No. 18-9530

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In the

Supreme Court of the United States

October Term, 2019

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TERRY MARGHEIM,

Petitioner,

v.

KENNETH R. BUCK, Weld County District Attorney and
EMELJA BULJKO, Weld County Deputy District Attorney,

Respondents.

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On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE

Whether the Petition presents any issue for consideration, when the appellate decision from which the Petition arises merely affirmed the dismissal of this case as mandated by an earlier appellate decision which Petitioner never asked this Court to review.

RELATED DECISIONS
(in chronological order)

Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment; United States District Court for the District of Colorado; March 11, 2016; Case No. 12-cv-1520-WJM-NYW.

Margheim v. Buljko, 855 F.3d 1077 (10th Cir. 2017) (Appendix B to the Petition).

Final Judgment; United States District Court for the District of Colorado; June 15, 2017; Case No. 12-cv-1520-WJM-NYW.

Order Denying Post-Judgment Motion; United States District Court for the District of Colorado; March 19, 2018; Case No. 12-cv-1520-WJM-NYW.

Order and Judgment; United States Court of Appeals for the Tenth Circuit; Case No. 18-1138; issued February 13, 2019 (Appendix A to the Petition).

JURISDICTIONAL STATEMENT

The decision of the United States Court of Appeals for the Tenth Circuit from which the Petition for Certiorari arises was issued on February 13, 2019. (Appendix A to the Petition) A timely petition for rehearing was denied by the Tenth Circuit on March 11, 2019. (Appendix D to the Petition) Pursuant to 28 U.S.C. §1254, the Petition for Writ of Certiorari filed by Terry Margheim would give this Court jurisdiction to review the decision issued by the Tenth Circuit on February 13, 2019 – but only that decision.

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STATEMENT OF FACTS

The present case grew out of the prosecution of Terry Margheim on criminal charges in the District Court for Weld County, Colorado. References to "the court" in Part A below mean the Weld County District Court. After the criminal proceedings concluded, Margheim filed a lawsuit in the United States District Court for the District of Colorado under 28 U.S.C. §1983 for the alleged violation of his civil rights. References to "the court" or "district court" in Parts B, C, D and E below mean the United States District Court for the District of Colorado.

A. Criminal Charges

On January 25, 2010, Terry Margheim was arrested at his house for assaulting his girlfriend or common law wife, Courtney Graham. (Aplt. App. Vol. I at 272, 286-287; Vol. II at 6)[1] Margheim was charged with harassment/domestic violence under C.R.S. §18-9-111 and criminal mischief/domestic violence under C.R.S. §18-4-501 in Case No. 10M251 (the "First DV Case"). (Aplt. App. Vol. I at 272; Vol. II at 6) The court released Margheim on $3,000 bond, subject to his appearance on February 11, 2010, and conditioned on his compliance with a mandatory protection order under C.R.S. §18-1-1001. (Aplt. App. Vol. I at 272,

[1] References are to the record as submitted to the Tenth Circuit in case number 18-1138.

289-290, 294; Vol. II at 6-7) The protection order required Margheim to avoid contact with Graham. (Aplt. App. Vol. I at 290)

On January 26, 2010, Margheim posted an appearance bond of $3,000 in the First DV Case (the "First Bond"). (Aplt. App. Vol. I at 241, 303; Vol. II at 7) The appearance date was subsequently rescheduled to March 25, 2010. (Aplt. App. Vol. I at 305) When Margheim failed to appear on March 25, the court in the First DV Case ordered the First Bond forfeited; issued a warrant for Margheim's arrest (the "First Warrant"); and ordered Margheim to post a new bond for $6,000. (Aplt. App. Vol. I at 273, 296; Vol. II at 7) The mandatory protection order remained in force. (Aplt. App. Vol. I at 273; Vol. II at 7)

On April 10, 2010, Margheim was arrested pursuant to the First Warrant. (Aplt. App. Vol. I at 273; Vol. II at 7) During this arrest, the officers learned that Margheim had been in contact with Graham, in violation of the protection order. (Aplt. App. Vol. I at 373) As a result, Margheim was charged with violation of the mandatory protection order. (Aplt. App. Vol. I at 273, 304; Vol. II at 7) This new charge was designated Case No. 10M1026 (the "Second DV Case"). (Aplt. App. Vol. I at 273, 304; Vol. II at 7)

On April 12, 2010, Margheim posted the new bond of $6,000 in the First DV Case (the "Second Bond"). (Aplt. App. Vol. I at 304; Vol. II at 9, 22)

In April of 2010 Emela Buljko was a Deputy Assistant Attorney for Weld County. (Aplt. App. Vol. I at 273; Vol. II at 8) In that capacity, Buljko reviewed daily reports on the status of criminal prosecutions. (Aplt. App. Vol. I at 344:7-12) These reports indicate when the defendant in a pending criminal prosecution has been charged with new offenses which would constitute a violation of the defendant's bond or conditions of probation. (***Id***. at 344:15-25) In mid-April 2010, this report indicated that Margheim had been charged with a new offense, violation of the protection order issued in the First DV Case. (***Id***. at 344:1-25; 346:1-17)

Based on this information, Buljko on April 22, 2010, filed a motion to revoke bond in the First DV Case. (Aplt. App. Vol. II at 9, 24) The motion stated that "Defendant has a new offense in Weld County case, 10M1026 (failed to comply with the protection order issued in 10M251)." (Aplt. App. Vol. II at 24) Although the punctuation was not perfect, the meaning was understood: that "Defendant has a new offense in Weld County, case 10M1026 (failed to comply with the protection order issued in 10M251)." (Aplt. App. Vol. I at 346:4-13)

The "new offense" occurred on April 10, when, as Margheim was being arrested for failure to appear in the First DV Case, he was found to be in violation of the mandatory protection order. (Aplt. App. Vol. I at 373) This incident therefore could not be a "new offense" with respect to the Second Bond, the bond

Margheim posted on April 12 for $6,000. (***See*** Aplt. App. Vol. I at 252, 300; Vol. II at 9) However, this incident was a "new offense" with respect to the First DV Case.

The motion to revoke bond also requested "that a warrant issue for the arrest" of Margheim. (Aplt. App. Vol. II at 24) Because the motion sought an arrest warrant, it was verified as required by C.R.S. § 16-4-109(4)(a). On April 23, 2010, the court granted the motion to revoke bond in the First DV Case and issued the arrest warrant (hereafter the "Second Warrant"). (Aplt. App. Vol. I at 156, 274, 314; Vol. II at 8)

Armed with the Second Warrant, Greeley police officers went to Margheim's home on May 7, 2010, to arrest him. (Aplt. App. Vol. II at 37:4-25) During the search incident to this arrest, the officers found narcotics in Margheim's possession. (Aplt. App. Vol. I at 32, 34, 341:2-5; Vol. II at 39:8-11) The discovery of these narcotics led to the filing of new criminal charges against Margheim, designated Case No. 10CR754 (the "Drug Case"). (Aplt. App. Vol. I at 32, 156, 252, 341:3-8; 348) During the prosecution of the Drug Case, Margheim was

allegedly "detained against his will for approximately six months." (Aplt. App. Vol. I at 253)[2]

On September 15, 2010, Margheim pled guilty to the charges of domestic violence and harassment in the First DV Case. (Aplt. App. Vol. I at 274, 316; Vol. II at 6, 8) The court accepted his plea and entered judgment against Margheim. (Aplt. App. Vol. I at 316) From Margheim's point of view, this was not a "favorable termination" of the First DV Case, the action in which Buljko had filed the motion to revoke bond and requested the arrest warrant.

On February 24, 2011, Margheim filed a motion in the Drug Case to suppress all evidence obtained during the search incident to his arrest, on the grounds that the May 7 arrest was invalid because the Second Warrant was issued without probable cause. (Aplt. App. Vol. II at 9) On December 1, 2011, the court granted this motion, finding the arrest and seizure of Margheim on May 7 to have been unlawful and ordering the suppression of all evidence. (Aplt. App. Vol. I at 156, 252; Vol. II at 10) Twelve days later the District Attorney dismissed the Drug Case because all evidence had been suppressed. (Aplt. App. Vol. II at 10, 49)

[2] During part of this time, Margheim was incarcerated on federal drug charges. (Aplt. App. Vol. I at 378)

B. Civil Lawsuit

In the summer of 2012, Margheim filed a *pro se* complaint in the United States District Court for the District of Colorado against various defendants, including the Greeley Police Department, the Weld County District Attorney and Buljko. (Aplt. App. Vol. I at 20-37) Margheim asserted claims under the Fourth and Fourteenth Amendments stemming from the allegation that he was "arrested on May 7, 2010, on a void warrant." (Aplt. App. Vol. I at 20, 26, 32)

The defendants moved to dismiss the amended complaint on various grounds, including statute of limitations and Eleventh Amendment. (Aplt. App. Vol. I at 38-57) On July 15, 2013, the United States Magistrate Judge recommended granting the motions to dismiss. (Aplt. App. Vol. I at 114-126)

On August 12, 2013, the United States District Court Judge adopted the recommendation of the magistrate. (Aplt. App. Vol. I at 131) In its order, the court construed the complaint as asserting a Fourth Amendment claim for false arrest, unlawful imprisonment, unlawful search and excessive force, and an unidentified claim under the Fourteenth Amendment; dismissed the Fourth Amendment claims as time barred; and dismissed the Fourteenth Amendment claim for failure to allege personal participation. (Aplt. App. Vol. I at 131-142) The court then entered judgment, dismissing the amended complaint with prejudice. (***Id***. at 144-145)

On December 13, 2013, Margheim filed a motion for relief from judgment under Rule 60(b), F.R.C.P. (Aplt. App. Vol. I at 152-153) In his brief supporting this motion, Margheim challenged only the court's failure to construe his complaint as stating a claim for malicious prosecution. (***See*** Aplt. App. Vol. I at 191; Supp. Appx. at 20-25) Margheim did not challenge the court's dismissal of his claims for false arrest, false imprisonment, unlawful search or excessive force. (***See*** Aplt. App. Vol. I at 191-192; Supp. Appx. at 20-25)

On December 20, 2013, the United States Court of Appeals for the Tenth Circuit issued its decision in ***Myers v. Koopman***, 738 F.3d 1190 (10th Cir. 2013). This decision explains that a claim of unlawful confinement which *precedes* the initiation of legal proceedings (as when the police arrest a suspect without a warrant) is a claim for false arrest or false imprisonment; whereas a claim for unlawful confinement which *follows* the initiation of legal proceedings (as when the police obtain a warrant before arresting a suspect) is a claim for malicious prosecution. ***Myers*** also explains that a claim for malicious prosecution does not accrue (and therefore the statute of limitations does not begin to run) until the final element of such a claim has occurred: the favorable termination of the underlying criminal proceedings.

On May 27, 2014, the district court issued an order concerning Margheim's motion for relief from judgment. (Aplt. App. Vol. I at 187-198). Reading this motion in the light of ***Myers v. Koopman***, the district court denied it in part and granted it in part, allowing Margheim to pursue a single claim for malicious prosecution in violation of 28 U.S.C. §1983 against Buljko. (Aplt. App. Vol. I at 192-198)

On October 2, 2014, Margheim – now represented by counsel – filed a motion to amend his complaint to reflect the fact that all claims against all parties had been dismissed, except a claim for malicious prosecution in violation of 28 U.S.C. §1983 against Buljko. (Aplt. App. Vol. I at 231-232) On November 6, 2014, the court granted this motion. (***Id***. at 250) On November 10, 2014, Margheim (through counsel) filed his second amended complaint. (***Id***. at 251-253) When read in conjunction with the court's order of May 27, 2014, this complaint asserts a single claim for malicious prosecution in violation of 28 U.S.C. §1983 against Buljko. (***Id***.)

After discovery, Buljko filed a motion for summary judgment based in part on the doctrine of qualified immunity. (Aplt. App. Vol. I at 271-284) With respect to qualified immunity, Buljko argued that Margheim could not show the violation of a clearly established constitutional right. (Aplt. App. Vol. I at 278-279, 337)

Buljko also argued that Margheim could not show the favorable termination of the original action, as necessary to sustain a claim for malicious prosecution. (Aplt. App. Vol. I at 271-272, 274-276, 333-334) Not surprisingly, Buljko focused on the First DV Case, the proceeding in which she had filed the motion to revoke bond and requested an arrest warrant. (Aplt. App. Vol. I at 275-276, 331-335)

Margheim opposed Buljko's motion primarily on the ground that his claim for malicious prosecution rested on the Drug Case, which (he asserted) was initiated without probable cause (the May 7 arrest pursuant to the Second Warrant) and ended in a favorable termination (case dismissed because evidence suppressed). (Aplt. App. Vol. II at 6, 8, 11-17) Margheim connected Buljko's actions in the First DV Case (filing motion to revoke bond and obtaining Second Warrant) to his subsequent detention in the Drug Case through causation. (Aplt. App. Vol. II at 5, 8, 15) Margheim also argued that Buljko was not protected by qualified immunity because the motion to revoke bond lacked probable cause. (Aplt. App. Vol. II at 5, 10-15)

On March 11, 2016, the court granted in part and denied in part the motion for summary judgment, finding that the doctrine of qualified immunity did not protect Buljko in these circumstances. (Aplt. App. Vol. I at 371-388) The court accepted Margheim's argument that the claim for malicious prosecution rested on

the Drug Case, which the court linked to Buljko through a four-step "but for" chain of causation. (Aplt. App. Vol. I at 378) The court also found that the Drug Case ended favorably to Margheim when the evidence was suppressed and the case was dismissed for lack of evidence. (Aplt. App. Vol. I at 378-379)

C. First Appeal

On April 8, 2016, Buljko appealed to the Tenth Circuit from the district court's order denying her motion for summary judgment to the extent based on the doctrine of qualified immunity. (Aplt. App. Vol. I at 389-390) This appeal was designated case number 16-1121 (the "First Appeal"). (Supp. Appx. at 27-28)

On April 28, 2017, the Tenth Circuit issued its decision in the First Appeal, reversing the district court's denial of summary judgment and finding that Buljko was protected by qualified immunity against the claim of malicious prosecution because the Drug Case did not end in a "favorable termination." (Supp. Appx. at 29-52) This opinion was published as ***Margheim v. Buljko***, 855 F.3d 1077 (10th Cir. 2017) (hereafter "***Margheim I***"). On that same day, the Tenth Circuit issued its "judgment" in the First Appeal, remanding the case to district court for further proceedings consistent with the opinion in ***Margheim I*** (i.e., that the claim of malicious prosecution could not penetrate Buljko's qualified immunity because

Margheim could not show the element of favorable termination). (Supp. Appx. at 55-56)

On May 15, 2017, Margheim filed a petition for rehearing in the First Appeal, and on May 18, 2017, the Tenth Circuit denied it. On May 26, 2017, the Tenth Circuit issued its mandate ending the First Appeal. (Supp. Appx. at 57)

D. Proceedings on Remand

On June 14, 2017, the district court vacated its earlier order denying summary judgment and, consistent with the opinion in ***Margheim I***, directed the clerk to enter final judgment in favor of Buljko and terminating the case. (Supp. Appx. at 58) On June 15, 2017, the clerk of the district court entered final judgment in favor of Buljko and terminated the case. (Aplt. App. Vol. I at 516) The same day, Margheim's counsel filed a motion to withdraw, and on June 21, 2017, the district court granted this motion. (Supp. Appx. at 59-64)

On July 3, 2017, Margheim – once again proceeding *pro se* – filed in the district court a combined motion under Rule 59(e), F.R.C.P. (hereafter the "Rule 59 Motion") to vacate the final judgment and apparently also challenging the order of August 2013 which found that all of Margheim's claims were barred by the statute of limitations (and which was later modified on May 27, 2014, to allow Margheim to pursue a single claim for malicious prosecution against Buljko).

(Aplt. App. Vol. I at 517-522) On March 20, 2018, the district court issued an order denying Margheim's Rule 59 Motion on various grounds. (Aplt. App. Vol. I at 527-533)

E. The Second Appeal

On April 5, 2018, Margheim filed a notice of appeal in the Tenth Circuit, expressing his desire to appeal from the order of final judgment entered on June 14, 2017, and the order of March 20, 2018, denying his Rule 59 Motion. (Aplt. App. Vol. I at 534) This appeal was designated case number 18-1138 (the "Second Appeal"). Margheim also requested leave to proceed *in forma pauperis.* (Supp. Appx. at 65-66) On April 9, 2018, the district court denied Margheim's request to proceed *in forma pauperis,* finding that "this appeal is not taken in good faith" and that Margheim "has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." (Supp. Appx. at 71)

On February 13, 2019, the Tenth Circuit issued its "Order and Judgment" in the Second Appeal. (Copy submitted as Appendix A to the Petition) This order affirmed the judgment entered by the district court on June 14, 2018, dismissing the case. On February 27, 2019, Margheim filed a petition for rehearing in the Second Appeal, and on March 11, 2019, the Tenth Circuit denied it. (Appendix D to the Petition).

REASONS FOR DENYING THE PETITION

The Petition seeks to challenge the Tenth Circuit's holding in ***Margheim I*** that a plaintiff must show the favorable termination of the underlying criminal proceedings as an element of a Fourth Amendment claim for malicious prosecution. That issue is not before the Court, however, because Margheim never asked this Court to review the decision of the Tenth Circuit in ***Margheim I***.

I. THE PETITION PRESENTS NO ISSUE FOR REVIEW.

Given the undisputed fact that Margheim was arrested pursuant to a warrant (whether lawfully issued or not), the only claim he could assert is for malicious prosecution. ***Myers v. Koopman***, 738 F.3d 1190 (10th Cir. 2013). But in ***Margheim I***, the Tenth Circuit held that Margheim's claim of malicious prosecution fails as a matter of law because he cannot show the element of favorable termination.

By statute and rule, Margheim had ninety days from the date the Tenth Circuit denied his petition for rehearing in the First Appeal to file a petition for writ of certiorari in this Court. 28 U.S.C. §2101(c); U.S. Sup. Ct. Rule 13. The Tenth Circuit denied Margheim's petition for rehearing in the First Appeal on May 18, 2017. Margheim therefore had until August 16, 2017, to petition this Court to review the decision of the Tenth Circuit in ***Margheim I***, but he never did.

It is that decision – and not the decision of the Tenth Circuit ending the Second Appeal -- which established that the only claim which could possibly arise from the facts underlying this case is a claim for malicious prosecution, but that Margheim cannot pursue such a claim because he cannot establish the element of favorable termination. Thus, the issue of whether a plaintiff must show the favorable termination of the underlying criminal proceedings as an element of a Fourth Amendment claim for malicious prosecution is not before this Court.

II. THIS COURT LACKS JURISDICTION TO REVIEW ANY ORDERS PRECEDING THE FINAL JUDGMENT.

A notice of appeal must be filed within thirty days "after entry of the judgment or order appealed from." F.R.A.P. 4(a)(1)(A). The time to appeal runs from the entry of an order disposing of a motion to alter or amend judgment under Rule 59. F.R.A.P. 4(a)(4)(A)(iv). Margheim's notice of appeal, filed in the Tenth Circuit on April 2, 2018, within thirty days of the district court's denial of his Rule 59 Motion on March 19, 2018, therefore preserved his right to appeal from the final judgment entered on June 15, 2017. (Aplt. App. Vol. I at 516-533)

The only issues Margheim could raise in the Second Appeal, however, were the propriety of the district court's denial of his Rule 59 Motion and the correctness of the final judgment entered in June 2017, pursuant to the opinion and mandate from the Tenth Circuit in ***Margheim I***. The Rule 59 Motion did *not*

preserve Margheim's right to challenge on appeal any orders issued by the district court which preceded the final judgment.

Noting that portions of Margheim's Rule 59 Motion sought to challenge the legal propriety of the court's earlier orders dismissing all claims (except malicious prosecution) as untimely, the district court characterized this motion as "much closer to a Rule 60(b)(1) motion for relief from judgment based on mistake." (Aplt. App. Vol. I at 531) To the extent Margheim's Rule 59 Motion asserted legal error in the earlier rulings dismissing all claims, the district court properly treated it as filed under Rule 60. ***Jones v. Gundy***, 100 F. Supp.2d 485, 487 (W. D. Mich. 2000); *see also* ***Security Mutual Casualty Co. v. Century Casualty Co***., 621 F.2d 1062, 1064 (10th Cir. 1980) (trial court treated Rule 60 motion as filed under Rule 59 because it did not allege legal mistake). And, as the district court also observed, "such motions" (*i.e.*, motions filed under Rule 60) "must be brought within one year of the relevant order." (Aplt. App. Vol. I at 531); F.R.C.P. 60(c)(1); ***Gundy*** at 488; ***Federal Land Bank v. Cupples***, 889 F.2d 764, 766 (8th Cir. 1989); 11 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, at § 2866, pp. 535-536.

This one-year limit precludes Margheim's attempt in July 2017 to challenge the district court's order, entered almost four years earlier in August 2013, dismissing as untimely his claims for false arrest, false imprisonment and

excessive force. (Aplt. App. Vol. I at 131-145) It also precludes Margheim's attempt in July 2017 to challenge the district court's order, entered over three years earlier in May 2014, dismissing his claims for supervisor and municipal liability. (Aplt. App. at Vol. I 187-198; *see in particular* 195, 198) And it precludes Margheim's attempt in July 2017 to challenge the district court's order, entered over one year earlier in March 2016, reaffirming the dismissal of his claims for supervisor and municipal liability (to the extent such claims were still being asserted). (Aplt. App. Vol. I at 382-383, 387)

The one-year period under Rule 60(b)(1) is the outer limit within which such motions may be brought. But even if a motion is filed within one year of the order, it may still be denied if the court finds that it was not filed "within a reasonable time of the judgment [or] order … from which relief is sought." Wright & Miller at § 2866, pp. 535-536, 548; ***Gundy*** at 488; ***Cupples*** at 765.

Here, the district court correctly found "in its discretion that Margheim's motion is unreasonably untimely." (Aplt. App. Vol. I at 531-532) This finding, that Margheim's attempt in July 2017 to challenge orders issued almost four years earlier in August 2013; to challenge orders issued over three years earlier May 2014; and to challenge orders issued over one year earlier in March 2016, is "unreasonably untimely," is well within the district court's discretion. *See, e.g.,*

Security Mutual Casualty Co. v. Century Casualty Co., 621 F.2d 1062, 1068 (10th Cir. 1980) (three months); ***Central Operating Co. v. Utility Workers of America***, 491 F.2d 245, 253 (4th Cir. 1974) (four months); ***Trade Well International v. United Central Bank***, 825 F.3d 854, 861 (7th Cir. 2016) (five months); ***Barry v. Atkinson***, 193 F.R.D. 197, 198 (S.D. N.Y. 2000) (nine months).

This finding of untimeliness is strengthened by the fact that Margheim did not seek review of the August 2013 order dismissing all claims, except to the extent his complaint could be construed as asserting a claim for malicious prosecution. (Supp. Appx. at 20-26) Accordingly, the Tenth Circuit was without jurisdiction in the Second Appeal to consider Margheim's belated challenge to the orders of August 2013, May 2014, and March 2016, which together dismissed all the claims that Margheim attempted to assert, except a single claim of malicious prosecution against Buljko. And if the Tenth Circuit lacked jurisdiction in the Second Appeal to consider the propriety of the district Court's orders entered years before final judgment, most assuredly this Court lacks jurisdiction to consider those orders pursuant to a petition for certiorari arising from the decision of the Tenth Circuit ending the Second Appeal.

III. EVEN IF THIS COURT HAD JURISDICTION TO REVIEW THE EARLIER ORDERS, THE TIMELINESS OF MARGHEIM'S "OTHER CLAIMS" IS IRRELEVANT.

All of Margheim's claims derive from his arrest on May 7, 2010, pursuant to the Second Warrant. (*See* Aplt. App. Vol. I at 21-22, 26, 28, 61, 63, 208, 209, 251, 252, 348) As the Tenth Circuit explained in ***Myers v. Koopman***, 738 F.3d 1190 (10th Cir. 2013):

> Unreasonable seizures imposed *without* legal process precipitate Fourth Amendment false imprisonment claims. (citation omitted) Unreasonable seizures imposed *with* legal process precipitate Fourth Amendment malicious-prosecution claims.

738 F.3d at 1194, emphasis added; ***see also Margheim I*** at 1985. All the "seizures" of which Margheim complains were imposed "with legal process" – the Second Warrant. Therefore, these seizures "precipitate … malicious prosecution claims," not claims for false imprisonment, false arrest or excessive force.

Accordingly, the only claim Margheim could ever assert is for malicious prosecution. It is therefore irrelevant whether the district court erred in finding that Margheim's claims for false arrest, false imprisonment and excessive force were barred by the statute of limitations. In fact, the district court recognized this in its order denying Margheim's Rule 59 Motion:

> The Court ruled that the statute of limitations had run on the false arrest claim, but in truth his false arrest claim

> never accrued in the first place. Margheim was arrested pursuant to a warrant, so there was never a time when Margheim was detained without legal process. [citation omitted] From the beginning, his claim was always malicious prosecution or nothing.

(Aplt. App. Vol. I at 532, n. 2) Therefore, any ruling by this Court concerning the timeliness of the "other claims" Margheim asserted could not alter the outcome of this appeal. Rule 61, F.R.C.P.

CONCLUSION

For the reasons stated above, Respondents respectfully request that the Court deny Margheim's Petition for Writ of Certiorari.

DATED this 25th day of June, 2019.

Respectfully submitted,

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