22-1756

In The

United States Court of Appeals

For The Second Circuit

JAMES CERISIER,

Plaintiff-Appellant,

v.

CITY OF NEW YORK,

Defendant-Appellee,

NEW YORK CITY POLICE OFFICER SAURABH SHAH,

Defendant-Appellee.

On appeal from the United States District Court for the Eastern District of New York, 1:19-cv-3850

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE IN SUPPORT OF APPELLANT

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), the undersigned counsel certifies that amicus curiae Institute for Justice is not a publicly held corporation, does not have any parent corporations, and that no publicly held corporation owns 10 percent or more of the corporation's stock.

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INTEREST OF AMICUS CURIAE[1]

The Institute for Justice ("IJ") is a nonprofit, public-interest law firm dedicated to defending the nation's constitutional structure and the foundations of a free society. IJ believes it is critical for courts to enforce constitutional limits on government power and ensure that the public can hold officials accountable when they violate the Constitution.

Because qualified immunity limits access to federal court and drastically hinders the enforcement of constitutional rights, IJ litigates and files amicus briefs in government immunity and accountability cases nationwide. *E.g.*, *Villarreal v. City of Laredo, et al.*, 20-40359 (5th Cir.); *Pollreis v. Marzolf, et al.*, 21-3267 (8th Cir.); *Rosales v. Bradshaw, et al.*, 22-2027 (10th Cir.); *Ashaheed v. Currington*, 20-1237 (10th Cir.).

IJ thus has an interest in this Court's review and reversal of the district court's judgment below, which erroneously based its qualified immunity analysis on irrelevant considerations and superficial fact distinctions that have no bearing on the Fourth Amendment issue.

[1] Pursuant to Fed. R. App. P. 29(a)(4), counsel for amicus states: the parties consented to the filing of this brief; no party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting this brief; and no person other than amicus contributed money intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

Does qualified immunity shield an officer from suit for seizing a person by pointing a loaded gun at him, merely because that seizure was not accompanied by a verbal threat and physical contact? No. Appellate caselaw clearly established that a Fourth Amendment excessive force claim requires neither of those latter two elements. So the district court erred in granting immunity based on those irrelevant considerations.

This Court has made clear that considerations irrelevant to the constitutional analysis cannot be the basis for qualified immunity. Here, as Cerisier correctly argues in his opening brief, the irrelevance of verbal threat and physical contact as prerequisites to an excessive force claim was clearly established by the holdings of at least six other circuits and multiple decisions of this Court signaling that it agrees with them.

Additionally, the Supreme Court established the irrelevance of verbal threat and physical contact as prerequisites to an excessive force claim in explaining that excessive force is simply a type of unreasonable seizure claim and that a seizure requires nothing more than a show of authority. Pointing a gun at a person is clearly a show of authority—and is clearly unreasonable if done to a nonthreatening, compliant person.

Moreover, this Court can simply hold that seizing a nonthreatening, compliant person by pointing a gun at him is obviously unreasonable, even without a case explicitly saying so (and remand for trial to determine whether that is in fact what happened here).

In reversing, this Court should reaffirm qualified immunity's proper scope, making clear that its fair warning standard is not an invitation to grant impunity to government officials. A growing chorus of Justices, judges, and scholars—including Judge Calabresi—are rightly concerned that the doctrine has unjustifiably come to eviscerate Section 1983's broad remedial text, history, and purpose.

Finally, even if the Court grants immunity here (which it should not), it should clearly establish that (1) pointing a weapon at a person can, without more, violate the Fourth Amendment, and (2) doing so to a nonthreatening, compliant person necessarily violates the Fourth Amendment. Clearly establishing the law is imperative where, like here, the question is most likely to arise (and recur) in Section 1983 litigation; doing so avoids a cycle of immunity that frustrates the development of constitutional precedent, disincentivizes law-abiding behavior by government officials, and undermines the public's vindication of rights.

ARGUMENT

I. This Court should reaffirm qualified immunity's fair warning standard and deny immunity in this case.

In its excessive force analysis under *Graham v. Connor*, 490 U.S. 386 (1989), the district court implicitly (and correctly) recognized that a Fourth Amendment violation has no verbal threat or physical contact requirement, and that this case should go to trial. But then the court erroneously granted qualified immunity simply because Officer Shah did not accompany his gunpoint seizure of Cerisier with a verbal threat or physical contact. That is emblematic of the overextension of qualified immunity based on irrelevant considerations, which this Court has cautioned against, and which eviscerates constitutional accountability.

This Court should reverse, reaffirming that qualified immunity cannot be based on considerations irrelevant to the constitutional analysis. Here, the irrelevance of verbal threat and physical contact as prerequisites to an excessive force claim was clearly established by (1) the holdings of at least six other circuit courts, coupled with this Court's indications that it agrees with them, and (2) the Supreme Court's explanations that excessive force is simply a type of unreasonable seizure claim and that a seizure requires nothing more than a show of authority.

Moreover, the unconstitutionality of pointing a gun at a nonthreatening, compliant person is sufficiently obvious that no case explicitly saying so should be necessary.

In reaffirming these principles, this Court should make clear that qualified immunity is governed by a fair warning standard and is not "a scavenger hunt for prior cases with precisely the same facts." *Perea v. Baca*, 817 F.3d 1198, 1204 (10th Cir. 2016). Those reminders are crucial, as a growing body of judicial and scholarly writing laments the judiciary's treatment of qualified immunity as an excuse to concoct impunity and eviscerate Section 1983's broad remedial text, history, and purpose.

A. Qualified immunity is not based on considerations irrelevant to the constitutional analysis.

The district court erred by failing to recognize that the irrelevance of verbal threat and physical contact as prerequisites to an excessive force claim was clearly established by the weight of appellate authority, including the holdings of at least six circuits, this Court's indications of agreement, and the Supreme Court's explanations of the nature of an excessive force claim. Moreover, the unconstitutionality of pointing a gun at a nonthreatening, compliant person is sufficiently obvious that no case explicitly saying so should be necessary.

1. For starters, the district court erroneously based its analysis primarily on district court decisions; the clearly established inquiry is based on "Supreme Court or Court of Appeals case law," including "the decisions of other circuits." *Terebesi v. Torreso*, 764 F.3d 217, 231 & n.12 (2d Cir. 2014). Because a consensus of appellate authority—including statements and published decisions of this Court—clearly established that verbal threat and physical contact are not required for an excessive force claim, granting immunity based on those considerations violates the doctrine's "purpose," which is just "fair warning." *Id.* at 230 (quoting *Hope v. Pelzer*, 536 U.S. 730, 739–40 & n.10 (2002)).

Under that standard, "[e]ven if this Court has not explicitly held a course of conduct to be unconstitutional, we may nonetheless treat the law as clearly established if decisions from this or other circuits clearly foreshadow a particular ruling on the issue." *Id.* at 231 (cleaned up). This Court has previously recognized that the law was clearly established even though it had not "directly ruled on the precise issue presented"; it reached that conclusion based on three pre-incident decisions from other circuits, coupled with pre-incident language from this Court suggesting

that the conduct at issue was problematic. *See Weber v. Dell*, 804 F.2d 796, 803–04 (2d Cir. 1986).

That is just like the situation here, where the clear foreshadowing of this Court's rejection of verbal threat and physical contact as prerequisites for an excessive force claim came from: (1) the published decisions of at least six other circuits clearly establishing the unconstitutionality of gratuitously pointing a weapon, without more[2]; and (2) the published decisions of this Court cited in footnote 1 of *Mills v.*

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[2] *E.g.*, *Stamps v. Town of Framingham*, 813 F.3d 27, 39–40 (1st Cir. 2016) ("[officer's] pointing his loaded assault rifle at the head of a prone, non-resistant, innocent person who presents no danger, with the safety off and a finger on the trigger, constituted excessive force in violation of that person's Fourth Amendment rights"); *Wright v. City of Euclid*, 962 F.3d 852, 869–70 (6th Cir. 2020) ("We have also recognized that pointing a gun at an individual can constitute excessive force under the Fourth Amendment. . . . Based on this authority, it was clearly established as of the time of Wright's encounter with the officers that brandishing a firearm without a justifiable fear that Wright was fleeing or dangerous was unreasonable and constituted excessive force.") (citing *Binay v. Bettendorf*, 601 F.3d 640, 650 (6th Cir. 2010)); *Baird v. Renbarger*, 576 F.3d 340, 346 (7th Cir. 2009) ("police are not entitled to point their guns at citizens when there is no hint of danger"); *Jacobs v. City of Chicago*, 215 F.3d 758, 774 n.7 (7th Cir. 2000) ("it is a reasonable inference . . . that the act of pointing a loaded weapon at a person . . . carries with it the implicit threat that the officer will use that weapon if the person at whom it is directed does not comply with the officer's wishes"); *Wilson v. Lamp*, 901 F.3d 981, 990 (8th Cir. 2018) ("On the facts here, the continuous drawing and pointing of weapons constitutes excessive-force."); *Tekle v. United States*, 511 F.3d 839, 847 (9th Cir. 2007) ("We have held since 1984 that pointing a gun at a suspect's head can constitute excessive force in this circuit."); *Maresca v. Bernalillo Cnty.*, 804 F.3d 1301, 1314 (10th Cir. 2015) ("The display of weapons, and the pointing of firearms directly at persons inescapably involves the immediate threat of deadly force. Such a show of force should be predicated on at least a perceived risk of injury or danger to the officers or others, based upon what the officers know at that time.") (quoting *Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179, 1192 (10th Cir. 2001)).

Fenger, 216 F. App'x 7, 9 (2d Cir. 2006) (summary order), for the proposition that "Circuit law could very well support [a] claim that a gunpoint death threat issued to a restrained and unresisting arrestee represents excessive force."[3]

2. Additionally, it is clear that pointing a weapon at a person, without more, can be excessive force (and indeed is, when the person is nonthreatening and compliant) because: (1) an excessive force claim is simply a subset of "the Fourth Amendment's prohibition against unreasonable seizures of the person," *Graham*, 490 U.S. at 394; and (2) a seizure of the person can be accomplished simply by a "show of authority" to which the person submits, *California v. Hodari D.*, 499 U.S. 621, 625 (1991). It necessarily follows that (1) a show of authority in the form of a pointed weapon to which a person submits constitutes a seizure, and (2) if done without sufficient justification, it is an unreasonable seizure—which is what the excessive force inquiry is about, per *Graham* (and the text of the Fourth Amendment).

[3] Importantly, these appellate pronouncements predate Officer Shah's conduct, unlike the post-incident, unpublished decision in *Gerard v. City of New York*, 843 F. App'x 380 (2d Cir. 2021) (summary order), to which the district court gave so much weight in deciding that the unconstitutionality of Officer Shah's conduct was not clearly established.

Here, Officer Shah seized Cerisier by pointing a gun at him. If Officer Shah did so without sufficient justification, that seizure was unreasonable (i.e., excessive force). As the district court rightly recognized, it should be for a jury to decide whether, under the circumstances, Officer Shah had sufficient justification.

3. Because appellate authority made it clear that verbal threat and physical contact are not required for an excessive force claim, they are precisely the sorts of irrelevant considerations and superficial distinctions this Court has explained should not govern the qualified immunity analysis.

Denying immunity in *Terebesi*, this Court lamented that "[i]t has become commonplace for defendants in excessive force cases to support their claims to qualified immunity by pointing to the absence of prior case law concerning the precise weapon, method, or technology employed by the police." *Id.* at 237 n.20. By necessity, "[s]ome measure of abstraction and common sense is required with respect to police methods and weapons in light of rapid innovation in hardware and tactics." *Id.* In other words, immunity cannot be based on a "distinction [not] relevant to the

[prior] decision's constitutional holding." *Horn v. Stephenson*, 11 F.4th 163, 171–72 (2d Cir. 2021).[4]

Because verbal threat and physical contact are not elements of a Fourth Amendment claim, Cerisier's claim based on a method of violation that lacks those elements (i.e., Officer Shah's seizure of Cerisier by pointing a gun at him, without more) is not subject to immunity on the basis of those irrelevant elements or distinctions.

4. Finally, this Court can hold, construing the record in favor of nonmovant Cerisier, that pointing a loaded gun at a nonthreatening, compliant person would be obviously unconstitutional to any reasonable officer and therefore preclude immunity even without a case explicitly saying so. The point is simple and need not be belabored: Any reasonable officer should know that putting a person a trigger pull away from death for no reason is unreasonable, excessive, and unconstitutional. *See Hope*,

[4] Sister circuits have held the same. *E.g.*, *Wilson*, 901 F.3d at 990–91 (citing cases involving disparate methods and circumstances of force to reject officers' argument that the right to be free from gratuitous gun pointing was not clearly established "under similar facts"); *Nelson v. City of Davis*, 685 F.3d 867, 884 (9th Cir. 2012) ("[a]n officer is not entitled to qualified immunity on the ground[] that the law is not clearly established every time a novel method is used to inflict injury"); *Phillips v. Cmty. Ins. Corp.*, 678 F.3d 513, 528 (7th Cir. 2012) (denying qualified immunity because "[e]ven where there are 'notable factual distinctions,' prior cases may give an officer reasonable warning that his conduct is unlawful").

536 U.S. at 740–41; *accord McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (granting summary reversal of qualified immunity where guard pepper sprayed prisoner for no reason, "in light of" *Taylor v. Riojas*, 141 S. Ct. 52 (2020), which relied on *Hope*'s obviousness standard).

If the jury then sides with Officer Shah on the disputed fact of whether Cerisier was actually nonthreatening and compliant, it can return a verdict in Officer Shah's favor or "decide [issues properly bearing on qualified immunity] on special interrogatories." *Jones v. Treubig*, 963 F.3d 214, 224–25 (2d Cir. 2020) (citation omitted). That is the system Section 1983 envisions—not one in which officers escape accountability based on cramped readings of caselaw that distort the constitutional analysis and the legal process.

B. This Court should make clear that qualified immunity is not an invitation to concoct impunity.

To summarize: After the district court correctly found that this case belongs in front of a jury, the court defied settled constitutional principles and the proper scope of qualified immunity to insulate Officer Shah from that bulwark of our constitutional order based on constitutionally irrelevant considerations. It is imperative for this Court to reverse and reaffirm its fair warning standard, making clear that qualified immunity

should not distort the legal process. Otherwise, the doctrine threatens to swallow Section 1983's broad remedial text, history, and purpose.

As the Supreme Court has "repeatedly emphasized, 'the central objective of the Reconstruction-Era civil rights statutes . . . is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief.'" *Felder v. Casey*, 487 U.S. 131, 139 (1988) (quoting *Burnett v. Grattan*, 468 U.S. 42, 55 (1984)). Section 1983 "provides a uniquely federal remedy against incursions upon rights secured by the Constitution and laws of the Nation, and is to be accorded a sweep as broad as its language." *Id.* (cleaned up). The statute (which does not speak of any immunities)[5] evinces "broadly remedial purpose[s]." *See Spear v. Town of W. Hartford*, 954 F.2d 63, 66 (2d Cir. 1992); *Pauk v. Bd. of Trustees*, 654 F.2d 856, 861 (2d Cir. 1981).

"This text embodies a foundational constitutional principle: Where there is a right, there must be a remedy." Evan Bernick, *It's Time to Limit Qualified Immunity*, Geo. J.L. & Pub. Pol'y: Legal Blog (Sept. 17, 2018),

[5] Indeed, the evidence shows that Congress intended for Section 1983 to abrogate common law immunities. *See* Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 101 (forthcoming), *available at* https://tinyurl.com/QI-Flawed-Fnd.

https://www.law.georgetown.edu/public-policy-journal/blog/its-time-to-limit-qualified-immunity/. But a growing, cross-ideological chorus of Supreme Court Justices,[6] federal judges,[7] and constitutional scholars[8] are sounding the alarm about qualified immunity's abrogation of Section 1983 and its corrosive effects on the ability of the people to hold police

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[6] *E.g.*, *Kisela v. Hughes,* 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting) (quoted in main text, *infra*); *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1871 (2017) (Thomas, J., concurring in part and concurring in the judgment) (quoted in main text, *infra*); *Crawford-El v. Britton*, 523 U.S. 574, 611 (1998) (Scalia, J., dissenting) ("our treatment of qualified immunity under 42 U.S.C. § 1983 has not purported to be faithful to the common-law immunities that existed when § 1983 was enacted, and that the statute presumably intended to subsume"); *Wyatt v. Cole*, 504 U.S. 158, 170 (1992) (Kennedy, J., concurring) ("in the context of qualified immunity . . . we have diverged to a substantial degree from the historical standards").

[7] *E.g.*, *Zadeh v. Robinson*, 928 F.3d 457, 479, 480–81 (5th Cir. 2019) (Willett, J., concurring in part) (quoted in main text, *infra*); *Horvath v. City of Leander,* 946 F.3d 787, 801 (5th Cir. 2020) (Ho, J., concurring in the judgment in part and dissenting in part) ("there is no textualist or originalist basis to support a 'clearly established' requirement in § 1983 cases"); *Thompson v. Clark*, 2018 WL 3128975, at *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."); *Estate of Smart v. City of Wichita*, 2018 WL 3744063, at *18 n.174 (D. Kan. Aug. 7, 2018) ("the court is troubled by the continued march toward fully insulating police officers from trial—and thereby denying any relief to victims of excessive force—in contradiction to the plain language of the Fourth Amendment"); *Manzanares v. Roosevelt Cnty. Adult Detention Ctr.*, 331 F. Supp. 3d 1260, 1294 n.10 (D.N.M. 2018) ("qualified immunity has increasingly diverged from the statutory and historical framework on which it is supposed to be based") (citation omitted); *Ventura v. Rutledge,* 398 F. Supp. 3d 682, 697 n.6 (E.D. Cal. 2019) ("this judge joins with those who have endorsed a complete re-examination of [qualified immunity] which, as it is currently applied, mandates illogical, unjust, and puzzling results in many cases").

[8] *E.g.*, William Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45, 55–61 (2018); Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1799–1814 (2018); Reinert, *supra* note 5, at 165–87; Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. Rev. 885, 912–37 (2014).

and other officials accountable for the violence and other harms they inflict.

Justice Sotomayor recently warned that qualified immunity has unjustifiably become "an absolute shield for law enforcement officers" that has "gutt[ed] . . . the Fourth Amendment." *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting). Justice Thomas explained that "we have diverged from the historical inquiry mandated by the statute [and] have completely reformulated qualified immunity along principles not at all embodied in the common law." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1871 (2017) (Thomas, J., concurring in part and concurring in the judgment) (cleaned up).

And Judge Willett of the Fifth Circuit lamented: "To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the first to behave badly"; "this entrenched, judge-created doctrine excuses constitutional violations by limiting the statute Congress passed to redress constitutional violations." *Zadeh v. Robinson*, 928 F.3d 457, 479, 480–81 (5th Cir. 2019) (Willett, J., concurring in part).

Most recently, Judge Calabresi cataloged the myriad reasons that "more and more judges have come to recognize[] qualified immunity cannot withstand scrutiny," and that broad readings of the doctrine do not "strike[] the right balance." *McKinney v. City of Middletown*, 49 F.4th 730, 756–58 (2d Cir. 2022) (Calabresi, J., appendix to dissenting opinion) (collecting additional cases).

The district court's decision in this case exemplifies the realization of these fears and the doctrine's continued devolution from any grounding in text, history, or purpose. This Court should reject it and explain to lower courts that qualified immunity is a fair warning standard—not an end run around government accountability.

II. To avoid further erosion of Section 1983, this Court should clearly establish the law going forward, even if it grants immunity here.

This Court should deny qualified immunity and remand this case for trial. But even if it holds that the unconstitutionality of Officer Shah's conduct was not clearly established in January 2019 and grants immunity here, the Court should take this opportunity to clearly establish the law going forward.

"[D]efining constitutional rights and only then conferring immunity[] is sometimes beneficial to clarify the legal standards governing public officials." *Camreta v. Greene*, 563 U.S. 692, 706 (2011). So the Court should align itself with its sister circuits, *see* n.2 above, and, as it has already suggested in multiple cases, clearly establish that (1) pointing a weapon at a person can, without more, violate the Fourth Amendment, and (2) doing so to a nonthreatening, compliant person necessarily violates the Fourth Amendment.

As this Court recently recognized, "some kinds of constitutional questions do not often come up" outside of Section 1983 cases, creating a "repetitive cycle of qualified immunity defenses" when courts resolve these cases without addressing the constitutionality of the underlying conduct. *Sabir v. Williams*, 52 F.4th 51, 58 n.3 (2d Cir. 2022). So courts should "still address the merits question . . . to clearly establish the law and prevent a vicious cycle of shielded misconduct." *Id.*; *see also Bacon v. Phelps*, 961 F.3d 533, 542 (2d Cir. 2020) ("There is value in making constitutional determinations, which have a significant future effect on the conduct of public officials and the policies of the government units to which they belong.") (cleaned up).

By contrast, when courts decline to address the constitutional merits, "the qualified immunity situation threatens to leave standards of official conduct permanently in limbo." *Camreta*, 563 U.S. at 706. In these situations, courts may "fail to clarify uncertain questions, fail to address novel claims, [and] fail to give guidance to officials about how to comply with legal requirements"; in turn, "the development of constitutional precedent and the promotion of law-abiding behavior" is frustrated. *Id.* (cleaned up). In short, "if courts refuse to resolve legal claims because the law was not clearly established, then the law will never become clearly established." Jay R. Schweikert, Cato Institute, *Qualified Immunity: A Legal, Practical, and Moral Failure* (2020).

This case presents the type of Fourth Amendment question that is unlikely to arise outside the context of Section 1983 litigation and should be decided on its merits to provide clarity and guidance to public officials and the people they serve. It is not a case that raises any of the circumstances the Supreme Court held in *Pearson v. Callahan* may counsel against a constitutional holding, such as an unrecurring scenario or one that is so factually sensitive that it can provide no guidance to future litigants. *See* 555 U.S. 223, 237 (2009).

To the contrary, this case is a quintessential chance to provide clear warning to police about the reasonable boundaries of their conduct—and a meaningful opportunity for people who find themselves unjustly staring down a gun barrel to vindicate their rights. *See Camreta*, 563 U.S. at 706 (warning that, by allowing courts to avoid clearly establishing the law, "qualified immunity thus may frustrate 'the development of constitutional precedent' and the promotion of law-abiding behavior").

Accordingly, even if it grants immunity here (which it should not), this Court should make clear that an officer needs sufficient justification before pointing a weapon and putting a person in danger of life or limb.

CONCLUSION

The Court should deny qualified immunity and remand for trial.

November 23, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the length limitation of Fed. R. App. P. 29(a)(5) because it contains 4,078 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Century Schoolbook.

November 23, 2022

Respectfully submitted,

/s/ Jaba Tsitsuashvili
Counsel for Amicus Curiae

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on November 23, 2022, I caused this Brief of Amicus Curiae to be filed electronically with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all counsel of record.

/s/ Jaba Tsitsuashvili
Counsel for Amicus Curiae