

In The  
**Supreme Court of the United States**

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N.S., ONLY CHILD OF DECEDENT, RYAN STOKES,  
BY AND THROUGH HER NATURAL MOTHER AND  
NEXT FRIEND, BRITTANY LEE; NARENE JAMES,

*Petitioners,*

v.

KANSAS CITY BOARD OF POLICE COMMISSIONERS;  
MICHAEL RADER, LELAND SHURGIN;  
ANGELA WASSON-HUNT; ALVIN BROOKS;  
MAYOR SLY JAMES; DARRYL FORTE;  
RICHARD SMITH; WILLIAM THOMPSON;  
AND DAVID KENNER,

*Respondents.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eighth Circuit**

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MOTION BY THE **FOURTH AMENDMENT  
ALLIANCE**, WITH ATTACHED PROPOSED  
*AMICUS CURIAE* BRIEF IN SUPPORT OF  
PETITIONERS' PETITION FOR WRIT OF  
CERTIORARI, FOR LEAVE TO (1) FILE THE  
BRIEF, AND (2) TO DO SO WITHOUT TEN DAYS'  
ADVANCE NOTICE TO THE PARTIES

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January 18, 2023

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The Fourth Amendment Alliance respectfully moves for leave to file a brief *amicus curiae* in support of Petitioners' Petition for a Writ of Certiorari, and to do so without 10 days' advance notice to the parties of Amicus' intent to file as ordinarily required.

Amicus has sent inquiry to counsel for both Petitioners and Respondents requesting consent. Petitioners' counsel has provided that consent to the filing of the amicus brief. Respondents' counsel does not consent.

The Fourth Amendment Alliance advocates distinctively for a healthy balance between the reasonable Constitutional rights protections of citizens and reasonable liability protections for law enforcement, the heart of this matter. By doing so, the Fourth Amendment Alliance offers unique perspective, and an important advocacy in this matter; important both for the consideration of our justices and for the future of America.

For these reasons, Amicus respectfully requests that the Court grant this unopposed motion to file the attached proposed *amicus curiae* brief and accept it in the form submitted and at the time submitted.

Respectfully submitted,

/s/ J. Todd Benson

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No. 22-556

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**On Petition For A Writ Of Certiorari  
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BRIEF OF *AMICUS CURIAE*  
**FOURTH AMENDMENT ALLIANCE**  
IN SUPPORT OF PETITIONERS

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## **QUESTIONS PRESENTED**

1. Whether this Court's jurisprudence in cases of violated civil rights adequately protects Constitutional rights and assures justice for victims.
2. Whether this Court's qualified immunity regime has strayed so far from its creation standard that it obviates the text and intent of the Fourth Amendment and 42 U.S.C. § 1983, as well as historic common law standards, such that it deprives victims of rights violations of fair and equal justice under law and needs correction.
3. Whether this Court's qualified immunity jurisprudence runs afoul of the Constitution's Seventh Amendment and Federal Rule of Civil Procedure 56.

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**INTEREST OF THE *AMICUS CURIAE*<sup>1</sup>**

Far too many Americans live in fear of our armed law enforcement officers and other government officials violating their Fourth Amendment protections against “unreasonable searches and seizures.” Their lives, livelihoods, and liberty are frequently jeopardized, despite doing nothing illegal.

The Fourth Amendment Alliance is a 501(c)(3) educational public charity formed to help restore our unique and cherished Fourth Amendment protections to our homes, cars, cities and to our courts; that is the crux of this case. With a keen understanding of egregious rights violations by malicious officers, and with a deep understanding of the dearth of justice in our courts in “The Qualified Immunity Era,” the Fourth Amendment Alliance seeks to replace the strictures of misguided precedent with application of the text of the Fourth Amendment and Section 1983, logic, and common sense. We balance justice when rights are violated with reasonable protections for law enforcement.

Violations of Fourth Amendment protections irreparably damage the lives of citizens, harm our families, and diminish our economy. Unrestrained constitutional violations by government agents tear at the social fabric of our Republic and lead to the diminution

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. This brief has been submitted with an unopposed motion for leave to file it.



of our great nation of laws. Municipal budgets are bloated with pointless busywork and legal fees. Violations cost citizens money for legal fees and other costs, shift the costs of such violations from the violators to the victims, and deprive Americans of time, which is the most valuable of all assets because it can never be replaced. Rights violations can also cost the violated peace of mind, trust in government, livelihood, health and sometimes even life.

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## INTRODUCTION AND SUMMARY OF ARGUMENT

Only justice in *our* courts protects *our* rights in *our* streets and homes.

Ryan Stokes was retrieving a car in a parking lot. It is undisputed that Ryan was unarmed, committing no crime, and threatening no one – either before or at the time he was slain. Ryan was shot repeatedly in the back and killed by Officer William Thompson. Prior to shooting and killing Ryan, Officer Thompson did not announce his presence, issue any warning, or properly assess the situation. Again, these facts are undisputed in this case. Given these undisputed facts, killing Ryan constitutes an “unreasonable seizure” under our Constitution’s Fourth Amendment.

An alternate scenario is offered by Thompson. He claims that he believed Ryan had a gun and that he believed Ryan presented a lethal threat to another officer, despite the (again undisputed) fact that Ryan was

speaking to another officer with his hands up (and that officer deemed Ryan to be so little threat that he had already holstered his own weapon). Nevertheless, Officer Thompson made the fateful decision to kill Ryan, purportedly “to protect other officers.”

The parties have disturbingly different versions of events. There are no facts to support Officer Thompson’s version of events. Further, two other “reasonable officers” at the scene chose radically different courses in interacting with Ryan. Our Constitution provides for a jury to decide whether Officer Thompson’s actions were reasonable under the circumstances, yet Ryan’s family has been denied their right to prove their case to a jury of their peers. That is a miscarriage of justice. It must be corrected.

Americans must have recourse to jury trials whenever rights are violated, to determine whether rights are violated, to ascribe liability for violations, to determine the reasonableness of an officer’s conduct, to award damages if the jury finds a constitutional violation, and to deter future violations. The Constitution’s Seventh Amendment guarantees this right.

## **CONTEXT**

Americans respect that police officers do a lot of good work protecting lives and property. However, in a few cases, police officers steal time and money and sometimes health and life from citizens by violating Fourth Amendment protections against unreasonable searches and seizures. For example, through the past

five years, an average of three unarmed citizens have been killed by police officers at traffic stops every two weeks, and estimates say that annually over 40,000 identifiable serious violations of Fourth Amendment protections are inflicted upon Americans by police officers who are not held accountable for the violations they inflict. Lack of accountability leaves more than 2,000 officers on our streets with 10+ formal complaints filed against them, more than 20 with 100+ complaints. And it requires outrage, then takes time and effort to document and file complaints. Even repeat offenders are not rebuked. For perspective, annually over 60,000,000 interactions with our 700,000+ law enforcement officers produce over 10,000,000 arrests.<sup>2</sup> While wise observers see that rights violations are exceptions, some rights violations are so egregious that they create enough anger to tarnish all of the good work of law enforcement. The exceptions must be corrected by our courts.

Note well:

- The Constitution of the United States, with its Bill of Rights, belongs to “We the People.” Our Constitution defines and limits the powers, responsibilities, and authority of government allowed by citizens. It clearly states the rights of citizens, which “shall not be violated.” Dating back to Reconstruction, and in particular during the last sixty years, Congress and

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<sup>2</sup> Tracy Williams, *QUALIFIED IMMUNITY: SOLVED*, Chapter 1 “Stats” (Amazon, 2022)

the Executive Branch have made it clear that deprivations of civil rights should not be tolerated. All “reasonable persons” who attend high school and take US Government or Civics class are taught about the Constitution and civil rights. **The Bill of Rights remains unchanged, “clearly established” for more than 230 years.** Thus, the first law of the land must be considered first in judicial deliberations, and all other laws and judicial decisions must comport with the Constitution.

- Congress enacted Section 1983 to clearly state the will of the elected representatives of the people. **Those who violate our rights shall be held accountable in our courts.** Nobody is confused about what this federal law means, or why it was enacted. What is expected of our courts and our justices is clear. It remains the “*clearly established*” will of the people for nearly 150 years.
- Law enforcement exists solely to protect and serve citizens, and law enforcement personnel work for the people. Citizens expect to be protected and served.
- US courts belong to the citizens. Courts exist to provide “Equal Justice Under Law”. It is error for this Court, with its qualified immunity jurisprudence to, “substitute [its] own policy preferences for the mandates of Congress.” *Hoggard v*

*Rhodes*, 594 US (2021) (Thomas, J., respecting denial of certiorari)

- Civil societies create laws and law enforcement, hence police powers are granted by the citizens. Abuses of rights that “*shall not be violated*” should not be tolerated. Violations must be rectified in courts in civil societies. Respect begets respect. Civility begets civility.

**The just powers of government derive from the consent of the governed. The governed must not be abused by the powers they permit.**

American citizens are keenly interested in cases of violated Constitutional rights by anyone claiming to act on behalf of *our* government. The Constitution is our bulwark against tyranny, and inalienable rights must be defended at all costs. For as Martin Niemoller warned, if we don’t speak up when the rights of some are violated, the rights of all are in jeopardy because there may be nobody left to speak for us.

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## ARGUMENT

### I. Rights have been violated.

*“The right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated . . .”*

Constitution of the United States, Fourth Amendment

## FACTS

Ryan Stokes was shot in the back and killed by Kansas City police officer William Thompson. Thompson did not assess the situation correctly, did not announce his arrival, and did not warn that lethal force was imminent. He just shot and killed Ryan.

Ryan was getting a car to pick up his friend. Ryan committed no crime. Ryan threatened nobody. Ryan was unarmed. Ryan was simply standing, facing Officer Daniel Straub with empty hands raised above his waist.

Officer Straub had followed Ryan into a parking lot and was speaking with him after Ryan had stopped and put his hands up. Straub testified that he heard no warning or commands from Thompson and was surprised by the lethal shots that Thompson fired.

Officers Straub and Thompson saw the same scene. While Straub holstered his weapon, Thompson fired. These officers disagreed about how to interact with Ryan.

Thompson fired his weapon not once to warn, deter or stop a claimed threat, but, with purpose and intent, fired three times, killing the young man.

A police officer sneaking up from behind and killing any unarmed man standing with his hands up and speaking with another officer is an “unreasonable seizure.”

These are all statements of undisputed fact.

Facts determine whether rights are violated.

It is plainly obvious that Ryan's Fourth Amendment rights were violated.

### **ALLEGATIONS**

Officer Thompson claims that he thought that Ryan had a gun in his hand and presented a lethal threat to other officers. Thompson claims that shooting three times and killing Ryan was therefore done with 'probable cause' and merits 'qualified immunity from liability' because he was doing 'lawful police work' by 'stopping a threat to other officers.' Thompson promoted this story to the point that he was issued a commendation for killing Ryan and 'saving lives.'

No unequivocal video or other evidence supports Thompson's story. Since Thompson's claim that he thought Stokes had a gun was wrong, and since it is undisputed that Ryan had no gun in his hand (he was found unarmed after being shot), a good faith basis exists to question Thompson's story. Therefore, Rule 56 of the Federal Rules of Civil Procedure does not allow summary judgment in this case. Therefore, Ryan's family fully deserves to have a jury trial.

Thompson's unfounded allegation regarding risk to officer safety cannot support summary judgment because it is merely an allegation, and a wrong one at that. Further, objective evidence severely undermines Thompson's position because Officer Straub, standing closer and speaking with Stokes, had just holstered his

weapon. Obviously, Straub did not see a gun or feel threatened.

Thompson's unprovable and unfounded claims could be deemed dubious simply because Thompson has a self-interest in being exonerated. Motivations often prejudice testimony and it is the role of the jury to determine if that is so in every case.

It is illegitimate for any court to grant summary judgment by accepting as fact unproven and challenged statements of a party. Yet here, district court and the court of appeals have supplanted the province of the jury by doing so.

Judges and juries often draw different conclusions from any set of given facts. As this Court is well aware, split decisions happen. It would be grave judicial error of the most unsettling sort for a jury trial to be denied based on the conclusions of judges relying on unproven (and, in this case, unprovable) assertions of an officer who has shot and killed an innocent civilian. Judicial artifice must never diminish, negate or deny facts that everyone can plainly see.

## **CONTEXT**

Reasonable officers are expected to know the laws of the people they protect and serve. Any officer who does not know laws cannot enforce laws. And an officer who does not know the preeminent of all laws, the Constitution and its Bill of Rights, is unfit to hold police



powers over citizens who grant officers and departments authority to exercise police powers.

Further, police supervisors and departments have a responsibility to ensure that all officers meet this base requirement, regularly, because of the severity of damage violations can inflict. This is a reasonable expectation by citizens, therefore officers who violate rights must be accountable for rights violations they choose to inflict, although deficient trainers and supervisors must also be accountable for their roles. Incompetence and/or ignorance are not acceptable among officers selected, vetted, academy-trained and armed, who choose to assume the weighty responsibilities of exercising, with weapons, unbalanced and unchecked police powers over fellow citizens.

Facts determine violations. Unverified speculation about what officers may know is only misdirection to insignificant trivia. Thompson knew shooting a citizen risks violating Fourth Amendment protections. No reasonable person can credibly claim to not know that killing someone could violate Constitutional rights. And it is an absurdity for anyone else to claim that Thompson might not have known this, or that a fictional reasonable officer's hypothetical awareness of violations determines whether rights are violated.

### **SUMMARY POINT**

In this case Thompson may or may not have expected that our courts might shield him from liability for the rights violation he chose to inflict, but that does

not change the plain and simple and universally recognized fact – Ryan Stokes had a *right to be secure in his person, while retrieving a car in a parking lot, against the unreasonable seizure of death*. That right was violated.

**II. Rights violations deserve justice, both to remedy harms inflicted and to deter future harms.**

Our courts exist to provide justice for two purposes; to remedy harms inflicted and deter future harms. These are fair expectations of citizens, and the reason citizens engage the trouble, time, and expense to pursue claims in our courts.

Ryan Stokes' tragic death cannot be undone. A jury should decide if compensation is deserved. No more citizens should be pointlessly killed (or injured, arrested or otherwise have rights violated) while simply speaking with an officer in a parking lot (or otherwise committing no crime and threatening nobody). Our justices *must* protect our rights, first and foremost among considerations.

And while we may wish for more specificity and guidance in law about harms and remedies, it is often left to courts to observe harms and apply remedy proportionate to similar past cases or *de novo*. Legislatures cannot possibly craft laws in anticipation of all harms that might be inflicted, so our courts must provide redress with the benefit of hindsight. Our Founders anticipated this when creating our judicial branch

of government, as did Congress when it crafted Section 1983 with broad language. Thus, judicial deliberations require wisdom, reason and sound judgment from juries and judges, more so from our Supreme Court justices who are at the top of their profession. It is a weighty burden to carry, citizens acknowledge it, and we are grateful for the abundant good work our judges and justices do.

While reliance on precedent and groupthink can be tempting, an easy default, we respectfully submit that it is time to apply fresh, logical thinking to cases like this. Citizens expect that when a paradigm must be bent, our justices have the intellectual honesty and intellectual fortitude to chart a new, coherent path forward and create new precedents. This is critical in matters so gravely important as the Constitutional rights of citizens who, like Ryan Stokes, face emergent lethal threats when armed officers arrive while citizens are doing nothing illegal. For mothers everywhere, this incident must not be repeated.

**III. In this case, qualified immunity has been misapplied. Novel and unsettled legal issues must be addressed by the Court, because there is a compelling need for justice when rights are violated.**

It's simple. "Justice for violated civil rights" and "qualified immunity" are not a dichotomy. The concepts as designed can coexist in a single case. Those phrases answer different questions.

Observe too that our objective, as a society, is to Salvage the Qualified Immunity Defense, lest law enforcement be unprotected from liability for lawful conduct when it should be shielded. To do so, we must correctly reframe “qualified immunity”, and it must remain within acceptable confines. This is an urgent task, for every day we delay violations happen and lives are damaged or lost.

It is grievous judicial error for *our* courts to deny that *our* rights are violated solely because the violator has a plausible-sounding explanation. Yet this malignancy festers in our courts when rights are violated by law enforcement. We do not permit excuses to exonerate criminals or even negligent actors. Facts determine violations and facts are determined by juries. Court watchers who see this error object.

It is serious judicial error for *our* courts to create a unique fast track to summary judgment dismissal for cases of violated civil rights, to preference ‘officers who have to get back to work, and be relieved of the heavy burdens and costs of litigation’ . . . as if other citizens have no need for the same. And if Ryan’s killer didn’t wear a badge, would he be entitled to summary judgment dismissal by claiming he thought Ryan was armed . . . ? Whither goest “Equal Justice Under Law”? Court watchers who see this error firmly object.

And the proper first judicial question is not whether Thompson is “entitled to immunity,” or whether he should have known that he was violating a right “clearly established” in that circuit, or whether

some precedent informs this case. The proper FIRST question is whether, while standing in a parking lot, the rights of Ryan Stokes were violated by the *unreasonable seizure of bullets and death*. Court watchers who see this error object strenuously.

So let us consider two novel tasks.

Our FIRST novel task is to understand what qualified immunity was created to do, because its creators would not recognize it today. Whether officers have “qualified immunity” from liability for rights violations requires us to correctly frame what is and is not “qualified” (limited, not absolute) “immunity” (protection, particularly from liability for conduct in this context). While some form of immunity has long existed in common law, the phrase “qualified immunity” was created to shield from liability police officers who violated rights at the direction of both a law and training (*Pierson v Ray*, 1967<sup>3</sup>). Those officers were not liable because they were acting as ‘agents’ of a law, and *the principal is liable for the agent’s conduct*.

The concept has been incrementally corrupted, and the phrase misapplied in the decades since (and the litany of cases is well known), to the point where it has become nearly complete absolution when officers violate rights, no matter how obvious or egregious the violation. Logic fails. That offends citizens. It is impossible to make a cogent and compelling argument for implementing “qualified” immunity in its present

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<sup>3</sup> *Pierson v Ray*, 386 US 547 (1967)

protocol, for it obviates protections for well-established, fundamental constitutional rights.

As long as “immunity” illogically denies that rights are violated, rights violations will continue apace, followed by government employees pleading, “*I expect immunity. Don’t critique my (flawed/split-second) decision. Provide no rebuke or justice.*”

As a society of laws, we must shed groupthink and precedent when they become illogical.

Now, it is reasonable, in great civil societies, to allow law enforcement officers to act without fear of liability for rights violations when officers conduct themselves in accord with law, training or orders. Educated citizens respect this and accept that a limited “immunity from liability” may apply in many circumstances.

However, whether a rights violator has immunity does NOT change the facts that determine whether rights were violated, the FIRST question. Segregating these two points is the critical crux of the approaching paradigm change.<sup>4</sup>

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<sup>4</sup> Most Americans know we have great difficulty getting justice when rights are violated. The status quo must change. While the ‘defund police’ crowd seeks to reduce rights violations by reducing the size of police forces, that is clearly error that does not assure justice for violations and does not assure a reduction in the number or severity of violations. It does, however, diminish society’s ability to protect lives and property. Similarly, the “end qualified immunity” crowd seeks to deny all liability protection for government actors, which would make individuals liable when

We can observe many cases where facts, and increasingly video, prove that rights are violated because a citizen committed no crime and threatened no one, thereby negating the existence of *actual* probable cause required for “reasonable searches and seizures.” False allegations or erroneous assumptions, particularly when implausible and unsupported by any objective evidence, do not make a seizure or search reasonable. And while there may be *de minimus* harm to an innocent person from being temporarily stopped-and-frisked in a high crime district, pointless arrest damages lives and pointless death is intolerable.

Qualified immunity in its current form, and its derivatives, have left many citizens damaged and uncompensated due to excuses by violators. Angst simmers in our communities.

Reasonable citizens categorically reject the idea that there exists in our statutes or in common law any complete absolution from liability for all rights violations. And nothing of the sort should ever be allowed by our courts. Officers are human. In addition to all the good work they do, they sometimes make mistakes. They sometimes act on erroneous assumptions, emotion, impulse, or bias. Violations happen.

Reasonable citizens categorically reject the idea that an explanation or excuse by an accused

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they should not be. This also is error. Both approaches overcorrect and risk damaging civil society.

Better: “solve QI.” Qualified immunity has a place, but it must be “qualified.”

government official, who is just as honest as other men or women and no more so, might be deemed equivalent to fact. Many defendants are motivated to deceive in order to be absolved of liability. Serious motivation that is. Especially when rights are violated by government officials, credibility and truthfulness necessarily must be weighed by a jury.

Reasonable citizens categorically reject the idea that any credence should ever be given to a judge's opinion about what a fictional "reasonable officer" might know, think, or do, when a set of actual facts exists between actual litigants. Citizens also reject the notion that a judge's opinion about what is "objectively reasonable" should ever supplant facts or usurp the province of a jury.

Reasonable citizens categorically reject the notion that judicial branch employees can dismiss by summary judgment cases of rights violations by other government employees. That is entirely illogical, and unsustainable. The Seventh Amendment controls. Such decisions obviously are the province of juries of citizens. As Thomas Jefferson, a man who thought long and deep about structures of government and courts, observed when he wrote to Thomas Paine,

*"I consider the trial by jury as the only anchor ever yet imagined by man by which a government can be held to the principles of its constitution."*

Truth. In cases of rights violations or other constitutional matters between government and citizens, it



is essential that resolution must almost always be by jury trials. Consensus matters. Decades of corrupted qualified immunity precedent, and too many damaged lives denied justice, could have been avoided by properly engaging juries.

So, this Court should first reframe what is and is not ‘qualified immunity’.

Our SECOND novel legal task is to identify how and when “correctly qualified immunity” should be applied.

To secure justice we as a society, through our courts, must address the correct questions in the correct order. In cases of violated Constitutional rights, there are Three Critical Questions:<sup>5</sup>

1. *Were rights violated?* This is a definitive yes or no inquiry, **fact-based, and must be considered from the perspective of “reasonable citizens”** who own the Constitution, courts, and the mechanisms of law enforcement . . . and **who sit on juries**. This inquiry ignores assertions by violators, actual named violators or fictional “reasonable violators.” An excuse by the violator does not inform this answer, nor alter it. **FIRST: Were rights violated?**

2. *Who is liable for the violation?* If there is a violation, someone has liability. Who? Did the violator(s) use free will . . . ? Or were violators, (i) acting on

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<sup>5</sup> See “QUALIFIED IMMUNITY: SOLVED” by Tracy Williams, Amazon, 2022, Chapter 7.

orders, ala Justice John Marshall’s inquiry eloquently deliberated in *Little v Barreme*,<sup>6</sup> where a superior may be liable, or (ii) acting pursuant to training – where a department, academy or device manufacturer may have liability, or (iii) acting pursuant to a law, where a legislative body or its counsel didn’t vet a law’s conflict with the Constitution<sup>7</sup> and may be responsible for the violation . . . ?

Obviously, liability for free will decisions is on the violators.

Where violations result from ‘*officers acting as agents, at the direction of a principal*’, then [only] can citizens accept that ‘qualified immunity’ might shield the violator . . . *because someone else is liable (its creation standard)*. The correct point to inquire whether qualified immunity shields rights violators is [only] here, as a subset of the Second Critical Question that society asks, and that society answers through our courts/juries. Naturally, the correct liable party must be identified in the suit, but that is the responsibility of attorneys and litigants. And granted, other immunities must be addressed, but that is not our present task.

- *Logically addressing liability, and properly identifying where the qualified immunity question belongs, creates a novel pattern of judicial deliberation that this Court must install, **now**, to get this*

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<sup>6</sup> *Little v Barreme*, 6 US 170 (1804)

<sup>7</sup> As in *Pierson v Ray*, *supra*.

*case right, and for the benefit of all citizens who must be out on our streets tomorrow, and for the benefit of all of our good law enforcement officers who already know where the guardrails are.*

- *Correctly settling the proper inquiries in this case will also create a new precedent for other cases and other courts.*

***The Court's opportunity to address significant societal issues within these two points absolutely merits a grant of certiorari.***

3. *Who owes restitution, and how much?* This springs from the assignment of liability, and requires the wisdom of our juries, judges, and justices to assess and value damages fairly. Legislatures might act (many have) to create a structure of indemnity, to define and assure adequate compensation for victims and provide proper protections for law enforcement, but that is a task for the legislative body. This Court's present tasks are clear and identifiable and urgent. Tell the truth. Dispense honest justice. Establish logical precedents. Protect the Constitutional rights of citizens.

Logic, common sense, and the American people require addressing the question of qualified immunity where it logically belongs, as a subset of Critical Question Two.

Note: Immunity does not inform whether rights are violated. And it never did.

So, Three Critical Questions hearken for answers in this case of Officer Thompson killing Ryan Stokes.

1. Would a jury deem Ryan's Fourth Amendment protection against "unreasonable seizure" violated by Thompson killing him? Almost certainly, yes. At the very least, the fact that both sides invested years into litigation indicates that serious debate exists about material facts that have been interpreted differently. So, in our constitutional republic, a jury should decide.

2. Who is liable for the violation? Did Thompson use free will, or could someone else possibly be liable, and hence could correctly 'qualified' immunity apply? Seems abundantly clear, yet a jury should decide.

3. Who owes restitution, and how much, derive from the jury's answers to #2.

Assurance of payment becomes a question of personal responsibility, department or municipal indemnification, employment agreements, liability indemnity insurance, and/or etc. Too many municipalities settle far too many claims with confidential settlements today, costing taxpayers hundreds of millions without taxpayer consent. Resolving this element of the enterprise of government is the responsibility of the elected representatives of the people. Courts must simply be honest and logical and deliver truth and justice to those who plead for it.

Ryan's rights were clearly violated. By following well-intentioned but misguided precedents justice has been denied by our courts by incorrectly applying

“qualified” immunity. Justice was denied when summary judgment was granted in this case because there are numerous genuine disputes about material facts. Under these circumstances, a trial by jury is required. We respectfully pray that you make it so.

**IV. Law enforcement immunity from liability is corrupted, must be reframed by SCOTUS. Constitutional civil rights protections must be restored, to our homes, streets, and our courts. Solving this vexing conundrum is one of the most pressing and important legal issues of our time.**

This Court must correct misguided precedents and end egregious errors of The Qualified Immunity Era. As a civil society, we can no longer pretend that the judicial regime of shielding the indefensible with jargon has credibility or constitutes justice.

The Founders who just fought a Revolutionary War to secure the freedoms in the Constitution’s Bill of Rights, and built consensus among state leaders to approve the text of those rights, would never accept the Court’s qualified immunity regime as it exists today for it obviates rights, and can subject a citizen’s freedom, health and life to the momentary whims of unchecked armed tyrants with scant hope for judicial correction. In fact, abuses of rights by armed government bullies significantly contributed to fomenting that Revolution.

Perceived injustice, caused at least in part by qualified immunity, created the great civil unrest of 2020. Citizens demanded justice.

When regrettable incidents happen, society must be able to say, "There will be justice." Yet in The Qualified Immunity Era justice is too often denied. We can correct that.

Precedent must not be obfuscation by citation, with rulings containing more citations than facts.

The search for precedents to cite is false flag busy-work for both violators and the violated, who scramble to assemble malleable quotes describing dissimilar incidents. The nation and clients would be better served by clever attorneys writing original advocacy for the unique matters at hand.

Because The Qualified Immunity Era has created precedents that have denied clearly merited justice in far too many cases, officers who violate rights have incentive to make fallacious assertions, contradict direct evidence, alter or manufacture evidence, commit felony perjury, and/or engage in witness tampering (including coercing other officers at a scene to support dubious assertions) to try to claim "probable cause" and the liability absolution of "qualified immunity." Law enforcement sometimes withholds or destroys bodycam video and other objective evidence in order to hide the immutable objective truth of rights violations that video or evidence establishes. Some departments even fail to report shootings of citizens to the FBI. As a

result, The Qualified Immunity Era has seriously eroded trust in law enforcement, and that is a modern tragedy.

Summary judgment dismissals of valid and meritorious requests for jury trials have been done by rote regurgitation of entirely dissimilar precedents, with each such ruling further corrupting precedent. As a result, The Qualified Immunity Era has undermined trust in our courts essential for civil societies to flourish, and that too is a modern tragedy.

Some federal judges have acknowledged the illogical and indefensible in cases where qualified immunity and its derivatives have been applied, including in the Second Circuit (*McKinney v Middletown*), the Fifth Circuit (*Jamison v McClendon*) and Tenth Circuit (*Estate of Dillon Taylor v Bron Cruz*). Even Supreme Court justices have observed the need to reform the qualified immunity regime.

This Honorable Court must fix this. Now.

As a society we seek truth and justice. Our current justices must take the lead, summon courage and leadership, create new protocols when rights are violated, reframe what “qualified immunity” is and is not, and establish new precedents.

As a society, we must correct course, lest we continue to lurch incrementally toward a dystopian future. Common sense and logic must be restored. Constitutional rights must be restored to our streets

and protected by our courts, lest those rights become meaningless words or a cause célèbre.

So, let us bend the paradigms of precedents cobbled together in The Qualified Immunity Era. Let logic, common sense, truth, and the Constitution prevail.

We cannot repair the damage done to past cases, but we can make the future better. As arborists say, “The best time to plant a tree is 25 years ago. The second best time to plant a tree is today.”



## SUMMARY

For our children and grandchildren, “Let us fix the problem, not the blame.”

A rights violation is a rights violation. Violations damage lives and deserve justice, to remedy harms and deter future harms. When violations happen, let us assure justice.

Law enforcement immunity from liability is important, but it must be “qualified.”

Jury trials must be required whenever government actors violate our Constitution. Juries build consensus, and jury consensus, never judges, must decide who tells the truth. Juries of the people best hold our government to our Constitution.

American citizens are counting on our Supreme Court justices to illuminate a new, logical path forward . . . to restore Constitutional rights protections to our streets and to our courts.



Please solve and reframe qualified immunity. Doing so logically, properly identifying where immunity questions belong, will create novel judicial protocol. Correctly ordering the real questions in this matter will assure justice in this case, and this new precedent will help assure justice whenever rights are violated. For these two reasons a grant of certiorari is merited . . . and required.

Thank you for your thoughtful consideration, and for your good work on behalf of the American people.



## CONCLUSION

**The petition for certiorari should be granted, the rights of the American people should be affirmed, the challenge of correctly re-defining ‘qualified immunity’ should be won by this Court, and new logical protocols and precedents for “justice when Constitutional rights are violated” should be established for America.**

Respectfully submitted,

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