



ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

2520 Venture Oaks Way, Suite 150 • Sacramento, CA 95833
(800) 564-6791 • (916) 239-4082 • (916) 924-7323 – Fax
ascdc@camgmt.com • www.ascdc.org

August 7, 2020

REQUEST FOR PUBLICATION
(Cal. Rules of Court, rule 8.1120)

OFFICERS

PRESIDENT

Lawrence R. Ramsey

PRESIDENT-ELECT

Diana Lytel

VICE PRESIDENT

Marta A. Alcumbrac

SECRETARY-TREASURER

Ninos P. Saroukhanioff

PAST PRESIDENT

Peter S. Doody

EXECUTIVE DIRECTOR

Jennifer Blevins, CMP

Hon. Helen I. Bendix, Acting Presiding Justice
Hon. Victoria Gerrard Chaney, Associate Justice
Hon. Zaven V. Sinanian, Judge of the Los Angeles Superior Court
California Court of Appeal
Ronald Reagan State Building
Second Appellate District, Division One
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, California 90013

Re: *Abdulkadhim v. Wu*
2d Civil Case No. B298091

Dear Honorable Justices and Judge:

Pursuant to rule 8.1120(a) of the California Rules of Court, the Association of Southern California Defense Counsel (“ASCDC”) respectfully requests that this Court publish its recent opinion in *Abdulkadhim v. Wu* (July 23, 2020, No. B298091) (the “Opinion”).

Interest Of The Requesting Organization

ASCDC is the nation’s largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California’s civil defense bar. ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in amicus appellate matters, ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas.

ASCDC’s members, and the broader legal community, regularly confront the legal doctrine that *Abdulkadhim v. Wu* addresses—the sudden emergency doctrine—particularly in litigation involving vehicle accidents. The legal issue in this case implicates other personal-injury cases in which our members are currently representing defendants. ASCDC has a significant interest in developments affecting this area of law.

BOARD OF DIRECTORS

KERN COUNTY

Thomas P. Feher

LOS ANGELES COUNTY

Lindy F. Bradley
Alice Chen Smith
Lisa Collinson
Julianne DeMarco
Steven S. Fleischman
R. Bryan Martin
David A. Napper
Lisa Perrochet
Eric Schwettmann
Wendy Wilcox

ORANGE COUNTY

David J. Byassee
Lisa J. McMains

RIVERSIDE COUNTY

Gary T. Montgomery

SAN BERNARDINO COUNTY

Jeffrey A. Walker

SAN DIEGO COUNTY

Colin Harrison
Benjamin J. Howard
Patrick J. Kearns

SANTA BARBARA COUNTY

Michael A. Colton

VENTURA COUNTY

Natalia Greene
Michael LeBow

The Opinion

The Opinion addresses the sudden emergency doctrine and resolves an important legal question: That whether something is an “emergency or peril” under that doctrine depends on the “set of facts presented to” *the defendant*, and it is “irrelevant” whether the defendant’s reaction to the peril created an emergency for *someone else*. (Opn. at pp. 5-6.) The Opinion recognizes that the relevant facts are undisputed, “but the parties disagree regarding *application of the sudden emergency doctrine to those facts*. Their briefing clarifies that the parties’ disagreement centers on what set of circumstances constituted the emergency relevant to the sudden emergency doctrine. [¶] Wu argues that the emergency was Mendez’s car stopped in a lane of traffic moving at highway speed. Abdulkadhim counters that the emergency was Al-Kuraishi’s inability to see the stopped car until it was too late because of Wu’s lane change.” (*Ibid.*, italics added.) The Opinion resolves this legal question by concluding that “the only relevant emergency is the one *Wu* faced” and that the plaintiff had “focused on the wrong set of circumstances for application of the sudden emergency doctrine.” (Opn. at p. 6, original italics.) The Opinion thus concludes that the trial court properly granted summary judgment to the defendant motorist because the defendant was confronted with an emergency when a vehicle stopped ahead of him on the freeway. (*Ibid.*)

Why Publication Is Warranted

An opinion “should be certified for publication in the Official Reports” if it meets any of the nine separately listed criteria in California Rules of Court, rule 8.1105(c). The Opinion meets at least two such criteria:

- It “explains . . . an existing rule of law”; and
- It “[i]nvolves a legal issue of continuing public interest.”

(Cal. Rules of Court, rule 8.1105(c)(3), (6).)

The Opinion explains an existing rule of law (rule 8.1105(c)(3)). The Opinion is helpful in explaining that whether something is an “emergency or peril” under the sudden emergency doctrine depends on the situation presented to the defendant, and it is “irrelevant for purposes of the sudden emergency doctrine” whether the defendant’s reaction to the peril created an emergency for someone else. (See Opn. at pp. 5-6.) The parties’ dispute was not over the facts. It was about an important legal question: How should courts apply the sudden emergency doctrine to those facts? The Opinion clarifies that when the parties are litigating whether the defendant caused the emergency, the emergency at issue is the one that the *defendant*, not someone else, faced. (See Opn. at p. 6.) We know of no other published decision directly resolving this same question. The Opinion cites *Pittman v. Boiven* (1967) 249 Cal.App.2d 207, 216, and *Shiver v. Laramee* (2018) 24

Cal.App.5th 395, 399, which both say that a defendant cannot rely on the sudden emergency doctrine when the defendant caused or contributed to the creation of the emergency or “perilous situation,” but neither opinion explains that the relevant emergency is the one presented to the defendant, not the plaintiff. Because of the ambiguity in those published opinions, the plaintiff here certainly will not be the last plaintiff to focus “on the wrong set of circumstances for application of the sudden emergency doctrine.” (Opn. at p. 6.) Publication will provide courts and litigants with helpful guidance regarding the doctrine’s correct application.

The Opinion involves a legal issue of continuing public interest (rule 8.1105(c)(6)). Correct application of the sudden emergency doctrine is an issue of continuing public interest because the doctrine often arises in personal-injury cases involving vehicle accidents, particularly on California highways. Such lawsuits are filed across California daily. ASCDC’s members routinely litigate cases with facts analogous to this lawsuit, where a sudden danger presents itself to a motorist on a roadway. Only *published* precedent can provide guidance. By clarifying what is the “relevant emergency” for purposes of the sudden emergency doctrine (Opn. at p. 6), publication of this Opinion will reduce uncertainty and minimize needless litigation in both the trial and appellate courts. Guidance on this important and reoccurring issue will benefit the broader legal community.

* * *

For all these reasons, ASCDC respectfully urges this Court to publish its opinion.

Respectfully submitted,

ASSOCIATION OF SOUTHERN CALIFORNIA
DEFENSE COUNSEL

By: /s/ Geoffrey B. Kehlmann

Geoffrey B. Kehlmann
EDWARD L. XANDERS (SBN 145779)
GEOFFREY B. KEHLMANN (SBN 298967)
Greines, Martin, Stein & Richland LLP
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
Telephone: (310) 859-7811

cc: See Attached Service List

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On August 7, 2020, I hereby certify that I electronically served the foregoing **ASCDC'S REQUEST TO PUBLISH OPINION** through the Court's electronic filing system, TrueFiling. I certify that all participants in the case who are registered TrueFiling users and appear on its electronic service list will be served pursuant to California Rules of Court, rule 8.70. Proof of electronic filing through TrueFiling is then printed and maintained in our office. Electronic service is complete at the time of transmission.

Eric A. Forstrom, Esq.
Forstrom Law
412 Olive Avenue, Suite 512
Huntington Beach, California 92648
Attorneys for Plaintiffs and Appellants
ESTATE OF JASIM AL-KURAISHI and HALAH JAWAD ABDULKADHIM

Cleidin Z. Atanous, Esq.
LAW OFFICE OF CLEIDIN Z. ATANOUS
1940 E. Chapman Avenue, Suite A
Fullerton, California 92831
Attorneys for Defendant and Respondent TOMMY WU

Executed on August 7, 2020, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Pauletta L. Herndon
Pauletta L. Herndon

1. At the time of service, I was at least 18 years of age.
2. My email address used to e-serve: **gkehlmann@gmsr.com**
3. I served a copy of the following document(s) indicated below:

Title(s) of documents served:

REQUEST - REQUEST TO PUBLISH OPINION: B298091_Request for Publication_ASCDC

Person Served	Service Address	Type	Service Date
Eric Forstrom	eforstrom@forstromlaw.com	e-Serve	08-07-2020 11:47:57 AM
Forstrom Law		2fa9e0d9-fa47-4166-be2b-aed9d0b30694	
Paula Herndon	pherndon@gmsr.com	e-Serve	08-07-2020 11:47:57 AM
Greines Martin Stein & Richland LLP		e33cbcd5-6d4e-4da9-aa41-25195d6254a0	
Cleidin Atanous	czatanous@yahoo.com	e-Serve	08-07-2020 11:47:57 AM
Law Ofc Cleidin Z Atanous		f2f27f3a-0bcc-420e-9d7c-bc19f73a8f88	
Christopher Mesaros	chris@firstlg.com	e-Serve	08-07-2020 11:47:57 AM
First Law Group		da051ab2-ea1f-44e1-8d40-d246e8ca1464	
Geoffrey Kehlmann	gkehlmann@gmsr.com	e-Serve	08-07-2020 11:47:57 AM
Greines Martin Stein & Richland LLP		279bedff-9177-4ebe-a4e4-c07851c8e4d5	
Monique Aguirre	maguirre@gmsr.com	e-Serve	08-07-2020 11:47:57 AM
Greines Martin Stein & Richland LLP		cf17eb3a-11aa-49d0-9052-2e2bad297683	
Christopher Mesaros	christina@firstlg.com	e-Serve	08-07-2020 11:47:57 AM
First Law Group		ea81772b-321c-4636-8a07-bd415d53b6f0	
Eric Forstrom	eforstrom@hotmail.com	e-Serve	08-07-2020 11:47:57 AM
Markarian Law Group		87e9a64b-8db1-4d4f-bba2-efae9b7ae0a5	
Edward Xanders	exanders@gmsr.com	e-Serve	08-07-2020 11:47:57 AM
Greines Martin Stein & Richland LLP		0a010869-e822-4e48-ada5-a7e386434c45	

TrueFiling created, submitted and signed this proof of service on my behalf through my agreements with TrueFiling.

The contents of this proof of service are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

08-07-2020

Date

/s/Paula Herndon

Signature

Kehlmann, Geoffrey (298967)

Last Name, First Name (Attorney Number)

Greines Martin Stein & Richland LLP

Firm Name