No. _____

In The
Supreme Court of the United States

BETSY ROSS, and as next friend of minor K.R.,

***Petitioner*,**

v.

MARY KLESIUS, In her individual and official capacity at Cecil County Department of Social Services, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Daniel L. Cox
Counsel of Record
THE COX LAW CENTER, LLC
Post Office Box 545
Emmitsburg, Maryland 21727
(410) 254-7000
dcox@coxlawcenter.com

Counsel for Petitioner

Dated: January 23, 2018

THE LEX GROUP[DC] ♦ 1050 Connecticut Avenue NW ♦ Suite 500, #5190♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ Fax: (202) 955-0022 ♦ www.thelexgroup.com

QUESTIONS PRESENTED

Three questions are presented:

1. Did the Court of Appeals below err in requiring Petitioner's Free Speech claim to be held to a heightened standard of proving Defendant-Respondents' subjective "awareness" at a clear and convincing level, considering this Court's rule in *Crawford-El v. Britton*, 523 U.S. 574 (1998), *Perry et al v. Sindermann*, 408 U.S. 593 (1972), *Pickering v. Board of Education of Township High School District 205, Will County, Illinois* (1968) and *Waters v. Churchill*, 511 U.S. 661 (1994), in order to show a causal connection for a retaliation motive by Defendant-Respondents against Betsy Ross, when Judge Quarles of the District Court below found that knowledge by Defendant-Respondents of her protected speech was able to be proven to a reasonable jury?

2. In a matter of first impression, do Foster Parents and Children have the same real property warrant protections under the *Castle Doctrine* and the Fourth Amendment as U.S. citizen parents and children when there are no exigent or emergent circumstances of imminent physical harm to the children?

3. Do public officials have quasi-immunity when they commit First Amendment retaliation and also restrain private Foster families from publishing "negative" letters in the newspapers, in order to receive a state license for a private foster home?

LIST OF PARTIES

In addition to the parties listed in the caption, LATONYA COTTON, In her individual and official capacity at Cecil County Department of Social Services; REBECCA SUTTON, In her individual and official capacity at Cecil County Department of Social Services; KIM COMPTON, In her individual and official capacity at Cecil County Department of Social Services; TINA LINKOUS, In her individual and official capacity at Cecil County Department of Social Services; SUSAN BAILEY, In her individual and official capacity at Cecil County Department of Social Services; HELEN MURRAY-MILLER, In her individual and official capacity Department of Human Resources - Social Services, the Cecil County Department of Social Services ("CCDSS"), an entity of the State of Maryland, and Nicholas Riccuiti, and Barbara Sicliano, co-defendants to the District Court action, are also party Respondents to this Petition.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The Fourth Circuit's Opinion was rendered on October 25, 2017.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments I & IV to the United States Constitution, set forth in Appendix 72a.

STATEMENT OF THE CASE

The constitutional rights of Foster parents and children at issue in this case not only impact millions of foster families in this nation but also impact any American raising children and, by extension, anyone being investigated for "neglect or abuse" or illegal residency by a government agent.

Parents, including Foster parents, are not second-class citizens in our constitutional Republic. Although Foster parents do not possess 14th Amendment parental rights power of custodial care and control (e.g., generally, *Troxel v. Granville*, 530 U.S. 57 (2000), they are nonetheless equally protected in regard to their Freedom of Speech under the First Amendment and their real property rights under the Fourth Amendment.

Betsy Ross[1], a 2007 Foster Parent of the Year for Cecil County, Maryland, was, the very next year

[1] Betsy Ross is Appellants' name and is not a pseudonym. Her grandparents Ross are from Ireland.

upon her ascending to the Foster Parent Association presidency, wrongly reported for and charged with child neglect after whistleblowing against the Cecil County Department of Social Services ("CCDSS"). From March-June 2008, she spoke up and criticized what she perceived was financial issues with CCDSS and its seemingly odd refusal to give access to the Foster Parent Association bank account. In July 2008, Betsy Ross refused to sign checks for and spend money as a Foster Parent Association incoming president when CCDSS Defendant Mary Klesius ordered her to do so. Betsy refused because Cecil County Foster Parent Association ("CCFPA") Treasurer of 30+ years, Doris Asti, had told her that "CCDSS was hiding state funds in the foster parent bank account." (Appendix 44a). Past CCFPA president, Karen Dix, confirmed to Betsy Ross the fact CCDSS was placing unused state funds into the CCFPA account. Soon after the conversation with Mary Klesius where she objected to spending the funds, Betsy Ross then reported the matter to the Maryland State Foster Parent Association Vice President Michelle Burnett along with the fact that CCDSS was hiding state funds in the CCFPA account instead of returning them to the state Treasury. (Appendix 44a). Michelle Burnette testified in this case attesting to facts that she referred the complaints and report of Betsy Ross to the acting CCDSS Ombudsman, John Bertullis[2], who was in

[2] The court below found errantly that Bertullis did not find "mismanagement of funds" (Appendix 14a), but Bertullis actually stated he found that CCDSS deposited a check No. 152 on 5/5/2007 into CCFPA's bank account and "blurred the boundaries" of the finances. (JA 1107) Doris Asti, long-time treasurer for CCFPA, testified that it was "true" CCDSS was "hiding state funds in the CCFPA" bank account. *Id*.

contact with CCDSS and was a social worker himself, and that Betsy should expect a call from him. (JA 1313)[3]. However, instead on August 15, 2008, the date that Betsy Ross was meeting with Foster Parents for their Association caucus to consider her campaign to be their president, she was humiliatingly pulled aside by Defendant Mary Klesius and told in front of the other parents "we have to meet," and was then falsely accused of child neglect and had her children removed through a warrantless home entry. Later, Burnette testified she was also falsely accused of neglect by DSS. CCDSS Defendants testified that the reported neglect and decision to remove her children came into CCDSS by its worker Tina Linkous around 12 noon on August 15, 2008. However, Foster parent Karen Edwards testified under oath that she received a call to place three foster children whom she learned were Betsy Ross's foster children early that morning of the 15th of August, 2008, around 9:30am, establishing, according to District Judge Quarles "evidence [that] lends support to [Betsy Ross's] argument that the neglect allegations were pretextual." (Appendix 58a).

After an intensive four-day administrative trial regarding allegations of child neglect against Betsy Ross, with sworn testimony by witnesses showing CCDSS/CPS manufactured the allegations against Betsy Ross because of her complaints about CCDSS financial mismanagement and hiding state funds in the Foster Association account, the State voluntarily dismissed and "Ruled Out" the false neglect charges against Betsy Ross, with state law requiring the

[3] "JA" refers to the Joint Appendix filed together with Petitioner's opening Brief in the Fourth Circuit.

matter to be purged from her files forever[4]. CPS child neglect charges can be forwarded to the state's attorney for prosecution, so they carry more than a "thinly veiled criminal threat" *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963) which this Court has said is forbidden as a prior restraint on protected speech. *Id*. at 70.

Betsy Ross then pursued relicensing with a private foster care agency to move on with her service of fostering children. She then obtained a written agreement signed by CCDSS expressly stating CCDSS and its agents would "make no negative statements" concerning Betsy Ross to anyone, including in regard to her private licensure process. After CCDSS and then the state licensing agent Defendant Helen Murray-Miller read her published letters to the editor in the Cecil Whig newspaper exposing concerns about the Cecil County Department of Social Services, Defendant Murray-Miller had contact with CCDSS and directed in writing that the private foster agency (The Arc) deny a foster care home license to Betsy Ross (indefinitely "place on hold") until "Betsy Ross resolves" her negative "letters to the editor". This act chilled the free speech rights of Betsy Ross in exchange for her receiving a State License, all in violation of this Court's constitutional rules.

---

[4] Yet CCDSS did not destroy the files, but apparently moved them over into Betsy Ross's foster license file instead. Tina Linkous falsely testified at the neglect trial she had "shredded" the so-called neglect allegations interview notes, only to find them a year later for her own deposition testimony. (JA 274-276; 1033-8).

The Court below errantly found that Betsy Ross's free speech claim was limited to "three instances" including only retaliatory *removal* of her foster children, closure of her foster home and retaliatory denial of a private foster license via the State's licensure agent Defendant Murray-Miller after Betsy Ross published "negative" letters in the newspaper Cecil Whig about CCDSS. (See Appendix 6a, ¶ 1). Yet Betsy Ross plead and proved, with district judge Quarles agreeing is a material fact in dispute, that the *false child neglect allegations*[5] made by social worker Tina Linkous at the behest of Mary Klesius – whom Betsy Ross opposed regarding CCDSS hiding state funds and ordering her to sign checks disbursing those funds - and the ensuing investigation for child neglect and warrantless invasion of her home were also pre-textual, and blackmailed others from voting for her as Foster Association president. (Appendix 58a, ¶ 2, District Court Opinion of Judge Quarles). The CCDSS warrantless entry into Betsy Ross's home and removal of children, K.R. just five (5) days from adoption to Betsy Ross, having been with Ms. Ross from just-after birth until one and a half (1 ½) years old, and being very attached to her as her only known mother, shocked the conscience. It also upset certain CCDSS social workers. Defendant Rebecca Larson (the assigned CPS "investigator") expressed serious "concerns" to her CCDSS supervisors against removing the children from Betsy Ross because of their attachment to her and lack of any imminent danger, (See JA 419, ¶¶ 1,2); Nicholas Riccuiti, CCDSS Director, also expressed concerns about the

[5] False reports of child neglect are proscribed under Maryland law.

investigation of Betsy Ross' foster home such that he "put on a hold" closing her foster home (See JA 420, ¶ 4) and then only signed off on doing so at the urging of Mary Klesius and other social workers under Mary Klesius' control; and Assist. Director Sue Bailey, returning to work from vacation, questioned the reason for the removal and ultimately required the return of K.R. to her mother, approving the adoption 45-60 days after removal *during the CCDSS neglect investigation and closure of Betsy Ross' home,* further showing the investigation to be false and retaliatory. She also appears to admit to Doris Asti's testimony that CCDSS was in fact "hiding state funds" in the foster association account. (See JA 422, ¶ 2). Retaliation then continued against Betsy Ross for sending letters to the editor of the Cecil Whig which were published, whistleblowing about CCDSS practices and claiming knowledge of its wrongdoing.

Notably, in the instant matter the Fourth Circuit errantly found that a type of high-bar "motive" proof to the causal element was required under First Amendment jurisprudence by requiring what Appellant argues is a clear and convincing proof of "awareness" by Defendant-Respondents of Betsy Ross' protected speech. (See Appendix 7a-8a). Yet this "back-door" heightened proof of motive requirement as applied to the First Amendment claims of plaintiffs has been expressly overruled for stating a claim and for proof at trial for First Amendment retaliation by this Court in *Crawford-El v. Britton*, 523 U.S. 574, 595-6 (1998) (citing *Pickering v. Board of Education of Township High School District 205, Will County, Illinois* (1968)). District Judge Quarles already found in the instant matter

that the evidence was sufficient for a reasonable jury to find against Defendant-Respondents. To require a clear and convincing high standard of proof of Defendants' "awareness" rather than the preponderance of evidence showing that they knew or should have known of the protected speech, is error. 523 at 595-6.

CCDSS then entered Betsy Ross's home without invitation and without a warrant, traumatizing her 1 ½ year old adoptee-daughter who was screaming at being removed, all in retaliation for her First Amendment protected speech.

It is a matter of first impression on the question of whether a Foster family loses their Fourth Amendment warrant rights when there are no exigent circumstances or imminent danger of physical harm to the children. Although the law is settled that the government may not enter a home without a warrant or exigent circumstance in both civil and criminal investigations, (See *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312, 98 S. Ct. 1816, 1820, 56 L. Ed. 2d 305 (1978), ("the Fourth Amendment prohibition against unreasonable searches protects against warrantless intrusions during civil as well as criminal investigations"), and no reasonable social worker can presume otherwise without any exigent circumstances of imminent harm or serious physical danger, (See *City & Cty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1775, 191 L. Ed. 2d 856 (2015)), yet the courts below found facts that only a jury may find regarding the very gravamen of the case, that of denying any retaliatory and false allegations in order to begin the faux investigation. The Fourth Circuit vaguely stated that the entry of

the social workers was permissible with an unconstitutional rule: "reduced Fourth Amendment scrutiny applicable to home visits by social workers" a standard that is both errant and entirely inapplicable to the instant case. (See Appendix 5a) (See also *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993)). Such a vague standard is also errantly obtained, it appears, from this Court's rule in *Wyman v. James*, 400 U.S. 309 (1971), where it seems the Fourth Circuit has "reduced" the Fourth Amendment for Foster parents on grounds of separate "permissible" invitation entries that do not require any warrant. Regardless, *Wildauer* is inapplicable to the instant matter.

The facts, being viewed in the light most favorable to Betsy Ross, including the traumatic seizing and removal of her now-adopted daughter K.R., have consistently demonstrated a trial by jury is of right in this matter.

On October 25, 2017, after canceling a requested and scheduled oral argument, the Fourth Circuit issued its unpublished opinion affirming the District Court's revised summary judgment.

The instant Petition followed.

REASONS FOR ALLOWANCE OF THE WRIT

Intentional violations of constitutional rights can create liability of state agents, and to state a claim under 42 U.S.C. § 1983 the plaintiff is not burdened with proving the state of mind of the agent(s) violating her fundamental rights. "§ 1983

contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels v. Williams*, 474 U.S. 327, 330 (1986). Betsy Ross has shown that the action(s) taken that resulted in depriving the plaintiffs of their fundamental constitutional rights were intentional and not merely negligent acts because they were pretextual and made after she criticized CCDSS. *Id.*

Defendant-Respondents claimed baldly to the courts below that they were not "aware" of Plaintiff verbally – for months – seeking Foster Parent Association banking information while being rebuffed, criticizing and opposing Mary Klesius' order to Betsy Ross to sign checks from the Foster Parent account and CCDSS mismanaging and illegally holding state funds, and whistleblowing to Michelle Burnett and John Bertulis about the financial mismanagement, prior to the false child neglect allegations being generated and reported by Mary Klesius' assistant social worker Tina Linkous. The ensuing child neglect charges, investigation and seizure of Betsy Ross' children – K.R. being traumatized at removal from her only known mother a mere five (5) days away from final adoption decree – were already held by Judge Quarles below to potentially be pre-textual, only to be changed two years later after his retirement. If a reasonable federal Judge could find for the likelihood of Betsy Ross's First Amendment rights being chilled and her life wrecked by CCDSS retaliation of false child neglect charges, then a jury of her peers could also.

These are questions of fact for the jury to decide.

Review is further warranted because the Fourth Amendment applies to all Foster families in America, or else the reasoning for its relaxing, by implication, removes all protections of a warrant upon probable cause for anyone raising children or being investigated for neglect or abuse. The lower court has extended its limited "home visit" permissible entry case *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993) to a near complete erasure of the Fourth Amendment's warrant requirement for families with children living in the Fourth Circuit. (Appendix 5a, "reduced Fourth Amendment scrutiny applicable to home visits by social workers"). The Fourth Circuit encompasses millions of families with children – many of whom are seeking legal residency while others are very interested in helping foster and adoptive children – and such a rule as applied in this case is patently unconstitutional because it allows the government to forcibly enter homes with children merely because the children are present and social workers are involved. Here, at no time were social workers invited into Betsy Ross' home for voluntary or planned "home visits" and the mere presence of children in one's home – whether foster or not – does not "reduce Fourth Amendment scrutiny". *Id.* This Court has consistently held that the only exceptions to the warrant requirement are inclusive of an imminent danger of serious physical injury to a resident, *City & Cty. of San Francisco* at 1775, something Defendant-Respondents in this case conceded in their testimony under oath did not exist. Review is therefore warranted to clarify the confusion among the Circuits over when a warrant is required to enter a home where foster children are lawfully

residing in peace and safety, as they were in the instant case prior to the CPS/CCDSS entry.

Third, review is warranted to determine whether public officials have quasi-immunity when they commit First Amendment retaliation and also restrain private Foster families from publishing "negative" letters in the newspapers, in order to receive a state license for a private foster home. The facts Judge Quarles found to be substantial and materially in dispute, and which a reasonable jury could conclude demonstrate pre-textual false child neglect allegations and First Amendment retaliation, include that: "Ross informed Burnett of concerns" prior to the allegations reported by Linkous and prior to the August 15, 2008 removal of the children. *Id.* Betsy Ross also, along with others, repeatedly complained to Mary Klesius about withholding of financial information regarding the Foster Parent Association bank account, from March through June 2008. *Id.* Additionally, Judge Quarles held the inference exists that the private foster license state agent Defendant-Respondent Murray-Miller not only provided a "self-serving affidavit" to the court, which we argue was potential perjury when comparing her equivocating deposition testimony, (See Appendix JA 522, 574), but that "Ross's First Amendment right against retaliation for her criticism of CCDSS was clearly established. Accordingly, Murray-Miller is not entitled to qualified immunity." (Appendix 62a, Opinion of Judge Quarles). Yet soon after Judge Quarles retired, the law of the case was changed after years of delay via motions, without a single piece of evidence changing. Review by this Court is therefore additionally warranted because of the confusion that the District Court rulings below have caused the

law of the case doctrine for the certainty all litigants deserve in Federal Court. The evidence overwhelmingly demonstrates and was found to demonstrate significant and substantive material disputes of fact and factual matters for the jury by Judge Quarles below ruling Defendant-Respondents were exposed to liability and not shielded by quasi-immunity in the First amendment claim, only to have that law of the case changed after his retirement. (Appendix 57a-63a).

I. REVIEW IS WARRANTED TO RESOLVE WHETHER, UNDER, *Crawford-El v. Britton*, 523 U.S. 574 (1998), FOSTER PARENT(S) AND CHILDREN HAVE TO PROVE CLEAR AND CONVINCING EVIDENCE TO MAINTAIN A FREE SPEECH AND RETALIATION CLAIM WHEN THEY RAISE MATERIAL, SUBSTANTIVE FACTS IN DISPUTE THAT A REASONABLE JURY COULD FIND SHOWED PRETEXTUAL CHILD NEGLECT ALLEGATIONS AND CHARGES.

Review is warranted because the Fourth Circuit erred under *Crawford-El* and heightened the pleading requirements for Betsy Ross – four years after filing suit – to mandate clear and convincing proof of "awareness" of the protected activity by the Defendant-Respondents. "Neither the text of § 1983 or any other federal statute, nor the Federal Rules of Civil Procedure, provide any support for imposing the clear and convincing burden of proof on plaintiffs either at the summary judgment stage or in the trial itself. The same might be said of the qualified

immunity defense…" *Id.* at 594. This is because any heightened standard of proof "lacks any common-law pedigree and alters the cause of action itself in a way that undermines the very purpose of § 1983 —to provide a remedy for the violation of federal rights." *Id.* at 595.

Here, the Court of Appeals and District Court on a second (or third, if you include the oral pre-trial motions in chambers) reconsideration changed the law of the case from Judge Quarles' judgment, after trial was prepped and ready with over four (4) years of litigation completed. Judge Blake decided to raise the level of proof and to dismiss the case. Such is in error because it undermines the very purpose of §1983, that of ensuring Foster parents like Betsy Ross and her friends, who testified of their own persecutions received at the hand of CPS/DSS, have the same free speech rights as every other American. Involvement as a Foster parent should be a wonderful experience encouraged by the State, not used for the purpose of blackmailing over financial mismanagement, and launching false investigations into foster parents who expose concerns about the state CCDSS and its alleged problems that Betsy Ross wrote about in the Cecil Whig.

In *Perry et al v. Sindermann*, 408 U.S. 593 (1972), with facts similar to the instant case in regard to election as president to an association, a contractee who then publicly stated concerns at odds with the state college officials, and that "on one occasion, a newspaper advertisement appeared over his name that was highly critical of the Regents." *Id.* at 595. He was then let go, and this Court overturned and remanded reaffirming that the state cannot withhold

a state benefit "on a basis that infringes his constitutionally protected speech or associations," *Id.* at 597, because that would impermissibly "produce a result which [it] could not command directly." *Speiser v. Randall*, 357 U.S. 513, 526. Such interference with constitutional rights is impermissible." *Id.*

Here we have both the impermissible withholding of a state foster care license, and even worse - the impermissible launching of a pretextual false child neglect charges against Betsy Ross because of her exercising her constitutionally protected speech and association. The record on these points is not sparse or lacking in any regard on behalf of Betsy Ross' claims. They are voluminous, with sworn testimony of supporting proof of Betsy Ross's claims by a record of thousands of pages and over a dozen depositions and sworn statements, motions and rulings, of which a mere portion of 1,437 pages are in the joint appendix below (JA 1-1437). Upon such evidence Judge Quarles ordered the matter to a trial by jury.

The rule of the court below misconstrues this Court's rule by raising the level of proof required by Plaintiff and requiring the causality "but for" element as needing to also provide indirect proof of "awareness" of Betsy Ross's protected speech. Such would result in the denial of plaintiff's bona fide constitutional rights because proving state of mind is not the rule, *Daniels* 474 U.S. at 330, and such would "impose[] a heightened standard of proof at trial upon plaintiffs with bona fide constitutional claims. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252–255, 106 S. Ct. 2505, 2512–2514, 91 L. Ed. 2d 202 (1986)." *Crawford-El* at 595-6.

However, even if the Court requires clear and convincing evidence objectively "proving awareness" in order to prove causality by Defendant-Respondent CCDSS and Mary Klesius with Betsy Ross's concerns, complaints and criticisms of CCDSS, it was already established by the District Court below, Judge Quarles, that causality was proven, that Mary Klesius and the Defendants knew for months of Betsy Ross's criticisms (Appendix 59a), and that a reasonable jury could find for Betsy Ross. (Appendix 36a-71a). The lower court erred therefore by taking away this gravamen of a factual inquiry from the jury and the court did more than abuse its discretion because of the mixed law and fact issues before it below.

The lower court erred, therefore, and review is needed by this Court to correct the rule and error.

II. REVIEW IS WARRANTED AS A MATTER OF FIRST IMPRESSION TO RESOLVE WHETHER FOSTER PARENTS' LOSE THEIR FUNDAMENTAL RIGHTS UNDER THE FOURTH AMENDMENT'S REAL PROPERTY WARRANT REQUIREMENTS AND ITS *CASTLE DOCTRINE* MERELY BECAUSE OF THEIR PHYSICAL POSSESSION OF FOSTER CHILDREN, ABSENT ANY IMMINENT DANGER OF HARM

Foster children are precious and like all children have magical love for loving parents, but they don't magically remove a land owner's Fourth Amendment warrant protections by their appearance and physical presence in the home.

There is confusion in the circuits regarding whether foster families have a lesser status as protected Americans under the Fourth Amendment's warrant requirements. Although admitting it is a matter of first impression, Defendant-Respondents offensively described the "reduced Fourth Amendment protections" to plaintiffs by claiming Betsy Ross was "merely a foster parent" and the children "mere foster children" and that "Betsy Ross, who owns the home the government enters…does not have a Fourth Amendment claim." (JA 52-3, 66, 102).

The Fourth Circuit has apparently held in this case, without substantive consideration of the law and without oral argument, that a "reduced Fourth Amendment scrutiny is applicable" whenever social workers enter a home. (Appendix 5a, citing *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993).

This rule is made worse considering that the State CCDSS social workers in this case argued that anyone who has children where the *possibility* of neglect therefore exists has this reduction of protection under the Fourth Amendment. (JA 53).

Such talk is easily dispensed as no-where found in the rule of law of this Republic, but it is not sure to be clarified without this Court's help. It is a self-defeating interpretation of the Fourth Amendment, rendering it meaningless for most of all child-raising Americans. Under such a rule, whenever a child enters a domain it magically turns into a reduced protection area from government raids upon mere allegations of neglect. If such were the case, there would be no laws and regulations for investigating neglect matters that must be followed, complete with

probable cause for an imminent danger of physical harm providing exigent circumstances allowing a warrantless entry.

If our Founders had believed in such a principle, all or most of whom possessed children in their own homes, that so-called "reduction of Fourth Amendment" protections would have been expressly stated in the Constitution, and it is not. Instead, the exact opposite is mandated for all homes, regardless of whether children exist in them, that prior to government's entry there must be probable cause upon a warrant signed by a judge, unless there is reason to believe exigent circumstances exist where the child is in imminent danger of physical harm.

From "time immemorial" this land has recognized the common law and English constitutional mandate that a woman's home is her castle. *Weeks v. United States*, 232 U.S. 383, 390 (1914) (discussing the common-law maxim as considered by the Supreme Court); "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter - all his force dares not cross the threshold of the ruined tenement!" William Pitt, Speech on the Excise Bill (1763) (quoted in *Miller v. United States*, 357 U.S. 301, 307 (1958)).

This Court, in *Wyman v. James*, 400 U.S. 309 (1971) has already declared that social workers and the state, in the context of home visits, may not force themselves into a home uninvited, absent a criminal investigation and warrant. "The home visit

[regarding welfare benefits] is not a criminal investigation, does not equate with a criminal investigation…" *Id.* at 323.

The circuits are split and widely different on this crucial point of American family freedom, and review by this Court is warranted.

In *Calabretta v. Floyd*, 189 F.3d 808, 817 (9th Cir. 1999) the Ninth Circuit goes into detail, also relevant to the Fourth Circuit's reasoning regarding "reduced Fourth Amendment scrutiny" for government social workers to enter a home without any exigency but merely "under the circumstances presented" (Appendix 5a), and there the rule is the opposite of the Fourth Circuit's, firmly protecting against the abuses of government entry into the home:

> "The statutes[30] appellants cite say nothing about entering houses without consent and without search warrants. The regulations they cite require social workers to respond to various contacts in various ways, but none of the regulations cited[31] say that the social worker may force her way into a home without a search warrant in the absence of any emergency. A possibly related regulation, in the chapter on "Report of Child Abuse Investigative Procedures," does speak to search warrants, but not at all helpfully to appellants. It says that the "child protective official" receiving a report should "consider the need for a search warrant."[32] This administrative

> regulation would tend to put the social worker on notice that she might need a search warrant, not that she was exempt from any search warrant requirements.
>
> Appellants presented no evidence they did "consider the need for a search warrant." They both imagined incorrectly that no search warrants were necessary to enter houses for child abuse investigations. We conclude that on appellants' first issue, whether they were protected by qualified immunity regarding their coerced entry into the Calabrettas' home, the district court was right. They were not."

Id. at 817.

Here, in the court below a Maryland Statute was cited for supporting a Fourth Amendment warrant waiver authority by social workers in Maryland, that being Md. Code Ann., Fam. Law ¶¶ 5-325(a)(3), (b)(1), 5-504 (2006). Those mere legal custody provisions do not grant social workers any waiver powers over the Fourth Amendment warrant requirements absent a child being in "imminent danger of physical harm" so, like the 9th Circuit wrote, the existence of the statutes and regulations "tend to put the social worker on notice that she might need a search warrant, not that she was exempt from any search warrant requirements" *Calabretta* at 817. But even if this Court does not adopt such a rule to clarify the confusion in the circuits, it is clear that the law cited by the Fourth Circuit provided no such authority to violate "clearly established statutory or

constitutional rights of which a reasonable person would have known." (Appendix 5a, citing *Graham v. Gagnon*, 831 F.3d 176, 182 (4th Cir. 2016)).

At least seven (7) U.S. Circuit Courts of Appeal set fort rules which differ one from another regarding social worker entry under the Fourth Amendment. (See *Kovacic v. Cuyahoga Cty. Dep't of Children & Family Servs.*, 724 F.3d 687, 695 (6th Cir. 2013) "[A] social worker, like other state officers, is governed by the Fourth Amendment's warrant requirement." (internal cites omitted); *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1242 (10th Cir. 2003) ("Measured against this parental interest, the state's interest in protecting children does not excuse social workers from the warrant requirement of the Fourth Amendment"); *Calabretta v. Floyd*, 189 F.3d 808, 817 (9th Cir. 1999) ("The statutes[30] appellants cite say nothing about entering houses without consent and without search warrants….[the social workers] both imagined incorrectly that no search warrants were necessary to enter houses for child abuse investigations"); *Gates v. Texas Dep't of Protective & Regulatory Servs.*, 537 F.3d 404, 419–20 (5th Cir. 2008) ("We begin by noting that it is well established in this circuit that the Fourth Amendment regulates social workers' civil investigations"); *Tenenbaum v. Williams*, 193 F.3d 581, 603 (2d Cir. 1999) ("Does the ordinary probable-cause standard applicable to, among others, law enforcement officials making warrantless arrests also apply to caseworkers seizing children without prior court authorization? Although all agencies of government are governed by the unreasonable searches and seizures provision of the Fourth Amendment, there are some agencies outside the realm of criminal law enforcement where

government officials have "special needs beyond the normal need for law enforcement [that] make the warrant and probable-cause requirement impracticable"); *Donald v. Polk County*, 836 F.2d 376, 384 (7th Cir. 1988) (probable-cause standard applies to caseworkers' removal of child from parents' custody).

Here, the objectionable rule of the Fourth Circuit is further concerning in that it was apparently developed errantly from this Court's rule in *Wyman v. James*, 400 U.S. 309 (1971), which was focused solely on permissive, non-coercive civil home visit entries by social workers. *Id.* at 323. The Fourth Circuit then expanded that "home visit" rule to extend to searches in a quasi-criminal context once in the home. *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993) (Disagreed with by *Roe v. Texas Dept. of Protective and Regulatory Services*, 5th Cir. (Tex.), July 17, 2002), where the facts were clearly limited to exigent circumstances of the foster parent giving two of the children to the actual parents and then reporting to the government that the children were "missing." *Id.* 372 ("The Fourth Amendment protects against unreasonable searches and seizures. *United States v. Place*, 462 U.S. 696, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983). After alleging that the remaining two children were missing, she invited Cruger to help her look for them. The entry of the deputy sheriffs and Emerson into her home was not unreasonable under the circumstances.").

In the instant case, Betsy Ross was expressly threatened with the possibility of a criminal child neglect investigation and charges, and was in fact administratively charged as such before procuring the charges' dismissal as "Ruled Out" for being

completely unfounded without any supporting evidence. Here, also, there was no imminent danger to the children, and no exigent circumstances, as testified to by the social workers involved, making the search and seizure completely unreasonable and as such illegal. Indeed, some of the social workers objected to removing the children, only to be overruled by their superiors. (JA 419-20). In fact, upon entering the home the lead social worker required to make a finding regarding the children found them "safe" *in the care and custody of Betsy Ross*. (JA 1083, "I assessed the children as essentially no imminent or immediate danger to them.", Rebecca Larson, Defendant-Respondent, CPS investigator). All this showed that the search and seizure was pretextual and illegal, done to silence Betsy Ross from speaking as a United States citizen of her truthful concerns.

Review is warranted to reaffirm that the warrant requirement of the Fourth Amendment applies to all families in America, not just those without children.

III. REVIEW IS WARRANTED TO CONFIRM THAT SOCIAL WORKERS LOSE THEIR QUASI-IMMUNITY WHEN THEY OPEN A PRETEXTUAL NEGLECT INVESTIGATION AND REMOVE AND THEN REPLACE AN ADOPTEE-DAUGHTER, AND THEN DENY A STATE LICENSE BECAUSE OF LETTERS TO THE EDITOR.

The "clearly established" standard is satisfied at the time of the affirmative acts of Defendant-Respondents in this case because Judge Quarles

already ruled that "the law is well established that a public official cannot take adverse action against an individual for voicing criticism. See *Trulock*, 275 F.3d at 405-06. A reasonable official would have known that retaliation for Ross's statements was impermissible." (Appendix 59a-60a) (citing also, *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998), "the First Amendment's bar on retaliation for protected speech 'has long been clearly established'"). *Id.*

In *Crawford-El v. Britton*, this Court expressly stated that to survive a quasi-immunity defense, a First Amendment claim's inquiry should focus on whether the state actor was seeking "to deter public comment on a specific issue of public importance." 523 U.S. 574, 592 (1998). When Mary Klesius allegedly ordered the child neglect allegations against Betsy Ross to be manufactured by her assistant Tina Linkous, who then allegedly obtained "impromptu" pool supervision and other wild and easily disproven information from a known pathological liar pre-teen under mental health care at a home visit in another state some two years after the alleged pool supervision incident, that is precisely what Defendant-Respondents were doing. Betsy Ross had just spent the summer making her concerns well-known about the financial mishandling of the Foster Parent account and had rejected Mary Klesius' demand she sign a check without authority.

Review is warranted because Judge Quarles found that Betsy Ross's "evidence lends support to [her] argument that the neglect allegations were pretextual." (Appendix 58a). He also found that evidence tended to show that Betsy Ross's foster and pre-adoptee children were removed pretextually in

retaliation for her protected speech, and that "there is a material dispute of fact whether Defendants had knowledge of the protected speech, and that "a reasonable jury could conclude that "Defendants were aware of Ross's complaints about the mismanagement of funds or criticism of CCDSS before August 15, 2008 when the foster children were initially removed." (Appendix 57a-58a). Judge Quarles was not limiting the pretextual retaliation issue merely to removal of the children, but was referring to the date they were removed while referencing the pretextual neglect allegations as underlying the retaliation. *Id.* Two years later prior to a trial of hearing any evidence, upon Judge Quarles retirement, the District Court changed its law of the case and reversed Judge Quarles' decision granting immunity to the outrageous actions of Defendant-Respondents.

Review is warranted to reinstate the law of the case and prevent the premature removal of the facts from which a reasonable jury could find that the actions of Defendant-Respondents were pretextual and illegal retaliation for protected speech, and therefore lacking in immunity.

CONCLUSION

This honorable Court is requested to grant the instant Petition for Writ of Certiorari and reverse the decision of the Fourth Circuit Court of Appeals.

Respectfully submitted,

Daniel Lewis Cox
Counselor for Petitioner
The Cox Law Center, LLC
P.O. Box 545
Emmitsburg, Maryland 21727
Office: 410.254.7000
Facsimile: 410.254.7220
E-mail: dcox@coxlawcenter.com