southbound side of SH at approximately 7:54PM. **I turned around to check on Ronald. As I passed him, while going north bound on SH 46, I observed he was crouched over, fidgeting with something in his hands.**

For officer safety reasons, since I was unsure of Ronald's intentions, **I approached Ronald with my duty weapon unholstered** and told him to show me his hands. As Deputy Gonzales arrived on scene, **I told Deputy Gonzales to provide lethal coverage** while I transitioned to less lethal. **Deputy Gonzales unholstered his duty weapon**. I transitioned to my department issued less than lethal "CLE." After Ronald failed to comply with lawful orders from a peace officer, **I deployed CLE, which made contact with Ronald**.

I checked Ronald's person for weapons. Ronald showed to have no weapons.

JIMMY GONZALES' SHERIFF REPORT
ROA.24-50975.579.

According to Deputy Saenz, he was attempting to conduct a welfare check on the subject due to him sitting on the side of a roadway.

I arrived in the area and observed the adult male was **sitting on the northbound side of S.H. 46 in front of Guadalupe Valley Memorial Park with a cell phone in his hands.** I approached the male with my duty weapon giving him commands to extend his arms and lay on his stomach. I was requested, by Deputy Saenz, **to provide lethal cover** while he switched to his department issued less-lethal CLE. **Deputy Saenz deployed his CLE.**