Case No. 23-30879

United States Court of Appeals
for the
Fifth Circuit

WESLEY PIGOTT, ON HIS OWN BEHALF
AND ON BEHALF OF HIS MINOR CHILD, K.P., AND MYA PIGOTT,
Plaintiffs-Appellants,

v.

PAUL GINTZ (SHIELD NO. 91581)
Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Louisiana, Alexandria Division

BRIEF OF PLAINTIFFS-APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

Appellants certify that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

1) **Plaintiffs-Appellants:**

   Wesley Pigott, on his own behalf and on behalf of his minor child K.P.; Mya Pigott

2) **Defendant-Appellee:**

   Paul Gintz

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary as this case does not raise complex factual or legal issues.

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INTRODUCTION

This case is about an unlawful seizure performed by an inebriated Rapides Parish Sheriff's Office ("RPSO") deputy, Defendant-Appellee Paul Gintz ("Gintz"), who was later sanctioned for his actions. On the night of April 17, 2020, Gintz abandoned his post at the Rapides Parish Detention Center (the "Facility") and used his personal vehicle to follow an innocent man, Mr. Wesley Pigott ("Pigott"), and his children (together "Appellants") for several miles. Without identifying himself as law enforcement and upon stopping his vehicle behind Pigott's parked car, Gintz immediately pulled out his gun and lodged the barrel into the back of Pigott's head, as his two children watched in terror. The gun remained in that same position for up to five minutes—until a second officer, Deputy Lacaze, arrived.

The district court granted Gintz's summary judgment motion based on the doctrine of qualified immunity. This was error, as qualified immunity is unavailable to Gintz according to the text of the 1871 Ku Klux Klan Act—later named and today referred to as "Section 1983." Additionally, viewed in the light most favorable to Appellants, disputed

issues of material fact remain, concerning both the manner and the length of Appellants' unlawful seizure.

In brief, on April 17, 2020, Pigott drove his truck, with his 17-year-old daughter, Mya Pigott, in the front seat, to pick up his 15-year-old son, K.P., and two of K.P.'s friends. K.P. and his friends, wet from an afternoon of fishing, rode in the truck bed. At the time, Pigott was working at a Huddle House restaurant in Alexandria, Louisiana, where he supervised two individuals who worked at the restaurant on a work-release program from the Facility. Because on the evening in question Mya wanted to see where these workers were housed, Pigott briefly drove through the parking lot of the Facility, turned around, and drove away.

Although neither Gintz nor any of the deputies under his supervision observed Appellants engage in any suspicious activity, Gintz followed Appellants away from the Facility. He did so in his personal, privately-owned vehicle—against department policy—for several miles. After being followed for close to ten minutes on a highway, then through a Popeye's parking lot, and the wrong way down a service road, Pigott was sure he was being followed. He stopped his vehicle to determine why

and exited his car. Gintz stopped behind Pigott's parked truck and exited his vehicle.

Without provocation, without identifying himself, and without issuing any preliminary commands, Gintz immediately held Pigott and the children at gunpoint; he told Pigott to turn around and then threatened to blow Pigott's "fucking head off." Gintz pressed the barrel of his gun against the back of Pigott's head. He was so close that Pigott could smell alcohol on Gintz's breath. Throughout the entire encounter, Pigott and the three children complied with Gintz's commands. Despite Pigott pleading with Gintz to calm down, the chaotic scene continued for several minutes until Deputy Lacaze arrived to de-escalate the situation fomented by Gintz.

The district court erred in finding no unlawful seizure and no use of excessive force. These holdings are premised on two flawed grounds—specifically, that there was no clearly established law barring Gintz's actions, and that the injury requirement was not satisfied because it was unsupported by written third-party records. The clearly established law argument holds no weight as the record contains testimony that goes to the heart of genuinely disputed or ignored issues of material fact.

While the court credited certain disputed issues of material fact in Appellants' favor, it ignored others. Here, the lower court accepted that Gintz pointed his service weapon at Pigott; pressed the barrel of his gun to the back of Pigott's head; pointed his weapon at the children; and kept his gun lodged at the back Pigott's head until a second deputy arrived. That said, the court ignored that: (1) Gintz never saw Appellants drive through the parking lot of the Facility, nor did he see any suspicious activity take place that night, by Appellants or otherwise; (2) Gintz smelled like alcohol—placing the weight of any perceived threat he may have apprehended from Appellants on his own inebriation rather than on actual facts; (3) Pigott fully complied with Gintz's commands, never resisting or attempting to flee; (4) Gintz knew that three of the four individuals in the truck were children, one as young as ten or eleven; and (5) an internal affairs investigation about this very incident, which involved another officer who calmly and peacefully dispelled any suspicion upon arrival at the scene, resulted in the discipline of Gintz for improper use of force.

Finding Gintz's seizure of Appellants reasonable contradicts the record. Significantly, nowhere in Gintz's testimony does he claim that he

or his deputies saw Pigott or the children do anything suspicious at the Facility, other than simply drive through its parking lot. No one at the Facility claimed to see Pigott or his passengers throw, or attempt to throw, contraband over the fence. Nonetheless, the court credits alleged problems with contraband being thrown over the fence on previous occasions as sufficient justification for seizing Pigott and the children with a gun. This was error, as Circuit precedent requires the opposite conclusion—particularly when, as here, the totality of the circumstances indicates that the scope of the officer's actions was objectively unreasonable.

As to injury, emotional injury is cognizable under Section 1983, and third-party written records are not required to satisfy the injury requirement. Against this backdrop, Appellants' unlawful seizure and excessive force claims should be remanded for jury adjudication.

The lower court's summary judgment grant warrants reversal, and the supplemental state law claims dismissed without prejudice should be reinstated.

JURISDICTIONAL STATEMENT

This is an appeal from a final judgment of the United States District Court for the Western District of Louisiana. That judgment granted Defendant's motion for summary judgment based on qualified immunity with respect to Plaintiffs' claims under 42 U.S.C. § 1983, and declined to exercise supplemental jurisdiction over Plaintiffs' state law claims. ROA.1350. The court had jurisdiction over Plaintiffs' federal claims under 28 U.S.C. §§ 1331 and 1343(a)(3), and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

Plaintiffs filed a timely notice of appeal on December 8, 2023. ROA.1352. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether it was error to bypass an analysis of the *Graham* factors and grant summary judgment based on qualified immunity (a defense precluded by the original text of Section 1983) as to Appellants' unlawful seizure and excessive force claims.

2. Whether it was error to grant summary judgment as to the unlawful seizure and excessive force claims because disputed and ignored material facts show that (a) Gintz's seizure by force, and for the period at

issue, was unreasonable, and (b) the injury shown by Appellants is cognizable.

3. Whether declining to exercise jurisdiction over the supplemental state law claims was error because that conclusion was premised on the improper grant of summary judgement as to the federal claims.

STATEMENT OF THE CASE

Wesley Pigott is the father of K.P. and Mya Pigott. ROA.1064. Pigott is white, and his two children are Black. ROA.1120-21. On the evening of April 17, 2020, Pigott and his daughter Mya picked up K.P. and two of his friends, who are Latino, after they went fishing. ROA.833, 1067. Pigott worked at Huddle House at the time. ROA.829. There, he supervised individuals detained at the Rapides Parish Detention Center (the "Facility") who participated in a work-release program. ROA.830. Shortly after Pigott and Mya picked up K.P. and his friends from fishing, Mya asked to see where the work-release people Pigott supervised lived. ROA.834. In response, Pigott drove by the Facility, briefly entered the parking lot, turned the truck around, and drove out of the lot. *Id.*

Whether Gintz Saw Appellants Drive Through the Facility Parking Lot Is Disputed.

Mya testified that she saw Gintz sitting in a chair outside the Facility as her father drove through the lot. ROA.1093. By contrast, Gintz testified that he was working inside the Facility at the time and was sitting at a desk. ROA.1146. Gintz, the supervisor on duty that day, testified that two deputies inside the fence of the Facility saw a truck drive through the lot and radioed it in. *Id.* According to Gintz, those deputies saw one person in the back of the truck. ROA.1149. Gintz testified that, after hearing about the truck, he left his desk, walked outside, and—counter to department policy—got into his personal vehicle to pursue Pigott and his children. ROA.1146, 1149-50. Gintz claimed he saw three people in the back of the truck as he exited the building and saw the truck pull out of the lot. ROA.1146, 1149.

Gintz Followed Appellants in an Unmarked Car Until Pigott Parked His Truck.

Shortly after Appellants exited the parking lot, Mya told Pigott that someone was following them. ROA.1069-70. Pigott proceeded back to Highway 28, turned left to travel back to town, and changed lanes a few times to confirm he was being followed. ROA.1069. While both vehicles were stopped at a light, Gintz could see three male youth in the truck

bed. ROA.1147. Notably, the Facility only houses adults, so Gintz had no indication that the three youth had escaped from the Facility.

Pigott decided to pull over to determine why someone was following him, as he did not want to be followed home. ROA.1069. Before he stopped his truck, Pigott drove the wrong way down a frontage road to see whether his pursuer would follow. ROA.1071. Gintz followed, after which Pigott stopped his truck in a parking lot; Gintz pulled into the same lot, directly behind Pigott's truck. ROA.1071-72. At this point, Gintz had followed Pigott and his children for approximately seven or eight miles, or ten minutes. ROA.1151.

Without Identifying Himself, Gintz Exited His Vehicle and Immediately Pulled a Gun on Appellants.

Immediately after exiting his truck, Gintz pointed his gun at Pigott. ROA.1069, 1072, 1096, 1116. The first command that Gintz gave Pigott was to "get the fuck out of the truck" and to put his hands up. ROA.1069, 1072, 1096, 1117. Pigott immediately obeyed Gintz's verbal commands. ROA.1069, 1096, 1117. Gintz then pointed the gun at the children and told them to get their hands up, which they did—immediately. ROA.1098, 1117. Gintz never identified himself as law enforcement. ROA.1069.

After Pigott and the children complied with Gintz's commands to put their hands up, Gintz moved closer and pointed his gun at Pigott's forehead, between his eyes, from about two inches away. ROA.1117. The children could not make out how Gintz was dressed or whether he was wearing a uniform because the headlights of Gintz's personal vehicle were shining in their faces. ROA.1096, 1116. All the children could see was a man with a gun. *Id.*

Mya, believing they were being robbed, tried to jump into the backseat of the truck. ROA.1098. Pigott did not see the badge on Gintz's person or recognize him as law enforcement until Gintz's gun was drawn and already pointed at him. ROA.1071. Pigott, who remained calm and collected, repeatedly told Gintz to stay calm, and in response, Gintz told Pigott to turn around. ROA.1072, 1098.

Pigott turned around as instructed and was at this point facing away from Gintz. *Id.* Gintz asked Pigott a series of questions while pointing the gun at the back of Pigott's head, as the children watched. ROA.1072, 1096-97, 1116-17. Gintz then pressed the barrel of the gun against the back of Pigott's head. ROA.1073.

What Happened Next, Including Whether Gintz Smelled Like Alcohol, Is Disputed.

Pigott smelled alcohol on Gintz's breath. ROA.1078. Gintz denies drinking alcohol at work and on the day of the incident. ROA.1152. As Gintz continued to question Pigott, Pigott turned to answer, but Gintz yelled out, "[i]f you turn around again, I'm going to blow your fucking head off." ROA.1072, 1117. Gintz denies ever pointing the gun at the back of Pigott's head or in the direction of the children. ROA.1150.

Gintz admits that Pigott and the children were compliant with all his orders and that Pigott never attempted to flee. *Id.* Pigott attempted to de-escalate the situation, answering all Gintz's questions and repeatedly asking Gintz to remain calm so that everyone could go home that evening. ROA.1072, 1117. Pigott's minor child, K.P, feared for his own life and for the lives of his friends and family with him. ROA.1121. The children were crying. ROA.1077. K.P. repeatedly begged Gintz, "[p]lease don't shoot my daddy!" ROA.1072, 1119. The children in the back of the truck heard and saw every action Gintz took, except for K.P.'s 11-year-old friend, who cowered in fear in the truck bed. ROA.1072.

Notably, Gintz was not wearing a body-worn camera. ROA.1146. Gintz later testified that Pigott was not doing anything threatening when

he got out of his truck. ROA.1149-50. Gintz also admitted that the children had not been doing anything threatening and were "just sitting there quiet." ROA.1150.

Gintz continued to question Pigott about why he was at the Facility until the second deputy, Clayton Lacaze, arrived. ROA.1072. According to Appellants, Gintz kept the gun pointed at Pigott's head when Deputy Lacaze got out of his truck. ROA.1118. But Lacaze testified that he saw the gun at a "low ready" position. ROA.1181-82. When Lacaze arrived, he had no idea why Gintz had been following Pigott in his personal vehicle. ROA.1179. Lacaze testified that the children in the truck bed had their hands up and Pigott's hands were on his head. ROA.1182-83. Lacaze did not draw his weapon. ROA.1150. Instead, he told Gintz to holster his gun, and Gintz complied. *Id.* Lacaze pulled Gintz aside to speak privately, leaving Pigott and the children alone before addressing them. ROA.1117-18.

The Second Officer Who Arrived on Scene Searched Pigott, Apologized to Him, and Released Appellants.

Lacaze conducted a pat-down search of Pigott and told the children they could lower their hands. ROA.1191. Lacaze asked Pigott for his driver's license, and Pigott complied. ROA.1192. Pigott offered to allow

the officers to search his vehicle, and Lacaze conducted a cursory search but saw nothing suspicious, rendering a full search unnecessary. *Id.*

At the end of the encounter, Lacaze apologized to Pigott and told him he was free to leave. ROA.1198. Lacaze testified that Pigott had not been free to leave before this point. ROA.1193.

Gintz's Actions Were Deemed a Violation of Department Policy, and He Was Sanctioned.

As a result of the April 17, 2020 incident, the Internal Affairs Division of RPSO investigated Gintz's actions. ROA.1152, 1225-26. That investigation report, produced on April 23, 2020, found that Gintz abandoned his post as a supervisor, pursued a truck in his personal vehicle counter to department policy, and improperly drew his weapon and pointed it at Pigott. *Id.*

The investigation further pointed to Gintz's own report that no deputy observed Pigott or anyone in the vehicle commit any illegal act while on the premises of the Facility. *Id.* According to that investigation, Gintz "did not have enough justification to use his privately-owned vehicle to follow the F250 through Alexandria, and used a show of force

with his firearm to gain compliance of the driver." *Id.* Gintz was sanctioned with leave without pay for three (3) days for his actions. *Id.*[1]

Appellants Suffered Emotional Injuries from the Incident.

Pigott testified that he has developed paranoia around law enforcement. ROA.1077. Both children were afraid to sleep alone and would not go outside without their father after the incident. *Id.* Mya began having nightmares and could not sleep alone for at least a year, and the family even got her a service dog to help her cope. ROA.1077-78, 1100. K.P. had wanted to be a game warden, but the incident with Gintz eroded his trust in law enforcement so severely that he abandoned that ambition. ROA.1077, 1108, 1208.

Pigott testified that K.P. had suffered "such severe mental anguish that his personality and behavior [had] drastically changed;" he was "a happy, laid-back child and straight-A student who had never been in trouble before," and "[s]ince April 17, 2020, K.P. has become depressed and angry, his grades have plummeted, and he's gotten into trouble outside the home." ROA.1207. Eventually, K.P.'s fear of Gintz became so

[1] There is a disparity between Gintz's testimony and the Letter of Disciplinary Action. Gintz stated he was suspended for three days; the Letter states a recommendation of two days.

severe that it was a major contributing factor in Pigott's decision to move his family out of state. ROA.1208.

Appellants Initiated Litigation Against Gintz.

On April 16, 2021, Appellants brought this action under the 1871 Ku Klux Klan Act, 42 U.S.C. § 1983, asserting claims of, *inter alia*, unreasonable seizure and excessive force under the Fourth and Fourteenth Amendments. ROA.14-31.

Gintz filed his answer to the complaint on July 14, 2021. ROA.67-82. In his Answer, Gintz asserted that all his actions "were taken by an official who had a reasonable, good-faith belief that his actions were legal and constitutional and, thus, he is entitled to good faith defense and/or qualified immunity." ROA.80.

On April 19, 2023, Gintz moved for summary judgment on the issue of qualified immunity. ROA.441-748. Plaintiffs filed an opposition to the motion. ROA.999-1227. Defendant filed a reply in support of his motion, ROA.1249-64, and Plaintiffs filed a sur-reply. ROA.1277-84.

On November 14, 2023, the district court granted Gintz's motion. ROA.1313-36. The court found that Gintz subjected Pigott and his children to a reasonable seizure and that his use of force was objectively

reasonable. ROA.1329-31, 1341-45. The court also found that the Pigott children's bystander liability claims were not cognizable under Section 1983 and declined to exercise supplemental jurisdiction over Plaintiffs' state law claims of intentional infliction of emotional distress, negligent infliction of emotional distress, assault, and battery. ROA.1345, 1346-49. On November 15, 2023, the court entered a judgment in Gintz's favor. ROA.1350. This appeal timely followed. ROA.1352-53.

SUMMARY OF THE ARGUMENT

The court erred in granting summary judgment to Gintz based on qualified immunity. That judgment should be reversed, and the bystander liability and supplemental state law claims reinstated, for three reasons.

First, based on a misreading of the operative statute—the original text of which specifically prohibits the invocation of common law immunity defenses—the court wrongly placed the burden of overcoming qualified immunity on Appellants. In short, the court lacked subject matter jurisdiction to adjudicate the defense of qualified immunity or, at a minimum, to place the burden of rebutting the defense on Appellants. As multiple Judges of this Court have now recognized, the original text

of Section 1983, codified in the 1871 Ku Klux Klan Act, precludes application of common law immunities, including qualified immunity, to Section 1983 claims. *Villarreal v. City of Laredo*, ___F.4th___, No. 20-40359, 2024 WL 244359, at *23 n.14 (5th Cir. Jan. 23, 2024) (*en banc*) (Willett J., dissenting with Elrod, Graves, Higginson, Ho, and Douglas, JJ.); *see Jimerson v. Lewis*, ___ F.4th ___, No. 22-10441, 2024 WL 640247, at *5 n.1 (5th Cir. Feb. 15, 2024) (Dennis, J., dissenting) (similar). The statute not only invalidates the doctrine's application as it relates to the notion of "clearly established law," it also calls into question Circuit precedent placing the burden of overcoming the defense on plaintiffs.

Second, the court improvidently bypassed the *Graham* factors in assessing the constitutionality of the force and the length of the seizure at issue, resulting in the improper grant of summary judgment on the federal law claims. By ignoring *Graham*, the lower court failed to assess material facts in Appellants' favor—including whether Gintz ever saw Appellants drive through the lot of the Facility (or engage in any suspicious activity other than a traffic violation), was inebriated, or knew three of the four individuals in the truck were children; whether Pigott fully complied with Gintz's commands, never resisting or attempting to

flee; and that an internal affairs investigation about the incident, involving an officer who calmly and peacefully dispelled any suspicion without any use of force, resulted in the discipline of Gintz. While the lower court credited Gintz's testimony to justify his use of a firearm—namely that contraband had been thrown over the fence of the Facility on previous occasions and that Gintz was uncertain about the number of people in the truck—the facts taken altogether refute this conclusion. The court's unsupported finding that Appellants failed to show cognizable injury because of the absence of third-party written records also fails, as such proof is not required by law. *See Alexander v. City of Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017).

Finally, the court erred in declining to exercise supplemental jurisdiction over Appellants' state law claims. The sole basis for making this determination rested on the conclusion that Gintz was entitled to summary judgment on the federal law claims. Because that conclusion was incorrect, the court's ruling as to these remaining claims should not stand.

STANDARD OF REVIEW

"This court reviews a grant of a motion for summary judgment *de novo*, and applies the same standard as the district court, viewing the evidence in the light most favorable to the nonmovant." *Reitz v. Woods*, 85 F.4th 780, 787 (5th Cir. 2023) (citation omitted). "Summary judgment is proper 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)). "In reviewing the evidence, the court must refrain from making credibility determinations or weighing the evidence." *Deville v. Marcantel*, 567 F.3d 156, 164 (5th Cir. 2009) (quotations omitted).

In granting qualified immunity on summary judgment, a court commits reversible error if it "ignore[s] facts in the record," including those that "cast[] doubt" on the reasonableness of an officer's actions. *Winzer v. Kaufman Cnty.*, 916 F.3d 464, 475 (5th Cir. 2019). Here, the record shows that the original text of Section 1983 precludes invoking the defense of qualified immunity. Ku Klux Klan Act of 1871, ch. 22, § 1, 17 Stat. 13 (1871).

ARGUMENT

I. Rebutting the Qualified Immunity Defense, Which Violates the Original Text of Section 1983, Cannot Fall to Plaintiffs.

The court erred in granting summary judgment to Gintz, as the grant was improperly premised on bypassing the *Graham* factors and relying on a flawed interpretation of clearly established law. ROA.1323. While *Graham* is no defense to Gintz's actions in this case and clearly established law also fails to rescue him, *see infra* Part II, there is a more fundamental reason why this Court should not affirm summary judgment: qualified immunity is completely inconsistent with the text of Section 1983 as originally enacted. Alexander Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201, 207–08 (2023). Faithfully applied, Section 1983 provides no immunity for Gintz's actions and, at a minimum, does not permit this Circuit to place the burden of the defense on the party opposing it.

A. The Original Text of Section 1983 Abrogates Common Law Immunities and Defenses.

When Congress passes new legislation, it "does not write upon a clean slate." *United States v. Texas*, 507 U.S. 529, 534 (1993). Rather, it legislates against a backdrop of established "common law adjudicatory principles." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108

(1991). Courts generally assume that Congress chose to retain the common law unless the text of the statute says otherwise. *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co.*, 464 U.S. 30, 35–36 (1983). Thus, it is the statutory text that decides whether common-law principles survive and apply to a statute.

Starting in 1967, the Supreme Court assumed that Congress intended to retain common-law principles in actions under Section 1983. *See Pierson v. Ray*, 386 U.S. 547, 557 (1967). In *Pierson*, the Supreme Court reviewed the version of Section 1983 found in the U.S. Code, *id.* at 547 n.1, and concluded that the "legislative record gives no clear indication that Congress meant to abolish wholesale all common-law immunities." *Id.* at 554. Accordingly, the Court granted defendants a "defense of good faith and probable cause" that existed in Mississippi's common law. *Id.* at 557.

The presumption that Congress intended to incorporate common-law defenses in Section 1983 is the foundation of the modern doctrine of qualified immunity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 806–07 (1982).[2] With each step along the path of qualified immunity, the

[2] More recent scholarship has cast doubt on whether there was ever any generally available defense of good faith for constitutional claims or common law torts in 1871. *See* William Baude, *Is Qualified*

Supreme Court has explicitly relied on the supposed silence of Section 1983 to ground the doctrine.[3]

But the assumption that Congress intended to incorporate the common law in Section 1983 is incorrect. That is because the version of Section 1983 the Court examined—the U.S. Code—*omits language originally passed by Congress*. To see how, one must turn to the origin of Section 1983.

The 42nd Congress passed Section 1983 as part of the Ku Klux Klan Act of 1871. The original text of Section 1983 stated:

> [A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, ***any such law, statute, ordinance, regulation, custom or usage of the State to the contrary notwithstanding***, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . . .

Immunity Unlawful?, 106 Calif. L. Rev. 45, 55–57 (2018); *see also* Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1801–02 & nn.24–26 (2018); *Ziglar v. Abbasi*, 582 U.S. 120, 157 (2017) (Thomas, J., concurring in part and concurring in the judgment) (noting "growing concern with our qualified immunity jurisprudence"); *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting) (similar); Brief of the Cato Institute as Amicus Curiae in Support of Petitioner, *Rogers v. Jarrett*, No. 20-93 (U.S. Aug. 31, 2023).

[3] *See, e.g.*, *Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993) ("[c]ertain immunities were so well established in 1871" that "Congress would have specifically . . . provided had it wished to abolish them"); *see also Will v. Mich. Dep't of State Police*, 491 U.S. 58, 67 (1989) (relying on presumption that 42nd Congress "likely intended" for common law to apply); *Briscoe v. Lahue*, 460 U.S. 325, 337 (1983) (similar); *Procunier v. Navarette*, 434 U.S. 555, 561 (1978) (similar); *Imbler v. Pachtman*, 424 U.S. 409, 418 (1976) (similar).

Ku Klux Klan Act of 1871, ch. 22, § 1, 17 Stat. 13 (1871) (emphasis added). The bolded text above is known as the "Notwithstanding Clause."[4]

To determine the meaning of this language, courts look to the "ordinary public meaning" "at the time of its enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). As understood by the 42nd Congress, a "usage or custom" was the common law itself. *Strother v. Lucas*, 37 U.S. 410, 437 (1838). Whether a rule was established by "usage" or through "custom," it existed by "a common right, which means a right by common law." *Id.*; *see also, e.g.*, *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591, 659 (1834) (similar); *Western Union Telegraph Co. v. Call Pub. Co.*, 181 U.S. 92, 102 (1901) (citing Black's Law Dictionary for proposition that common law springs from "usages and customs").

Against this backdrop, the term "notwithstanding" has the same ordinary public meaning today as it did for the 42nd Congress in 1871. *See* Bryan A. Garner, *Garner's Modern English Usage* 635 (4th ed. 2016) ("This usage [of notwithstanding] has been constant from the 1300s to the present day."). "Notwithstanding" means "[w]ithout opposition,

[4] That language can be seen highlighted in an authentic copy of the Civil Rights Act of 1871, certified by the National Archives and Records Administration on August 19, 2022, and attached as Appendix A.

prevention, or obstruction from," or "in spite of." Complete Dictionary of the English Language 894 (Webster's 1886); *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 939 (2017) (explaining that the ordinary meaning of "notwithstanding" is "in spite of"). Many then-contemporaneous dictionaries confirm this meaning. *See, e.g.*, *Etymological Dictionary of the English Language* 344 (Chambers's 1874) (similar); 2 A New Dictionary of the English Language 1351 (1837) (similar).

This plain-English understanding of the Notwithstanding Clause is consistent with the context and history of its enactment. Reinert, *supra*, at 205. And, to the extent relevant, records of legislative debates of the Civil Rights Act of 1871 are "far from . . . silent about immunities"—rather, they are "replete" with evidence that the provision would displace common-law immunities. Richard A. Matasar, *Personal Immunities Under Section 1983: The Limits of the Court's Historical Analysis*, 40 Ark. L. Rev. 741, 771 (1987).

As members of this Court have now recognized, the Notwithstanding Clause means that the common law cannot prevent persons from being held liable under Section 1983. *See* Reinert, *supra*, at 236. As Judge Willett recently explained: "The language is unsubtle and

categorical, seemingly erasing any need for unwritten, gap-filling implications, importations, or incorporations. Rights-violating state actors are liable—period—notwithstanding any state law to the contrary." *Rogers v. Jarrett*, 63 F.4th 971, 980 (5th Cir. 2023) (Willet, J., concurring), *cert. denied*, 144 S. Ct. 193 (2023); *Villarreal*, 2024 WL 244359, at *23 n.14; *see Jimerson*, 2024 WL 368944, at *5 n.1; *see also Price v. Montgomery Cnty.*, 72 F.4th 711, 727 n.1 (6th Cir. 2023) (same); *Perron v. Travis*, 2023 WL 6368131, at *5 n.7 (M.D. La. Sept. 28, 2023) (similar). No one—neither court nor commentator—has contended otherwise.

In short, the Notwithstanding Clause means that the common law does not prevent persons from being held liable under Section 1983. *See* Reinert, *supra*, at 236 ("Its implications are unambiguous: state law immunity doctrine, however framed, has no place in Section 1983."). Because the district court ruled to the contrary, that decision requires reversal.

B. The Removal of the Notwithstanding Clause in the Revised Statutes of 1874 Did Not Change the Substance of Section 1983.

Shortly after passing the Ku Klux Klan Act of 1871, the 43rd Congress compiled the Revised Statutes of 1874. The purpose of this exercise was to "revise, simplify, arrange, and consolidate all statutes of the United States." Shawn G. Nevers & Julie Graves Krishnaswami, *The Shadow Code: Statutory Notes in the United States Code*, 112 L. Library J. 213, 218 (2020). At its core, this compilation was organizational—simply putting all existing federal laws in the same place for the first time.

But Congress was not satisfied with the results of this compilation and engaged a lawyer to review the proposed revisions. This person was tasked with striking any provision that substantively changed the law but keeping "mere changes of phraseology not affecting the meaning of the law." 2 Cong. Rec. 646, 648 (1874).

As the Supreme Court explained, where a statutory change "was made by a codifier without the approval of Congress, it should be given no weight." *United States v. Welden*, 377 U.S. 95, 98 n.4 (1964); *see also*

Fourco Glass Co. v. Transmirra Prod. Corp., 353 U.S. 222, 227 (1957) (Reviser's changes "do not express any substantive change").

Through this exercise, Congress intended to "consolidat[e] the laws," not change their meaning. *Welden*, 377 U.S. at 98 n.4; *see also Fourco*, 353 U.S. at 227; *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 510 (1939) (similar). Indeed, Congress sought "to preserve absolute identity of meaning" in the law. 2 Cong. Rec. 4220 (1874) (Sen. Conkling). This was true for omissions too, which the 43rd Congress viewed as a necessary tool "to strike out the obsolete parts and to condense and consolidate." 2 Cong. Rec. 129 (1873).

These revisions were passed by the 43rd Congress as the Revised Statutes in 1874, which later became the U.S. Code. But because the explicit intent of Congress was to *not* change the substantive provisions of the law, the omission of the Notwithstanding Clause in 1874 did not alter the 42nd Congress's original decision to abrogate the common law from Section 1983.

This approach matches the Supreme Court's presumption against implicit statutory changes or repeals. When Congress wants to repeal or change some part of a statute, it must do so with "clear and manifest"

intent. *Watt v. Alaska*, 451 U.S. 259, 266–67 (1981) (citation omitted). In other words, to incorporate the common law back into Section 1983, the Revised Statutes would have needed to include some form of positive text about the common law. *See* Reinert, *supra*, at 236–37.

But that addition to the text did not occur. The Revised Statutes did not mention the common law. And the 43rd Congress did not affirmatively include language indicating that it was reversing the 42nd Congress's decision to excise the common law from Section 1983. The omission of the Notwithstanding Clause was intended to be a ***non-substantive*** change to the law.

It makes sense, then, that the Supreme Court has already viewed the omission of other Notwithstanding Clauses from other civil rights statutes as non-substantive changes to the law. *See Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 422 (1968); *United States v. Price*, 383 U.S. 787, 803 (1966); *The Civil Rights Cases*, 109 U.S. 3, 16–17 (1883). In *Jones*, for example, the Supreme Court viewed the omission of another Notwithstanding Clause—in Section 1982—as a non-substantive change. *Jones*, 392 U.S. at 422 n.29. The Court recognized that the Section 1982 Notwithstanding Clause was "obviously inserted" to "emphasiz[e] the

supremacy of the 1866 statute over inconsistent state or local laws." *Id.* And later, when "[i]t was deleted" in the Revised Statutes, the Court presumed the omission was just a decision to remove perceived "surplusage." *Id.*

So too with Section 1983. The 1871 Congress was explicit in legislating that persons can be held liable for Section 1983 violations despite any common law doctrines to the contrary.

The doctrine of qualified immunity rests on the presumption that the 1871 statute was silent about the common law. That is a fallacy. The statute was not silent—rather, it explicitly rejected any common law defenses. Accordingly, its application on summary judgment was inappropriate, necessitating reversal of the district court's judgment for adjudicating a defense over which it lacked jurisdiction. *See Cell Sci. Sys. Corp. v. La. Health Serv.*, 804 F. App'x 260, 262 (5th Cir. 2020) (a party may challenge subject matter jurisdiction at any stage of the proceedings) (citing *Ramming v. United States*, 281 F.3d 158, 1616 (5th Cir. 2001)); *see also e.g., Federal Sav. And Loan Ins. Corp. v. Shelton*, 789 F. Supp 1367, 1370 (1992) (affirmative defenses can be challenged on subject matter jurisdiction grounds); *Resolution Trust Corp. v. Vestal*, 838 F. Supp. 305,

307 (1993) (same); *Patchak v. Zinke*, 583 U.S. 244, 254 (2018) ("a congressional grant of jurisdiction is a *prerequisite* to the exercise of judicial power"); *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 433 (1989) (subject-matter jurisdiction of lower federal courts "is determined by Congress 'in the exact degrees and character which to Congress may seem proper for the public good.'" (citation omitted)).

C. The Fifth Circuit Improperly Places the Burden of Overcoming Qualified Immunity on Plaintiffs.

By facially challenging the doctrine of qualified immunity in his opposition to Gintz's motion for summary judgment, Appellants preserved their challenge to the doctrine for this Court's review. As Judge Willett explained, Professor Reinert's research unearths an issue with which the federal courts must contend. Qualified immunity "does not merely complement the text [of Section 1983]—it brazenly contradicts it," which is especially important "in this text-centric judicial era when jurists profess unswerving fidelity to the words Congress chose." *Rogers*, 63 F.4th at 980–81. Here, the court bypassed the *Graham* analysis and jumped to the "clearly established law" prong—placing the burden on plaintiffs to show that "the allegedly violated constitutional right" was

"clearly established at the time of the incident," and that the "conduct of [Gintz] was objectively unreasonable in light of that then clearly established law" such that no "officers of reasonable competence could disagree." ROA.1333 (citing *Tarver v. City of Edna*, 410 F.3d 745, 750 (5th Cir. 2005)).[5] But this burden shifting is inherently premised on the view that qualified immunity is available as a defense to Section 1983 claims, and it is not.

At bottom, there is a "growing, cross-ideological chorus of jurists and scholars" recognizing that the doctrine of qualified immunity has no basis in the text of Section 1983 or the common law. *Zadeh v. Robinson*, 928 F.3d 457, 480–81 (5th Cir. 2019) (Willet, J., concurring) (footnotes omitted); *see Ziglar*, 582 U.S. at 157–60 (Thomas, J., concurring) (courts applying the doctrine are not "engaged in 'interpret[ing] the intent of Congress in enacting'" Section 1983, and further "th[is] sort of 'freewheeling policy choice'" is antithetical to the judicial role). As Professor Reinert's recent scholarship illuminates, the doctrine of

[5] *See* Matthew Ackerman, *Reflections on a Qualified (Immunity) Circuit Split*, Ackerman & Ackerman (Mar. 17, 2022), http://tinyurl.com/36xjxvw7 (noting Sixth through Eleventh and D.C. Circuits also place burden on plaintiff; Third is inconsistent; Fourth places burden on plaintiff to establish constitutional violation and on defendant to show violation not clearly established; and Second and First Circuits place burden on defendant).

qualified immunity "has no place in Section 1983" because it was adopted on the mistaken presumption that a relevant statute was silent about the common law. *Reinert*, *supra*, at 236. If this scholarship is correct and Section 1983 precluded common law defenses, then the defense should never have impeded this case on summary judgment—let alone in such a way that the burden of overcoming the defense fell to Appellants.

Appellants thus request that this case be remanded with no credence paid to the doctrine at all; or, at a minimum, that the burden of proving the existence of the defense here falls on Gintz.

D. Qualified Immunity as Applied in the Fifth Circuit Violates Article III.

Even if this Court finds that qualified immunity stands despite being untethered to the text of Section 1983 and the intent of Congress, Gintz's defense of qualified immunity should nonetheless be dismissed—as the two-part legal test courts apply to determine the defense's application violates Article III's justiciability mandates.[6]

Article III, Section 2, Clause 1 limits judicial power. Clause 1 states that the "judicial power shall extend to" certain categories of "Cases" and

[6] *See* Taylor Kordsiemon, Challenging the Constitutionality of Qualified Immunity, 25:3 U. Penn J. Const. L. Rev. 576, 597-600 (2023).

"Controversies," thereby precluding the issuance of advisory opinions and the shirking of judicial responsibility to clarify for the parties exactly what the law is governing the dispute in question. *See, e.g.*, *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (exercise of judicial power under Article III depends on the existence of a case or controversy and this is tied to the lack of power to issue advisory opinions).[7]

The Article III violation at issue plays out at both the first and second steps of the qualified immunity inquiry. As to the first prong (whether a constitutional violation exists), that very question forces courts to unlawfully issue advisory opinions, as those opinions do not have the force of law in the present case or controversy before the court. *See Pearson v. Callahan*, 555 U.S. 223, 236-42 (2009) (collecting criticism of rigid two-step inquiry); *see also* Thomas Healy, *The Rise of Unnecessary Constitutional Rulings*, 83 N.C. L. Rev. 847, 920 (2005) ("Unnecessary constitutional rulings in qualified immunity . . . cases violate the ban on advisory opinions because a decision on the constitutional issue has no effect on the outcome of the dispute."). In

[7] *See also, e.g.*, *North Carolina v. Rice*, 404 U.S. 244, 245-46 (1971) (dismissing case as moot, noting "Court [has] no power to issue advisory opinions"); *Hall v. Beals*, 396 U.S. 45, 48 (1969) (similar); *St. Pierre v. United States*, 319 U.S. 41, 42 (1943) (same).

overturning the rigidity of *Saucier v. Katz*, 553 U.S 194 (2002), the *Pearson* court acknowledged this very tension. *See Pearson*, 555 U.S. at 236.

The second prong (whether clearly established law prohibits the challenged conduct) forces courts to forsake their duty to state what the law is, relying instead on answering "contingent" questions to opine on the dispute before them. *See, e.g.*, *Ala. State Fed'n of Labor v. McAdory*, 325 U.S. 450, 461 (1945) (collecting cases and stating "[i]t has long been the Court's considered practice not to decide abstract, hypothetical or contingent questions"); *Halder v. Standard Oil Co.*, 642 F.2d 107, 110 (5th Cir. 1981) (holding "district courts lack jurisdiction to express legal opinions based upon hypothetical or academic facts"). The court here relied on hypothetical and contingent considerations about Gintz's actions—such as, for example that officers "***must often*** make split-second judgments about the amount of force that is necessary in a particular situation"—without requiring any proof on summary judgment to establish the veracity of these hypothetical considerations. ROA.1334. Whereas the second prong of the qualified immunity analysis could, *arguendo*, be justified—where application of common law

immunity defenses was not precluded by statute, and potentially where the burden of the defense fell on the party advancing it—because neither scenario presents itself here, the manner in which the doctrine was applied to the facts by the court here fails. This requires reversing the qualified immunity judgment entered as to the federal law claims in this case.

II. The District Court Erred in Granting Qualified Immunity on the Unlawful Seizure, Excessive Force, and Bystander Liability Claims.

Even assuming qualified immunity is applicable (including in its placement of the burden to overcome the defense on the plaintiff, which should not be the case), the court was still wrong to grant summary judgment here. Resolving all material factual disputes in Appellants' favor, a reasonable jury could conclude that Gintz "carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances." *Cnty. of Los Angeles, Calif. v. Mendez*, 581 U.S. 420, 428 (2017). It could further find that, because that force extended for several minutes, the seizure was unlawfully extended. *See United States v. Jenson*, 462 F.3d 399, 404 (5th Cir. 2006) (detention runs

afoul of Fourth Amendment if jury concludes it lasted "longer than necessary to effectuate the purpose of the stop").

In this case, the court concluded "it did not violate clearly established law for Deputy Gintz to use a moderate amount of non-deadly force (displaying his firearm) for the three-to-five minutes he waited, outnumbered, for backup to arrive, where no shots were fired and no one was arrested or physically touched." ROA.1342. But this finding contradicts a record replete with material disputes and facts improperly ignored altogether by the court. "The operative question in excessive force cases is 'whether the totality of circumstances justifie[s] a particular sort of search or seizure.'" *Mendez*, 581 U.S. at 427–28. It is reversible error for a district court to—as the court did here—"ignore[] facts" regarding the circumstances at issue, including facts that "cast[] doubt on whether a reasonable officer would have concluded" that the officer's actions were warranted. *Winzer*, 916 F.3d at 475.

Appellants were "seized" when Gintz drew his weapon and commanded Pigott to get out of his truck. *See, e.g.*, *Carroll v. Ellington*, 800 F.3d 154, 170 (5th Cir. 2015) (*citing United States v. Mendenhall,* 446

U.S. 544, 554 (1980)). The seizure lasted until Lacaze arrived and told Appellants they were free to go. ROA.778, 958.

Viewing the record in the light most favorable to Appellants, a reasonable jury could conclude that Gintz (1) conducted an unreasonable seizure by force; and (2) unlawfully prolonged Appellants' detention until Lacaze arrived. A jury could further conclude that Appellants suffered cognizable emotional injuries at the hands of the inebriated Gintz when he pointed his service weapon at them; placed the barrel of the gun against Pigott's head for up to five minutes; and made verbal threats to use lethal force. These injuries resulted directly and only from the use of force in question, "the excessiveness of which was clearly unreasonable." *Chambers v. Short*, No. 22-60349, 2023 WL 2823902, at *3 (5th Cir. Apr. 7, 2023). The law is clearly established that the force used against Appellants was excessive "at the time of the challenged conduct." *Timpa v. Dillard*, 20 F.4th 1020, 1029 (5th Cir. 2021) (quotations omitted).

A. Appellants Were Unlawfully Seized at Gunpoint for an Objectively Unreasonable Amount of Time.

To determine whether seizures involve unreasonable force, courts assess 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 [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Cooper v. Brown*, 844 F.3d 517, 522 (5th Cir. 2016) (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Here, material facts the court ostensibly viewed in Appellants' favor do not tell the full story.[8] Disputed and ignored issues of material fact permeate each prong of the *Graham* analysis.

As to the first prong, the only crime at issue was a traffic violation—rendering of no moment the "ominous" gloss to which the court points (that it was late at night; and that there had been previous attempts to throw contraband over the Facility's walls (but none that night)). In terms of the immediacy of the threat, that too falls flat because the inebriated Gintz knew the three individuals in the bed of the truck were children and there is a disputed issue of material fact as to Pigott's degree of compliance with Gintz's commands. Concerning active resistance or flight, neither can be substantiated on the record to justify holding Pigott at gunpoint for a prolonged period of time in front of his children, who

[8] The court resolved in favor of Appellants that Gintz pointed his gun at Pigott, *compare* ROA.1069, 1096-97, 1117 *with* ROA.1150; pressed it to the back of his head, *compare* ROA.1073, 1097 *with* ROA.1150; pointed it at the children, *compare* ROA.1098, 1117 *with* ROA.1150; and held Pigott at gunpoint until Lacaze arrived, *compare* ROA.1118 *with* ROA.1181-82.

were also threatened at gunpoint, until another deputy arrived. Moreover, Gintz's own employer found that his behavior on the night in question violated department policy, leaving largely nonexistent any justification that could be ascribed to his actions.

Because the grant of qualified immunity here involved the court ignoring "facts in the record," including those that "cast[] doubt" on the reasonableness of Gintz's actions, summary judgment in Gintz's favor should be reversed. *Winzer*, 916 F.3d at 475. A jury could indeed find that Gintz unlawfully seized Appellants, each of whom suffered cognizable emotional injuries resulting "directly and only from [Gintz's] use of force that was clearly excessive," the "excessiveness of which was clearly unreasonable." *Chambers*, 2023 WL 2823902, at *3.

1. The Court Misapprehended the Severity of the Alleged Crime at Issue.

The first *Graham* factor requires consideration of the severity of the crime at issue. *Graham*, 490 U.S. at 396. The court erred in finding that the "crime" at issue consisted of anything more than a traffic violation—here, the fact that Pigott drove the wrong way down a one-way street. ROA.1328. According to the court, Gintz "had reasonable suspicion to believe the people in the truck had thrown contraband over the Facility

fence." ROA.1329. But Gintz never saw Appellants or anyone in the truck throw contraband or engage in any other suspicious activity; the deputies Gintz was supervising also did not see Appellants or anyone in the truck engage in any suspicious activity; and Gintz admits he could see that the people in the bed of the truck were youth and thus could not have been escaped persons from the Facility.

a. The Court Ignored that Appellants Were Not Observed Committing Anything More Than a Traffic Violation.

The court wrongly concluded that it was reasonably suspicious that Pigott was slowly driving through the Facility parking lot during nighttime hours when there had been prior instances of alleged contraband being thrown over the fence. ROA.1329 ("the [RPSO] had recently experienced problems with individuals throwing contraband over the [Facility] fence"); ROA.1147 (Gintz testifying to same). Neither the court nor Gintz claimed that these unspecified incidents when individuals threw contraband over the fence took place that day or at night. Indeed, there is no specific reference to when these incidents occurred—only a baseless inference by the court that if there were issues with contraband, they must have involved the cover of night. Holding

that the reasonable suspicion at issue involved anything more than a traffic violation was error.

Significantly, the court ignored the material fact that Gintz admitted that neither he nor any of his deputies saw anyone in the truck throw anything over the fence or do anything suspicious in the parking lot. ROA.1147. Gintz testified that he never saw Pigott's truck go near the Facility fences; that no one ever saw anyone in Appellants' vehicle throw anything from the truck; that the truck was not speeding out of the parking lot; and that the truck was not driving erratically. *Id.* In the internal affairs investigation conducted pursuant to this incident, the warden of the Facility pointed to Gintz's own report that no deputy observed Pigott or anyone in the vehicle commit any illegal act while on the premises of the Facility. ROA.1152, 1225. In other instances when individuals allegedly threw contraband over the fence, Gintz testified that no one had ever been followed off the property, and that only marked police units were used to stop those involved in such activity. ROA.1147-48.

Separately, a jury could find credible Mya's testimony that she saw Gintz sitting in a chair outside the Facility when Appellants drove

through the parking lot. The court found that this discrepancy did not create a genuine dispute of material fact, ROA.1328, and instead credited the testimony of Deputy Sanchez, who stated he was standing outside of the Facility and observed the truck. *Id.* But if a jury were to find Mya's testimony credible, it would lead to the inference that Gintz saw Appellants drive through the parking lot *without doing anything suspicious at all*. This issue is therefore material, because "its resolution could affect the outcome of the action." *DIRECTV Inc. v. Robson*, 420 F.3d 532, 536 (5th Cir. 2005). If all Gintz saw was the truck briefly circling through the parking lot and driving away at a low speed, he had no basis to follow Appellants.

It has long been held that "a person's 'presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime.'" *See United States v. McKinney*, 980 F.3d 485, 492 (5th Cir. 2020). In *Gonzalez v. Huerta*, for example, this Court held that an unconstitutional seizure occurred when an officer detained the plaintiff based solely on "the bare report of a 'suspicious' vehicle in the school parking lot" and "a recent history of burglaries of motor vehicles at the

same location." 826 F.3d 854, 857–58 (5th Cir. 2016); *see also United States v. Hill*, 752 F.3d 1029, 1034 (5th Cir. 2014) (no reasonable suspicion to stop and frisk a man when he "without a driver's license, at 11:00 p.m. on a Saturday night, in an apartment complex that has a drug reputation and is in a high-crime county, was sitting in the driver's seat of a car that was backed into a parking spot, and, when the police arrived, his passenger exited from the car and took a few steps away).[9] The circumstances adopted by the court here "attempt[] to put an ominous gloss on what appears almost entirely ordinary." *Id.* at 1034.

b. Traffic Violations Are Minor Crimes That Do Not Justify the Drawing of a Weapon.

The only conceivable crime at issue here was a traffic violation, as the facts viewed in the light most favorable to Appellants show little more than an inebriated man, violating his employer's protocol to engage in a fool's errand. Traffic violations do not rise to a level that would justify an officer immediately drawing a gun and pointing it at an adult and multiple children. *See, e.g.*, *Reyes v. Bridgwater*, 362 F. App'x 403, 407

[9] *See also United States v. Jaquez*, 421 F.3d 338, 341–42 (5th Cir. 2005) (officer lacked reasonable suspicion to stop a red vehicle 15 minutes after receiving dispatch that red vehicle was involved in gunfire in the area); *Alexander v. City of Round Rock*, 854 F.3d 298, 305 (5th Cir. 2017) (similar); *Brown v. Texas*, 443 U.S. 47, 52 (1979) (similar); *United States v. Benjamin*, 481 F. App'x 92, 93-96 (5th Cir. 2010) (similar).

n.5 (5th Cir. 2010) (unpublished) (finding that the "severity" factor militated against use of force where the crime at issue was a misdemeanor); *cf. Tarver*, 410 F.3d at 753 (objective reasonableness of officer's actions analyzed in light of severity of the crime). When weighed in favor of Appellants, the factual circumstance contributing to reasonable suspicion for the *Terry* stop was a minor traffic violation. *See supra* at Part II.A.1.a. This strongly suggests that Gintz's actions, specifically the immediate and sustained drawing of his weapon, were unlawful.

2. The Court Improperly Considered Appellants an "Immediate Threat" to Gintz.

The second *Graham* factor requires consideration of the immediacy of any threat posed to Gintz or others. *Graham*, 490 U.S. at 396. The record shows that at no point did Pigott, nor any of the children, pose a threat to Gintz—much less an "immediate" threat justifying the pressing of a barrel of a gun into the back of Pigott's head, all while threatening to "blow" it off. ROA.1072, 1073, 1117. Yet the district court found that "Deputy Gintz could not be aware from the beginning of the encounter what level of threat the Plaintiffs might pose to his safety." ROA.1341. This finding belies material evidence in the record.

a. The Court Avoided Material Testimony That Gintz Was Inebriated and Appellants Were Not Remotely Threatening.

The court's opinion fails to consider material facts that go to the immediacy of any threat that could have been at issue during the encounter. First, the court makes no mention of the alcohol Pigott detected on Gintz's breath, ROA.1010; this fact cannot be ignored, as a jury could infer that Gintz's inebriation caused him to perceive a nonexistent threat. *See, e.g.*, Stephanie M. Gorka, et al., "Association between problematic alcohol use and reactivity to uncertain threat in two independent samples," https://doi.org/10.1016/j.drugalcdep.2016.04.034. Second, the court improperly ignores that Gintz himself testified that Pigott was not doing anything threatening when Pigott first got out of his truck. ROA.1149-50. To the extent Gintz's testimony suggests Pigott was an immediate threat because he showed some form of resistance, that is a disputed issue of material fact. ROA.1316. Gintz separately admitted that the children had not been doing anything threatening and were "just sitting there quiet." ROA.1150.

These facts concerning Appellants' behavior stand in stark contrast to Gintz's behavior. Pigott's, Mya's, and K.P.'s testimony indicate that

the first command Gintz issued was to "get the fuck out of the truck," at which time Gintz had already pulled his gun. ROA.1069, 1072, 1096, 1117. He shouted, "If you turn around again, I'm going to blow your fucking head off." ROA.1072, 1117. Gintz refused to calm down, single-handedly creating a dangerous, chaotic situation that had no basis in the facts before him. The court's opinion effectively opts to consider all situations police officers encounter as immediate threats, even where material facts (including the inebriated state of the officer and the complete compliance of the alleged suspects) suggest the opposite. This is not the law on summary judgment. *See Tolan v. Cotton*, 572 U.S. 650, 659 (2014) (reversing grant of summary judgment on qualified immunity because lower court "failed properly to acknowledge key evidence offered by the party opposing that motion").

b. The Court Credited Gintz's Claim That He Was "Outnumbered," All While Ignoring That the Other People Were Compliant Children.

The court goes out of its way to credit Gintz's testimony that "his gun was unholstered because he was outnumbered and could not see into the back seat of the truck and therefore did not know how many individuals were inside the truck." ROA.1330. But the court ignores

Gintz's testimony that he had concluded that the three individuals in the bed of the truck, whom he initially presumed were escaped persons from the Facility, were mere children. ROA.1329. In doing so, the court improperly implied that the situation was threatening, when Gintz knew that four of the five people in the car were minors, with the youngest appearing to be ten or eleven years old. ROA.1019.

It is true that Gintz initially alleged that he was concerned that there may have been an escape attempt at the Facility since his deputies allegedly saw *one* person in the truck bed, and he saw *three* people when he began his pursuit ROA.1152. But no one at the Facility observed any escape or attempted escape, and Gintz did not bother to check whether anyone had reported an escape. ROA.911. And when he seized Appellants, Gintz had no reasonable basis to suspect that they were transporting escaped persons because Gintz had observed—while following Appellants in his personal vehicle—that the people in the bed of the truck were children. ROA.1147. Because the Facility houses only adults, seeing three children in the truck confirmed that they were not escaped persons, dispelling any concerns about the immediacy of any purported threat.

As in *Flores v. Rivas,* it was "objectively unreasonable" for Gintz to point and forcefully brandish a deadly weapon at citizens whom he "could not reasonably have perceived to be dangerous," particularly when those citizens were "unarmed children who were not alleged to have done anything to threaten [Gintz's] safety or the safety of another police officer or the general public." No. EP-18-CV-297-KC, 2020 WL 563799, at *7 (W.D. Tex. 2020). Under these facts, a reasonable jury could find that Appellants did not pose a threat to Gintz and that his drawing a firearm was unlawful. "At least seven circuits have denied qualified immunity to police officers alleged to have brandished a firearm at compliant suspects or innocent bystanders." *Id.* at *8 (surveying cases); *see also Holland v. Harrington*, 268 F.3d 1179, 1193 (10th Cir. 2001) (similar).

That Gintz concluded the individuals in the bed of the truck were mere children, one appearing as young as ten or eleven, is material to any determination of the immediacy of the threat involved. The court's failure to consider this evidence—and its failure to view the evidence in the light most favorable to Appellants—warrants reversal.

Under these facts, a reasonable jury could find that Gintz's drawing of his firearm was unconstitutional.

c. The Court Failed to Consider Deputy Lacaze's Ability to Quickly and Calmly Dispel Any Suspicions Without Resorting to Force.

The court erroneously concluded Gintz's "use of his weapon was reasonable to protect his own safety." ROA.1330. But, when Lacaze arrived on the scene, Pigott had his hands on his head, and the children had their hands up. ROA.1182-83. Pigott was also in the process of attempting to de-escalate the situation, answering all Gintz's questions and repeatedly asking Gintz to remain calm so that everyone could go home that evening. ROA.1072, 1117.

By immediately drawing his weapon and pointing it at Pigott, by failing to identify himself as law enforcement, and by shouting threats, Gintz created a chaotic scene wholly inconducive to investigating whatever alleged suspicions he had about Appellants' supposed activities. ROA.1069, 1072. The arrival of Lacaze—including the subsequent calm and peaceful resolution of the incident through responsible policework and calm dialogue—underscores the inappropriateness and inefficiency of Gintz's approach, which resulted in escalating a non-threatening situation. ROA.957. A jury could reasonably find that Gintz perceived a threat where none existed, resulting in

Appellants being unreasonably held at gunpoint. *See Trammell v. Fruge*, 868 F.3d 332, 340 (5th Cir. 2017); *Joseph v. Bartlett*, 981 F.3d 319, 324, 332-33 (5th Cir. 2020).

3. The Court Wholly Overlooked Appellants' Complete Lack of Resistance and Flight.

The third *Graham* factor requires consideration of whether Appellants resisted Gintz or attempted to flee. *Graham*, 490 U.S. at 396. "[U]sing force against someone who is not actively resisting arrest is in violation of clearly established law." *Muslow v. City of Shreveport,* 491 F.Supp.3d 172, 189 (W.D. La. 2020); *Sam v. Richard*, 887 F.3d 710, 714 (5th Cir. 2018) (holding that even the use of relatively minor force, including "pushing, kneeing, and slapping," is excessive when deployed against "a suspect who is neither fleeing nor resisting arrest," and collecting cases); *see also Konrad v. Kolb*, No. 17-291, 2019 WL 3812883, at *9 (W.D. La. Aug. 13, 2019). The district court largely left this *Graham* factor unaddressed, effectively conceding the lack of any resistance or flight on the part of Appellants. In doing so, however, the court ignored material facts that militate against the use of force exhibited by Gintz.

The record is clear that Pigott and the children never resisted any command from Gintz or otherwise attempted to evade him. Gintz

testified that Pigott never fled or attempted to flee. ROA.1150. Gintz cannot overcome the undisputed fact that Appellants did not resist any command from Gintz or otherwise attempt to resist his display of authority. *See supra* at Part II.A.2. Nor can Gintz avoid the disciplinary action taken against him for his unjustified use of force in this circumstance. ROA.1013. The internal investigation found that Gintz abandoned his post as a supervisor on April 17, 2020, pursued a vehicle in his personal vehicle counter to department policy, and improperly drew his weapon and pointed it at Pigott. ROA.1152, 1225-26.

The internal investigation report matters because it supports the finding that Gintz's use of force was not premised on measured actions that "ascend[] in severity only as circumstances require." *See Joseph*, 981 F.3d at 324, 332–33 (discussing use of force in the context of resistance posed by suspect). Here, Gintz immediately resorted to force, refusing to de-escalate the situation he created, as required by law. A reasonable jury could thus find that the initial drawing of his gun was unreasonable. And they could also independently find that the length of the seizure at gunpoint (which lasted until Lacaze arrived) was wholly unjustified by

the lack of any evidence suggesting any resistance or perceived flight. *Jenson*, 462 F.3d at 404.

* * *

As to bystander liability, this Court has held that "bystanders may recover when they are subject to an officer's excessive use of force such that their own Fourth Amendment right is violated." *Crane v. City of Arlington, Tex.* No. 21-10644, 2022 WL 4592035, at *9 (5th Cir. Sept. 30, 2022). Because an officer who points a weapon at children who are not resisting nor posing a threat has acted unreasonably as a matter of law, *Flores*, 2020 WL 563799, at *7 (W.D. Tex. 2020), the rights of K.P. and Mya were violated. Accordingly, K.P. and Mya are entitled to recover for bystander liability.

* * *

All the evidence viewed in the light most favorable to Appellants could lead a reasonable jury to conclude that Gintz lacked an objectively reasonable basis to brandish a deadly weapon at Appellants, while he threatened to "blow" Pigott's "head off," ROA.1072, 1117, and pressed the barrel of the gun into the back of Pigott's head. ROA.1073. They could equally conclude that continuing this status quo for five minutes until

Deputy Lacaze arrived was separately unconstitutional. *See Tolan*, 572 U.S. at 659.

B. Gintz Violated Clearly Established Law.

Clearly established law did not permit Gintz to use a weapon in the circumstances at issue, nor to continue to detain Appellants at gunpoint for "several minutes." *See Sam*, 887 F.3d 713 (*supra* at Part II.A.3); *Taylor v. Riojas*, 592 U.S. 7, 9 n.2 (2020) (reversing grant of qualified immunity where court erroneously cited "ambiguity in the caselaw"); *see also McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (similar). Even without "materially similar" case law, Gintz's actions of terrorizing children and their father for a minor traffic violation are "so far beyond the hazy border between excessive and acceptable force that [he] had to know he was violating the Constitution." *Hope v. Pelzer*, 536 U.S. 730, 754 (2002) (Thomas, J., dissenting) (citing *Priester v. Riviera Beach*, 208 F. 3d 919, 926 (11th Cir. 2000)). In other words, that Gintz's use of force was excessive should be common sense.

1. Officers Cannot Brandish Weapons at Compliant Subjects.

The law is and has long been clear that, where "all *Graham* factors counsel against the use of force, it is objectively unreasonable for a police

officer to brandish a deadly weapon at . . . compliant suspects." *Flores*, 2020 WL 563799, at *7–9 (collecting cases). Although the Fifth Circuit has not had the occasion to consider this exact circumstance, it is clearly established that "even the use of relatively minor force . . . is excessive when deployed against 'a suspect who is neither fleeing nor resisting arrest.'" *Id.* at *7 (quoting *Sam*, 887 F.3d at 714).

Taken together, courts within this circuit, along with seven other circuits, have concluded that an officer violates the Fourth Amendment when he brandishes his weapon at compliant suspects. *Id.* at *8 (citing cases from the First, Third, Sixth, Seventh, Eighth, Ninth, and Tenth circuits); *see also Manis v. Cohen*, No. 00 Civ. 1955, 2001 WL 1524434, at *7–8 (N.D. Tex. Nov. 28, 2001) (denying qualified immunity on unlawful seizure and excessive force claims, where evidence showed an officer brandished a gun at plaintiff lacking "legal justification in using any force whatsoever," including because plaintiff was "not resist[ing] lawful police authority"); *Miller v. Salvaggio*, No. 20 Civ. 642, 2021 WL 3474006, at *9–10 (W.D. Tex. Aug. 6, 2021) (finding it "objectively unreasonable for [d]efendants to point their guns at [p]laintiffs," where all "*Graham* factors counsel against the use of force"). Moreover, as recognized in

Flores, this Court has indicated it would join its sister circuits given the occasion to do so. *See Checki v. Webb*, 785 F.2d 534, 538 (5th Cir. 1986) ("A police officer who terrorizes a civilian by brandishing a cocked gun in front of that civilian's face may not cause *physical* injury, but he has certainly laid the building blocks for a section 1983 claim against him.").

The lower court incorrectly distinguished *Flores*, crediting Gintz's version of the facts in doing so. The court held that, unlike in *Flores*, Gintz did not use physical force against Appellants, and had reasonable suspicion criminal activity was afoot. But drawing a gun on an individual is deemed "force." *See, e.g., Smith v. Heap*, 31 F.4th 905, 912 (5th Cir. 2022). At bottom, *Flores* read alongside this Court's decision in *Joseph* stand for the principle that an officer cannot brandish his weapon against compliant suspects, regardless of whether the officer had reasonable suspicion to initiate the encounter or whether the officer ultimately uses physical force. *Flores*, 2020 WL 563799, at *7–9; *Joseph*, 981 F.3d at 324, 332–33.

The district court relied on a single Fifth Circuit case for the principle that it was lawful for Gintz to brandish his weapon. ROA.1339. But *Hodge v. Laryisson* is distinguishable. 226 F.3d 642 (5th Cir. 2000).

Hodge held that an officer's brandishing of a firearm during a drug raid of a home for which the officer had a search warrant was lawful. *Id.* at 642. *Hodge* did not involve a seizure where the officer had only reasonable suspicion of a traffic violation, the suspect fully complied, and no resistance or flight took place (material facts at issue in this case). *See id.* *Hodge* thus has no bearing here. *See supra* at Part II.A.1.[10]

2. Officers Cannot Extend a Seizure by Holding Compliant People at Gunpoint for Minutes.

It is also clearly established that Gintz unlawfully extended the encounter by brandishing his weapon for up to five minutes. A key requirement with respect to seizures is that they must "last no longer than is necessary to effectuate the purpose." *Florida v. Royer*, 460 U.S. 491, 500 (1983). A violation occurs where an officer fails to diligently pursue a means of investigation "that would quickly confirm or dispel the authorities' suspicion." *United States v. Place*, 462 U.S. 696, 702 (1983).

[10] In assessing Gintz's actions, the court also relied on *Hankins v. Wheeler*, No. 21-1129, 2023 WL 5751131 (E.D. La. Sept. 6, 2023), appeal pending *Hankins v. Wheeler*, No. 23-30711 (5th Cir. 2023), and *Martin v. City of Alexandria Municipality Police Dep't*, No. CIV A 03-1282, 2005 WL 4909292 (W.D. La. Sept. 16, 2005). But these cases are inapt as the facts the court relied upon—that more than a traffic violation existed here and that compliance and lack of resistance were immaterial—are in dispute. Moreover, *Martin* is distinguishable for a separate reason. There, the officer used a weapon because the suspects had items in his hands, and the officer was unable to tell what the items were. *Id.* There were not objects in view in Appellants' hands that would tether them to Gintz's suspicion that they may have been throwing contraband over the fence. *See supra* at Part II.A.1.a.

The officer's "course of action 'must be reasonably related . . . to dispelling his reasonable suspicion developed during the [encounter]." *United States v. Thibodeaux*, 276 F. App'x 372, 380 (5th Cir. 2008) (citation omitted). Where this is not the case, he commits a Fourth Amendment violation. *Id.*

Accordingly, even if *arguendo* it was reasonable (and it was not) for Gintz to briefly brandish his firearm, it is clearly established that continuously brandishing it at compliant and unresisting Appellants for minutes straight was objectively unreasonable; indeed, unlike Lacaze, Gintz failed to utilize an alternative course of action reasonably related to dispelling his suspicions. *See supra* at Part II.A.2.c. (Lacaze found no reason to draw his weapon and told Gintz to put his down, quickly dispelling any suspicion); *see also Short v. West*, 662 F.3d 320, 327 (5th Cir. 2011) (affirming determination that sheriff's actions were not reasonably related to the circumstances of the stop where sheriff ordered individuals be detained and escorted to station so he could interview them, an action that was "not likely to 'confirm or dispel his suspicions *quickly*'" in light of other available methods).

C. The Court Erred in Finding No Cognizable Injury.

The district court's alternative argument as to why the unlawful seizure and excessive force claims fail is makeweight. The opinion states: "While the Court is mindful of the costs associated with treatment for mental health issues and psychological injury, it is noted that other indicia of psychological injury–including, for example, letters from teachers or report cards evidencing K.P.'s declining academic performance–could have been provided to the Court but were not." ROA.1345. This is not right, as third-party written records are not required under Circuit law. *See Alexander*, 854 F.3d at 309 ("*Any* force found to be objectively unreasonable necessarily exceeds the *de minimis* threshold."). If a jury finds Gintz's use of force objectively unreasonable, "even relatively insignificant injuries and purely psychological injuries will prove cognizable." *Id.*; *Williams v. Bramer,* 180 F.3d 699, 703 (5th Cir.1999). Psychological injury has been established here. *See supra* Part II.C.

First, the court brushed aside Appellants' testimony regarding their injuries, citing a lack of evidence. ROA.1343. But a jury could find that the injuries are cognizable based on Appellants' testimony alone. In

dismissing Appellants' experience of being held at gunpoint for "mere minutes," the court failed to appreciate the terror of staring down a firearm—having it pointed, or "swung," at your children; hearing your children crying in fear; having it pressed against your head; smelling alcohol on its bearer's breath; hearing the frantic, uncontrolled bearer threaten to "blow your fucking head off"; and fearing for minutes that your children will see you gunned down. That the court can dismiss this terror as inconsequential because it lasted "mere minutes" is perhaps the clearest indication that this case—and the question of whether Gintz's behavior in those "mere minutes" was reasonable—belongs before a jury.

It is sufficient to rely on Appellants' undisputed testimony and recitation of the facts because it is not contradicted by any other evidence. *See Odubela v. Exxon Mobil Corp.*, 736 F. App'x 437, 441 (5th Cir. 2018) ("[The Court] will not evaluate credibility or weigh evidence" at the motion for summary judgment stage); *see also Leonard v. Dixie Well Serv. & Supply, Inc.*, 828 F.2d 291, 294 (5th Cir. 1987) (similar)). It was inappropriate for the court to weigh the credibility of Appellants' emotional distress on summary judgment; whether they were injured, and the extent of their injuries should be determined by a jury. *Id.*

Second, as to the written records the lower court argues are required to establish injury, Federal Rule of Civil Procedure 56(c) articulates no such requirement. The fact is, the Fifth Circuit does not require corroborating medical evidence to show evidence of injury for the purposes of summary judgment or trial. On this point, the standard favors the plaintiff's testimony unless evidence in the record makes a plaintiff's claims untenable. *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Anderson v. McCaleb,* 480 F. App'x 768, 771-72 (5th Cir. 2012) (similar). A non-conclusory affidavit can create genuine issues of material fact that preclude summary judgment, even if the affidavit is self-serving and uncorroborated. *Lester v. Wells Fargo Bank, N.A.*, 805 F. App'x 288, 291 (5th Cir. 2020).

Not only has this Court never held that a civil rights plaintiff's testimony alone is insufficient to prove injury or any other element of an excessive force claim, it has explicitly held that no such requirement exists. *See Durant v. Brooks*, 826 F. App'x 331, 336 (5th Cir. 2020); *see also Benoit v. Bordelon*, 596 F. App'x 264, 269 (5th Cir. 2015) (plaintiff's testimony alone sufficient to establish injury); *Falcon v. Holly*, 480 F.

App'x 325, 326 (5th Cir. 2012) (similar); *Young v. Akal*, 985 Fed. Supp. 2d 785, 800 (W.D. La. 2013) (same).

Finally, where the causal link between an alleged injury and a defendant's action is obvious, there is no need for medical evidence. *See Ziesmer v. Hagen,* 785 F.3d 1233, 1239 (8th Cir. 2015) (cleaned up) (expert testimony unnecessary where injury not sophisticated and inferences drawn from the facts within "range of common experiences"). Here, the court pointed to no legal authority holding that a civil rights plaintiff seeking to establish injury in an excessive force case must present evidence other than their own testimony.

Accordingly, a jury could find that Appellants suffered (1) an injury resulting "directly and only from [Gintz's] use of force," *see* ROA.1077-78, 1100, 1108, 1207, 1207-08, (2) the "excessiveness of which was clearly unreasonable," *see supra* at Part II. *Chambers*, 2023 WL 2823902, at *3. On summary judgment, Appellants have established they meet the first element (causation) of this injury test; as to the second element (excessive force for a prolonged period), disputed or ignored material facts at the lower court preclude reaching the conclusion that Gintz used reasonable force for an appropriate period.

III. The Court's Refusal to Exercise Supplemental Jurisdiction over the State Law Claims Warrants Reversal.

The court declined to exercise supplemental jurisdiction over Appellants' remaining state law claims on the grounds that no federal claims remained in the case. ROA.1346-49. Because the court's dismissal of Appellants' Section 1983 claims should be reversed, so too should the dismissal of their Louisiana state law claims. *Cherry Knoll, L.L.C. v. Jones*, 922 F.3d 309, 320 (5th Cir. 2019) (reversing dismissal of plaintiff's Section 1983 claims and vacating declination of supplemental jurisdiction resting on that dismissal); *see also Est. of Holt v. City of Hattiesburg*, No. 17-60302, 2020 WL 582580, at 231 n.2 (5th Cir. Feb. 5, 2020).

CONCLUSION

This Court should reverse the judgment of the district court.

Dated: February 20, 2024

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Rule 32(a)(7)(B)(i) of the Federal Rules of Appellate Procedure because it contains 12,759 words, excluding the parts of the brief exempted by Rule 32(f).

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/s/ Nora Ahmed
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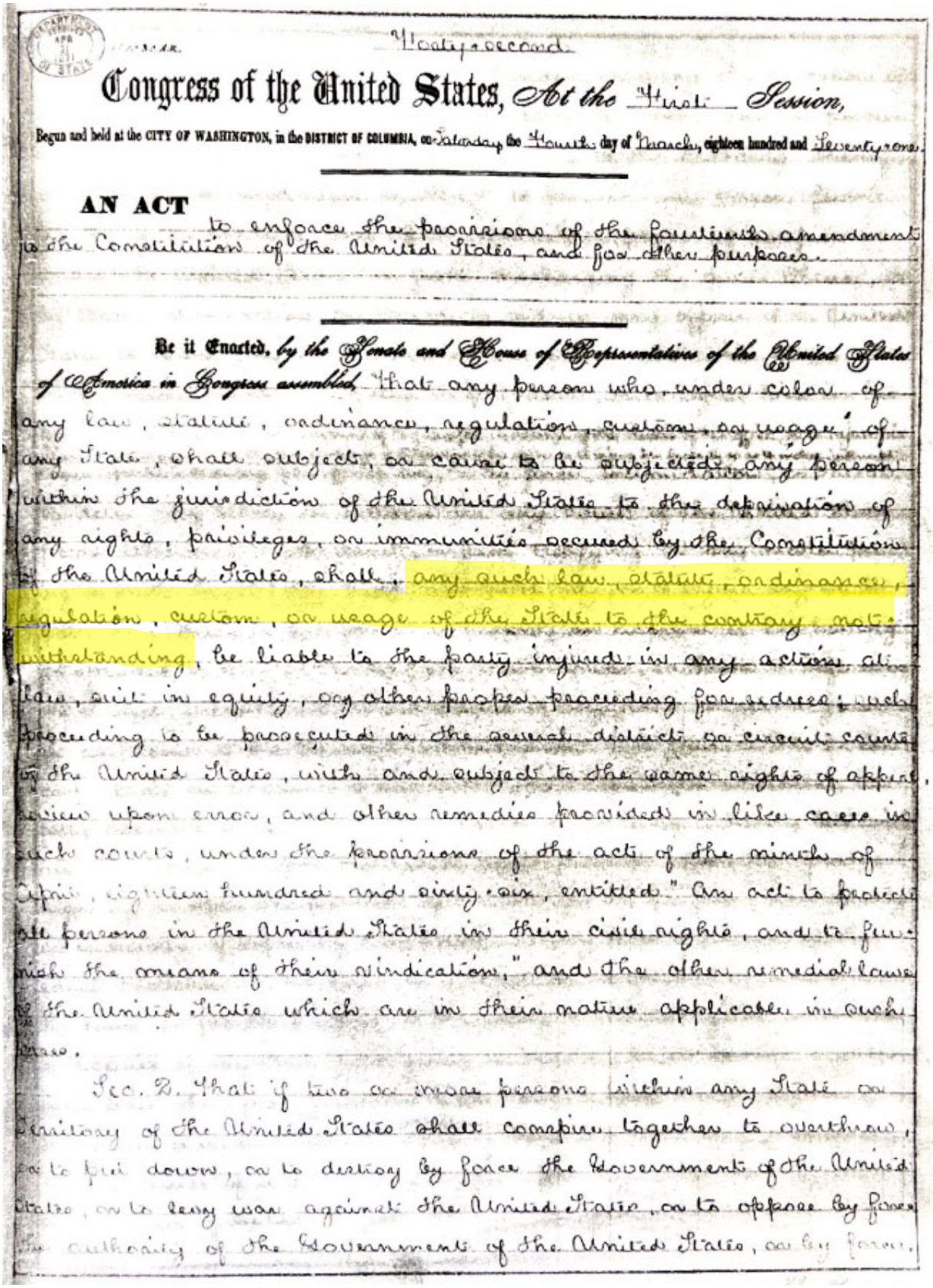
APPENDIX A



Forty-second

Congress of the United States, At the First Session,

Begun and held at the CITY OF WASHINGTON, in the DISTRICT OF COLUMBIA, on Saturday, the Fourth day of March, eighteen hundred and Seventy-one.

AN ACT

to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes.

Be it Enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several districts or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication," and the other remedial laws of the United States which are in their nature applicable in such cases.

Sec. 2. That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the Government of the United States, or by force,

United States Court of Appeals

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February 21, 2024

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No. 23-30879 Pigott v. Gintz
USDC No. 1:21-CV-1015

Dear Ms. Ahmed,

Your brief has been processed. Within 14 days, counsel must separately file a copy of the Record Excerpts in Portable Document Format (PDF) file, as required by 5th Cir. R. 30.1.2, by using the docket event "Record Excerpts Filed," which is found under the "Briefs" category. Failure to do so may result in the dismissal of the appeal.

Sincerely,

LYLE W. CAYCE, Clerk

Renee McDonough

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Renee S. McDonough, Deputy Clerk
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