

# Wiley Files SCOTUS Petition Seeking Clarification of Qualified Immunity in Police Misconduct Case

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Washington, DC – Wiley, working with the Supreme Court Program at the University of North Carolina School of Law, has filed a petition for a writ of certiorari in *Cunningham v. Baltimore County*. The petition asks the U.S. Supreme Court to review a decision of the Maryland Supreme Court regarding the proper application of the qualified immunity doctrine in cases involving police conduct that shocks the conscience and therefore violates an individual's Fourteenth Amendment due process rights.

The case stems from a 2016 incident in which Baltimore County police were attempting to serve a misdemeanor arrest warrant for a traffic violation. Following a six-hour standoff, a police officer fired a shot at the woman being served, which traveled through the woman, ricocheted off a refrigerator, and hit the woman's five-year-old son. A jury determined that the officer's decision to fire the shot was objectively unreasonable.

The child asserted a claim alleging that firing the shot, when the woman posed no imminent threat and in the presence of a child, shocks the conscience and so violated the child's Fourteenth Amendment rights. Without deciding whether there was a constitutional violation, the Maryland Supreme Court held that the officer is entitled to qualified immunity because his actions did not violate "clearly established" law, since there was no prior case with sufficiently similar facts.

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## Practice Areas

Class Actions and Complex Multi-Jurisdiction Litigation  
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The petition asks the Court to clarify that a prior case with similar facts is not necessary for the law to be “clearly established” when the constitutional violation is sufficiently obvious that any reasonable officer would know that his conduct was unlawful. It further argues that Fourteenth Amendment violations are, by definition, obvious because to establish a constitutional violation the plaintiff must show that the officer’s conduct was so egregious as to shock the conscience. After noting that lower courts are split on how to apply qualified immunity in the context of obviously unlawful conduct, the petition asserts that decisions like that of the Maryland Supreme Court in this case immunize the worst conduct since there will often be no prior case with similar facts precisely because the conduct is so obviously unlawful.

The petitioner is represented, pro bono, by Wiley partners Richard A. Simpson, Theodore A. Howard, and Lukman Azeez, and associate Boyd Garriott. The Wiley team served as co-counsel with Leslie D. Hershfield of Schulman, Hershfield & Gilden; Timothy F. Maloney and Alyse L. Prawde of Joseph, Greenwald & Laake; and Professor F. Andrew Hessick of the UNC School of Law. Law students Drew Alexander and Gabbi Schust assisted in preparing the petition. Wiley paralegal Elisabeth Patterson also assisted in this matter.