**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**LAKEVILLE DIVISION**

SHERYL JORDAN, as Personal Representative of the Estate of DAVID JORDAN, JR.

CASE NO.: 2020-CV-000319

Plaintiff,

v.

SHERIFF DEREK MICHAELS in his official capacity as Sheriff of Midland County, and ERIC WATSON, an individual,

Defendants.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF

PLAINTIFF'S MOTION TO STRIKE AND IN OPPOSITION OF

DEFENDANT'S MOTION TO EXCLUDE

/s/ 2222
2222
*Attorneys for the Plaintiffs*

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## INTRODUCTION

The police are supposed to protect and serve, but instead an all-too familiar story unfolded on the afternoon of February 14, 2019 in Ford Hampton, Florida. Just as school was letting out across the street at Ford Hampton Elementary, a Midland County Sheriff's officer shot and killed a Black man in his own home. The officer, Defendant Eric Watson, was investigating a complaint over loud music when he quickly fired through the front door, killing David Jordan, Jr. Jordan's mother brought this 42 U.S.C. section 1983 action on behalf of Jordan's estate, herself, and Jordan's three children. In response, Defendant Watson alleges that he is immune from all liability through qualified immunity, as he, at no time, committed any act in derogation of Jordan's civil rights of which a reasonable officer would have had knowledge.

Plaintiff thus motions to strike Defendant's claim because (1) Defendant violated Jordan's rights, as a non-threatening, non-fleeing Black man, to not be seized by deadly force, and (2) these rights were clearly established by prior precedent. To hold otherwise is to enable a pattern of police brutality in America.

Despite stipulating to his expert qualifications, Defendant also moves to exclude Dr. Frank Edwards' expert testimony. This motion should be denied because Dr. Edwards reliably explains why Defendant's decision to use deadly force was unreasonable given the circumstances. Especially in light of a pattern of racial bias at the

Midland County Sheriff's Office, Dr. Edwards' testimony is sufficiently probative to help the jury further evaluate the reasonableness of Defendant's use of force.

## STATEMENT OF FACTS

This case arises out of the killing of David Jordan Jr. ("Jordan") by Officer Eric Watson ("Defendant") pursuant to the investigation of a simple noise ordinance violation. Compl. ¶12. Defendant, a White male, had previously arrested Jordan, a Black man, for a curfew violation. Watson Aff. ¶ 46; McDonald Aff. ¶ 13. Jordan resided across the street from Ford Hampton Elementary School. Compl. ¶ 3. On the afternoon of February 14, 2019, Lee McDonald, a third-grade teacher at the elementary school, reported hearing loud music from Jordan's house on 1501 58th Street South. McDonald Aff. ¶ 4. Two Midland County Sheriff's Office Deputies from the Road Patrol unit were dispatched to investigate. Watson Aff. ¶ 8; Rivera Aff. ¶ 4. Defendant and Officer Eddie Rivera ("Rivera") arrived in front of Jordan's house at 3:15 PM, as the school was letting out. Compl. ¶ 12.

The officers approached the residence and knocked on Jordan's front door. Watson Aff. ¶ 21. There was no response and the loud music continued playing. *Id.* Defendant knocked, and then banged his police baton against Jordan's side door. Watson Aff. ¶¶ 23-24. Jordan's house had no other entries besides the front and side doors. Ex. A 37. Neither of the doors were windowed. Compl. ¶ 12. The officers did not identify themselves as policemen until Jordan opened his front door. Rivera Aff. ¶ 23. Both officers saw a small dark object in Jordan's right hand. Rivera Aff. ¶ 26; Watson Aff. ¶

26. Rivera suddenly started shouting, "gun," as Jordan began to close the door with his left hand. Rivera Aff. ¶ 27; Watson Aff. ¶ 31. Defendant was not certain whether Jordan was holding a gun, but he drew and aimed his weapon at Jordan. Watson Aff. ¶ 32. Defendant did not see Jordan "aim" the object in his hand at anybody. Watson Aff. ¶ 35. Jordan did not threaten or pose a threat to either officer. Compl. ¶ 19. As the front door was closing, Defendant rapidly fired four times. Watson Aff. ¶ 36. One of the bullets penetrated through the door and hit Jordan's skull, killing him instantly. Compl. ¶ 19; Roberts Aff. ¶ 14. From across the street, Lee McDonald witnessed the shooting and rushed the elementary school children inside to shelter in place. McDonald Aff. ¶ 16.

After Jordan was killed, Rivera "took cover" behind the patrol car. Rivera Aff. ¶ 37. Then, a SWAT team and other personnel entered Jordan's house in an effort to subdue his already deceased body. Compl. ¶ 19. Defendant and Rivera were put on paid administrative leave for ten days. Watson Aff. ¶¶ 50–51.

Dr. Frank Edwards conducted a review of Midland County Sheriff's department data on ordinance violations where police officers drew their weapons during the stop. Edwards Aff. ¶ 5. Dr. Edwards concluded that racial bias plays a statistically significant role in whether Midland County Sheriff's officers draw their weapon during a stop. Edwards Aff. ¶ 8. These findings are consistent with Dr. Edwards' larger findings that the risk of being killed by police use of force is disproportionately higher for Black men. Edwards Aff. ¶ 10.

## ARGUMENT

### I. THIS COURT SHOULD GRANT THE PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY BECAUSE THE DEFENSE IS INSUFFICENT.

Under Rule 12(f), the court "possesses liberal discretion when ruling on motions to strike" any redundant, immaterial, impertinent or scandalous matter. *BJC Health Sys. v. Columbia Cas*. Co., 478 F.3d 908, 917 (8th Cir. 2007). A motion to strike an affirmative defense is "is appropriately granted where the defense is clearly legally insufficient." *United States v. 729.773 Acres of Land*, 531 F. Supp. 967, 971 (D. Haw. 1982).

The qualified immunity doctrine protects government officials performing discretionary functions from all civil damages in a section 1983 action. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The doctrine does not apply, however, where the officer has violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* The plaintiff must plead facts showing that (1) the government official violated their constitutional right and (2) that the constitutional right was "clearly established" at the time of violation. *Ashcroft v. al–Kidd*, 563 U.S. 731, 734 (2011).

Here, the facts show that Defendant violated Jordan's clearly established right from unreasonable seizure by deadly force. Accordingly, the Court should strike Defendant's clearly insufficient affirmative defense of qualified immunity.

### A. Defendant Violated Jordan's Fourth Amendment Rights by Unreasonably Using Deadly Force.

When a police officer has used deadly force to apprehend a suspect, "there can be no question that . . . [this] is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). This reasonableness requirement evaluates whether the use of deadly force was "objectively reasonable" from the perspective of an officer on the scene. *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Long v. Slaton*, 508 F.3d 576, 580 (11th Cir.). An officer's use of force is reasonable if (1) the officer gave warning about the possible use of deadly force, (2) force was reasonably necessary to prevent escape, and (3) there was probable cause to suspect either a threat of serious physical harm, either to the officer or others, or crime involving infliction or threatened infliction of serious physical harm. *Adams v. Sheriff of Palm Beach County, Florida*, 658 Fed. App'x. 563 (11th Cir. 2016) (citing *Garner*, 471 U.S. at 11–12).

Effectively ignoring the officer's actual intentions, the objective reasonableness analysis "sanction[s] a 'shoot first, think later' approach to policing." *Mullenix v. Luna*, 136 S. Ct. 305, 316, (2015) (Sotomayor, J., dissenting). However, the Court must consider the facts "taken in the light most favorable to the party asserting the injury." *Saucier v. Katz* 533 U.S. 194, 201 (2001), *rev'd on other grounds*, *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

Here, Defendant's qualified immunity claim is factually insufficient. By firing upon a non-fleeing, non-threatening suspect without warning, Defendant's use of deadly force was unreasonable and thus violated Jordan's constitutional rights.

1. Defendant failed to warn before using deadly force.

Deadly force may be reasonable if the officer has given a warning. In *Youngblood v. Qualls*, the district court held that that an officer was not entitled to qualified immunity partly because he gave no warning before using force. *Youngblood v. Qualls*, 308 F. Supp. 3d 1184 (D. Kan. 2018). The officer was investigating a call about "disorderly conduct [which] is not a serious crime," where the suspect was "loud" and "certainly distasteful." *Id.* at 1197, 1201. Since the officer seized and threw the suspect without giving any prior warning, his conduct was not "objectively reasonable" in light of *Graham v. Connor*. *Id.* at 1201.

Here, in the fleeting moments after Jordan opened his front door, Defendant issued no warning whatsoever before firing his weapon. Moreover, neither Rivera nor Defendant identified themselves as police when they were knocking on his door. Although both officers note that loud music was playing, a verbal warning was still possible, given that Defendant was able to hear Rivera yelling, "gun, gun, gun." Lee McDonald, who made the initial noise complaint, could hear the officers' banging on Jordan's door, as well as Watson's gunshots, but heard no music at the time of the gunshots. If the music had ceased by the time Defendant fired his weapon, as McDonald's statement implies, then a verbal warning about the imminent use of deadly force was possible. Loud music playing or not, Jordan was never given a warning.

2. Defendant's use of deadly force was not reasonable because Jordan did not and could not flee.

Deadly force may be reasonable if the officer believes it is necessary to prevent a suspect from escaping. *Adams v. Sheriff of Palm Beach County, Florida*, 658 Fed. App'x. 557, 563 (11th Cir. 2016). Defendant's decision to use deadly force cannot be reasonable because Jordan never attempted to escape. Defendant and Rivera had knocked on Jordan's front and side doors—the only doors—and do not claim that Jordan tried escaping before Defendant fired his weapon. Absent any actual or perceived risk of letting Jordan flee, Defendant's use of deadly force was unreasonable.

Even if Jordan's decision to shut his front door is somehow construed as an escape attempt, deadly force is unreasonable absent any serious crime. The Fourth Circuit Court of Appeals held that shooting a suspected misdemeanant was an objectively unreasonable use of force. *Henry v. Purnell*, 652 F.3d 524 (4th Cir. 2011). While the decedent in *Henry v. Purnell* faced a misdemeanor charge for failure to pay child support, here Jordan faced an even less serious charge: a non-criminal, first-time noise complaint. It cannot, therefore, be construed that Defendant's use of deadly force was reasonably necessary to stop a fleeing suspect.

3. Defendant's use of deadly force was not in response to a serious threat.

There was no serious threat warranting Defendant's use of force for two reasons. First, Jordan was not committing a serious or threatening crime. Second, Jordan posed no immediate threat at the time.

First, deadly force may be reasonable where the suspect "has committed a crime involving the infliction or threatened infliction of serious physical harm." *Adams*, 658 Fed. App'x. at 563. Where the offense is as minor as playing music too loudly in a parking lot, the use of force by pepper spray is unreasonably excessive. *Brown v. City of Huntsville, Ala.* 608 F.3d 724, 739 (11th Cir. 2010). Here, as agreed to by both officers, a noise disturbance violation is not a criminal violation. Rivera Aff. ¶ 12; Watson Aff. ¶ 15. Since Defendant does not claim that Jordan's loud music could have inflicted serious physical harm, Defendant's use of force was unreasonable.

Second, deadly force may be reasonable where the officer "has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." *Adams*, 658 Fed. App'x. at 563. In *Nunez v. Santos*, the court held that an officer's use of deadly force was unreasonable where the suspect did not reach for or aim their gun. *Nunez v. Santos* 427 F.Supp.3d 1165, 1186 (D. Ariz. 2019) (citing *Willis v. City of Fresno*, 680 F. App'x. 589, 591 (9th Cir. 2017)). There, the armed suspect was walking in and out of his front door, and the officer claimed that he reasonably believed the suspect pointed the gun at him. *Id.* at 1184. Indeed, "the mere fact that a suspect possesses a weapon does not justify deadly force." *Hayes v. Cty. of San Diego*, 736 F.3d 1223, 1233 (9th Cir. 2013). Here, Defendant was uncertain whether Jordan even had a gun, and claims he never saw whatever was in Jordan's right hand "specifically aimed at anybody." Watson Aff. ¶¶ 32, 35. Defendant insufficiently claims that Jordan posed a threat, and therefore his use of deadly force was unreasonable.

### B. Jordan's Right from Unreasonable Seizure by Deadly Force Was "Clearly Established."

Defendant is not entitled to qualified immunity if the injured party's constitutional right was "clearly established" at the time of his killing. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Supreme Court has alternatively held that this element does not require "a case directly on point," but also that "clearly established law must be 'particularized' to the facts of the case." *Compare Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018), *with White v. Pauly*, 137 S. Ct. 548, 552 (2017). Here, Jordan's rights have been clearly established on both a broad and particularized level. Therefore, any reasonable officer would have been placed on notice that Defendant's Watson's actions violated a Constitutional right.

#### 1. Deadly force against a non-threatening, non-fleeing individual is unconstitutional.

A Constitutional right has been clearly established if "its contours are sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Ashcroft v. Al-Kidd*, 563 U.S. 731, 741 (2011). One such Fourth Amendment right protects against an officer's use of deadly force where the "threat presented lacked immediacy and alternatives short of lethal force remained open." *McKenney v. Mangino*, 873 F.3d 75, 83 (1st Cir. 2017). In *McKenney*, a suspect was told to drop their gun, but had not been warned they would be killed if they did not comply. *Id.* at 80. Here, although the Rivera and Defendant could have believed that Jordan held a gun, there was no warning prior to the use of deadly force. Beyond playing music and

shutting his front door, Jordan's action did not present a threat. Given that the officers had covered both exits, non-lethal methods were available.

Furthermore, Florida police officers are especially on notice of this distinct right. In *Adams v. Bradshaw*, a Florida officer was not entitled to summary judgment for qualified immunity because "the law was clearly established that the use of deadly force against an unarmed, non-threatening, and non-fleeing individual is unconstitutional." *Adams v. Bradshaw*, 658 Fed. App'x. 557, 564 (11th Cir. 2016). Indeed, a non-threatening suspect's Fourth Amendment right not to be seized by deadly force has been repeatedly established in the state of Florida. *Id.*

Here, viewing the facts in a light most favorable to Jordan, Defendant used deadly force upon a suspect who had not posed any threat or attempted to flee. Given the extensive case law, a reasonable officer in Defendant's position would have known that shooting Jordan under these circumstances violated his constitutional rights.

2. Defendant's conduct was particularly suspect in this case.

In defining a clearly established right, "settled law must squarely govern[] the specific facts at issue." *James v. New Jersey State Police*, 957 F.3d 165, 169 (3d Cir. 2020) (internal citations and quotations omitted). In *Bryant v. Mascara*, an officer was not entitled to qualified immunity because he had violated clearly established constitutional rights. *Bryant v. Mascara* 723 Fed. App'x. 793, 797 (11th Cir. 2018). *Bryant* is dispositive because the particular facts of the case are virtually identical to those before the Court here. Both cases involve two officers who arrived at a residence

across from an elementary school at three in the afternoon for a noise complaint, and repeatedly knocked on the suspect's door. *Id*. at 794. As here, the officer in *Bryant* shot the suspect three times through the front door, tracking upward, as the suspect closed the door. Both the decedent in Bryant and Jordan were black men with dreads. Due to factual uncertainty as to whether the defendant held a gun in his right hand as he shut the door with his left hand, the court in *Bryant* denied defendant's qualified immunity claim. *Id.* at 797.

Here, given the nearly identical facts, a reasonable officer would have been on notice that (1) shooting the suspect is grounds for a civil rights lawsuit, and (2) qualified immunity would not automatically shield a defendant if there was *any* question as to whether the suspect had a gun. Thus, precedent clearly established that Defendant should have known better than to shoot an unthreatening man in his own home over a noise complaint.

## II. THIS COURT SHOULD DENY DEFENDANT'S MOTION IN LIMINE BECAUSE DR. EDWARDS' EXPERT TESTIMONY RELIABLY HELPS EXPLAIN DEFENDANT'S DECISION TO USE DEADLY FORCE.

Expert testimony is relevant if it has any tendency to render a fact of consequence more or less likely. Fed. R. Evid. 401. Relevant evidence must tend to "logically, naturally, and by reasonable inference . . . establish material facts such as identity, intent, or motive." *People v. Ghobrial*, 5 Cal. 5th 250, 282 (Cal. 2018). Thus, the evidence need not conclusively prove a material fact in order to be relevant. *Old Chief v. United States*, 519 U.S. 172, 177 (1997); *United States v. Colbert*, 828 F.3d 718, 727–28 (8th Cir. 2016) ("[T]he threshold for relevance is 'quite minimal.'").

Since Defendant stipulates that Dr. Edwards is a qualified expert, this Court should deny Defendant's motion to exclude Dr. Edwards' testimony for three reasons. First, Dr. Edwards' testimony shows that Defendant acted recklessly, maliciously, or deliberately indifferent toward Jordan when he used deadly force in violation of Jordan's constitutional rights. Second, Dr. Edwards' testimony will help the jury determine whether Defendant's use of deadly force was reasonable. Third, Dr. Edwards' testimony is substantially more probative than prejudicial because it helps explain the intersection of policing and race, an admittedly charged issue, in this specific context.

### A. Dr. Edwards' Expert Testimony Is Relevant Per FRE 401 To Prove That Defendant Unreasonably Used Deadly Force by Shooting Jordan.

In *Hardy v. City of Milwaukee*, the court held that testimony regarding past police practices and conduct was relevant. *Hardy v. City of Milwaukee*, 88 F. Supp. 3d 852, 863 (E.D. Wis. 2015). Testimony of an officer's history of conducting strip searches made the fact that the officer conducted a strip search of the plaintiff more probable. *Id.*

The relevance of racial bias in ascertaining the reasonableness of Defendant's use of force is apparent here for two reasons. First, Dr. Edwards' expert testimony about patterns of racial bias at the Midland County Sheriff's Office has the tendency to show that Defendant's actions were influenced by racial bias. Notably, Dr. Edwards' expert testimony needs only to make it any more or less probable that racial bias motivated Defendant's actions. With Dr. Edwards' testimony, a reasonable jury could conclude that Defendant—a white police officer—unreasonably used excessive deadly force against Jordan—a Black man hiding behind his front door—in part due to racial biases.

Second, an officer's racial motivation "demonstrate[s] why the plaintiffs' testimony, and not the officers', should be deemed credible by the jurors." *Price v. Kramer*, 200 F.3d 1237, 1251 (9th Cir. 2000). There are issues of fact regarding whether Jordan threatened the officers, which will be made more or less credible with Dr. Edwards' testimony of bias. The testimony is therefore relevant.

### B. Dr. Edwards' Expert Testimony Is Relevant Per FRE 702 Because It Helps the Jury Understand How Racial Bias Impacted Defendant's Acts.

Expert testimony is admissible if it assists the trier of fact in understanding the evidence. Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579, 593 (1993). Expert testimony assists the trier of fact if it is relevant and connects the proffered scientific research to the particular disputed fact. *Daubert*, 509 U.S. at 591.

#### 1. The expert testimony will help the jury evaluate the reasonableness of Defendant's use of force.

While the reasonableness of an officer's use of force should generally be considered "without regard to their underlying intent and motivation," *Graham v. Connor*, 490 U.S. 386, 397 (1989), evidence of racial bias may still be considered in determining whether the officers' use of force was objectively reasonable. *Mendoza v. Block*, 27 F.3d 1357 (9th Cir. 1994) (holding that evidence of an officer's racist language was relevant to the reasonableness of the officer's use of force). *Graham* even concedes that "[o]f course, in assessing the credibility of an officer's account of the circumstances that prompted the use of force, a factfinder may consider . . . evidence that the officer may have harbored ill will toward the citizen." *Graham*, 490 U.S. at 399 n.12.

Accordingly, an officer's racial motivation tends to explain why the officer used excessive force. *Price v. Kramer*, 200 F.3d 1237, 1251 (9th Cir. 2000).

Here, Dr. Edwards' scientific analysis of the Midland County Sheriff's department will assist the jury in determining the reasonableness of Defendant's use of force. Jordan was neither (1) committing a crime by violating the noise ordinance nor (2) resisting arrest. Since the *Graham* reasonableness factors favor Jordan, Dr. Edwards' finding of significant racial bias is thus uniquely important to help the jury understand why Defendant drew his weapon and shot Jordan. Moreover, Dr. Edwards' testimony connects his peer-reviewed finding that the risk of being killed by police use of force significantly increases for Black men, which helps determine whether Defendant's reasonable force claim is credible.

2. The expert testimony illustrates a pattern and practice of racism at the Midland County Sheriff's Office.

In *Wright v. Stern*, the court held that expert testimony based on the expert's independent research was relevant to show that employment decisions were made in an "arbitrary and racially biased manner." *Wright v. Stern*, 450 F. Supp. 2d 335, 360 (S.D.N.Y. 2006). Opposing parties may challenge the weight of such testimony with "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof." *Id.* (citing *Daubert*, 509 U.S. at 596).

Here, Dr. Edwards' independent research on the effect of racial bias in Midland County Sheriff's officers' decision to draw their weapon during stops for non-traffic misdemeanors and ordinance violations is relevant. Similar to *Wright*, Dr. Edwards'

findings help determine whether racial animus influenced Midland County Sheriff's officers who drew their weapons during stops for ordinance violations. Given that Defendant stopped at Jordan's home for a civil ordinance violation, Dr. Edwards' independent research is relevant to show a pattern and practice of racism in Defendant's department. Ultimately, however, the jury must determine whether Dr. Edwards' testimony proves with a reasonable degree of certainty that Jordan's death was impacted by racial bias. Particularly because Defendants concede to Mr. Edwards' expert qualifications, Defendant's point is better suited for cross-examination and closing argument than a *Daubert* motion. *Wright,* 450 F. Supp. 2d at 360.

### C. Dr. Edwards' Testimony Is Sufficiently Probative Because It Helps the Jury Consider the Relevant Factors of Defendant's Acts.

Rule 403 excludes otherwise relevant evidence when the probative value of that evidence is substantially outweighed by the danger of confusing the issues or misleading the jury. Fed. R. Evid. 403. However, since "most relevant evidence is, by its very nature, prejudicial," evidence may only be excluded if it causes the jury to decide on improper grounds. *United States v. Hanna,* 630 F.3d 505, 511 (7th Cir. 2010). Admissible expert testimony is not objectionable if it raises an ultimate issue to be decided by the factfinder. *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004).

Dr. Edwards' testimony is substantially more probative than prejudicial for two reasons. First, the reality of police brutality in America cannot be divorced from the shooting of Jordan. Second, Dr. Edwards' conclusions help the jury consider

Defendant's use of force in light of the underlying pattern of racism exhibited at the Midland County Sheriff's Office.

1. Police brutality in America is interrelated with Jordan's death.

Dr. Edwards' testimony does not risk confusing the jury because there is inherent probative value in illustrating the effects of an officer's racial bias on the subsequent killing of a Black man. *Price v. Kramer*, 200 F.3d 1237, 1251 (9th Cir. 2000) (holding that racial bias is "an obvious and appropriate subject to explore given the nature of the [qualified immunity] case"). In light of the long history of attacks on Black lives by police officers, Dr. Edwards' testimony helps illustrate the increased risk of Black men being killed by the police. Aff. Edwards ¶¶ 8–10; *Black Lives Matter Seattle-King Cty. v. City of Seattle*, 2020 U.S. Dist. LEXIS 103346 at 2 (W.D. Wash. June 12, 2020) (illustrating the "current tragic flashpoint in the generational claims of racism and police brutality in America"). The persistent racialized police shootings in America has probative value in understanding Jordan's death.

2. The jury must ultimately decide whether Defendant's acts are related to his department's pattern of racial bias.

While Defendants may disagree with Dr. Edwards' ultimate conclusions, this Court should only exclude Dr. Edwards' testimony if it causes the jury to decide on improper grounds. Here, however, Dr. Edwards' expert testimony will allow the jury to consider Defendant's use of force in light of the underlying pattern of racism exhibited in Defendant's own department. Dr. Edwards' scientific analysis cannot be substantially prejudicial because it cites general themes of racial bias, rather than attacking any

specific officer. Since Dr. Edwards' findings of systemic bias are not individualized to the Defendant, whether his findings bear any consequence to the Defendant is an issue for the jury.

Any concerns with Dr. Edwards' conclusions go not to admissibility, but rather to the weight it should be given. *WBIP, LLC v. Kohler Co.*, 965 F. Supp. 2d 170, 173 (D. Mass. 2013). Even if Dr. Edwards' testimony alone may confuse the jury, the "prejudicial effect of the evidence may be reduced by the manner in which the evidence is introduced," such as providing cautionary instructions to the jury. *United States v. Benton*, 637 F.2d 1052, 1057 (5th Cir. 1981). Thus, this Court can accept the evidence and still avoid juror confusion.

## CONCLUSION

Where the police cause harm instead of protecting, and repeat such harms instead of changing, there should be consequences. If Defendant's affirmative defense stands, the mother of David Jordan Jr., along with his three children, will have no recourse against the man who killed their loved one. Their pain is part of a pattern of pain among the families of Black men killed by police in America, a complex and delicate issue that Dr. Frank Edwards can help explain. Plaintiff therefore respectfully submits that this Court grant its Motion to Strike and deny Defendant's Motion in Limine.

Date: 09/10/2020

*/s/ 2222*
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*Attorneys for the Plaintiffs*