

No. \_\_\_\_\_

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**IN THE**  
**SUPREME COURT OF THE UNITED STATES**

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SHEENA SHAW,

*Petitioner,*

v.

SACRAMENTO COUNTY SHERIFF'S DEPT. et al.,

*Respondents.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

May the Ninth Circuit Court of Appeals ignore the goals of 42 U.S.C. § 1983 when interpreting and applying state statutes of limitations and the coordinate tolling rules? *See* 42 U.S.C. § 1988.

42 U.S.C. § 1988 provides:

The jurisdiction in civil and criminal matters conferred on the district and circuit courts [district courts] by the provisions of this Title, and of Title “CIVIL RIGHTS,” and of Title “CRIMES,” for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, **so far as the same is not inconsistent with the Constitution and laws of the United States** shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

42 U.S.C. § 1988 (2020) (emphasis supplied).

## LIST OF PARTIES

Plaintiff:

Sheena Shaw;

Defendants:

Sacramento County Sheriff's Department;

Scott Jones, Sheriff, County of Sacramento;

Sergeant M. Pai #205S;

Deputy Steven Forsyth #874;

Deputy Colin Mason #461;

Deputy Kenneth Shelton #1021;

Deputy Reid Harris #238;

Deputy S. Barry #828;

Deputy C. Bartilson #1470;

Deputy Doe #2;

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

**OPINIONS BELOW**

The unpublished memorandum opinion of the court of appeals, dated June 23, 2020, appears at Appendix A, App. 1. The unpublished order of the district court appears at Appendix E, App. 34.

**JURISDICTION**

The court of appeals denied rehearing en banc on August 18, 2020. App. B.

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

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourth Amendment to the U. S. Constitution provides:

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.

42 U.S.C. § 1983 provides:

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.

## INTRODUCTION

The Ninth Circuit decision ignored decisions of this Court and 42 U.S.C. § 1988, which prohibit the application of state statutes of limitations and tolling rules that are inconsistent with the goals of 42 U.S.C. § 1983.

This resulted in several of Petitioner's claims being dismissed, though she was imprisoned during the two year limitations period.

The Ninth Circuit decision deprived Petitioner of the right to seek redress for the deprivation of her constitutional rights.

## STATEMENT OF THE CASE

### A. The warrantless arrest of Petitioner and search of her home

Because she was arrested without a warrant or probable cause Ms. Shaw was imprisoned in the county jail until the next morning, April 6, 2014. She filed this action under 42 U.S.C. § 1983 to vindicate her rights under the Fourth Amendment on April 6, 2016. The district court dismissed the action in its entirety, finding that she was not imprisoned under California law when she was in county jail, ignoring settled Ninth Circuit precedent and relying on a dubious California Court of Appeal decision, which was issued in 2018, almost a year after the motion to dismiss was fully briefed. In upholding the district court, in part, the Court of Appeals for the Ninth Circuit ignored the goals of 42 U.S.C. § 1983 and ignored 42 U.S.C. § 1988 and the decisions of this Court.

Defendant Sacramento County Sheriff's Department deputies descended on and entered Sheena Shaw's home by breaking down the front door on April 5, 2014. The Defendants used excessive force in arresting her without probable cause and imprisoned her in county jail. She was released the next day, April 6, 2014.

Two years after her release, on April 6, 2016, Petitioner filed a handwritten complaint against Defendants Sacramento County Sheriff's Department and individual defendants ("Defendants") under 42 U.S.C. § 1983 in the United States District Court for the Eastern District of California. After counsel was appointed the First Amended Complaint was filed and the Defendants filed a motion to dismiss on June 23, 2017, arguing, *inter alia*, that the entire action was time-barred. Petitioner filed a timely response to the motion to dismiss, asserting that the limitations period was tolled for one day under § 352.1 and *Elliott*. The Defendants filed a reply. The district court vacated the hearing, set for August 10, 2017. After Petitioner commenced discovery the Defendants successfully moved to stay discovery. On October 25, 2018, more than 14 months after the hearing date on the motion to dismiss, the district court issued its Order granting the Defendants' motion to dismiss and dismissing the case in its entirety.

On February 4, 2020, while the case was being considered for oral argument, Petitioner filed a motion for leave to file a supplemental opening brief addressing the retroactivity of *Austin*.

Defendants filed an opposition and Petitioner filed a reply. On February 26, 2020, the court granted the motion and filed Petitioner's Supplemental Opening Brief. On March 18, 2020, Defendants filed a Supplemental Answering Brief, and on March 31, 2020, Petitioner filed a Supplemental Reply Brief. The case was argued and submitted on May 11, 2020.

**B. Decisions below**

In an unpublished memorandum disposition, dated June 23, 2020, the panel affirmed in part and reversed in part. The panel affirmed the dismissal of all causes of action other than Petitioner's claim for false arrest, which "did not accrue until . . . April 6, 2014." 810 Fed.Appx. at 554. App. A at 4.

Petitioner filed a timely petition for rehearing en banc. App. C, at 6.

## REASONS FOR GRANTING THE PETITION

1. The Ninth Circuit's decision conflicts with 42 U.S.C. §§ 1983 and 1988 and with this Court's decisions requiring respect for the goals of 42 U.S.C. § 1983 when interpreting and applying state statutes of limitations and tolling rules in civil rights actions

42 U.S.C. § 1983 is to be accorded "a sweep as broad as its language." *Felder v. Casey*, 487 U.S. 131, 139 (1988) (citation omitted). 42 U.S.C. § 1988 provides:

The jurisdiction in civil and criminal matters conferred on the district and circuit courts [district courts] by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, **so far as the same is not inconsistent with the Constitution and laws of the United States** shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

42 U.S.C. § 1988 (2020) (emphasis supplied).

In *Hardin v. Straub*, 490 U.S. 536 (1989), the Court of Appeals for the Sixth Circuit refused to apply the Michigan tolling provision to

inmates' § 1983 suits. The Sixth Circuit held that "application of a lengthy tolling period is clearly counterproductive to sound federal policy in attempting to deal with § 1983 claims as promptly as practicable." *Id.* at 542. The Sixth Circuit decided the case on two other interests, "the settled § 1983 policy of deterring officials' unconstitutional behavior and a novel 'rehabilitative function [of] providing a "safety valve" for prisoner grievances.'" *Id.* The Sixth Circuit concluded that "quick disposition of § 1983 suits advances these latter policies" and "held that Michigan's tolling law is inconsistent with federal law and declined to apply it." *Id.* at 542-43.

This Court reversed the Sixth Circuit, finding:

A State's decision to toll the statute of limitations during the inmate's disability does not frustrate § 1983's compensation goal. Rather, it enhances the inmate's ability to bring suit and recover damages for injuries. Nor does the State's decision to toll its statute of limitations hinder § 1983's deterrence interest. In the event an official's misconduct is ongoing, the plaintiff will have an interest in enjoining it; thus, the time during which the official will unknowingly violate the Constitution may well be short. The State also may have decided that if the official knows an act is unconstitutional, the risk that he or she might be haled into court indefinitely is more likely to check misbehavior than the knowledge that he or she might escape a challenge to that conduct within a brief period of time.

*Id.* at 543 (footnote omitted); *see also* .

The Ninth Circuit decision states that state statutes of limitations and the coordinate tolling rules are binding rules of law. App. 3a. However, in quoting from *Bd. of Regents of Univ. of N.Y. v. Tomanio*, 446 U.S. 478, 484 (1980), the Ninth Circuit ignores the next two sentences in that case, where this Court stated that 42 U.S.C. § 1988 “authorizes federal courts to disregard an otherwise applicable state rule of law only if the state law is “inconsistent with the Constitution and laws of the United States.” *Id.*

The Ninth Circuit ignores this.

The Ninth Circuit also ignored *Elliott v. City of Union City*, 25 F.3d 800 (9th Cir. 1994), a published decision that is the law in the Circuit. The Ninth Circuit held in *Elliott* that tolling is available to plaintiffs held in both county jails and state prisons because there is no practical distinction between the two forms of confinement. 25 F.3d at 803. In *Elliott*, the plaintiff was arrested, charged, and held in continuous pretrial custody in the county jail until he was convicted and sent to prison. *Id.* at 801. Elliott filed a § 1983 action in federal district court alleging that the defendant police officers used excessive force during his arrest. *Id.*

The Ninth Circuit considered Code of Civil Procedure § 352, the predecessor to section 352.1 (the only difference between the prior and current versions of the statute is the length of the tolling period), and held that “actual, uninterrupted incarceration is the touchstone for assessing tolling” because, *inter alia*, “[a] person held in police custody prior to arraignment is faced with the same limitations as someone in custody after arraignment.” *Id.* at 803. The court held that the statute of limitations applicable to Elliott’s § 1983 action “was tolled commencing at the time of his arrest and continuing through his custody.” *Id.*

Ninth Circuit caselaw is binding authority that “must be followed unless and until overruled by a body competent to do so.”

*Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001).

Elliott explained why “charge” refers to pretrial detention:

Although the words “imprisoned” might appear to refer to an actual prison, this reading of the statute would make it self-contradictory, since it refers to being held “on a criminal charge,” i.e., prior to conviction. It is the second phrase, “in execution under sentence of a criminal court,” that covers post-conviction incarceration. i.e., confinement in an actual prison. *See Mitchell v. Greenough*, 100 F.2d 184, 187 (9th Cir. 1938) (“the phrase ‘imprisonment on a criminal charge’ refers to one who is . . . not yet convicted”), *cert. denied*, 306 U.S. 659, 83 L.Ed. 1056, 59 S.Ct. 788 (1939).

25 F.3d at 802 n. 2.

The *Elliott* reasoning was consistent with this Court’s holding in *Wallace v. Kato*, 549 U.S. 384 (2007). In *Wallace*, this Court held that:

“Every confinement of the person is an imprisonment, whether it be in a common prison or in a private house, or in the stocks, or even by forcibly detaining one in the public streets; and when a man is lawfully in a house, it is imprisonment to prevent him from leaving the room in which he is.”

*Id.* at 388-89 (citation omitted).

The Ninth Circuit ignored settled law and ignored this Court’s holding in *Wallace v. Kato* in finding that Petitioner was not imprisoned when she was incarcerated in jail from April 5 to April 6, 2014, even though the panel opinion reversed the judgment of the district court on the false arrest claim because it acknowledged that that claim did not accrue until April 6, 2014. App. A at 4.

In *Felder v. Casey*, 487 U.S. 131 (1988), this Court held:

Section 1983 creates a species of liability in favor of persons deprived of their federal civil rights by those wielding state authority. As we have repeatedly emphasized, “the central objective of the Reconstruction-Era civil rights statutes . . . is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief.” *Burnett v. Grattan*, 468 U.S. 42, 55 (1984). Thus, § 1983 provides “a uniquely federal remedy against incursions . . . upon rights secured by the Constitution and laws of the

Nation,” *Mitchum v. Foster*, 407 U.S. 225, 239 (1972), and is to be accorded “a sweep as broad as its language.” *United States v. Price*, 383 U.S. 787, 801 (1966).

*Id.* at 139.

The Ninth Circuit ignores the words of this Court and has ignored the law as set forth in 42 U.S.C § 1988, which prohibits the use of state statutes of limitations and tolling provisions that are inconsistent with 42 U.S.C. § 1983. In this case the Ninth Circuit has cut off Petitioner’s constitutional rights by elevating an intermediate state court decision above the decisions of this court and above the laws of the United States without regard for the purposes of Title 42, Section 1983 and the Fourth Amendment to Constitution of the United States of America. This petition should be granted and the judgment of the Ninth Circuit vacated.

### Conclusion

The Court should grant the petition for writ of certiorari.

Respectfully submitted,  
\_\_\_\_\_  
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IN THE SUPREME COURT OF THE UNITED STATES

CASE NO. \_\_\_\_\_

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Sheena Shaw, - *Petitioner,*

v.

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***CERTIFICATE OF FILING AND SERVICE OF PETITION FOR WRIT OF  
CERTIORARI***

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I, Jeff Dominic Price, a member of the Bar of this Court, hereby certify that on this 15th day of January, 2021, one copy of the Petition for Writ of Certiorari in the above entitled case was mailed, first class postage prepaid, to Wendy Motooka, Rivera Hewitt Paul LLP, 11341 Gold Express Drive, Suite 160, Gold River, California 95670, counsel for respondent herein. I further certify that the original of the Petition for Writ of Certiorari was filed through the Court's e-filing system, at 1 1<sup>st</sup> St. N. E., Washington, D.C. 20543.

Respectfully submitted,

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/s/ Jeff Dominic Price

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