To amend the Revised Statutes to remove the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Markey (for himself, Mr. Sanders, and Ms. Warren) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Revised Statutes to remove the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ending Qualified Immunity Act”.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) In 1871, Congress passed the Ku Klux Klan Act to combat rampant violations of civil and
constitutionally secured rights across the nation, particularly in the post-Civil War South.

(2) Included in the act was a provision, now codified at section 1983 of title 42, United States Code, which provides a cause of action for individuals to file lawsuits against State and local officials who violate their legal and constitutionally secured rights.

(3) Section 1983 has never included a defense or immunity for government officials who act in good faith when violating rights, nor has it ever had a defense or immunity based on whether the right was “clearly established” at the time of the violation.

(4) From the law’s beginning in 1871, through the 1960s, government actors were not afforded qualified immunity for violating rights.

(5) In 1967, the Supreme Court in Pierson v. Ray, 386 U.S. 547, suddenly found that government actors had a good faith defense for making arrests under unconstitutional statutes based on a common law defense for the tort of false arrest.

(6) The Court later extended this beyond false arrests, turning it into a general good faith defense for government officials.
(7) Finally, in Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Court found the subjective search for good faith in the government actor unnecessary, and replaced it with an “objective reasonableness” standard that requires that the right be “clearly established” at the time of the violation for the defendant to be liable.

(8) This doctrine of qualified immunity has severely limited the ability of many plaintiffs to recover damages under section 1983 when their rights have been violated by State and local officials. As a result, the intent of Congress in passing the law has been frustrated, and Americans’ rights secured by the Constitution have not been appropriately protected.

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress that we must correct the erroneous interpretation of section 1983 which provides for qualified immunity, and reiterate the standard found on the face of the statute, which does not limit liability on the basis of the defendant’s good faith beliefs or on the basis that the right was not “clearly established” at the time of the violation.
SEC. 4. REMOVAL OF QUALIFIED IMMUNITY.

Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by adding at the end the following: “It shall not be a defense or immunity to any action brought under this section that the defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when it was committed. Nor shall it be a defense or immunity that the rights, privileges, or immunities secured by the Constitution or laws were not clearly established at the time of their deprivation by the defendant, or that the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.”