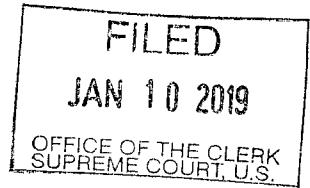


No. 18-7542

In The
Supreme Court of the United States



PAMELA SUZANNE HARNDEN,

Petitioner,

vs.

SAINT CLAIR COUNTY, ET AL.;
SAINT CLAIR COUNTY 31ST CIRCUIT COURT, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do the 5th and 14th Amendments justify the tolling of a civil action during the course of a criminal action?
2. As kidnapping does not have a federal statute for a private right to civil action despite there being a federal criminal statute and since the criminal statute confers a right to a private citizen and not a specific group, does this give rise to the creation of an implied private right to action?
3. If the answer to Question 2 is yes, then does the statute of limitations applied to the criminal action transfer to the implied civil action?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

1. Saint Clair County Sheriff Department Tim Donnellon
2. Detective Coleen Titus
3. Deputy Randall Gobeyn
4. Prosecuting Attorney Michael Wendling
5. Prosecuting Attorney John Walke
6. Saint Clair County 31st Circuit Court, Probate Judge Elwood Brown
7. Judge John D. Tomlinson
8. Attorney Referee Peter Shane Burleigh
9. Clerk Christine Regan

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APPENDIX C: Decision of the United States District Court, Eastern District of Michigan, Southern Division, Judge's Opinion, Case No. 16-cv-13905.

APPENDIX D: Decision of the United States District Court, Eastern District of Michigan, Southern Division, Magistrate Judge's Report and Recommendation, Case No. 16-cv-13904.

APPENDIX E: Decision of the United States District Court, Eastern District of Michigan, Southern Division, Magistrate Judge's Report and Recommendation, Case No. 16-cv-13905.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendixes B and C to the petition and are unpublished.

The report and recommendations of the magistrate judge of the United States District Court appears at Appendixes D and E to the petition and are unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 25, 2018.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th Amendment: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

5th Amendment: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

14th Amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws.”

42 U.S.C. § 1983: “Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief

was unavailable. For the purposes of this section, any Act of congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

18 U.S.C. § 1201: “(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when...”

18 U.S.C. § 3299: “Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense under section 1201 involving a minor victim, and for any felony under chapter 109A, 110 (except for section 2257 and 2257A), or 117, or section 1591.”

STATEMENT OF THE CASE

The Constitution very clearly grants the citizens of the United States certain inalienable rights. The 4th, 5th and 14th Amendments promise that we have protections from the government abusing its power of authority over us and that we can feel safe because the government agencies must follow the laws and established protocols which guarantee that due process will be followed. These rights do not discriminate between the victim and the perpetrator. All citizens are protected under the color of the law.

From the very beginning of our living nightmare, our Constitutional rights were not only violated, we were abused even further every time we mentioned the violations.

It is commonly believed that if the state child protective services opens a complaint against you then you are obviously guilty- this is not always the case and is a very serious misunderstanding. (The cover page of the Child Protective Services (CPS) report says “no abuse at this time”.) If my evidence were to be presented, you will see that Saint Clair County DHHS foster license and adoption license workers crossed county lines without any form of legal authority or jurisdiction. It was

during this illegal questioning of our 7 year old internationally adopted daughter and 8 and 9 year old foster-to-adopt children who were wards of Indiana (living with us in Michigan) that the adoption license worker became the “call in person” or “reporting person.” It was here that the 7 year old claimed that her 15 year old brother hit her with a metal rod. When CPS came to the house that night with the above mentioned foster license worker, they did not possess a warrant, a legal complaint, an officer of the law was not present, and when I asked why they were pushing past me into my home, I was told they would figure it out after talking to the other children. It was during that time the new story of the 15 year old hitting the 13 year old adopted daughter’s ring finger with a pitchfork handle came to be. Despite the lack of medical attention at the hospital for any type of injury and the physician assistant’s subsequent testimony that the injury to her finger was from play, our son was arrested (charges were dismissed). At no time were my husband nor I charged with any crimes and the charges against our son weren’t even presented to court by a prosecutor- CPS acted as the prosecutor and brought the charges. My children were seized from my care and possession without the express description of whom was to be

seized, from where and why. In fact, my daughters were seized on two different days, both of which were prior to any court hearings, and one was out of the court's and CPS' jurisdiction- my sons were seized two weeks later and taken using verbal court orders. (*See O'Donnell v. Brown*, 335 F. Supp. 2d 787 (2004)) The rest of the violations of my rights by the defendants that can be substantiated with documentation and audio recording are outlined in the original complaints.

In the cases before you, the Federal Bureau of Investigation was conducting criminal investigations into all of the Defendants. This investigation was opened in January 2010 and was not closed until November 12, 2014 (making the criminal investigation open 4 years and 10 months). During her notification of closing call to me, Agent Danielle Christenson advised me that I could now pursue civil action. Despite receiving the same acknowledgements (that civil matters are not to be filed during criminal proceedings) from many different people who work in law enforcement, attorneys and the opinions of other courts, the courts in these federal suits have opined otherwise.

The issue of tolling/freezing is a legal theory that does not always have a specific statute and is generally allowed at the discretion of the presiding judge. Since there is not a specific statute that addresses civil kidnapping, the jurists must look at standard practices, reason, common sense and the Constitutional rights of all parties involved.

Again, in regard to the issue of kidnapping, the courts have agreed with the defense that since there is not a specific statute written by Congress granting a private right of action for kidnapping, then I am not entitled to equal protection under the law. In situations such as this it is up to the judges to grant the plaintiff the ability to file an implied private action suit, without such I would be left without any remedy for justice. It will be found that Judge Goldsmith did not dismiss the civil kidnapping theory because he weighed the facts against the standards set for a judge to determine whether an implied right to private action exists, he simply dismissed the claim based on the fact that a civil statute does not exist in the code.

REASONS FOR GRANTING THE WRIT

NOW comes the Plaintiff with her Writ of Certiorari under S.C.R. 10(c).

A. TOLLING/FREEZING

The commencement of tolling and/or freezing of the statutes of limitations for a civil case during the warming up or progression of a criminal case of the same facts has come into question. This is another subject matter which does not have a specific statute to abide by.

Contrary to cited precedents, both the District and 6th Circuit Court of Appeals determined that the time for the statutes of limitations in regard to the civil rights violations against me began to run at either the October 20, 2008 or March 15, 2010 dates, with the possible exception of Defendant Regan who's date would be October 17, 2011, all of which made my cases filed in an untimely manner.

However, when speaking to multiple attorneys and law enforcement officers **they all** say the same thing: you cannot file a civil suit during the commission of a criminal investigation. These statements seem to be verified by the following:

'We believe it has long been the practice to "freeze" civil proceedings when a criminal prosecution involving the same facts is warming up or underway. In the context of appeals from civil service adverse actions, we have repeatedly approved this practice.

'The "freeze" we think is not for the protections of the employee only, but also rises out of a sense that deferrable civil proceedings constitute improper interference with the criminal proceedings if they churn over the same evidentiary material.' *Peden v. United States*, 512 F.2d 1099, 1103, 1104 (Fed. Cir. 1975) (emphasis added)

In *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. __

(2013) the time of accrual was addressed as follows:

"Statute of limitations establish the period of time within which a claimant must bring an action. As a general matter, a statute of limitations begins to run when the cause of action "accrues"- that is, when "the plaintiff can file suit and obtain relief." *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)

and

"Recognizing that Congress generally set statutory limitations periods to begin when their associated causes of action accrue, this Court has often construed statute of limitations to commence when the plaintiff is permitted to file suit. See, e.g., *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 418 (2005) (resolving an ambiguity in light of "the 'standard rule that the limitations period commences when the plaintiff has a complete and present cause of action" (quoting *Bay Area Laundry*, *supra*, at 201)); *Rawlings v. Ray*, 312 U.S. 96, 98 (1941)."

As stated above, every party whose career is in the legal system advised that I could not file any civil suits during a criminal

investigation. To me this was verified when Agent Christenson advised that I was now able to file civilly if I chose as the criminal case was closed. Besides this, I was aware that kidnapping does not have a statute of limitations, therefore it was assumed that would be the same in a civil suit. This will be discussed later in this Petition.

Also, as briefly mentioned above, every time that we complained about our rights being violated, the defendants who had complete control of our lives at that time, would issue orders which kept our children away from us longer which placed greater financial and emotional burdens on our family and if the FBI would not have been involved, would have kept our case open until it was passed the time of filing a civil suit. Now, if the statutes of limitations was as rigid as the lower courts would like us to believe, then opinions such as those of *Peden* and *Heimeshoff*would not have stood the test of time. Both of those cases allow the tolling of civil cases pending the circumstances of the individual case. In my cases the Defendants, especially Defendant Brown, had complete control of the progression of the civil cases against me. Not only did he control the local circuit court, at the time he was the chairperson for the Judicial Ethics Committee (he has since left that

position), which allowed him to control whether those who practiced in his court would face disciplinary actions when grievances were filed.

I filed the civil suits in an effort to receive some kind of justice for the crimes that were committed against my family and me. Complaints were filed with the Michigan Attorney Grievance Committee and the Judicial Ethics Commission, but Defendant Brown, the judge who presided over the abuse/neglect cases in our county circuit court, was the Chairperson on the Judicial Ethics Committee at the time. To the surprise of no one, all complaints were dismissed by the Commissions. This is the same judge (Defendant Brown) that the FBI substantiated was part of the kidnapping, perjury and wrong-doing in the court. The Michigan Attorney General's Office refused to investigate my complaints because the FBI was involved. The Michigan State Police (MSP) refused to investigate because the FBI was involved. In fact, the MSP detective told us to take our story to the media if we wanted our case to get attention. The U.S. Attorney would not authorize warrants for the agents to move forward in the criminal case, this left me with filing civil suits as my only remedy for justice.

By allowing the tolling/freezing of the statutes of limitations during the course of the criminal investigation, the constitutional rights (especially the 5th and 14th Amendments) of all parties involved are protected. The survival of the case based on tolling/freezing would then leave the issue of immunity as the determining factor. The process for that determination would still grant all parties their full rights and would be discussed in the district court.

B. KIDNAPPING

After a brief review of the original Complaint, you will find that the FBI came to the only logical conclusion: all defendants kidnapped my children, held my children for ransom, perjured themselves and/or participated in the wrong-doing in the courts. All of these crimes were substantiated by the Bureau and warrants were sought.

As discussed above, an express private right to action via a statute for civil kidnapping does not seem to exist, thus the ability for judges to grant an implied cause of action.

Would kidnapping pass the test for an implied civil action? Yes.

- Does 18 U.S.C. § 1201 confer a “right” on the Plaintiff?
 - Yes, § 1201 protects an individual’s right to safety.

- Does § 1201 protect an individual not a regulated entity?
 - Yes.
- Was the conduct of the defendant intentional?
 - Yes, the actions taken by the defendants were conducted with intent and knowledge of the laws they were breaking (MCL 722.621-638). This is substantiated by documents, audio recordings and the violations ceased when the FBI started their investigation.

Now comes the main question: if the court grants an implied cause of action in regard to a civil remedy for kidnapping, does the civil action carry the same statute of limitations as the criminal? 18 U.S.C. § 3299 establishes that kidnapping has no statute of limitations.

If this Court agrees that kidnapping has an implied cause for civil action and the timeless statute of limitations applies, then the only question for the survival of this case would be how to apply immunities. As the issue of immunities in these cases would be determined in the lower courts, it is not necessary to discuss the matter in this document.

CONCLUSION

Plaintiff prays that this Court would grant this writ of certiorari so that justice may finally prevail.

Respectfully submitted,

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January 10, 2019