No.

IN THE

Supreme Court of the United States

STUART WRIGHT, PETITIONER

v.

UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Eighth Circuit decision affirming the Magistrate's order "reflected a clear misapprehension of summary judgment standards in light of [Supreme Court] precedents" --- like what happened in *Tolan v. Cotton*, 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014) (*per curiam*). Ignoring Wright's detailed facts violated procedural rules and Supreme Court "axiom[s]", "general rule[s]", and "fundamental principle[s]" governing summary judgment. *Id.*, 134 S.Ct. at 651, 656, 660.

- Supreme Court precedents require that, "The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505 (1986). That did **NOT** happen here.

- Local Rule 56.1(c) following those precedents was **NOT** followed:

  - ❖ A moving party filing reply suggestions "must respond to the non-moving party's … additional facts…." U.S.A. did **NOT** do so.

  - ❖ "Unless specifically controverted by the moving party, all facts set forth in the statement of the opposing party are deemed admitted …." U.S.A. did **NOT** specifically "controvert," and the Magistrate did **NOT** so "deem."

Thus, the QUESTIONS PRSENTED are as follows:

I. Whether the U.S.A.'s failure to "respond" and the Magistrate Judge's failure to "deem admitted" in

this case conflict with Supreme Court precedent regarding "**the axiom** that in ruling on a motion for summary judgment, '[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.' " *Tolan v. Cotton, supra*, 134 S.Ct. at 1863, quoting *Anderson v. Liberty Lobby, Inc., supra*, 477 U.S. at 255.

II. Whether the U.S.A.'s failure to "respond" and the Magistrate Judge's failure to "deem admitted" in this case conflict with Supreme Court precedent regarding **the "general rule** that a 'judge's function' at summary judgment is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.' *Anderson*, 477 U.S., at 249 …. Summary judgment is appropriate only if 'the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.' [FRCP] 56(a). … a court must view the evidence 'in the light most favorable to the opposing party.' *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598 … (1970); see also *Anderson, supra*, at 255…. " *Tolan v. Cotton, supra*, 134 S.Ct. at 1866.

III. Whether the U.S.A.'s failure to "respond" and the Magistrate Judge's failure to "deem admitted" in this case conflict with Supreme Court precedent regarding "**the fundamental principle** that at the summary judgment stage, reasonable inferences should be drawn in favor of the nonmoving party." *Tolan v. Cotton, supra*, 134 S.Ct. at 1868.

[emphasis added]

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Stuart Wright respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit (Pet.App. 1a) is reported in the Federal Reporter at 892 F.3d 963. The summary judgment opinion of the District Court for the Western District of Missouri (Pet.App. 10a) is not yet reported in the Federal Supplement but is available at 2017 WL 2191639.

JURISDICTION

The Eighth Circuit entered judgment on June 13, 2018. Thereafter, a Petition for Rehearing En Banc was filed on July 30, 2018 and denied on August 29, 2018. The time for filing a petition for a writ of certiorari runs through the date of Tuesday, November 27, 2018 pursuant to Supreme Court Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

This case involves a statutory provision --- the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1).

> "…the district courts … shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages … for injury

> or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

The relevant provisions of the Local Rule 56.1(c) for the Western District of Missouri are as follows:

> "**Reply Suggestions.** The party moving for summary judgment may file reply suggestions. In those suggestions, the party must respond to the non-moving party's statement of additional facts in the manner prescribed in Rule 56.1(b)(1). Unless specifically controverted by the moving party, all facts set forth in the statement of the opposing party are deemed admitted for the purpose of summary judgment."

STATEMENT

As the Eighth Circuit correctly observed in the first sentence of its opinion, this is an "unfortunate case of mistaken identity." Stuart Wright was **the wrong man.** He was NOT the man actually wanted by the United States marshals. He was just in the Grandview Community Center playing in a basketball game. Then, the marshals rushed out onto the court in the middle of the basketball game, pointed a gun in his face, took him down by tasering him, took him into custody, and detained him. The detention continued even after

one of the assisting officers there at the scene gave the marshals a positive identification of the man in custody as Stuart Wright rather than Vinol Wilson whom they were seeking.

The following chart demonstrates what was required and then what really happened:

What the Rule Requires	**What Actually Happened**
W.D. Local Rule 56.1(c) requires that a movant choosing to file "reply suggestions" "must respond … in those suggestions in the manner prescribed in Rule 56.1(b)(1)."	**Defendant U.S.A. did file "Reply Suggestions" but did NOT respond as required.**
"Unless specifically controverted by the moving party, all facts set forth in the statement of the opposing party are deemed admitted for the purpose of summary judgment."	**Although defendant U.S.A. did NOT specifically controvert, the District Court did NOT deem Mr. Wright's facts admitted.**

Thus, it is clear that Mr. Wright did not get what court rules required and, more importantly, what decades of Supreme Court case law has declared to be mandatory: viewing the facts in the light most favorable to the adverse party and allowing the adverse party to have the benefit of all reasonable inferences to be drawn from the evidence.

Mr. Stuart Wright has made four claims under the Federal Tort Claims Act, 28 U.S.C.A. §1346(b):

A. false arrest
B. false imprisonment
C. abuse of process
D. assault and battery

The aforementioned

Plaintiff's Local Rule 56.1(a) Listing of Material Facts Demonstrating Genuine Disputes so as to Defeat Summary Judgment

provided a dramatically different set of facts from what the U.S.A. contended as to what happened on April 15, 2009. Here are a few examples of those facts --- facts to which **the USA never responded** in the manner required by the Local Rule at issue and facts which **the District Court never deemed admitted** --- although both were obligated to do so by the Local Rules and, more importantly, by Supreme Court precedent.

8. Stuart Wright never threatened the man in the Royals shirt [i.e., a United States marshal] by any words he said or anything he did.
9. Stuart Wright never cocked his fist in any way at all or did anything else at all that looked like he (Stuart Wright) was going to punch the man in the Royals shirt. Stuart Wright had seen the gun pointed in his direction, and he was very scared about all of that.
10. Stuart Wright made no indication that he would try to hurt or injure the man in the Royals shirt in any way.

11. Stuart never challenged or provoked the man in the Royals shirt in any way.
12. Stuart Wright did not use or threaten the use of violence or physical force on anyone. He did not flee. He never tried to run away from the man in the Royals shirt in any way.
13. …Stuart was tasered and injured for no reason in that he was doing nothing to injure anyone or to threaten anyone. The tasering was very painful. It felt like Stuart was holding onto a power line. Stuart fell to the floor. …
15. Stuart's brother, Stephen Wright, got Stuart's driver's license from his gym bag and gave the license to one of the men who was there along with the man in the Royals shirt. … Almost everyone there was telling the men who Stuart Wright was and that he was not Vinol.
16. As Stuart was being taken out of the Community Center, he saw a Grandview Police Officer named Officer Clausing. Stuart recognized him as a Grandview High School graduate. Stuart said something to the effect of, "My name is Stuart Wright. I graduated from Grandview High School in 1996. You know me." Officer Clausing then said something to the general effect of, "That's not the guy. I know him." Nevertheless, Stuart was taken out of the Grandview Community Center in handcuffs and put in the back of a car that was outside of the Community Center.
17. When the men put Stuart in the back seat of the car, they put him in there in such a way that his head was toward the passenger side and his feet were near the driver's side. By that time,

many people had told them that he was Stuart Wright, they had his driver's license, and the Grandview Police Officer had told them that he was Stuart Wright and that he (the police officer) knew Stuart. Still, they kept Stuart handcuffed and in their custody. …

19. Stuart Wright remembers hearing some of the men talking about … how they had gotten the wrong guy.
20. Stuart Wright remembers them laughing about it all.
21. At one point, Stuart's brother Stephen Wright was allowed to come over to the car and speak to him briefly. The man in the Royals shirt told Stephen that he knew Stuart was not Vinol, but he said that Stuart had information about Vinol. The man in the Royals shirt and one other man told Stephen to speak to his brother and tell him to tell them what they want to hear. …
27. At that time, Vinol was about 5'11" inches tall and weighed about 200 pounds. … Stuart Wright was about 6'5" tall and weighed 280 pounds. …
30. Terrance Jackson was a referee on the court during the game shown in the disk on April 15, 2009. Based upon his observations and recollections, the following things are true:

¶2. On April 15, 2009, I was working as a referee for a basketball game being played at the Grandview Community Center in Grandview, Jackson County, Missouri. I was on the court refereeing the basketball game when some men ran onto the court with weapons. … I remember that night very

> well….I was watching what happened, and I saw it from beginning to end. …
> ¶4. I do not recall ever hearing that man with the gun or any man tell Stuart Wright to get down on the ground or do any other particular thing.
> ¶5. I never saw Stuart Wright turn and run from the man with the gun.
> ¶6. I never saw Stuart Wright do anything threatening toward the man with the gun.
> ¶7. I never heard Stuart Wright say anything threatening toward the man with the gun.
> ¶8. I never saw Stuart Wright cock his fist in any way or push away the man with the gun or take any other action of any kind toward the man with the gun. …
> ¶10. There were many, many of us there who were telling the man with the gun and the others that the man they tasered was Stuart Wright and not the guy named Vinol.
> ¶11. … I did not see or hear anyone (including Stuart Wright) interfere with or resist the men who had the weapons

These are examples of Mr. Wright's factual submissions which the U.S.A. never specifically controverted and which the Magistrate Judge never deemed admitted --- although both actions are literally required by Local Rule 56.1 and practically required by Supreme Court precedent, axioms, general rules, and fundamental principles in cases where summary judgment motions are at issue. These material facts establish the claims of false arrest, false imprisonment, abuse of process, and assault and battery.

The Essential Procedural History

The original Complaint in this case was filed on December 9, 2010. The procedural history since that time is summarized below.

Wright I	Magistrate Judge's original ruling on qualified immunity (9/6/2012)
Wright II	8th Cir. opinion remanding case for more consideration, *Wright v. US*, 545 Fed. Appx. 588 (8th Cir. 2013) (11/29/2013)
Wright III	Magistrate Judge's opinion granting in part and denying in part defendants' request for qualified immunity (9/16/2014)
Wright IV	8th Cir. opinion reversing Magistrate Judge's denial of qualified immunity to defendants, *Wright v. US*, 813 F. 3d 689 (8th Cir. 2015) (12/23/2015)
Wright V	Magistrate Judge's opinion granting qualified immunity to defendants (3/15/2016)
Wright VI	Magistrate Judge's opinion granting summary judgment on 4 claims under the Federal Tort Claims Act (5/18/2017)
Wright VII	8th Cir.'s opinion affirming summary judgment on 4 claims under the Federal Tort Claims Act 892 F. 3d 963 (8th Cir. 2018) (6/13/2018)
Wright VIII	8th Cir.'s denial of the Petition for Rehearing En Banc (8/29/2018)

Wright VI and VII are the opinions directly at issue in this Petition for Certiorari. Count III of the original 4-count Complaint is what remains at issue. That single count alleged the following violations of the Federal Tort Claims Act, 28 U.S.C.A. §1346(b):

A. false arrest
B. false imprisonment
C. abuse of process
D. assault and battery

No rulings in Wright I through Wright V addressed the Federal Tort Claims Act matters in any way.

The Magistrate Judge's order and the 8th Circuit panel's opinion sustained defendant U.S.A.'s motion for summary judgment as to all four claims under Count III regarding the Federal Tort Claims Act.

The Panel Opinion

The panel opinion first addressed the point being raised herein as follows, offering a tortured interpretation of the rule at issue:

> *"A. Genuine Issue of Material Fact*
>
> Wright argues the Government was required to respond to the concise statement of material facts that he offered in response to the Government's original statement of uncontroverted material facts attached to its motion for summary judgment. Wright asserts that Mo. D. Ct. R. W. D. 56.1(c) ("**Local Rule 56**") states the Government "must" respond to

> Wright's list of material facts. Therefore, he claims that the district court should have deemed those facts admitted because the Government failed to respond. However, Wright mischaracterizes the rule. Local Rule 56.1(c) states that in response to a non-moving party's statement of material facts, '[t]he party moving for summary judgment *may* file reply suggestions.' (emphasis added). The 'must' to which Wright refers appears in the next sentence: '[i]n those suggestions, the [Government] must respond to [Wright's] statement of additional facts in the manner prescribed in Rule 56.1(b)(1).' Id. The word 'must' does not command a response: rather, it directs how the Government should respond to Wright's statement of facts should it choose to do so. Therefore, the district court was not required to deem Wright's list of material facts admitted simply because the Government did not directly respond to them."

Wright v. U.S.A., supra, 892 F.3d at 966. Thus, the panel opinion basically excused the U.S.A. and the Magistrate Judge for their failures to comply with Local Rules which comport with Supreme Court precedent on how to decide summary judgment issues. The fallacies in the Magistrate Judge's logic and analysis will be explained hereinbelow.

Additionally, the panel opinion went further to hold that, "none of Wright's proposed facts contradict a material fact that the district court relied on in conducting its summary judgment analysis…" with the claimed result that, "…none of [Wright's] facts are

inconsistent with the district court's conclusions." *Wright v. U.S.A.*, *supra*, 892 F.3d at 967. The fallacies in the panel opinion's logic and analysis will be explained hereinbelow. The reality is that the U.S.A.'s submitted facts were wholly at odds with the facts submitted at length by Mr. Wright.

REASONS FOR GRANTING THE PETITION

A. "…a United States court of appeals has decided…an important federal question in a way that conflicts with relevant decisions of this Court." Supreme Court Rule 10(c)

As outlined above, *Tolan v. Cotton*, *supra*, strongly and dramatically set forth its holding as to how Supreme Court precedent firmly establishes that the "axioms," "general rules," and "fundamental principles" direct how summary judgment decisions are to be made. When those are not followed, vacating the circuit decision and remand are required. That was true in *Tolan v. Cotton*, and it is likewise true here. The rationale for such a ruling is set forth in detail herein.

The same *Tolan*-like result was reached in *Thomas v. Nugent*, 572 U.S. 1111, 134 S.Ct. 2289 (Mem), 189 L.Ed.2d 169 (2014) two weeks after the *Tolan* decision, to wit:

> "On petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit. Petition for writ of certiorari granted. Judgment vacated, and case remanded to the United States Court of Appeals for the Fifth Circuit for further

> consideration in light of *Tolan v. Cotton*,572 U.S. ——, 134 S.Ct. 1861, 188 L.E.2d 895 (2014) (*per curiam*)."

Also, the *Tolan* opinion, *supra*, 134 S.Ct. at 1868, referred to other cases where Supreme court action has been deemed necessary to correct "a clear misapprehension of summary judgment standards in light of [Supreme court] precedents":

> "*Brosseau [v. Haugen],* 543 U.S., at 197–198, 125 S.Ct. 596 (summarily reversing decision in a Fourth Amendment excessive force case 'to correct a clear misapprehension of the qualified immunity standard'); see also *Florida Dept. of Health and Rehabilitative Servs. v. Florida Nursing Home Assn.*, 450 U.S. 147, 150, 101 S.Ct. 1032, 67 L.Ed.2d 132 (1981) (*per curiam*) (summarily reversing an opinion that could not "be reconciled with the principles set out" in this Court's sovereign immunity jurisprudence).

The Magistrate Judge and the 8th Circuit in this case basically claim to be exempt from the axioms, general rules, and fundamental principles which have historically governed the processing of summary judgment motions. It is stunning that non-compliance by the federal government defendant in this case should be allowed when even pro se litigants must comply with relevant rules of the procedural and substantive law. *See Faretta v. California*, 422 U.S. 806, 934-35, n. 46, 95 S.Ct. 2525, 2541, n. 46 (1975).

The decisions below focused upon why compliance with Local Rules was not required --- all without

analyzing in any way or commenting in any way upon the relationship between those Local Rules and the Supreme Court-sanctioned axioms, general rules, and fundamental principles governing summary judgment decisions. Here is the proper analysis of what the 8th Circuit has tried to do by way of excusing such blatant non-compliance. The rule itself states the following:

> **56.1(c) Reply Suggestions.** The party moving for summary judgment may file reply suggestions. In those suggestions, the party must respond to the non-moving party's statement of additional facts in the manner prescribed in Rule 56.1(b)(1). Unless specifically controverted by the moving party, all facts set forth in the statement of the opposing party are deemed admitted for the purpose of summary judgment.

The plain meaning of Rule 56.1(c) is as follows:

- The movant may choose to file "reply suggestions" or not.
- U.S.A. herein chose to file a 12-page document on March 10, 2017 and decided to call its pleading "Reply Suggestions." [Doc. #126]
- With the U.S.A. having chosen to file its "Reply Suggestions," Rule 56.1(c)'s mandatory "must" dictates the "manner" (i.e., "as prescribed in Rule 56,1(b)(1)") in which the movant "must respond." This is the first point somehow missed by the panel opinion wherein there was no acknowledgment of the reality that the U.S.A. --- although not required to file "reply

> suggestions" --- did indeed file a document entitled "Reply Suggestions." The panel opinion further failed to acknowledge what Rule 56.1(c) mandates that a movant "must" do "In those suggestions" once the choice is made to file such a document. The panel opinion offers no analysis of how it is that a party choosing to "file reply suggestions" can ignore with impunity the Rule's mandate as to what "must" be done in those suggestions and "the manner" in which it must be done. The panel's confusion can be seen in the above-quoted excerpt from the panel opinion, essentially claiming that the U.S.A. "Reply Suggestions" did not have to specifically controvert Mr. Wright's factual submissions although the rule explicitly requires exactly that.

Thus, despite acknowledging that the Rule "directs how the Government should respond," nevertheless the panel opinion concludes in this case that the **responding** Government can ignore the clear obligation that it "must respond to the non-moving party's statement of additional facts in the manner prescribed in Rule 56.1(b)(1)." U.S.A. definitely responded, but "In those suggestions" the U.S.A. **NEVER** provided the mandatory response "to the non-moving party's statement of additional facts in the manner prescribed in Rule 56.1(b)(1)."

Furthermore, despite the U.S.A.'s having NOT "specifically controverted" Mr. Wright's facts "In those (USA reply) suggestions" --- as Local Rule 56.1(c) requires --- , the Magistrate Judge did **NOT** deem those facts admitted and the panel opinion [p. 5] held that "…

the district court was not required to deem Wright's list of material facts admitted…" The panel opinion so held although the Rule clearly and unequivocally directs a different result:

> "Unless specifically controverted by the moving party, all facts set forth in the statement of the opposing party are deemed admitted for the purpose of summary judgment."

B. The Magistrate Judge "so far departed from the accepted and usual course of judicial proceedings, [and the Eighth Circuit has] sanctioned such a departure … as to call for an exercise of this Court's supervisory power." Supreme Court Rule 10(a).

Mr. Wright's prayer is that the District Court's decision be reversed and the case be remanded for review and the issuance of a decision in which the District Court is directed to apply properly the published rule upon which Mr. Wright had relied as to how the decision-making for his case would take place. Allowing the current District Court decision and the current panel opinion to stand as now written works against uniformity and even creates disharmony with prior Supreme Court decisions.

What happened in this case --- denying Mr. Wright that to which he was entitled by rule and by case law --- can only be seen as departing from what the Supreme Court has held to be the principles according to which summary judgment decisions are to be made:

> "… the court must "view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the ... motion.' " *Scott v. Harris*, 550 U.S. 372, 378, 127 S.Ct. 1769 (2007) (quoting *United States v. Diebold, Inc.*,369 U.S. 654, 655, 82 S.Ct. 993 (1962) (*per curiam*)).
>
> " ' This court still has the 'obligation to view the facts in the light most favorable to the adverse party and to allow the adverse party the benefit of all reasonable inferences to be drawn from the evidence.' " *U.S. v. City of Columbia, Mo.*, 709 F. Supp. 174, 175 (W.D. Mo. 1989), citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, … (1970); *Inland Oil and Transport Co. v. United States*, 600 F. 2d 725, 727-28 (8th Cir. 1979), cert. denied, 444 U.S. 991, 100 S.Ct. 522 (1979).

These principles are wholly violated when a party refuses to follow local rules on evidence presentation and the Magistrate Judge and the appellate court thereafter refuses to apply the mandated evidentiary consequence. These material facts --- particularly if deemed admitted --- establish the claims of false arrest, false imprisonment, abuse of process, and assault and battery.

Further analysis is needed regarding the panel opinion's final exculpatory conclusion which reads as follows:

> "Wright outlines several factual contentions that he claims contradict the district court's factual statements and summary judgment conclusions. However, none of these facts are inconsistent

> with the district court's statement of material facts. For example, the district court made no reference to where Wright's hands were located during the encounter, but Wright presents a witness affidavit stating that Wright had his hands in the air. This is the only statement regarding the placement of Wright's hands, and, even if it is true, it is not material because the district court already acknowledged that Wright was not engaging in any threatening behavior. Because none of Wright's proposed facts contradict a material fact that the district court relied on in conducting its summary judgment analysis, we find the district court did not err." [p. 5]

Mr. Wright contends that this is **NOT** at all true. Here are two contrasts that illustrate his point:

Magistrate Judge Findings:	**Wright Uncontroverted Facts:**
"The man was yelling things as he came toward Wright…. As Franklin approached Wright, he ordered Wright to get on the ground." [¶¶ 26-27]	"I do not recall ever hearing that man with the gun or any man tell Stuart Wright to get down on the ground or do any other particular thing." [Declaration of Terrance Jackson, Doc. 119-G, ¶4.]
"As Franklin approached Wright, … Wright continued to back away from	Stuart Wright "… did not flee. He never tried to run away from the man in the Royals shirt in any way."

Franklin…."	[Stuart Wright Declaration, Ex. A, ¶13 Brandon Rashad Jones Declaration, Ex. B, ¶6, Stephen Leonard Wright Declaration, Ex. C, ¶6 and Walter Kenneth Bethea, Jr. Declaration, Ex. D, ¶4.]

The panel opinion's finding of NO contradictions cannot be squared with the reality of the record, particularly when viewed "in the light most favorable to the opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1596, 26 L.Ed.2d 142 (1970) and *see also Anderson, supra,* at 255, 106 S.Ct. 2505, all as quoted and cited in *Tolan v. Cotton, supra*, at 1866.

The current panel opinion creates an imbalance by which

- (a) a summary judgment movant's material facts **will be deemed admitted** if the non-movant fails to respond and controvert

  and yet

- (b) the non-movant's material facts **will NOT be so deemed admitted** if the movant fails to respond and controvert.

This one-sided administration of justice is not allowable in American jurisprudence. It provides precedent for appellate panels and district courts to ignore altogether a responding party's statement of material facts.

- The current panel opinion nullifies Local Rule 56.1(c).
- The current panel opinion provides precedent for courts to
  (a) ignore altogether the non-movant's position,
  (b) view no facts in the light most favorable to the non-movant, and
  (c) deny the non-movant the benefit of reasonable inferences.

The panel opinion in this case goes against those high and well-established principles of American jurisprudence. The Panel Opinion misunderstands W.D.Mo. Local Rule 56.1(c)'s mandatory requirements for what must be contained within "reply suggestions" that a movant chooses to file. The Rule itself dictates that a movant choosing to file "reply suggestions" "must respond (therein) in the manner prescribed in Rule 56.1(b)(1). Thus, the panel opinion transforms this Rule into a wholly permissive, optional status which can now serve as precedent for future opinions to ignore and forego any analysis whatsoever of the non-movant's submitted facts and to decide the case on the basis of viewing the facts solely in the movant's "light," giving no favorable inferences whatsoever to the non-movant. In the process, this would render WDMo. Rule 56.1 a useless and meaningless nullity.

It is unjust and unfair for a trial court and thereafter an appellate panel to allow a movant-defendant to violate the rule and then ---somehow---be excused from receiving the consequences of such rule violation. It is likewise unjust and unfair for the United States of America to be shielded from the principles of precedent, axioms, general rules, and

fundamental principles regarding how summary judgment cases are to be decided in this country.

CONCLUSION

A defendant's violating the rule by choosing to file reply suggestions but NOT responding to plaintiff's material facts and then both the Magistrate Judge and the Eighth Circuit ignoring the rule by NOT deeming the facts admitted and by NOT following Supreme Court precedent's axioms, general rules, and fundamental principles for adjudicating summary judgments

CANNOT BE SQUARED WITH

"viewing the facts in the light most favorable"
OR
granting "the benefit of all reasonable inferences."

The Supreme Court is urged to grant this Petition for Certiorari and either

- vacate the judgment and remand the case for further consideration in light of *Tolan v. Cotton*,572 U.S. 650, 134 S.Ct. 1861, 188 L.E.2d 895 (2014) (*per curiam*), just as was done in *Thomas v. Nugent*, 572 U.S. 1111, 134 S.Ct. 2289 (Mem), 189 L.Ed.2d 169 (2014) two weeks after the *Tolan* decision,

  or

- hear this case in full, giving Stuart Wright the consideration which was denied to him by the Magistrate Judge and the Eighth Circuit Court

of Appeals and which has long been mandatorily required by the United States Supreme Court's precedents, axioms, general rules, and fundamental principles.

Respectfully submitted,

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