No. _____

In The
Supreme Court of the United States

KENNETH RATLIFF,

Petitioner,

vs.

ARANSAS COUNTY, TEXAS; COLBY SCUDDER, Individually; RAYMOND SHEFFIELD, Individually,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Instead of relying on discovery control and summary judgments to weed out frivolous claims, should the lower federal courts nonetheless be allowed to demand a "heightened" pleading standard for municipal liability claims that violates this Court's guidance and the rules of procedure, thereby only allowing such claims to proceed to discovery when such discovery is already known?

2. When the facts, viewed in the light most favorable to Kenneth Ratliff, show that as he was lawfully armed on the porch of his home, with his weapon at his side, telling unknown persons in the pitch-dark nearly 90 feet away to leave his property, he was shot five times by Deputy Scudder who identified himself only by shouting "I'm gonna shoot your ass, motherf[***]er," should that officer be entitled to summary judgment on qualified immunity grounds?

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption of the case as recited on the cover page. There are no governmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

RELATED CASES

Ratliff v. Aransas County, Texas, et al., No. 2:17-cv-00106, U.S. District Court for the Southern District of Texas. Judgment entered January 9, 2019.

Ratliff v. Aransas County, Texas, et al., No. 19-40121, U.S. Court of Appeals for the Fifth Circuit. Judgment entered January 15, 2020.

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CITATIONS TO THE OPINIONS AND ORDERS BELOW

The decision of the Fifth Circuit Court of Appeals affirming the District Court's dismissal based on qualified immunity (*Ratliff v. Aransas County*, No. 19-40121, 2020 U.S. App. LEXIS 1348) is reported at 948 F.3d 281 (5th Cir. 2020). [App. 1-16]. The denial of Petitioner's motion for *en banc* reconsideration is unreported. [App. 41-42].

The decision of the District Court dismissing Petitioner's municipal liability claims (filed September 27, 2017) is unreported. [App. 30-40].

The decision of the District Court dismissing Petitioner's claims based on qualified immunity (filed January 9, 2019) is unreported. [App. 18-28].

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on January 15, 2020. Petitioner petitioned for rehearing, which was denied on March 24, 2020. Pursuant to this Court's March 19, 2020, order, this petition is timely filed on August 21, 2020. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The **Fourth Amendment of the United States Constitution** provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

The **Second Amendment of the United States Constitution** reads that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]"

Federal Rule of Civil Procedure 8(a) ("General Rules of Pleading") provides that a pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

STATEMENT OF THE CASE AND RELEVANT FACTS

I. Facts Viewed in the Light Most Favorable

On March 23, 2015, Kenneth Ratliff (hereinafter occasionally referred to as "Ratliff" or "Petitioner") spent the day fishing and having a few beers with his friends. [App. 19]. After cleaning his catch and having some drinks at a local bar, Ratliff returned home at about 2:00 a.m. and shortly thereafter got into an argument with his girlfriend ("T.V."). [App. 19]. After being asked to leave by Ratliff, T.V. stormed out, telling Ratliff "you're going to pay for this motherf[***]er." [App. 19]. Fearing that T.V.'s family might come to confront or harm him, Ratliff lawfully armed himself with a handgun and sat on his porch. [App. 19].[1] After apparently calling 911, T.V. informed the arriving

[1] The law concerning the lawfulness of Ratliff's arming himself on his own property is without question. *See* U.S. Constitution, Second Amendment (right to keep and bear arms); U.S. Constitution, First Amendment (right to freedom of speech); Texas Penal Code § 9.31 (right to self-defense); Texas Penal Code § 9.32 (right to use deadly force in the defense of person); Texas Penal Code § 9.33 (right to self-defense of third person); Texas Penal Code §§ 9.41 & 9.42 (right to protect one's own property). *See also McDonald v. City of Chicago*, 561 U.S. 742, 791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (reiterating the fundamental Second Amendment right outlined in the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right to "possess a handgun in the home for the purpose of self-defense."); *Columbia v. Heller*, 554 U.S. 570, 592, 128 S. Ct. 2783, 171 L.Ed. 2d 637 (2008) (holding the Second Amendment codified a pre-existing right of the individual to possess and carry weapons in case of confrontation and the "central component" of this right is self-defense).

deputies that while Ratliff had assaulted her, she did not want to press charges and that all she wanted was to get some belongings and check on her son who was asleep in Ratliff's house. [App. 19-20].

As Ratliff heard unknown persons[2] approaching in the pitch-dark night, Ratliff yelled – well before the unknown persons entered his yard – several times for them to stay off of his property. [App. 20]. In response, Ratliff was told by one of the unknown persons (who were some 90 feet from Ratliff's porch), "I'm gonna shoot your ass, motherf[***]er." [App. 20-21]. Almost immediately thereafter, Ratliff was in fact shot (five times) by Deputy Scudder just as Ratliff was recorded saying "this is my property." [App. 21].

After miraculously surviving his injuries, Ratliff was subsequently indicted, arrested and later acquitted by a jury of all charges associated with the incident. [App. 21].

At no time prior to the shooting did Deputy Scudder or Deputy Sheffield announce their presence as law enforcement and/or their position with the Sherriff's department in any fashion whatsoever to Ratliff. [App. 21].

At the time of these events, it was pitch-dark and no assertion – but for facts fabricated by the Fifth Circuit – has been made that any lighting (or rather a lack

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[2] Later determined to be T.V., Deputy Colby Scudder (hereinafter "Deputy Scudder") and Deputy Raymond Sheffield (hereinafter "Deputy Sheffield").

thereof) would have allowed Ratliff to guess, much less know, who (law enforcement or otherwise) was approaching his home. [App. 20].

The only material facts somewhat contested by the parties – those being 1) whether Ratliff ever raised, pointed or otherwise moved his gun from his side; and 2) whether Ratliff even knew that he was dealing with law-enforcement – were acknowledged by the Fifth Circuit to be "genuinely disputed" but nonetheless dismissed by the Fifth Circuit as immaterial or "beside the point." [App. 14-15].

II. Proceedings

Ratliff brought suit against Deputy Scudder, Deputy Sheffield and Aransas County, Texas (hereinafter "County"), in the United States District Court for the Southern District of Texas, alleging, *inter alia*, a claim under the Fourth Amendment for excessive force. [App. 43].

The District Court granted the County's Motion to Dismiss for failure to state a *Monell* claim [App. 30-40] and later granted summary judgment for the individual deputies, finding – despite a material dispute about whether Ratliff ever raised his weapon at all and/or whether he knew he was dealing with law enforcement – that "the direction of a suspect's gun is immaterial to the reasonable force inquiry if other facts establish that the suspect was a threat to the officer or others" and that Deputy Scudder was entitled to qualified immunity because he had a "reasonable belief that he was

in danger" as Ratliff "could have raised" his weapon.[3] [App. 18-28].

Ratliff appealed to the Fifth Circuit Court of Appeals (hereinafter occasionally referred to as "Fifth Circuit"), where the Fifth Circuit affirmed both decisions, finding that Ratliff had failed to assert a proper *Monell* claim and that despite genuine issues concerning Ratliff's actions and/or those of Scudder, disturbingly found – ignoring all facts and/or Second Amendment rights to the contrary – that merely *possessing* a gun and *refusing to unarm* himself at the request of unknown persons threatening his life justifies him being shot multiple times and being deprived of a jury trial on the issue of the reasonableness of the force used against him. [App. 1-16].[4] This petition followed.

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[3] In so finding, the District Court chose not to consider whether such actions were unreasonable in light of clearly established law and did not address the liability of Deputy Sheffield, having found such contingent upon a constitutional violation by Deputy Scudder.

[4] The only other "fact" – one that is completely and utterly contrived from **nothing** in the record – that the Fifth Circuit used to support its conclusion was that "[t]here is no genuine dispute about whether Deputy Scudder could reasonably have believed that Ratliff knew he was confronting the police. After all, the deputies were in uniform and, although it was dark, the area was illuminated by lights from Deputy Sheffield's squad car." [App. 15].

REASONS FOR ALLOWING THE WRIT

A. Fifth Circuit's Heightened Pleading Requirement

Troubling in this case is the Fifth Circuit's (and those courts in its jurisdiction) continued treatment of municipal liability pleadings – a struggle this Court has seemingly had with the Fifth Circuit for some time. In affirming the dismissal of Ratliff's municipal liability claims against the County at the pleading stage, the Fifth Circuit contravened this Court's guidance in *Leatherman*, its progeny and the rules of procedure, and continued – as it has for more than a decade against the admonishments of this Court – to require a "heightened" pleading requirement for municipal liability claims.

In 1985, the Fifth Circuit first created a heightened pleading requirement in § 1983 actions asserting claims against public officials who might be entitled to an immunity defense. *Elliot v. Perez*, 751 F.2d 1472, 1482 (5th Cir. 1985). In no uncertain terms, this ruling required a plaintiff to anticipate a defendant's assertion of an immunity defense in the initial complaint, and "alleg[e] with particularity all material facts on which [the plaintiff] contends . . . will establish his right to recover which will include detailed facts supporting the contention that the plea of immunity cannot be sustained." *Id*. Without squandering effort on the obvious, prior to 1992, many federal courts followed suit and the Fifth Circuit continued to impose "special" or "heightened" pleading burdens for § 1983

complaints. *See Lewis v. Woods*, 848 F.2d 649 (5th Cir. 1988); *Palmer v. San Antonio*, 810 F.2d 514 (5th Cir. 1987); *Jacquez v. Procunier*, 801 F.2d 789 (5th Cir. 1986); *Morrison v. Baton Rouge*, 761 F.2d 242 (5th Cir. 1985). That was, until this Court – in resolving a conflict among various Courts of Appeals concerning pleading requirements in § 1983 causes of action and in reversing the Fifth Circuit regarding same – specifically abrogated any "heightened pleading requirement" for actions against municipalities. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993). In so finding, this Court expressed that it was not deciding whether qualified immunity jurisprudence would require a heightened pleading in cases involving individual government officials and that, in the absence of an amendment to Rules 8 and 9 requiring an added specificity requirement of Rule 9(b) to claims against municipalities, "federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later." *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164-169 (1993).

Shortly after *Leatherman* (and presumably in direct response to same), the Fifth Circuit issued a new opinion, wherein the Fifth Circuit announced that "[w]hen a public official pleads the affirmative defense of qualified immunity in his answer, the district court may, on the official's motion or on its own, require the plaintiff to reply to the defense in detail . . . [which] must be tailored to the assertion of qualified immunity

and fairly engage its allegations." *Schultea v. Wood*, 47 F.3d 1427, 1433 (5th Cir. 1995). While such decision seems at first blush to comport with *Leatherman*, it does little more than just rearrange the adjective "heightened" from the initial pleading to a subsequent reply concerning the pleading.[5]

Without engaging such approach (but certainly questioning the validity and/or continued validity of it), Petitioner would assert that such validity has been certainly called into question given this Court's further decisions. Following *Leatherman*, this Court had ample opportunities to address the viability of the *Leatherman* opinion and has repeated what it had said in

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[5] While Petitioner could find no instance where this Court has addressed the continued validity of *Schultea*, such disagreement has certainly found fodder amongst the district courts as follows:

> District courts have disagreed as to whether *Schultea*'s heightened pleading requirement remains viable in light of *Swierkierwicz*. *Compare Furstenfeld v. Rogers*, No. 3-02-CV-0357, 2002 U.S. Dist. LEXIS 11823, at *9 n.3 (N.D. Tex. 2002) ("To the extent that current Fifth Circuit authority requires a plaintiff to go beyond the requirements of Rule 8(a) by alleging facts in support of each and every element of his claim or legal theory, the Court respectfully suggests that this is no longer the law.") *with Kluth v. City of Converse*, No. SA-04-CA-798, 2004 U.S. Dist. LEXIS 26946, at *12 (W.D. Tex. 2004) ("Because *Swierkierwicz* did not involve qualified immunity and does not directly overrule *Schultea*, this Court will continue to apply the *Schultea* framework until the Fifth Circuit or Supreme Court directs otherwise.").

Almaguer v. Chacon, 2006 U.S. Dist. LEXIS 103447, at *9 n.9 (W.D. Tex. 2006).

rejecting any heightened pleading requirements – that a simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. *See Swierkiewicz v. Sorema*, 534 U.S. 506, 512 (2002). In clearer particularity, this Court reiterated that "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions," such as averments of fraud or mistake. *Swierkiewicz* at 513. Accordingly, and without any further decisions on such issue by this Court, it would seem that the answer is quite clear and that any attempt by the Fifth Circuit to "heighten" the pleading requirements is improper. But then came *Iqbal* and *Twombly*.

In 2007, this Court issued *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), wherein this Court – in determining the sufficiency of a pleading in an antitrust competition case – stated that under Rule 8(a)(2) notice pleading, only some factual allegations of the nature of the claim and the grounds on which the claim rests were necessary, and while "heightened fact pleading of specifics" were not required, there must be "enough facts to state a claim to relief that is plausible on its face." *Twombly* at 570. In follow-up to *Twombly* in 2009, this Court issued *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), wherein this Court – in addressing immunity claims in the context of a *Bivens* action against the F.B.I. Director and a former Attorney General – again references the concept that a complaint must be "nudged . . . across the line from conceivable to plausible." *Iqbal* at 680. Petitioner does not take issue with

such rulings and the idea that an implausible pleading might be summarily dismissed. Instead, it is the use of such decision to support the Fifth Circuit's reinstituted vigor and continued efforts to demand "heightened pleadings" (over and above "plausible" ones) that Petitioner takes issue with.

Contrary to the belief that *Letherman* has been retired by *Iqbal/Twombly*[6], post-*Iqbal/Twombly* cases seem to indicate otherwise. Just two weeks after the decision in *Twombly*, this Court in *Erikson v. Pardus* applied notice pleadings to a pro se prisoner's § 1983 medical treatment complaint. *Erickson v. Pardus*, 551 U.S. 89 (2007). The ruling in *Erikson* specifically held that the plaintiff prisoner's § 1983 claim satisfied Federal Rule 8's *notice pleading standard*. *See Erikson* at 2200 (*emphasis added*). Even though it was necessary in 2011 for this Court to issue *Skinner v. Switzer*, 562 U.S. 521, 530 (2011), wherein this Court, in reversing the Fifth Circuit's decision affirming the dismissal of a 1983 case involving DNA evidence in a criminal case, cited to *Swierkiewicz* (in lieu of *Iqbal* and *Twombly*) when describing the federal pleading standard. And in 2014, this Court in *Johnson v. City of Shelby*, 574 U.S. 10 (2014), again in reversing the Fifth Circuit, reaffirmed *Leatherman* and *Swierkiewicz* and confirmed in no uncertain terms that there is "no heightened

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[6] *See Gonzalez v. Nueces County*, 227 F.Supp. 3d 698, 703 (S.D. Tex. 2017), wherein the District Court (the same involved in the instant case) asserts that this authors' position that *Leatherman* has not been overruled to be one that "runs counter" to the observations asserted in *Twombly*. *Gonzalez* at 703.

pleading" requirement for civil rights claims against municipalities. *Johnson* at 11-12.

And yet, the dismissal of municipal liability claims continues for "factually-deficient" pleadings in the Fifth Circuit. *See, e.g.*, *Gonzales v. Nueces County*, 227 F.Supp. 3d 698, 705 (S.D. Tex. 2017) (dismissing claims against the county despite a list of over 200 internal investigations contained within the complaint as such was "devoid of facts showing any similarity"); *Moreno v. City of Dallas*, No. 3:13-cv-4106-B, 2015 WL 3890467, at *9 (N.D. Tex. 2015) (dismissing claims against the city because eight prior incidents over five years plead in the complaint did not establish a pattern); *Carter v. Diamond URS Huntsville, LLC*, 175 F.Supp. 3d 711, 753-54 (S.D. Tex. 2016) (dismissing claims against a city because alleging only three isolated incidents were insufficient to plead a custom or practice); *Sanchez v. Gomez*, 283 F.Supp. 3d 524, 536-37 (W.D. Tex. 2017) (finding a sufficient pattern of excessive force against persons with mental illness when nine similar incidents were alleged and statistics suggested that the city's proportion of individuals killed by police who had visible mental health issues were double and quadruple the national average); *Flanagan v. City of Dallas*, 48 F.Supp. 3d 941, 952-54 (N.D. Tex. 2014) (finding a "close call" when a plaintiff plead sufficient facts in alleging that a police department had a policy to shoot first and ask questions later after the city publicly acknowledged that training issues existed and numerous statistics showed high levels of a variety of misconduct compared to the national averages); *Harvey v.*

Montgomery County, 881 F.Supp. 2d 785, 797-98 (S.D. Tex. 2012) (finding that the plaintiff had adequately pled a pattern by describing numerous specific incidents involving excessive use of force and by alleging that there had been 200 complaints of excessive force and 200 complaints of unlawful detention lodged with the Sheriff's Department in the last ten years).[7]

Much like in *Johnson*, the complaint at issue stated simply, concisely, and directly events that led to Ratliff being shot on his porch and the "plausible" theories of municipal liability that caused them. Having informed the County of the factual basis for his complaint, Ratliff was not required to do more to survive a threshold motion to dismiss based on the pleadings and should have been given an opportunity to develop his claims and conduct discovery (tailored as the District Court might have seen fit) to support same.

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[7] *See also* the opinion of the District Court at issue, wherein the Court, when faced with a medical indifference overdose case where the pleadings included numerous other instances of medical indifference, side-stepped the "volume" issue so often sought and stated simply that "even if all seventeen were pled specifically and similarly in support of any one of the fifteen alleged customs, the Court finds that it would not be enough to show a persistent widespread practice that amounts to a policy attributable to Nueces County." *Bond v. Nueces County, et al.*, 2:19-cv-00043, in the United States District Court, Southern District of Texas, Corpus Christi Division, *Order Denying Leave to Amend*, p. 11 (presently on appeal in the Fifth Circuit). While Petitioner also might include the plethora of cases summarily dismissed by district courts in the Fifth Circuit at the pleading stage, Petitioner is certain that doing so would put him well over the word-limit prescribed by this Court.

In short, if the Fifth Circuit's reading of the "plausibility standard" is correct, nearly every plaintiff will fall short in their pleadings of municipal liability if it is required that before filing, they will need to already have the discovery they will only be entitled to after they have filed suit. That is – at best – what is implausible.

Even assuming that *Iqbal* and/or *Twombly* were meant to increase a plaintiff's pleading burden beyond the *Leatherman* notice requirement, it is readily apparent that while such might apply to individual claims, it does not apply to *Monell* issues and that, even if that were not the case, the *Monell* issues at hand (training, past misconduct, ratification or otherwise) – based on the facts of this case where Ratliff who, while on his own property, while lawfully armed, while lawfully requesting unknown persons (cursing threats of death) leave his property and still never raising his weapon or threatening anyone, was shot five times – are certainly "plausible" on their face and worthy of discovery on the issue of *Monell* liability. See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

With such in mind, Petitioner requests that the decision of the Fifth Circuit affirming the dismissal of Petitioner's municipal liability claim be reversed by this Court.

B. Fifth Circuit Usurps Jury Role in Granting Qualified Immunity

In affirming the dismissal of Ratliff's claims against Deputy Scudder on qualified immunity grounds, the Fifth Circuit overstepped its role and implanted its desire for Scudder to win over the evidence illustrating true material and genuine disputes over the circumstances surrounding Ratliff's shooting.

Without even paying lip-service to the *Graham* factors[8] (all of which would benefit Ratliff, as he was only being approached to secure some belongings, had threatened no one and was at his own home) and/or even addressing whether the right at issue was clearly established, the Fifth Circuit – in a vacuum – concluded (based entirely on the existence of a weapon and little more) that there was "ample reason to fear for their safety" and hence, qualified immunity as a matter of law was warranted.

Whether this Court were to review the cases cited during the summary judgment proceedings by Respondents, those as cited by the District Court and/or

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[8] Because such claims as this are oftentimes fact intensive, whether the force used is "excessive" or "unreasonable" depends on the facts and circumstances of each particular case and demands that a court should consider the totality of the circumstances, "*including* the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (*emphasis added*) (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

those cited by the Fifth Circuit (all of which are different and ever-changing), one thing stands clear – each is based on sets of facts far different from those at hand. Each of these cases concerned factual situations where the officer reasonably believed because of the person's movements that force (deadly or otherwise) was necessary. Such is not the case at hand and the Fifth Circuit clearly ignored the admittedly disputed facts and existing case law establishing the principle that "even when a weapon is present, the threat must be sufficiently imminent at the moment of the shooting to justify deadly force." *Luna v. Mullenix*, 773 F.3d 712, 723 (5th Cir. 2014), *rev'd on other grounds*, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015); *see also Cole v. Carson*, 905 F.3d 334, 345 (5th Cir. 2018) (finding that the "core, established rule" is that "deadly force may not be used where the suspect poses no immediate threat to the officer and no threat to others. . . . It violates the Fourth Amendment to use deadly force absent such a threat."); *Reyes v. Bridgewater*, 362 F. App'x 403, 407 (5th Cir. 2010) (no qualified immunity where plaintiff was holding a knife at his side and there was no evidence that "there was no 'immediate threat' " as required to justify the use of deadly force); *Bacque v. Leger*, 207 F. App'x 374, 376 (5th Cir. 2006) (no qualified immunity because plaintiff "was not threatening anyone at [the] time" when he stood motionless with his knife at his side); *Schaefer v. Whitted*, 121 F.Supp. 3d 701, 716 (W.D. Tex. 2015) (declining to find qualified immunity for defendant officer who shot a suspect who was lawfully armed on his own property and conflicting statements about whether he actually pointed his gun at the officer);

Ramirez v. Fonseca, 331 F.Supp. 3d 667 (W.D. Tex. 2018) (no qualified immunity when plaintiff did not pose an immediate threat). *See also Heyward v. Tyner*, 2017 U.S. Dist. LEXIS 219545 *17-18 (S.D. S.C. 2017) (citing to *Schaefer* in finding that a man shot while lawfully armed in defense of his home stated a cognizable excessive force claim for violation of his Fourth Amendment rights).

Just as it did in *Tolan v. Cotton*, 572 U.S. 650 (2014), the Fifth Circuit failed in this case to view the evidence at summary judgment in the light most favorable to Ratliff, failed to credit evidence contradicting key conclusions, improperly "weighed" the evidence and ultimately resolved all disputes in favor of Deputy Scudder. *Tolan* at 657. In *Tolan*, the Fifth Circuit created from non-existent and/or disputed testimony a "dimly-lit" scenario as it assisted in supporting their opinion. Similarly, the Fifth Circuit in the instant case fabricated a "well-lit" (the opposite of an accepted and uncontroverted fact) scenario to fit its ultimate conclusion. [App. 15]. In *Tolan*, the Fifth Circuit concluded the existence of a threat when the words relied upon could easily have been interpreted in a non-threatening way. Similarly, the Fifth Circuit in the case at hand takes ample strides in its interpretation of the words and actions of Ratliff (including that Ratliff had "nearly killed a person earlier in the night"), ignoring the context of same and/or non-existence of any actual threat to anyone and the very important fact that contrary to his own partner and T.V., Deputy Scudder states that Ratliff actually raised his gun and pointed

at him not once, but twice. [App. 14]. In sum, while the particular facts might be a bit different, the overall scenario and the Fifth Circuit's treatment of the case is very similar.

As such, allowing the Fifth Circuit's decision to stand is just plain wrong, both on behalf of the law and the facts. More importantly, letting the decision stand sends a very troubling message to the public that their ability to determine the reasonableness of actions is unimportant as compared to the desire to protect law enforcement at all costs. While Petitioner certainly understands the desire of the Court to not decide cases with the guidance of 2020 hindsight, he certainly also believes such decisions should not take place in the vacuum of shortsighted, insufficient and/or manufactured evidence.

CONCLUSION

For the reasons explained above, Petitioner asks that his Petition for Writ of Certiorari be granted, and that he be given the opportunity to present his arguments before this Honorable Court.

Respectfully submitted,

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