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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2010

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CAUSE NO. 09-9100

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BEAU RADLEY,

Petitioner,

v.

FAIR COUNTY POLICE DEPARTMENT and

ARTHUR GOODE,

Respondents.

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

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BRIEF FOR PETITIONER

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COUNSEL FOR PETITIONER

## **QUESTIONS PRESENTED**

- I. Whether the Fourth Amendment protection against excessive force extends beyond initial seizure.
- II. If the Court were to apply a rule of continuing seizure to the Fourth Amendment protection against the use of excessive force, to what point beyond initial seizure should that protection extend?

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OPINIONS BELOW

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The opinions of the District and Appeals Courts  
have not been reported. The opinions appear in the record.

## **STATEMENT OF JURISDICTION**

The court of appeals entered judgment on March 15, 2010. (R. at 16). Petitioner filed his petition for writ of certiorari on May 15, 2010. (R. at 17). This Court granted the petition on October 7, 2010. (R. at 18). This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2000). A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

## STATEMENT OF FACTS

On September 23, 2008, Petitioner, Beau Radley, was pulled over by Fair County Police Officer, John Marlin, for suspicion of driving under the influence. (R. at 3). When Radley refused to take a breathalyzer test, Marlin handcuffed Radley and drove him to the Fair County Police Station. (R. at 3). Upon arrival, Marlin escorted Radley to the booking room and transferred Radley into the custody of Fair County Police Officer, Respondent Arthur Goode. (R. at 3). When Marlin left the room, Goode began calling Radley “scum” and “white trash,” to which Radley did not respond. (R. at 3). Goode tightly recuffed Radley after the booking process and when Radley complained, Goode did not loosen the cuffs. (R. at 3). At this point, Marlin came into the booking room and Radley again complained about his tight cuffs. (R. at 3). Marlin checked his cuffs and loosened them, leaving Goode alone to escort Radley to a holding cell. (R. at 3). In the holding cell, Goode pushed Radley to the ground and kned Radley in the back, threatening that he “shouldn’t have embarrassed him” and if Goode had to come back Radley would “regret it.” (R. at 3). When Radley was sure Goode was off duty, he reported the abuse and was taken to the hospital for examination. (R. at 3). Radley’s injuries included a cut lip, bruised wrists, and bruising along his jaw from being pushed to the ground while his hands were still cuffed behind his back. (R. at 4).

On February 1, 2009, Radley filed claims against the Fair County Police Department and Officer Arthur Goode, under 42 U.S.C. § 1983 for a violation of his Fourth and Fourteenth Amendment protections against excessive force by an officer under color of law. (R. at 4). Respondents filed a Motion to Dismiss the Fourth Amendment claim for failure to state a claim upon which relief can be granted. (R. at 5). The District Court for the Southern District of Fair, in granting the Respondents’ motion, held that Fourth Amendment protection extends beyond

initial seizure, but stops once the detainee is transferred out of the arresting officer's custody. (R. at 13). The Fifteenth Circuit Court of Appeals affirmed the district court's decision. (R. at 16). On May 15, 2010, Radley filed a Writ of Certiorari to the United States Supreme Court which was granted. (R. at 17, 18).

## **SUMMARY OF ARGUMENT**

### **I.**

In *Graham v. Connor*, the Supreme Court refused to determine whether the Fourth Amendment or the Fourteenth Amendment provides arrestees with protection against the deliberate use of excessive force beyond the point when arrest ends and pretrial detention begins. However, in holding the Fourth Amendment applied to abuse occurring after a detained citizen was in handcuffs and in a police car, the *Graham* Court implied that seizure is a continuing event that does not end as soon as a suspect is first restrained.

The *Graham* Court held whether the Fourth or Fourteenth Amendment applies depends upon whether a plaintiff's legal status is classified as a person undergoing seizure or a pretrial detainee. An arrestee's legal status does not immediately change after officers bring a suspect under their control, since there has been no legal determination that he should enter the pretrial system. Therefore, excessive force experienced while under the seizure and control of the officers should be properly analyzed under the continuing seizure approach, which asserts the Fourth Amendment protection extends beyond the point of initial seizure.

Interpreting the Fourth Amendment under the continuing seizure approach allows arrestees the protection intended historically by the Framers of the Constitution. The Fourth Amendment's clear textual protection for arrestees against governmental behavior is a more appropriate constitutional amendment for purposes of excessive force analysis, rather than the

Fourteenth Amendment's more generalized notion of substantive due process. The Framers of the Constitution wrote the Bill of Rights to guarantee protection in the area of criminal procedure and explicitly drafted the Fourth Amendment to address pretrial deprivations of liberty. The Supreme Court previously held that Fourteenth Amendment protection should be reserved for claims lacking enumerated rights under a specific amendment, therefore the Fourteenth Amendment should not be applied when doing so would duplicate protection that a more specific constitutional provision already bestows. Thus, since the Fourth Amendment directly addresses protection of an accused's rights, the Fourteenth Amendment is inapplicable.

Since *Graham*, the majority of courts adopted the continuing seizure doctrine when interpreting arrestees' constitutional protection against use of excessive force. The Second, Third, Sixth, Eighth, Ninth, and Tenth Circuit Courts correctly determined that Fourth Amendment protection extends beyond the initial point when the officer gains control over the arrestee. In the lower court opinion, the Fifteenth Circuit also correctly agreed the Fourth Amendment continues to protect arrestees beyond their initial seizure.

## II.

The Fourth Amendment mandates protection extend until Radley has been arraigned or formally charged because until it is determined he was lawfully arrested, there have been no evidentiary findings to warrant the deprivation of his Fourth Amendment rights. Under the continuing seizure approach, Radley should not lose his Fourth Amendment rights until arraignment, despite the fact that he was arrested and in a holding cell, because his arrest was made without a warrant. Since Radley was arrested without a warrant, there has been no judicial determination by an unbiased magistrate that sufficient evidence exists to indict Radley and enter him into the pretrial system. Until a formal hearing occurs, Radley could be released from police

custody before a case is set for trial, so depriving his Fourth Amendment rights prior to this procedure is unjustified. A probable cause hearing or arraignment is a judicial proceeding that affects the legal status of Radley and officially enters him into the pretrial system. Thus, extending the Fourth Amendment's protection until this change in legal status occurs is consistent with the *Graham* Court's requirement that the legal status of the plaintiff determine which amendment governs his excessive force claims. When looking at the circuit courts' opinions where a plaintiff was held pursuant to a warrantless arrest, there is a consensus that the Fourth Amendment is the correct constitutional standard for excessive force against arrestees prior to arraignment or a probable cause hearing.

The arresting officer requirement should not be this Court's bright line rule because its application is arbitrary, basing a citizen's constitutional protection on something as haphazard as police station protocol. Determining which amendment applies must depend on a constitutional change in the arrestee's status that would warrant a change in protection. If Radley's Fourth Amendment protection abruptly ends merely because the arresting officer handed him over once they reached the police station, his Fourth Amendment rights have been deprived without the requisite change in his legal status. Furthermore, continuing to apply the arresting officer rule would promote unequal application of the law to abused arrestees who are detained in counties with different procedures of when the arresting officer transfers custody. Therefore, since the arresting officer rule has no constitutional basis and would provide inconsistent protection, this Court should decline to follow the Fifteenth Circuit's decision to establish a bright line rule during this event.

## ARGUMENT

### **I. BECAUSE FOURTH AMENDMENT JURISPRUDENCE SUPPORTS PROTECTION AGAINST EXCESSIVE FORCE EXTENDING BEYOND INITIAL SEIZURE, THIS COURT SHOULD HOLD THAT RADLEY'S FOURTH AMENDMENT RIGHTS CONTINUED BEYOND THE POINT IN TIME WHEN HE WAS TAKEN INTO POLICE CUSTODY.**

#### **A. In *Graham v. Connor*, the Supreme Court left undecided the exact moment in time when seizure ends, but implied seizure extends beyond the time when the accused was first taken into custody.**

Section 1983 was enacted by Congress to afford a remedy for citizens deprived of constitutional rights, privileges, and immunities by a government official's abuse of his position. 42 U.S.C. § 1983 (2003). The threshold issue in every § 1983 inquiry is to determine which of the plaintiff's constitutional rights were violated in order to determine the standard to be used when analyzing a plaintiff's excessive force claim. *Graham v. Connor*, 490 U.S. 386, 394 (1989). Prior to conviction for a crime, the two primary sources of constitutional protection against physical abuse by government officials are the Fourth Amendment's protection against unreasonable search and seizure and the Fourteenth Amendment's protection against deprivation of liberty without due process of the law. *Graham*, 490 U.S. at 395; see U.S.CONST. amends. IV & XIV, § 1.

Determining which constitutional amendment the court should apply depends upon whether a plaintiff is classified as a person undergoing seizure or a pretrial detainee. *Graham*, 490 U.S. at 395. A plaintiff who is abused while being seized can invoke protection of his rights under the Fourth Amendment, causing the excessive force to be analyzed under the objective reasonableness standard, which inquires whether the officers' actions were objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* at 396-97.

The Due Process Clause of the Fourteenth Amendment protects a pretrial detainee from the use of excessive force that amounts to punishment. *Id.* at 395 n.10. The applicable standard when analyzing governmental abuse under the Fourteenth Amendment is whether the force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm. *Brothers v. Klevenhagen*, 28 F.3d 452, 456 (5th Cir.), *cert. denied*, 513 U.S. 1045 (1994). When applying Fourteenth Amendment, courts will also consider if the officer's conduct "shocks the conscience." *Riley v. Dorton*, 115 F.3d 1159, 1168 n.4 (4th Cir.), *cert. denied*, 522 U.S. 1030 (1997).

In *Graham v. Connor*, the Supreme Court applied the Fourth Amendment to excessive force occurring during arrest, investigatory stops, or other seizures, but explicitly refused to answer whether the Fourth Amendment continues to provide individuals with protection against the use of excessive physical force beyond the point at which arrest ends and pretrial detention begins. *Graham*, 490 U.S. at 395 n.10. It is significant that the *Graham* Court did not limit its Fourth Amendment application to the citizen's arrest, instead focusing its analysis on the seizure of the accused. *Graham*, 490 U.S. at 395. By applying the Fourth Amendment to the abuse occurring after the police officers put the plaintiff in handcuffs and shoved him into a police car, the *Graham* Court implicitly held arrest is a continuing event that does not end as soon as a suspect is first restrained. *United States v. Johnstone*, 107 F.3d 200, 205 (3d Cir. 1997); *see Graham*, 490 U.S. at 389. The *Graham* decision additionally shows that handcuffing does not end seizure for purposes of Fourth Amendment rights in excessive force claims. *Johnstone*, 107 F.3d at 205; *see Graham*, 490 U.S. at 389.

The gap of constitutional protection between arrest and arraignment left by the *Graham* Court created a split of constitutional interpretations in the lower circuit courts of when the

Fourth Amendment's protection over seizure ends and the Fourteenth Amendment's protection over pretrial detainees begins. *Wilson v. Spain*, 209 F.3d 713, 715 (8th Cir. 2000).

**B. Supported by the majority of circuit courts, the continuing seizure approach views an arrestee as remaining under seizure beyond arrest, and retaining this legal status provides the appropriate constitutional protection against excessive force from law enforcement officers as intended by the text of the Fourth Amendment.**

This Court should adhere to the Fifteenth Circuit's application of the continuing seizure approach, in holding that Radley's Fourth Amendment rights extended beyond initial seizure. The continuing seizure approach views seizure as a continuum, instead of the particular moment of initial restraint. *Johnstone*, 107 F.3d at 206. By interpreting seizure as extending beyond arrest, any abuse occurring during this continuing seizure would be analyzed under the Fourth Amendment. *See Graham*, 490 U.S. at 395 (excessive force occurring during seizure is protected by Fourth Amendment).

The Second, Third, Sixth, Eighth, Ninth, and Tenth Circuits adopted this constitutional interpretation, holding the Fourth Amendment applies beyond arrest, extending until either the arrestee leaves the custody of the arresting officer or attends a formal hearing. *See, e.g., Aldini v. Johnson*, 609 F.3d 858, 866 (6th Cir. 2010) (dividing line between Fourth and Fourteenth Amendment's zones of protection occurs at the probable cause hearing); *Wilson*, 209 F.3d at 716 (Fourth Amendment applies not only to the act of arrest, but to any subsequent force used against an arrestee); *Johnstone*, 107 F.3d at 206 (seizure continues after arrest); *Pierce v. Multnomah Cnty., Or.*, 76 F.3d 1032, 1043 (9th Cir.), *cert. denied*, 519 U.S. 1006 (1996) (warrantless, post-arrest, pre-arraignment custody governed by Fourth Amendment); *Austin v. Hamilton*, 945 F.2d 1155, 1160 (10th Cir. 1991) (Fourth Amendment protects against abuse to arrestee detained

without a warrant); *Powell v. Gardner*, 891 F.2d 1039, 1044 (2d Cir. 1989) (Fourth Amendment protection applies while arrestee is in the arresting officer's custody).

Only a small number of circuits declined to follow the continuing seizure doctrine, instead viewing seizure as a single act of detention, not a continuing event. *Riley*, 115 F.3d at 1163. The Fourth and Fifth Circuits interpreted the Fourth Amendment as only applying to the initial decision to detain the accused and not to the conditions of their custody. *Id.* These circuits held that once a person is lawfully arrested they become a pretrial detainee and are protected under the Fourteenth Amendment's Due Process Clause. *Brothers*, 28 F.3d at 455; accord *Valencia v. Wiggins*, 981 F.2d 1440, 1445 (5th Cir.), *cert. denied*, 509 U.S. 905 (1993). The Seventh and Eleventh Circuits also held the Fourteenth Amendment applies to excessive force against arrestees; however, these circuits were indecisive in their application of constitutional standards, applying both the Fourth and Fourteenth Amendments to detainees in the gap period. *See Cottrell v. Caldwell*, 85 F.3d 1480, 1490-92 (11th Cir. 1996) (finding mistreatment claims of arrestees are governed by the Due Process Clause, but then applying the Fourth Amendment standard to a post-arrest, pre-arraignment plaintiff's excessive force claim).

Applying the Fourth Amendment past initial seizure provides arrestees the protection against excessive force that is constitutionally most appropriate. *Aldini*, 609 F.3d at 866. The Framers drafted the Bill of Rights to unequivocally restrict the exercise of arbitrary authority by the government in the areas of criminal procedure. *Albright v. Oliver*, 510 U.S. 266, 273 (1994). As part of the Bill of Rights, the Fourth Amendment was specifically drafted to protect against pretrial deprivations of liberty. *Id.* at 274. Conversely, the Fourteenth Amendment has most often been interpreted in matters relating to marriage, family, procreation, or other unenumerated rights. *Id.* at 272. The Supreme Court held that where an amendment provides an explicit

textual source of protection against a particular sort of government behavior, that amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims. *Graham*, 490 U.S. at 395. Therefore, since the Fourth Amendment provides specific constitutional protection to arrestees, relying on the Fourteenth Amendment would unnecessarily duplicate this authority. *Albright*, 510 U.S. at 288.

Furthermore, the Fourth Amendment should extend beyond initial detention because there has been no judicial proceeding in the moments after arrest which affirmatively enter the accused into the pretrial system. *Aldini*, 609 F.3d at 866. Initial detention does not provide the legal determination from a judge required to change the plaintiff's official status from undergoing seizure to a pretrial detainee. *Id.*; see *Graham*, 490 U.S. at 395. The process of arrest and booking occur before entering the judicial system, and therefore, warrant protection under the Fourth Amendment, instead of the safeguards granted to pretrial detainees under the Fourteenth Amendment. *Aldini*, 609 F.3d at 866.

Circuits in favor of applying the Fourteenth Amendment after arrest are ultimately unpersuasive because they depend on precedent decided before *Graham*, thus misapplying irrelevant case law. *Austin*, 945 F.2d at 1159. The Fourth and Fifth Circuits base the majority of their reasoning on the Supreme Court case, *Bell v. Wolfish*, which instructs courts to analyze conditions of pretrial detention under the Due Process Clause of the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); see, e.g., *Riley*, 115 F.3d at 1163 (embracing the framework of *Bell* rather than extending the Fourth Amendment to pretrial detainees); *Valencia*, 981 F.2d at 1445 (citing *Bell* as the most important basis for their application of Fourteenth Amendment to excess force claims); *Brothers*, 28 F.3d at 456-57 (relying on *Valencia* and *Bell*). While *Bell* appears to assign the Fourteenth Amendment to the gap period, *Graham v. Connor*,

decided ten years after *Bell*, left open the issue of which amendment applied to post-arrest, pre-arraignment detainees. *Graham*, 490 U.S. at 395 n.10. Therefore, *Graham* implicitly overrules *Bell*, and the Fourth and Fifth Circuit's reliance on its rationale is unfounded.

Another pre-*Graham* decision rejecting the continuing seizure interpretation is the Seventh Circuit case, *Wilkins v. May*, which determined seizure ends the moment arrest is complete. *Wilkins v. May*, 872 F.2d 190, 192 (7th Cir. 1989), *cert. denied*, 493 U.S. 1026 (1990). One year after *Graham*, the Seventh Circuit decided *Titran v. Ackman*, and based its rationale for applying the Fourteenth Amendment on *Wilkins*. *Titran v. Ackman*, 893 F.2d 145, 147 (7th Cir. 1990). However, the subsequent *Graham* decision has been interpreted to undercut *Wilkins*'s view that seizure ends at the moment police gain custody and control over the suspect. *Valencia*, 981 F.2d at 1444 n.10; *accord Austin*, 945 F.2d at 1159. Furthermore, the precedent of *Titran* is uncertain at best. While the *Titran* court does state during the time between arrest and conviction the government may not punish a citizen without due process of law, the *Titran* court also affirmed the objective reasonableness standard, holding that force on a person in custody pending trial will track the Fourth Amendment. *Titran*, 893 F.2d at 147. This conflicting rationale further weakens any court's reliance upon *Titran*.

Analyzing Officer Goode's excessive force against Radley under the continuing seizure approach, Radley's rights are properly protected under the Fourth Amendment. Following the precedent of the *Graham* Court, when Radley was arrested and placed in Officer Marlin's squad car, he was still undergoing seizure for purposes of his excessive force claim. *See Graham*, 490 U.S. at 389. Radley's arrival at the Fair County Police Station and subsequent booking did not end his Fourth Amendment protection because there had been no judicial process to change his legal status to that of a pretrial detainee. *See Johnstone*, 107 F.3d at 203 (excessive force in

police station garage protected by the Fourth Amendment). Therefore, the placement of Radley in a holding cell a few hours after his arrest, where the physical abuse occurred, should also be viewed as a continuation of his seizure under Fourth Amendment jurisprudence. *Compare Wilson*, 209 F.3d at 714 (abuse in holding cell several hours after arrest protected by Fourth Amendment), *with Valencia*, 981 F.2d at 1442 (abuse in holding cell *three weeks* into detention analyzed under Fourteenth Amendment).

## **II. THE FOURTH AMENDMENT MANDATES PROTECTION EXTEND UNTIL RADLEY HAS BEEN ARRAIGNED OR FORMALLY CHARGED BECAUSE UNTIL IT IS DETERMINED HE WAS LAWFULLY ARRESTED, THERE HAVE BEEN NO EVIDENTIARY FINDINGS TO WARRANT THE DEPRIVATION OF HIS FOURTH AMENDMENT RIGHTS**

### **A. The extension of Fourth Amendment rights until arraignment or a formal hearing allows for consistent protection to all arrestees who have not had a neutral magistrate rule on whether the state can take away their liberty, and until this occurs, the accused could be set free at any time before formally entering the pretrial system.**

When a citizen brings a § 1983 claim against an officer, a substantially higher hurdle must be surpassed to show excessive force under the Fourteenth Amendment standard than under the objective reasonableness test of the Fourth Amendment. *Aldini*, 609 F.3d at 864-65. Therefore, a pretrial detainee who has their official abuse analyzed under the Fourteenth Amendment effectively has less constitutional protection against excessive force than an arrestee who is protected under the Fourth Amendment. *Id.* The lowering of rights is constitutionally permissible after a probable cause hearing, since there has been a judicial determination of a potential legal violation which justifies an extended restraint of liberty. *Bell*, 441 U.S. at 536. Prior to a formal hearing, the arrestee has not yet entered the pretrial system because the state has not presented the required evidence to warrant an indictment. *Aldini*, 609 F.3d at 866. It is logically inconsistent with this Nation's concept of justice to lower someone's rights after they

are arrested to that of a pretrial detainee when it is possible the accused could be released before charges are filed. *Pierce*, 76 F.3d at 1043.

Placing the dividing line for Fourth Amendment protection at a probable cause hearing or arraignment adheres to precedent and the judicial goals of protecting citizens from unfounded invasions of liberty and privacy. *Aldini*, 609 F.3d at 866 (citing *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975)). The Supreme Court previously acknowledged this division, holding for constitutional purposes, an arrestee becomes a pretrial detainee after they obtain a judicial determination of probable cause. *Bell*, 441 U.S. at 536. A probable cause hearing or arraignment is a legal proceeding that affects the official status of an arrestee by constitutionally authorizing his detention throughout the proceedings against him. *Aldini*, 609 F.3d at 866. The requisite change in legal status is not accomplished by merely arresting a citizen or placing him in a jail cell. *Id.*

The Sixth, Ninth, and Tenth Circuit Courts recognized the Fourth Amendment as extending protection until arraignment or a probable cause hearing in the absence of a warrant. *See, e.g., Aldini*, 609 F.3d at 866 (warrantless arrestee in gap period protected by Fourth Amendment); *Pierce*, 76 F.3d at 1043 (Fourth Amendment sets the applicable constitutional limitation on the treatment of an arrestee detained without a warrant up until the arrestee is released or found to be in legal custody based upon probable cause for arrest); *Austin*, 945 F.2d at 1160 (protection of Fourth Amendment extends until person is taken before a magistrate judge or other judicial official to determine probable cause). These circuits agreed a judicial discovery from a neutral magistrate, determining the accused is properly held pursuant to legal evidence, is necessary to end Fourth Amendment rights. *Aldini*, 609 F.3d at 864 n.6. Examining other areas of Fourth Amendment jurisprudence, these circuits also were persuaded in extending Fourth

Amendment rights to citizens after initial seizure, by both the duration of arrest and necessity of probable cause for detention, concluding the Fourth Amendment's protection logically imposes restriction on the treatment of an arrestee who is detained without a warrant. *Austin*, 945 F.2d at 1160; *accord Pierce*, 76 F.3d at 1043.

It is noteworthy that the circuits most strongly rejecting the continuing seizure approach applied the Fourteenth Amendment in cases where the detainees were arrested pursuant to a valid warrant. In *Riley v. Dorton*, the Fourth Circuit explicitly conceded the plaintiff was arrested pursuant outstanding warrants, and therefore, the probable cause hearing rule established by the Ninth and Tenth Circuits was inapplicable. *Riley*, 115 F.3d at 1164 n.1. Additionally, in the Fifth Circuit's leading excessive force cases, the plaintiffs were also arrested with a valid warrant. *Brothers*, 28 F.3d at 454; *accord Valencia*, 981 F.2d at 1442. This precedent shows other circuit's acknowledgement of the importance of a probable cause hearing before application of the Fourteenth Amendment. *Riley*, 115 F.3d at 1164 n.1. *Cf. Titran*, 893 F.2d at 145 (finding Fourteenth Amendment applies to arrestee in gap period being held without a warrant).

The abuse Radley suffered from Officer Goode occurred before a probable cause hearing or arraignment. Radley was arrested without a valid warrant; therefore, at the time of the excessive force, no judge had made the independent determination that Radley should be entered into the pretrial system. *See, e.g., Aldini*, 609 F.3d at 866; *Pierce*, 76 F.3d at 1043; *Austin*, 945 F.2d at 1160. Depriving Radley's Fourth Amendment rights would be pre-emptive, and judgment of his legal status cannot be compared to cases where detainees already had a judicial determination of probable cause. *See Riley*, 115 F.3d at 1164 n.1. Thus, Radley's Fourth

Amendment rights should extend until he had been arraigned or attended a probable cause hearing. *See Pierce*, 76 F.3d at 1043.

**B. This Court should reject the Fifteenth Circuit’s arresting officer requirement as a bright line rule because its application is arbitrary and irrelevant to the constitutional rights of arrestees.**

The Fifteenth Circuit, in an attempt to establish a bright line rule, adopted the arresting officer rule which extends Fourth Amendment protection to arrestees as long as they are in the presence of the arresting officer. However, the Fifteenth Circuit in affirming the district court’s opinion never provided any rationale to support their decision on this issue, beyond their desire to set a clear constitutional standard. While this is a valid goal, the adoption of a bright line rule must be preceded on some constitutional basis to justify the change in citizens’ rights. *Riley*, 115 F.3d at 1164.

The arresting officer rule escapes this basic logic and arbitrarily picks a meaningless point in time to determine a citizen’s rights, instead of the moment when their legal status changes. *Aldini*, 609 F.3d at 866. In *Riley v. Dorton*, the court declined to adopt the arresting officer rule, claiming that besides lacking textual and precedential support, the rule’s effect would cause Fourth Amendment coverage to depend upon the fortuity of how long an arresting officer happens to remain with a suspect. *Riley*, 115 F.3d at 1164. Since the legal status of the victim governs what amendment is applied in excessive force claims, it would be irrational for Fourth Amendment rights to depend solely on law enforcement protocol, since the arresting officer’s presence has no influence on a detainee’s legal status. *Aldini*, 609 F.3d at 866.

Additionally, the arresting officer rule aggravates the current problem created by the circuit court split: unequal application of the law. There can be no greater interference of liberty than applying the Constitution differently to arrestees in similar situations. *Wilkins*, 872 F.2d at

193. Depending on the custom of a particular police administration, the arresting officer could leave immediately after arrest or continue to stay with the arrestee throughout the booking process. *Riley*, 115 F.3d at 1164. Thus, two arrestees abused during the same point in time during seizure could have their constitutional rights differ merely because the arresting officer in one case momentarily left. *Id.*

While several circuits applied the Fourth Amendment in cases where the arresting officer was present during the abuse, these cases are not indicative of a strong precedent supporting the arresting officer rule. *See, e.g., Wilson*, 209 F.3d at 714; *Johnstone*, 107 F.3d at 203; *Austin*, 945 F.2d at 1157. The Second Circuit is the only circuit that explicitly adopted the arresting officer rule as a threshold requirement for Fourth Amendment protection. *Powell*, 891 F.2d at 1044. In *Powell v. Gardner*, the Second Circuit held the Fourth Amendment standard should be applied at least to the period prior to the time when the person arrested is arraigned or formally charged and remains in sole or joint custody of the arresting officer. *Id.* However, in their articulation of the arresting officer rule, the Second Circuit acknowledged the necessity of a formal hearing for Fourth Amendment protection. *Id.* In *Powell*, the plaintiff was arrested pursuant to a court issued warrant; therefore a formal hearing had already occurred prior to the abuse. *Id.* at 1041. Thus, the *Powell* court's opinion cannot be viewed as requiring the presence of the arresting officer as the sole factor courts look to when determining Fourth Amendment application.

The Third and Eighth Circuit Courts applied the Fourth Amendment to plaintiffs abused while in the presence of their arresting officer. *Compare Wilson*, 209 F.3d at 714 (arresting officer abused arrestee in jail cell), *with Johnstone*, 107 F.3d at 203 (excessive force administered by arresting officer after arrival at police station). However, in both circuits the courts' opinions never mentioned the arresting officer rule as justification for Fourth Amendment

protection. Instead, the Third and Eighth Circuits' rationale focused on embracing the continuing seizure interpretation of the Fourth Amendment, holding Fourth Amendment protection extended to excessive force occurring after the arrestee arrived at the police station. *Wilson*, 209 F.3d at 716; *accord Johnstone*, 107 F.3d at 206. Due to the opinions' lack of analysis regarding the arresting officer rule, it can be inferred that the Third and Eighth Circuits' application of the Fourth Amendment was primarily based on their constitutional interpretation that a plaintiff abused at a police station is still undergoing seizure, rather than the fact the arrestee happened to be still in the custody of the arresting officer. *Wilson*, 209 F.3d at 716; *accord Johnstone*, 107 F.3d at 206.

Even if the arresting officer rule is applied in Radley's case, its application to end his Fourth Amendment rights is unfounded. The Fifteenth Circuit overlooked the fact that Officer Marlin, the arresting officer, was still present at the police station and in joint custody of Radley during the time of his abuse. *See Powell*, 891 F.2d at 1044 (Fourth Amendment standard applies while arrestee remains in the custody (sole or joint) of the arresting officer). Joint custody of an inmate allows for two officers to control an arrestee, but gives each the freedom to briefly leave to further assist in efficient booking of an inmate. *See id.* at 1041. When Officer Marlin and Radley arrived at the police station, Radley was temporarily transferred into Officer Goode's custody. Goode then verbally abused Radley during the booking process and excessively tightened his handcuffs. Officer Marlin returned a short time later and proceeded to loosen Radley's handcuffs, thus asserting his continuing control over the conditions of Radley's seizure. *See Pierce*, 76 F.3d at 1043. After Marlin left the room again, Goode physically abused Radley after placing him in a holding cell.

The mere fact that Goode was the only officer present during both instances of abuse does not indicate that Marlin released his control over Radley. *See, e.g., Powell*, 891 F.2d at 1041 (arresting officer temporarily transferred custody of arrestee to desk sergeant for the booking process, after log-in was complete the arresting officer regained physical control over arrestee); *Riley*, 115 F.3d at 1161 (non-arresting officer took accused to police station, after booking the arresting officer regained custody to transport accused to jail); *Wilson*, 209 F.3d at 714 (arresting officer allowed another officer to transport arrestee to jail, upon arrival both officers participated in booking). Marlin was in close physical proximity to Radley at all times in the police station and gave no indication of being relieved of his responsibility to Radley. *See Powell*, 891 F.2d at 1041 (although non-arresting officer was processing arrestee, arresting officer was nearby in the same building to quickly regain custody once log-in was complete). This was exemplified when Marlin returned to check on Radley after a brief period of time and immediately took care of his request for looser cuffs, instead of deferring this job to Officer Goode. Thus, this Court could interpret from the facts that when Radley experienced excessive force at the police station, he was still in the joint custody of his arresting officer.

### **CONCLUSION**

Petitioner respectfully requests this Court to reverse the Fifteenth Circuit's decision and find that Radley's Fourth Amendment rights extended until he was arraigned or attended a probable cause hearing. This Court should find that Fourth Amendment rights extend beyond initial seizure by adopting the continuing seizure approach in excessive force cases, which will allow this Court to remain faithful to the Framers' intended protection under the Fourth Amendment and provide arrestees with consistent protection until a judicial determination enters

them into the pretrial system. In determining when Fourth Amendment protection ends, this Court should place a bright line when the arrestee attends a formal hearing, which would allow a magistrate to rationally conclude whether an arrestee should be further detained or released before lowering the arrestee's rights from the Fourth Amendment to the Fourteenth Amendment. Rejecting the arresting officer rule in favor of a formal hearing standard will not only promote consistent application of the law, but will also allow the change in an arrestee's rights to depend upon a legal proceeding instead of a fortuitous event.

**PRAYER**

For these reasons, Petitioner prays this Court reverse the decision of the court below and remand to the District Court for further proceedings.

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**CERTIFICATE OF SERVICE**

Counsel for Petitioner certifies that this brief has been prepared and served on all opposing counsel in compliance with the Rules of the Freshman Moot Court Competition.

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