No. 26-_____

IN THE

Supreme Court of the United States

RANDLE JACKSON, INDIVIDUALLY AND AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF DESHAUN SIMMONS,

Petitioner,

v.

GERALD BUSH,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a prison guard acts with deliberate indifference when he improperly releases inmates in a maximum-security facility and subsequently fails to supervise them;

Whether a prison guard may avoid liability for constitutional violations by claiming that he was unaware of an obvious risk of harm;

Whether the district court improperly weighed the evidence in the light most favorable to the moving party.

PARTIES TO THE PROCEEDING

The captioned parties, Petitioner Randle Jackson, Individually and as the Personal Representative of the Estate of Deshaun Simmons, and Respondent Gerald Bush, are the only parties to this proceeding. Dontai Parks, Cheryl Youngquist, Michelle Mapp, and Thomas Robertson were defendants and appellees in the lower courts but are not parties to this Petition.

STATEMENT OF RELATED CASES

United States District Court for the District of South Carolina, Randle Jackson, individually and as the Personal Representative of the Estate of Deshaun Simmons v. Gerald Bush, Dontai Parks, Cheryl Youngquist, Michelle Mapp, and Thomas Robertson, 1:23-cv-04955-JDA.

United States Court of Appeals for the Fourth Circuit, Randle Jackson, individually and as the Personal Representative of the Estate of Deshaun Simmons v. Gerald Bush, Dontai Parks, Cheryl Youngquist, Michelle Mapp, and Thomas Robertson, No. 25-1449.

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PETITION FOR WRIT OF CERTIORARI

Randle Jackson, Individually and as the Personal Representative of the Estate of Deshaun Simmons, respectfully petitions this court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

On July 9, 2026, the United States Court of Appeals for the Fourth Circuit rendered a published opinion in this matter, with the majority opinion written by Chief Judge Diaz and a separate opinion concurring in part and dissenting in part written by Judge Gregory. *Randle Jackson, Individually and as the Personal Representative of the Estate of Deshaun Simmons v. Gerald Bush, Dontai Parks, Cheryl Youngquist, Michelle Mapp, Thomas Robertson*, App. No. 25-1449 (4th Cir. 2025). The Fourth Circuit opinion is attached to this petition as Appendix A. The district court opinion and order is attached to the petition as Appendix B, the district court order on Summary Judgment is attached as Appendix C, the Report and Recommendation of the Magistrate Judge is attached to the petition as Appendix D, and the Fourth Circuit Court of Appeals' order denying rehearing is attached as Appendix E.

JURISDICTION

The Fourth Circuit filed its opinion in this matter on July 9, 2026. A petition for rehearing was filed on July 21, 2026. The petition for rehearing and rehearing *en banc* was denied on August 4, 2026, with

the final decision entered on August 12, 2026. This Court may review the Fourth Circuit's decision pursuant to 28 U.S.C. § 1254. The Petitioner timely filed this Petition for a Writ of Certiorari within ninety days of the United States Court of Appeals for the Fourth Circuit's judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statutory and constitutional provisions at issue in this case are 42 U.S.C. § 1983; the Seventh Amendment to the United States Constitution: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law"; the Eighth Amendment to the United States Constitution: "nor cruel or unusual punishment inflicted." All other relevant constitutional provisions considered by this Court to be relevant or applicable to this Petition may also be involved.

INTRODUCTION

This is a case that tests the judiciary's commitment to upholding the protections of 42 U.S.C. § 1983 and the Eighth Amendment to the United States Constitution as interpreted and applied by this Court in *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). This case also squarely implicates the Seventh Amendment to the United States Constitution, which provides, "In Suits at common law, where the value in controversy shall

exceed twenty dollars, the right of trial by jury shall be preserved […]" Petitioner was killed by inmates improperly released by a prison guard after being subjected to a series of brutal attacks while under the custody and control of the South Carolina Department of Corrections, and his Estate seeks the benefit of 42 U.S.C. § 1983, the Eighth Amendment, and the Seventh Amendment in this action.

During the six years that he was incarcerated in the South Carolina Department of Corrections, Dashaun Simmons was viciously attacked at three different correctional facilities on at least four different occasions. Despite repeatedly begging for institutional protection, Simmons received none. In 2020, Simmons was stabbed by an eight-inch ice pick, which two inmates improperly released by corrections officer Gerald Bush carried in plain view for at least six minutes before initiating the attack that took Simmons' life. The district court granted the Respondent's motion for summary judgment, and the Fourth Court affirmed the dismissal in a published opinion. The practical implication of these rulings is that a trained and experienced correctional officer can improperly release violent offenders in a maximum-security facility among inmates known to be vulnerable and face no legal repercussions for the violent assault and murder that inevitably follows. The Petitioner asks the court to correct this injustice.

STATEMENT OF THE CASE

Legal Framework

A claim under § 1983 requires a plaintiff to plead that a person acting under color of state law deprived the plaintiff of a federally protected right. *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). *See also West v. Atkins*, 487 U.S. 42 (1988) citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981) (overruled in part on other grounds, *Daniels v. Williams*, 474 U.S. 327, 330-331 (1986); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978): "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." "The eighth amendment protects a convicted inmate from physical harm at the hands of fellow inmates resulting from the deliberate or callous indifference of prison officials to specific known risks of harm […], just as it protects against harm resulting from deliberate indifference of prison officials to serious medical needs." *Pressly v. Hutto*, 816 F.2d 977, 979 (4th Cir. 1987), citing *Davis v. Zahradnick*, 600 F.2d 458, 460 (4th Cir. 1979) and *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 252 (1976). (internal citation moved to end).

An inmate alleging that a prison official violated his Eighth Amendment rights must plead facts that plausibly show "deliberate indifference to a substantial risk of physical harm." *Parrish ex rel Lee v. Cleveland*, 372 F.3d 294, 302 nn.10-11 (4th Cir. 2004). This "requires two showings, one objective and one

subjective. First, the inmate must prove that 'the deprivation of a basic human need was objectively sufficiently serious.' Second, [he] must prove that 'subjectively the officials acted with a sufficiently culpable state of mind.'" *Jehovah v. Clarke*, 792 F.3d 457, 469 (4th Cir. 2015) citing *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003). The first prong is satisfied by a showing of "a serious or significant physical or emotional injury resulting from the challenged conditions or […] a substantial risk of serious harm resulting from the prisoner's exposure to the challenged conditions." *De'Lonta* at 634, citing *Strickler v. Waters*, 989 F.2d 1375, 1381 (4th Cir. 1993) (internal quotations omitted). The subjective prong requires "a showing of deliberate indifference by prison officials." *Ibid.*, citing *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). An official must have "responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 844; *see also Cox v. Quinn*, 828 F.3d 227, 236 (4th Cir. 2016) ("[A] prison official's response to a known threat to inmate safety must be reasonable."). Reasonableness of the actions taken must be judged in light of the risk the defendant actually knew at the time. *See Brown v. Harris*, 240 F.3d 383, 390 (4th Cir. 2001).

Deliberate indifference "entails something more than mere negligence […but] is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer*, 511 U.S. at 835. "Acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk." *Id.* at 836. In

Makdessi v. Fields, the Fourth Circuit, quoting *Farmer*, explained in detail how a plaintiff may prove deliberate indifference:

> Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that a risk was obvious…[A]n injury might be so obvious that the factfinder could conclude that the guard [or official] did know of it because he could not have failed to know of it. A prison official's subjective actual knowledge can be proven through circumstantial evidence showing, for example, that the substantial risk of inmate attacks was longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and *the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus must have known about it. Direct evidence of actual knowledge is not required*.

Makdessi v. Fields, 789 F.3d 126, 133-34 (4th Cir. 2015) (quotation marks and citations omitted) (emphasis added).

"[P]rison officials may not simply bury their heads in the sand and thereby skirt liability." *Id. "[I]t does not matter whether the risk comes from a single*

source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk." Id. at 134 (quoting *Farmer*, 511 U.S. at 843). "Nor is it dispositive that the prisoner did not give advance warning of the risk or protest his exposure to the risk." *Id.* at 134 (quoting *Farmer*, 511 U.S. at 843).

Facts and Procedural History

From 2014 until his death in November 2020, Dashaun Simmons ("the decedent") was an inmate under the custody and control of the South Carolina Department of Corrections ("SCDC"). In June 2017, Simmons was housed in the Marion Unit of the Broad River Correctional Institution ("Broad River") when other inmates began to threaten to kill him. Simmons reported these threats to SCDC employees, telling them that he was afraid he would be killed or suffer serious bodily injury if he remained in Marion Unit and asking to be moved to another unit. SCDC employees ignored Simmons' concerns and forced him to remain in Marion Unit. On July 18, 2017, during a shift change, a correctional officer working an assigned shift in Marion Unit opened the door to Simmons' cell, as well as the doors to a number of unknown assailants' cells. The assailants left their cells, entered Simmons' cell, and brutally attacked Simmons, who suffered 23 stab wounds and a broken jaw as a result of the assault.

On September 12, 2018, Simmons filed C.A. No. 2018-CP-40-04850 ("*Simmons I*") in the Richland County Court of Common Pleas against SCDC,

alleging causes of action for gross negligence and negligent hiring, supervision, and retention pursuant to the South Carolina Tort Claims Act. On June 2, 2020, Simmons filed C.A. No. 2020-CP-40-02627 (*"Simmons II"*) in the Richland County Court of Common Pleas alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. That case was removed to the United States District Court, District of South Carolina on August 24, 2020, and assigned C.A No. 1:20-cv-03036.

While Simmons was litigating *Simmons I* and *Simmons II*, he was attacked twice more in SCDC custody. In early April 2019, Simmons, who was then housed at Perry Correctional Institution ("Perry"), began to receive threats from a fellow inmate. On April 7, Simmons reported those threats to detention center officers and told them that he feared again being attacked, injured, and killed. Perry officers refused to move Simmons away from the inmate, who ultimately attacked Simmons, stabbing him twice in the neck, biting him multiple times on the face, and throwing him down a flight of stairs. On January 2, 2020, Simmons filed suit in the Greenville County Court of Common Pleas against SCDC for the damages that he sustained during this attack (CA. No.: 2020-CP-23-00011, "*Simmons III*").

Following the attack at Perry, Simmons was transferred to McCormick Correctional Institution. As soon as Simmons arrived at McCormick, he once again began to receive threats. Simmons reported these threats to SCDC officials, even going so far as to tell them that a "hit" was taken out on his life. On September 17, 2020, Simmons sought medical

treatment for a burn that he sustained when an inmate threw hot water on him. On October 16, 2020, during a mental health session, Simmons asked SCDC staff, "is it necessary(6) [*sic*] for someone to die before someone will take him seriously."

Less than three weeks later, on November 3, 2020, Simmons was housed in Dorm F-2, where Gerald Bush was on duty. Because he was the only trained guard on duty, Bush was not supposed to release any inmates from their cells. Nevertheless, Bush released multiple inmates, including Dominick and Ransom, who another inmate – who Bush was later unable to identify – said were barbers. Bush did nothing to verify the individuals' status as barbers or to ensure that the individuals were allowed out of their cells, such as reviewing documentation or consulting with other officers.

Bush opened Dominick's cell door at 7:40 a.m., only two minutes after he was seen on surveillance video speaking with the unidentified inmate. At 7:42 a.m., Dominick briefly left his cell and then returned. At 7:48 a.m., Dominick left his cell "clutching a white object in his right hand." This object was later identified as an eight-inch-long ice pick made from part of a sink. Six minutes later, Dominick walked out of view of security cameras and, while out of view, attacked Simmons. Simmons was not discovered for nearly an hour, when at 8:40 a.m., a correctional officer saw two inmates running toward her carrying Simmons and yelling for help. Simmons was later transported to Medical College of Georgia, where he was pronounced dead from a stab wound to the back.

Petitioner filed suit against several correctional officers, including Respondent, on August 23, 2023, in the McCormick County Court of Common Pleas. That action was subsequently removed to district court, which granted summary judgment despite a record replete with evidence of Respondent's deliberate indifference to Petitioner's constitutional rights. Petitioner was deprived of his right to a jury trial when the district court made factual determinations and weighed the evidence in its order granting summary judgment. The Fourth Circuit Court of Appeal's Order affirmed that decision and denial of Respondent's constitutional rights as protected by the Seventh and Eighth Amendments.

REASONS FOR GRANTING THE PETITION

I. A plaintiff must have recourse when a trial court invades the province of the jury by making factual determination and weighing the evidence.

Viewed in the light most favorable to Petitioner, the facts in the record are as follows: Gerald Bush, a corrections officer with experience in multiple detention centers and the special adjustment unit, violated policy and protocol by unilaterally releasing multiple inmates at their request at a time when no inmates were allowed out of their cells. Bush made no attempts to officially verify the identities or professions of the inmates he released, even though policy required him to corroborate worker status before releasing inmates. Instead, he asked another inmate to vouch for the released inmates and told the released inmates not to "bullshit" him about their status as

workers. Bush, the only qualified officer in the unit, then left the unit and the inmates he released unsupervised for approximately one hour. During that time, two of the inmates that Bush released, Dominick and Ransom, walked the unit while brazenly wielding an eight-inch homemade ice pick before stabbing and killing Simmons.

Viewed in the light most favorable to Petitioner, the inferences to be drawn from the facts in the record are as follows:

- Bush, with his training and experience, knew that the special adjustment unit housed inmates who had requested and been denied protective custody, making them among the most vulnerable inmates in a maximum-security facility.
- Bush, having previously witnessed SCDC inmates attempt to attack other inmates with weapons, knew that violent offenders in a maximum-security facility procured weapons and used those weapons to injure and kill other inmates.
- Bush, having been through the training required of all SCDC corrections officers, knew that protocol prohibited officers like him from releasing *any inmates* if he was the only fully trained officer on duty.
- Bush, who testified that he told the released inmates not to "bullshit" him and asked other inmates if Dominick and Ransom were being truthful, knew that inmates are often dishonest and often lie to get what they want.

- Bush, who betrayed his own knowledge of the danger of releasing Dominick and Ransom by seeking reassurance about their employment status before releasing them from their cells, knew that he should only release inmates who were allowed to be out of their cells *when* they were allowed to be out.
- Bush, having been through the training required of all SCDC corrections officers, knew that policies regarding the confinement and release of violent offenders in maximum-security facilities are in place for the protection of detention center inmates and staff and to prevent violent attacks like the attack that killed Simmons.

Together, these facts and inferences, viewed in the light most favorable to Petitioner, clearly demonstrate that Respondent intentionally took a dangerous risk that he knew may very well cause harm to Simmons and others and which did in fact result in Simmons' brutal murder. *See Anderson v. Kingsley*, 877 F.3d 539, 545 (4th Cir. 2017).

District courts considering motions for summary judgment and appellate courts reviewing *de novo* grants of summary judgment "are required to view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the summary judgment motion'." *Scott v. Harris*, 550 U.S. 372 (2007) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (*per curiam*)). As Judge Gregory noted in his dissenting opinion, "in qualified immunity cases, this usually means […] adopting the plaintiff's version of the facts." *Id. See* Dissent at 20, citing *Scott*

at 378 and *Case v. Beasley*, 167 F.4th 651, 659 (4th Cir. 2026).

In its opinion, the Fourth Circuit Court of Appeals recognized the holding in *Quinn v. Zerkle* that the court "must view the ***undisputed*** facts and all reasonable inferences drawn therefrom in the light most favorable to [Appellant] to determine whether there is a genuine dispute as to any material fact." Opinion at 7, citing *Quinn v. Zerkle*, 111 F.4th 281, 290 (4th Cir. 2024) (emphasis added). ***Disputed facts***, however, are for a jury to decide. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("disputes over facts that may affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment"); *Id.* at 254, quoting *Curley v. United States*, 160 F.2d 229, 232-33 (1947) (it is "the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact").

The district court's ruling, as affirmed by the Fourth Court, "fully credits the account of the moving party – Bush – and dismisses any inferences that may be made against him." Dissent at 17. The majority accepts as true Bush's outrageous claims that he knew of no risk in letting violent offenders out of their cells at their request and allowing them to roam unsupervised in an institution where inmates are known to use weapons to attack and kill other inmates. Supporting these claims is Bush's testimony that he did not know that Simmons had been threatened or previously attacked or that Dominick or Ransom were armed. Bush, however, was an experienced corrections officer with, at the very least, a reasonable person's understanding of a maximum-security prison.

The record is filled with circumstantial evidence contradicting Bush's claim that he did not know improperly releasing violent offenders and leaving them unsupervised created a risk of harm to Simmons and other vulnerable inmates in the unit. Simmons had previously requested protective custody because of threats against him. As a result, he was housed in the special adjustment unit, which was filled with inmates who had been denied protective custody. It is safe to infer that Bush, who had been through SCDC training and worked in the special adjustment unit several times in the past, knew of Simmons' vulnerable status. At the time of the attack, Bush should not have released a single inmate, as he was the only qualified officer in the unit. Even if he had been allowed to release inmates, he was required to first verify their status as workers, which he failed to properly do. He did recognize, however, that verification was necessary, as he asked *other inmates* instead of going through any institutional channels. Bush not only created the dangerous situation but then left inmates unsupervised for a significant period of time, further violating prison policy and basic common sense.

This Court, quoting Blackstone, has described the right to trial by jury as, "the most transcendent privilege which any subject can enjoy" and found that, "maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 485-86 (1935) quoting Blackstone's Commentaries, v. 3, p. 379.

The Fourth Circuit Court of Appeals has "emphasized repeatedly the drastic nature of the summary judgment remedy and [has] held that it should not be granted unless it is perfectly clear that there are no genuine issues of material fact in the case." *Ballinger v. North Carolina Agr. Extension Service*, 815 F.2d 1001, 1004-05 (4th Cir. 1987). As a result, in reviewing a summary judgment motion, a court "may not credit the movant's contrary evidence, weigh the evidence, or resolve factual disputes in the movant's favor, even if a jury could well believe the evidence forecast by the movant." *Quinn* 111 F.4th at 290 (4th Cir. 2024) (quoting *Aleman v. City of Charlotte*, 80 F.4th 264, 297 (4th Cir. 2023)).

It was not the district court's place to determine the factual dispute about what Bush knew. It is instead the jury's place to look at the wealth of circumstantial evidence and determine whether Bush "*intentional*[ly took]…a risk that [he knew] *might cause harm* while *lacking any intent to cause such harm*." *Anderson v. Kingsley*, 877 F.3d 539, 545 (4th Cir. 2017) (emphasis in original). In this case, a jury could believe the evidence forecast by Bush. However, weighing the facts and inferences in Petitioner's favor, a jury could very well find for Appellant. Because Petitioner may prevail if a jury weighs the evidence in his favor, Bush is not entitled to summary judgment, and this case should be remanded for trial.

II. The lower courts' rulings deny Petitioner any redress and allow Respondent to avoid all legal responsibility for abhorrent conduct by implausibly claiming that he was unaware of the most basic risk of harm.

"The Eighth Amendment protects a convicted inmate from physical harm at the hands of fellow inmates resulting from the deliberate or callous indifference to specific known risks of harm." *Pressly v. Hutto*, 816 F.2d 977, 979 (4th Cir. 1987). "Whether a prison official acted with 'deliberate indifference' is a question of fact that can be proven through direct or circumstantial evidence." *Cox v. Quinn*, 828 F.3d 227, 236 (4th Cir. 2016). Proof "requires two showings, one objective and one subjective. First, the inmate must prove that 'the deprivation of a basic human need was objectively sufficiently serious.' Second, [he] must prove that 'subjectively the officials acted with a sufficiently culpable state of mind.'" *Jehovah v. Clarke*, 792 F.3d 457, 469 (4th Cir. 2015) citing *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003).

The Fourth Circuit focused its analysis of the district court's decision on *De'Lonta*'s subjective prong, finding that Petitioner did not establish that Bush was subjectively aware Dominick and Ransom were going to stab Simmons when Bush released them in violation of policy. In doing so, the majority conflates *evidence* of subjective knowledge with the need for *an admission* of such knowledge. As Judge Gregory explains in his dissenting opinion, "Bush's own actions demonstrate that he knew there was risk in permitting unauthorized prisoners free rein about the prison."

Dissent at 24. Despite violating protocol by failing to appropriately confirm workers' identities, Bush *did* look for reassurance before releasing Dominick and Ransom because what he was doing was so dangerous that he must have known of the risk it created. Bush warned Dominick and Ransom not to "bullshit" him about their status as workers and asked another inmate to verify their status. If Bush were unaware of the risk of improperly releasing inmates, he would not have taken these steps, as ineffectual and minimal as they were. Bush, like all corrections officers or any layman, *was of course aware* that releasing violent offenders ii maximum security prisons based solely upon their requests to leave their cells and leaving them completely unsupervised around vulnerable inmates creates a serious risk of harm.

In a footnote, the majority states that Bush's attempted verifications of Dominick's and Ransom's statuses "don't suggest that he subjectively believed his actions created an unreasonable safety risk." Opinion at 12, n. 3. In *Makdessi*, however, the Fourth Circuit expressly allowed a plaintiff to prove subjective knowledge through circumstantial evidence of an obvious risk. "Direct evidence of actual knowledge is not required." *Makdessi v. Fields*, 789 F.3d 126, 133-34 (4th Cir. 2015). As Judge Gregory notes in his dissent, it is unlikely, "that Bush is the one prison official in the country that did not know the risks of allowing any requesting prisoner to wander the unit of a maximum-security facility." Dissent at 27. "To accept otherwise is to assume Bush's remarkable unawareness, which the record does not require of [the Court] at this stage." Dissent at 28.

Even if this Court is not moved by the significant circumstantial evidence of Bush's subjective knowledge, the evidence clearly demonstrates that the risk of harm was obvious, such that Bush "could not have failed to know of it." *Makdessi,* 789 F.3d at 133 (4th Cir. 2015) quoting *Brice v. Va. Beach Corr. Ctr.*, 58 F.3d 101, 105 (4th Cir. 1995). As Judge Gregory writes in his dissent, "it hardly takes a model employee to recognize that in a maximum-security facility, a prisoner is not released from his cell simply because he asks to be released." Dissent at 22. In opening cell doors and releasing inmates, Bush intentionally took a risk that he knew *might cause harm* while *lacking any intent to cause such harm*. *Anderson v. Kingsley*, 877 F.3d 539, 545 (4th Cir. 2017) (emphasis in original). Bush's actions support Petitioner's claim of deliberate indifference.

Further, there is no doubt that Bush could have easily averted the danger to Simmons and failed to do so. *See Brown v. N. C. Dep't of Corr.*, 612 F.3d 720, 723 (4th Cir. 2010) citing *Case v. Ahitow*, 301 F.3d 605, 607 (7th Cir. 2002). Indeed, Bush himself was solely responsible for creating the extremely dangerous situation that caused Simmon's death. Had Bush simply followed protocol by not releasing any inmates when he was the only trained officer in the unit and not permitted those inmates to roam the unit without trained officers to supervise them, Simmons would not have been killed. While the majority accepts as true Bush's claim that he "was responsible for 'opening the top tier' of the dorm to let inmate workers out of their cells" (Opinion at 4), there is evidence in the record that Bush was not only not responsible for, *but was specifically prohibited from*, releasing any inmates at

that time. (Opinion at p.5, ft 1). Further, had Bush stayed in the unit until another trained officer was present, Dominick and Ransom would not have been left unsupervised for nearly an hour with a large weapon and easy access to their intended target.

The district court's decision as affirmed by Fourth Circuit Court of Appeals allows a corrections officer to unjustifiably and recklessly create a risk of harm to an inmate, fail to abate that risk when given every opportunity to do so, and avoid any liability simply by claiming ignorance. It is hard to believe that such reckless conduct does not rise to the level of deliberate indifference. See *Farmer v. Brennan*, 511 U.S. 825, 836 (1994) ("with deliberate indifference lying somewhere between the poles of negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness.)." Bush's conscious disregard of the substantial risk of serious harm that his own actions created caused Simmons' death. *See Farmer,* 511 U.S. at 839, citing the Model Penal Code § 2.02(2)(c) ("to act recklessly […] a person must 'consciously disregard' a substantial risk of serious harm.")

III. Qualified immunity does not shield a correctional officer from conduct that is plainly incompetent and patently inadequate.

Qualified immunity protects "government officials performing discretionary functions from liability for civil damages insofar as their conduct does not violate clearly established statutory or

constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "An official may claim qualified immunity as long as his actions are not clearly established to be beyond the boundaries of his discretionary authority." *Leverette v. Bell*, 247 F.3d 160, 165 (4th Cir. 2001). Put differently, officers are not protected by qualified immunity when they are "plainly incompetent or … knowingly violate the law." *Rogers v. Pendleton,* 249 F.3d 279 (4th Cir. 2001) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). "A factfinder may conclude that an officer's response to a perceived risk was so patently inadequate as to justify an inference that the officer actually recognized that his response to the risk was inappropriate under the circumstances." *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 303 (4th Cir. 2004).

Bush's actions on the day of Simmons' death were plainly incompetent and patently inadequate. That his blatant violations of prison protocol were multiple and consistent should not absolve him of liability for the direct results of his actions. In its opinion, Fourth Circuit states there is no evidence, "that the risk of letting an inmate worker out without proper verification was previously communicated to Bush." Opinion at 12. However, the very fact that protocols involving inmate release exist is evidence that such risk was communicated to Bush. Multiple other officers testified that Bush violated policy. Even Youngquist, an officer still in training, understood that policy prohibited Bush from releasing *any* inmates on the day in question, something she confirmed "every officer knows." Youngquist's testimony alone is enough to dispute Bush's baseless and unbelievable assertion

that such policy and its rationale was unknown to him alone.[2]

In its opinion, the Fourth Circuit notes that Petitioner must also establish that Bush's conduct violated clearly established law. Opinion at 13, ft. 4. Such a showing requires Appellant to prove that the violated right's contours are sufficiently clear that "a reasonable official would understand that what he is doing violates that right." *Carroll v. Carman*, 574 U.S. 13, 16 (2014) (quoting *Anderson v. Creighton,* 483 U.S. 635, 640, (1987)). "The relevant consideration […] is not whether the official's actions were a proper, or even legal, exercise of [his] discretionary authority," but rather, "whether a reasonable officer in the [defendant's] position should have known that the conduct was clearly established to be beyond the scope of [his] authority." *Leverette* at 165 citing *In re Allen*, 106 F.3d 582 (4th. Cir. 1997) and *Sims v. Metro, Dade Co.*, 972 F.2d 1230, 1236 (11th Cir. 1992).

There is no question that any reasonable officer in Bush's position should have known that violating policy by releasing dangerous inmates and allowing them to mix with other vulnerable inmates unsupervised for an hour was "beyond the scope of h[is] authority." *Id.* There is also no question that what

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[2] Youngquist's testimony that ***every officer*** knew that releasing inmates under these circumstances was against protocol and that Bush should not have released a single inmate at the time of the attack is itself sufficient evidence for a jury to find for Petitioner. This testimony alone is grounds for remand.

Bush did – what he must have known was extraordinarily dangerous – was deliberately indifferent to specific known risks of harm. *See Pressly v. Hutto*, 816 F.2d 977, 979 (4th Cir. 1987).

Acknowledgment of the genuine issue of material fact as to whether the risk of releasing then leaving unsupervised violent offenders in a maximum-security prison was known to Bush does not require this Court to carve out a narrow and specific "constitutional right to have an officer properly verify inmate workers before releasing them from their cells." Opinion at 13, fn 4. As the dissent explained, and as the evidence in the record unambiguously shows, *no inmates* were allowed out at the time of the attack. The question, then, is not whether Simmons had a right for officers to verify workers' statuses, but rather whether Simmons had a right to be free from the harm Bush created and caused by improperly releasing then leaving unsupervised dangerous inmates as part of Bush's pattern of ineptitude and practice of flouting rudimentary prison rules in conscious disregard for inmate safely. It is Appellant's firm belief that he did and that the danger of what Bush did is so obvious that Bush must have known it "went beyond the scope of h[is] authority." *Leverette* at 165.

Because Bush violated Simmons' clearly established constitutional rights of which a reasonable person would have known, he is not entitled to the protections of qualified immunity. *Harlow* at 818 (1982). Further, because there is a material fact in dispute regarding the actual conduct of Bush – whether he subjectively knew of the risk of harm that his actions posed – Bush is not entitled to qualified

immunity. *Buonocore v. Harris,* 65 F.3d 347, 359 (4th Cir. 1995) (citing *Pritchett v. Alford,* 973 F.2d 307 313 (4th Cir. 1992)). Petitioner therefore requests that this Court grant certiorari to protect Simmons' constitutional rights in death, as SCDC wholly failed to protect them during his life.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that this Court grant the Petitioner's Writ for Certiorari.

Respectfully submitted,

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