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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Cedric Adams, et al

— PETITIONER

(Your Name)

vs.

Nick Diamond, et al,

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cedric Adams

(Your Name)

15 Arabella Circle

(Address)

Oakland, TN, 38060

(City, State, Zip Code)

505-991-1102

(Phone Number)

(i)

Question(s) Presented

Should a local government be dismissed from acceptance of claims and the very beginning of a suit with prejudice giving absolute immunity without allowing time for factual allegations, evidence, documentation and record to be established for the negligent acts of their police officer according to 42 U.S.C § 1983 or the Tennessee Governmental Tort Liability Act?

Whether a police officer may reasonably rely on a narrow exception to a specific and clearly established right to shield him from civil liability when his conduct far exceeds the limits of that exception?

Whether a police officer can use the defense of Qualified Immunity according to an intentional tort of assault and battery?

Whether a police officer motivation or intent is relevant concerning a 42 U.S.C § 1983 claim or according to the Tennessee Governmental Tort Liability Act, TCA 202 and TCA 205 governing a police officer negligence?

Whether a Final Judgment Order is valid if that order fails to list or mention a state claim with supplemental jurisdiction?

This case involves substantial federal questions and deals with broad issues that apply to many different cases. There is legal conflict in this case that arises from issues connected to the U.S. Constitution and federal law.

There is a question of exceptional importance and many different issues, concerns and challenges that were not addressed from the acceptance of claims, throughout and before the District Court jury trial proceedings and issues were not addressed in, at or by The Sixth Circuit Court Of Appeals. A "pro se complaint must be held to less stringent standards than formal pleadings drafted by lawyers." (*Erickson v. Pardus*, 551 U.S. 89, 94 (2007) and all factual allegations made by plaintiffs are to be taken as true and this entire process and procedures was not structured correctly constitutionally, lawfully or procedurally to hold all responsible defendants civilly liable by dismissing Metro Nashville Davidson County with prejudice from acceptance of claim without allowing time for a factual allegations, developments or a factual

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record to be established and that would have revealed an MNPd policy violation holding Metro Nashville Davidson County civilly liable. If a case is not charged and structured lawfully, constitutionally or procedurally correct from the beginning then anything after or according to that case cannot be fair or just and is a miscarriage of justice and creates manifestations of injustices. The Sixth Circuit Court Of Appeals also did not hear or address issues and challenges raised in appeal based on formality of a pro se petitioner and denied the panel rehearing or rehearing en banc reasoning stating that petition for rehearing was not filed in a timely fashion. The Courts should overturn the lower court's decision and the verdict of the jury trial in this case to ensure uniformity and consistency in the interpretation and application of law. This case presents significant legal questions, has national importance and the ideal vehicle to clarify constitutional issues, to address vital legal matters and the Courts is needed to provide authoritative interpretations of law to foster a coherent body of law in the reversible legal errors in the lower court's structure and proceedings.

There is a question of exceptional importance and needs to be examined that the District Judge in this case in fact stated in the judgment summary order and during trial proceedings that by matter of law Officer Diamond actions and conduct did constitute a violation of petitioner Cedric Adams constitutional rights which would hold Metro Nashville Davidson County liable who were dismissed with prejudice from acceptance and beginning of claims. Petitioner Cedric Adams court appointed representation with their unique skills, knowledge and experience neglected to file a rule 50 motion after defense rested or before submission to trial jury. It's only two ways this incident could have happened was (1) Officer Diamond was not properly trained according to and dealing with the mentally, emotionally or psychologically challenged or (2) Officer Diamond himself was not mentally, psychologically or emotionally stable to carry out his professional duties.

There is a question of exceptional importance concerning criminal intent which is the intent to do harm or cause injury and general intent which is the intent to do or cause the act. The fact that an assault and battery happened and with the use of Officer Diamond service weapon the general intent is evident and present and also includes the elements of criminal intent or negligence. The District Court clearly overlooked that petitioner's complaint and amended complaint that was filed civilly in federal court according to a 42 U.S. Code § 1983 claim for excessive force involving a state actor negligently discharging his service weapon committing an intentional tort of assault and battery. Officer Diamond assumption and what he

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intended contradicts and violates *TCA 29-20-202* Removal of immunity for injury from negligent operation of motor vehicles or other equipment and *TCA 29-20-205* Removal of immunity for injury caused by negligent act or omission of employees that distinguishes discretionary functions from ministerial, operational and proprietary functions and duties. Officer Diamond assumption, what he intended and negligently discharging his service weapon violated constitutional and civil rights of *42 U.S. Code § 1983* which squarely states while improper intentions do not make a reasonable use of force is unconstitutional, good intentions do not shield an officer from liability if their use of force was objectively unreasonable and the results and outcome of this incident verifies that Officer Diamond's use of excessive force was unwarranted and unreasonable. Officer Diamond motivation is irrelevant. The specific intent of the individual police officer who executed the search or seizure does not matter. Good faith is not available as a defense. "A trespass may be committed from a mistaken notion of power, and from an honest motive to accomplish some good end. But the law tolerates no such abuse of power, nor excuses such acts. Nor could the defendants' good faith reduce the plaintiffs' damages. "Compensation cannot be diminished by reason of good motives upon the part of the wrong-doer." The State's immunity is waived when: (1) the State is the moving party seeking relief; (2) an act of the legislature creates a specific waiver of immunity; and (3) where a State agency's actions are illegal, or when a public employee refuses to do a ministerial act required by statute. (*State Office of Child Support Enf't v. Mitchell*, 954 S.W.2d 907 (1997); *Travelers Cas. & Sur. Co. of Am. v. Arkansas State* ".).

There is a matter of exceptional importance on whether Officer Diamond conduct was discretionary or ministerial is at issue in this case and it is necessary to examine the Metro Nashville Police Department use of force policy. The Metro Nashville Police Department use of force policy clearly states *11.10.020(A)* Officer Diamond did not make sure all other options were exhausted, unavailable or were not feasible and according to MNPd use of force policy *11.10.150(B)(4)* Officer Diamond did not make every effort to minimize the risk of harm to multiple innocent persons verifying and proving that Officer Diamond's actions, conduct and behavior was not discretionary functions but an operational or ministerial acts barring Officer Diamond from the qualified immunity defense and removing immunity from Metro Nashville Davidson County. The Office Of Professional Accountability reports and findings satisfy the legal authority, state remedy and policy violation that Officer Diamond violated policy removing

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immunity from Metro Nashville Davidson County. Officer Diamond's actions and conduct and verified by The Office Of Professional Accountability reports and findings found Officer Diamond guilty according to the handling of Authorized Firearms and Accessories did not observe all safety precautions necessary to prevent injury or damage. When there is a state remedy civil liability is had.

There is a question of exceptional importance to determine whether a complaint states a plausible claim, "a district court must (1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true." (*Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (citing *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009)). The court must then consider whether those factual allegations, accepted as true, "plausibly suggest an entitlement to relief." (*Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681)). A complaint need not contain "detailed factual allegations," but it must contain more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." (*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." The plausibility standard "does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal conduct ." In a § 1983 action "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." (*King v. Zamiara*, 788 F.3d 207, 216 (6th Cir. 2015) (quoting *Smith v. Wade*, 461 U.S. 30, 56, 103 (1983)).

There is a question of exceptional importance and needs to be noted that in this case the intentional tort of assault and battery is not listed in the Final Judgement Order in this case that would have shown that The Final Judgement Order in this case is incorrect or inaccurate on the face and show that Metro Nashville Davidson County was in fact also civilly liable. In tort law, assault and battery is an intentional tort in which all original defendants including Metro Nashville Davidson County that were included and a part of initial and amended complaints could be held civilly liable. The *TGTLA* basis for liability clearly states the tort liability of municipalities and other local governmental entities is determined under the *Tennessee Governmental Tort Liability Act - Tennessee Code Annotated (TCA) Chapter 20*. This Act,

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passed in 1973 by the Tennessee General Assembly, is an attempt to balance the needs of injured persons to recover for injury or damage caused by the negligent acts of a local government and the needs of local governments to provide and of their citizens to receive public services, without unduly burdensome litigation and taxes. One of the most important provisions of the Act is the section that grants absolute immunity to local governments and then creates exceptions to this immunity making them liable for certain actions or inactions, based on negligence which in this case Metro Nashville Davidson County was dismissed from acceptance of claims with prejudice and petitioner Adams was not allowed the place, time or opportunity for factual allegations, documentation or record to be established for the negligence of Officer Diamond. (*Limbaugh v. Coffee Medical Center*, 59 S.W.3d 73 (Tenn. 2001). The underlying tort that caused injury was an assault and battery. The Courts have found there was sufficient evidence to conclude that the assault and battery was a foreseeable consequence of the defendants negligence. Officer Diamond's state created danger did not avoid substantial risk to multiple innocent lives. (*Hughes v. Metro. Gov't of Nashville & Davidson Cty.*, 340 S.W.3d 352, 371 (Tenn. 2011) (stating that the intentional creation of "an apprehension of harm in the plaintiff" constitutes the intentional tort of assault); *Lacy v. Hallmark Volkswagen Inc. of Rivergate*, No. M201602366COAR3CV, 2017 WL 2929502). Officer Diamond's actions resulted from a policy or practice attributable to Metro Nashville, the initial and amended complaint both satisfies claims against Metro Nashville under § 1983.

The Tennessee Supreme Court ruled in a unanimous decision in *Lawson v. Hawkins County, Tennessee*, No. E2020-01529-SC-R11-CV (Tenn. Feb. 16, 2023) that the Governmental Tort Liability Act (GTLA) "removes immunity only for ordinary negligence," not for gross negligence or recklessness. Ordinary negligence is a failure to exercise the level of caution necessary in a particular situation. This level of caution is what any average person in a similar situation would use. Negligence generally means there was a careless mistake or some inattention that resulted in injury.

There is a question of exceptional importance and the TCA 29-20-205 and the distinction between discretionary and operational functions. In *Bowers v. City of Chattanooga*, 826 S.W.2d 427 (Tenn. 1992), the Tennessee Supreme Court adopted the "planning-operational" test for determining what constitutes a discretionary functions and under that test decisions that rise to the level of planning or policy-making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational are not considered discretionary acts and, therefore, do not give rise to immunity. The planning-operational test focuses on the type

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of decision rather than on the decision maker. Planning decisions are those which are "determined after consideration or debate by an individual or group charged with the formation of plans or policies." Some acts indicative of planning decisions include "Assessing priorities, allocating resources, developing policies, or establishing plans, specifications, or schedules." Generally, operational decisions are those made on a case-by-case basis by individuals or groups that are not responsible for developing plans or policies. Some acts indicative of operational decisions are those based on "pre existing laws, regulations, policies or standards." Generally, Bowers pushes liability for the negligent acts of low-ranking employees upward to the municipality. Negligent operational acts of low-ranking employees will be held not to be discretionary (which makes the municipality liable for those acts).

There is a question of exceptional importance of Officer Diamond with the defense of and a jury trial constructed to and under special interrogatory and according to the qualified immunity defense according to an intentional tort of assault and battery that was not listed in the Final Judgment Order in this case. Metro Nashville Davidson County the appropriate, proper and liable party according to constitutional rights violations of ordinary negligence of a Metro Nashville Davidson police officer according to *U.S. Code – 42 U.S.C. §1983* civil rights claim, constitutional law carved out in federal and state constitutions *U.S. Code – 42 U.S.C. §1983* and *The Tennessee Governmental Tort Liability Act* removing immunity from Metro Nashville Davidson County. Petitioner Cedric Adams could not in no way fairly have been successful at or during a jury trial if the proper party defendant Metro Nashville Davidson County was dismissed with prejudice at the beginning and acceptance of claims without allowing time for factual allegations, development or record to be established that would have produced a state remedy, legal authority or policy violation that also removes immunity and that makes Metro Nashville Davidson County a proper party defendant and holds them civilly liable. The outcome of the District Court jury trial that was under special interrogatory according to the qualified immunity defense concluded that Officer Diamond's actions and conduct was not intentional but was accidental according to an intentional tort of assault in battery not mentioned in the Final Judgment Order according to ordinary negligence with the use of his service weapon filed civilly in federal court hold and makes Metro Nashville Davidson County a proper party defendant. The Court should grant certiorari to resolve circuit split , clarify the contours of the qualified immunity doctrine and restore some semblance of the historical order, at least in obvious excessive force cases such as this one. This outcome would eviscerate *Section 1983*, which

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should not be understood to grant immunity to officers unless they would have had a defense in "an analogous situation at common law." *Ziglar v. Abbassi* 137 S. Ct. 1843, 1870 (2017)(*Thomas, J., concurring in part and concurring in the judgment*); see also *Wyatt v. Cole*, 504 U.S. 158, 170 (1992) (*Kennedy J., concurring*). When Congress enacted Section 1983, the background common law of assault and battery would not have provided Respondent Officer Diamond a defense against Petitioner's Cedric Adams suit. The Court's should intervene being the proper party defendants Metro Nashville Davidson County was dismissed from the beginning of claims and the State claim of assault and battery not listed in Final Judgement Order is a miscarriage of justice and allows for the creation of a manifestation of injustices.

PARTIES TO THE PROCEEDING

Petitioner Cedric Adams was the appellant in the Sixth Circuit Court of Appeals. Respondent Nick Diamond was the Appellee in the Sixth Circuit Court of Appeals. Ashley Smith and Sir Christian Adams were plaintiffs in the U.S. District Court for the Middle District of Tennessee Nashville Division. Metro Nashville Davidson County, TN and John Doe were defendants in the United States District Court for the Middle District of Tennessee Nashville Division.

PETITION FOR A WRIT OF CERTIORARI

Cedric Adams petitions for a writ of certiorari to review the judgment rendered in the jury trial of the United States District Court of Middle Tennessee Nashville Division in this case that has been sealed and to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case that is unpublished and the panel rehearing and hearing en banc that was denied which is also unpublished.

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Appendix B

Letter to District Court Judge that this case was filed civilly in federal court for constitutional rights violations and according to the negligence of MNPDP Officer and that there was a policy violation and that Metro Nashville Davidson County was unfairly dismissed from suit with prejudice.

Appendix C

Metro Nashville Davidson County Office Of Professional Accountability reports findings that Officer Diamond violated MNPDP policy and is the legal authority that Officer Diamond violated an operational, ministerial or proprietary function and not a discretionary function, the state remedy that verifies civil liability.

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Final Judgment Order in this case that neglected to list or mention state claims of assault and battery in Final Judgment Order.

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-Metro Nashville Davidson County use of force policy

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OPINIONS BELOW

The United States District Court of Middle Tennessee Case No. 3:18-cv-00976 was sealed. The Sixth Circuit Court of Appeals rejected appeal and reply briefs based on formality. The Sixth Circuit Court of Appeals did not grant panel rehearing or rehearing *en banc* based on untimely filing.

JURISDICTION

The Sixth Circuit Court of Appeals entered the final judgment in this case on 06/01/2023 which this petition is filed within the 90 days from the denial of a timely filed petition for rehearing. In this case the petition for rehearing and the rehearing *en banc* was denied for untimely filing. This petition is filed within the 90 days entered in the final judgment of this case and the Court has jurisdiction pursuant to 28 U.S.C. § 1254(1)

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable search and seizures, shall not be violated

Title 42 U.S.C § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, usage, of any State or Territory***subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof 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***

STATEMENT OF CASE

Officer Diamond violated apparent, relevant and established policy, statutes, doctrines, laws and rights which can be seen within itself and on the surface. Metro Nashville does not retain immunity for claims of negligence from and by one of their officers or intentional and negligent infliction of emotional distress, and is the proper party-defendant." An act or practice that causes a small amount of harm to a large number of people, or a significant amount of harm to a small number of people, may be deemed to cause substantial injury. An injury may be substantial if it raises significant risk of concrete harm. Officer Diamond draw his service weapon and forced entry into Petitioner's Adams home and then used lethal, deadly, unnecessary force as a first option to de-escalation and according to responding to a domestic dwelling without a warrant, probable cause or exigent circumstances just Officer Diamond assumptions responding, approaching and physically being on the scene and false information transcribed by and through dispatch who was not on scene to physically see, hear to provide, to give, to make and give a reason or excuse of exigent circumstances and to minimize, diminish, making light of and under playing clearly established MNPDP policy violations by Officer Diamond "forcing entry" in a home with his service weapon drawn and the firing his service weapon without concern, disregard or evaluating all necessary precautions to protect multiple innocent lives, citizens or bystanders, by overlooking, disregarding, making light of, under playing and violating essential constitutional rights. Officer Diamond testified that officers don't like to pull service vehicles up to and in front of the correct home or address as a physical and visual announcement of their presence. Officer Diamond also testified to that police officers do not normally like to knock on a home door as if they were police or initially knocking and immediately stating who they are, there authority and reasons for being there but in hopes that others would hopefully think it's a neighbor or something which is unlawful, unprofessional, negligent and not responsible in a cold, dark wooded area, in early morning hours, around someone's yard and at someone's home and against MNPDP policy and the basis and foundation of all clearly established rights guaranteed by the United States Constitution for the safety of himself and to provide safety to and for others. Officer Diamond testified to and despite and regardless of him being right-handed, standing face to face and firing his service weapon striking Plaintiff Adams in the back or if he had or was making a two hand grip testified to and against and contrary to MNPDP policies, protocols, procedures and training that officers shoot to not neutralize perceived threat but to eliminate them. Officer Diamond testifying to that officers trained to shoot from the hip furthermore proves these claims. Officer Diamond testified according to his thoughts to how he was trained and it's being defended by and on every level,

even with the alternate outcomes resulting in death, the violation of constitutional rights to, at and in someone's home and the results and outcome of the entire incident responding to, at and in plaintiff's home and no arrests just Officer Diamond forced entry in Plaintiff's home wielding his weapon and then firing that service weapon striking Plaintiff Adams and endangering multiple innocent lives of a bed rest mother and an one month old child and it's just said to be "accidental." Officer Diamond violation of rights and policies is what led to the excessive force which any amount of force was unreasonable and the result and outcome of the incident with no physical violence, force, weapons or arrests and all harm, injuries and damages were introduced, applied and administered from and by Officer Diamond state created danger. Many circuits have recognized two potential circumstances in which the state created danger doctrine may arise: (1) special, custodial relationships in which the state assumes control over an individual (e.g., prisons) and (2) noncustodial contexts in which the state created a danger that harmed an individual. Under this doctrine, courts attach liability when state actors either create or enhance a danger that deprives the plaintiff of his or her right to substantive due process. (For example, in *State v. Alford*, [970 S.W.2d 944, 946 (Tenn. 1998)]). Officer Diamond created and increased all plaintiffs' vulnerability to the danger in every way. In this case Qualified Immunity is not being used to justify a wrongful death or injuries but used to shield Officer Diamond and Metro Nashville from a wrongful, unlawful, unreasonable and unconstitutional shooting which all factual allegations alleged by Pro Se Petitioner and after judgment summary appointed legal representation with their unique skills, knowledge and experience did not file the procedural and customary rule 50 motion Judgment as Matter of Law after defense rested or before case was submitted to jury of furthermore proves that this entire incident, process, procedures, proceedings and jury trial was constructed, facts and evidence was omitted, excluded, limited or minimized and the qualified immunity doctrine used and applied and negatively affected Petitioner Adams and his family at and his family home by Officer Diamond negligent conduct. Plaintiff Adams was instructed and directed to not challenge and honor the rulings of the District Court Judge but the trial jury was asked to look over and not consider the ruling of the District Court Judge that Respondent, defendant Officer Nick Diamond violated Petitioner Adams civil rights by a matter of law and that Officer Diamond actions and conduct constitutes a violation of Petitioner Adams constitutional and civil rights. Officer Diamond a state actor and acting under the color of the law introducing all weapons, danger, force and harm against MNPD use of force policy and his negligence of a forced entry into a home wielding or with his service weapon drawn and the civil and constitutional rights violations and unreasonable use of excessive deadly force and the results of this jury trial was a miscarriage of justice. Plaintiffs have not

changed their procedural posture from the initial filing of the original complaint, throughout jury trial or through the appeals procedures. The entire incident, process, procedures, proceedings, court records and jury trial minimized, limited, excluded, overlooked, omitted and withheld essential facts and evidence. This process, procedures, proceedings and jury trial was constructed and lacked involved and affected plaintiffs, responsible defendants dismissed with prejudice. The District Judge stated that Officer Diamond actions by a matter of law constituted a violation of Petitioner Adams 4th Amendment rights. Facts and evidence were omitted, excluded, minimized and jury trial minimized and limited to an single issue based off "accidental" that cannot be proven by anything other than what Officer Diamond says in addition to his position and authority within society versus a mountain of facts and evidence, policy violations, broken laws and rights violated and the actual use of unreasonable lethal deadly force, bodily contact and the endangering of multiple innocent lives and his use of unreasonable use of extreme excessive lethal deadly force as a first choice and option and a jury trial limited to disregard the ruling of the courts of the violations of constitutional rights and then and for a jury to make a determination according to what they feel was right or wrong according to an issue instead of what is just and fair and according to the law. Petitioner Adams was instructed, followed and complied but Petitioner Adams court appointed counsel did not want to have examined, introduce or challenge District Judge rulings and then the trial jury asked to disregard The District Court Judge rulings of the violations of rights. Officer Diamond stated that he became startled and that he intentionally fired his service weapon and it was all a continuous motion which is consistent with the evidence and facts and what allowed Plaintiff Adams to recognize and avoid serious injury or death but endangered, put in direct line of fire and imminent danger all lives that was present, involved and occupants of the home. Officer Diamond violated MNPD use of force policy and constitutional rights with the use of unwarranted, unreasonable and unlawful use of excessive force and everything deemed lawful and intentional except where it can be seen within itself, on the surface and were Officer Diamond was absolutely wrong being deemed, charged or argued "unintentional" or "accidental" is a miscarriage of justice. How these claims were charged, how the court records and jury trial was structured, presented and left to be defended as "accidental" and to say Petitioner Adams person, family, home and rights were and known to have been violated then a trial had to say he did not violate Plaintiff Adams rights is a clear miscarriage of justice, fundamentally flawed and systemic failure. The preponderance of evidence standard in Plaintiff Adams favor, showing, proving and giving him greater weight of the evidence or more likely that it happened than it did not which is seen and proven on the surface and within itself including the results and outcome

of the incident. Civil cases have a broader definition of accountability. To limit a plaintiff, the accuser who all factual allegations are supposed to be taken as true according to and surrounding the same set of facts, case or controversy is like requiring the plaintiff or accuser to plead the fifth according to not actions or involvement in a crime but according to complaint, claims or accusations that he is making. The way the jury trial was constructed and set up and how it was limited and minimized to a single issue and not around and according to the entire scope of the incident is a violation of rights, due process and a miscarriage of justice. The limiting of the jury trial to a single issue, motions filed to "exclude damages from dismissed claims" and to prevent "lay opinion" testimony was done to prevent Plaintiff Adams from going into detail, bring focus to and to alter facts, files, evidence and court records regardless and despite of the damages from dismissed charges. Plaintiff Adams has a right to be heard based on the full scope of the incident and based on the witness personal knowledge surrounding a case or controversy. It is a miscarriage of justice and a violation of rights to prevent the Plaintiff the one who filed and brought Officer Diamond up on charges, the plaintiff and accuser to prevent or limit a jury in anyway from considering, examining or hearing the full testimony, facts and evidence of the plaintiff, petitioner or accusers openly and fairly is a violation of rights and due process. If a person that is being accused of a crime has the right to confront a witness against him quite naturally the accuser has the right for accusations to be heard thoroughly and fully , examined and considered even according to a single issue, charges or claims surrounding or according to the same incident, case or controversy. For Plaintiff Adams to be reprimand by District Court Judge and appointed court representation to reprimand Petitioner Adams during trial in open court about what is acceptable to be said or testified about according to an issue surrounding or according to the same incident, case or controversy is a violation of rights, due process, unjust and unfair. It can be seen on the surface simply by the plaintiff, petitioner or the person making the accusation being limited, reprimand and motions being filed to prevent "to exclude damages from dismissed claim" and "lay opinion testimony" which "lay opinion" testimony was ruled in Plaintiffs favor but the motion "to exclude damages from dismissed claim" was ruled against Plaintiff Adams and used as a basis to limit the trial even more than the already dismissed claims, people, damages and parties but used by the District Court Judge and court appointed attorneys to limit and exclude evidence, facts and testimony and alter court records. Petitioner Adams even was reprimand and conversations had during the jury trial during his testimony was about "is it ok for Plaintiff Adams say this and can he speak about that" according to accusations he made and to and about and what he is accusing Officer Diamond of is a violation of rights, due process and a miscarriage of justice. Qualified Immunity and the use

of force is being deemed "accidental" even with Officer Diamond admitting that the use of force was an intentional and continuous motion which allowed Plaintiff Adams to avoid death. Officer Diamond forced entry, had his gun drawn, aimed, yelled verbal commands and applied the excessive use of deadly force according to and surrounding an incident responding to, approaching, at and in someone's home or domestic dwelling concerning a domestic dispute and the claims, facts, and evidence prove claims and it can be seen and shown. The District Court Judge did not charge and did not instruct the trial jury to consider Officer Diamond "negligence" and that would have included professional responsibility, accountability and liability of Officer Diamond and all dismissed defendants who are responsible who were dismissed with prejudice who is civilly liable and responsible according to Officer Diamond's negligence is unlawful, unconstitutional, unfair and unjust. The District Court Judge dismissed and with prejudice responsible and liable parties from claim. Then the District Judge ruled on and instructed the trial jury to disregard the fact the courts already ruled that by matter of law that Officer Diamond's actions, conduct and behavior was in violation of Petitioner Adams 4th Amendment constitutional rights. This entire incident or ordeal from the beginning has been a documented and blatant attempt to avoid responsibility, liability and accountability, physical damage to the plaintiff's home, personal property and damage to property inside of home and the mental, emotional, psychological trauma and distress from being involved in something this tragic and the nature of having an unlawful forced entry into a family's home, gun drawn and in your face, pointed and aimed at you and discharged at you at point blank range striking petitioner Adams and bullet traveling into and throughout his home and knowing his significant other and child is sitting directly behind him and subjected to a substantial risk of death. What happened to Petitioner Adams from Officer Diamond's actions, disregard of and for others and innocent lives, against all logic, training, morals, procedures, policies, protocols, rules, regulations, state created danger, state law, constitutional rights and a disregard for Petitioner Adams life, public safety or the safety of others and all involved and their lives all built on, off and around Officer Diamond's assumption, false or misinformation by dispatch and the way Officer Diamond responded, approached and handled the situation. Officer Diamond thought there was a kidnapping, false imprisonment, someone being held against their will, any kind of violence or weapons being involved would have prevented Officer Diamond from wasting so much time running round yard, looking into cars, putting ear to doors, looking through and assuming someone might be escaping through windows or jetting out back door as to arrest instead of the safety of occupants involved or the lives of those inside the home. If the safety of the public was put first or the presence of multiple innocent lives, bystanders or citizens was

regarded or even for Officer Diamond safety and protection or for the safety and protection of unknowing, started or unaware occupants of the home was a thought or a concern this incident would have never happened. The Office of Professional Accountability within its findings stating and documenting Officer Diamond "negligently" discharged his service firearm and he did not utilize or observe all safety precautions while using firearm to avoid a discharge. Officer Diamond admitted while physically being on the scene that he heard commotion, argument and silence and none of what the dispatch stated to him and/or within that time frame as or before making an unlawful forced entry. Officer Diamond admitted, documented and testified to and although responding to and not pursuing an established crime or suspects and going to and approaching someone's home in the early morning hours stated that they don't like to park directly in front of someone's home or knock on home's door as if they are police and immediately announcing his presence or who he was immediately or right away, his authority and why or the reason for him being there for his safety and protection or for the safety and protection for startled, unaware or unknowing occupants of the home or dwelling or to prevent substantial risk to multiple innocent lives which is contrary and against MNPd use of force policy and constitutional and civil rights and exactly why this situation or incident occurred. The former just couldn't happen without the latter. If it is said that Officer Diamond made an intentional and lawful entry then Officer Diamond intentionally and lawfully could and had his gun drawn for his safety and his natural reaction going into and not knowing what you going into, what is going on and the unknown on the other side of the door Officer Diamond' instinct and continuous motion would cause him to intentionally fire his weapon and all the defenses of and that it could possibly be said of accidental until he realized or when he realized he was wrong or neutralized who he thought to be the threat and discharged his service weapon at point blank range from outside, at and striking Petitioner Adams and bullet traveling into throughout plaintiff's home narrowly missing a bed rest mother nursing infant child. This was a blatant attempt from the very beginning to avoid accountability, liability and responsibility and constructed through terminology, techniques and tactics, excluded facts and evidence and a complete disregard policies, statutes, laws and rights in an attempt to create a reason, excuse or defense including dismissing claims, damages, defendants who are responsible and essential plaintiffs which was a part of, involved in and that life was affected. Officer Diamond did commit the assault and battery while displaying and use of a firearm and endangered multiple and innocent citizens lives and to disregard and to overlook that is a miscarriage of justice. And a jury trial had, directed to and focus to be put on "accidental or intentional" and a single issue of just the firing of Officer Diamond's service weapon and to not have presented, heard or examined the entire

scope of the incident, evidence, laws, statutes and facts is unjust and unfair which disregarded the violation of and that is contrary to MNPd use of force policy, TGTLa, constitutional and civil rights and with the outcome and results of the incident of no arrest, harm, weapons or danger but introduced and administered from, through and by Officer Diamond is a miscarriage of justice and the jury trial verdict is incorrect according the weight of the facts, evidences, danger created, broken laws and violation rights. The District Judge not charging claims according to alleged facts, according to and surrounding incident or responding to a domestic dispute and/or according to Officer Diamond "negligence" or "which allowed and eliminated civil liability to all responsible parties, the original and amended complaint defendants and was the beginning and that allowed tactical and terminology issues and orchestrated to create an defense for Officer Diamond and Metro Nashville to escape responsibility and liability. Plaintiffs bypassed the state and filed complaint civilly and federally on the account of Officer Diamond "negligence" and for violation of MNPd use of force policy, state created danger, TGTLa, constitutional and civil rights violations that was tried in a federal courtroom in addition to state charges of assault and battery which had supplemental jurisdiction that is not mentioned or Final Judgment does not reflect. Officer Diamond contends that his job is to save lives but his ultimate responsibility is public safety and to protect and serve. In no way can Officer Diamond mind state, mindset or mentality be to save lives while responding to a 911 call and through his approach violating MNPd use of force policy, unreasonable use of excessive force, assault and battery with the use of his service weapon and according to an incident were Officer Diamond was responding and not pursuing knowing there was multiple and innocent lives involved and he chose an approach and handling of a incident or situation that would cause a substantial risk to innocent bystanders and citizens and this to not be presented, looked over and past and not to be heard, considered or examined and said to be accidental or unintentional is a miscarriage of justice and the trial jury verdict does not reflect the weight of the evidence. Plaintiff Adams court appointed counsel was presented with all documentation, evidence, facts and files upon being appointed to be Plaintiff's counsel which was not used for or in the best interest of client but court appointed representation did not use provided facts, statutes, laws, rights, evidence, files and documentation and guided and directed Petitioner Adams through these processes , procedures, proceedings and jury trial which resulted in and returned an inaccurate, incorrect and erroneous verdict. All documentation, facts, files and evidence was presented to, gave and passed along to court appointed counsel and upon Petitioner Adams mentioning the excluded evidence of the voicemail from Petitioner Adams phone call the night of the incident to his mother immediately as and after use of force happened and any, all and other essential facts or

evidence that did not make into evidence or trial that contradicted any possible thought Officer Diamond could have thought and for that and other essential facts, evidence, files and testimony not to be presented at and during jury trial is a violation of rights and due process and is unjust and unfair. Petitioner Adams court appointed counsel in no way could have honestly examined or defended Petitioner Adams or these claims diligently and zealously by having all documentation, files, facts and evidence given to them from Petitioner Adams, attempted to be discussed and considered and being in possession of all paperwork, facts, documentation, files and evidence over an extended amount of time while, during and with preparation of a trial, court appointed counsel Drew Warth said he was unaware that a voicemail even existed and this with a host of different other evidence, files, documentation and facts brought again and again to the appointed counsel attention who claimed to be unaware of a voicemail. There was also essential and incriminating video evidence known but withheld by Officer Diamond defense that was not entered into trial that was discussed between defense attorney and District Judge that can be verified through and in trial transcript. Plaintiff Adams was unaware of the phone call, it was early morning hours and Officer did not immediately knock or announce and could not physically be seen, Officer Diamond or his service vehicle because he parked at the wrong home which is known and he testified to all this. Officer Diamond knocking on Plaintiff's home door and running away from front porch lights and the door he knocked on and without verbally stating he was a law enforcement officer which Officer Diamond testified to and that officers don't like to initially knock or verbally state who they are which had more of a logical, lawful, moral and trained reasoning to de escalating a domestic dispute at a domestic dwelling and that would have prevented the violation of MNPd use of force policy, TGTLA, state created danger, the unlawful entry, the unreasonable use of excessive force, assault and battery with and the display and use of Officer Diamond service weapon from even occurring. It is a legal principle holding that a person who is unaware of a law may not escape liability for violating merely by being unaware of its content. Common and fundamental law states Ignorance of the law is no excuse for breaking it. The substantive principle is sometimes put in the form of a rule of evidence, that everyone is presumed to know the law. Officer Diamond is not presumed to know the law but required to uphold the law, Officer Diamond is not presumed to know the law but the trial jury is to judge and make fair determinations according to it and Officer Diamond is not presumed to know the basic and fundamental laws but citizens are expected to live in accordance to them. General statements of the law can give fair warning to police officers that their conduct violates established law even in novel factual circumstances. (*United States v. Lanier*, 520U.S. 259, 271(1997); *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) For the District judge

to make statements to the trial jury before the start of the trial that swayed and dictated unnecessary and false information to the jury that there was no clearly established law as of September 2017 to put Officer on notice that unintentionally firing his weapon in similar circumstances violated the plaintiff's constitutional rights is misleading and false. The District Judge made a statement directed to the trial jury that as of September 2017 that it was no established law to put Officer Diamond on notice that unintentionally firing his weapon in similar circumstances violated constitutional rights is a statement that just by saying it swayed and directed the jury as if the Officer Diamond made a mistake and no professional responsibility or established rules, regulations, MNPd use of force policy, state, responsibility or liability laws, state created danger doctrines or constitutional and civil rights and laws that are established even exist or was violated and if those responsibilities, doctrines, policies, laws and rights had been honored this would or could never have happened. Officer Diamond forcing entry into a home, weapon drawn or brandished violating the MNPd use of force policy and state created danger doctrine aimed and yelled verbal commands and 6 ½ pounds of pressure having to be applied to the trigger and discharging it applying unlawful and unreasonable use of force striking Plaintiff Adams in back from point blank range and bullet traveling through the back side of Plaintiff Adams clothing and fired from outside at, into and throughout a home with a complete disregard for public safety and multiple innocent lives and as citizens with rights and governed by laws and responsibilities of officers to protect and preserve innocent lives, citizens or for public safety to be overlooked as and all said to be accidental is unfair and unjust and the outcome of the jury trial is not sufficient against the weight of the documentation, testimony, facts, evidence, outcome and results of this incident and the verdict in the jury trial is against the weight of the evidence is erroneous, incorrect, inaccurate and a complete miscarriage of justice. And at this point the only other addition to already clearly established MNPd use of force policy, state laws, constitutional and civil rights and laws would be that police officers can do no wrong and are not responsible or cannot or will not be held liable, responsible or accountable for their negligent behavior or actions even according to and violating their own MNPd use of force policy, state created, law enforcement responsibility and police liability laws, state laws, constitutional and civil rights and the policies, laws, doctrine and constitutional rights do not apply to officers of the law and officers of the law are not responsible, liable or accountable for their actions and that is bias, unfair, unjust and a miscarriage of justice. And to contend Officer Diamond did everything within the scope of and according to law and rights and all this was just an accident one is saying that established MNPd use of force policy, state created danger and law enforcement responsibility and police liability laws, state laws and the language of those

charges or claims and rights guaranteed by the Constitution of the United States and the construction of them all are fundamentally flawed or in this case not being applied, honored or adhered to and constructed not to hold Officer Diamond and all defendants liable and accountable. From the beginning, according and throughout these entire proceedings, pre trial, the jury trial and at the appeals stage there has been limited, omitted and excluded evidence, facts, plaintiffs, defendants, damages and claims from court records and the jury trial through the use of terminology, techniques and tactics to avoid responsibility, liability and accountability, injuries and damage to property and lives and the mental, physical, emotional and psychological trauma and distress of being in front of and on the other end of a firearm and it being discharged at point blank range and a bullet fired from outside at striking Petitioner Adams into and throughout his home putting all lives in extreme imminent danger and it said to be accidental endangering multiple innocent lives and with thoughts said to be of saving lives and overlooking, disregarding and striking Petitioner Adams and the dangers of and putting all and multiple lives in imminent danger and the direct line of fire seems to be unreal and very hard to understand or comprehend. Officer Diamond assumption, mentality, mind state, mindset and/or approach and how he responded not pursuing caused state created danger, the violation of policy, training, moral, logic, law enforcement responsibility, liability and state laws and constitutional rights violations and after the fact and with using hindsight was constructed to be said and argued that according to the circumstances and situation and the results and outcome of this incident to be accidental. Officer Diamond is not a superhero, this was not a military operation, this was not even an authorized police investigation or police operation, Officer Diamond was not even in pursuit but responding to domestic dispute at a domestic dwelling. Officer Diamond was not on a narcotics or special unit task force, any kind of agent or detective or working a case he was responding to a 911 call of a domestic dispute at a domestic dwelling that according to MNPd policy, police responsibility laws, liability laws, state laws and constitutional and civil rights that govern and would have prevented any conduct, behavior or actions of Officer Diamond from occurring. This has been an attempt to use reasons or excuses not known at the time of the excessive force or the assault and battery to decide whether Officer Diamond acted appropriately and to avoid accountability, liability, responsibility, judgment and damages. It seems to have been from the beginning of this incident to first acknowledge that Officer Diamond even discharged his weapon and then when forced to acknowledge an attempt, constructed or ploy to contend, say or argue qualified immunity or accidental according to the unlawful entry and the discharge and use of unlawful and unreasonable lethal deadly force by Officer Diamond from his service weapon for no reason or cause which was unreasonable,

unwarranted and unlawful but despite evidence, facts, documentation, files, testimony, policies, the results and outcome of the incident, police responsibility, liability, state and constitutional laws and rights and circumstances according to the situation, it is impossible to contend that Officer Diamond conduct was accidental when the excessive force and assault and battery should not and could have been prevented from happening. This has been from the beginning not a path towards justice but a series of obstacles to prevent from holding Officer Diamond, dismissed defendants or anyone accountable, liable or responsible for blatant MNPD use of force policy violations, state created danger, police liability and law enforcement responsibility laws, state laws, human, constitutional and civil rights violations. Officer Diamond is guilty of violating MNPD use of force policy and negligently discharging his service weapon removing immunity from Metro Nashville Davidson County and all dismissed defendants according to The Tennessee Governmental Tort Liability Act. Officer Diamond is guilty of assault and battery with displaying and use of his service weapon. Officer Diamond is also guilty of having his weapon drawn, finger inside weapon frame, yelling verbal commands, aiming his service weapon, applying 6 1/2 pounds of pressure to trigger striking Petitioner Adams and in violation of excessive force and constitutional and civil rights and all danger was created by Officer Diamond or the state and the jury trial verdict reflects none of this or the verdict is against the weight of the evidence. Plaintiff appointed representation failed to represent Plaintiff Adams zealously and diligently, failed to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules and there was prejudice or damage to Petitioner Adams during the course of the professional relationship and jury trial proceedings. Petitioner Adams court appointed counsel professional conduct is a duty that requires the lawyer to pursue a matter on behalf of the client despite opposition, obstruction, or personal inconvenience and to take whatever lawful and ethical measures required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, ambiguous statutes, or judicial opinions, and changing public and judicial attitudes. The duty of a lawyer is to represent the client with zeal and does not militate against the concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm. Thus, the lawyer's duty to pursue a client's lawful objectives zealously does not prevent the lawyer from acceding to reasonable requests of opposing counsel or judge that do not prejudice the client's rights, being punctual in fulfilling all professional commitments, avoiding

offensive tactics, or treating all persons involved in the legal process with courtesy and consideration. The lawyer should carry through to conclusion all matters undertaken for a client. It is common knowledge and in most cases appointment of counsel according to civil proceedings is uncommon but in this case the District Judge granted and appointed attorneys at the trial stage according to attorneys professional ethics and conduct governed but upon Petitioner Adams mentioning an appeal attorney, Drew Warth, declined to file appeal and filed motion to be relieved from duties as Petitioner Adams attorney. Plaintiff Adams court appointed representation despite the clear language of the federal excessive force rights guaranteed by the United States Constitution neglected to, did not want to discuss, present, defend or at least examine or have examined these rules, policies, doctrines, rights, and laws according to or against facts, evidence, files, documentation or testimony that clearly was in the best interest of appointed counsel client and that was consistent with the incident and the language of the MNPd use of force policy, TGTLA, state created danger or the Constitution of the United States. Despite being aware of and knowing according to MNPd use of force policy that because Officer Diamond was responding and not pursuing and because it was known and common knowledge that multiple lives was involved and it was a substantial risk to innocent bystanders, Officer Diamond weapon was never supposed to be unholstered or drawn and the use of lethal deadly force according to this incident had to be "negligent" and was never supposed to be an option responding and not pursuing in addition to not waiting for backup or against his better judgment and previous experience or using a host of other de escalation tactics before deciding to draw his service weapon. Officer Diamond and all weapons, danger and harm was created by Officer Diamond for not adhering to and following procedure and MNPd policy that had more of a logical reasoning to de escalating the situation just by Officer Diamond mere presence and a physical or verbal announcement that according to facts, evidence, documentation, files and testimony shows that Officer Diamond did not adhere to that would have prevented the unreasonable use of excessive force, assault and battery while displaying and using government issue firearm according to this incident and claims. It is impossible to contend accidental or a single issue of intentional or accidental according to the firing of Officer Diamond service weapon when everything else was intentional. It is impossible to contend that the firing of Officer Diamond service weapon was accidental when according to MNPd use of force policy his firearm was never supposed to be drawn, Officer Diamond did not pull his service vehicle in front of correct home as a physical visual announcement of his presence, knocked on door without announcing and ran away from door and porch lights back around Plaintiff's home in the early morning and where he could not be physically seen or heard and according to facts,

documentation, files, evidence and even Officer Diamond own testimony did not adhere to, immediately or fully applied with no probable cause or exigent circumstances existed he would have breached Plaintiff's home door immediately and before false information from dispatch stating "it sounds like male struck female and she screaming louder." Officer Diamond being physically on scene stating, documenting and testifying to he heard commotion, argument, raised voices or silence, even stating he couldn't make out what was being said and none of what dispatch said and heard, Officer Diamond even stating and testified to he didn't hear a female scream help or anything like that. Officer Diamond stated and testified to while being physically on the scene as and after false information from dispatch was interviewed and testified that he didn't physically hear none of what dispatch just relayed to him and Officer Diamond still chose to make a forced entry with gun drawn and contrary to MNPd use of force policy, protocols, procedures, training, laws and rights and the circumstances and situation responding to a domestic residence was not even supposed to have a gun out or drawn going into an unknown situation involving multiple innocent people, citizens, lives, bystanders or plaintiffs according to and into a situation breaching a homes door and unknown to what was on the other side of that door against his own safety and protection and the safety and protection of startled, unknowing and unaware occupants and to prevent putting multiple innocent lives at risk, imminent danger and in direct line of fire and all weapons, harm, force and danger created by Officer Diamond. If Officer Diamond would have dropped his service weapon and it accidentally discharged, that is one thing but when having a gun drawn, finger in weapon frame or trigger guard, yelling verbal commands, aiming a weapon, applying pressure to the trigger and striking a person in the back can be nothing negligent. It is impossible to say Officer Diamond service weapon fired accidentally when he violated MNPd use of force policy, established police responsibility and law enforcement liability laws, state created danger, state laws and established constitutional and civil rights and thorough consideration and examination of the entire incident and not just a single issue of just the firing of Officer Diamond's service weapon would have proven both claims. If your job is to save lives and that's your true intentions when Officer Diamond was responding and according to the approach, how things were handled with no probable cause or exigent circumstances the outcome, results, documentation, testimony, files, facts and evidence of the incident shows that in no way could Officer Diamond have been thinking save or preservation of lives but instead disregarded policy, laws and rights and he introduced and administered all weapons, force, violence or harm striking one and endangering all, multiple and innocent lives is impossible to comprehend, understand or to contend unintentional or accidental up until and to that point that was deemed

unlawful, unintentional and accidental. Officer Diamond stating, documenting and testifying to that "officers don't usually or normally knock and announce themselves because they want occupants to think maybe it's a neighbor knocking on or at door and not the police and maybe they would come to door if they thought it was a neighbor and not police" is against and contrary to the knock and announce rule making unlawful entry claim valid and proven and against any policies, procedures, training, de escalation tactics, responsibility, liability, state and constitutional laws and rights. Officer Diamond's actions were not rational, logical or lawful and the verdict of the jury trial is not true or correct according to the policies, statutes, laws, rights, facts, evidence, files, documentation, testimony, results and outcome of the incident. Objectively reasonableness by its nature is proportional to the threat faced. Objectively reasonableness requires a very careful balancing of the nature of the intrusion on the citizen's liberty and rights against the countervailing governmental interest at stake. Substantial risk to multiple innocent lives responding to a 911 call to a domestic dwelling and not pursuing an established crime or suspect against, according to or versus crimes that were not established or unknown. It is impossible for Officer Diamond to contend saving lives, public safety or his primary interest or concern being occupants inside a home but running around outside the home looking into cars, around yard, seeing if some is escaping through windows or possibly jetting out the back door. This has been an attempt to use reasons and facts not known at the time of the unlawful entry and the unlawful and unreasonable use of force to decide whether Officer Diamond acted appropriately and a ploy to avoid accountability, responsibility, damages and liability. This has been from the very beginning and throughout the entire incident and on every level, through every step of the way, throughout and according to the entire process, all procedures, proceedings including jury trial or appeal has not been a path towards justice and systematic failure but has been a series of obstacles to prevent from holding Officer Diamond, Metro Nashville Davidson County or anybody liable, responsible and accountable from established state law and constitutional civil rights claims. Officer Diamond forcing entry, finger inside trigger guard or weapon frame, yelling verbal command, aiming his service weapon, applying pressure to the trigger using unreasonable lethal, deadly and excessive force and striking his target all were intentional creation of an apprehension of harm. The Police Liability Law is a way of establishing responsibility for the officers. Police have a responsibility to protect individuals from others who may want to cause harm to them or others and officers should not be the reason, cause, administer or introduce harm, substantial risk or danger to citizens. If Officers are or do they are liable for whatever occurs because of the Police Liability Law. Civil Liability is referred to and is applied to a police officer's personal life and decision making ability.

Each officer is responsible for their own actions. If they act under negligence they may be appropriately punished. They are to act in the best interest of those that they are protecting. If they do not they must suffer the consequences of their actions, or lack thereof. Police Officers legal duties include knowledge of ordinances, policies, doctrine, police liability, responsibility and state laws and rights of the United States Constitution. Civil Liability Law states that it is a law enforcement officer's responsibility to make decisions that keep others safe and not act in a negligent manner which is the foundation surrounding and according to this incident and these claims. Due to the Law Enforcement Liability Law which outlines the terms of responsibility for police officers. Officers are to act in the best interest and safety of civilians, which is where civil liability comes into play. A civilian may file a case against law enforcement if they feel that they have been wronged in some way due to law enforcement behavior or if they feel that law enforcement has acted negligently in some way and they have experienced harm due to that negligence. Civil liability means an officer bears responsibility for some wrongdoing and will be ordered to pay money damages. Civil lawsuits require a much lower standard of proof than criminal prosecutions. When a plaintiff brings a civil suit the plaintiff only has to prove that the defendant has committed the negligent acts by a preponderance of the evidence. A preponderance of evidence meaning simply the greater weight of the evidence. The results and outcome of the incident, the facts, documentation, files, testimony and evidence in itself and that can be seen on the surface satisfies Petitioner Adams claims and proves much more than a preponderance of evidence. This case was tried, based off and proceeded as if petitioner was defendant and had to prove beyond a reasonable doubt and the defendant was the plaintiff and brought on the suit and had the benefit of preponderance of evidence. The District Judge directing and placing trial under "special interrogatory" and limited trial to a single issue involved in and including an entire course of actions and events according to an incident in which those claims and according to how they were tried was still proven by a preponderance of evidence and the jury trial verdict is erroneous, inaccurate and incorrect and the violation of the federal civil rights claim of excessive force and proving the claim of assault and battery that is not mentioned in the Final Judgment Order. The Police Liability Law states if an officer causes harm to another person or they act under negligence they should be appropriately punished and must be held accountable and held responsible. Each officer is responsible for their own actions whether good or bad. By a preponderance of evidence and according to the objectively reasonableness test, by viewing a situation or incident from the standpoint of, based on and examined by what a reasonable officer with similar or same training and experience facing similar circumstances would have acted the same way or similar judgment based on the totality

of the facts known to the officer at the time the force was applied, based on if the officer acted properly according to established MNPD use of force policy, state created danger and police liability and responsibility laws, state laws and constitutional rights at the time and based on Officer Diamond's force the ("what " and "how") must be reasonably balanced with the governmental interest stake ("why"). Officer Diamond's what and how while breaching a homes door responding to a 911 domestic dispute at a domestic dwelling administering unreasonable lethal deadly force and said to be accidental and in order to save lives instead of adhering to already established MNPD use of force policy and not drawing his weapon for substantial risk to and of innocent bystanders and for the safety of startled, unknowing or unaware occupants inside home, pulling his service vehicle to and in front of correct home as a physical visual announcement of his presence and immediately knocking and verbally announcing his presence de escalating and preventing an unlawful forced entry and an excessive force and state assault and battery claims that is proven because no amount of force was reasonable and that should have never happened. Officer Diamond's thoughts and actions were not that of public safety, professionally responsible or actions to preserve life responding to a dispute at a domestic dwelling but actions that endangered all lives involved. Officer Diamond's negligence" according to the circumstances and situation surrounding and according to the use of force to, at and inside someone's home. This case is clear acts of "negligence". The excessive and unreasonable use of force and the constitutional and civil rights violations and the state claim of assault and battery still was satisfied and proven. The verdict reached by the trial jury is incorrect and inaccurate and does not reflect facts, evidence, testimony. Policies, laws and rights or the officer negligence surrounding or consistent with these claims that were not charged and despite the jury trial being conducted around, excluded and prevented and that even lack stating claim of assault and battery in the Final Judgement Order in addition to jury verdict being incorrect all is a clear miscarriage of justice. Officer Diamond reasonably conducted himself in an unreasonable way. The assault and battery and excessive force all happened as Officer Diamond was responding to prevent or establish a crime and not in pursuit of or to stop a crime. The qualified immunity defense cannot be applied to standards of conduct that are unreasonable. The excessive force and assault and battery happened as Plaintiff Adams was answering his home's door and complied with Officer Diamond's verbal commands and orders and this incident in no way should have happened. Officer Diamond's conduct deprived and infringed on the plaintiff's human, civil and constitutional rights. Officer Diamond's conduct caused injuries or damages to plaintiff property which if accountability, responsibility or liability was immediately had would have prevented plaintiffs from being evicted and losing their

home. Officer Diamond's conduct caused physical, mental, psychological and emotional distress. Petitioner Adams proved by a preponderance of the evidence that is within itself and shows and can be seen on the surface which is just the greater weight of the evidence and according to establish laws and constitutional rights versus Officer Diamond defense is simply what he says and his position and authority within society compared to what happened of an actual assault violating MNPD use of force policy while displaying and negligently firing his service weapon removing immunity from Metro Nashville Davidson County according to TGTLA and violation by matter of law according constitutional and civil rights violations of 42 U.S.C § 1983.

REASONS FOR GRANTING THE WRIT

I. The Case Presents Questions Of Exceptional Importance And This Court Should Decide And Resolve The Questions Presented

A. Current Justices of This Court Have Written or Joined Opinions Expressing Concerns About the Breadth of Qualified Immunity

Current Justices of this Court have written or joined opinions questioning the broad scope of qualified immunity. The questioners recognized flaws falling into two broad categories: the fact that qualified immunity has no basis in the common law at the time § 1983 was enacted in 1871, and the fact that the Court's qualified immunity jurisprudence does not adequately deter police misconduct. In *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017), Justice Thomas "wrote separately to note his growing concern with the Court's qualified immunity jurisprudence." *Id.* at 1870 (*Thomas, J., concurring in part and concurring in the judgment*). Specifically, Justice Thomas's concern was that the Court had "diverged from the historical inquiry" into whether "whether the common law in 1871 would have accorded immunity to an officer for a tort analogous to the plaintiff's claim under § 1983"—an "inquiry demanded by the statute." *Id.* at 1871. Because "some evidence supports the conclusion that common-law immunity as it existed in 1871 looked quite different from our current doctrine," Justice Thomas stated that the Court, "in an appropriate case, should reconsider its qualified immunity jurisprudence." *Id.* at 1871-72 (*citing William Baude, Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45 (2018)). In 2015, Justice Sotomayor dissented from the Court's decision in *Mullenix v. Luna*, 136 S. Ct. 305 (2015), to grant qualified immunity to a police officer who killed a suspect fleeing police custody by firing six shots at the suspect's car. Justice Sotomayor described the Court's decision, stating that it fostered a "culture" of "'shoot first, think later' approach to

policing” that “renders the protections of the Fourth Amendment hollow.” *Id.* at 316 (*Sotomayor, J., dissenting*). Justice Sotomayor revisited this criticism in her dissent—joined by Justice Ginsburg—in *Kisela v. Hughes*, 138 S. Ct. 1148 (2018). That case involved a police officer who, without warning, shot and seriously injured a woman who was calmly holding a knife in a non-threatening manner. *Id.* at 1155 (*Sotomayor, J., dissenting*). Justice Sotomayor dissented because in her view, the majority “effectively treated qualified immunity as an absolute shield” to liability. *Id.* She reiterated her concern that qualified immunity had “transformed[ed] into an absolute shield for law enforcement officers, gutting the deterrent effect of the Fourth Amendment.” *Id.* at 1162. Moreover, she noted that the majority’s decision “sent an alarming signal to law enforcement officers and the public” because it showed “officers that they could shoot first and ask questions later, and showed the public that palpably unreasonable conduct would go unpunished.” *Id.* Justice Breyer, writing for the Court more than two decades ago, limited the scope of qualified immunity in an opinion that expressed both concerns in *Richardson v. McKnight*, 521 U.S. 399 (1997). In that case Justice Breyer cited both a lack of common law immunity and the absence of any special policy concerns as justifications for denying qualified immunity to prison guards employed by a private prison company. *Id.* at 412. Specifically, Justice Breyer noted that because there was no analogous common law immunity, the guards were not entitled to qualified immunity because they failed to demonstrate that denying them immunity would (1) make them too timid to do their jobs effectively, (2) deter “talented candidates . . . from entering public service,” or (3) severely distract the guards from performing their duties. *Id.* at 409-12 (quoting *Wyatt v. Cole*, 504 U.S. 158, 167 (1992)). Although *Richardson*, decided more than two decades ago, “answered the immunity question narrowly,” *Id.* at 413, its focus on historical common law immunities and the policy justifications underlying § 1983 jurisprudence are reflected in Justice Thomas and Justice Sotomayor’s more recent criticisms of the scope of qualified immunity. This case illustrates both of those concerns. Officer Diamond immunity from suit in this case far exceeds any defense that would have been available to him when § 1983 was first enacted. The common law “good faith” defense only applied to explicit statements of law, such as statutes or orders from the Executive. See *Pierson v. Ray*, 386 U.S. 547, 556-57 (1967). Here, Officer Diamond’s immunity, based on an extension of Sixth Circuit case law, demonstrates that his qualified immunity offers far greater protection than the “good faith” immunity of his nineteenth-century contemporaries. Moreover, the Sixth Circuit’s decision—which allows

officers to dodge liability when a Sixth Circuit case conflicts with this Court's jurisprudence but has not been explicitly overruled— allows palpably unreasonable conduct to go uncompensated. Police officers therefore can escape lawsuits even when they ignore case law from this Court, provided defense counsel and lower court judges scour the Federal Reporter for cases from the lower courts that have been abrogated, but not explicitly overruled. Under such a system, officers have hardly any incentive whatsoever to avoid violating citizens' constitutional rights.

B. The Scope of Qualified Immunity Has Long Been Criticized by Judges, Activists, and Scholars of All Perspectives.

Criticisms of the scope of qualified immunity are not new—"Justices have been raising concerns about qualified immunity for decades." Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 *Notre Dame L. Rev.* 1797, 1798-99 (2018). The criticisms are not only decades old, they have also come from representatives of virtually every judicial, academic, and political philosophy. For example, Justice Kennedy criticized the departure from the common law immunities available at § 1983's genesis in his concurrence in *Wyatt v. Cole*, 504 U.S. 158 (1992). In that opinion, he wrote that the Court's "qualified immunity doctrine is rooted in historical analogy, based on the existence of common-law rules in 1871, rather than in 'freewheeling policy choices.'" *Id. at 1835* (Kennedy, J., concurring) (quoting *Malley v. Briggs*, 475 U.S. 335, 342 (1986)). Because a great many § 1983 suits could be resolved at the summary judgment stage, there was no longer a need for the expansive qualified immunity principles solely "justified by the special policy concerns arising from public officials' exposure to repeated suits" in cases such as *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). *Id. at 171*. Justice Kennedy's opinion partially inspired Justice Thomas's *Ziglar* concurrence. *Ziglar*, 138 S. Ct. at 1870-71. The "growing, cross-ideological chorus" of criticisms of qualified immunity has reached lower court judges as well. *Zadeh v. Robinson*, 902 F.3d 483, 499 (5th Cir. 2018) (Willett, J., concurring dubitante). These judges have expressed frustration both at the scope of qualified immunity, and at the lack of guidance from this Court. In *Zadeh v. Robinson*, Fifth Circuit Judge Don Willett decried "the kudzu-like creep of the modern immunity regime," which he said "lets public officials duck consequences for bad behavior no matter how palpably unreasonable as long as they were the first to behave badly." *Id. at 498*. "To some observers, qualified immunity smacks of unqualified impunity," Judge Willett noted, further arguing that lower courts are helpless to alter this perception because they are encouraged to avoid finding constitutional violations, in

favor of simply ruling that a right was not clearly established. *Id.* at 498-99. "Heads defendants win, tails plaintiffs lose," because plaintiffs are required to "produce precedent even as fewer courts are producing it." *Id.* at 499. This "imbalance," Judge Willett wrote, "leaves victims violated but not vindicated; wrongs are not righted, wrongdoers are not reproached, and those wronged are not redressed." *Id.* Judge Willett is joined in his criticism of the massive scope of qualified immunity by the late Judge Stephen Reinhardt of the Ninth Circuit. Similarly to Judge Willett, Judge Reinhardt wrote that "the law of qualified immunity forecloses the development of constitutional law in areas where such development is most needed." *Stephen R. Reinhardt, The Demise of Habeas Corpus and the Rise of Qualified Immunity: The Court's Ever Increasing Limitations on the Development and Enforcement of Constitutional Rights and Some Particularly Unfortunate Consequences*, 113 *Mich. L. Rev.* 1219, 1222 (2015). This has led, Judge Reinhardt wrote, "to the growing belief by members of minority groups that our legal system does not afford fair and equal treatment to all." *Id.* Worse still, Judge Reinhardt argued, while "the Court's approach to qualified immunity is unnecessary to the welfare of law enforcement officers," lower courts are bound by it, creating "an unnecessary and unjust process that values other concerns of far less importance over the constitutional rights of individuals." *Id.* at 1254. It is not only appellate judges who have criticized the broad scope of qualified immunity. District court judges, too, have expressed their frustration and discomfort with the current state of the law. For example, in *Kong ex rel Kong v. City of Burnsville*, 2018 WL 6591229, at *17 (*D. Minn. Dec. 14, 2018*), Judge Susan Nelson acknowledged that qualified immunity's "clearly established" prong creates a "demanding standard" for plaintiffs to meet. "Indeed," she observed "the standard is so demanding that, in recent years, jurists and academics from across the ideological spectrum have called the historical and legal underpinnings of this 'clearly established' inquiry into question." *Id.* at *17 n.17. Judge Jack Weinstein had much harsher words: "The Supreme Court's recent emphasis on shielding public officials and federal and local law enforcement means many individuals who suffer a constitutional deprivation will have no redress." *Thompson v. Clark*, 2018 WL 3128975, at *11 (*E.D.N.Y. June 26, 2018*). It is not just judges of divergent political backgrounds that are opposed to the current scope of the immunity doctrine. A diverse array of civil society groups, such as the *American Civil Liberties Union*, *Brief of the American Civil Liberties Union and the American Civil Liberties Union of the District of Columbia as Amici Curiae in Support of Respondents at 15*, *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018)

(No. 15-1485) ("The current standard provides far broader immunity than either Congress in 1871 or the Cato Institute, the National Association for the Advancement of Colored People Legal Defense Fund, the American Constitution Society, The Federalist Society, and the American Bar Association have all the Fourth Amendment's Framers would have envisioned or countenanced."). Brief of the Cato Institute as Amicus Curiae in Support of Petitioner, *Allah v. Milling*, No. 17-8654 (2018) ("Judges and scholars alike have increasingly arrived at the conclusion that the contemporary doctrine of qualified immunity is unmoored from any lawful justification and in need of correction."). LDF Statement on the Non-Indictment of Cleveland Police Officers in the Shooting Death of Tamir Rice, LDF (Dec. 28, 2015), Lynn Adelman, *The Supreme Court's Quiet Assault on Civil Rights*, Am. Const. Soc. (Jan. 12, 2018), ("Since Monroe, however, the Supreme Court has not been friendly to [§ 1983], consistently narrowing it and making it harder for individuals whose constitutional rights have been violated to prevail in lawsuits."). *The Federalist Society, Resolved: The Supreme Court Should Overrule Qualified Immunity*, Lynda G. Dodd, *Rethinking Qualified Immunity*, ABA (Feb. 7, 2018), "Almost all the . . . Court's recent qualified-immunity criticized the scope of the Court's current immunity doctrine. Moreover, their criticisms are remarkably similar. Scholars, too, have roundly criticized the breadth of qualified immunity for a variety of reasons. Some have followed the lead of William Baude, who argues that "the modern doctrine of qualified immunity" does not have "a legal basis," and concludes that because "qualified immunity is unlawful, it can be overruled." *Baude, supra*, at 48, 88. Other scholars focus not only on qualified immunity's lack of a historical basis, but also its "failures to achieve its intended policy aims," because it "does not shield individual officers from financial liability," "almost never shields government officials from costs and burdens associated with discovery and trial in filed cases," and "appears unnecessary to encourage vigorous enforcement of the law." *E.g., Schwartz, supra*, at 1799-80. Finally, some commentators have observed that allowing judges the "discretion to decide whether to begin with the constitutional merits or the 'clearly established' question has opened the door for strategic behavior by judges." Scott Michelman, *The Branch Best Qualified to Abolish Immunity*, 93 *Notre Dame L. Rev.* 1999, 2016 (2018).

II. The Courts are split on the questions and this case is the ideal vehicle to bring qualified immunity closer to its Common Law Roots Without Reintroducing a Subjective Inquiry.

Petitioner Cedric Adams indisputably had a clearly established right against a warrantless forced entry into his home and the discharging of Officer Diamond service weapon and the use of unreasonable excessive force resulting in an intentional tort assault and battery and putting three lives in imminent danger and direct line of fire for no cause. The scope of qualified immunity cannot include immunizing an officer who uses a narrow exception to a clearly established right as an excuse to engage in conduct obviously well outside that exception. And this case provides the Court an opportunity to place an important limit on the scope of qualified immunity that does not allow exceptions to clearly established rights to swallow the rights themselves. Though the language of § 1983 "admits of no immunities," *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976), this Court has interpreted the statute as governed by the common law of 1871, *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951). This Court reemphasized the relevance of the common law to § 1983 in *Pierson v. Ray*, 386 U.S. 547, 554-55 (1967), and read the statute against "the background of tort liability" to extend the common-law defense of "good faith and probable cause" to officers sued under § 1983 for an unconstitutional arrest, *Id.* at 556-57. The common-law "good faith" defense has since been modified and expanded into the current doctrine of qualified immunity. In *Scheuer v. Rhodes*, this Court extended qualified immunity to executive officers entertaining both a subjective good-faith belief in the legality of their actions as well as objective reasonable grounds for that belief. 416 U.S. 232, 247-48 (1974). And in *Wood v. Strickland*, the two-part test was clarified to deny immunity when an official "knew or reasonably should have known that the action he took would violate the Constitution" or "if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury." 420 U.S. 308, 322 (1975). The Wood test, which contained both objective and subjective elements, expanded Pierson's protection of an officer relying on a presumptively valid statute to officers operating in areas of constitutional uncertainty and was applied in various contexts until 1982. In *Harlow v. Fitzgerald*, this Court dropped the subjective prong of the Wood test in an effort to prevent "bare allegations of malice" and insubstantial claims from going to trial and subjecting officials to broadreaching discovery. 457 U.S. 800, 815-16 (1982). Holding qualified immunity shielded officials insofar as they do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known," *Id.* at 818, this Court departed substantially from the Wood test and even more so from the common-law "good faith" defense. That departure has been repeatedly affirmed and justified by the need to

balance plaintiffs' interests in vindicating constitutional rights and officers' efficient performance of their public duties. See *Harlow*, 457 U.S. at 813 ("The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative."); *Anderson v. Creighton*, 483 U.S. 635, 639 (1987); *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1866 (2017) ("The qualified immunity rule seeks a proper balance between two competing interests."). Eliminating the subjective inquiry of the Wood test has elevated the interest of public efficiency, reducing the likelihood that insubstantial claims survive summary judgment only because an official's subjective state of mind is a jury question. But it has also led to confusion concerning what is meant by "clearly established law." As lower courts have struggled to determine when constitutional rights are clearly established, this Court has issued numerous decisions offering guidance on the question without resolving the confusion. Clearly established rights cannot be claims on general legal principles or a simple parroting of Bill of Rights language. *Brosseau v. Haugan*, 543 U.S. 194, 201 (2004); *Anderson v. Creighton*, 483 U.S. 635, 639 (1987); *Mitchell v. Forsyth*, 472 U.S. 511, 531 (1985); *Davis v. Scherer*, 468 U.S. 183, 192-93 (1984). But plaintiffs also need not rely on a case holding the very action in question unlawful. *Ziglar*, 137 S. Ct. at 1866-67; *Anderson*, 483 U.S. at 640. Officers should be "on notice" that their conduct is unlawful. *White v. Pauly*, 137 S. Ct. 548, 552 (2017); *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011); *Saucier v. Katz*, 533 U.S. 194, 206 (2001). But general statements of the law can give fair warning to officers that their conduct violates established law even in novel factual circumstances. *United States v. Lanier*, 520 U.S. 259, 271 (1997); *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). This case presents the ideal vehicle to reduce confusion regarding the "clearly established" inquiry and restore some character of the common-law "good faith" defense without returning to the subjective inquiries that prompted the decision in *Harlow*. The current formulation of the "clearly established" test departs substantially from its roots in the common law good faith defense, and Justices of this Court have criticized that departure. Justice Kennedy stated that the current rule "diverged to a substantial degree from the historical standards." *Wyatt v. Cole*, 504 U.S. 158, 170 (1992) (Kennedy, J., concurring). And Justice Thomas has sought an opportunity to restore qualified immunity to its common-law underpinnings, saying, "Until we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress. In an appropriate case, we should reconsider our qualified immunity jurisprudence." *Ziglar*, 137 S. Ct. at 1870-72. This is the

appropriate case. The common-law good faith defense imported into § 1983, at its core, protected officers who relied on concrete statements of the law that, after the officer's action, were invalidated. In *Pierson*, the officers relied on a statute that was valid at the time of the arrest, but was invalidated after the arrest occurred. 386 U.S. at 550-51. In a case decided just before passage of the Civil Rights Act of 1871. Officer Diamond did not act with the support of a law or judicial decision later invalidated, nor did he act, as in *Wood*, where the state of the law was unclear or unaddressed. Reasonable officers rely on the law as stated by the judiciary and legislature and do not hypothesize new or broader exceptions to justify unreasonable conduct post hoc. Officers should not be protected when they rely on unfounded extensions of existing exceptions to specifically defined rights. Rather, this Court should hold that an officer is entitled to qualified immunity only when he acts within the boundaries of an already-enumerated exception to the right at issue or he acts in an area of the law the courts have not addressed. Officer Diamond did neither. Officer Diamond approached and knocked, but then he proceeded to run around home away from the front door and front porch lights and around the home and peering in windows, his service vehicle parked in front of the wrong home with no physical visual that he was on the scene. The Sixth Circuit District Court Judge agreed that Officer Diamond conduct was unlawful and stated in Judgement Summary order and during trial that by matter of law Officer Diamond conduct constitutes a violation of Petitioner Adams rights. But despite holding that Officer Diamond violated Petitioner Cedric Adams rights a jury trial was held according to the qualified immunity defense and an incorrect verdict was returned that Officer Diamond did not violate Petitioner Adams constitutional rights. This Court's expectations of a reasonable officer should not be so low. Officers should not be shielded from liability just because their particular violation of constitutional rights happens to be original. *Rice v. Burks*, 999 F.2d 1172 (5th Cir. 1993); see also *Zadeh v. Robinson*, 902 25 F.3d 483, 499 (5th Cir. 2018) (Willett, J., concurring dubitante). Qualified immunity should only be extended, as the common-law good faith defense was, to officers relying on presumptively valid law, not to officers that make up new exceptions or unreasonably broaden old ones as they go. As the dissent notes, officers should not be able to "commit a Fourth Amendment violation and hope that a court will create or extend an exception covering that violation." *Id.* at 925 n.3 (Smith, J., dissenting). Protecting officers who unreasonably hypothesize new exceptions "would lead to the conclusion that there can never be a clearly established violation absent a factually analogous

case." *Id.* This case is the appropriate vehicle to effectuate a step back toward the common law. The District Court Judge held that by matter of law Officer Diamond conduct violated Petitioner Adams the Fourth Amendment rights. Applying the "good faith" notion that an officer is immune only when acting in reliance on presumptively valid law. Officer Diamond could not use that narrow exception as an excuse for his conduct responding to and at Petitioner Adams home and discharging his service weapon from outside entry at and striking Petitioner Adams and bullet traveling into and throughout home putting two more lives in direct line of fire lodging in sofa where a bed rest mother was nursing a one month old child. This case does not present the interests that can be balanced against vindicating constitutional rights, such as where an officer lacked clear guidance from the courts or would be inhibited from the discharge of his duties because of an open legal question. See *Ziglar*, 137 S. Ct. at 1866. Officer Diamond did not act in the face of an open question. He ignored the answers given by both this Court and the Sixth Circuit to pursue an unauthorized course of action. Denying qualified immunity to officers who ignore directions from the courts will not entail the social costs normally accompanying such a denial because officers have clearly delineated methods for discharging their duties in compliance with constitutional restraints. To hold in this case that an officer is only entitled to qualified immunity when faced with an open question of law or when relying on presumptively valid direction from the legislature or courts would not upset the focus on the "objective legal reasonableness of the official's acts," *Ziglar*, 137 S. Ct. at 1866, nor would it require defining the right at too high a level of generality, *White*, 137 S. Ct. at 552. Rather, it would clarify that an objectively reasonable officer cannot ignore the limits and instruction given him in the law. When this Court issues unequivocal instructions on the manner in which officers may conduct themselves, reasonable officers can read and rely on those instructions. Not only is this case a vehicle to restore the core character of the common-law approach while maintaining an objective inquiry, but it offers a narrow approach that would preserve protection for officers presented with open questions of law or competing instructions from the courts. Officers who face conflicting instructions from different courts of equal authority would be entitled to rely on either instruction and not be required to predict the decisions of this Court. See *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (*holding an officer faced with a sharp divide between courts nationwide on the question of whether an officer with probable cause to arrest for a misdemeanor may enter a home in hot pursuit without a warrant was entitled to qualified immunity*). This case also presents the ideal opportunity to

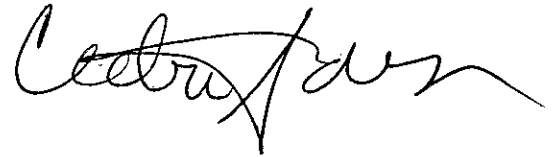
clarify qualified immunity in a way that more robustly protects citizens' constitutional rights while simultaneously buttressing protection for reasonable officers. As members of this Court have noted, § 1983 serves as an effective deterrent of future Fourth Amendment violations and as an important redress for past ones. *Collins v. Virginia*, 138 S. Ct. 1663, 1680 n.6 (2018) (Thomas, J., dissenting). But recent decisions seemingly expanding qualified immunity's application have "gutted" the deterrent effect of the Fourth Amendment." *Kisela*, 138 S. Ct. at 1162 (Sotomayor, J., dissenting). Instructing officers like Officer Diamond who are presented with undoubtedly constitutional avenues for fulfilling their duties to follow those avenues would make § 1983 a more effective tool to prevent constitutional violations. Instead of continually testing, and usually overstepping, the limits of narrow exceptions to the Fourth Amendment, officers would instead be incentivized to follow the procedures already approved by the courts. Thus, citizens could expect officers more often to adhere to clearly constitutional investigative methods. Because of § 1983's importance as a deterrent to constitutional violations, qualified immunity must not protect officers who are willing to forego clearly constitutional investigative methods in favor of experimenting with more intrusive tactics. The circuit split underscores that the Court should intervene to explain exactly when that is so. After all, if the obviousness principle means anything, it should mean that, with none of the factors identified in *Graham* supporting a use of force, Respondent's "forcing entry into a home, wielding and discharging his service weapon striking the petitioner and putting multiple lives in direct line of fire and imminent danger" is an obvious violation of the law. If the Court does not take this case and establish some bounds for when the law is clearly established in excessive force cases, courts and police officers will "effectively treat qualified immunity as an absolute shield." *Kisela*, 138 S. Ct. at 1155 (Sotomayor, J., dissenting). That outcome would eviscerate Section 1983, which should not be understood to grant immunity to officers unless they would have had a defense in "an analogous situation at common law." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1870 (2017) (Thomas, J., concurring in part and concurring in the judgment) (internal quotation omitted); see also *Wyatt v. Cole*, 504 U.S. 158, 170 (1992) (Kennedy, J., concurring). When Congress enacted Section 1983, the background common law of assault and battery would not have provided Respondent Nick Diamond with a defense against Petitioner's Cedric Adams suit. The Court should grant certiorari to resolve the circuit split, clarify the contours of the qualified immunity doctrine, and restore some semblance of the historical order, at least in obvious excessive force cases like this one. This case

provides a uniquely clean vehicle to decide the questions presented as a pure issue of law. The question presented is focused on a narrow issue— a single claim against a single officer—which further streamlines and simplifies the issues before the Court. These are no lurking factual issues that could make this case a poor vehicle for considering the question presented. Indeed, the record in this case and the procedural posture of Respondent's throughout all proceedings pre and jury trial and according to appeal establish that all the factors identified in *Graham*— and reaffirmed in *Kisela*—cut in favor of holding that Respondent should have been on notice that forcing entry into a domestic dwelling welding and discharging his service from outside at, into and throughout a home knowing multiple lives were involved and striking Petitioner violated his constitutional rights. The circuit courts of appeal are split about a matter of exceptional importance involving excessive force and qualified immunity for police officers who assault non-threatening, non-fleeing individuals. The First, Fifth, Sixth, and Tenth Circuits have held that the case law is sufficiently clear to warn a reasonable officer that the Fourth Amendment forbids the use of substantial force against a non-threatening suspected misdemeanor who is not fleeing, resisting arrest, or posing any risk to the safety of others. See *Westfall v Luna*, 903 F.3d 534, 549 (5th Cir. 2018); *Ciolino v. Gikas*, 861 F.3d 296, 306 (1st Cir. 2017); *Kent v. Oakland County*, 810 F.3d 384, 397 (6th Cir. 2016); *Casey v. City of Federal Heights*, 509 F.3d 1278, 1285 (10th Cir. 2007). The courts have held, even if the suspected misdemeanor fails to comply with a police officer's commands. In this case, however, there was no fleeing suspect, attempt to resist arrest, complied with Officer commands or that did not pose any threat of or to the safety of others and the results, outcome, documentation and testimony of the incident of September 29, 2017 all clearly show and verify these facts. In this case there was not even a suspected misdemeanor and Officer Diamond was responding to a domestic dwelling, knowing multiple lives were involved and there was no established crime or suspect. The Courts should overturn the lower court's decision and the verdict of the jury trial in this case to ensure uniformity and consistency in the interpretation and application of law. This case involves sufficiently important issues that a few or more courts have interpreted laws differently according to the qualified immunity defense. This case could have national significance and harmonize conflicting decisions in the federal circuit courts and have precedential value.

CONCLUSION

For the foregoing reasons, the petition should be granted, the judgment below should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Brown", with a stylized flourish extending to the right.