

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-659

LARRY THOMPSON, PETITIONER

v.

PAGIEL CLARK, ET AL.

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

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

The question presented in this case concerns the requirements to establish a claim under 42 U.S.C. 1983 against local law-enforcement officers based on an alleged unreasonable seizure pursuant to legal process in violation of the Fourth Amendment. The court of appeals held that to establish such a claim, the plaintiff must prove, inter alia, that the underlying criminal

proceeding initiated by the legal process has terminated in a manner that affirmatively indicates the Section 1983 plaintiff's innocence. Pet. App. 3a-7a. The United States has filed a brief as amicus curiae supporting petitioner, contending that the Section 1983 plaintiff should be required to show that the underlying criminal proceeding has terminated in his favor, but not that it has terminated in a way that affirmatively indicates his innocence.

The United States has a substantial interest in the issues presented in this case. The United States is committed to ensuring that constitutional rights are carefully safeguarded. The government prosecutes individuals -- mostly state and local law-enforcement officers -- who willfully violate individuals' rights under color of law, in violation of 18 U.S.C. 241 and 242. And the government brings civil actions against state and local law-enforcement agencies under 34 U.S.C. 12601, which authorizes the Attorney General to seek appropriate relief to remedy a pattern or practice of law-enforcement officers' violations of constitutional rights.

In addition, this Court has often invoked its Section 1983 jurisprudence in cases involving implied causes of action against federal officers for the deprivation of constitutional rights under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). See, e.g., Hartman v. Moore,

547 U.S. 250 (2006). The United States therefore has a substantial interest in the circumstances in which federal officers may be held liable for damages in civil actions for alleged violations of constitutional rights, to the extent that such a claim (including one like petitioner's) remains viable after Ziglar v. Abbasi, 137 S. Ct. 1843 (2017).

The government has previously presented oral argument as amicus curiae in cases concerning the contours of constitutional tort claims under Section 1983 and related questions. See, e.g., McDonough v. Smith, 139 S. Ct. 2149 (2019); Nieves v. Bartlett, 139 S. Ct. 1715 (2019); Lozman v. City of Riviera Beach, 138 S. Ct. 1945 (2018); Manuel v. City of Joliet, 137 S. Ct. 911 (2017). As in those cases, we believe that participation by the United States in the oral argument in this case could be of material assistance to the Court.

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General
Counsel of Record

AUGUST 2021