

No. 20-951

In the Supreme Court of the United States

MARY STEWART, AS ADMINISTRATOR OF THE ESTATE OF
LUKE O. STEWART, SR., DECEASED, PETITIONER

v.

CITY OF EUCLID, OH, ET. AL., RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

**MOTION FOR LEAVE TO FILE AND BRIEF OF
PROFESSOR SETH STOUGHTON AND POLICING
SCHOLARS AS AMICI CURIAE IN SUPPORT OF
PETITIONER**

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**MOTION FOR LEAVE TO FILE BRIEF OF
*AMICI CURIAE***

Amici curiae timely notified the parties of their intention to submit an amicus brief in this case, as required by Supreme Court Rule 37.2(a). Petitioner consented, but Respondent withheld consent. *Amici curiae* respectfully moves this Court, under Supreme Court Rule 37.2(b), for leave to file the attached brief in support of Petitioner.

Seth Stoughton is an Associate Professor at the University of South Carolina School of Law and an Associate Professor (Affiliate) in the University's Department of Criminology and Criminal Justice. Professor Stoughton was an officer with the Tallahassee Police Department for five years. In that time, he trained other officers, helped write policies to govern the use of new technologies, earned multiple instructor and operator certifications, and taught personal safety and self-defense courses in the community. This background has influenced Professor Stoughton's scholarship, which focuses on policing, police culture, and related regulations. To that end, Professor Stoughton takes a special interest in judicial rulings that implicate policing, such as training and officer accountability. These include developments in municipal and officer liability.

Professor Stoughton is joined by policing scholars across the country who likewise have expertise and interest in legal issues that implicate policing, including police culture, training, and officer accountability. Biographies of all fifteen *amici* are available in the Addendum.

Amici believe that this case presents fundamental issues concerning the scope of municipal liability and the relationship between policing culture and unconstitutional force. In the attached brief, *amici* offer the Court an analysis of the causal link between police culture—officer training, supervision, the prioritization of aggressive policing, and the failure to investigate and discipline excessive uses of force—and unconstitutional uses of force. The proposed amicus brief explains how a police department’s culture can affect an individual officer’s actions, and, therefore, may lead to unconstitutional uses of force against civilians.

For these reasons, the Court should grant *Amici Curiae* leave to file the attached amicus curiae brief in support of Petitioner.

Respectfully submitted,

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**BRIEF OF PROFESSOR SETH STOUGHTON AND
POLICING SCHOLARS AS *AMICI CURIAE* IN SUPPORT
OF PETITIONER**

INTEREST OF THE *AMICI CURIAE*¹

Amici curiae are 15 policing scholars who teach, study, or write about legal issues implicating policing, including police culture, training, and officer accountability. *Amici* share an interest in rulings that implicate policing and developments in municipal and officer liability. *Amici* believe that this case presents fundamental issues concerning the scope of municipal liability and the relationship between policing culture and unconstitutional force.

SUMMARY OF ARGUMENT

Amici urge review and reversal of the Sixth Circuit’s rule that municipal liability requires violation of a clearly established law. The “clearly established” rule ignores the relationship between police culture and unconstitutional uses of force, causing absurd results. *Stewart* and *Wright* make this clear. In *Wright*, the Sixth Circuit found that the City of Euclid’s police training program “gave rise to a culture that encouraged . . . unconstitutional excessive force.” *Wright v. City of Euclid, Ohio*, 962 F.3d 852, 881 (6th Cir. 2020). But in *Stewart*, where the same training program and the same police culture also lead to unconstitutional force, the Sixth Circuit found that Respondent could not be liable. *Stewart v. City of Euclid, Ohio*, 970 F.3d 667, 676 (6th Cir.

¹ Under Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief.

2020). The only difference between *Stewart* and *Wright* is that a “clearly established” law had not foreclosed Stewart’s “particular circumstance[]”: an officer climbing into the victim’s vehicle and shooting him at close-range. *Id.* at 675.

In addition to Petitioner’s arguments, *amici* ask the Court to consider the causal link between police culture—officer training, supervision, the prioritization of aggressive policing, and the failure to investigate and discipline excessive uses of force—and unconstitutional uses of force. Police culture can be indicative of “deliberate indifference” to constitutional rights regardless of whether a “clearly established” law prohibits the conduct.

Amici explore that link. This brief proceeds in three parts.

First, it explains how organizational culture, including that of police agencies, affects individual actions.

Second, it describes several aspects of police culture and explains how each shared attitude can affect an individual police officer’s actions, including the decision to use force.

Third, it demonstrates through empirical research and case studies that police culture can contribute to the unconstitutional use of force.

ARGUMENT

I. The Role of Culture in Shaping Actions

Social psychologists have long recognized a link between culture and behavior: organizational culture influences individuals’ beliefs and decisions. Simply put, a person’s behavior is the product of multiple factors, including their social environment. *See* Geoffrey P. Alpert

et al., *Measuring the Impact of Organizational Culture and Climate on Police Officers' Decisions and Behavior* 1 (Centre of Excellence in Policing & Security, Griffith Univ., Aus. Working Paper, Issue 1, July 2012). Personality and individual characteristics, such as belief systems and attitudes “provide[] only a partial explanation of decision-making and behavior.” *Id.* (citation omitted). Beyond individual characteristics, people learn behavior norms “by virtue of their associations with others or where they exist within social networks.” Thomas Baker et al., *Promoting Ethical Behavior and Organizational Citizenship Behaviors: The Influence of Corporate Ethical Values*, 59 *J. Bus. Res.* 849, 853 (2006). Especially in the workplace—where people spend the vast majority of their waking hours with peers, engaged in a common goal—employees develop “a set of shared attitudes . . . in dealing with the strains of the occupation.” Jason R. Ingram et al., *A Multilevel Framework for Understanding Police Culture: The Role of the Workgroup*, 51 *Criminology* 365, 366 (2013). These shared attitudes shape individuals' thought-processes and behavior. Baker et al., *supra*, at 855.

Extensive empirical, peer-reviewed research has established conclusively that organizational culture alters the actions of individuals who are part of that culture. See Anusorn Singhapakdi & Scott J. Vitell, *Marketing Ethics: Factors Influencing Perceptions of Ethical Problems and Alternatives*, 10 *J. Macromarketing* 4, 14 (1990) (finding that employees are less likely to overlook unethical behavior by their peers than when the company has a code of ethics). These studies reveal that organizational culture is essentially “a mechanism of social control that can be used to manipulate subordinates into perceiving, thinking, and feeling in certain ways.” Scott E. Wolfe &

Alex R. Piquero, *Organizational Justice and Police Misconduct* 38 *Crim. Just. & Behav.* 332, 338 (2011).

Police culture is no exception. Officers' unique working environment and common experiences create a culture built on "shared understandings and collectiveness." Ingram et al., *supra*, at 367. Numerous studies demonstrate that this shared police culture affects individual police officers' actions. For example, researchers have found that police culture influences an officer's decision to wear a seatbelt while on patrol, changes the likelihood that an officer will proactively stop and search vehicles, and even alters an officer's decision on whether to use force. See Michael Sierra-Arévalo, *American Policing and the Danger Imperative*, __ *L. & Soc'y Rev.* __ (accepted for publication Nov. 20, 2020) (tying police culture's danger imperative to officers' practice of disregarding written policy to wear seatbelts while driving); Eugene A. Paoline III & William Terrill, *The Impact on Police Culture on Traffic Stop Searches: An Analysis of Attitudes and Behavior*, 28 *Policing: Int'l J. Police Strategies & Mgm't* 455, 468 (2005) (finding that officers who subscribed to certain cultural norms were more likely to conduct traffic stops and searches); William Terrill et al., *Police Culture & Coercion*, 41 *Criminology* 1003, 1029 (2003) (finding that officers sharing a certain set of cultural values were more likely to use coercive force against civilians).

This idea is widely accepted by policing scholars. President Obama's Task Force on 21st Century Policing recognized that law enforcement "[b]ehavior is more likely to conform to culture than rules" and cautioned that "[a]ny law enforcement organization can make great rules and policies . . . but if policies conflict with the existing culture, they will not be institutionalized and behavior will

not change.” Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing* 11-12 (2015).

Indeed, police culture contributed to all the major abuse of force scandals over the last thirty years, including the beating of Rodney King, the Los Angeles Police Department (“LAPD”) Rampart scandal, and misconduct within the Ferguson Police Department (“FPD”) as identified by a Department of Justice (“DOJ”) investigation. *See infra* part III.

Why and how police culture can lead individual officers to use abusive force against civilians is a well-tread research topic. What emerges is a clear portrait of a shared police culture that can contribute to an officer’s unlawful use of force.

II. Police Culture Affects Officers’ Decisions to Use Force

Law enforcement is unique in combining significant individual discretion with the power to use force against citizens. Policing scholars consistently identify a set of shared attitudes that define and shape officers’ behaviors. These cultural attitudes, as described below, are not universal across all police departments in the United States. Yet, when adopted and encouraged within a department, these interrelated attitudes can create a culture that promotes using unlawful force and shields such abuses from investigation, punishment, and reform.

A. The Danger Imperative

Policing is undoubtedly dangerous work. Yet, police culture’s emphasis on the risk of danger to individual

officers—sometimes called “the danger imperative”²—can change officers’ risk-calculus and resulting behaviors in predictable, if unintentional ways.

The danger imperative leads officers to be hyper-vigilant against what is communicated as an ever-present specter of violent assault. Officers are taught, “[a]s you approach any situation, you want to be in the habit of looking for cover[] so you can react automatically to reach it should trouble erupt.” Ronald J. Adams et al., *Street Survival: Tactics for Armed Encounters* 155 (1980). Police officers are steeped in this unrelenting rhetoric from their first day at the training academy to their last shift. Officers’ training emphasizes “the possibility—even inevitability—of confronting violence while on patrol.” Sierra-Arévalo, *American Policing*, *supra*, at 21-30. Officers are frequently reminded: “their single most important goal every day is simply to make it home at the end of their shift.” Seth Stoughton, *Principled Policing: Warrior Cops & Guardian Officers*, 51 *Wake Forest L. Rev.* 611, 639-40 (2016). It is no wonder that police believe their work is “among the most dangerous [jobs] in the country.” Otwin Marenin, *Cheapening Death: Danger, Police Street Culture, and the Use of Deadly Force*, 19 *Police Q.* 461, 466 (2019).

Officer decision-making is predicated on this “culturally constructed understanding of danger.” Sierra-Arévalo, *American Policing*, *supra*, at 12-13. “[P]olice see how problems shared by their fellow officers are addressed” and “come to a common understanding of solutions to problems encountered in the course of their

² The term “danger imperative” was coined in *American Policing and the Danger Imperative*. Sierra-Arévalo, *American Policing and the Danger Imperative*, *supra*, at 1-41.

work.” *Id.* at 15. The danger imperative thus affects both how police officers perceive the risk of their jobs, and how they act upon that risk. For example, officers are taught that “traffic stops are fraught with grave and unpredictable danger,” but, in reality, 98% of traffic stops result in no or minor injuries to officers. Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 Mich. L. Rev. 635, 638-40 (2019).

The danger imperative affects officer behavior with unintended consequences. For example, many police officers ignore department policy that requires them to wear their seatbelts while on patrol because they believe it could stop them from reaching their gun in an emergency. *Id.* at 31-37. Yet, car accidents cause almost 50% of all fatal on-duty accidents for police officers. *Id.* at 37; see also FBI, *2019 Law Enforcement Officers Killed & Assaulted (LEOKA) Report* (2020), <https://ucr.fbi.gov/leoka/2019/topic-pages/officers-feloniously-killed>. The cultural preoccupation with a certain type of danger—violent assault—can lead officers to depreciate an otherwise relevant consideration: traffic safety.

The danger imperative can also lead officers to depreciate other relevant considerations, including the civil rights and physical well-being of the community. “The police are trained to believe that they must always be in control and that they must win in every encounter.” Marcel F. Beausoleil, *Police Abuse, in the Social History of Crime and Punishment in America: An Encyclopedia* 1372, 1375 (Wilbur R. Miller ed., 2012). This belief can lead officers to view confusion, requests for clarification, and challenges to police authority as indicative of physical threats. Stoughton, *Principled Policing*, *supra*, at 652.

Additionally, this cultural attitude can lead officers to use excessive force. For example, the now ubiquitous

deployment of less-than-lethal force options, like TASERs, can lead fearful officers to use those options in lieu of less serious, but potentially more appropriate options, such as empty-hand control techniques. See Seth W. Stoughton et al., *Evaluating Police Uses of Force* 214 (2020) (discussing what has been referred to as “lazy Tazy”). As one training officer noted of officers who used a TASER to subdue a mentally-ill man: “They’re not thinking in terms of what risk that weapon poses to that person, they’re thinking about self-preservation.” Michael Sierra-Arévalo, *Technological Innovation and Police Officers’ Understanding and Use of Force*, 53 *Law & Soc’y Rev.* 420, 441-42 (2019).

B. “Us Versus Them”

Police culture often prizes the concept of officers as an elite, professional force, separated from ordinary citizens. Many officers view themselves as “the thin blue line” between public order and criminal chaos. That “simple-looking emblem has multiple meanings, all arising from the same concept: police officers stand as a thin line that protects society from good and evil, chaos and order.” Nan Royce, *Thin Blue Line, A Meaningful Gift to Howard Lake Police Department*, *Herald Journal* (Jan. 5, 2018) <http://www.herald-journal.com/archives/2018/stories/HL-blue-line-flag.html> (quoting Major Timothy Roufa, Chief Technology Officer, Florida Department of Highway Safety and Motor Vehicles). As such, officers may see themselves as members of an elite fraternity (the sheepdogs) that protect the naïve sheep (innocent citizens) against dangerous wolfdogs (criminals). Dave Grossman & Loren W. Christensen, *On Combat: The Psychology and Physiology of Deadly Conflict in War and in Peace* 176-77 (2007).

These pervasive metaphors can influence officers' behavior. They encourage officers to view themselves as different from and superior to normal citizens, dissociating police from those they are sworn to protect. This creates an "us versus them" mentality. Such dissociation suggests that only police officers have the right to evaluate their work, since "police believe that they have special, experience-based and intuitive knowledge that those outside their occupational circle neither share nor understand." David A. Harris, *Failed Evidence: Why Law Enforcement Resists Science* 67 (2012).

Too often, this narrative feeds into an adversarial stance between officers and the public. "This distorted perception reinforces the idea that the police are a separate entity from the public and can result in a pattern of self-justification that can be used to legitimize rudeness, a lack of empathy, and, in some cases, illegal behavior." Jack L. Colwell & Charles Huth, *Unleashing the Power of Unconditional Respect: Transforming Law Enforcement and Police Training* 45, 80-82 (2010). Officers with this mentality are therefore more likely to be aggressive towards people they view as "sheep." It can also reduce officers' respect and patience for citizens. Officers may come to "expect civilians to acknowledge their inferior status and defer accordingly." Richard E. Sykes & Edward E. Brent, *Policing: A Social Behaviorist Perspective* 101 (1983).

Additionally, dissociation from the public can feed into the danger imperative and make officers suspicious and distrusting of civilians. If every police-citizen encounter has the potential to turn violent, by definition each citizen has the potential to be violent. Officers who anticipate force are thus ready to respond with force in every situation, such that, as one commentator advised, officers

should “have a plan to kill everyone [they] meet.” John Bennett, *How Command Presence Affects Your Survival*, PoliceOne.com (Oct. 7, 2010), <https://www.policeone.com/Officer-Safety/articles/2748139-How-command-presence-affects-your-survival/>.

C. The Warrior Mentality

Police culture’s danger imperative and “us versus them” mentality can feed into a third attitude: police officers are warriors in a never-ending campaign against crime. Police are commonly described as “on the front line of a war that goes undeclared because of politics and political correctness.” Alexis Artwohl & Loren W. Christensen, *Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Survive a Gunfight* 6 (1997). This attitude may appear harmless, but policing’s emphasis on a “warrior mentality” may only deepen the divide between police officers and civilians.

First, it promotes the idea that police officers are part of a quasi-military force, reinforcing the danger imperative’s demand for hyper-vigilance in every citizen encounter. Stoughton, *Principled Policing*, *supra*, at 640. Second, a war requires an enemy. If police officers are the good guys, who are the bad guys? Anyone who fails to defer to officers, immediately and completely. Such individuals are “assholes”—enemy combatants whom the police must fight and conquer. John Van Maanen, *The Asshole*, in *Policing: A View From The Street* 221 (Peter K. Manning & John Van Maanen eds., 1978), *reprinted in Police & Society: Touchstone Readings* 346, 347 (Victor E. Kappeler ed., 2d ed. 1999). Officers with this mentality are more likely “to interpret the exercise of free-speech rights as unlawful disobedience, innocent movements as physical threats, [and] indications of mental or physical

illness as belligerence.” U.S. DOJ, *Investigation of the FPD 2* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf. Likewise, the war-on-crime’s paramilitary tone can lead officers to view the public as “the enemy”—which may in turn lead to department policies that dramatically increase citizen complaints. Beausoleil, *supra*, at 1375. In short, paramilitary policing “reinforces the siege mentality that transforms all outsiders into enemies and dehumanizes entire communities.” Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department’s Board of Inquiry Report on the Rampart Scandal*, 34 Loyola L.A. L. Rev. 545, 570 (2001).

Finally, the warrior mentality emphasizes that police officers are engaged in morally righteous work, and that using force is necessary to achieve the end result—winning. In a police department that has adopted this mentality, such an “ends justify the means” perspective can be used to explain, even celebrate, using unlawful force “as a means to a noble cause.” Beausoleil, *supra*, at 1375.

D. Command Presence

Police culture also emphasizes the idea of “command presence,” which demands that police “must always be in control” and “win in every encounter.” *Id.* Famously, the LAPD’s Chief William Parker described the department’s philosophy as: “You are a cop, you are in charge, you have to show everyone you are in charge. Be decisive. Have command presence.” Chemerinsky, *supra*, at 563. Police often believe that “command presence” deters criminals from thinking that officers are easy marks because “treating a suspect with respect will cause the suspect to view the officer as weak.” Colwell &

Huth, *supra*, at 28. In one popular approach to exerting command presence, officers are trained to take control by using an “Ask, Tell, Make” approach in interactions with civilians: “Officers first ask a civilian to do something. If the civilian does not do as requested, the officer orders the civilian to comply. If the civilian does not comply with the order, the officer forces the civilian to comply, using violence as it is needed.” Stoughton, *Principled Policing*, *supra*, at 653. In practice, the “Ask, Tell, Make” approach has caused unconstitutional uses of force across police departments, particularly where police officers utilize this technique in the absence of legal authority to act. *Id.*

If adopted, this cultural expectation of control encourages officers to adopt an adversarial and aggressive posture towards civilians, “especially when they perceive the public as being unsupportive or overly critical of their actions.” Colwell & Huth, *supra*, at 45. And an officer who needs to “always be in control” and “win” every encounter cannot tolerate disrespect. The Court recognized this phenomenon in *Terry v. Ohio*, finding that unconstitutional stop-and-frisks were “motivated by the officers’ perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempt[ed] to undermine police control of the streets.” 392 U.S. 1, 14 n.11 (1968) (quoting Lawrence P. Tiffany, et al., *Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment* 18-56 (1967)). A police culture that prioritizes control can prime officers to aggressively react to perceived slights from citizens and escalate the situation, including to the point of using force, until the officer has “won.” Beausoleil, *supra*, at 1375.

This sets the stage for needless escalation between police officers and citizens. All too often, we see the

results on the news—a routine encounter between police and citizens escalates to violent, even deadly, force. *See, e.g.*, Christina Carrega, *6 Atlanta Police Officers Charged in Forceful Arrests of College Students in Car*, ABC News (June 2, 2020, 2:08 PM) <https://abcnews.go.com/US/atlanta-police-officers-charged-forceful-arrests-college-students/story?id=71023836> (college students hit numerous times with TASER and pulled from car); Seth Stoughton, *Cop Expert: Why Sandra Bland’s Arrest Was Legal But Not Good Policing*, Talking Points Memo (July 24, 2015, 10:07 AM), <http://talkingpointsmemo.com/cafe/sandra-bland-video-legal-but-not-good-policing> (woman dies in jail following her arrest after a traffic stop for not signaling her lane change).

E. The Code of Silence

Finally, the cultural emphasis on police protecting themselves and each other can extend beyond physical threats; in some departments, police culture demands that officers protect each other from criticism. “In the face of outside criticism, cops tend to circle the wagons, adopting a ‘code of silence,’ protecting each other, and defending each other’s actions.” Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 *Geo. Wash L. Rev.* 453, 454 (2004). Police culture’s “us versus them” attitude can reinforce the code of silence by making officers less willing to report abuses of power by their peers. In a national survey of officers, over half agreed that “it is not unusual for police officers to ‘turn a blind eye’ to other officers’ improper conduct” and two-thirds reported that “officers who report incidents of misconduct are likely to be given a ‘cold shoulder.’” David Weisburd et al., Nat’l Inst. of Justice, *Police Attitudes Toward Abuse of Authority: Findings from a National Study 2* (2000), <https://ncjrs.gov/pdffiles1/nij/189105.pdf>.

This culture can create an atmosphere where abuse is not only tolerated, but tacitly encouraged. Without fear of repercussion, officers are more likely to engage in aggressive policing or even abuse that escalates the use of force against citizens. Beausoleil, *supra*, at 1375. For example, researchers found that after Florida sheriffs' offices entered into collective bargaining agreements that included procedural protections from administrative discipline, violent incidents of misconduct by officers increased by 40%. Dhammika Dharmapala et al., *Collective Bargaining Rights & Police Misconduct: Evidence from Florida* __ J.L. Econ. & Org. __ (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3095217. As this study suggests, when law enforcement agencies afford officers greater protection from scrutiny, they are more likely to engage in misconduct.

III. When Police Culture Leads to a Constitutional Violation

A municipality is deliberately indifferent where the “need for more or different training is so obvious, and the inadequacy [is] so likely to result in the violation of constitutional rights[.]” *City of Canton*, 489 U.S. 378 at 390. Because officers carry guns, the “need to train officers in the officers in the constitutional limitations on the use of deadly force,” is “so obvious” that a municipality’s “failure to do so could be properly be characterized as ‘deliberate indifference’ to constitutional rights.” *Id.* at fn.10.

Not every threat justifies using deadly force. *Stewart*, 970 F.3d at 680 (Donald, J. dissenting in part). Whether force is constitutional depends on whether the officer’s conduct was “‘objectively reasonable’ in light of the facts and circumstances,” which must be assessed “from the

perspective of a reasonable officer on the scene[.]” *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). Relevant factors include the severity of the crime, whether the suspect poses an immediate threat to safety, and whether the suspect is actively resisting or evading arrest. *Id.*

But police culture, which is manifested in a department’s official policies and its “informal,” but “well settled” practices, *City of St. Louis v. Praprotnik*, 485 U.S. 112, 138 (1988) (Brennan, J. concurring); see *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 689-90 (1978); *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 819-20 (1985), can encourage the use of force without regard for these factors. Indeed, if found within a police department, the elements of police culture discussed in part II are indicia of potent cultural norms that encourage unconstitutional uses of force. Not every element of police culture is necessary to find that a widespread practice of encouraging or tolerating unconstitutional force exists. Just one element, whether it be failing to investigate uses of force or inadequate training, can contribute to unconstitutional uses of force against civilians.

The link between a flawed police culture and unconstitutional force shows that such abuses are not just the result of an individual officer’s bad acts—they are the “natural consequence” of a culture “that encourage[s], permit[s], or acquiesce[s] to the use of unconstitutional excessive force.” *Wright*, 962 F.3d at 881; see *City of Canton*, 489 U.S. at 390. Indeed, the empirical research discussed in parts I and II elucidate that a deadly shooting like Stewart’s is an “obvious” consequence of a defective policing culture. See *City of Canton*, 489 U.S. 378 at 390. When acted upon, this police culture can lead to violations of citizens’ constitutional rights. See *Wright*, 962 F.3d at 881.

A. Training and Messaging

Police culture surrounding officer training, or the lack thereof, can also lead to unconstitutional uses of force. *See Wright*, 962 F.3d at 880-81 (Respondent’s police training created “custom of allowing excessive force”). The “command presence” paradigm instructs officers to take control of civilian interactions at all costs—including using force. *See supra* part II.D. By prioritizing control, over communication, for example, police training encourages force in situations where it is not justified.

The DOJ’s investigation found the FPD engaged in a pattern of unconstitutional excessive force because many officers were quick to escalate encounters with subjects whom they perceived to be challenging officer orders. *See* U.S. DOJ, *Investigation of the FPD, supra*, at 28. Officers escalated these encounters with force using an abbreviated or perfunctory “Ask, Tell, Make” approach, often relying on TASERs and canines even when the subject was unarmed or restrained. *Id.*

In one case, an FPD officer asked a handcuffed African-American man to get out of the back seat of his patrol car once it had arrived at the jail (Ask). *Id.* at 30. The man verbally refused and the officer ordered him to comply (Tell). *Id.* The man did not physically resist arrest or attempt to assault the officers. *Id.* The officers tased and (allegedly) punched the man in the face and head (Make). *Id.*

In another case, an African-American man was walking down the street when an officer asked him to stop (Ask). *Id.* at 35. The man kept walking, so the officer grabbed his arm (Tell). *Id.* When the man pulled away, the officer forced him to the ground. *Id.* Then, the officer handcuffed the man and used his TASER twice because

the man allegedly would not provide his hand for cuffing (Make). *Id.*

In these examples, the DOJ found that the FPD officers used unconstitutional force. *See id.* at 28-34. The civilian victims neither posed an immediate threat to officer or public safety nor resisted arrest. *Graham*, 490 U.S. at 394. The DOJ connected these unconstitutional uses of force to the officers' training: "officers ha[d] not been trained or incentivized to use de-escalation techniques to avoid or minimize force in these situations." U.S. DOJ, *Investigation of the FPD*, *supra*, 34. The failure to de-escalate directly lead to the unconstitutional use of force.

Likewise, Chemerinsky's analysis of the LAPD found that the LAPD's reliance on "command presence," led to unnecessary aggression by officers. Chemerinsky, *supra*, at 563, 569.

Respondent's training program is no different. The Sixth Circuit held that a jury could find that Respondent's training program—a graphic depicting an officer beating a civilian, a Chris Rock skit called "How not to get your ass kicked by the police!" and a route recital of their use-of-force policy at roll call—"gave rise to a culture that encouraged, permitted, or acquiesced to the use of unconstitutional excessive force, and that, as a result, such force was used on [the victim]." *Wright*, 962 F.3d at 862-63, 881.

And courts across the country have found that similar uses of force by officers in "make" scenarios violated the Constitution. *See, e.g., Wright*, 962 F.3d 852, 869 (6th Cir. 2020) (explaining that it is unreasonable to "tase a citizen not under arrest merely for failure to follow the officer's orders when the officer has no reasonable fear for his or

her safety”); *Godawa v. Byrd*, 798 F.3d 457, 467 (6th Cir. 2015) (reversing grant of qualified immunity to an officer who shot victim fleeing from a field sobriety test); *Gonzalez v. City of Anaheim*, 747 F.3d 789, 797 (9th Cir. 2014) (fatally shooting suspect was unreasonable where the officer entered the suspect’s vehicle when the suspect “stomped on the accelerator” in an effort to flee because suspect did not pose an immediate threat).

These examples demonstrate a link between “command presence”-type officer training and unconstitutional uses of that force. *See Wright*, 962 F.3d at 880-81. Indeed, when there is a cultural expectation that officers must take control of any civilian encounter, it is entirely predictable that officers will use force even when unjustified.

B. Police Priorities and Role in Community

Cultural norms about police priorities and the officer’s role in the community can lead to unconstitutional force. For example, a police department may explicitly or implicitly instruct officers to prioritize treating community members as officer safety risks over, for example, developing good police-community relations. *See supra* parts II.A & II.E. This directive creates an environment where officers approach every situation as a potential deadly force encounter. *Id.* This “warrior” worldview separates officers from thinking of themselves as members of the public. *See supra* parts II.B & II.C.

Empirical research proves that police officers who ascribe to these elements of police culture are more likely to resort to using force and engage in coercive police tactics. For example, researchers found that patrol officers who identified with aspects of an adversarial, warrior-mentality police culture, including distrusting

citizens and aggressive policing, were more likely to engage in proactive traffic stops and searches. *See* Paoline & Terrill, *supra*, at 461, 467. And officers did not need to subscribe wholesale to police culture for it to affect their policing: adversarial policing culture led to more aggressive enforcement even when an officer only moderately identified with it. *Id.*

In another study, surveying the behavior and attitudes of over 600 officers across 12,000 citizen encounters (3,000 of whom were considered suspects), researchers found that officers who had positive or mixed views towards the adversarial police culture described above were more likely to use coercive force than those who did not. Terrill et al., *supra*, at 1005-07, 1010-11, 1026, 1029.

In practice, this cultural preoccupation with danger and the corresponding need to use force creates a tinderbox. Officers who expect to be met with resistance from civilians are more likely to employ force, even when such force is not justified. *See supra* parts II.B-D. Examples of how a police department's culture caused individual officers to exert unlawful force against citizens abound. Erwin Chemerinsky described the LAPD's "Rampart Scandal"—where police in an elite gang unit planted evidence, falsified testimony, stole, and beat and killed civilians all while covering up their crimes—as “the result of an institutional mind-set first conceived in the 1950s” and “not simply about failure to control a problem group of rogue officers.” Chemerinsky, *supra*, at 562. Chemerinsky pointed explicitly to the LAPD's culture of aggressive, authoritarian command and control policing, code of silence, and resistance to civilian oversight as the “central problem” that led to officers' constitutional abuses. *Id.* at 561-63. The LAPD beating of Rodney King tells a similar story. There, too, an independent

commission found that the LAPD's culture of "we/they" encouraged so-called "street justice" against citizens with a "bad or uncooperative attitude." *Report of the Independent Commission of the LAPD* 34, 131 (1991).

More recently, the DOJ's investigation of the FPD found a pervasive culture of command presence policing that sanctioned and encouraged officer's use of force against citizens "as punishment" when they failed to comply with order that lacked legal authority. U.S. DOJ, *Investigation of the FPD, supra*, at 34-35. The DOJ explained that "[o]fficers [in the FPD] expect and demand compliance even when they lack legal authority. They are inclined to interpret the exercise of free-speech rights as unlawful disobedience, innocent movements as physical threats, [and] indications of mental or physical illness as belligerence." *See id.* at 15. When met with these perceived "threats," FPD officers responded with unjustified force:

- Officer stopped a man without reasonable suspicion and asked that he identify himself. The man asserted his rights and declined to be frisked. When the man reached his identification toward the officers, following the officers' request, the officers interpreted his motion as an attempted assault and took him to the ground. The man was later arrested for Failure to Comply and Resisting Arrest, without justification.
- A sergeant detained an African-American man without articulating any reasonable suspicion of criminality. When the man declined to answer questions or submit to a frisk (there was no reason to believe he was

armed), the sergeant grabbed the man, drew his TASER, and ordered the man to comply. Evidence showed that the man made no aggressive movement toward the officer, but the officer fired the TASER into the man for over 20 seconds and arrested the man for Failure to Comply and Resisting Arrest.

Id. at 21, 34.

When confronted with innocuous movements—and where there was no reasonable suspicion of criminality—these officers used force against civilians. In each case, the individual officer’s constitutional violation was caused in part by the culture of the police department. *See id.* at 34-35. These examples demonstrate the causal link between an adversarial police culture that encourages officers to anticipate force and preemptive, unconstitutional uses of that force.

C. Lack of Supervision and Accountability

Excessive force is likewise promoted by the “code of silence.” *See supra* part II.E. When police departments fail to hold officers accountable for misconduct, including excessive uses of force, it signals the department’s tolerance or tactic approval of an officer’s actions, even in situations where the action is contrary to law or agency policies. What an agency *does* sends a far stronger message than what an agency *says*.

Officer supervisors play an important role in determining and communicating agency culture: their behaviors demonstrate to other officers what is acceptable and what is not. Maarten Van Craen & Wesley G. Skogan, *Officer Support for Use of Force Policy*, 44 *Crim. Just. & Behav.* 843, 849 (2017). Simply put, officers

take cues from their supervisors about how to deal with citizens. *See id.* Where supervisors fail to make critical inquiries into officers' uses of force or fail to discipline officers for unreasonable uses of force, officers learn that such force is acceptable, even desirable.

Both the empirical research and police department investigations bear out this causal relationship. *See e.g.*, Dharmapala et al., *supra* (linking rise in police misconduct to limits on administration investigations and discipline); Chemerinsky, *supra*, at 561-63 (describing the LAPD's culture of code of silence and resistance to civilian oversight as the "central problem" that led to officers' constitutional abuses); *Report of the Independent Commission of the LAPD, supra*, at 34, 131. And, in all the examples used in Sections A and B, there were no repercussions for the officers. *See* U.S. DOJ, *Investigation of the FPD, supra*, at 30, 34-35.

As to the FPD, this failure to discipline contravened the FPD's written policy regarding use of force: "force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under a particular set of circumstances." *See id.* at 29 (quoting FPD General Order 410.01). Yet, the DOJ found that FPD officers "routinely engaged in the unreasonable use of [TASERs], and supervisors routinely approve[d] their conduct." *Id.* at 31 (emphasis added). Indeed, "[FPD] Supervisors seem[ed] to believe that any level of resistance justifies any level of force." *Id.* at 40 (emphasis added). Given the FPD's complacency with unconstitutional uses of force, the FPD's failure to investigate force, failure to follow FPD's use-of-force policy in analyzing officer conduct, failure to correct officer misconduct when they find it, and failure to recognize "patterns of abuse," *id.* at 38, it is no wonder

that unconstitutional uses of force were so commonplace among the FPD as to arise to a sanctioned custom.

Respondent also has a use-of-force policy, *Wright*, 962 F.3d at 881, but the officer responsible for investigating excessive force allegations had “*never* heard of a use of force incident by a Euclid officer that seemed inappropriate to him.” *Id.* at 882. The Chief of Police agreed: “he had never found merit to any civilian complaint concerning use of force, false arrest, or illegal searches.” *Id.* at 864. Respondent’s “failure to ever meaningfully investigate excessive force complaint” suggests a police culture that ratifies, and likely encourages, unconstitutional force. *See id.* at 882.

When departments fail to uphold their written policies related to the use of force, it signals to officers that those policies are not worth the paper they are written on. The actual “policy” is what is tolerated and even encouraged by the department’s culture. As exemplified by FPD, LAPD, and Respondent, that policy may be the unreasonable use of force.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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ADDENDUM:
Biographies of Amici Curiae

Kami Chavis, a former Assistant United States Attorney for the District of Columbia, is Vice Provost at Wake Forest University and she is a Professor of Law and Director of the Criminal Justice Program at Wake Forest University School of Law. Professor Chavis graduated with a B.A. in Public Policy Analysis from the University of North Carolina at Chapel Hill. After receiving her J.D. from Harvard Law School, she worked as an associate at private law firms in Washington, D.C., where she participated in various aspects of civil litigation, white-collar criminal defense, and internal investigations. Professor Chavis is an expert on implementing organizational change in local law-enforcement agencies, regarding police-use of force, mitigating risks associated with allegations of racial profiling, and the implementation of body-worn cameras and other technological tools that assist law enforcement. She frequently makes presentations on law-enforcement issues and is a leader in the field of police accountability.

Frank Rudy Cooper is the William S. Boyd Professor of Law and Director of the Program on Race, Gender, and Policing at the University of Nevada-Las Vegas William S. Boyd School of Law. He graduated from Amherst College and Duke University Law School, where he was on the *Duke Journal of Gender, Law & Policy* and the Moot Court Board. He clerked for the Honorable Solomon Oliver, Jr. (N.D. Ohio). He has taught at four law schools. Professor Cooper is known for work in Criminal Procedure, Masculinities Studies, and Critical Race Theory. His dozens of publications have appeared in, *inter alia*, the Boston University Law Review, the University of California, Davis Law Review, the University of Illinois Law Review, and the Arizona State Law Journal.

Jeffrey Fagan is the Isidor and Seville Sulzbacher Professor of Law at Columbia Law School and Professor of Epidemiology at Columbia University. He also is a Senior Research Scholar at Yale Law School. His research and scholarship examine race and criminal procedure, policing and police reform, the legitimacy of the criminal law, capital punishment, firearm violence and regulation. He served on the Committee on Law & Justice of the National Academy of Science from 2000-2006. He was a member of the 2004 National Research Council panel that examined policing in the U.S. He was an expert consultant to the U.S. Department of Justice in its investigation of the Ferguson (Missouri) Police Department and the lead expert witness for plaintiffs in the civil rights trial on the New York City Stop and Frisk program. He is a Fellow of the American Society of Criminology.

Brandon L. Garrett is the L. Neil Williams Professor of Law at Duke University School of Law, where he has taught since 2018. He was previously the Justice Thurgood Marshall Distinguished Professor of Law and White Burkett Miller Professor of Law and Public Affairs at the University of Virginia School of Law, where he has taught since 2005. His research and teaching interests include criminal procedure, wrongful convictions, habeas corpus, corporate crime, scientific evidence, civil rights, and constitutional law. Professor Garrett's work, including several books, has been widely cited by courts, including the U.S. Supreme Court, lower federal courts, state supreme courts, and courts in other countries. He also frequently speaks about criminal justice matters before legislative and policymaking bodies, groups of practicing lawyers, law enforcement, and to local and national media. Professor Garrett attended Columbia

Law School, where he was an articles editor of the Columbia Law Review and a Kent Scholar. After graduating, he clerked for the Hon. Pierre N. Leval of the U.S. Court of Appeals for the Second Circuit. He then worked as an associate at Neufeld, Scheck & Brustin LLP in New York City. He has participated for several years as a researcher in the Center for Statistics and Applications in Forensic Science (CSAFE), as well as a principal investigator in an interdisciplinary project examining eyewitness memory and identification procedures supported by Arnold Ventures. Supported by grants from the Charles Koch Foundation and the Wilson Foundation, Professor Garrett is the founder and Director of the Wilson Center for Science and Justice at Duke.

Ayesha Bell Hardaway is an Assistant Professor of Law at Case Western Reserve University School of Law. As a member of the faculty, Professor Hardaway teaches as a clinician in the Milton A. Kramer Law Clinic in the areas of criminal justice, civil litigation, and health law. She is currently the Director of the Criminal Defense Clinic where she supervises students in their first-chair direct representation of clients accused of misdemeanor crimes in the Greater Cleveland area. Professor Hardaway's scholarly research centers around the issue of police reform and she has published articles in some of the country's leading law reviews including the Georgetown Law Journal, Boston Law Review and the Stanford Civil Rights-Civil Liberties Journal. In addition to her research expertise and teaching responsibilities, Professor Hardaway is an expert consultant to a host of municipalities and higher education institutions seeking to improve the policies, training and culture of their law enforcement departments. Of particular note, she

currently serves as Deputy Monitor of the Independent Monitoring Team appointed to evaluate the progress and implementation of Cleveland Police Department reforms mandated by a settlement agreement between the City of Cleveland and the U.S. Department of Justice.

David A. Harris is the Sally Ann Semenko Endowed Chair and Professor of Law at the University. He teaches Criminal Law, Criminal Procedure, and Evidence, and focuses his research on police conduct, search and seizure law, and the intersection of race and criminal justice. His published work includes *Profiles in Injustice* (2002) on racial profiling, and *A City Divided: Race, Fear, and the Law in Police Confrontations* (2020).

David Jaros joined the University of Baltimore School of Law after three years as an assistant professor in New York University School of Law's Lawyering Program. His teaching interests include Criminal Procedure, Evidence, and Criminal Law. He is a member of the American Law Institute and is an appointee to the Maryland Task Force to Study Crime Classification and Penalties. Professor Jaros' scholarship addresses the use of criminal law to police and regulate various aspects of our daily lives. His articles have appeared in a number of law reviews including the *Columbia Law Review*, *University Pennsylvania Law Review*, *Boston College Law Review*, and the *Iowa Law Review*. Professor Jaros received his law degree from Yale Law School and his Master's degree in public policy from the John F. Kennedy School of Government at Harvard University. After graduating from Yale, he clerked for the Honorable Allyne Ross, United States District Court, Eastern District of New York. He then worked for five years as a public defender at the Bronx Defenders in New York

City, first as a staff attorney and later as the legal director. He is a member of the New York and Massachusetts bars.

Richard A. Leo, PhD, JD, is the Hamill Family Professor of Law and Psychology at the University San Francisco. Dr. Leo is one of the leading experts in the world on police interrogation practices, the impact of *Miranda*, psychological coercion, false confessions, and the wrongful conviction of the innocent. Dr. Leo has authored more than 100 articles in leading scientific and legal journals as well as several books, including the multiple award-winning *Police Interrogation and American Justice* (Harvard University Press, 2008). Dr. Leo has won numerous individual and career achievement awards for research excellence and distinction. Dr. Leo has been the recipient of Soros and Guggenheim fellowships, among others. In 2011 he was elected to the American Law Institute. In 2016, the *Wall Street Journal* named him as one of the 25 law professors most cited by appellate courts in the United States. His publications have been translated into multiple languages and downloaded over 54,000 times on the Social Science Research Network (SSRN). Dr. Leo has been featured and/or quoted in hundreds of stories national print and electronic media, and his research has been cited by numerous appellate courts, including the United States Supreme Court on multiple occasions.

Justin Nix is an Associate Professor in the School of Criminology and Criminal Justice at the University of Nebraska Omaha, where he teaches classes on policing and coordinates the Master of Arts degree program. He earned his Ph.D. from the University of South Carolina in 2015. His areas of research expertise include police

legitimacy and officer decision-making. To date, Professor Nix has authored or co-authored more than thirty peer-reviewed journal articles on these topics, as well as several book chapters, research briefs, and op-eds. He is also a member of the Crime and Justice Research Alliance's expert panel, and frequently engages with local and national media on issues pertaining to policing and criminal justice.

Jeffrey J. Noble is a retired Deputy Chief of Police of the Irvine Police Department. He is a police consultant and expert in the use of force, police tactics, procedures, investigations and accountability. He has been retained in notable cases across the country including Tamir Rice, Philandro Castille, and George Floyd. He is the co-author of *Managing Accountability Systems for Police Conduct: Internal Affairs and External Oversight* and *Evaluating Police Uses of Force* (2008).

L. Song Richardson is Dean and Chancellor's Professor of Law at UC Irvine School of Law. Her teaching and research focuses on criminal procedure, criminal law, and race and policing. Dean Richardson received her A.B. from Harvard College and her J.D. from Yale Law School. Her interdisciplinary research uses lessons from cognitive and social psychology to study decision-making and judgment in a variety of contexts. Her scholarship has been published by law journals at Harvard, Yale, Berkeley, Cornell, Duke and Northwestern, among others. She is also a leading expert on race and policing, including numerous articles on police violence. She has worked with police departments seeking to understand and address the impact of race on their policing practices.

Michael Sierra-Arévalo is an Assistant Professor in the Department of Sociology at the University of Texas at Austin. Sierra-Arévalo's research employs quantitative and qualitative methods to investigate police culture, behavior, and legitimacy. Drawing on ethnographic fieldwork and interviews with police officers in three U.S. police departments, his recent research shows how policing's cultural preoccupation with danger and death shapes police training, practice, and policy. His other research interests include gangs, gun violence, social networks, and violence prevention. Sierra-Arévalo's research has appeared in a variety of social science publications, including the Proceedings of the National Academy of Sciences, Criminology, Law & Society Review, and the Annual Review of Law and Social Science. His writing and research can also be found in a range of popular outlets, including The Washington Post, Times Higher Education, Vox, GQ, and NPR. He received his Ph.D. in Sociology from Yale University and his B.A. in Sociology and Psychology from the University of Texas at Austin.

Seth Stoughton is an Associate Professor at the University of South Carolina School of Law and an Associate Professor (Affiliate) in the University's Department of Criminology and Criminal Justice. Professor Stoughton was an officer with the Tallahassee Police Department for five years. In that time, he trained other officers, helped write policies to govern the use of new technologies, earned multiple instructor and operator certifications, and taught personal safety and self-defense courses in the community. This background has influenced Professor Stoughton's scholarship, which focuses on policing, police culture, and related regulations. To that end, Professor Stoughton takes a

special interest in judicial rulings that implicate policing, such as training and officer accountability. These include developments in municipal and officer liability.

The **Wilson Center for Science and Justice** brings together faculty and students at Duke University in law, medicine, public policy, and arts and sciences to pursue research, policy and law reform, and education to improve criminal justice outcomes. The Wilson Center is led by Brandon Garrett, the L. Neil Williams, Jr. Professor of Law at Duke and a leading scholar of criminal procedure, scientific evidence and wrongful convictions. The Wilson Center launched in 2019 with a \$4.7 million grant from the Charles Koch Foundation. Its three main areas of focus are: accuracy in criminal cases, equity in criminal outcomes, and behavioral health needs. The Wilson Center's work is non-partisan and evidence-informed. It seeks to engage with state and local government and community stakeholders to translate research into effective and practical policy.

Jordan Blair Woods, J.D., Ph.D., is an Associate Professor of Law and Faculty Director of the Richard B. Atkinson LGBTQ Law & Policy Program at the University of Arkansas School of Law. His primary research interests and teaching areas include criminal law and procedure, family law, law & sexuality, and constitutional law. His scholarship focuses on the regulation of law enforcement, criminal justice issues affecting LGBTQ populations, and the legal regulation of youth in family and child welfare contexts. His publications include *Traffic Without the Police*, 73 *Stanford Law Review* (forthcoming 2021), and *Policing, Danger Narratives, and Routine Traffic Stops*, 117 *Michigan Law Review* 635 (2019). His scholarship on

policing issues has been selected for presentation at the 2018 Stanford/Harvard/Yale Junior Faculty Forum and the National Association of Criminal Defense Lawyers (NACDL) "Getting Scholarship into Court Project." Woods holds an A.B. from Harvard College, J.D. from UCLA School of Law, and M.Phil. and Ph.D. in criminology from the University of Cambridge, where he was a Gates Scholar.