

No. 20-6104

IN THE

Supreme Court of the United States

JACQUELINE PIDANICK,

Petitioner,

v.

PAUL C. LAROSA, III and CHRISTOPHER SANKOWSKI,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether, in the absence of any special justification, this Court should depart from the long-standing principles supporting qualified immunity under the circumstances presented in this case regarding the First Amendment claims against LaRosa and Sankowski?

2. Whether there was any violation of the plaintiff's established First Amendment rights when LaRosa investigated her social media postings to determine if there was a real threat to the life of a sitting judge?

TABLE OF CONTENTS

QUESTIONS PRESENTED	2
TABLE OF AUTHORITIES	3
PRIOR PROCEEDINGS	5
STATUTES AND RELEVANT PROVISIONS	5
STATEMENT OF THE CASE	6
REASONS FOR DENYING THE PETITION	7
I. THIS CASE DOES NOT IMPLICATE ANY ALLEGED CIRCUIT SPLIT REGARDING A VIOLATION OF FIRST AMENDMENT RIGHTS WHEN LAW ENFORCEMENT INVESTIGATES A PERCECIVED THREAT TO THE LIFE OF A SITTING JUDGE.	7
II. THIS CASE IS NOT OF GREAT PRACTICAL IMPORTANCE NOR WAS IT DECIDED CONTRARY TO PRIOR DECISIONS BY THIS COURT.	8
III. THIS CASE IS NOT A VEHICLE FOR EVALUATING THE ALLEGED CORRUPTION OR INADEQUACIES OF THE SOUTH CAROLINA FAMILY COURT SYSTEM.	8
IV. THIS CASE IS NOT A VEHICLE FOR EVALUATING WHETHER SOUTH CAROLINA LAW ENFORCEMENT AGENCIES ADEQUATELY RESPONDED TO/INVESTIGATED PETITIONER’S CLAIMS OF DOMESTIC ABUSE.	9
THE JUDGMENT BELOW IS CORRECT	10
CONCLUSION	10

TABLE OF AUTHORITIES

CASE LAW

<i>Arizona v. Evans</i> , 514 U.S. 1, 23 n. 1 (1995)	8
<i>Ashcroft v. al-Kidd</i> , 563 U.S. 731 (2011)	8
<i>Califano v. Yamasaki</i> , 442 U.S. 682, 702 (1979)	7
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982)	8
<i>Hunter v. Bryant</i> , 502 U.S. 224 (1991)	8
<i>Mitchell v. Forsyth</i> , 472 U.S. 511 (1985),	8
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009),	8
<i>Pidanick v. LaRosa and Sankowski</i> , 9:18-cv-01534-DCN	5
<i>Pidanick v. Maddaloni et al.</i> , 9:17-cv-00281-DCN	5
<i>Virginia v. Black</i> , 538 U.S. 343 (2003)	8
<i>Watts v. United States</i> , 394 U.S. 705 (1969)	8

OTHER AUTHORITIES

First Amendment to the U.S. Constitution	5, 7, 10
Supreme Court Rule 10(a)	7

PRIOR PROCEEDINGS

Petitioner initially filed this lawsuit against South Carolina Law Enforcement Division (“SLED”) Supervisory Special Agent Lt. Paul LaRosa and Beaufort County Sheriff’s Office Lt. Christopher Sankowski along with her ex-boyfriend Christopher Maddaloni, his attorney Marshall Horton and the attorney’s law firm, Horton and Goodman in the U.S. District Court for South Carolina, Charleston Division. 9:17-cv-00281. Respondents LaRosa and Sankowski filed a motion to sever, as they were completely separate and distinct from the claims against the co-defendants. The court severed the action and Respondents LaRosa and Sankowski were assigned a new case number in the same court. 9:18-cv-01534-DCN. No appeal of that order was filed.

On October 16, 2018, Respondents filed a motion for summary judgment on all causes of action. An Order granting summary judgment was issued on April 22, 2019, in which the Report and Recommendation of March 18, 2019 was fully adopted. Petitioner filed a notice of appeal to the Fourth Circuit Court of Appeals. #19-1462.

On January 30, 2020, the Fourth Circuit Court of Appeals found no reversible error and affirmed for the reasons stated by the district court. #19-1462. On March 5, 2020, *pro se* Petitioner filed a petition for rehearing which was denied on March 20, 2020. Petitioner filed a motion to proceed *in forma pauperis*, which is dated April 20, 2020. She filed a petition for Writ of Certiorari, which is dated June 29, 2020 and August 5, 2020.¹ #20-6104

STATUTES AND RELEVANT PROVISIONS

This case involves a very narrow claim that Pidanick’s First Amendment rights were infringed upon by officers when they met with her to investigate some postings she had made on

¹ It appears that although the court returned the petition to petitioner to make limited corrections, she also updated and changed the content of the petition and re-dated it. It was filed by the court on October 22, 2020.

social media. Pidanick originally claimed that the officers retaliated against her for pursuing her First Amendment right to free speech by investigating her posts. Pidanick's brief to this court, however, is extremely lengthy and delves into many issues outside the underlying case. Sankowski and LaRosa assert that a proper consideration of the issues in this case will involve the well-established elements of qualified immunity, a review of whether there is a clearly established right not to be the subject of an investigation for social media posting that are perceived to threaten the life of a sitting judge, and whether the Complaint sets forth a valid claim of conspiracy.

This case does not satisfy the criteria for certworthiness. There is no question presented that has split the federal circuits or state supreme courts. There are no issues of great practical importance and this matter has not already been addressed by the Supreme Court with a contrary decision below. Petitioner is merely asking this court to reverse the Fourth Circuit Court of Appeals and rule in her favor because she did not like the decision.

STATEMENT OF THE CASE

LaRosa and Sankowski assert that the facts of the single encounter between them and Pidanick are set forth in both the Report and Recommendation (included in the Petitioner's appendix) which was relied on by the District Court and the Fourth Circuit Court of Appeals as well as the audio recordings of the meeting between Pidanick and the officers. Such facts are not restated here, but are important as the petitioner has included allegations, facts and arguments in her petition which have no relevance to this narrow case and are far outside the scope of any appealable issues involved herein.

REASONS FOR DENYING THE WRIT

Petitioner Pidanick's brief is lengthy, unclear and attempts to argue a number of issues that (a) were not ever at issue in this case; (b) were issues with the severed defendants; (c) have nothing to do with the issues in this matter; and/or (d) are not properly preserved for appeal. Respondents LaRosa and Sankowski assert that Petitioner has not submitted any argument in support of certiorari and that the petition should be denied.

I. THIS CASE DOES NOT IMPLICATE ANY ALLEGED CIRCUIT SPLIT REGARDING A VIOLATION OF FIRST AMENDMENT RIGHTS WHEN LAW ENFORCEMENT INVESTIGATES A PERCEIVED THREAT TO THE LIFE OF A SITTING JUDGE.

No circuit subscribes to the Petitioner's broad proposition that it is a violation of a citizen's First Amendment rights, for a law enforcement officer to investigate social media postings that have been reported to him as a perceived threat to the life of a sitting judge. Petitioner has cited to no law, statute or other such determination to support her position because no such determination exists. Here, the petitioner was interviewed, not at a police station, but in her own apartment. She was never arrested and never even threatened with arrest. To the contrary, Lt. LaRosa specifically told her that if he found any further questionable posts, he would contact her directly.

This Court's usual practice is to wait until a circuit split emerges before granting review to resolve important legal questions. *See* Sup. Ct. R. 10(a). Before this Court resolves a new legal question "[i]t often will be preferable to allow several courts to pass on a given . . . claim in order to gain the benefit of adjudication by different courts in different factual contexts." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). "[W]hen frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better

informed and more enduring final pronouncement by this Court.” *Arizona v. Evans*, 514 U.S. 1, 23 n. 1 (1995)(Ginsburg, J., dissenting). Although respondents take the position that no novel legal issue exists, if the court were to discern one, there is no circuit split that should be resolved. Importantly, the District Court relied on case law from both the Fourth Circuit and the Eighth Circuit in making its decision. Petitioner has never set forth any contrary decision from any other circuit.

II. THIS CASE IS NOT OF GREAT PRACTICAL IMPORTANCE NOR WAS IT DECIDED CONTRARY TO PRIOR DECISIONS BY THIS COURT.

This case was decided pursuant to established law. The District Court relied on multiple decisions from this court. When considering qualified immunity and allegations of First Amendment violations, the District Court relied on prior Supreme Court decisions in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), *Mitchell v. Forsyth*, 472 U.S. 511 (1985), *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011), *Hunter v. Bryant*, 502 U.S. 224 (1991), *Pearson v. Callahan*, 555 U.S. 223 (2009), *Virginia v. Black*, 538 U.S. 343 (2003), *Watts v. United States*, 394 U.S. 705 (1969). The decision is in line with this court’s prior decisions and therefore the petition should be denied.

III. THIS CASE IS NOT A VEHICLE FOR EVALUATING THE ALLEGED CORRUPTION OR INADEQUACIES OF THE SOUTH CAROLINA FAMILY COURT SYSTEM.

Petitioner spends the majority of her petition making allegations and arguments regarding the actions involved in her family court case with parties other than Sankowski and LaRosa. Such allegations are contained in a separate federal court matter, and are not issues in the case before this court. That case was severed early on, by the District Court and no appeal was filed. This case is specifically about the investigation of a state law enforcement officer who received a report from a sitting judge that a litigant before him had made social media postings that he perceived as

threats. The officer had no involvement in the underlying family court case, nor did he ever receive any information from the judge about the rulings in that case. The state law enforcement officer was only investigating the report of a perceived threat. This is a very narrow case involving one meeting between the petitioner and the officers that lasted less than one hour and resulted in no arrests. Any allegations by the petitioner outside of this single event are not relevant and should not be considered.

IV. THIS CASE IS NOT A VEHICLE FOR EVALUATING WHETHER SOUTH CAROLINA LAW ENFORCEMENT AGENCIES ADEQUATELY RESPONDED TO/INVESTIGATED PETITIONER’S CLAIMS OF DOMESTIC ABUSE.

Petitioner makes a number of allegations in her brief about reporting domestic abuse and the abuse of her child by her father, but that law enforcement “did not do anything” to help her. The officers involved in this case were not involved in any reporting of domestic violence or child abuse or assault. Lt. LaRosa is an agent with the South Carolina Law Enforcement Division and his office is in Columbia, South Carolina, over three hours from Bluffton. Lt. Sankowski is a deputy with the Beaufort County Sheriff’s Office, but at the time of this matter, was responsible for overseeing the security of the Courthouse. He did not respond to calls for service or investigate allegations of criminal conduct outside the walls of the courthouse. The Beaufort County Sheriff’s Office is not a party to this litigation. Therefore, any claims by the petitioner that she was victimized and that law enforcement refused to assist her with allegations of abuse are not properly before this court and should not be considered by this court.

THE JUDGMENT BELOW IS CORRECT

Finally, certiorari should be denied because there was no violation of petitioner's First Amendment rights, no conspiracy between the two officers and no violations of state law. The District Court properly evaluated the claims according to current law and the Fourth Circuit Court of Appeals properly affirmed the District Court's decision.

CONCLUSION

Respondents Lt. LaRosa and Lt. Sankowski respectfully submit that the Petitioner has not presented any valid legal arguments to support the grant of her petition for writ of certiorari. Therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

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