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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 re-
hearing. The petition for rehearing is
granted. Accordingly, the panel's March
7, 2007, opinion is withdrawn and the judg-
ment 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 con-
cluding 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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ney General's Office, Providence, RI, for
Defendant, Appellee.

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

ORDER OF COURT

Appellee Kenneth Jones' petition for re-
hearing en banc is denied.

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

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