IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

No. 17A582

MAYOR AND CITY COUNCIL OF BALTIMORE CITY, *et al.*,

Petitioners-Applicants,

v.

MARLOW HUMBERT,

Respondent.

SECOND APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATESCOURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable Chief Justice John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Fourth Circuit

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Pursuant to Rules 13.5 and 30.2 of this Court, Petitioners-Applicants Mayor and City Council of Baltimore City; Sheila Dixon, former Mayor of the City of Baltimore, in her individual capacity; the Baltimore City Police Department ("BPD"); Chris Jones, Sergeant, individually and as a BPD Officer; Caprice Smith, Detective, individually and as a BPD Officer; Dominick Griffin, Detective, individually and as a BPD Officer, by their undersigned counsel, hereby respectfully request that the time in which they must file a petition for a writ of

certiorari in this matter be extended an additional 30 days, to and including Wednesday, February 2, 2018.

Applicants' petition for a writ of certiorari will seek review of a judgment of the United States Court of Appeals for the Fourth Circuit, invoking this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1). The Court of Appeals issued its judgment August 7, 2017, and amended that judgment August 22, 2017. A. 104. Detectives Caprice Smith and Dominick Griffith (the "Petitioner Detectives") and their supervisor, Sergeant Chris Jones ("Petitioner Sergeant")(all three collectively, "the Officers") timely filed petitions for rehearing and rehearing en banc. The Court of Appeals stayed its mandate on August 22, 2017, pending its ruling on those petitions. On September 5, 2017, the Court of Appeals denied the petitions for rehearing and for rehearing en banc. A. 133.

Your Honor granted Applicants' first application for a 30 day extension of time, so that their petition for a writ of certiorari is now due January 3, 2018, when it was formerly due December 4, 2017. Applicants file this application at least ten days before January 3, 2018. S. Ct. R. 13.5. Applicants have now retained outside counsel experienced in Supreme Court litigation to assist with the preparation of the petition, and he needs time to become familiar with the case.

BACKGROUND

In 2008, the BPD arrested respondent for a rape based on the identification of respondent by the victim. When the victim later told the prosecution that she could not identify respondent as her attacker, the State entered a plea of *nolle*

prosequi. Respondent spent some fifteen months in jail before the State dismissed the charges against him.

Respondent then sued petitioners and former Commissioner of the BPD Bealefeld (who is not a petitioner in this case) in the United States District Court for the District of Maryland for malicious prosecution under 42 U.S.C. § 1983 and the constitution and common law of Maryland.[1] The jury returned a verdict in respondent's favor, awarding him $2.3 million, $1.5 million of which constituted punitive damages. The District Court set aside the verdict, finding that based on the facts as found by the jury in answering special interrogatories, and drawing all reasonable inferences in favor of respondent, the officers had probable cause to arrest respondent and therefore were entitled to qualified immunity, and that respondent had also therefore failed to make out his state law claims. *Humbert v. Jones,* No. WDQ-11-0440, 2015 WL 4042327 (June 22, 2015 D. Md.), A. 55-103.[2]

A unanimous panel of the Court of Appeals reversed. *Humbert v. Mayor and City Council of Baltimore,* 866 F.3d 546 (CA4 2017), A. 104-132. It held that the Petitioner Detectives and the Petitioner Sergeant did not have probable cause when they arrested Respondent Marlow Humbert for the rape, and that the jury thus had properly held them liable under 42 U.S.C. § 1983 and Maryland law for malicious prosecution. It also concluded that no reasonable officer in their position could have believed that probable cause existed, so that the Officers were not

[1] The District Court stayed all proceedings as to Petitioners Mayor and City Council, the BPD, and former Mayor Dixon, as well as to Bealefeld, until it resolved the claims against the three officers. *Humbert v. Mayor and City Council of Baltimore,* 866 F.3d 546, 553 n. 3 (CA4 2017), A. 112.

entitled to qualified immunity. *Id.*, at 551 & 562. The Court of Appeals accordingly reinstated the jury verdict against the Petitioner Detectives and Petitioner Sergeant and remanded the case for further proceedings consistent with its opinion. A. 132.[2]

This case raises issues similar to those currently before the Court in *District of Columbia v. Wesby*, No. 15-1485, argued before this Court on October 4, 2017. *Wesby* presents the question whether the officers who arrested the respondent in that case had a reasonable belief that they possessed probable cause to arrest respondent in a situation where those officers knew facts weighing both for and against probable cause. Here, too, when the Officers arrested Respondent Humbert, they possessed facts that strongly implicated Mr. Humbert as the rapist, and some facts that tended to negate his involvement. As in *Wesby*, the Court of Appeals in this case applied a probable cause standard that in effect negated the facts known to the Officers supporting probable cause, while giving controlling weight to facts pointing in the other direction. In addition, the Court of Appeals attributed the knowledge of each individual Officer to all three of them collectively, even though the evidence showed that the Officers did not all have knowledge of the same facts that tended to negate probable cause. As in *Wesby*, the Court of Appeals decision in this case contravenes this Court's precedents on qualified immunity. *E.g.*, White *v. Pauly*, __U.S.__, 137 S. Ct. 548 (2017).

This case presents another example where the Court of Appeals of the Fourth Circuit "continues the shift that began in *Henry v. Purnell,* 652 F.3d 524 (CA4 2011)(en

[2] After resolving the claims against the Petitioner Detectives and Petitioner Sergeant, the District Court granted the motion of the other Petitioners for judgment as a matter of law, finding that respondent's claims against those Petitioners could not survive "because the Officers did not commit a constitutional violation," and that as to a remaining state-law claim against Bealefeld, it would decline to exercise supplemental jurisdiction. *Humbert, supra,* 866 F.3d, at 554 & 554 n. 6, A. 115. *See* n. 1, above

banc), where judge[s] engage[] in post hoc evaluation of police conduct. . . [and] imagine some alternative means by which the objectives of the police might have been accomplished." *Hensley v. Price,* No. 16-1294 (Nov. 17, 2017), slip op at 24 (Shedd, J., dissenting)(*quoting United States v. Sharpe,* 470 U.S. 675, 686-687 (1985)).

1. Probable Cause

Each of the Petitioner Detectives and the Petitioner Sergeant in this case separately weighed the evidence both supporting and discrediting probable cause to arrest Mr. Humbert, and concluded that on balance, sufficient evidence to apply for an arrest warrant existed. Given the facts that each of the Officers separately knew at that time, a reasonable officer would have believed he had probable cause to arrest Respondent Humbert.

On April 30, 2008, a young female graduate student at the Maryland Institute, College of Art in Baltimore City, Maryland, was returning to her apartment when a man followed her through the doorway. She said hello to the man, and got a clear look at his face while he stood in the building entranceway. The man then put on a mask, pulled out a gun, and forced the woman into her apartment. He raped her. In addition to the mask, the man wore gloves and a condom. After the man left, the victim called her neighbors, who in turn called the BPD. The BPD assigned the investigation to Petitioner Detectives Griffin and Smith, and assigned Petitioner Sergeant Jones to supervise and assist them.

Immediately after the attack, the victim described her attacker to the Officers as standing 5'7" to 5'9", of medium build, an African-American male, and in his late 30s to early 40s. The victim testified that Petitioner Sergeant Jones asked her

repeatedly whether her attacker was homeless. *Id.*, at 551, A. 108. It was undisputed that Humbert was homeless at the time.

The victim was an accomplished portrait artist, and had seen her attacker's face before he put on the mask. Later on the evening of the attack, she drew a sketch of her attacker's face. Because BPD regulations required a BPD sketch artist to make the official composite sketch, the next day Petitioner Detective Griffin took the victim to a police sketch artist to assist that artist in creating the composite. The BPD artist created a sketch from the victim's description. The victim, as she said at trial, was unhappy with the sketch the BPD artist made, finding it too "generic," *Humbert v. Jones,* No. WDQ-11-0440, 2015 WL 4042327, at *1 (June 22, 2015 D. Md.), A. 57, and "so she worked with [the sketch artist] to redraw parts of it so that it looked as close to her attacker as possible," *ibid.,* in particular by "drawing the nose," *id.,* at *1 n. 8, A. 58, which she said was "one of her attacker's distinctive features." *Id.,* at *18, A. 58. "The Victim testified that she had been satisfied with the composite sketch" once she had made it more accurate. *Id.,* at *1, A. 58.

The BPD reproduced the composite sketch on fliers and distributed them in the area near the victim's home. The victim said that she "recognized" the "composite sketch that appeared on the wanted flyer" as the one she had helped draw and had approved as accurate. *Ibid.* The BPD distributed the flyer with the composite and the victim's verbal description of her attacker to the BPD and in the area near the victim's home. Eight days after the attack, another BPD officer, who was never a party to this case, stopped Respondent Humbert on a street near the victim's home. He did so because respondent matched the composite sketch

and the victim's description of her rapist. The officer showed respondent the composite drawing, and took respondent's photograph.

This photograph was placed in a photo array book, which also contained the photographs of sex offenders recently released from custody and of other persons. Petitioner Detectives Smith and Griffin showed the photo array book to the victim on May 9. The Officers had previously showed the victim two other groups of photos of potential suspects, one a six pack and the second a photo array book. When viewing this third photo array, as soon as she saw the photograph of respondent in the book, the victim made an emotional and emphatic identification of respondent as her attacker. She exclaimed, "That's him," pushed the book out of her sight, and began crying. Petitioner Detective Smith asked her to finish reviewing the entire book, and after she had done so, she returned to the photograph of respondent and wrote "that's him" on the back and signed her name. *Humbert,* 866 F.3d at 551, A.109. The victim then told Petitioner Detectives Smith and Griffin that she wanted to see respondent in a line up and to hear respondent's voice to be positive of her identification. *Ibid.*

Petitioner Detectives Smith and Griffin informed Petitioner Sergeant Jones of the victim's emotional identification of Humbert, but there was no evidence that they ever informed him of her request for a line-up. Insofar as it relates to Petitioner Sergeant Jones, the testimony at trial was that only ***after*** respondent had been arrested did the victim also tell Petitioner Sergeant Jones that she wished to see respondent in a line-up so as to be sure of her identification.

Later on that same day, May 9, Petitioner Detective Smith swore out an arrest warrant application for Humbert's arrest, to which Petitioner Detective Griffin gave input. Petitioner Sergeant Jones reviewed and approved the warrant application. Thus, the evidence in this case establishes (when viewed most favorably for respondent) that when Petitioner Detective Smith swore out the arrest warrant with input from Griffin, and Petitioner Sergeant Jones reviewed and approved it, they knew the following: that the victim was an art student; that the victim had observed her attacker's face; that the victim had given Petitioner Detectives Smith and Griffin a description of the face and physical characteristics of her attacker, and drawn a sketch of him, on the day of the attack; that the next day, the victim helped the BPD artists draw the composite sketch of her attacker, had altered the sketch to make it less generic and more like her attacker, especially as regards the distinctive characteristic of the attacker's nose, and had then approved that sketch as accurate; that BPD had circulated among its officers the sketch as well as the victim's verbal description of her attacker; that respondent "closely matched" the victim's description of her attacker as "a 5/7', African-American male in his late 30s to early 40s who was fairly well-spoken," 866 F.3d, at 559, A. 108; that eight days after the attack, a BPD officer armed with the composite sketch and the verbal description the victim had provided of her attacker stopped respondent on the street because respondent so closely resembled that sketch and description; that the BPD officer stopped respondent within a few blocks of the victim's home and that when stopped the respondent was wearing a woman's stocking on his head; that when shown in a photograph array the photograph that the BPD officer had

taken of respondent on the street, the victim immediately and emphatically identified respondent as her attacker, and then wrote "that's him" and signed her name on the back of respondent's photograph; and that the victim had reacted emotionally to seeing respondent's photograph, crying and pushing the photo array away, as she repeatedly said, "that's him."

Petitioner Detectives Smith and Griffin also knew that, after the victim had emphatically and emotionally identified the photograph of respondent as her attacker, she had said that she wanted to see respondent in a physical lineup and hear his voice to be sure of the identification. Petitioner Detectives Smith and Griffin knew that BPD procedure did not call for such a physical lineup before arrest, because taking a person into custody for such a lineup itself required probable cause to arrest and BPD did not have any facilities to conduct such lineups. In addition, they knew that voice identification was inherently unreliable.

When Petitioner Sergeant Jones approved the arrest warrant, he knew all of the above, except he did *not* know that the victim had told Petitioner Detectives Smith and Griffin that she wanted to see respondent in a physical lineup and hear his voice to be sure of her identification. Only after the arrest of respondent did the victim tell Petitioner Sergeant Jones that she wanted to see the respondent in a physical lineup and to hear his voice so as to be able to be sure of her identification. The victim testified that Petitioner Sergeant Jones showed her a photo of a man at some point, perhaps while she was working on the composite sketch, and told her

that he was her attacker. There was no evidence that Detective Petitioners knew that Sergeant Jones had done this.

There was no evidence that the Petitioner Detectives or the Petitioner Sergeant knew, as Humbert later testified at his civil damages trial, that the BPD officer stopped and photographed Humbert near the homeless shelter where he was staying at the time, only a couple of miles away from where his family members lived. *Humbert,* 866 F.3d at 559, A. 125.

Based upon all this, the Officers believed they had probable cause to arrest respondent. The Court of Appeals held otherwise.

2. The Court of Appeals Decision

The Court of Appeals based its reversal on two findings of fact that it made. First, taking the evidence in the light most favorable to respondent, it found that the evidence showed that Petitioner Sergeant Jones had improperly influenced the victim's identification of the respondent. It said that the evidence showed he had done so by repeatedly asking "the victim multiple times whether her assailant was homeless, and it is undisputed that Humbert was homeless at the time he was stopped," 866 F.3d at 560, A. 127; and by showing the victim a photograph of respondent and identifying him as her attacker, "a day after the assault occurred, either during ***or after*** she completed the composite sketch and only a few days before she saw his photo in the photobook." *Ibid.* (emphasis added). Based on these findings, the Court of Appeals concluded that "the ***Officers*** improperly influenced the investigation from its inception," *ibid.* (emphasis added), thereby

rendering the warrant invalid and requiring a finding that the Officers lacked probable cause to arrest respondent.

Second, the Court of Appeals concluded that the evidence showed that the Officers withheld from the prosecution a report showing that DNA obtained from the victim shortly after the attack did not match respondent's DNA, and that they did so because the victim had said she would not testify against respondent unless there existed DNA evidence implicating him in the attack. These facts, the court said, meant that the "criminal proceedings and pretrial detention also violated [respondent's] Fourth Amendment rights." *Id.* at 561, A. 129.

Based on these findings, the Court of Appeals further concluded that the Officers "had no reasonable basis to believe probable cause existed to seek the warrant or initiate criminal proceedings against Humbert," because no "reasonable officer could have believed that the Fourth Amendment permitted Jones's conduct" in showing her the photograph and telling her it was her assailant. *Id.* at 562, A. 131. Therefore, the court said, none of the three Officers was entitled to qualified immunity.

In making these findings, the Court of Appeals relied on several questionable characterizations of the record. First, it said that Petitioner Sergeant Jones had repeatedly asked the victim if her attacker had been homeless, and added that respondent was homeless at the time. But the Court of Appeals never referred to any evidence that Petitioner Sergeant Jones or anyone else told the victim her attacker was homeless. The only evidence on this point is that the Sergeant

questioned whether she thought he was. This point does not support the Court of Appeals' conclusions.

Second, the court placed reliance on the victim's testimony that when shown the photograph of respondent in the photobook, she had reacted "emotionally to seeing Humbert's photo because his photo looked like the one Jones showed her the day after her attack and Jones indicated that he was her assailant." *Id.* at 551; A. 131. But the Court of Appeals never addressed the fact, as the District Court had concluded, that there exists "no evidence that the Victim communicated the apparent partial source of her distress to Smith or Griffin." A. 88-89. Despite this, the Court of Appeals repeatedly taxed both Petitioner Detectives with knowledge that the victim had reacted to the photo of respondent, and identified him as her assailant, in part because Petitioner Sergeant Jones had shown her a photograph identified as her assailant. If those Petitioner Detectives did not know that Sergeant Jones had shown her the photograph of someone and told her the man in the photograph was her attacker, their probable cause determination cannot be undermined by him having done so.

Third, the Court of Appeals did not properly consider the victim's testimony regarding when Petitioner Sergeant Jones supposedly showed her the photograph. The victim gave conflicting testimony on this point, saying he did so during the drawing of the sketch, then saying he did it after the sketch was complete, finally ending up by testifying that she could not say when the Sergeant had done so. A. Because she was unsure, the District Court found that no basis existed in the evidence to "infer that Jones showed her the picture before the sketch had been

completed." A. 82 n.46. The timing here is important: if Sergeant Jones did not show her the photograph until after the sketch had been completed, the photograph could not have tainted the sketch. So, too, the photograph could not possibly have contaminated her verbal description of the attacker, or the sketch she drew, because she gave that description and drew that sketch the day before anyone showed her any photographs. This factor does not bear the weight the Court of Appeals ascribes to it.

Worse, the Court of Appeals seems to have misapprehended Petitioner Sergeant Jones's testimony about allegedly showing the victim a photograph. The Court of Appeals noted that Petitioner Sergeant Jones had "testified that he did not show 'anybody a photo of anything,'" 866 F.3d at 551, A. 108 (quoting J.A. 622 (trial testimony)), but went on to conclude that Jones had "later stated that if he had shown her a photo, 'it would have been to tell her what features to have drawn on the composite.'" *Ibid.* (quoting J.A. 654 (trial testimony)). No reading of Petitioner Sergeant Jones's testimony can support the Court of Appeals' characterization of it in this regard. Indeed, Petitioner Sergeant Jones testified precisely the opposite: he said he never showed her a photograph, and would not have done so, because doing so would have been tantamount "to tell[ing] her what features to draw on the composite," *ibid.* (quoting J.A. 654 (trial testimony)), and that was exactly what he was trying to avoid. Here is the excerpt from his testimony on this point, putting in context the language upon which the Court of Appeals relied:

"REDIRECT EXAMINATION:

"Q. Okay. And, when you were being asked about the book of 45 photos, you started to say the key thing about the photos is, and then counsel stopped you. Do you remember – do you remember that?

"A. Yes.

"Q. Would you finish that answer.

"A. Ultimately your goal is not to be overly prejudicial, or really prejudicial in any way, so you wouldn't want to show a single photo and say, 'Is this the guy?' The average person would think that's who you want them to pick.

* * *

"[U]ltimately the goal is not to prejudice the person. It's to show them something so they have no idea – I'm sorry – it's to show them something so they have no idea who you're looking for them to identify." A. 176A-176B.

* * *

"RECROSS EXAMINATION:

"Q. I believe you stated a few minutes ago that you don't want to show someone just one guy, because then you'll know that someone wants [*sic*] to select them, correct?

"A. Correct.

"Q. And isn't that exactly what Ms. Doe testified that you did –showed her the picture of one guy?

"A. That's what she said.

"Q. And the probable effect of that, based on your testimony, is that she would know who you wanted her to select; is that correct?

"A. Say that again.

"Q. The probable effect of you showing her one person's photo would be that she knew who you wanted her to select; is that correct?
"A. The probable effect of that – "

"Q. Yes or no?

"A. No, I don't agree with that. I'm trying to explain to you why I don't agree with it. No, I don't agree with that.

"Q. Is that not what you just testified to?

"A. Can I give you more than a 'yes' or 'no' answer?

"THE COURT: If you need to.

"THE WITNESS: So, Your Honor, if -- if that, in fact, was true, it would have been telling her the features that she should describe to the sketch artist. Is that the same thing that you're saying? It wouldn't have been telling her who to pick out. It would been telling her– she was there to do a composite. So it would have been to tell her what features to have drawn on the composite.

"BY [PLAINTIFF'S COUNSEL]:

"Q. It doesn't – does it matter, Detective, whether or not you were trying to signal to her what to draw on the composite, or what to select, or who to select if you did show her a photograph?

"[COUNSEL FOR DEFENDANTS]: Objection.

"THE WITNESS: I didn't.

"[COUNSEL FOR DEFENDANTS]: He didn't. Okay.

"BY [PLAINTIFF'S COUNSEL]:

"Q. If you showed her a photograph, is it your testimony that it wouldn't have contaminated her moving forward?

"[COUNSEL FOR DEFENDANTS]: Objection.

"THE COURT: Sustained." A. 179

Petitioner Sergeant Jones testified that he did not show the victim any photograph, never conceded that he might have done so, and certainly never said that if he had done so, "it would have been to tell her what features to have drawn on the composite," as the Court of Appeals said he did.

In the same way, the Court of Appeals misapprehended the evidence regarding DNA. As noted, the Court of Appeals found that the Officers withheld the lab

reports concluding that the DNA from the victim's kit did not match respondent's DNA. 866 F.3d at 561, A. 128. But the uncontroverted evidence at trial shows that at respondent's arraignment on June 23, 2008, the prosecutor in open court informed the court that he had already learned that the DNA test did not show a match to respondent's DNA, though he added that he had to confirm that result. A. 162 (arraignment transcript). In addition, the Petitioner Detectives testified that prosecutors generally obtain DNA reports directly from the state crime lab, and that their general practice was to provide any reports they obtained to the prosecutor. Thus, the evidence showed the prosecutor knew of the DNA results and was able to get access to them, if he in fact had not in the course of routine proceedings already done so, less than two months into Humbert's detention.

Second, after Humbert was arrested, Petitioner Sergeant Jones truthfully told the victim there was DNA evidence against respondent. During their ongoing investigation of a serial rapist in the Charles Village area, the police had recovered DNA matching respondent on a condom wrapper found outside the residence of a woman raped a month before the attack in this case. A.163-64. Counsel for the Officers sought to get this into evidence at the trial below, but it was deemed inadmissible. *See* A. 171. The issue had also been raised in the Petitioner Detectives' Motion for Summary Judgment. The District Court ruled:

> Another victim—who had been raped on March 30, 2008 on Bolton Street in Baltimore [near Charles Village]—had told officers that her attacker used a Trojan Magnum condom in a gold foil wrapper during the rape. . . . On March 31, 2008, [police] discovered a condom wrapper matching that description near [that] victim's home, and she confirmed that it was the same type her attacker had used. . . . On May 14, 2008,

> she viewed Humbert's picture in a photo array and said he looked 30%-80% like her attacker. . . . In a report dated June 10, 2008, Humbert's DNA was identified on the condom wrapper, along with the DNA of two other unknown individuals. A. 26 n.34.

Thus, when Petitioner Sergeant Jones assured the victim there was DNA evidence against respondent, his statement was accurate. It was not a clearly-established legal rule that this evidence would be excluded from the Humbert civil damages trial or that he violated Humbert's rights in telling the victim about it; instead, the issue required briefing at summary judgment and argument again at trial before the District Court excluded the DNA evidence linking respondent to other rapes in the same area of the city, subject to plaintiff's counsel opening the door through evidence he might elicit at the trial. Police officers are not required to predict how a court might rule on complex and unpredictable evidentiary issues at trial.

3. Issues For Review In This Court

The Court of Appeals decision thus misapprehended the record evidence in important ways that raise serious doubt as to its ruling on probable cause.

First is the issue raised by *Wesby,* that is, whether apart from evidence contradicting a conclusion of probable cause, the officers nevertheless had sufficient evidence that it was reasonable for them to have concluded that they had probable cause to arrest respondent. Second, the Court of Appeals incorrectly attributed what one of the Officers knew to all the other Officers, even though there existed no evidence those other Officers in fact had that knowledge. Thus, though no evidence showed that Petitioner Detectives Griffin or Smith had

any idea that Jones had shown any photographs to the victim, or that he had identified anyone as the attacker, the Court of Appeals denied them qualified immunity on the ground that they in fact possessed such knowledge. So, too, the court attributed to all three Officers knowledge of the victim's statement that she reacted so strongly to the photo of respondent in the photobook because Jones had previously shown her the photograph, even though there is no evidence she told anyone that was the reason, and no evidence that the Officers knew anything about her feeling in this regard.

This Court has held that each officer's entitlement to qualified immunity must be analyzed based only upon the facts known to him or her. *White*, 137 S. Ct. at 550 ("Because this case concerns the defense of qualified immunity, however, the Court considers only the facts that were knowable to the defendant officers." (Citation omitted.). There was no evidence that either Smith or Griffin knew that Jones allegedly showed the victim a single photo.

Likewise, there was no evidence that prior to Humbert's arrest, Jones had any knowledge that the victim had qualified her photo identification by stating that she wanted to see Humbert in a line up. To reverse the District Court's grant of qualified immunity and reinstate the jury's malicious prosecution verdict, the Court of Appeals attributed to Petitioner Sergeant Jones knowledge that (according to the evidence) only Petitioner Detectives Smith and Griffin had.

The Court of Appeals held that the Petitioner Detectives and Petitioner Sergeant Jones caused legal process to be "instituted and maintained" without probable cause because they failed to disclose the negative DNA report and

assured the victim there was DNA implicating Humbert. *Humbert,* 866 F.3d at 561. The evidence showed that only Petitioner Sergeant Jones assured the victim there was DNA evidence (which was an accurate statement), and there was no evidence the Petitioner Detectives knew Jones told her that. In addition, the evidence showed that as far the Petitioner Detectives and Petitioner Sergeant Jones knew the normal business process was for the prosecutor to obtain the lab report directly from the state crime laboratory.

The decision of the Court of Appeals in this case cannot be squared with the record evidence, and conflicts with the many decisions of this Court holding that officers are entitled to qualified immunity unless each officer is himself "plainly incompetent" or "knowingly violate[s] the law." *Mullenix v. Luna,* —— U.S. ——, 136 S. Ct. 305, 308 (2015)(citations omitted). The officer's "*particular* conduct" and the "specific context" must be examined, and immunity may be denied only when the constitutional right is so clearly defined that "every reasonable officer would have understood that what he is doing violates that right." *Ibid.* The panel decision in this case failed to meet this standard, because even on the facts viewed most favorably to respondent, the Petitioner Detectives and Petitioner Sergeant reasonably believed they had probable cause to institute the prosecution of respondent.

REASONS FOR GRANTING A SECOND EXTENSION OF TIME

Applicants respectfully request that the time in which they must file a petition for a writ of certiorari be extended for an additional thirty days, for the following reasons:

1. As described above, this case presents complicated issues of importance warranting a carefully-drafted petition for a writ of certiorari.

2. Good reasons exist for this Court carefully to consider whether to grant a writ of certiorari to the United States Court of Appeals for the Fourth Circuit in this case, given that the panel opinion departed from this Court's precedents in important ways.

3. Counsel of Record, and the City Solicitor's Office generally, is currently stretched thin with limited resources. We act as general counsel to the BPD, which is currently in the beginning stages of implementing a wide-ranging United States Department of Justice consent decree for police reform. We must contend with high rates of violent crime. We also act as general counsel to the Mayor and City Council of Baltimore and all City agencies.

4. The City Solicitor's Office has now retained William Alden McDaniel, Jr. of Ballard Spahr LLP as associate counsel. Mr. McDaniel is an experienced litigator who has handled matters in this Court. He will assist in the preparation of the Petition for a Writ of Certiorari and he will need time to get up to speed on this matter.

5. If no extension is granted, that petition would be due in less than a month, which is insufficient time.

6. Granting this motion will not unnecessarily of unduly delay this action or prejudice any party.

Respectfully submitted,

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Additional material from this filing is available in the Clerk's Office.