

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

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

CASE NO.: 2:20cv15994

Plaintiff,

v.

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

Defendants.

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DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO  
STRIKE AND IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE

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## INTRODUCTORY STATEMENT

This Court should deny Sheryl Jordan's ("Plaintiff") Motion to Strike because Deputy Eric Watson ("Deputy Watson") did not violate a clearly established constitutional right while performing a discretionary function when he used deadly force against David Jordan, Jr. ("Decedent"). Deputy Watson was performing a discretionary function in an authorized manner when he responded to a noise complaint at the Decedent's home and proceeded to try to get the attention of someone inside.

Deputy Watson did not violate a clearly established constitutional right when he used deadly force after the Decedent emerged from his home holding a gun. No existing precedent shows a clearly established right existed at the time of the incident. Further, Deputy Watson acted reasonably when he used deadly force after the Decedent emerged holding a gun, posing a threat to both deputies on the scene, and children across the street.

This Court should grant Deputy Watson's First Motion in Limine to exclude the Plaintiff's expert witness, Professor Frank R. Edwards ("Edwards"). The Plaintiff anticipates Edwards to testify about racial bias at the Midland County Sheriff's Office ("Midland") and the impact the bias had on Deputy Watson when he used deadly force against the Decedent.

Edwards' testimony is irrelevant because evidence of subjective intent is not an issue in claims alleging Fourth Amendment violations. Edwards' testimony is likely to cause unfair prejudice and jury confusion and is not helpful to the jury because excessive force claims are fact-intensive.

## STATEMENT OF FACTS

Deputies Watson and Eddie Rivera (“Deputy Rivera”) are veteran law enforcement officers with collectively more than twenty years’ experience, currently employed by Midland. (Watson Statement ¶¶ 2, 5); (Rivera Statement ¶ 2.) Both Deputies were members of the Road Patrol Unit, which responds to calls for service in February 2019. (Watson Statement ¶ 8.)

On February 14, 2019, Deputy Watson received a complaint call for a noise disturbance—a county ordinance violation usually responded to by asking for music to be turned down—and Deputy Rivera went as back-up. (Watson Statement ¶¶ 12–14); (Rivera Statement ¶¶ 7, 9–13.) The complaint was made by a teacher from Fort Hampton Elementary school in an area faced with drugs, gangs, and violence, because of the volume and vulgar language of the music during parent pick up. (McDonald Statement ¶¶ 4–7); (Rivera Statement ¶ 19.)

Deputies Watson and Rivera heard loud music from the Decedent’s home through their patrol car windows. (Watson Statement ¶ 19); (Compl. ¶ 3.) Deputy Watson and Rivera pounded on the front door. (Watson Statement ¶¶ 21–22.) Getting no response, Deputy Rivera continued to knock while Deputy Watson walked to the side door and began knocking. (Rivera Statement ¶¶ 22–23.) Still getting no response, Deputy Watson began banging on the side door with his police baton, hoping someone inside would hear. (Watson Statement ¶ 23.)

Deputy Watson started walking back to the front door and heard the music get louder; someone inside the house was opening the front door. (Watson Statement ¶ 24.)

Deputy Rivera began to yell, “Sherriff’s Office,” repeatedly. (Rivera Statement ¶ 24.) The door opened wide enough to reveal the foyer of the home where the Decedent stood close to Deputy Rivera, holding a small black handgun in his right hand. (Watson Statement ¶¶ 25–26); (Rivera Statement ¶¶ 25–26.) Deputy Rivera began screaming “gun,” and ordered the Decedent to “drop the gun.” (Rivera Statement ¶ 27.) The Decedent did not comply with Deputy Rivera’s orders and instead pointed the gun at Deputy Rivera. (Rivera Statement ¶ 28.) The Decedent peered at Deputy Watson and began closing the door with his left hand, still pointing the gun at Deputy Rivera, in the direction of fifty elementary school children. (Watson Statement ¶¶ 31–35.)

The situation quickly escalated to an armed suspect threatening an officer. (Watson Statement ¶ 38.) Believing Deputy Rivera and the children were in danger, Deputy Watson fired his gun four times through the door. (Watson Statement ¶¶ 35–37.) Deputy Watson and Rivera took cover behind a patrol car and called over the radio that shots had been fired while the children were rushed back inside to shelter. (Rivera Statement ¶ 36); (McDonald Statement ¶ 16.) As Deputies Watson and Rivera waited for the SWAT team, the music continued to blare across the neighborhood. (Rivera Statement ¶¶ 36–37.) The Decedent was pronounced dead at the scene. (Med. Exam’r Dep’t.)

The Plaintiff brought this claim for wrongful death against Deputy Watson alleging excessive use of force and battery under 42 U.S.C. § 1983 and negligence. (Compl. ¶¶ 23–27, 30–32.) Deputy Watson raised the affirmative defense of qualified

immunity. (Defs.’ Answer & Defenses ¶ 6.) In reply, the Plaintiff filed a Motion to Strike qualified immunity. (Pl.’s Mot. to Strike.)

The Plaintiff filed a Notice of Expert Witness with the intent to enter testimony of Edwards who, if permitted, would testify about racial bias in Midland and its impact on Deputy Watson. (Pl.’s Notice of Expert Witness.) In response, Deputy Watson filed a Motion in Limine to exclude Edwards’ testimony. (Mot. in Lim. ¶¶ 3–6.)

### **ARGUMENT AND CITATIONS OF AUTHORITY**

#### **I. THIS COURT SHOULD DENY PLAINTIFF’S MOTION TO STRIKE BECAUSE DEPUTY WATSON ACTED REASONABLY AND DID NOT VIOLATE A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT WHILE PERFORMING A DISCRETIONARY FUNCTION WHEN HE SHOT THE DECEDENT.**

Qualified immunity is an affirmative defense shielding government officials against civil liability in a personal capacity. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Government officials performing discretionary functions are entitled to qualified immunity if their conduct does not violate a clearly established constitutional right. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004). Law enforcement officers (“officers”) are government officials under the doctrine of qualified immunity. *See, e.g., Garczynski v. Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009).

Officers bear the initial burden to establish their alleged conduct involved a discretionary function. *Mitchell v. City of New York*, 841 F.3d 72, 79 (2d Cir. 2016); *Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009).

The majority of Circuits shift the burden to the plaintiff to show an underlying constitutional violation and the right was clearly established at the time of the challenged conduct. *See Rohas v. Anderson*, 727 F.3d 1000, 1003 (10th Cir. 2013); *Collier v. Montgomery*, 569 F.3d 214, 217 (5th Cir. 2009); *Garczynski v. Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009); *Gardenhire v. Schubert*, 205 F.3d 303, 311 (6th Cir. 2000); *Erwin v. Daley*, 92 F.3d 521, 525 (7th Cir. 1996). The minority approach keeps the burden entirely with the officer. *See DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 35 (1st Cir. 2001); *Tellier v. Fields*, 280 F.3d 69, 84 (2d Cir. 2000).

This Court should deny Plaintiff’s Motion to Strike for three reasons. First, Deputy Watson was engaged in a discretionary function when he responded to a noise complaint. Second, Deputy Watson’s conduct did not violate any clearly established right. Third, the Plaintiff cannot show the Decedent suffered an underlying constitutional violation because of Deputy Watson’s use of deadly force.

**A. Deputy Watson Was Engaged in a Discretionary Function When Responding to a Noise Complaint by Knocking on the Door of the Decedent’s House.**

Qualified immunity applies to officers performing discretionary functions. *Harlow*, 457 U.S. at 818. A two-part test exists for determining whether an officer’s action was discretionary. *Holloman*, 370 F.3d at 1265. First, the court determines whether an officer performed a legitimate job-related function when the alleged violation occurred. *Id.* at 1265–66 (“[T]o pass the first step of the discretionary function test . . . [the officer] must have been performing a function that, but for the alleged constitutional infirmity, would have fallen within his legitimate job description.”). Second, the court

determines whether an officer exercised a job-related function in an authorized manner.

*Id.*

Here, Deputy Watson approached the Decedent's home, responding to a complaint of loud and vulgar music coming from a house facing an elementary school. (Watson Statement ¶ 14.) Initially, Deputy Watson attempted to knock on the front door and then tried the side door. (Watson Statement ¶¶ 21–22.) Getting no response, Deputy Watson took out his baton and began banging loudly on the side door to get the attention of someone inside. (Watson Statement ¶ 23.)

To rectify a noise complaint, officers must get the attention of someone inside and instruct them to turn down the music. (Rivera Statement ¶ 15.) Because no one answered the knocks on the door, Deputy Watson had to bang on the door more forcefully, which led to the Decedent opening the front door. (Watson Statement ¶¶ 22–24.)

Thus, Deputy Watson was performing a discretionary function; his actions were exercised as a legitimate part of his job in an authorized manner. Therefore, the burden shifts to the Plaintiff to show an underlying constitutional violation that was clearly established at the time of the challenged conduct.

**B. The Plaintiff Cannot Show an Underlying Constitutional Violation or That Deputy Watson's Conduct Violated Any Clearly Established Right When He Used Deadly Force Against the Decedent.**

To overcome qualified immunity, the plaintiff must satisfy a two-prong test. *Holloman*, 370 F.3d at 1264 (citing *Wilson v. Layne*, 526 U.S. 603, 609 (1999)).

Qualified immunity does not apply if the plaintiff shows the officer: 1) violated a

constitutional right that was 2) clearly established at the time the alleged violation occurred. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Courts may use discretion in deciding which prong to address first. *Pearson v. Callahan*, 555 U.S. 223, 232, 236 (2009). This memorandum of law will discuss whether there was a clearly established right before considering whether a constitutional right was violated.

- i. *Deputy Watson did not violate a clearly established right because the Decedent posed a threat to others and no facts show the Decedent was unarmed.*

Qualified immunity shields an officer whose conduct does not violate a clearly established right a reasonable person would have known. *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015). A right is clearly established when the circumstances are clear enough that every reasonable officer would have understood his actions violated the right. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). Further, a right is clearly established when prior decisions place the right beyond debate and should not be defined “at a high level of generality.” *White v. Pauly*, 137 S. Ct. 548, 551–52 (2017).

An officer violates a clearly established right when he uses excessive force against an individual who posed no threat to the officer or others. *Bryant v. Mascara*, 723 F. App’x 793, 793, 796–97 (11th Cir. 2018). In *Bryant*, deputies responded to a noise complaint and knocked on the decedent’s garage door. *Id.* at 794. When no one responded, one of the deputies knocked on the front door. *Id.* After knocking, the deputy heard the garage door open and testified to seeing the decedent holding a gun before using deadly force. *Id.* at 794–95. The decedent’s daughter testified that she saw her father open the garage door from across the street, and he had nothing in his hands. *Id.* at

795. The court found a reasonable officer would not have believed the decedent posed a threat. *Id.* at 797. Thus, the deputy violated a clearly established right by using excessive force against an individual who posed no threat. *Id.*; *cf. Est. of Smart by Smart v. City of Wichita*, 951 F.3d 1161, 1174 (10th Cir. 2020) (finding no violation of a clearly established right when witnesses testified to not seeing a gun, rather than seeing the decedent empty-handed).

Conversely, an officer does not violate a clearly established right when he uses deadly force in a threatening situation against an armed individual. *White*, 137 S. Ct. at 549–50. In *White*, an officer arrived late to the scene, heard one defendant yelling “we have guns,” and was under the threat of fire from another defendant. *Id.* at 550. The second defendant emerged from a window and pointed his gun at the officer, who was about fifty feet away. *Id.* Within seconds, the officer shot and killed the defendant pointing the gun without giving warning. *Id.* The Court explained the case’s “unique facts and circumstances” were dispositive to conclude that the officer did not violate a clearly established right. *Id.* at 552.

Here, Deputy Watson and Rivera testified to the Decedent holding a gun or a gun-like object in his right hand. (Watson Statement ¶ 32); (Rivera Statement ¶ 26.) The only other testimony in this case did not indicate the Decedent was unarmed. (McDonald Statement ¶ 12.) Additionally, a gun was found in the Decedent’s back pocket. (Watson Statement ¶ 55.). No facts exist suggesting the Decedent was either unarmed or not holding a gun-like object in his right hand.

The lack of testimony or facts showing the Decedent was unarmed differentiates this case from *Bryant*. In *Bryant*, the decedent's daughter testified to her father being unarmed. Unlike the daughter's testimony in *Bryant*, the Plaintiff offered no testimony in this case showing the Decedent was unarmed.

Like the officer in *White*, Deputy Watson acted because of a threatening situation. In *White*, the late-arriving officer heard a defendant say, "we have guns" and saw another defendant point his gun at the officer. Here, Deputy Watson saw the Decedent emerging from his home with a gun, heard Rivera shout "gun, drop the gun" in a neighborhood known for violence, and observed the Decedent disregarding Deputy Rivera's orders to drop the gun. Thus, Deputy Watson did not violate a clearly established constitutional right because this case is like *White* and presents "unique facts and circumstances" to *Bryant*.

- ii. *Deputy Watson's actions did not violate a constitutional right because his actions were objectively reasonable when he used deadly force in a threatening situation.*

Excessive force claims stemming from a seizure must be analyzed under the Fourth Amendment's reasonableness standard. U.S. Const. amend. IV; *Graham v. Connor*, 490 U.S. 386, 394 (1989). Using deadly force is justified if any reasonable officer would believe there was a threat of serious physical harm to themselves or to others at the time. *Jiron v. City of Lakewood*, 392 F.3d 410, 415 (10th Cir. 2004). The reasonableness inquiry determines whether the officer's actions are objectively reasonable regardless of any subjective intent. *Graham*, 490 U.S. at 397.

The fine line between reasonable and unreasonable force leads to a fact-specific inquiry under the totality of the circumstances. *Id.* at 396; *Garczynski*, 573 F.3d at 1166. Those facts often include tense, uncertain, and rapidly evolving situations requiring officers to make split-second judgments. *Id.* at 1167. Courts may consider: 1) the severity of the crime; 2) an immediate threat to officers or others; and 3) whether the suspect is actively trying to evade arrest by flight or resistance. *Mitchell v. Schlabbach*, 864 F.3d 416, 421 (6th Cir. 2017).

An officer acts objectively reasonable when he uses deadly force against an armed suspect who ignores orders and threatens other officers. *Est. of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1261 (10th Cir. 2008). In *Larsen*, two officers in separate vehicles responded to a 911 call. *Id.* at 1258. When they arrived, the officers found the suspect on the porch, wielding a large knife. *Id.* The officers repeatedly told the suspect to “drop the knife.” *Id.* The suspect ignored them and instead raised the weapon, pointing it at the officers, which prompted an officer to use deadly force. *Id.* In analyzing the reasonableness of force under a totality of the circumstances, taking into consideration the threat and need to make “split-second judgments,” the court determined the officer’s action was objectively reasonable. *Id.* at 1261.

Here, the threats the Deputies and others faced were exhaustive. Deputy Watson responded to a 911 noise complaint in a neighborhood riddled with “drugs, gangs, and violence.” (Rivera Statement ¶¶ 10, 19.) After arriving at the Decedent’s home, facing an elementary school, Deputies Watson and Rivera knocked on the front and side doors and announced themselves shouting, “Sheriff’s Office.” (Rivera Statement ¶ 17–24.)

When the Decedent—standing 6’1” and weighing 212 pounds—emerged from the home, Deputy Rivera observed a gun in his right hand. (Med. Exam’r Dep’t Midland County); (Rivera Statement ¶¶ 24–26.) Deputy Watson perceived a “small and dark” object in the same hand. (Watson Statement ¶ 32.) The Decedent raised the gun at Deputy Rivera, who felt threatened. (Rivera Statement ¶¶ 28–34.) The Decedent ignored Deputy Rivera’s orders to “drop the gun,” causing Deputy Watson to fire his weapon four times. (Watson Statement ¶¶ 27–36.) Deputy Watson shot the Decedent because he posed a threat to Rivera and fifty children across the street. (Watson Statement ¶ 33.)

Although the initial call was for a noise complaint, the situation escalated quickly to an armed individual threatening a deputy. Once the Decedent, a large man, pointed a gun at Deputy Rivera, the Decedent posed an immediate threat to both Deputies and the children across the street, requiring a split-second judgment by Deputy Watson. Further, the Decedent quickly closed the door, shielding himself from the Deputies’ view while still aiming at Deputy Rivera. Deputy Watson secured the area after the shooting, and both deputies sought cover from what they believed was an ongoing situation involving an armed suspect. (Watson Statement ¶ 42; Rivera Statement ¶ 36–38.)

Like the suspect in *Larsen*, the Decedent in this case threatened the Deputies. In *Larsen*, the suspect wielded a large knife, refused to comply with officers’ orders to drop the knife, and pointed the knife at the officers. Here, the Decedent was holding a gun, not complying with orders to drop it, and pointed the gun at Deputy Rivera. The similarities between the Decedent’s actions, and the suspect in *Larsen*, demonstrate that Deputy

Watson's actions were objectively reasonable. Thus, by the totality of the circumstances, Deputy Watson's use of force was objectively reasonable.

Therefore, this Court should deny the Plaintiff's Motion to Strike because Deputy Watson did not violate a clearly established constitutional right while performing a discretionary function and his actions were objectively reasonable. Because the reasonableness determination does not consider any underlying intent or motive, the Plaintiff's expert is not relevant.

**II. THIS COURT SHOULD EXCLUDE EDWARDS' TESTIMONY BECAUSE IT IS NOT RELEVANT, WILL CAUSE UNFAIR PREJUDICE AND CONFUSION, AND IS NOT HELPFUL.**

Expert testimony is admissible if it helps the jury understand a fact at issue and is relevant and reliable. *See* Fed. R. Evid. 702; *Daubert v. Merrill Dow Pharm., Inc.*, 509 U.S. 579, 580 (1993). Expert testimony is relevant and reliable if the expert: 1) is qualified; 2) uses reliable methods; and 3) has "specialized knowledge" that will help a jury understand evidence or a fact at issue. *See* Fed. R. Evid. 702; *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004). This Memorandum of Law will only discuss the relevance of Edwards' testimony under Federal Rules of Evidence 401, 403, and 702(a), pursuant to this Court's Amended Order dated September 2, 2020.

Edwards' testimony should be excluded because it is not relevant, will unfairly prejudice Deputy Watson and confuse the jury, and is not helpful to the jury in determining a fact at issue.

**A. Edwards' Testimony Should Be Excluded Because It Does Not Make a Consequential Fact More or Less Probable Because Deputy Watson's Subjective Intent Is Not at Issue.**

Evidence is relevant if it makes a consequential fact “more or less probable” than if the evidence was absent. Fed. R. Evid. 401. Admissibility of expert testimony partially turns on the connection between the research and the disputed facts in the case. *Graniczny v. City of El Paso*, 809 F. Supp. 2d 597, 607 (W.D. Tex. 2011). If expert testimony does not relate to any issue in the case, it is not relevant. *Daubert*, 509 U.S. at 591.

Evidence of officers' states of mind is irrelevant in Fourth Amendment claims. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *see also Graham*, 490 U.S. at 394 (explaining that excessive force claims stemming from a seizure are analyzed under the Fourth Amendment's objective reasonableness standard); *Gonzalez v. City of Bakersfield*, No.: 1:16-cv-00107-JLT; 2017 WL 2423674, at \*4 (E.D. Cal. June 5, 2017) (following *Brigham* and *Graham* in excluding expert testimony of officer's intent as irrelevant under the Fourth Amendment's objective standard).

Here, Edwards intends to testify about racial bias at Midland and its effects on Deputy Watson during the incident. (Pl.'s Notice of Expert Witness.) As *Brigham* and *Graham* described, the proper Fourth Amendment standard considers only whether an officer's conduct was objectively reasonable. Testimony revealing Deputy Watson's alleged racial bias does nothing more than indicate subjective intent. Thus, this court should exclude Edwards' testimony because it is not relevant to Deputy Watson's objective reasonableness.

**B. Edwards' Testimony Should Be Excluded Because It Will Cause Unfair Prejudice and Jury Confusion Because of the Risk of Impeding the Jury's Fact-Finding Ability.**

Evidence is inadmissible “if its probative value is substantially outweighed by . . . unfair prejudice, [or] confusing the issues . . . .” Fed. R. Evid. 403. Because expert testimony is inherently powerful, it has great potential to impact a jury. *See Frazier*, 387 F.3d at 1263. Imprecise expert testimony serves to confuse a jury and is against its purpose. *See Hull v. Merck & Co.*, 758 F.2d 1474, 1477 (11th Cir. 1985) (affirming the exclusion of an expert based on unanalyzed assumptions). Expert testimony regarding police racial bias may be excluded where the prejudicial effect on a party outweighs the gain of educating the jury about racial bias. *See Thomas v. Cannon*, Nos. 3:15-05346 BJP, 3:16-cv-05392, 2017 WL 11423601, at \*2 (W.D. Wash. June 20, 2017) (excluding expert testimony educating the jury about unconscious bias in a police shooting case because of unfair prejudice).

Expert testimony serves to prejudice the opposing party and confuses the jury when used in fact-intensive excessive force claims. *Thompson v. City of Chi.*, 472 F.3d 444, 457 (7th Cir. 2006). In *Thompson*, the plaintiffs challenged the exclusion of expert testimony about the propriety of an officer's use of force. *Id.* at 451, 457. The court explained that because the appropriate analysis in an excessive force claim is fact-intensive and turns on objective reasonableness, juries are in as good of a position as an expert to decide whether excessive force was used. *Id.* at 458. Expert testimony would only lead jurors to substitute their findings for those of the expert. *Id.* Accordingly, the

court excluded the expert because any insight offered would cause a substantial risk of unfair prejudice and increase the possibility of confusion. *Id.*

Here, the Plaintiff asserts a fact-intensive claim under the Fourth Amendment turning on objective reasonableness and a totality of the circumstances analysis. Edwards is a distinguished scholar with extensive qualifications. (Edwards Resume.) Edwards' testimony that racial bias played a part in Deputy Watson's actions is based on an inference that racial bias exists at Midland. (Edwards Statement ¶¶ 5–8.) The jury may naturally hear his testimony and unduly replace Edwards' conclusions for their own. (Edwards Statement ¶¶ 2–4.)

The risk of expert testimony causing unfair prejudice and jury confusion in a Fourth Amendment claim makes this like *Thompson*. In *Thompson*, the expert offered to testify whether the defendant officer's use of force was proper. Here, Edwards plans to testify that Deputy Watson acted out of racial bias—creating a near-conclusive inference that Deputy Watson acted improperly. In both instances, the expert testimony threatens to undermine the fact-finding role of the jury. Thus, Edwards' testimony should be excluded because it is likely to cause unfair prejudice and jury confusion.

**C. Edwards' Testimony Should Be Excluded Because It Does Not Help the Jury Understand a Fact at Issue Because It Does Not Fit the Issue of This Case.**

Expert testimony must help the jury understand evidence or determine a fact issue. Fed. R. Evid. 702(a). Expert testimony is not helpful if there is no “fit between the testimony and the issue of the case.” *United States v. Singleton*, Nos. 95-30154, 95-30175, 1996 WL 166211, at \*2 (9th Cir. Apr. 9, 1996) (citing *Daubert*, 509 U.S. at 591)

(Finding no “fit” between an expert’s testimony discussing the “general problem of institutional racism” and “whether the government discriminated against [the defendant].”).

Here, the fact at issue is whether Deputy Watson’s use of force was objectively reasonable under a totality of the circumstances. Edwards’ testimony will ultimately educate the jury on non-issues in this case: police racial bias within Midland, Deputy Watson’s subjective intent, and police racial bias trends in general. (Pl.’s Notice of Expert Witness.) Thus, Edwards’ testimony should be excluded because it is not helpful for the jury to determine and fact at issue.

### **CONCLUSION**

This court should deny the Plaintiff’s Motion to Strike Deputy Watson’s qualified immunity defense because Deputy Watson acted reasonably and did not violate a clearly established constitutional right while performing a discretionary function when he used deadly force against the Decedent.

This court should grant Deputy Watson’s Motion in Limine and exclude Edwards’ expert testimony because it is not relevant, will cause unfair prejudice and jury confusion, and is not helpful to the jury.

Respectfully Submitted,

/s/ Team 9000