No. 22-1878

IN THE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Abrar Omeish,

Plaintiff-Appellant,

v.

Justun Patrick,

Defendant-Appellee.

On appeal from the United States District Court
for the Eastern District of Virginia
Case No. 1:21-cv-35
Hon. Liam O'Grady

BRIEF OF AMICUS CURIAE PUBLIC ACCOUNTABILITY IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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October 24, 2022

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INTEREST OF AMICUS CURIAE[1]

Public Accountability is a nonpartisan, nonprofit organization that promotes access to civil justice for those injured by the government. As part of its mission, Public Accountability has developed deep expertise in the area of qualified immunity, and particularly qualified immunity's interplay with excessive uses of force. It uses that expertise to help individuals, to inform lawmakers, and—through briefs like this one—to advise the courts. Because qualified immunity and excessive force are the main issues in this appeal, Public Accountability offers a perspective that will help inform the Court's decision.

[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel has made any monetary contributions to fund the preparation or submission of this brief. Defendant-Appellee Justun Patrick declined to consent to the filing of this brief.

INTRODUCTION

When Justun Patrick pulled Abrar Omeish over, she was less than cooperative. No one denies this. She questioned the reason for the stop and she did not immediately produce her papers. But that is not enough, under our constitutional system of government, for agents of the state to exercise their monopoly on violence. The Fourth Amendment requires more. It asks: Had Omeish committed serious crimes? Did she present an immediate threat? Did she actively resist arrest, or attempt to flee?

To each those questions the answer is "no." She had committed a traffic violation—a minor crime, insufficient on its own to authorize force under the law of any circuit. She was unarmed and remained in her car. She posed no "direct physical threat." JA 25. She did not attempt to flee. Whether she resisted arrest is genuinely disputed, JA 24, but that means that for summary judgment purposes, she didn't. In short, her conduct satisfied none of the Fourth Amendment's prerequisites for the use of force.

Even so, Patrick pepper-sprayed her at point-blank range—and directly in the face, at that. Now he seeks qualified immunity for his conduct.

Qualified immunity is about "fair notice."[2] It shields government agents from liability for violating constitutional rights if those rights were not "clearly established" at the time of the violation. A right can by clearly established by controlling case law from the relevant court of appeals or by a "consensus of persuasive case law" from other circuits.[3]

This amicus brief offers two points for the Court's consideration. First, qualified immunity's legal foundation has come under fire from jurists and scholars of all ideological stripes. Taking heed of that criticism, the Supreme Court has recently trimmed the doctrine's harshest excesses. This Court's decision should account for the Supreme Court's jurisprudential course correction.

Second, under the robust consensus of the other circuits, Omeish had a clearly established right not to be pepper-sprayed. The district court reached a contrary conclusion not based on any threat presented by Omeish, but—because of the roadside setting—based on her disobedience alone. JA 25. The Sixth, Seventh, Eighth, and Ninth Circuits have rejected that reasoning, and the First, Second, and Fifth Circuits have held generally that disobedience on its own cannot authorize significant force. *See infra* Part 2.2.2. So under the

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[2] *Hope v. Pelzer*, 536 U.S. 730, 739 (2002); *Thorpe v. Clarke*, 37 F.4th 926, 934 (4th Cir. 2022).

[3] *See, e.g.*, *Ray v. Roane*, 948 F.3d 222, 230 (4th Cir. 2020) (denying qualified immunity to an officer who needlessly shot a dog on the basis of decisions from six other circuits).

consensus of the other circuits' case law, Patrick could not have pepper-sprayed Omeish merely for disobeying him. And the same goes for all the other factors: A majority of the federal courts of appeals would rule for Omeish under their clearly established case law.

ARGUMENT

1. The Supreme Court has changed course on qualified immunity. This Court should take that into account.

In recent years, qualified immunity has come under criticism from jurists and commentators of all ideological stripes. Professor Joanna Schwartz of UCLA, a leading expert on police-misconduct litigation, has described qualified immunity as "a doctrine unmoored to common-law principles, unable or unnecessary to achieve the Court's policy goals, and unduly deferential to government interests."[4] Professor William Baude of the University of Chicago, a prominent scholar of originalism, has examined the professed legal bases of qualified immunity and likewise determined that none of them "can sustain the modern doctrine."[5] And Professor Alexander Reinert has shown that as enacted,

[4] Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1800 (2018).

[5] William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 51 (2018).

before it was altered by a scrivener's error, the text of 42 U.S.C. § 1983 explicitly excluded common-law defenses like qualified immunity.[6]

Based on the work of Professor Baude and others, Justice Thomas called for overruling the current doctrine in *Baxter v. Bracey*, concluding that it "appears to stray from the statutory text" of 42 U.S.C. § 1983. *Baxter*, 140 S. Ct. 1862, 1862 (2020) (Thomas, J., dissenting from denial of certiorari). Justice Gorsuch, too, has expressed skepticism of the more stringent interpretations of the "clearly established" requirement. *Browder v. City of Albuquerque*, 787 F.3d 1076, 1082–83 (10th Cir. 2015) (Gorsuch, J.). And Justice Sotomayor has objected that the Court's most recent applications of the doctrine involve "nothing right or just under the law." *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting).

Meanwhile, in this Court, Judge Motz has noted that "aspects of the federal doctrine of qualified immunity have faced criticism from litigants, scholars, and Supreme Court Justices alike." *R.A. v. Johnson*, 36 F.4th 537, 547 n.2 (4th Cir. 2022) (Motz, J., concurring). In the Fifth Circuit, Judge Ho has labeled qualified immunity one of "an unholy trinity of legal doctrines" that "conspires to turn winnable claims into losing ones." *Tucker v. Gaddis*, 40 F.4th 289, 293 (5th Cir. 2022)

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[6] Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 101, 166–67 (forthcoming), *available at* https://ssrn.com/abstract=4179628.

(Ho, J., concurring). And in nearly every other circuit, judges have reached similar conclusions.[7]

All this criticism has not gone unnoticed at the Supreme Court. In a pair of recent cases, the Court rejected lower-court grants of qualified immunity for the first time in over 15 years. *See Taylor v. Riojas*, 141 S. Ct. 52 (2020) (per curiam); *McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (mem.). In *Taylor*, the Court held that confining a prisoner for several days in "shockingly unsanitary cells" obviously violated the Constitution, even without a case directly on point. 141 S. Ct. at 53. And in *McCoy*, it vacated the Fifth Circuit's grant of qualified immunity to a prison guard who assaulted an inmate with pepper spray "for no reason at all," 950 F.3d 226, 232 (5th Cir. 2020), signaling that its course correction held fast even for claims of excessive force. 141 S. Ct. at 1364.

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[7] *See, e.g.*, *McKinney v. City of Middletown*, 49 F.4th 730, 756 (2d Cir. 2022) (Calabresi, J., dissenting) ("[T]he doctrine of qualified immunity—misbegotten and misguided—should go."); *Jefferson v. Lias*, 21 F.4th 74, 87, 93–94 (3d Cir. 2021) (McKee, J., joined by Restrepo & Fuentes, JJ., concurring); *Reich v. City of Elizabethtown*, 945 F.3d 968, 989 n.1 (6th Cir. 2019) (Moore, J., dissenting); *Thompson v. Cope*, 900 F.3d 414, 421 n.1 (7th Cir. 2018); *Goffin v. Ashcraft*, 977 F.3d 687, 694 n.5 (8th Cir. 2020) (Smith, J., concurring); *Sampson v. Cty. of Los Angeles*, 974 F.3d 1012, 1025 (9th Cir. 2020) (Hurwitz, J., concurring in part and dissenting in part); *Cox v. Wilson*, 971 F.3d 1159, 1165 (10th Cir. 2020) (Lucero, J., joined by Phillips, J., dissenting from the denial of rehearing en banc); *Schantz v. DeLoach*, 2021 WL 4977514, at *12 (11th Cir. 2021) (Jordan, J., concurring).

Assessing these decisions, Judge Willett of the Fifth Circuit has concluded that "the Court seems determined to dial back [qualified immunity's] harshest excesses." *Ramirez v. Guadarrama*, 2 F.4th 506, 522 (5th Cir. 2021) (Willett, J., dissenting). Other jurists, too, have concluded that *Taylor* and *McCoy* represent a change in jurisprudential heading. *See, e.g.*, *Truman v. Orem City*, 1 F.4th 1227, 1240 (10th Cir. 2021); *Moderwell v. Cuyahoga Cnty.*, 997 F.3d 653, 667 (6th Cir. 2021); *Cope v. Cogdill*, 3 F.4th 198, 220 (5th Cir. 2021) (Dennis, J., dissenting); *Rico v. Ducart*, 980 F.3d 1292, 1307 (9th Cir. 2020) (Silver, J., concurring in part). Whatever decision this Court reaches here, it too should account for this recent change in the Supreme Court's qualified-immunity jurisprudence.

2. This Court should also consider the robust consensus of the other circuits: Patrick's use of pepper spray on Omeish was excessive.

Whether a police officer's use of force is excessive under the Fourth Amendment depends, on the one hand, on the type, amount, and severity of force used; and on the other hand, on the government's interest in using that degree of force. *Est. of Armstrong ex rel. Armstrong v. Vill. of Pinehurst*, 810 F.3d 892, 899 (4th Cir. 2016). As Omeish's brief explains, this Court's precedents clearly establish that pepper-spraying her was an excessive use of force. Most of the federal

courts of appeals agree: Patrick's use of pepper spray on Omeish was excessive.

2.1. Pepper-spraying Omeish was a serious intrusion on her liberty interests.

Pepper spray is "*designed* to cause intense pain." *Young v. Cty. of Los Angeles*, 655 F.3d 1156, 1162 (9th Cir. 2011) (quotation marks omitted). It burns the victim's skin, paralyzes the victim's larynx, causes mucus to come out of the victim's nose, and generally subjects the victim to "disorientation, anxiety, and panic." *Id.* It can cause "protracted impairment of a function of a bodily organ" and "lifelong health problems such as asthma." *Id.* Indeed, for some, it can even cause "asphyxia and death." *See Iko v. Shreve*, 535 F.3d 225, 239 (4th Cir. 2008). That is why "several appellate courts" have classified it as a "dangerous weapon" under the criminal sentencing guidelines. *United States v. Douglas*, 957 F.3d 602, 606–07 & n.15 (5th Cir. 2020) (collecting cases). And that is also why most circuits classify it as a "significant" use of force that requires a similarly high state interest in using force.

In the **First Circuit**, "appl[ying] pepper spray into the faces of the non-threatening plaintiffs" to force compliance with police orders violates the Fourth Amendment. *Asociacion de Periodistas de Puerto Rico v. Mueller*, 529 F.3d 52, 60–61 (1st Cir. 2008).

In the **Second Circuit**, the use of pepper spray "constitutes a significant degree of force" because of its "incapacitating and painful effects." *Edrei v. Maguire*, 892 F.3d 525, 543 (2d Cir. 2018) (quoting *Tracy v. Freshwater*, 623 F.3d 90, 98 (2d Cir. 2010)). "[I]t violate[s] clearly established law to use pepper spray against a non-resisting and non-threatening individual[.]" *Jones v. Treubig*, 963 F.3d 214, 226 (2d Cir. 2020).

In the **Sixth Circuit**, using pepper spray may amount to excessive force "even when a suspect verbally and physically resists arrest," unless she committed a severe crime or posed an immediate threat. *Grawey v. Drury*, 567 F.3d 302, 311 (6th Cir. 2009). In particular, pepper-spraying someone in the face, at "close proximity"—in other words, as Patrick did to Omeish—is justified only when the state's interest in using force is especially high. *Wright v. City of Euclid*, 962 F.3d 852, 871 (6th Cir. 2020).

The **Ninth Circuit** considers pepper spray, "particularly [when used] in the face," to be a "non-trivial, intermediate level of force"—less severe than "deadly force," to be sure, but still a "significant intrusion upon an individual's liberty interests." *Senn v. Smith*, 2022 WL 822198, at *2 (9th Cir. 2022); *Young*, 655 F.3d at 1161. It cannot be used unless "justified by a commensurately serious state interest." *Young*, 655 F.3d at 1163.

2.2. Pepper-spaying Omeish was not justified by a commensurately serious state interest.

The state's interest in using force is evaluated under the totality of the circumstances, but with a particular eye toward three factors: the severity of the crime the plaintiff committed, if any; whether the plaintiff posed an "immediate threat" to the safety of officers or others; and whether the plaintiff was "actively resisting" arrest or attempting to flee. *Armstrong*, 810 F.3d at 899 (quotation marks omitted).

2.2.1. Omeish had committed, at most, minor crimes.

Omeish ran a red light, and she didn't get out of her car when asked. She also refused at first to hand over her license and registration, but she was trying to comply with that order by the time Patrick pepper-sprayed her. These are not major crimes under the law of any circuit.

In the **First Circuit**, a "civil motor vehicle violation" is a "minor infraction[]" that does not justify removing someone from a parked vehicle and taking them to the ground. *Raiche v. Pietroski*, 623 F.3d 30, 37 (1st Cir. 2010). And a plaintiff's "mere obstinance," unaccompanied by any evidence of a threat, cannot warrant the use of pepper spray. *Asociacion*, 529 F.3d at 60.

In the **Fifth Circuit**, a "minor traffic violation" cannot justify intermediate force—in that case, "breaking [the plaintiff's] driver's side

window and dragging her out of the vehicle." *Deville v. Marcantel*, 567 F.3d 156, 167–69 (5th Cir. 2009).

The **Sixth Circuit** has held that conduct much like Omeish's—"an illegal left-hand turn"—is "not [a] particularly severe" crime. *Kostrzewa v. City of Troy*, 247 F.3d 633, 639 (6th Cir. 2001). Nor is "obstructing official business." *Thomas v. Plummer*, 489 F. App'x 116, 126 (6th Cir. 2012).

In the **Ninth Circuit**, "run-of-the-mill traffic violation[s]" provide "little, if any, support for the use of force." *Young*, 655 F.3d at 1164; *see also Bryan v. MacPherson*, 630 F.3d 805, 828 (9th Cir. 2010) ("Traffic violations generally will not support the use of a significant level of force."). Nor does "disobeying a peace officer," so long as the disobedience is merely "passive noncompliance" and doesn't pose a danger to the officer or others. *Young*, 655 F.3d at 1164–65. In fact, *Young* is directly on point: Much as Omeish refused an order to exit her vehicle, the plaintiff there refused an order to re-enter his, and the court held that his disobedience was not enough to authorize the use of pepper spray. *Id.* So too in *Bryan*: The plaintiff disobeyed an order to remain in his car, but his disobedience, on its own, could not justify "significant force." *See* 630 F.3d at 822, 828–29.

And last, in the **Tenth Circuit**, traffic offenses—even the more serious ones, like driving under the influence—warrant no "more than

minimal force." *Wilkins v. City of Tulsa*, 33 F.4th 1265, 1274 (10th Cir. 2022).

So the consensus of the other circuits is that Omeish had committed a minor crime at most, warranting little or no force on its own.

2.2.2. Omeish did not present an immediate threat to Patrick or anyone else.

The district court found, for purposes of summary judgment, that "Omeish herself" was not a "direct physical threat." JA 25. It also found that the parties genuinely disputed "the degree to which Omeish resisted" Patrick's attempt to remove her from the car. JA 24. It granted summary judgment only because Omeish disobeyed Patrick "on the side of a busy roadway," which in its view was "inherently dangerous." JA 24–25. But most circuits have held that mere disobedience cannot justify significant force. And several circuits have so held even when the disobedience takes place on the side of a busy roadway.

The **First Circuit** has held that a motorist who displays some disobedience—there, failing to stop when signaled by police—but who, once stopped, remains in their parked vehicle, displays no weapons, and makes no physical threats, does not pose enough of a threat to justify significant force. *Raiche*, 623 F.3d at 37; *see also Asociacion*, 529 F.3d at 60.

The **Second Circuit** has held that a plaintiff's "refusal to permit the easy application of handcuffs by placing her hands behind her back" could not reasonably be "interpret[ed] as threatening an attack." *Brown v. City of New York*, 798 F.3d 94, 102 (2d Cir. 2015).

The **Fifth Circuit** has also held that no reasonable officer would perceive a plaintiff's mere disobedience—there, refusing to obey an order to kneel—as an immediate threat. *Hanks v. Rogers*, 853 F.3d 738, 746 (5th Cir. 2017). Indeed, it held that this conclusion was "obvious" and thus denied the officer qualified immunity. *Id.* at 747.

In the **Sixth Circuit**, "mere failure to follow orders" does not justify using intermediate force: An officer must have "some other reason to fear for his safety." *Palma v. Johns*, 27 F.4th 419, 430 (6th Cir. 2022); *id.* at 424, 442–43 (this rule clearly established since at least 2017). Nor does surrounding traffic change the threat calculus. *See, e.g.*, *Meadows v. City of Walker*, 46 F.4th 416, 418, 420 (6th Cir. 2022) (affirming denial of summary judgment in case involving traffic stop on side of busy highway). After all, the relevant factor is whether "the *suspect* poses an immediate threat to the safety of the officers or others." *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)) (emphasis added).

In **Seventh Circuit**, even in the context of a "high-risk traffic stop," only "minimal force" is warranted to "remove a driver perceived

to be intoxicated and passively resisting." *Phillips v. Cmty. Ins. Corp.*, 678 F.3d 513, 517, 529 (7th Cir. 2012).

The **Eighth Circuit** has declined to hold that a vehicle occupant's mere disobedience—even on the side of a busy highway, with the officer "standing near passing traffic"—is necessarily "a realistic threat to [the officer's] personal safety." *Brown v. City of Golden Valley*, 574 F.3d 491, 497 & n.4 (8th Cir. 2009). Instead, in that circuit, the question must go to a jury. *Id.*

The **Ninth Circuit** has also rejected the argument—adopted by the district court here—that a plaintiff's disobedience during a traffic stop is inherently dangerous. *Young*, 655 F.3d at 1165; *cf.* JA 24–25. Instead, it has observed, officers in those circumstances have a variety of "less painful and potentially injurious" options, including calling for assistance, so resorting to force without first exhausting those options is unreasonable. *Young*, 655 F.3d at 1165–66.

Also, here, the district court made much of the fact that the traffic stop took place "on the side of a busy, two-lane road." JA 24. But *Bryan* involved a traffic stop on California State Route 75, just after the Coronado Bridge—a much busier stretch of road. 630 F.3d at 822; *see California State Route 75*, Wikipedia (May 25, 2022).[8] Still, the Ninth

[8] https://en.wikipedia.org/w/index.php?title=California_State_Route_75&oldid=1089883062.

Circuit did not find any "substantial government interest in using significant force" there. *Bryan*, 630 F.3d at 828–29.

So the consensus of the other circuits is that disobedience alone is not a realistic threat to an officer's safety. In the words of the Eighth Circuit, it may be "nothing more than an affront to [the officer's] command authority." *Golden Valley*, 574 F.3d at 497. And several circuits have adhered to that conclusion even under the specific facts here—a traffic stop by the side of a busy roadway. So that too cannot, under the clearly established case law of the courts of appeals, justify Patrick's use of force against Omeish.

2.2.3. Omeish was only passively resisting.

"Resistance" is a matter of degree, not of kind. It "runs the gamut" from purely passive civil disobedience to active physical assault on an officer. *Bryan*, 630 F.3d at 830. The district court found that the degree of Omeish's resistance was genuinely disputed and that Omeish herself did not pose a "direct physical threat." JA 24–25. In other words, as the video shows, she disobeyed commands, she refused to get out of the car, and she was not easily removed from the car. Under the summary judgment standard, perhaps the most that can be said is that she went limp. But whatever else she may have done, she did not threaten or use violence. Had Patrick stopped trying to remove her from the car, perhaps to await backup or even take her up on her

belated offer to produce her driver's license, he would have been in no danger.

In the **Second Circuit**, passive resistance, "including going limp" and "refusing to identify [oneself]," does not justify the use of significant force. *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 118, 123–24 (2d Cir. 2004). Indeed, somewhat more resistance—refusing to put one's hands behind one's back for cuffing—does not justify "taking a person to the ground and incapacitating her with pepper [spray]." *Brown*, 798 F.3d at 102.

In the **Third Circuit**, a person who "is verbally uncooperative or passively resists the police," but who offers no other grounds under *Graham* for using force, "has the right not to be subjected to physical force such as being grabbed, dragged, or taken down." *El v. City of Pittsburgh*, 975 F.3d 327, 340 (3d Cir. 2020). Indeed, reviewing the decisions of several other circuits, the Third Circuit found that right clearly established. *Id.* at 339–40.

In the **Fifth Circuit**, a plaintiff's "passive resistance to being removed from her car" is not enough to authorize intermediate force. *Deville*, 567 F.3d at 167–69. Passive resistance, in that court, includes pulling one's arms away when an officer is attempting to physically remove one from one's vehicle. *Trammell v. Fruge*, 868 F.3d 332, 341 (5th Cir. 2017).

In the **Sixth Circuit**, even "verbally and physically resisting arrest" is not always enough to justify intermediate force like pepper spray. *Grawey*, 567 F.3d at 311. Among other things, that court distinguishes between physical resistance that consists merely of "pulling away from an officer" and physical resistance that rises to the level of "wrestling with or pushing an officer." *Wright*, 962 F.3d at 871; *see also Smith v. City of Troy*, 874 F.3d 938, 945 (6th Cir. 2017) (pulling one's arm away from an officer is "minimal" resistance). Such facts are, of course, disputed here. JA 24.

In the **Seventh Circuit**, "willful non-compliance" is not active resistance; it is "passive resistance," and when an individual is passively resisting, "only minimal force is warranted." *Becker v. Elfreich*, 821 F.3d 920, 927, 929 (7th Cir. 2016) (cleaned up); *see also Miller v. Gonzalez*, 761 F.3d 822, 829 (7th Cir. 2014) ("willful refusal to obey a police officer's order" warrants only "minimal use of force" (citation omitted)). In fact, even if a suspect offers active resistance "at some point prior to an officer's deployment of force," it is unreasonable for an officer to use significant force "if the suspect is passively resisting when force is deployed." *Ferguson v. McDonough*, 13 F.4th 574, 583–84 (7th Cir. 2021).

The **Eighth Circuit** has also held that the Fourth Amendment forbids using intermediate force against a "nonviolent, suspected misdemeanant who was not fleeing or resisting arrest, who posed little

to no threat to anyone's safety, and whose only [offense was] noncompliance with the officer's commands." *Golden Valley*, 574 F.3d at 499.

In the **Ninth Circuit**, "a failure to fully or immediately comply with an officer's orders neither rises to the level of active resistance nor justifies the application of a non-trivial amount of force." *Nelson v. City of Davis*, 685 F.3d 867, 881–82 (9th Cir. 2012) (collecting cases). In fact, that court has held that an arrestee who physically prevented an officer from searching his pockets—who engaged the officer in a "pushing and pulling match"—was not "actively resisting." *Davis v. City of Las Vegas*, 478 F.3d 1048, 1052, 1056 (9th Cir. 2007). Similarly, it has also held that a plaintiff's pushing an officer away to prevent him from grazing her chest while he was arresting someone else could not justify use of a taser against her, because her conduct was merely "defensive" and "intended to protect her own body." *Mattos v. Agarano*, 661 F.3d 433, 449 (9th Cir. 2011) (en banc).

So the consensus of the other circuits is that Omeish's conduct—disobeying an order to exit her car, possibly going limp—is at most passive resistance. And passive resistance does not justify the use of significant force.

2.3. In pepper-spraying Omeish, Patrick used excessive force.

Even though Omeish had committed at most minor offenses, presented no threat, was not fleeing, and was not actively resisting, Patrick used significant force against her. He did not "*need*" to use such force. *Cf. Nelson*, 685 F.3xd at 878 (quotation marks omitted). He could have waited for backup to arrive. He could have taken her up on her offer to produce her papers. He could have simply used her license plate to issue a ticket, as automated cameras do. He did none of these things. Instead, he chose violence. Under the clearly established caselaw of a majority of the other federal courts of appeals, the force he used was excessive.

CONCLUSION

For all these reasons, the district court's decision should be reversed.

Dated: October 24, 2022

Respectfully submitted,

By: */s/Athul K. Acharya*
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Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) and Rule 32(a)(7)(B) because, excluding the parts of the brief exempted by Rule 32(f), it contains 4,174 words, as counted by Microsoft Word for Mac 16.67.

This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using a proportionally spaced typeface—ITC Galliard Pro—set at 14 points or larger.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 22-1878 Caption: Omeish v. Patrick

Pursuant to FRAP 26.1 and Local Rule 26.1,

Public Accountability
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/Athul K. Acharya Date: Oct 24, 2022

Counsel for: Public Accountability

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