No. _____

IN THE
Supreme Court of the United States

_____

LIMMIA PAGE,

Petitioner,

v.

STATE OF NEW YORK,

Respondent.

_____

On Petition for a Writ of Certiorari
to the New York Court of Appeals

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

Whether a citizen loses the right to be free from unreasonable searches and seizures because an on-duty federal agent acting under color of law makes a prohibited arrest under the guise of a "citizen's arrest" contrary to the Fourth Amendment.

PARTIES TO THE PROCEEDING

The Petitioner is Limmia Page, who was defendant-respondent before the New York Court of Appeals.

The Respondent is the State of New York, who was appellant before New York Court of Appeals.

Petitioner was prosecuted jointly with two co-defendants. Neither participated in the appeal to the court below.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the Supreme Court of the State of New York, the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, and the New York Court of Appeals:

> *The People of the State of New York v Page*, No. 2017-01186 (N.Y. Sup. Ct., Erie County, Jan. 22, 2018).
>
> *The People of the State of New York v Page*, KA 18-00610, No. 878 (N.Y. App. Div., 4th Dep't., Nov. 9, 2018).
>
> *The People of the State of New York v Page* (N.Y. Ct. App., Apr. 3, 2019).
>
> *The People of the State of New York v Page*, No. 47 (N.Y. Ct. App., June 11, 2020).

Following the decision from the New York Court of Appeals, this matter was remitted to the Supreme Court of the State of New York, County of Erie. The matter is currently stayed upon consent pending resolution of this petition.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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An on-duty marine interdiction agent with Customs and Border Protection was expressly prohibited by statute from detaining or pursuing individuals he did not suspect of immigration violations. The agent did not act as a citizen when he pulled over a speeding vehicle — in which petitioner was a passenger — with his red and blue emergency lights. His conduct could not evade Fourth Amendment review under the guise of a citizen's arrest.

OPINION AND ORDER BELOW

The opinion of the New York Court of Appeals is reported at 111 N.Y.S.3d 401 (2020). It is reproduced at App. 1. The opinion of the New York Supreme Court, Appellate Division, Fourth Judicial Department is reported at 87 N.Y.S.3d 409 (2019). It is reproduced at App. 24. The New York Supreme Court's Order granting suppression is unpublished, but is reproduced at App. 30.

JURISDICTION

The Judgment of the New York Court of Appeals was entered on June 11, 2020. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourth Amendment to the United States Constitution reads:

> 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.

The Fourteenth Amendment to the United States Constitution reads:

> 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 law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article VI, clause 2 of the United States Constitution reads:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Other involved statutes — 8 C.F.R. §§ 287.5 and 287.8, 8 U.S.C. § 1357, and N.Y. Crim. Proc. §§ 2.15, 2.20, 140.25, and 140.35 — are reproduced in a Statutory Addendum at App. 35–61.

STATEMENT OF THE CASE

I. An on-duty marine agent with Customs and Border Patrol uses the emergency lights on his vehicle to pull a vehicle over for speeding.

A "marine interdiction agent with customs and border protection," was driving on the highway to reach his next destination after conducting a marina patrol. *See* App. 1. He was in his unmarked, federally-issued vehicle, which was equipped with red and blue police lights and a light bar. He was not performing immigration patrols on the highway, but was on duty as he travelled to his next work area.

A vehicle approached the rear of the agent's vehicle and seemed to brake suddenly. It swerved into another lane and tried to merge. A different vehicle merging from an entry ramp refused to yield during the attempted merge. Both vehicles then swerved to avoid a collision.

The agent assumed that the vehicle was speeding.[1] He acknowledged that he did not suspect that there were any immigration violations. Using the radio in his vehicle, he asked state police to see if anyone "could come assist" him. When he received no assistance on the radio, he called 911 and asked to be connected to the Buffalo Police Department.

When the vehicle exited the highway, the agent pursued it. Although he observed no further speeding or swerving at this point, he claimed that he was worried for the public if the vehicle started speeding again. He activated the lights on his vehicle and the vehicle immediately pulled over.

The agent relayed the information to the police while he waited in his car behind the vehicle. The lights remained active and the vehicle stayed where it was for five minutes before the police arrived.

One officer arrived from the Buffalo Police Department. The agent walked with the police officer to the vehicle "for officer safety reasons." *See* App. 25. Once the police officer told the agent that he "was no longer needed," the agent left. *Id.* at 26.

[1] While the respondent argued following the hearing that several state felonies could have been violated, the agent testified that the only violation was speeding.

The police officer searched the vehicle and recovered a handgun. Petitioner was a passenger in the vehicle. All occupants of the vehicle were charged with possession of a weapon. The details of the conversations and the encounter with the police officer after the agent's departure were not addressed at the suppression hearing.

II. Defense counsel's motion to suppress the evidence is granted.

Following a suppression hearing, defense counsel argued that the agent lacked authority under state and federal law to stop the vehicle. The agent was not a designated peace officer that could make a warrantless arrest and the officer could not make an arrest outside of his federal duties.

This arrest that was made with law enforcement equipment under the color of law could not be characterized as a citizen's arrest. The fact that the agent tried to summon other law enforcement assistance before pulling the vehicle demonstrated his awareness that his conduct was prohibited. As the police would not have been involved absent the agent's intervention, counsel urged the court to suppress the evidence in the case.

The respondent countered that the agent lawfully stopped the vehicle as a citizen's arrest. N.Y. Crim. Proc. § 140.30. They claimed that the agent was not acting under the color of law because he was in an unmarked vehicle, was not in uniform, and that his vehicle's lights were not "official" police lights. The respondent alleged that the agent did not do anything different than what a private citizen would do aside from activating red and blue lights on his vehicle. Ultimately, the respondent

argued that "a constitutional right [was] not implicated," even if the stop violated statutory provisions regarding warrantless arrests.

The hearing court found that the stop of the vehicle was accomplished through means exclusive to law enforcement vehicles. *See* App. 33. The fact that the agent approached the stopped vehicle with the police officer also indicated that he was acting under color of law. In other words, because the agent was on duty and using these tools, the encounter could not be characterized as a citizen's arrest. *Id.* The court granted the motion to suppress the evidence as fruit of the unlawful stop.

III. The Appellate Division unanimously affirms the motion to suppress.

The respondent appealed the suppression decision to the Appellate Division, Fourth Judicial Department. On direct appeal, the respondent advanced two arguments: 1) the stop was a lawful citizen's arrest because the agent was acting "like" a "concerned citizen," but not as a peace officer; and 2) no constitutional rights were implicated in the stop.

Petitioner argued that state law did not permit a warrantless arrest by an on-duty federal immigration agent acting in violation of his delineated duties. As the stop was made in violation of the applicable statutes, the stop was unlawful and unconstitutional. He further argued that the stop could not be validated as a citizen's arrest because the agent could not be characterized as a citizen while he was holding himself out to be a law enforcement agent. Fourth Amendment protections were implicated in the case because the state statute was designed to protect citizens

against unreasonable searches and seizures. Because the stop of the vehicle was illegal, the evidence seized was subject to suppression.

The Appellate Division agreed with petitioner and unanimously upheld the motion to suppress. It held that the officer engaged in conduct only permissible for police officers. This was apparent through the agent's use of red and blue emergency lights and a light bar as well as the agent acting as backup "in cooperation with the officer for safety purposes." *See* App. 28. Because no ordinary citizen could act in the way that the agent did, the encounter could not be characterized as a citizen's arrest.

The court expressly ruled that the Fourth Amendment was implicated. It found that petitioner had a right to be free from an unlawful search made under color of law. *See id.* at 28–29. Suppression was appropriate where "the purported private person is cloaked with official authority and acts with the participation and knowledge of the police in furtherance of a law enforcement objective." *Id.* at 29.

IV. The Court of Appeals refuses to extend Fourth Amendment protections to unlawful vehicle stops.

The respondent continued its efforts to reverse the suppression decision from the hearing court and the Appellate Division. Following an application for leave to appeal to the New York Court of Appeals, leave was granted. The same arguments advanced before the hearing court and the Appellate Division were briefed and argued by both parties once again. Both parties addressed the Fourth Amendment implications inherent in petitioner's case.

The five-member majority declined to apply Fourth Amendment protections to seizures made by federal agents outside of their proscribed duties. *See* App. 12. The

agent was not a peace officer authorized to make a warrantless arrest and was not among the exclusive list of federal agents permitted to make warrantless arrests in New York. *See id.* at 8–9. Instead, the majority concluded that the agent could make a "citizen's arrest" because he was excluded from these other categories of permissible warrantless arrests. *Id.* at 11–12. It declined to address any Fourth Amendment issues under the erroneous belief that no such arguments were advanced. *Id.* at 12.

Two judges of the Court of Appeals dissented (Fahey & Rivera, JJ.). The dissent was concerned that the majority's "decision expands the ability of law enforcement officials to affect arrest that they have no authority to make, under the guise of the citizen's arrest." *See* App. at 14.

The distinction between a peace officer and a federal agent was of no concern. The issue was whether the agent was "acting with the accoutrements — the outward characteristics — of a police officer or peace officer." *Id.* at 18. The agent exercised certain options that were only available to him by virtue of his employment as a federal agent. *Id.*

The majority's decision yielded dangerous repercussions: any law enforcement agent acting outside of statutory prohibitions could bypass constitutional protections accorded by the Fourth Amendment by invoking the words "citizen's arrest" at a hearing. *Id.* at 22.

The Fourth Amendment argument was properly before the court according to the dissent. The statutes at issue were designed to protect a constitutional right —

the Fourth Amendment right to be free from unreasonable searches and seizures. Because those statutes were violated, suppression was an appropriate remedy. *Id.*

REASONS FOR GRANTING THE PETITION

A federal immigration officer engaged in prohibited conduct could not avoid Fourth Amendment sanctions under the guise of a citizen's arrest. Where federal law occupies the field on arrests made by immigration officers, federal law pre-empts any state statute that attempts to morph prohibited conduct into permissible conduct

I. Fourth Amendment analysis could not be cast aside under the guise of a citizen's arrest where an on-duty marine interdiction agent with Customs and Border Protection acted as a law enforcement agent and stopped the petitioner.

Seizures of a person must yield to the protections detailed in the Fourth Amendment. *See District of Columbia v. Wesby*, 138 S. Ct. 577, 585–586 (2018). Arrests made "under color of official authority" must also yield to the Fourth Amendment, regardless of technical concerns. *See Brinegar v. United States*, 338 U.S. 160, 188 (1949) (Jackson, J., dissenting) (noting arrests made with the appearance of law enforcement authority can be coercive).

The Fourth Amendment is implicated even where an arrest complies with state statutes regarding arrests. *See Knowles v. Iowa*, 525 U.S. 113, 116, 118 (1998). This is especially so where a statute protecting Fourth Amendment rights is violated. *See Miller v. United States*, 357 U.S. 301, 313–314 (1958). Thus, an arrest that is unlawful according to statute triggers a Fourth Amendment analysis. *See Ohio v. Robinette*, 519 U.S. 33, 50–51 (1996) (Stevens, J., dissenting).

The agent here intentionally seized petitioner. The hearing court decided that the Fourth Amendment was implicated. The Appellate Division unanimously found the same.

But the Court of Appeals sought to shield this case from any of the protections accorded to petitioner under the Fourth Amendment by finding that the on-duty agent made a citizen's arrest.

There is no question that the agent was acting under the color of law when he pursued petitioner, activated his emergency lights, detained petitioner for at least five minutes, and approached the vehicle with a police officer. *See also United States v. Ible*, 630 F.2d 389, 392 (5th Cir. 1980). This agent was not acting as a citizen when he pulled the vehicle over. He was acting as a law enforcement agent when he used his specialized training and equipment to stop the petitioner.

There is a reason why actual citizen's arrests do not implicate the Fourth Amendment, but arrests by government agents do. Government agents receive specialized training because they must require discretion to engage in serious intrusions that private citizens do not. *See Foley v. Connelie*, 435 U.S. 291, 294, 298–299 (1978) (noting that even traffic stops intrude on privacy interests).

There was no off switch for this agent's cloak of authority when he elected to use his emergency lights and stop the petitioner. After all, "power, once granted, does not disappear like a magic gift when it is wrongfully used. An agent acting — albeit unconstitutionally — in the name of the United States possesses a far greater capacity for harm than an individual trespasser exercising no authority other than

his own." *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 391–392 (1971). Invoking the words "citizen's arrest" could not make the Fourth Amendment disappear in petitioner's case.

II. The arrest could be invalidated under federal law that pre-empted the state's laws on warrantless arrests by federal immigration agents.

State law governing warrantless arrests from federal agents only applies where there is no federal law on the subject. *See United States v Di Re*, 332 U.S. 581, 589 (1948). In petitioner's case, federal law expressly prohibited the conduct the agent engaged in. The prohibition was designed to protect the rights of individuals to be free from unreasonable searches and seizures. Because federal law pre-empted state law on this issue and the agent's conduct was unlawful according to a statute designed to protect constitutional rights, the Fourth Amendment applied. *Cf. United States v Brignoni-Ponce*, 422 U.S. 873, 882 (1975). Suppression was the appropriate sanction.

An arrest may not be invalidated where it comported with the applicable federal law. *Cf. United States v Watson*, 423 U.S. 411, 414–415 (1976). But the inverse application applies: where a statute prohibits specific types of arrests, and an agent acts contrary to that prohibition, the arrest can be invalidated, and its fruits suppressed on Fourth Amendment grounds. Federal law pre-empted state law on this issue; the agent's conduct was prohibited. The arrest should be invalidated.

In determining whether federal law pre-empts state law, the intent of Congress can be inferred from the statute itself. *See Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604–605 (1991). Congress occupies a field and pre-empts state law where

its legislation provides an extensive framework for certain types of conduct. *See Arizona v. United States*, 567 U.S. 387, 399 (2012). The same can be said of legislation "in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). States must not encroach on or stand in the way of the proper execution of such laws. *See Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 482 (1974).

New York allows only certain immigration agents to have the power of peace officers in the state to make warrantless arrests for state violations. *See* N.Y. Crim. Proc. § 2.15. Marine agents, such as the one in petitioner's case, are specifically excluded from New York's legislation. But this does not mean that they are permitted then to make arrests as private citizens while on duty. Such an interpretation would be contrary to the explicit and pervasive conduct governed by federal statute, a statute that the New York Court of Appeals acknowledged in its decision, but elected to ignore. *See* App. 10.

Federal law expressly prohibits the type of conduct the agent engaged in. It explicitly categorizes the types of warrantless arrests that immigration officers may make and only allows for warrantless arrests for federal offenses. *See* 8 C.F.R. § 287.5. The reasons underlying these prohibitions are clear: the resources of the CBP are to be dedicated exclusively to immigration matters. And such a warrantless arrest can only be made when the officer is "performing duties relating to the enforcement of the immigration laws at the time of the arrest." 8 U.S.C. § 1357(a)(5). Even vehicle

pursuits are prohibited unless made to apprehend fleeing aliens. *See* 8 C.F.R. § 287.8(e).

New York cannot attempt to validate an arrest as a citizen's arrest when such an arrest is expressly prohibited under federal law. The matter of immigration enforcement, including the use of federal immigration officers is a matter that has always been occupied by Congress. New York cannot label this agent as a private citizen where he was on duty at the time and engaging in prohibited conduct. The federal government controls the use of its agents, not New York.

Aside from the use of federal resources, the Congressional intent underlying these statutes is clear: even if New York attempts to characterize these as citizens, nothing changes the fact that the federal government still seeks to avoid expending resources on defending FTCA claims.

Federal law pre-empts New York's laws regarding warrantless arrests federal immigration officers make for state traffic law violations. The same can be said of New York's laws regarding citizen's arrests. As the agent's conduct was prohibited by federal law, any arrest was unlawful and triggered, at a minimum, Fourth Amendment review.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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September 2, 2020