

IN THE
Supreme Court of the United States

MOISES JIMENEZ,

Petitioner,

v.

ALEXANDRE ANSARI,

Respondent.

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

**BRIEF OF THE INTERNATIONAL MUNICIPAL
LAWYERS ASSOCIATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The International Municipal Lawyers Association (“IMLA”) is the nation’s oldest and largest organization devoted solely to local government law. A nonprofit, nonpartisan, professional association, IMLA’s membership comprises more than 2,500 local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA’s mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, as well as state and federal appellate courts.

This case is of major importance to IMLA and its members. It is essential that qualified immunity be properly afforded to law enforcement officers and that constitutional standards for police liability are clear, uniform, and consistent with this Court’s Due Process jurisprudence. IMLA files this brief not only in response to the improper denial of qualified immunity in this case but to bring to the Court’s attention *Cotton v. Hughes*, 176 F.4th 886 (6th Cir. 2026), issued just eight days after this decision, in which the Sixth Circuit doubled down on its flawed qualified immunity analysis—further confirming the urgency of this Court’s intervention to resolve the

1. No counsel for any party authored this brief in whole or in part, and no person or entity other than amicus made a monetary contribution intended to fund the preparation or submission of this brief. The parties received notice within 10 days of filing and the Petitioner and Respondent have both consented to the filing of this brief.

circuit split on the questions presented. This result has troubling implications for local governments in the Sixth Circuit and potentially for the nearly 20,000 law enforcement agencies and more than 700,000 uniformed officers nationwide: the availability of qualified immunity for law enforcement personnel cannot fluctuate simply due to geography. By disregarding this Court’s well-established qualified immunity precedents, the Sixth Circuit’s outlier rule will impose catastrophic financial burdens on local governments and exacerbate the already-significant challenges they face in hiring and retaining uniformed officers.

SUMMARY OF ARGUMENT

This case involves a misapplication of *Brady* responsibilities to uniformed officers, resulting in a denial of qualified immunity and a finding of liability at odds with Supreme Court precedent. That diversion is reiterated in the Sixth Circuit’s recent decision in *Cotton v. Hughes*, 176 F.4th 886 (6th Cir. 2026), decided just eight days after the opinion below. *Cotton* powerfully confirms the need for this Court to grant certiorari and resolve the circuit split on two questions of fundamental importance to constitutional law and law enforcement: (1) what level of culpability is required to impose liability on a police officer for nondisclosure of evidence under *Brady v. Maryland*, 373 U.S. 83 (1983), and (2) whether the withheld evidence must be admissible to give rise to a viable *Brady* claim.

First, continuing the misadventure visited on Officer Jimenez in this case, *Cotton* confirms the Sixth Circuit’s unbroken reliance on *Moldowan v. City of Warren*, 578 F.3d 351 (6th Cir. 2009), to impose an “unwavering” *Brady*

duty on police officers—a duty that, unlike in every other circuit to address the question, may be violated through mere negligence. This standard conflicts with the approach of the Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits which require recklessness, at minimum, and in many cases, bad faith. It also conflicts with this Court’s holding in *Daniels v. Williams*, 474 U.S. 327, 328 (1986), that “the Due Process Clause is simply not implicated by a negligent act of an official,” and with *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998), which held that “liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process.”

Second, *Cotton* demonstrates that the Sixth Circuit’s procedural framework makes it structurally impossible to resolve the admissibility question on interlocutory appeal. When the Officers in *Cotton* argued that the affidavits underlying the *Brady* claims were inadmissible hearsay, the court declined to reach the merits, holding that any “dispute over the admissibility of evidence” strips the court of interlocutory jurisdiction. *Cotton*, 176 F.4th at 900 (citing *Clark v. Abdallah*, 131 F.4th 432, 446 (6th Cir. 2025)). This procedural doctrine means that officers in the Sixth Circuit can never obtain interlocutory resolution of whether inadmissible evidence will sustain a *Brady* claim—the very question on which the circuits are split and which this Court left open in *Wood v. Bartholomew*, 516 U.S. 1 (1995).

Third, *Cotton* reveals that the culpability question likewise remains unresolved within the Sixth Circuit. The Officers’ bad faith argument was not decided on the merits—it was found to have been forfeited. *Cotton*,

176 F.4th at 900. The Sixth Circuit has thus applied *Moldowan*'s negligence standard for more than fifteen years without ever squarely confronting whether a higher *mens rea* is required. Only this Court can provide the much-needed clarity.

ARGUMENT

I. The Sixth Circuit's recent decisions confirm the urgency of resolving the circuit split on the culpability standard for police officers under *Brady*.

A. The depth and breadth of the circuit split requires this Court's intervention.

The circuit split regarding individual officer culpability is not marginal or speculative: at least eight circuits have squarely rejected the Sixth Circuit's approach to *Brady* claims.

The Third, Fourth, Fifth, and Eighth Circuits require proof that the officer acted in bad faith—that is, that the officer intentionally withheld evidence for the purpose of depriving the defendant of its use. See *Jean v. Collins*, 221 F.3d 656, 663 (4th Cir. 2000) (requiring that an officer “intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of that evidence”); *Villasana v. Wilhoit*, 368 F.3d 976 (8th Cir. 2004); *Helmig v. Fowler*, 828 F.3d 755 (8th Cir. 2016) (“failure to disclose exculpatory evidence does not constitute a *Brady* violation in the absence of bad faith”); *Brown v. Miller*, 519 F.3d 231 (5th Cir. 2008) (requiring “deliberate concealment”); *Gibson v. Superintendent*, 411 F.3d 427 (3d Cir. 2005) (police liable “when they affirmatively conceal material evidence from the prosecutor”).

The Seventh, Ninth, and Tenth Circuits require proof that the officer acted intentionally or at least recklessly—explicitly rejecting negligence as a basis for liability. See *Moran v. Calumet City*, 54 F.4th 483 (7th Cir. 2022) (“negligent conduct does not offend the Due Process Clause . . . evidence is considered suppressed in a § 1983 suit only if a police officer acted intentionally or at least recklessly”); *Tennison v. City & County of San Francisco*, 570 F.3d 1078 (9th Cir. 2009) (requiring “deliberate indifference to or reckless disregard”); *Tiscareno v. Anderson*, 639 F.3d 1016 (10th Cir. 2011) (“an investigator must not knowingly or recklessly cause a *Brady* violation”).

The Seventh Circuit’s decision in *Mims v. City of Chicago*, 155 F.4th 970 (7th Cir. 2025), clearly illustrates the reckless standard. Bernard Mims served ten years on a murder conviction before his criminal charges were dismissed. He then sued two police detectives for allegedly withholding an exculpatory audio recording. Applying its settled rule from *Moran*, the Seventh Circuit held that negligent conduct does not offend the Due Process Clause and that evidence is deemed suppressed in a § 1983 suit only if a police officer acted intentionally or at least recklessly in failing to turn over evidence to the prosecution. *Mims*, 155 F.4th at 975 (quoting *Miranda*, 900 F.3d at 353, and *Moran*, 54 F.4th at 493). The court emphasized that police “generally discharge their *Brady* duty by turning over exculpatory evidence to the prosecutor, thereby triggering the prosecutor’s disclosure obligation,” (*id.* (quoting *Beaman*, 776 F.3d at 512)) and held that an officer who knew the evidence was available to the prosecution through another source “could not have thought that he had the power to conceal” it. *Id.* at 977-78 (citing *Moran*, 54 F.4th at 495). This stands in direct

contrast to the Sixth Circuit’s approach in *Ansari* and *Cotton*, where the court does not require any showing of intentional or reckless concealment.

Similarly, the Eleventh Circuit holds that “a negligent act or omission cannot provide a basis for liability in a § 1983 action seeking compensation for loss of liberty occasioned by a *Brady* violation.” *Porter v. White*, 483 F.3d 1294 (11th Cir. 2007). And the Second Circuit has suggested “that a civil *Brady* claim requires a showing that the non-disclosure was intentional.” *Bellamy v. City of New York*, 914 F.3d 727 (2d Cir. 2019).

Against this backdrop, the Sixth Circuit stands alone in permitting liability based on what amounts to negligence. *Ansari* and *Cotton* confirm that this outlier position is hardening. Review is warranted to restore national uniformity on a question that affects every police officer in the country.

B. The Sixth Circuit’s decision in *Cotton* entrenches the *Moldowan* negligence standard.

In *Cotton*, the Sixth Circuit once again articulated the rule from *Moldowan* that “the police share in the state’s *Brady* obligations and have a responsibility to turn over evidence with ‘apparent’ exculpatory value to the prosecutor.” *Cotton*, 176 F.4th at 898 (quoting *Moldowan*, 578 F.3d at 381-82). This standard imposes a duty triggered by the mere “apparent” exculpatory value of the evidence—a standard indistinguishable from negligence, as it asks only whether a reasonable officer would have recognized the evidence’s exculpatory character, not whether the officer intentionally or recklessly withheld it.

Ansari and *Cotton* are the latest in a line of decisions—including *Salter v. City of Detroit*, 133 F.4th 527 (6th Cir. 2025), *Clark v. Louisville-Jefferson County Metro Government*, 130 F.4th 571 (6th Cir. 2025), and *Est. of Andrews v. City of Cleveland*, 112 F.4th 436 (6th Cir. 2024)—that make clear the Sixth Circuit will not reconsider this standard on its own. Each new decision deepens the entrenchment and widens the split with sister circuits.

C. *Cotton* shows the culpability question remains unresolved even within the Sixth Circuit.

Remarkably, the Sixth Circuit has never squarely held, in a case where the issue was properly presented and decided on the merits, that negligence suffices. In *Cotton*, the Officers argued they were entitled to qualified immunity because insufficient evidence showed they acted in bad faith. But the court declined even to consider that argument on the merits—it found the point forfeited. *Cotton*, 176 F.4th at 900 (citing *Armstrong v. City of Melvindale*, 432 F.3d 695, 700 (6th Cir. 2006)).

In sum, the Sixth Circuit effectively applies a negligence standard by default—through *Moldowan*’s formulation of an “unwavering” duty triggered by “apparent” exculpatory value—without ever explicitly rejecting the bad faith or recklessness thresholds required by other circuits. The result is that, in the Sixth Circuit, officers face the most plaintiff-friendly standard in the country without that standard ever having been validated in a direct confrontation with the alternatives. This is precisely the kind of unexamined assumption that certiorari is designed to correct.

II. The admissibility question cannot be resolved within the Sixth Circuit’s existing framework.

A. *Cotton* reveals a structural barrier to resolution.

In *Cotton*, the officers argued that the *Brady* claims were meritless because the Nard and Frazier affidavits constituted inadmissible hearsay. The Sixth Circuit refused to reach this argument, holding: “When an Officer’s appeal rests crucially on a dispute over the admissibility of evidence, we lack jurisdiction to review the appeal.” *Cotton*, 176 F.4th at 900 (citing *Clark v. Abdallah*, 131 F.4th 432, 446 (6th Cir. 2025)).

This holding creates a structural impossibility: the admissibility question can never be resolved on interlocutory appeal in the Sixth Circuit because it will always involve a dispute over whether particular evidence is or is not admissible—and the court treats all such disputes as factual questions outside its interlocutory jurisdiction. The only way to obtain a ruling on the merits is after trial—by which point the officer has already been denied qualified immunity—the very protection that the interlocutory appeal process is designed to provide.

This structural barrier is not unique to *Cotton*. The same jurisdictional limitation foreclosed Officer Jimenez’s ability to raise the admissibility argument in this case. *Cotton* makes clear that the Sixth Circuit will decline to assess the admissibility question on jurisdictional grounds, regardless of how the argument is framed.

B. This Court left the admissibility question open in *Wood v. Bartholomew*.

In *Wood v. Bartholomew*, 516 U.S. 1 (1995), this Court addressed whether the prosecution’s failure to disclose the results of an inadmissible polygraph test constituted a *Brady* violation. The Court held that nondisclosure was not material because it would not have affected the outcome of the proceeding. But the Court explicitly did not decide the broader question of whether inadmissible evidence can ever be considered “material” under *Brady*.

As the First Circuit recognized in *Ellsworth v. Warden*, 333 F.3d 1 (1st Cir. 2003), “[t]he circuits are split on whether a petitioner can have a viable *Brady* claim if the withheld evidence itself is inadmissible.” Some circuits, like the Fifth Circuit in *Spence v. Johnson*, 80 F.3d 989 (5th Cir. 1996), have held that “inadmissible evidence may be material under *Brady*.” Others, like the Seventh Circuit in *United States v. Souffront*, 338 F.3d 809, 823 (7th Cir. 2003), have held that “[t]he failure to disclose untrustworthy and unsubstantiated allegations against a government witness is not a *Brady* violation.”

The Sixth Circuit’s approach in both *Ansari* and *Cotton* effectively permit *Brady* claims based on evidence that may be inadmissible—uncorroborated rumors and anonymous tips in *Ansari*, and affidavits characterized as “the rankest type of inadmissible hearsay” in *Cotton*—while refusing to decide whether admissibility is actually required. This leaves officers subject to liability for failing to disclose information that might never have been presented to a jury, a result clearly at odds with *Brady*’s concern for evidence “material” to the defense at trial.

C. The combination of the negligence standard and the admissibility gap creates an untenable regime.

When the negligence standard is combined with the absence of an admissibility requirement, the result is obvious: police officers in the Sixth Circuit can face personal liability for negligently failing to disclose inadmissible hearsay. This is the practical reality that *Ansari* and *Cotton* together illustrate. No other circuit imposes liability under these conditions. The combination demands this Court’s intervention.

III. This Court’s Due Process precedent forecloses negligence-based liability for police officers.

A. The Due Process framework requires more than negligence.

This Court has repeatedly held that the Due Process Clause does not impose liability for negligent conduct by government officials. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986) (“the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.”); *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (“liability for negligently inflicting harm is categorically beneath the threshold of constitutional due process” and that only “the most egregious official conduct” rises to a due process violation.); *Arizona v. Youngblood*, 488 U.S. 51 (1988) (holding a due process violation based on failure to preserve potentially useful evidence requires a showing of bad faith—not merely negligence.)

The Sixth Circuit’s *Moldowan* standard—imposing liability whenever an officer fails to disclose evidence with “apparent” exculpatory value—is a negligence standard. It asks whether a reasonable officer should have recognized the evidence’s significance, not whether the officer deliberately or recklessly concealed it. This standard is irreconcilable with *Daniels*, *Lewis*, and *Youngblood*.

B. The Police-Prosecutor distinction reinforces the need for a higher standard.

This Court in *Brady v. Maryland* imposed a disclosure obligation on “the prosecution”—the government actors responsible for evaluating evidence and presenting the state’s case. 373 U.S. at 87. In *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), this Court extended the prosecutor’s duty to include “learn[ing] of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” But *Kyles* did not hold that police officers bear an independent constitutional obligation to evaluate materiality; rather, it held that the prosecutor must gather information from the police.

This distinction is constitutionally significant. Prosecutors are trained legal professionals who can evaluate whether evidence is material and exculpatory—police officers are not. Requiring officers to make complex legal judgments about materiality—and holding them personally liable for negligent errors in that judgment—imposes a standard that no decision of this Court has ever authorized and that the majority of circuits have rejected.

The Sixth Circuit’s broad pronouncement in *Cotton* that “[t]he Fourteenth Amendment requires prosecutors, police officers, and forensic scientists to disclose favorable evidence” treats constitutionally distinct roles as identical, extending *Brady*’s logic well beyond the parameters set by this Court. *Cotton*, 176 F.4th at 898. The conflation of prosecutorial and investigative functions further demonstrates the need for this Court to provide clarity on the proper scope of police officers’ *Brady* obligations.

The Seventh Circuit in *Mims* concretely illustrates this police-prosecutor distinction. It recognized that the “affirmative duty to discover and disclose exculpatory evidence primarily falls to the prosecutor” and that police “generally discharge their *Brady* duty by turning over exculpatory evidence to the prosecutor.” *Mims*, 155 F.4th at 975, 978 (citing *Beaman*, 776 F.3d at 512). In *Mims*, the court found no police liability precisely because the exculpatory recording was available to the prosecutor through the court files, demonstrating that the Seventh Circuit assigns the disclosure burden to the prosecutor once the evidence is available to that office. In contrast, the Sixth Circuit in *Cotton* stated flatly that “[t]he Fourteenth Amendment requires prosecutors, police officers, and forensic scientists to disclose favorable evidence”—erasing the distinction that the Seventh Circuit and this Court in *Kyles* recognized.

C. Qualified Immunity principles reinforce the need for certiorari.

Qualified immunity protects police officers from suit unless “existing precedent” places the constitutional question “beyond debate.” *Ashcroft v. al-Kidd*, 563 U.S.

731, 741 (2011). There is no decision of this Court that has held that *Brady* applies to individual police officers or that nondisclosure by police may be actionable absent bad faith or recklessness. Yet the Sixth Circuit treats these propositions as “clearly established” based solely on its own precedent—precedent that conflicts with the holdings of at least eight other circuits.

In *Cotton*, the officers waived the clearly established argument. But in *Jimenez*, the issue was squarely presented, and the Sixth Circuit held that *Moldowan* and *Est. of Andrews* “clearly established” police officers’ *Brady* duties as of 2012-2013—without citing any decision of this Court. This approach to the clearly established prong conflicts with this Court’s repeated admonition that qualified immunity should be denied only when “every reasonable official” would have understood the conduct was unlawful. *Ashcroft*, 563 U.S. at 741.

When the circuits are deeply divided on the very existence and scope of a duty, it strains credulity to say that law is “clearly established.” An officer in the Fourth, Fifth, or Eighth Circuit faces no liability absent bad faith; an officer in the Seventh or Ninth Circuit faces no liability absent recklessness; but an officer in the Sixth Circuit faces personal liability for negligence. This disparity itself demonstrates that the law is not “beyond debate”—and that certiorari is needed.

D. *Zorn v. Linton* confirms that the Sixth Circuit’s clearly established analysis cannot stand.

This Court’s March 2026 decision in *Zorn v. Linton*, 146 S. Ct. 926 (2026), robustly reinforces that the Sixth

Circuit’s qualified immunity analysis in *Ansari* is untenable. *Zorn* holds that qualified immunity may be denied only where precedent defines the right with a “high degree of specificity” such that “every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.” *Id.* at 93. This Court reversed a denial of qualified immunity even though the prior circuit precedent involved the exact same type of force against the same category of subject, holding that a seemingly minor factual difference—whether warnings are given—was sufficient to required immunity.

Applied to *Brady*, that standard defeats the Sixth Circuit’s reasoning. The court relied solely on *Moldowan*, a 2009 circuit decision involving materially different facts, to hold that police *Brady* duties were clearly established in 2012-2013. Under *Zorn*, *Moldowan* cannot clearly establish the law for Officer Jimenez’s specific circumstances because: (1) this Court has never held that *Brady* applies civil liability to police officers; (2) this Court has repeatedly questioned whether circuit precedent suffices; (3) *Moldowan* involved different types of evidence and different circumstances; and (4) the circuits are deeply divided over whether any police *Brady* obligation exists and what standard governs such circumstances. If identical force under nearly identical circumstances does not clearly establish the law in *Zorn*, a 2009 circuit decision cannot clearly establish police *Brady* duties under materially different facts.

IV. The Sixth Circuit’s hyper-technical Rule 50(a) standard creates an additional circuit split requiring this Court’s intervention.

A. The Sixth Circuit demands granular specificity that other circuits reject.

The Sixth Circuit’s outlier stance is not limited to *Brady* liability. The court required Officer Jimenez to articulate, in his mid-trial oral Rule 50(a) motion, the precise qualified immunity argument he wished to raise on appeal: that no clearly established law required disclosure of the specific type of evidence at issue. The court acknowledged that Jimenez raised qualified immunity and argued the “clearly-established” prong but held that this argument was forfeited because he did not specifically argue that “uncorroborated rumors and anonymous tips” were not clearly established as *Brady* material. Pet. App. A at 15a-16a.

That holding contradicts the approach of at least five other circuits, which adopt a notice-based standard permitting refinement after the verdict. See *Gonzalez-Bermudez v. Abbott Labs. P.R., Inc.*, 22 F.4th 1, 13–14 (1st Cir. 2021); *Laborers’ Pension Fund v. A & C Envtl., Inc.*, 301 F.3d 768, 776–78 (7th Cir. 2002); *Taylor Publ’g Co. v. Jostens, Inc.*, 216 F.3d 465 (5th Cir. 2000); *United Int’l Holdings, Inc. v. Wharf (Holdings) Ltd.*, 210 F.3d 1207, 1228–29 (10th Cir. 2000); *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 519 n.18 (3d Cir. 1998).

B. This Court’s precedent supports a notice-based approach.

Rule 50(a) requires notice and an opportunity to cure, not the most granular theory before the verdict. Rule 50(a)(1) permits judgment as a matter of law when “a reasonable jury would not have a legally sufficient evidentiary basis,” and Rule 50(a)(2) requires only that the motion “specify the judgment sought and the law and facts that entitle the movant to the judgment.” Fed. R.Civ. P. 50(a)(1), (2). The Sixth Circuit’s own precedents recognize that technical precision is not required in other contexts. See *Ford v. County of Grand Traverse*, 535 F.3d 483, 492–93 (6th Cir. 2008); *Kusens v. Pascal Co.*, 448 F.3d 349, 361 (6th Cir. 2006).

This Court’s decisions point to the same direction. *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 400–01 (2006), treats Rule 50(a) as the benchmark for a general sufficiency challenge and permits refinement after the verdict. *Ortiz v. Jordan*, 562 U.S. 180, 183–85 (2011), assumed that oral Rule 50(a) motions adequately raised qualified immunity and found forfeiture only when the movant failed to renew under Rule 50(b). *Dupree v. Younger*, 598 U.S. 729 (2023), confirms that notice—not granular pre-verdict formulation—governs preservation.

C. The Rule 50(a) forfeiture compounds the harm of the substantive circuit splits.

The Rule 50(a) issue does not exist in isolation. It operates in conjunction with the substantive *Brady* circuit splits to create a uniquely unfair regime in the Sixth

Circuit. An officer who is held to a negligence standard, unlike officers in other circuits; who can be held liable for failing to disclose inadmissible evidence, unlike in other circuits; who cannot obtain interlocutory resolution of the admissibility question under *Cotton*; and who loses the right to challenge these doctrines on appeal if his mid-trial oral motion does not articulate the precise legal theory with granular specificity, faces a system designed to ensure liability that no other circuit imposes.

The combination of substantive and procedural barriers for police officers to defend themselves in court makes Supreme Court intervention essential. The Sixth Circuit's negligence rule, its openness to liability based on inadmissible material, its refusal to review admissibility disputes on interlocutory appeal and its hyper technical preservation rule reinforce one another: each prevents an officer from obtaining meaningful review, and together they foreclose a fair opportunity to contest the legal premises of liability.

D. Intervention is needed to prevent officers from being trapped between competing procedural requirements.

The procedural trap is particularly acute because *Clark v. Louisville-Jefferson County Metro Government*, 130 F.4th 571 (6th Cir. 2025)—the case the Sixth Circuit would have applied to Jimenez's argument—was decided after the trial concluded in this case. The court therefore found that Officer Jimenez forfeited an argument based on a case that did not yet exist at the time of his Rule 50(a) motion.

Officers cannot preserve arguments based on case law not yet decided, but they also cannot raise those arguments for the first time on appeal. That self-defeating dilemma demonstrates why only this Court's intervention can break the cycle: the Court must require a notice-based Rule 50(a) standard that permits refinement as the law and the evidentiary record develop, while preventing forfeiture of a meritorious qualified immunity argument that was fairly identified before the verdict.

V. The price for misapplication of *Brady* liability to police officers will be borne by local governments and their taxpaying constituents.

The consequences of expansive *Brady* culpability are immense. Beyond the individual officer's obvious interest in avoiding negligence-based *Brady* litigation, the absence of uniform *Brady* standards has overwhelming implications for municipalities. Under *Monell* and its progeny, local governments face direct liability when constitutional violations result from their policies or customs, and as a practical matter, municipalities indemnify individual officers against personal judgments. Relatedly, many states require municipalities to indemnify police officers for tort judgments within the scope of their employment. And as a practical matter, municipal budgets bear the burden of the vast majority of these lawsuits. Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. Rev. 885, 890 (2014) (reporting on widespread indemnification). Uncertainty about an officer's constitutional duty therefore becomes uncertainty about a city's financial exposure.

Reverse convictions are a major element in that uncertainty. The *Ansari* verdict—\$10 million against a

single retired detective based on his failure to pursue a questionable anonymous tip —points to the massive scale of this exposure unless remedied. Without clear national rules, municipalities cannot train officers effectively, assess litigation risk, or distinguish defensible conduct from constitutional misconduct; instead, they face *in terrorem* pressure to settle even meritless claims.

That pressure continues to grow. As the Petition explains, “astronomical damages are typically awarded in reversed conviction lawsuits since juries often seek to compensate the plaintiff without focusing on the specific defendant’s conduct.” The proliferation of reversed conviction litigation—driven by conviction-integrity units within prosecutor offices across the country, including the Wayne County CIU in *Ansari* and *Cotton* and the Cook County CIU in *Mims*—means that the problem will only increase, as the data reveals:

Figure 1: Number of Exonerations by Year

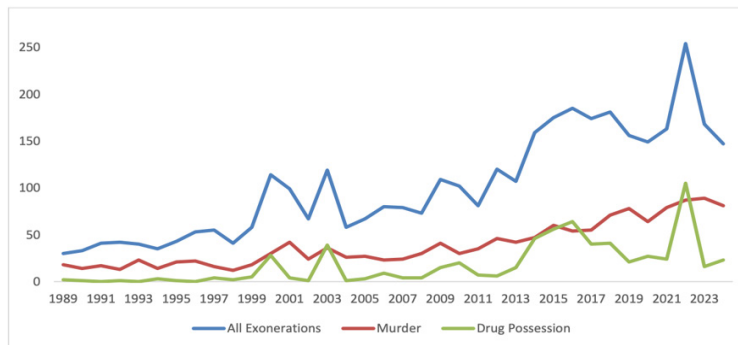
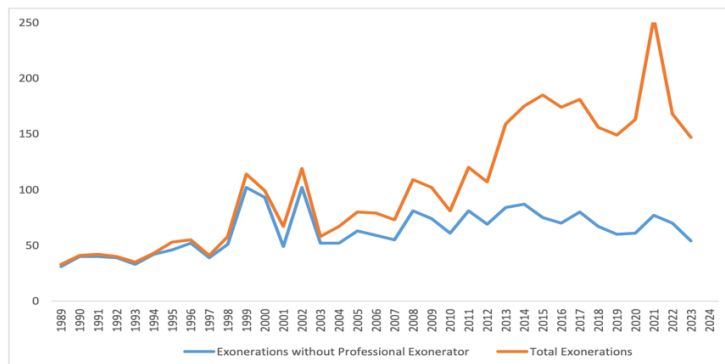


Figure 2: Professional Exonerators' Involvement as Share of Exonerations

https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/2024_Annual_Report.pdf

Figure 1 and Figure 2 document a dramatic and accelerating trend that bears directly on the financial exposure of municipalities nationwide. Figure 1 tracks the total number of exonerations per year from 1989 through 2024. In 1989, there were roughly 15 exonerations nationally. By 2022, that figure had surged to approximately 240—a roughly sixteen-fold increase over thirty-five years. Figure 2 disaggregates that growth by isolating the role of “professional exonerators”—conviction integrity units (“CIUs”) housed within prosecutors’ offices and attorneys affiliated with innocence projects. In the early years (1989-2000), the total exoneration line and the line tracking exonerations without professional exonerator involvement nearly overlap, reflecting a period when such institutional actors played virtually no role. Beginning around 2008, however, the two lines diverge sharply. The

“without professional exonerator” line plateaus at roughly 70-85 per year and has remained essentially flat ever since. By contrast, total exonerations continued to climb steeply, reaching approximately 240 in 2022—meaning that professional exonerators were involved in roughly 150-160 of those cases, or 60-65% of all exonerations. In practical terms, nearly all growth in exonerations over the past fifteen years is attributable to the proliferation of CIUs and innocence projects.

This trend is further amplified by CIU-driven mass case reviews, which Figure 1 illustrates through the drug-possession exoneration spike. Drug possession exonerations were essentially nonexistent before 2005, yet surged to approximately 50 per year around 2015-2016—a spike directly linked to systematic reviews conducted by units such as the Harris County CIU, which vacated hundreds of convictions after uncovering flawed forensic evidence. These mass reviews exemplify how the institutional growth of professional exonerators generates volume: a single CIU’s decision to audit a class of cases can produce dozens of reversed convictions in a single year, each one a potential § 1983 lawsuit against the municipality and its officers.

The financial implications for local governments are severe and compounding. Every reversed conviction creates an opportunity for plaintiffs to argue—often with the benefit of hindsight—that police officers should have undertaken additional investigative or quasi-prosecutorial steps, and to second guess prior professional determinations about the relevance, credibility, or materiality of evidence. Under the Sixth Circuit’s negligence-based *Brady* standard, these retrospective

challenges expose municipalities to massive liability—the *Ansari* verdict alone was \$ 10 million against a single retired detective—and the sixteen-fold increase in exonerations, overwhelmingly drive by professional exonerators, means the pipeline of such claims will only continue to expand. Multi-million-dollar awards of this magnitude, multiplied across a growing caseload of reversed convictions, drain municipal budgets of funds that would otherwise support first responders, teachers, sanitation workers, and other essential public services. Without uniform national standards that require more than mere negligence, municipalities face unpredictable and escalating exposure, together with *in terrorem* pressure to settle even meritless claims rather than risk catastrophic jury verdicts. In sum, uniform standards will allow municipalities to train officers consistently, assess liability predictably, budget for potential § 1983 judgments, and avoid the current regime in which identical police conduct creates liability in some circuits but not others.

VI. The heightened liability for individual officers under the Sixth Circuit’s outlier rule makes it even more difficult for local governments to hire and retain uniformed officers.

The result in this case, and in *Cotton* and other Sixth Circuit decisions cited above subjecting officers to litigation and massive damage awards, creates a further impediment to filling depleted and understaffed police departments. Across the Sixth Circuit—and nationwide—local governments continue to face headwinds in attracting and retaining the qualified and dedicated personnel need to ensure safety and stability in our communities. Challenges to qualified immunity and the prospect of

personal liability contribute greatly to this problem, as a Fraternal Order of Police survey found: “The most critical issues facing the law enforcement profession as perceived by law enforcement officers are 1) removal of qualified immunity for police officers” and “Over half of active officers were concerned about being fired ‘just for doing their job.’ More than six out of 10 officers held serious concerns about being criminally prosecuted and civilly sued.”² The problem is massive, and nationwide:

Indianapolis, for example, has nearly 300 fewer officers than in 2019 and is now requesting state trooper assistance. In August 2024, CBS News highlighted Baltimore’s police shortage, with only 1,981 officers instead of the needed 2,600. Louisiana Governor Jeff Landry declared a state of emergency in February 2024 due to officer shortages, citing a 47% increase in resignations since 2019 and 1,800 vacant sheriff’s deputy positions. Similarly, in April 2024, the Long Beach Police Department reported its worst staffing crisis in 25 years, with over 100 vacancies. With just 824 budgeted officers for a city of 500,000, officers and detectives had to work extra shifts to cover shortages. San Francisco and Phoenix are seeing shortages of more than 400 officers in each jurisdiction. Chicago is short well over 1,300, Los Angeles over 1,000, Washington almost 500, Houston nearly 100, Philadelphia about 1,200. In New York City, the shortages

2. National Fraternal Order of Police 2021 Critical Issues in Policing Survey, <https://files.fop.net/wp-content/uploads/2023/09/2021-Survey-Report-202309.pdf>.

in the nation’s largest police force add up to over 3,000. The Miami Police Department has received 809 applications this year — a number it once reached in a single day a decade ago.³

That shortage is also seen in the Sixth Circuit. In June 2026, the Kentucky League of Cities reported that Louisville is short upwards of 250 officers while Lexington has 100 unfilled vacancies.⁴ In Tennessee, Memphis faces a 20-year low in its police force.⁵ Columbus, Ohio continues dramatic population growth even as it loses uniformed officers, creating a “crisis.”⁶ Michigan is also facing a dire police shortage, requiring reduction in various qualifications.⁷

3. Gene Ira Katz, *Insufficient police staffing continues throughout the US*, American Police Beat, May 23, 2025, <https://apbweb.com/2025/05/insufficient-police-staffing-continues-throughout-the-u-s/>

4. KLC and KACP Present on Police Recruitment and Retention, June 23, 2026, <https://www.klc.org/News/13327/klc-kacp-present-on-police-recruitment-retention>

5. Olivia Lupia, *Memphis sees 20-year low in police officer numbers*, Tennessee Conservative, May 3, 2025, <https://tennesseeconservativenews.com/memphis-sees-20-year-low-in-police-officer-numbers/>

6. Mike McCarthy, *Columbus police face recruiting challenge as city population grows*, ABC6 FOX 28 NEWS, May 16, 2024, <https://abc6onyourside.com/?url=https%3A%2F%2Fabc6onyourside.com%2Fon-your-side%2F6-on-your-side%2Fcolumbus-division-of-police-recruitment-mayor-andrew-ginther-cpd-assistant-chief-lashanna-potts-officer-recruits-training-academy-growth-ohio>

7. Steve Neavling, *Officer shortage puts pressure on Michigan police departments to hire ‘wandering cops,’* Detroit

In a time when public respect for uniformed officers is at historic lows, when private sector salaries and benefits are more attractive, and when risks to officers in the line of duty continue to climb, the added potentiality of litigation and personal liability can only dissuade would-be police applicants and hasten the departure of seasoned officers. The Sixth Circuit's expansive attribution of *Brady* liability adds to that dilemma.

CONCLUSION

The Sixth Circuit's decisions in *Ansari* and then eight days later in *Cotton*, robustly reinforce the arguments made in the Petition for a Writ of Certiorari. They further confirm the Circuit's entrenched reliance on a negligence standard that conflicts with the holdings of at least eight other circuits. They demonstrate a structural barrier to resolving the admissibility question within the Sixth Circuit. And they reveal that the culpability question itself remains unresolved on the merits even as the negligence standard is applied by default. Those uncertainties burden local governments and their residents as they face massive reverse conviction liability and struggle to hire and retain qualified law enforcement personnel.

Metro Times, Aug. 8, 2025, <https://www.metrotimes.com/news/officer-shortage-puts-pressure-on-michigan-police-departments-to-hire-wandering-cops-34874724/>

For these reasons and more, the petition should be granted.

Respectfully submitted,

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