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**Adam JENNINGS, Plaintiff, Appellant,**

v.

**Kenneth JONES, Defendant, Appellee.**

**No. 05-2522.**

United States Court of Appeals,  
First Circuit.

Entered: Aug. 17, 2007.

Appeal from the United States District Court for the District of Rhode Island, Ernest C. Torres, U.S. District Judge.

Charles M. Bradley, FTS, Westerly, RI, for Plaintiff, Appellant.

Rebecca Tedford Partington, FTS, RI Attorney General's Office, Providence, RI, for Defendant, Appellee.

Before TORRUELLA, LYNCH and LIPEZ, Circuit Judges.

#### **ORDER OF COURT**

Appellee Kenneth Jones filed a petition for rehearing en banc in this case, which, under our Internal Operating Procedure X, encompasses a petition for panel rehearing. The petition for rehearing is granted. Accordingly, the panel's March 7, 2007, opinion is withdrawn and the judgment of even date vacated.

The panel majority now issues a new opinion, which eliminates the portion of the original panel opinion concluding that the defendant had abandoned his motions for a new trial and a remittitur. Instead, the new opinion orders a remand so that the district court may address these motions. However, the portion of the decision concluding that the district court erred in vacating the jury verdict on the basis of qualified immunity remains intact. Hence, we once again order reinstatement of the jury verdict.

In conjunction with the issuance of the majority opinion this day, Judge Lynch files her dissent to the majority's decision vacating the judgment of the district court.



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Before BOUDIN, Chief Judge, TORRUELLA, LYNCH, LIPEZ, and HOWARD, Circuit Judges.

#### **ORDER OF COURT**

Appellee Kenneth Jones' petition for rehearing en banc is denied.

BOUDIN, Chief Judge and LYNCH, Circuit Judge, concurring in the denial of rehearing en banc.

Properly, the revised panel opinion withdraws its ruling that the appellant waived or forfeited his right to a ruling on his