

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

JEREMY JONES,

Plaintiff-Appellant,

—v.—

DAVID CEINSKI, JR., Officer, in his individual capacity,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

**BRIEF FOR AMICI CURIAE GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE, BRADY CENTER TO PREVENT
GUN VIOLENCE IN SUPPORT OF THE APPELLANT**

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1 through 26.1-3, *Amici Curiae* the Giffords Law Center to Prevent Gun Violence and the Brady Center to Prevent Gun Violence (“*Amici*”) submit the following Certificate of Interested Persons and Corporate Disclosure Statement.

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INTERESTS OF *AMICI CURIAE*

Amici Curiae the Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) and the Brady Center to Prevent Gun Violence (“Brady”) are nonprofit organizations dedicated to reducing and eliminating gun violence.¹

Giffords Law Center is a nonprofit policy organization serving lawmakers, advocates, legal professionals, gun-violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.² The organization was founded more than 30 years ago following a gun massacre at a San Francisco law firm and was renamed as the Giffords Law Center in 2017 after joining forces with the gun-safety organization founded by former Arizona Congresswoman Gabrielle Giffords. Today, through partnerships with gun violence researchers, public-health experts, and community organizations, Giffords Law Center researches, drafts, and defends laws, policies, and programs proven to effectively reduce gun violence. For years, Giffords Law Center has long researched and advocated for the connection between community trust in law enforcement and gun

¹ Pursuant to Federal Rule of Appellate Procedure 29(a), *Amici* certify that (1) both parties consented to the filing of this brief, (2) no party’s counsel authored the brief in whole or in part, (3) no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief, and (4) no person other than *Amici* contributed money that was intended to fund preparing or submitting this brief.

² Giffords Law Center’s website, www.giffords.org/lawcenter, is a clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

violence prevention. Giffords Law Center has contributed technical expertise and informed analysis as an *amicus* in numerous cases involving firearm regulations and constitutional principles affecting gun policy.

In January 2020, Giffords Law Center published a report about how trust between a community and the police plays a critical role in combatting gun violence.³ The Report analyzed aggregated research on police practices and found that officers' unlawful use of force corrodes community trust and confidence in law enforcement, particularly in communities of color where brutal histories of over-policing and under-protection continue to contribute to violence. The Report demonstrated that law enforcement's use of unlawful force in policing communities ultimately causes increased violence.

Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans' fundamental right to live. Further, recognizing that gun violence is intersectional, Brady has a substantial interest in advocating for solutions that not

³ See Giffords Law Center, In Pursuit Of Peace: Building Police-Community Trust to Break the Cycle of Violence (2020), <https://files.giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-In-Pursuit-of-Peace.pdf>.

only reduce gun violence but also advance equity.⁴ Brady has filed *amicus curiae* briefs in many cases involving the regulation of firearms.

STATEMENT OF THE ISSUES

1. Whether police use of excessive force substantially harms society by diminishing community trust in law enforcement?
2. Whether Officer Ceinski's use of excessive force against Mr. Jones violated his constitutional rights?
3. Whether Officer Ceinski's conduct harms the public interest and outweighs any risk from holding police officers accountable for misconduct?

INTRODUCTION

This case comes down to whether police officers who abuse civilians and compromise the public trust should be insulated from the consequences of their actions. Courts evaluating assertions of qualified immunity by police officers have underscored that allowing claims like those of Mr. Jeremy Jones to proceed signals to law enforcement that unjustified use of force and violence against civilians has consequences. It also signals to those harmed by such violence, and the broader community, that the legal system can and will protect them—which in turn encourages trust and participation in that system.

⁴See, e.g., Brady United Against Gun Violence, *Preventing Police Violence With New Approaches To Policing*, <https://s3.amazonaws.com/brady-static/policingreform.pdf> (last visited Dec. 6, 2023).

In this case, an officer effecting a non-criminal traffic stop for an open car door choked a Black man with a disability and tried to use the man's prompt and voluntary notice that he had a lawful handgun in the car as justification for the use of force. The district court then granted "qualified immunity" to the officer for his acts. This is a paradigmatic example of how police misconduct ruptures trust, disenfranchises community members, and exacerbates gun violence. Indeed, abundant research demonstrates that gun violence increases when law enforcement conduct damages trust between police and the communities they are supposed to serve. The resulting violence imperils police officers and civilians alike.

Amici agree with Mr. Jones that the district court's ruling was legally and factually erroneous. The lower court's decision to award qualified immunity and prevent Mr. Jones from presenting his case to a jury not only ratifies the harm inflicted on Mr. Jones, but also gives a free pass to police violence toward Black people like Mr. Jones and further deepens distrust by communities of color toward law enforcement. These schisms undermine efforts to diminish and prevent gun violence. Rather than exacerbate the scourge of gun violence that has already taken too many American lives, *Amici* respectfully urge this Court to reverse the district court's grant of qualified immunity.

BACKGROUND

Mr. Jones is a Black man in his early 30s with a physical disability.

(Complaint, ECF No. 1 ¶ 5; Affidavit of Jeremy Jones (“Jones Decl.”), ECF No. 49, ¶ 3 (M.D. Fla. April 14, 2023).)⁵ On August 8, 2020, at around 11:00 p.m., Officer Ceinski pulled over Mr. Jones while he was driving in Sarasota, Florida. (Jones Decl. ¶¶ 6, 7.) As instructed, Mr. Jones exited his vehicle. (*Id.* ¶ 9.) Outside of the vehicle, he removed his license and a concealed carry permit from his wallet and handed them to Officer Ceinski. (*Id.* ¶¶ 10–12.) Officer Ceinski asked Mr. Jones if he had a weapon, and Mr. Jones confirmed he did. (*Id.* ¶ 13.)

Officer Ceinski then grabbed Mr. Jones’s wrists, twisted his arms, pushed him against the car, and placed him in a chokehold. (*Id.* ¶ 14.) He repeatedly called Mr. Jones a “handicapped ni**a” and choked Mr. Jones until he couldn’t breathe. (*Id.* ¶¶ 16–17.) While suffocating Mr. Jones, Officer Ceinski punched him on the top of the head with a closed fist. (*Id.* ¶ 18.) Mr. Jones never resisted Officer Ceinski or reached for a weapon. (*Id.* ¶ 15.) Officer Ceinski himself testified that Mr. Jones “wasn’t fighting me.” (Deposition of Officer Ceinski, Jr. (“Ceinski Dep”), ECF No. 50. at 57:19–20.)

Mr. Jones was transported to Sarasota Hospital, and evaluated for a head contusion, neck pain, rib pain, and a possible wrist fracture. (Jones Decl. ¶ 23.) He later learned he had suffered an umbilical hernia from being twisted by Officer

⁵ All ECF references are to *Jones v. Ceinski*, No. 8:22-cv-00231-KKM-AAS (M.D. Fla.).

Ceinski. (*Id.*)

SUMMARY OF ARGUMENT

The district court’s grant of qualified immunity to Officer Ceinski should be reversed for at least three reasons.

First, the district court’s grant of qualified immunity exacerbates the community harm already caused by unconstitutional police misconduct. Research shows a causal link between police misconduct like Officer Ceinski’s and community harm: permitting police misconduct shatters community-police relations and leads to increased violence.

Second, Officer Ceinski was not entitled to qualified immunity because his use of force was unreasonable under *Graham v. Connor*, 490 U.S. 386, 395–97 (1989). The purported infraction at issue here was a non-criminal traffic violation, Mr. Jones complied with the officer’s instructions, and he did not pose a threat. Consistent with best practices, Mr. Jones voluntarily disclosed that he lawfully possessed a gun located in his vehicle. The district court’s determination that Mr. Jones posed a threat merely because he had a gun in his vehicle is not correct under Eleventh Circuit law.

Third, the district court did not properly conduct qualified immunity’s requisite balancing between the “two evils” to the public interest: imposing liability versus insulating an officer from liability. *Harlow v. Fitzgerald*, 457 U.S. 800, 813

(1982). Here, Officer Ceinski violated established Eleventh Circuit law prohibiting gratuitous use of excessive force against an individual who was cooperating with the police and posed no threat. Upholding the grant of qualified immunity causes clear harm to the public interest.

ARGUMENT

I. POLICE USE OF EXCESSIVE FORCE SUBSTANTIALLY HARMS SOCIETY BY DIMINISHING COMMUNITY TRUST IN LAW ENFORCEMENT AND THREATENING AN INCREASE IN GUN VIOLENCE.

Federal courts evaluating claims of qualified immunity must consider the harms and costs that police misconduct imposes on the public. *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Data analysis demonstrates that failing to hold police officers accountable for abusive conduct not only harms individual victims but also entire communities. The unbridled use of excessive force perpetuates a corrosive cycle of negative police encounters, community distrust, and increased gun violence. Accounting for these harms, Officer Ceinski should not have received qualified immunity.

A. The Use of Excessive Force by Police Exacerbates Community Distrust and Compromises Public Safety.

The use of excessive force by police against civilians undermines community safety by reinforcing public distrust in law enforcement.⁶ Studies show that, to

⁶ *See* Giffords Law Center, *supra* n.3.

successfully protect the public, police officers “must have active public cooperation, not simply political support and approval.”⁷ Community members who perceive police officers as engaging in *unreasonable* conduct—such as putting a civilian in a chokehold until he cannot breathe while conducting a stop for a minor traffic violation—are less likely to view police as legitimate.⁸ This serious problem is compounded when police officers are not held accountable for such impunity, further reinforcing community mistrust.⁹ In 2020, public confidence in police fell below 50 percent for the first time.¹⁰ This was due to a “widespread perception that bad officers are not held accountable when things go wrong.”¹¹ Qualified immunity plays an outsized role in perpetuating this cycle of impunity, mistrust, and violence.

Use of excessive force by police not only causes significant emotional and

⁷ Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 266–67 (2008) (finding that community members who view police as legitimate are more likely to cooperate with police officers and comply with the law).

⁸ Tom R. Tyler & Cheryl J. Wakslak, Profiling And Police Legitimacy: Procedural Justice, Attributions Of Motive, And Acceptance Of Police Authority, 42 Criminology 2 (Mar 7, 2006) <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.2004.tb00520.x>.

⁹ See Rebeccah L. Sokol, et al., *The association between perceived community violence, police bias, race, and firearm carriage among urban adolescents and young adults*, Preventative Med. 154 (Jan. 2022), <https://pubmed.ncbi.nlm.nih.gov/34863814/> (individuals with higher levels of police distrust were more likely to acquire a firearm for protection).

¹⁰ James Crave, et. al., *How Qualified Immunity Hurts Law Enforcement*, CATO Inst. (Feb. 15, 2022), <https://www.cato.org/study/how-qualified-immunity-hurts-law-enforcement>.

¹¹ *Id.*

psychological harm to individuals, it also harms the broader community.¹² Distrust in law enforcement triggered by community awareness of police brutality and excessive force dramatically decreases witness engagement and crime reporting rates.¹³ This ultimately leads to lower rates of solved homicides and other violent crimes.¹⁴ As the rate of unsolved murders climbs, faith in police plummets further, and vigilante justice spreads.¹⁵

The impact of excessive force on community safety is enduring. A lack of community trust makes it more difficult for police officers to carry out their

¹² Denise Herd, *Cycles of Threat: Graham v. Connor, Police Violence, and African American Health Inequities*, 100 Boston U. L. Rev. 1047 (2020), <https://www.bu.edu/bulawreview/files/2020/05/09-HERD.pdf> (police use of excessive force leads to increased physical injuries, lower resistance to diseases and increased levels of chronic stress and psychological harm, and exploring how these outcomes result in reduced opportunities for education and employment and increased incidents of crime); *see generally* Giffords Law Center, *supra* n.3.

¹³ Matthew Desmond, et al., *Police Violence and Citizen Crime Reporting in the Black Community*, 81 Am. Soc. Rev. 857, 870–73 (2016) (reporting an estimated net loss of 22,000 emergency 911 calls in the year following the beating of Frank Jude).

¹⁴ Police Exec. Research Forum, *Review of the Chicago Police Dep’t’s Homicide Investigation Process* 99 (2019), https://iapail.wpengine.com/wp-content/uploads/2023/04/Chicago-Homicide-Investigations-Assessment-Report_FINAL_to-CPD.pdf (“[L]ack of witness cooperation,” including because of police distrust, is “one of the primary reasons for uncleared homicides”); *see generally* Wesley Lowery, et al., *Murder with Impunity: An Unequal Justice*, Washington Post (July 25, 2018), https://www.washingtonpost.com/graphics/2018/investigations/black-homicides-arrests/?utm_term=.1a29ae9b4d30 (discussing the “vicious cycle” where law enforcement continually fails to solve homicides involving Black Americans, distrust of law enforcement deepens, fewer arrests occur, and investigation cooperation declines).

¹⁵ *See generally* Jill Leovy, *Ghettoside: A True Story of Murder in America* (2015).

responsibilities safely and effectively.¹⁶ Community distrust in police also contributes to increased rates of violence due to fear that police cannot or will not provide effective assistance.¹⁷ This dangerous cycle not only erodes trust, but also foments violence and leads to further tragedy.

Even when excessive police force is not fatal, studies show that excessive force negatively affects the well-being of civilians and their communities.¹⁸ “Reoccurring” and “persistent” violent police misconduct not only “promotes wear and tear, including diabetes, stroke, ulcers, cognitive impairment, autoimmune illnesses, accelerated aging, and death,” but may also cause “emotions [that] might be damaging to individual mental health and might elevate distress at the population level.”¹⁹

This phenomenon of community distrust of police compromising public safety has been referred to as the “Jude Effect.” This term was coined to describe

¹⁶ Jay Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, CATO Inst. (Sept. 14, 2020), <https://www.cato.org/policy-analysis/qualified-immunity-legal-practical-moral-failure#exacerbates-crisis-accountability-law>.

¹⁷ David S. Kirk & Andrew Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 Am. J. of Soc. 1190, 1198, 1216–21 (2011), <https://www.scholars.northwestern.edu/en/publications/cultural-mechanisms-and-the-persistence-of-neighborhood-violence>; see also Desmond, *supra* n.13, at 870–73.

¹⁸ Sirry Alang, et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 Am. J. Pub. Health 662, 662–65 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5388955/>.

¹⁹ *Id.* at 663.

the dramatic decline of 911 calls after a highly publicized incident in which off-duty police brutally beat a man named Frank Jude.²⁰ The Jude Effect was observed in Chicago after the police killing of 17-year-old Laquan McDonald and in Baltimore after Freddie Gray's death in police custody. As explicated in a federal investigative report on the Chicago Police Department, Laquan McDonald's shooting represented "a tipping point—igniting longstanding concerns about [the] officers' use of force, and the City's systems for detecting and correcting the unlawful use of force."²¹ The report concluded that "trust has been broken" between police and the community and that this "breach in trust has in turn eroded [the] ability to effectively prevent crime."²² From 2015 to 2016, homicides in Chicago increased by 85% while murders solved by police fell by nearly 50% (from 50% to 29%).²³ Police who use excessive force against civilians during routine traffic stops contribute to the Jude Effect by breaking trust between police and communities, deterring cooperation with

²⁰ See Desmond, *supra* n.13; John Diedrich & Ashley Luthern, *911 calls fell in black Milwaukee neighborhoods after Jude beating, study finds*, Milwaukee J. Sentinel (Sept. 2016), <https://www.jsonline.com/story/news/investigations/2016/09/29/911-calls-fell-black-milwaukee-neighborhoods-after-jude-beating-study-finds/90907882/> (discussing how prosecutors created the term "the Jude effect" to describe the distrust they were witnessing among Black jurors during jury selection).

²¹ U.S. Dep't of Justice Civil Rights Div. & U.S. Attorney's Office for the N.D. of Ill., *Investigation of the Chicago Police Dep't 1* (Jan. 13, 2017), <https://www.justice.gov/opa/file/925846/download>.

²² *Id.* at 1–2.

²³ Police Exec. Research Forum, *supra* n.14, at 2–3.

police and, thereby, compromising public safety.

Further, trends in the concentration of violent crime illustrate the importance of community trust and participation in ensuring public safety. Many cities experience a similar and striking pattern of violence in which law enforcement employs practices of over-policing,²⁴ which ultimately prove ineffective by reducing community trust.²⁵ Declines in public trust in law enforcement lead to other systemic problems, including higher crime and more frequent “self-policing,” with fewer crimes reported. Research funded by the National Institute of Justice confirmed this localized effect in Chicago, when rates of violence were falling in most areas of the city, but high murder rates persisted in certain neighborhoods where police were deeply mistrusted.²⁶ Recognizing that mistrust of law

²⁴ Typically, crimes are carried out by an insular group of people who are often involved in cycles of retaliatory violence but comprise less than 1% of a city’s population. See Stephen Lurie, et al., *Presentation: The Less Than 1%: Groups and the Extreme Concentration of Urban Violence*, National Network For Safe Communities 13–17, 23 (Nov. 2018), https://cdn.theatlantic.com/assets/media/files/npsc_gmi_concentration_asc_v1.91.pdf (summarizing data collected from nearly two dozen U.S. cities that revealed that around 50% of the cities’ homicides and nonfatal shootings involved about 0.6% of the population, and law enforcement knew those victims and perpetrators had affiliations with groups involved in violence).

²⁵ See Giffords Law Center, *supra* n.3 (explaining that “many communities struggling with long-simmering crises of confidence in law enforcement witnessed spikes in violence after high-profile police misconduct further weakened community trust,” and explaining that these communities “have long felt brutally over-policed and under-protected,” making them “particularly susceptible to this trend.”).

²⁶ Kirk & Papachristos, *supra* n.17, at 1190.

enforcement is a powerful contributor to violence, researchers found strong evidence that “neighborhoods where the law and the police are seen as illegitimate and unresponsive have significantly higher homicide rates,” even after accounting for differences in race, age, poverty, and other structural factors.²⁷

Research analyzing connections between use of excessive force and community distrust of law enforcement leads to the inescapable conclusion that actions like Officer Ceinski’s undermine community trust in law enforcement. The incident has not only indelibly marked Mr. Jones himself, but also his companion in the car that evening, any witnesses, and all who attended to him that night—from the officers who arrived at the scene, to the ambulance personnel, to the hospital personnel. So too has there been an impact on countless community members who may not have been directly involved the night of the incident, but heard about it or observed the aftermath. Officer Ceinski’s improper use of excessive force against a compliant motorist threatens increased distrust of police officers due to the perception that police officers may become “erratic” and threaten the lives of innocent people during routine interactions with the community.

B. The Racialized Dynamics of the Interaction Further Threaten Community Trust in Law Enforcement and Safety.

Overwhelming evidence demonstrates that police officers are more likely to

²⁷ *Id.* at 1216–21.

use physical force in the most structurally disadvantaged neighborhoods of the United States²⁸ and are especially more likely to use force—including deadly force—against Black men like Mr. Jones.²⁹ Recent Department of Justice investigations identified pervasive patterns of unconstitutional policing practices, including excessive use of force that disproportionately affected Black individuals and led to higher levels of distrust of the police by Black communities.³⁰ This distrust resulted in less community engagement with police and ultimately undermined police officers' ability to effectively solve and prevent violent crime. These disparities in policing explain, in part, why Black individuals living in socioeconomically disadvantaged communities report higher levels of police distrust.³¹

Upholding the grant of qualified immunity for Officer Ceinski would

²⁸ See Phillip Atiba Goff, et al., *The Science of Justice: Race, Arrests, And Police Use of Force*, Center For Policing Equity 4 (2016), https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf.

²⁹ See Giffords Law Center, *supra* n.3; see also Rob Arthur, *New Data Shows Police Use More Force Against Black Citizens Even Though Whites Resist More*, SLATE (May 30, 2019), <https://slate.com/news-and-politics/2019/05/chicago-police-department-consent-decree-black-lives-matter-resistance.html>.

³⁰ For descriptions of the investigations, see Giffords Law Center, *supra* n.3, at 55–57. See also M.C. Brown II & Camille Lloyd, *Black Americans Less Confident, Satisfied with Local Police*, GALLUP (Sept. 18, 2023), <https://news.gallup.com/poll/511064/black-americans-less-confident-satisfied-local-police.aspx> (stating that Black Americans are less confident than White Americans and Hispanic Americans in their local police).

³¹ See Desmond, *supra* n.13.

immunize police officers from liability for unconstitutional conduct that fundamentally undermines trust in police especially by communities of color, leading to broader community harms like decreased crime reporting. Such a ruling would also effectively sanction the pattern of over-policing of communities of color and the use of excessive force by police officers against communities of color, and further deepen community distrust in police officers, resulting in increased violence.

II. OFFICER CEINSKI’S USE OF EXCESSIVE FORCE AGAINST MR. JONES VIOLATED HIS CONSTITUTIONAL RIGHTS.

Police officers may receive qualified immunity only “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Callahan*, 555 U.S. at 231 (internal quotation marks and citation omitted). If an officer was acting within the scope of his discretionary authority at the time of the incident, the inquiry turns to whether the officer acted reasonably given the facts and circumstances. *See Graham*, 490 U.S. at 395–97. “[T]he question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Id.* at 397 (citations omitted); *see also Perez v. Suszczyński*, 809 F.3d 1213, 1220 (11th Cir. 2016) (a police officer’s subjective beliefs “are not ‘facts and circumstances’ that [the court] may rely on to objectively determine the reasonableness of his actions.”) (citation omitted).

When analyzing the facts and circumstances to determine whether a police

officer’s conduct objectively constitutes use of excessive force, courts consider: “[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officer or others, and [3] whether he is actively resisting or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396 (the “*Graham* factors”); *see also Thornton v. City of Macon*, 132 F.3d 1395, 1400 (11th Cir. 1998). Here, all the *Graham* factors weigh against granting qualified immunity.

Under the first *Graham* factor, there was no “crime at issue.” The only potential infraction was a non-criminal, benign traffic violation: Mr. Jones’s passenger side car door was open. (Ceinski Dep. at 14:18–23.) The alleged violation—Florida Statutes, Motor Vehicles, § 316.2005—is plainly not criminal, even assuming *arguendo* Mr. Jones had been in violation.³² Eleventh Circuit decisions make clear that a minor offense or traffic infraction cannot justify use of force like that employed by Officer Ceinski. *See Lee v. Ferraro*, 284 F.3d 1188, 1200 (11th Cir. 2002) (denying qualified immunity where the “crime involved nothing more than the improper use of a horn”); *see also Brown v. City of Huntsville*, 608 F.3d 724, 739 (11th Cir. 2010) (denying qualified immunity where an arrestee was suspected of playing music too loudly). As for the third *Graham* factor, Mr. Jones did not resist arrest or flee the scene, as Officer Ceinski conceded. (Jones Decl. ¶ 15; Ceinski Dep. at 57:19–20.) The district court made no contrary

³² Mr. Jones was adjudicated “not-guilty.” (Jones Decl. ¶ 25, Ex. D.)

conclusion.

The district court's analysis turned largely on the second *Graham* factor. When assessing whether an individual posed a threat that could justify the use of force, courts examine “the risk presented, [and] evaluat[e] the totality of the circumstances surrounding the weapon.” *Perez*, 809 F.3d at 1220 (denying qualified immunity to an officer where the suspect, although carrying a knife, “did not make ‘any threatening moves toward the police’ and ‘was not actively resisting arrest.’”). Contrary to the district court's view, Mr. Jones did not pose any “immediate threat” to the officer or the public. Mr. Jones complied with Officer Ceinski's instructions (Jones Decl. ¶¶ 10, 12–13, 15), he did not reach for a weapon, (*id.* ¶ 15), and he did not resist the officer, (*id.*; *see also* Ceinski Dep. 57:19–20). Moreover, there were few or no other vehicles on the road near to Mr. Jones' car. (Ceinski Dep. at 13:2–3.) There was simply no objective threat to Officer Ceinski's safety or to the public.

The district court nevertheless determined that since Mr. Jones was “near a vehicle where a weapon could be accessed during a traffic stop,” the presence of that out of reach gun “authoriz[ed] the use of force to prevent such access.” (ECF No. 53 at 12). However, “the mere presence of a gun or other weapon is not enough to warrant the exercise of deadly force and shield an officer from suit.” *Perez*, 809 F.3d at 1220.

Moreover, Florida law expressly authorizes individuals to carry a concealed

firearm. Fla. Stat. § 790.06. It would be ludicrous for Florida to permit firearm possession if such possession justified the use of state violence against any firearm owner. Informing an officer of the presence of a firearm is also a recommended practice for a motorist during a routine traffic stop. *See* Am. Ass’n of Motor Vehicle Adm’rs, *What to Do and Expect When Pulled Over by Law Enforcement*, <https://www.aamva.org/law-enforcement/what-to-do-when-stopped-by-law-enforcement> (last visited Dec. 6, 2023) (“Let the officer know if you have a weapon in the vehicle upon first contact.”).³³ Lawful gun owners must be able to safely disclose the existence of their guns during a traffic stop without fear of being attacked; the alternative would invite perverse incentives to keep such weapons concealed, increasing the danger to all involved.

Analysis of the *Graham* factors leads to the inescapable conclusion that Officer Ceinski unconstitutionally used excessive force against Mr. Jones—who complied with the officer’s orders, did not resist or flee, and posed no threat. *Richmond v. Badia*, 47 F.4th 1172, 1182 (11th Cir. 2022) (“[T]he absence of a

³³ The National Rifle Association provides similar guidance, suggesting that, during a traffic stop by a police officer, “it may be a good idea to let the officer know” that “you are armed,” if you have a gun. Jim Wilson, *Routine Traffic Stops*, Nat’l Rifle Ass’n (Aug. 17, 2012), <https://www.americanrifleman.org/content/routine-traffic-stops/>; *see also id.*, *Traffic Stops: What CCW Citizens Need to Know* (Mar. 7, 2018), <https://www.nrafamily.org/content/traffic-stops-what-ccw-citizens-need-to-know/> (“I would rather show the officer the courtesy of telling him that I am armed and then complying with his orders regarding that fact. It is yet another indication that I have nothing to hide during this contact.”).

legitimate law enforcement justification for using force is indicative of excessive force.”).

III. OFFICER CEINSKI’S CONDUCT HARMS THE PUBLIC INTEREST AND OUTWEIGHS ANY RISK FROM HOLDING POLICE OFFICERS ACCOUNTABLE FOR MISCONDUCT.

The district court’s grant of qualified immunity is also inconsistent with clearly established Eleventh Circuit law, and qualified immunity’s purported goal of striking a balance between “two evils.” *See Harlow*, 457 U.S. at 813; *Callahan*, 555 U.S. at 231. As gun violence prevention organizations, we are focused on preventing violence in all forms, including the violence that results from failure to hold police officers accountable for violent actions.

The doctrine of qualified immunity requires courts to consider the public interest—which includes the harm caused by the police officer’s conduct—to ensure that qualified immunity does not become an “absolute shield” that leaves individuals whose constitutional rights are violated with no legal redress. *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting); *see also Witt v. Town of Brookside*, No. 2:21-CV-00773, 2021 WL 4820654, at *21 (N.D. Ala. Oct. 15, 2021) (“Given the clarity of the wrongfulness of this conduct, qualified immunity will not operate as ‘an absolute shield for law enforcement officers[.]’”); *Thompson v. Clark*, No. 14-CV-7349, 2018 WL 3128975, at *6–7 (E.D.N.Y. June 26, 2018) (“The legal precedent and policy justifications of qualified immunity, it has been charged, fail

to validate its expansive scope. The law, it is suggested, must return to a state where some effective remedy is available for serious infringement of constitutional rights.”) (citing *Kisela*, 138 S. Ct. at 1162).

Courts that neglect the public interest risk sanctioning “unqualified impunity,” allowing officials to “duck consequences for bad behavior,” rendering “unjust” decisions, and denying relief to civilians like Mr. Jones who have meritorious constitutional claims. See *Davis v. Scherer*, 468 U.S. 183, 195 (1984); *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019); *Ventura v. Rutledge*, 398 F. Supp. 3d 682, 697 n.6 (E.D. Cal. 2019).

Weighed against the theoretical risk of “undue inhibition” by police officers, the balance here favors the public interest in holding accountable an officer who, during a routine traffic stop, unreasonably harmed a compliant civilian. Despite the absence of any legitimate law enforcement purpose, Officer Ceinski “placed a two arm hold around Mr. Jones’s neck, implemented a one arm wrist lock, and struck the top of Mr. Jones’s head.” (ECF No. 53, at 11, 15.) Officer Ceinski would not relent even when Mr. Jones told the officer that he could not breathe. (Jones Decl. ¶¶ 14–19.) This conduct violated clearly established Eleventh Circuit law holding that a police officer “violates the Fourth Amendment when he uses gratuitous force against a suspect who is fully secured, not resisting arrest, and not posing a safety threat to the officer” ‘or other officers.’” *Johnson v. City of Miami Beach*, 18 F.4th 1267,

1272 (11th Cir. 2021); *see also Ingram v. Kubik*, 30 F.4th 1241, 1252 (11th Cir. 2022); *Patel v. City of Madison*, 959 F.3d 1330, 1339 (11th Cir. 2020); *Sebastian v. Ortiz*, 918 F.3d 1301, 1308 (11th Cir. 2019); *Saunders v. Duke*, 766 F.3d 1262, 1269–70 (11th Cir. 2014).

The consequences of affirming the district court’s grant of qualified immunity to Officer Ceinski are grave. Affirming qualified immunity would leave Mr. Jones without any redress for the harms and injuries he suffered. Such a decision would also put lawful gun owners, especially Black gun owners like Mr. Jones, on notice that officers can abuse them with impunity, and thus create a Prisoners’ Dilemma where both civilians and officers are incentivized to adopt a “shoot first, think later” mentality that renders “the protections of the Fourth Amendment hollow.” *Mullenix v. Luna*, 577 U.S. 7, 26 (2015) (per curiam) (Sotomayor, J., dissenting).

CONCLUSION

For the foregoing reasons, Giffords Law Center and the Brady Center respectfully urge that the Court reverse the district court’s grant of qualified immunity to Officer Ceinski.

Dated: December 6, 2023

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH FRAP 32(g)(1)

Undersigned counsel certifies that this Brief complies with the applicable type volume limitations in Rule 32(a)(7). This brief contains 4,959 words, exclusive of the components that are excluded from the word count limitation in Rule 32(f). This certificate was prepared in reliance upon the word-count function of the word processing system (Microsoft Word) used to prepare this brief. This brief complies with the typeface and type style requirements of Rule 32(a)(5) because it has been prepared in a proportionally spaced typeface using font size 14 Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2023, I served the foregoing document on all parties through the appellate CM/ECF system for the United States Court of Appeals for the Eleventh Circuit.

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