No. 21-A-_____

IN THE

Supreme Court of the United States

John Turnure

Applicant

v.

Latrent Redrick

Respondent

EMERGENCY APPLICATION FOR A STAY OF PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

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OPINIONS AND DECISIONS BELOW

The Sixth Circuit's opinion is online at *Redrick v. City of Akron*, No. 21-3027, 2021 WL 5298538 (6th Cir. Nov. 15, 2021), and is reproduced in Supreme Court Case No. 21-1128, Petition Appendix A.

The District Court's decision is online at *Redrick v. City of Akron*, No. 5:18-CV-2523, 2020 WL 7334818 (N.D. Ohio Dec. 13, 2020), and and is reproduced in Supreme Court Case No. 21-1128, Petition Appendix B.

The Stay is sought in response to the District Court's December 20, 2021 Trial Order, reproduced as Exhibit A.

The District Court informed counsel by email that it would not grant a stay. The emails are reproduced as Exhibits B, C, D, and E.

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I. INTRODUCTION

To the Honorable Brett M. Kavanaugh, Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

On February 11, 2022, counsel for Officer John Turnure electronically filed and mailed Officer Turnure's Petition for a Writ of Certiorari, now docketed at this Court as Case Number 21-1128, challenging the Sixth Circuit Court of Appeals' dubious denial of qualified immunity. On that day, counsel notified the district court that it filed in the United States Supreme Court. Within hours, the court returned an unprompted conclusion: the court's trial date would remain in place, regardless of Officer Turnure's attempt to vindicate what he, in good faith, believed to be a legally erroneous and certiorari-worthy error by the circuit court.

Officer Turnure now turns to this Court, and to your Honor, applying for a stay pending consideration of his case. This is a case where Officer Turnure has no other avenue to seek a stay pending consideration, where this Court's recent practice suggests a reasonable probability of certiorari being granted and a fair prospect of reversal, where there is a demonstrable likelihood that irreparable harm will result from the denial of a stay assuming the correctness of Officer Turnure's position, and where the balance of the equities weighs in favor of a stay.

Therefore, Officer Turnure respectfully asks that your Honor grant his application for a stay of lower court proceedings pending this Court's resolution of his Petition for a Writ of Certiorari.

II. JURISDICTION

This Court has jurisdiction to issue a stay of any final judgment subject to its review on writ of certiorari. 28 U.S.C. § 2101(f). The judgment at issue in this case stems from an appeal taken from a denial of qualified immunity to the Sixth Circuit under the collateral order doctrine. *See Mitchell v. Forsyth*, 472 U.S. 511, 524–25 (1985). The underlying Petition for a Writ of Certiorari seeks review under 28 U.S.C. § 1254(1) and the collateral order doctrine.

This Court normally requires litigants to first seek a stay in a lower court. Sup. Ct. R. 23(3). Doing so is not possible in this case. On December 8, 2021, the Sixth Circuit's mandate in this case issued. (R. 41, Mandate, at PageID #596). At that time, Officer Turnure's counsel had not yet determined whether seeking Supreme Court review was appropriate or necessary.[1] On December 20, 2022, the District Court scheduled the trial in this case for March 21, 2022. (R. 42, Trial Order, at PageID #597). The trial order made clear that delays would be looked upon unfavorably. (*Id.* ("If the trial date is delayed for any reason, unless otherwise notified by the Court, parties shall remain on standby subject to call for the start of the trial for a period of two (2) weeks.").

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[1] Notably, one the primary drafter of both the Petition for a Writ of Certiorari and this Application, only began working for the City of Akron Law Department Civil Division on December 6, 2021, having previously worked as an Assistant City Prosecutor.

On February 11, 2022, shortly after electronically filing with this Court, Officer Turnure submitted a courtesy copy of his Petition for a Writ of Certiorari to the district court judge's staff attorney, per standard operating procedure with this Judge. (*See* Exhibit B). The Staff Attorney responded, unprompted, with the following email sent to counsel for all parties:

> Counsel,
>
> Thank you for the notification. Judge Adams has indicated that in the absence of a stay from a higher court, this petition will not impact our currently scheduled final pretrial and trial dates. Thank you.

Exhibit C. Wanting to clarify, lead counsel for Officer Turnure responded by asking, again in an email to all parties:

> Thank you for the e-mail last Friday.
>
> The Defendant's filing of the Petition for Writ of Certiorari was not a perfunctory effort to delay a trial. Counsel has a strong belief in the filing as evidenced by the time (and expense) invested in preparing and filing it and the quality of the argument in the Petition.
>
> In that regard, the Defendant intends to file a motion to stay in the Supreme Court this week, unless you can offer any insight that filing the motion with this Court would be fruitful.
>
> Thank you[.]

Exhibit D. The Staff Attorney responded within five minutes, telling all parties that:

> From my discussions with Judge, I would stay on your current path. I would not anticipate Judge Adams himself entertaining a motion to stay absent some extraordinary circumstances arising. Thank you again for keeping us in the loop.

Exhibit E. With these emails in hand, counsel for Officer Turnure believes it clear that a stay is not available from the district court, and fears an attempt to file a stay there would be looked upon as frivolous and sanctionable.

Nor is relief available from the Court of Appeals. The Court of Appeals mandate issued on December 8, 2021. To seek relief from the Sixth Circuit, Officer Turnure would have to move for the court to recall its mandate. This is a "use of power . . . of last resort, to be held in reserve against grave, unforeseen circumstances." *Calderon v. Thompson*, 523 U.S. 538, 550 (1998). Officer Turnure does not believe that such circumstances exist at present. Without recalling the mandate, the Sixth Circuit cannot grant the relief here sought.

At present, the relief sought by Officer Turnure is unavailable in any other court or from any other judge. Sup. Ct. R. 23(3) therefore gives this Court the authorization to consider and grant Officer Turnure's Application for a Stay.

III. Statement of the Case

A more-in-depth Statement of the Case is included in Officer Turnure's Petition for Writ of Certiorari. The facts listed here are directly adapted from the Petition unless otherwise cited.

On September 30, 2017, brothers Latrent Redrick (the respondent here) and Jamon Pruiett (an additional plaintiff with only state-law claims remaining) were in downtown Akron, Ohio, celebrating Redrick's 21st birthday. Just before 2:00 AM, Redrick, Pruiett, and five friends went to a street food stand located outside a closing nightclub. While the group ordered, a fight broke out on the street. City of Akron police officers working extra duty began moving the crowd, including Redrick's group, across the street and away from the nightclub. While being moved, Redrick claims that a group of guys walked through his group, bumping some of his friends, and

started trash-talking. Redrick, licensed to carry a concealed weapon in Ohio, showed the gun and told the group to back off.

Nearby, Akron Police Officers John Turnure and Utomhin Okoh were watching the melee from a police cruiser. Okoh and Turnure saw Redrick show the gun, so they got out of the car and began following him. Redrick, at this point, was following the other group with his gun at his side; the other group was still trash talking but moving away from him. Officer Turnure claims, and video evidence and stills discussed in his Petition suggest, that Redrick began raising the gun towards the other group. Turnure fired into Redrick's back, dropping him to the ground and wounding him. Pruiett grabbed Redrick's gun and attempted to return fire, so Turnure shot and hit him too.

Felony charges were true billed by the Summit County, Ohio Grand Jury against both brothers—Pruiett for one count of Felonious Assault on a Peace Officer, and Redrick for two counts of Felonious Assault with two Firearm Specifications and one count of felonious Inducing Panic. A jury found Pruiett not guilty but Redrick pleaded no contest to and was found guilty of one count of misdemeanor Inducing Panic. No charges were filed against any Akron police officer.

Redrick and Pruiett filed a civil complaint in state court against several involved officers, including Turnure, and the City of Akron. Defendants removed to federal court. After motion practice and discovery the only remaining claims on summary judgment were a federal constitutional Unconstitutional Seizure claim and state-law assault and battery and negligence claims by both brothers against Officer

Turnure. (Pet. App.B, at A18 n. 4[2]). The district court denied summary judgment in full. (*Id.* at A19). Despite Officer Turnure timely filing for his appeal-of-right on denial of qualified- and state-law-immunity (R. 36, January 6, 2021 Notice of Appeal, at PageID# 571), the district court initially scheduled a trial date for less than six months after denial of summary judgment. (R. 37, Jan. 11, 2021 Trial Order, at PageID# 573). The court continued the trial to allow the appeal to run less than one week before the final pretrial. (R. 38, Continuance, at PageID# 580).

The Sixth Circuit upheld the denial of qualified immunity on Redrick's claims, reversed the denial of qualified immunity on Pruiett's claims, and affirmed denial of state law immunity on all state claims. (Pet. App.A, at A17). Officer Turnure timely shipped and electronic filed his Petition for a Writ of Certiorari on February 11, 2022; this Court docketed the Petition on February 15, 2022. The district court informed counsel on February 11, 2022 through a staff attorney contact that no continuance would be given to allow the Supreme Court to consider this case.

IV. Reasons for Granting the Application

For a stay to issue, Officer Turnure must demonstrate three conditions: "(1) a reasonable probability that this Court will grant certiorari, (2) a fair prospect that the Court will then reverse the decision below, and (3) a likelihood that irreparable

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[2] In drafting this Application counsel for Officer Turnure discovered that the footnote numbers in Appendix B to its Petition carried over from Appendix A, rather than re-numbering as they should. Officer Turnure apologizes for the error.

harm will result from the denial of a stay," assuming that Officer Turnure's position is correct. *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (Internal quotation marks and editorial marks omitted); *Barnes v. E-Systems, Inc. Group Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers). Some Justices have also required parties to demonstrate that the equities on balance do not weigh against a stay. *Compare King*, 567 U.S. at 1302–04 (not discussing balancing of equities) *with Phillip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1305 (2010) (Scalia, J., in chambers) ("A stay will not issue simply because the necessary conditions are satisfied. Rather, sound equitable discretion will deny the stay when a decided balance of convenience weighs against it" (internal quotation marks omitted)). The present case meets all three conditions, and the equitable balance weighs in favor of a stay.

A. There is a reasonable possibility that this Court will grant certiorari and reverse.

This Court has shown an ongoing interest in ensuring circuit courts do not over-expand clear establishment doctrine. *See, e.g., Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7–8 (2021) (*per curiam*); *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503–04 (2019) (*per curiam*); *Kisela v. Hughes*, 138 S. Ct. 1148, 1152–54 (2018) (*per curiam*); *District of Columbia v. Wesby*, 138 S. Ct. 577, 589–90 (2018); *White v. Pauly*, 137 S. Ct. 548, 551–52 (2017) (*per curiam*); *Mullenix v. Luna*, 577 U.S. 7, 11–13 (2015). That is precisely what happened here; the Sixth Circuit painted in broad strokes to find Officer Turnure's conduct when defending a third party to constitute an obvious constitutional violation and alternatively to be clearly established, despite

pointing only to escape and defense-of-self caselaw that do not address the particular circumstances present here.

Clear establishment, in the Fourth Amendment context, requires specificity. *Rivas-Villegas*, 142 S. Ct. at 8. To meet the exacting standard, plaintiffs and courts must demonstrate that "[t]he rule's contours [are] so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" *Wesby*, 138 S. Ct. at 590 (quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)). Specific to the excessive force context, this Court's precedent instructs lower courts to look to "the facts and circumstances of each particular case, 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." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

One theme underlies Officer Turnure's Petition: he acted in response to what he perceived to be an immediate threat to the safety of others, but the Sixth Circuit found clear establishment based on immediate threat to self caselaw. But not only did it find clear establishment; it found obviousness. (Pet.App.A, at A13).

To Officer Turnure's knowledge, the Supreme Court has never found an excessive force case to be an obvious constitutional violation; this Court has only speculated that such a case may exist. *See, e.g., Rivas-Villegas*, 142 S. Ct. at 8 (quoting *Brousseau v. Haugen*, 543 U.S. 194, 199 (2004)). The Sixth Circuit did not cite to any case where obviousness doctrine applied in the excessive force context, it merely cited *Rivas-Villegas* and *Brousseau* for the possibility, and adopted the "no

reasonable correctional officer" standard from the most recent Eighth Amendment obvious constitutional violation case from this Court, *Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (*per curiam*), to apply here without support for doing so. (Pet. at 30).

Part of the Sixth Circuit's obviousness decision was based on inappropriate factual conclusions, which Officer Turnure challenges in his *Scott* argument. Chief among the Sixth Circuit's inappropriate fact finding is that Redrick never fully unsheathed the gun from his pocket. (Pet.App.A at A9–A10), a finding that ignored significant record evidence, including admissions. (*See* Pet. at 14–15). No reasonable jury could credit Redrick for the actions the Sixth did. *See Scott v. Harris*, 550 U.S. 372, 380 (2007). Also notable among these arguments is the circuit court's focus on the legality of Redrick's gun. (Pet.App.A, at A8). The Sixth reasoned that "Turnure argues that he had probable cause to believe Redrick was committing a severe crime because he observed Redrick 'show' his gun. But it is legal to carry a gun in Ohio. Redrick was licensed to carry a concealed weapon." (*Id.*). The last two sentences are true. But there is much more to this analysis than the Sixth Circuit articulated. As laid out in Officer Turnure's Petition, Redrick was in a location—within a crowd leaving a bar—where a reasonable officer could articulate at least reasonable suspicion, if not probable cause, that he had the gun illegally inside a liquor serving establishment. (Pet. at 18–19). Additionally, as seen in video entered into the district court record, Redrick began advancing on the group he claims he felt threatened by. (R. 21–22, Video, at PageID# 153; *see also* Pet. at 16, Pet.App.C, Pet.App.D). In September 2017, Ohio still placed a duty to retreat before using deadly force on

persons in public spaces. Ohio Rev. Code § 2901.09(B) (eff. Sept. 9, 2008) (amended to a stand-your-ground model in 2021). The Sixth Circuit's finding that Officer Turnure could not have had probable cause to believe Redrick was committing a crime is wholly incorrect. The record contradicts these findings to the point that they violate *Scott v. Harris*. Therefore, not only did the Sixth Circuit rely on inapposite caselaw to find obviousness; it relied on improperly found facts too.[3]

By taking these actions, the Sixth Circuit essentially developed new doctrine. In lieu of reversal by this Court, any plaintiff's attorney filing an excessive force case in a Kentucky, Michigan, Ohio, or Tennessee should point to *Redrick* and claim that qualified immunity must be denied because the most charitable reading of their facts makes the case "obvious." This is certainly not the approach taken previously in other Sixth Circuit decisions, like ones involving the City of Akron. *See Lemmon v. City of Akron*, 768 F. App'x 410, 415–16 (6th Cir. 2019) (finding no constitutional violation for shooting someone who, at the moment of shooting, had his hands at his side with no gun drawn). Instead it represents a jarring shift towards defining clear

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[3] The Sixth Circuit arguably applied a 12(b)(6) standard to this case, where it took everything alleged by Redrick at any point as true, rather than a summary judgment standard where the party opposing "must do more than simply show that there is some metaphysical doubt as to the material facts." *Scott*, 550 U.S. at 380 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (internal quotation marks omitted)).

establishment at a high level of generality, using the obvious case doctrine as the shibboleth to circumventing qualified immunity. This Court has repeatedly corrected circuit courts that have strayed down this path before. *See, e.g., White*, 137 S. Ct. at 552 ("The panel majority misunderstood the clearly established analysis: It failed to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment" (internal quotation marks omitted)). It is reasonably likely that it will do so again here.

Nor was the Sixth Circuit's alternative clear establishment analysis proper. As detailed in the Petition, the circuit court identified only cases where officers used force based on an imminent threat-to-self that occurred in or around a person's home. (*See* Pet. at 32–34). Far from specified or particularized to the facts of this case, *Rivas-Villegas*, 142 S. Ct. at 8; *White*, 137 S. Ct. at 552, the Sixth Circuit's attempt at supporting its finding of obviousness with "a body of relevant caselaw" instead relied upon cases with different justifications for use of force and different factual backgrounds. (Pet.App.A, at A12–A14).

To concisely sum up Officer Turnure's position, the Sixth Circuit found his conduct to constitute an obvious violation of constitutional law using inappropriately found facts and without citing a single on-doctrine case. For a rule to be clearly established, it must be dictated by precedent that "must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Wesby*, 138 S. Ct. at 590. "It is not enough that the rule is suggested by then-existing precedent." *Id.* In this case, applying the most favorable possible

reading of the facts for the plaintiff, Officer Turnure observed Latrent Redrick brandish a gun while arguing with three individuals. Moments later, Officer Turnure shot Latrent Redrick because he saw Redrick approaching the same third party with a gun. There is no argument made, nor one possible, that Officer Turnure felt he himself was facing the most imminent threat of harm. Nor is there an argument made that Redrick was a felon trying to escape. But those are the only two doctrines applied in cases cited by the Sixth Circuit for clear establishment. (*See* Pet.App. at A12–A14). The circuit court did not identify a single use-of-force-to-protect-a-third-party case, let alone explain how that unidentified case clearly established or made obvious that Officer Turnure's actions violated Redrick's constitutional rights. Even assuming the imminent-threat-to-self doctrine applies, the circuit court failed to point to any case that clearly prohibits the officer's conduct under similar circumstances confronting Turnure. This is a plain example of a circuit court finding clear establishment and obviousness using rules suggested by tangential precedent. This Court's precedent makes the impropriety of this holding very clear. *See Wesby*, 138 S. Ct. at 589–90, *White*, 137 S. Ct. at 552. And this Court's long-running history of granting certiorari and reversing and remanding cases where circuit courts fail to abide by its clear establishment guidelines suggest that it is reasonably possible that it will do so for this flagrant violation too.

The Sixth Circuit's clear establishment holding in this case stands at odds with this Court's well-defined standard for clear establishment. *See, e.g., Wesby*, 138 S. Ct. at 590; *see also Rivas-Villegas*, 142 S. Ct. at 7–8. "This Court has repeatedly told

courts not to define clearly established law at a high level of generality," *Emmons*, 139 S. Ct. at 503 (Internal quotation marks and editorial marks omitted) but despite that instruction the Sixth Circuit used cases discussing tangential doctrines to decide the use-of-force-to-protect-a-third-party case before it. That is the very definition of defining clearly established law generally; rather than identifying a case that makes the unconstitutionality of Officer Turnure's actions "clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply," *Wesby*, 138 S. Ct. at 590, "the [court] relied on *Graham*, . . . and [its] Court of Appeals progeny, which . . . lay out excessive-force principals at only a general level." *White*, 137 S. Ct. at 552. This Court has reversed courts of appeals for such violations frequently, and must continue to do so to ensure that plaintiffs cannot "convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987).

Therefore, there is a fair prospect that this Court will grant certiorari and reverse the decision below. The foregoing demonstrates that Officer Turnure meets each of the first two conditions.

B. Assuming the correctness of Officer Turnure's position, there is a likelihood that irreparable harm will result from the denial of a stay.

Based on the facts and procedural lie of this case, when assuming the correctness of Officer Turnure's position, he stands to be irreparably harmed if this Court does not issue a stay of proceedings.

This Court's precedent makes clear that even allowing a municipal officer who is entitled to qualified immunity to stand trial is an irreparable harm. Qualified immunity "is an immunity from suit rather than a mere defense to liability." *Mitchell*, 472 U.S. at 526 (emphasis omitted). The immunity "is effectively lost if a case is erroneously permitted to go to trial," and the decision by the district court to go to trial "is effectively unreviewable on appeal from a final judgment." *Id.* at 526–27. Officer Turnure's petition is part of his appeal from the denial of qualified immunity, defined by the *Mitchell* Court's interpretation of the collateral order doctrine. *See id.* at 530. As *Mitchell* makes clear, the very act of making a municipal official with a valid claim to qualified immunity—as Turnure maintains he has—is an irreparable harm. Therefore, because the district court has informed counsel that it intends to proceed to trial "in the absence of a stay from a higher court," it is highly likely that irreparable harm will result from the denial of this stay.

Notwithstanding *Mitchell*'s instruction that forcing an officer with a valid claim of qualified immunity to proceed to trial is an irreparable harm itself, both parties stand to be harmed should the trial go forward and this Court later reverses the Sixth Circuit's denial of qualified immunity. Trial would, of course, result in final judgments on all claims against Officer Turnure—both the federal claim at issue in the Petition and the state-law claims not challenged here—likely sometime in early April. These final judgments will start Officer Turnure's 28-day clock for a new trial and 30-day clock for filing an appeal. Fed. R. Civ. P. 4(a)(1)(A), 59(b). Assuming the underlying Petition process follows its normal course, the earliest day that this Court

could consider the underlying Petition is April 1, 2022.[4] Therefore, even a per curiam reversal is unlikely to be released before either clock ends.

Assuming reversal (as required for this condition) reveals several lurking harms. Should this Court instruct the Sixth to reconsider, the Sixth could have a pre-trial and post-trial appeal simultaneously pending on the same case. Should this Court reverse and order the Sixth to remand to the district court, it would likely result in a post-trial appeal pending in the Sixth Circuit while a Rule 60(b) motion based on a pretrial motion is pending below. That hypothetical Rule 60(b) motion would also beg the question of whether the state-law claims deserve re-trial or re-consideration of damages based on testimony, instructions, and jury consideration on the newly barred claim, the answer to which would likely stem another appeal.

In short, allowing the trial to continue onward, when assuming the correctness of Officer Turnure's position, points all parties in the direction of a quagmire of costly duplicitous litigation. This poses a likely threat of irreparably harm both parties, especially because the loss of the federal claim ends the opportunity to collect attorney's fees. *See* Ohio Rev. Code § 2744.06(B)(1)(b)(iii) (no awards of attorney's fees on claims against government actors under Ohio law).

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[4] This Court docketed the underlying petition on February 15, 2022, meaning Redrick has until March 17, 2022 to file his response. Sup. Ct. R. 15(3). Officer Turnure plans to Reply and therefore does not expect to waive the 14-day waiting period under Supreme Court Rule 15(5). The waiting period ends on March 31, 2022.

For the foregoing reasons, assuming that Officer Turnure's position is correct, both parties would likely be irreparably harmed in the absence of a stay. Therefore, a stay should be granted.

C. The balance of equities weighs in favor of a stay.

Beyond the three necessary conditions, this Court has also previously required stay applicants to show that the balance of equities favor granting the application. *Philip Morris USA, Inc.*, 561 U.S. at 1305. Here, like in *Philip Morris*, the denial of a stay stands to impose an irreversible harm on Officer Turnure, but the grant of a stay would have no permanent injury to Redrick or Pruiett. Here, the balance of the equities weighs in favor of granting the stay, because not staying the proceedings below here sets this case on a path towards unfavorable piecemeal litigation.

Without a stay going into effect, both parties are faced with an immediate challenge: handling the Supreme Court cert process while actively trial prepping the same case. The trial in this case is scheduled to begin on March 21, 2022. Without a stay, Redrick's counsel faces five apparent choices: waiving his response to the petition, losing his chance to attack Officer Turnure's arguments, and risking this Court ordering a response during trial; responding during the prescribed 30-day period, which ends four days before the trial begins, costing counsel valuable trial prep time; moving for an extension of time to respond, focusing on trial prep, and allow the response time to conflict instead with post-trial motions; take the time to seek out and hire outside counsel; or do what Officer Turnure's legal team did and sacrifice a member to focus on Supreme Court litigation while the rest of the team works short-handed on trial prep. The district court's insistence on the trial

beginning while Officer Turnure's Petition is still pending puts both sides in a difficult position, and greatly increases the possibility that something will be missed or completed at a lower bar than any aspect of this case deserves. The time crunch may also cost plaintiff's counsel the time to evaluate whether any potential exists for a cross-petition by Pruiett.

Nor would Redrick or Pruiett face irreversible financial loss from rescheduling the trial should the stay be granted. At this point, Redrick still has pending a 42 U.S.C. § 1983 case. Should Redrick eventually prevail on this claim, Officer Turnure would owe him reasonable attorney's fees, which would likely including the cost of rescheduling the March 21, 2022 trial. *See* 42 U.S.C. § 1988(b). So the question of financial loss hinges on the same issue—whether Redrick eventually prevails on his federal civil rights claim—regardless of whether this Court grants this Application.

Pruiett, who has only state-law claims remaining, faces a greater chance of irreparable harm if the claim is not stayed than if it is. Should this Court hold that Officer Turnure was entitled to qualified immunity on Redrick's claims after a trial went forward, it will call into question evidence, testimony, and instructions given to the jury at trial about Officer Turnure's potential liability.[5] Such a major change could hypothetically warrant re-trial on the state-law claims to ensure that the jury's decision, both on the merits and on liability, were not tainted by the claim that Officer Turnure is, in this hypothetical, immune from. The granting of a stay merely costs

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[5] Officer Turnure intends to move for bifurcation, but as of filing Redrick and Pruiett are proceeding to trial together.

Pruiett time; the denial of a stay exposes Pruiett to a potential second trial, the costs for which he cannot recover from Officer Turnure.

Further, the risk of financial loss to both parties becomes significantly greater if a stay is not imposed, because the parties would have to put on a full trial knowing that this Court could grant review and reverse, possibly nullifying the entire trial, and certainly setting up expensive and time-consuming litigation (now without the possibility of prevailing party attorney's fees, since Ohio law does not provide them). Ohio Rev. Code § 2744.06(B)(1)(b)(iii). Plus, a stay of proceedings, assuming it leads to an eventual reversal, could lead to the district court remanding the case to the Summit County Court of Common Pleas as a 28 U.S.C. § 1367(c)(3) discretionary declination of supplemental jurisdiction. If this happens, it would provide Redrick and Pruiett the benefit of their original choice of venue.

All told, staying proceedings below allows both parties to focus on one element of litigation at a time. The absence of a stay here requires both parties to deal with piecemeal litigation now between the Supreme Court and district court, and, should Officer Turnure prevail, moving onward until the Supreme Court's decision can be reconciled with whatever happens at trial. This Court has previously noted that piecemeal litigation is a burden on both courts and litigants. *See Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1713 (2017); *see also Rose v. Lundy*, 455 U.S. 509, 520 (1982) ("To the extent that the exhaustion requirement reduces piecemeal litigation, both the courts and the prisoners should benefit.").

Therefore, the balance of the equities favor this Court granting Officer Turnure's Application for a Stay.

V. CONCLUSION

Officer Turnure's Petition presents a circuit court using improper evidence to expand clear establishment well beyond the bounds established for it by this Court. This Court has repeatedly granted certiorari and reversed circuit courts for attempting what the Sixth did here; there is a reasonable possibility and fair prospect that the Court will follow its established track of preventing such expansions. In the absence of a stay, Officer Turnure will be forced to stand trial which, assuming the correctness of his position, violates his right to immunity from suit. *Mitchell*, 472 U.S. at 526–27. The absence of a stay also threatens to launch both parties into costly, confusing, duplicitous piecemeal litigation, the likes of which this Court usually disfavors.

Therefore, Officer Turnure has met the three conditions incumbent on this Court granting his application for a stay, and the balance of the equities sides with staying the proceedings below. For the foregoing reasons, this Court should issue a stay of proceedings for all cases related to Supreme Court case 21-1128, pending a decision on Officer Turnure's Petition for a Writ of Certiorari.

Respectfully submitted,

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EXHIBIT A: DISTRICT COURT TRIAL ORDER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

Latrent Redrick, et al.,	)	Case No. 5:18CV2523
	)	
	)	
Plaintiffs,	)	JUDGE JOHN R. ADAMS
	)	
-vs-	)	
	)	TRIAL ORDER
City of Akron, et al.,	)	
	)	
Defendants.	)	

This case is scheduled for Trial on March 21, 2022 at 9:00 a.m. in the courtroom of the Honorable John R. Adams, Courtroom 575, United States District Court, 2 South Main Street, Akron, Ohio. If the trial date is delayed for any reason, unless otherwise notified by the Court, parties shall remain on standby subject to call for the start of the trial for a period of two (2) weeks. Jury costs will be assessed if settlement is achieved after a jury has been called.

The Final Pretrial will be conducted on March 7, 2021 at 10:00 a.m., also in Courtroom 575. Pursuant to Local Rule 16.3(e), the parties and lead counsel of record must be present and prepared with full authority to discuss all aspects of the case, including any pending motions, jury instructions, witness and exhibit lists, scheduling and settlement. Counsel are to have conferred with their clients, and with

each other, regarding their final settlement posture within two (2) business days before the final pretrial.

The following instructions will govern the operation of the trial and the obligations of parties and their counsel:

1. TRIAL DAYS

Trials will begin at 9:00 a.m. and continue until 4:30 p.m., unless circumstances dictate otherwise. A one (1) hour lunch break and two (2) fifteen minute breaks will be provided. Counsel must notify the Court's staff of issues to be addressed by the Court outside the presence of the jury so that trial may proceed with as few interruptions as possible. Accordingly, counsel should expect to be present in the courtroom from 8:30 a.m. until 5:00 p.m. in order to address matters outside the presence of the jury.

All parties and counsel are to be present in the courtroom at all times when the jury is seated.

2. STIPULATIONS OF FACT AND PRELIMINARY STATEMENTS

Counsel for the parties shall confer with one another in order to prepare written stipulations as to all uncontested facts to be presented at trial to the jury or to the Court, as the case may be. Stipulations of fact are strongly encouraged in order to eliminate the need for testimony of witnesses to facts which are not in dispute. Said stipulations shall be filed with the Court no later than ten (10) calendar days prior to the trial date.

Counsel shall also prepare and submit a Joint Preliminary Statement (not to exceed 2 pages) describing the case in an impartial, easily understood and concise manner for use by the Court either during voir dire or at the time the jury is impaneled. This statement will be used to set the context of the trial for the jury and must be submitted no later than ten (10) days prior to trial.

3. TRIAL BRIEFS; WITNESS AND EXHIBIT LISTS

Trial briefs, witness lists, and exhibit lists, if any, shall be filed ten (10) calendar days prior to the trial date. A complete trial brief includes: (a) a statement of the facts; (b) a complete discussion of the controlling law together with specific citations of statutes and case law; and (c) a discussion of any evidentiary issues likely to arise at trial. Together with the trial brief, the parties shall also file and exchange their proposed witness and exhibit lists. The lists shall provide a brief description and the purpose of each witness, and shall list and briefly describe each item of documentary or physical evidence which is to be offered.

Each attorney shall have a continuing obligation to supplement the party's list immediately upon learning of any additional witness. Witnesses not listed as part of the trial brief or provided before the trial starts shall not testify at trial, and exhibits not listed in the trial brief shall not be introduced at trial, absent a showing of good cause. This rule applies to lay witnesses as well as to expert witnesses.

In all cases, trial briefs and Motions in Limine are to be exchanged with opposing counsel by hand delivery or Fax. No later than five (5) days before trial, any objections to a proposed witness or exhibit shall be filed with the Court and served

upon opposing counsel. Such objections shall include a brief statement as to why the proposed witness exhibit should not be permitted or admitted, as well as, specific citations to pertinent case law or other legal authority

4. MOTIONS IN LIMINE

Shall be filed thirty (30) days prior to trial. Oppositions to be filed fourteen (14) days thereafter.

5. MARKING OF EXHIBITS

Exhibits shall be marked before trial with exhibit stickers, which are available from the clerk's office upon request. Plaintiff shall mark exhibits with numbers beginning with 1, and the defendant shall mark exhibits with numbers beginning with 1001 (*e.g.*, "Pl. Ex. 1" and "Deft. Ex. 1001") All exhibits must indicate the case number on the bottom portion of the exhibit sticker.

If there are multiple parties, the party's last name should precede the numbers or letters (*e.g.*, "Pl. Smith-1" or "Deft. Jones-1001"). Parties are encouraged to agree to the authenticity or admissibility of exhibits.

Whenever a multi-page exhibit is used, each page of the exhibit must be separately numbered. For example, if Plaintiff's Exhibit 1 is a three-page document, the first page should be marked as Pl. Ex. 1-1, the second page marked as 1-2, and the third page marked as 1-3.

Where more than ten (10) exhibits are offered by a party, it is required that counsel place all exhibit sets in a three-ring loose-leaf binder/notebook with appropriately marked divider tabs and a table of contents. Two (2) copies of all

exhibits shall be furnished to the Court no later than two (2) business days prior to the trial date.

Exhibits themselves will not be filed with the Clerk of Court but delivered to Chambers, Suite 510.

6. VOIR DIRE

The Court will conduct initial *voir dire* of the panel and of individual panel members. The Court may thereafter allow one counsel for each party to question the panel briefly on issues not addressed by the Court.

Proposed *voir dire* questions for the Court's questioning are to be submitted no later than ten (10) calendar days prior to the trial date, together with the trial briefs.

7. DEPOSITION TESTIMONY

Whenever depositions (videotape or written) are intended to be used as evidence at trial, counsel proposing to use such deposition testimony shall provide opposing counsel with pertinent transcript references fourteen (14) calendar days prior to trial. Objections to the proposed testimony will be provided to opposing counsel within seven (7) days thereafter. Counsel shall consult in an effort to resolve any objections raised. Where objections have been raised and not resolved, counsel proposing to use said deposition testimony shall file with the Court, a brief in support with citations to any applicable legal authority, attach and highlight the deposition portions objected to, and note the objections in the margin.

When videotape depositions will be presented in lieu of live testimony, counsel must file a complete written transcript of the videotape deposition prior to its use and follow Local Rule 32.1.

8. JURY INSTRUCTIONS AND INTERROGATORIES

Counsel are required to provide jury instructions to the Court only on the issues of the law applicable to the claims made and on damages. Counsel shall also provide proposed juror interrogatories. The Court will provide general instructions on issues such as credibility, etc.

Counsel shall exchange proposed jury instructions and interrogatories no later than ten (10) calendar days prior to the final pretrial date. Counsel shall then confer regarding their respective proposals in an effort to reach an agreement regarding as many jury instructions and interrogatories as possible.

Not later than one (1) business day prior to the final pretrial, a single joint submission shall be filed providing: (1) agreed upon instructions and interrogatories; (2) instructions and/or interrogatories proposed by plaintiffs, but opposed by defendants; and (3) instructions and/or interrogatories proposed by defendants, but opposed by plaintiffs. All proposed instructions shall be supported by citations to legal authority.

Such single joint submission of jury instructions and interrogatories to the Court shall be made in writing and produced electronically to the Court's law clerk.

9. NON-JURY CASES

In all non-jury cases, counsel for each of the parties shall prepare Proposed Findings of Fact and Conclusions of Law, which shall be filed with the Court not later than ten (10) calendar days before the date set for trial. Plaintiff's Conclusions of Law shall include a statement of the applicable statute conferring jurisdiction upon the Court.

Proposed Findings of Fact and Conclusions of Law shall be consecutively numbered with each finding and conclusion stated in a separate paragraph. The proposed Findings of Fact shall cite the particular witness(es) or exhibit(s) upon which each suggested finding is based; proposed Conclusions of Law shall cite legal authority.

10. SPECIAL INSTRUCTIONS TO COUNSEL

Pleadings or other materials submitted beyond the deadlines set forth in this order may be rejected by the Court. Any and all motions, responses, stipulations, objections, pleadings or memoranda not filed electronically required within two (2) business days of any settlement conference, hearing, final pretrial, or trial, shall be FAXED to the Court as well as to opposing counsel on the same day it is filed. The Court's fax number is 330-252-6077.

11. TECHNOLOGY FOR EXHIBITS

Any party that seeks to offer into evidence any type of electronic exhibits - including, but not limited to, audio CDs, DVDs, videos, or any other manner of electronic media – shall bear entirely the burden of ensuring that the proper

technology and equipment is available to allow a jury to view the media within the confines of the jury room and without any outside assistance. It is not the Court's responsibility to provide such technology or assistance to either party. If the exhibit is not properly formatted for jury use or the proper technology is not made timely available, the jury will not be permitted to review the electronic media.

12. CONDUCT OF COUNSEL

Pursuant to the Statement on Professionalism issued by the Supreme Court of Ohio on February 3, 1997, counsel are directed to be courteous and civil in all oral and written communications with each other and the Court. Pleadings or any other communications which do not conform to this standard will be rejected.

IT IS SO ORDERED.

DATED: December 20, 2021

/s/ John R. Adams

Judge John R. Adams

UNITED STATES DISTRICT COURT

EXHIBIT B: 1/11 EMAIL FROM COUNSEL TO DISTRICT COURT

From: Reece, John Christopher <JReece@akronohio.gov>

Sent: Friday, February 11, 2022 1:42 PM

To: [Staff Attorney to Judge Adams]; sarah@FGGfirm.com

Cc: jacqueline@FGGfirm.com; mdefibaugh_akronohio.gov

<MDefibaugh@akronohio.gov>

Subject: Turnure v. Redrick

[Staff Attorney] & Sarah,

Please find attached a Petition for Writ of Certiorari filed today in United States Supreme Court.

Thank you,

Chris Reece

City of Akron

330-375-2030

EXHIBIT C: 1/11 EMAIL FROM DISTRICT COURT TO COUNSEL

From: [Staff Attorney to Judge John R. Adams]

Sent: Friday, February 11, 2022 2:40 PM

To: Reece, John Christopher <JReece@akronohio.gov>; sarah@FGGfirm.com

Cc: jacqueline@FGGfirm.com; Defibaugh, Michael <MDefibaugh@akronohio.gov>

Subject: [External] RE: Turnure v. Redrick

Counsel,

Thank you for the notification. Judge Adams has indicated that in the absence of a stay from a higher court, this petition will not impact our currently scheduled final pretrial and trial dates. Thank you.

[Staff Attorney]

EXHIBIT D: 1/14 EMAIL FROM COUNSEL TO DISTRICT COURT

From: Reece, John Christopher <JReece@akronohio.gov>

Sent: Monday, February 14, 2022 2:49 PM

To: [Staff Attorney to Judge Adams]

Cc: mdefibaugh_akronohio.gov <MDefibaugh@akronohio.gov>;

sarah@FGGfirm.com

Subject: Latrent Redrick, et al. v. John Turnure

Jon,

Thank you for the e-mail last Friday.

The Defendant's filing of the Petition for Writ of Certiorari was not a perfunctory effort to delay a trial. Counsel has a strong belief in the filing as evidenced by the time (and expense) invested in preparing and filing it and the quality of the argument in the Petition.

In that regard, the Defendant intends to file a motion to stay in the Supreme Court this week, unless you can offer any insight that filing the motion with this Court would be fruitful.

Thank you,

Chris Reece

City of Akron

330-375-2030

EXHIBIT E: 1/14 EMAIL FROM DISTRICT COURT TO COUNSEL

From: [Staff Attorney to Judge John R. Adams]

Sent: Monday, February 14, 2022 2:51 PM

To: Reece, John Christopher <JReece@akronohio.gov>; sarah@FGGfirm.com

Cc: Defibaugh, Michael <MDefibaugh@akronohio.gov>; sarah@FGGfirm.com

Subject: [External] RE: Turnure v. Redrick

Chris,

From my discussions with Judge, I would stay on your current path. I would not anticipate Judge Adams himself entertaining a motion to stay absent some extraordinary circumstances arising. Thank you again for keeping us in the loop.

[Staff Attorney to Judge Adams]