

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAGHRIB SHAHEED, WAHEEDAH SHAHEED - PETITIONER

vs.

STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, PAUL BLISS, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, LYDIA FIGUEROA, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, CITY OF NEW YORK – RESPONDENTS

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a civil New York State Family Court Investigation Entry Order the equivalent of a search warrant, thereby authorizing the police to use force to entry a citizen's private dwelling, when there is not probable cause to believe that a crime has been committed, there is no consent to enter, and there is not an exception to the Fourth Amendment Warrant Requirement – in the form of an emergency or exigent circumstances.
2. Are the Respondent Police Officers entitled to qualified immunity after forcibly entering the Petitioners' dwelling, with a civil New York State Family Court Investigation Entry Order; and, Respondent Police Officers failed to adhere to the New York State statutory mandate, that requires law enforcement officers to obtain a search warrant – from a New York State Criminal Court – prior to entering the premises where a child or children are believed to be present, in relation to a civil Family Court Investigation Entry Order.
3. Is a civil New York State Temporary Child Removal Order a search warrant, that authorizes the Police to forcibly enter a private dwelling to search when there is not probable cause – as defined by Fourth Amendment jurisprudence – there is no consent to enter, and there is not an exception to the Fourth Amendment Warrant Requirement – in the form of an emergency or exigent circumstances.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT

Petitioner Daghrib Shaheed, and Petitioner Waheedah Shaheed, make this corporate disclosure statement pursuant to pursuant to SUP. CT. R. 29.6. The Petitioners are not corporations, and are not affiliated with any corporations within the meaning of the rule.

RELATED CASES

In the Matter of Hannah Olodan, Waheedah Shaheed, Respondent, File Number 7513, Docket Number NN-21913-12, Family Court of the State of New York: New York County (Order of Dismissal: 26 January 2015).

In the Matter of Abdul Maleek Rahim, Waheedah Shaheed, Respondent, File Number 7513, Docket Number NN-21912-12, Family Court of the State of New York: New York County (Order of Disposition: 26 January 2015).

The People of the State of New York v. Daghrib Shaheed, Docket Number 2012NY044694, Criminal Court of the City of New York: New York County (Final Judgment, dismissing the case with prejudice, entered on 18 September 2013).

The People of the State of New York v. Waheedah Shaheed, Docket Number 2012NY044692, Criminal Court of the City of New York: New York County (Final Judgment, dismissing the case with prejudice, entered on 18 September 2013).

The People of the State of New York v. Waheedah Shaheed, Docket Number 2012NY050853, Criminal Court of the City of New York: New York County (Final Judgment, dismissing the case with prejudice, entered on 2 April 2014).

Daghrib Shaheed v. Stephen Kroski et al., No. 14-cv-07424, United States District Court for the Southern District of New York. Judgment entered 29 October 2018.

Waheedah Shaheed v. Stephen Kroski et al., No. 15-cv-03480, United States District Court for the Southern District of New York. Judgment entered 29 October 2018.

Daghrib Shaheed, Waheedah Shaheed v. Stephan Kroski, New York City Police Officer; In an Individual and Official Capacity, et al., United States Court of Appeals for the Second Circuit, Docket Numbers 19-90, 19-94. Judgement entered 3 November 2020.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Second Circuit appears at Appendix A to the Petition, and it is unpublished. The Order of the United States Court of Appeals for the Second Circuit, consolidating Docket Numbers 19-90 and 19-94 appears at Appendix B to the Petition, and it is unpublished. The United States District Court, for the Southern District of New York's Decision and Order on Respondents' motion to dismiss appears at Appendix C to the Petition, and it has not been published. The United States District Court, for the Southern District of New York's Order and Opinion on Respondents' Motion for Summary Judgment appears at Appendix D to the Petition, and it has not been published. The United States District Court, for the Southern District of New York's, Order and Opinion on the Motion for Entry of Judgment appears at Appendix E to the Petition, and it has not been published. The United States District Court, for the Southern District of New York's Order on Motion in Limine appears at Appendix F to the Petitioner, and it has not been published.

JURISDICTION

The date on which the United States Court of Appeals decided Petitioners' case was 3 November 2020. No Petition for rehearing was timely filed in Petitioners' case. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.	U.S. CONST. amend. IV	Appendix S app. p. A321
2.	N.Y. CONST. art. VI, § 13	Appendix T app. p. A322
3.	N.Y. CRIM. PROC. LAW § 1.20 (Consol. 2012)	Appendix U app. p. A324
4.	N.Y. CRIM. PROC. LAW § 2.10 (Consol. 2012)	Appendix V app. p. A335
5.	N.Y. CRIM. PROC. LAW § 2.20 (Consol. 2012)	Appendix W app. p. A359
6.	N.Y. CRIM. PROC. LAW § 10.10 (Consol. 2012)	Appendix X app. p. A362
7.	N.Y. CRIM. PROC. LAW § 120.10 (Consol. 2010)	Appendix Y app. p. A364
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9.	N.Y. CRIM. PROC. LAW § 120.70 (Consol. 2010)	Appendix AA app. p. A367
10.	N.Y. CRIM. PROC. LAW § 120.80 (Consol. 2010)	Appendix BB app. p. A368
11.	N.Y. CRIM. PROC. LAW § 690.05 (Consol. 2012)	Appendix CC app. p. A370
12.	N.Y. CRIM. PROC. LAW § 690.25 (Consol. 2012)	Appendix DD app. p. A372
13.	N.Y. CRIM. PROC. LAW § 690.35 (Consol. 2012)	Appendix EE app. p. A373
14.	N.Y. CRIM. PROC. LAW § 690.36 (Consol. 2012)	Appendix FF app. p. A377
15.	N.Y. CRIM. PROC. LAW § 690.40 (Consol. 2012)	Appendix GG app. p. A378
16.	N.Y. CRIM. PROC. LAW § 690.45 (Consol. 2012)	Appendix HH app. p. A380

17.	N.Y. CRIM. PROC. LAW § 690.50 (Consol. 2012)	Appendix II app. p. A383
18.	N.Y. FAM. CT. ACT § 141 (Consol. 2012)	Appendix JJ app. p. A386
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22.	N.Y. FAM. CT. ACT § 1022 (Consol. 2012)	Appendix NN app. p. A390
23.	N.Y. FAM. CT. ACT § 1023 (Consol. 2012)	Appendix OO app. p. A395
24.	N.Y. FAM. CT. ACT § 1025 (Consol. 2012)	Appendix PP app. p. A396
25.	N.Y. FAM. CT ACT § 1027 (Consol. 2012)	Appendix QQ app. p. A399
26.	N.Y. FAM. CT. ACT § 1029 (Consol. 2012)	Appendix RR app. p. A403
27.	N.Y. FAM. CT. ACT § 1034 (Consol. 2012)	Appendix SS app. p. A404
28.	N.Y. FAM. CT. ACT § 1035 (Consol. 2012)	Appendix TT app. p. A408
29.	N.Y. FAM. CT. ACT § 1036 (Consol. 2012)	Appendix UU app. p. A412
30.	N.Y. FAM. CT. ACT § 1037 (Consol. 2012)	Appendix VV app. p. A414
31.	N.Y. PENAL LAW § 120.05 (Consol. 2012)	Appendix WW app. p. A416
32.	N.Y. PENAL LAW § 195.05 (Consol. 2012)	Appendix XX app. p. A420
33.	N.Y. PENAL LAW § 205.30 (Consol. 2012)	Appendix YY app. p. 0421

STATEMENT OF THE CASE

In 2012, Ms Wahedah Shaheed was residing in Harlem New York with her four children. Two of her children are adults, are were adults in 2012. Her two adult children are Noah Shaheed and Daghrib Shaheed. Her minor children in 2012 were Ms. Hannah Olodan, and Mr. Abdul Maleek Rahim. Petitioner Daghrib Shaheed

was over 21 years of age in 2012. All of Petitioner's Waheedah Shaheed's children are adults as of the date of this Petition. In the spring of 2012, Ms Waheedah Shaheed received a telephone call regarding her daughter. The school told her that they had noticed scar tissue on Ms. Olodan's arm(s). Ms. Olodan was taken to the hospital, and then released to the custody of her adult older brother. The Administration for Children Services (*hereafter* referred to as ACS) opened an investigation. In June of 2012, ACS obtained an *ex-parte* removal order for Ms. Waheedah Shaheed's minor children. On 6 June 2012, the Respondent Police Officers forced their way into the Shaheed's home without a search warrant, consent, or an exception to the exigent circumstances, or an emergency. There was not probable cause to believe that anyone had committed a crime. The Shaheed's were assaulted and arrested by the Police for Assault in the Second Degree, N.Y. PENAL LAW § 120.05, Obstruction of Governmental Administration in the Second Degree, N.Y. PENAL LAW § 195.05, and Resisting Arrest, N.Y. PENAL LAW § 205.30. The minor children that were the subject of the family court order were not present. And the 6 June 2012 orders were not directed towards a police officer, they were directed towards a peace officer. No ACS worker was present when the Police entered the Petitioner's home on 6 June 2012.

On 29 June 2012, the Respondent Police Officers made another forcible entry into the Shaheed's home. The Police were armed with an investigative order which required a that a search warrant be issued by a Criminal Court before Police Officer could enter the Petitioner's home. On 6 June 2012, the Respondent Police Officers

forced their way into the Shaheed's home without a search warrant, consent, or an exception to the exigent circumstances, or an emergency. There was not probable cause to believe that anyone had committed a crime. Petitioner Daghrab was seized, taken in custody, and then released. Petitioner Waheedah Shaheed was arrested, and charged with Obstruction of Governmental Administration in the Second Degree, N.Y. PENAL LAW § 195.05.

REASONS FOR GRANTING THE PETITION

The Court of Appeals' exercise of federal common law converts a civil family court order into a search warrant when there is not probable cause related to criminal activity. This has the effect of converting a family court civil matter into a criminal case. Once the family court order is designated a search warrant, they are automatically engaging in an official function. Under New York State Law, search warrants, and arrest warrants, are creatures of statute. Search warrants and criminal arrest warrants can only be issued by a Criminal Court Judge in the State of New York. The federal common law rule of the Second Circuit conflicts with the rule in the Seventh Circuit where, a social worker can make a determination as to whether a child can be removed from the home. *See Donald v. Polk County*, 836 F.2d 376, 377 (7th Cir. 1988), *see also Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1131 (9th Cir. 1999).

The forcible entry into, and search of, Waheedah and Daghrab Shaheed's apartment violated the Fourth Amendment to the United States Constitution. U.S. CONST. amend IV. In *Nicholson v. Scopetta* the Second Circuit noted that State

Law is dispositive when the Court stated the following: "Finally, there is a substantial Fourth Amendment question presented if New York law does not authorize removals in the circumstances alleged. We have said previously that a Family Court order is probably the equivalent of a warrant for Fourth Amendment purposes. *Tenenbaum*, 193 F.3d at 602. A warrant, of course, requires probable cause to support the seizure authorized by the warrant. *Whiteley v. Warden, Wyo. State Penitentiary*, 401 U.S. 560, 564, 28 L. Ed. 2d 306, 91 S. Ct. 1031 (1971). While we give considerable deference to the decisions of a "neutral magistrate" in issuing a warrant (or the Family Court equivalent), our review is not a "rubber stamp." *United States v. Travisano*, 724 F.2d 341, 345 (2d Cir. 1983). Plainly, if New York law does not authorize the removals the plaintiffs complain of, there can be no probable cause to carry out the removal. State law, then, is potentially dispositive of this issue." *Nicholson v. Scopetta*, 344 F.3d 154, 176 (2nd Cir. 2003).

Nicholson v. Scopetta, *Southerland v. City of New York*, and *Tenenbaum v. Williams* did not involve a Police Officer forcibly entering an apartment without a search warrant. *Nicholson v. Scopetta*, 344 F.3d 154, 176 (2nd Cir. 2003), *Southerland v. City of New York*, 680 F.3d 127 (2nd Cir. 2011), *rehearing, en banc, denied*, 681 F.3d 122 (2d Cir. 2012), *cert denied*, 568 U.S. 1150, 133 S. Ct. 980 (2013), and *Tenenbaum v. Williams*, 193 F.3d 581 (2nd Cir. 1999).

New York State Family Court Act § 1034 (2) (f) states that a Police Officer must have a search warrant before entering the home: "The court shall be available

at all hours to hear such requests by the social services district which shall be permitted to make such requests either in writing or orally, pursuant to section 690.36 of the criminal procedure law, in person to the family court during hours that the court is open and orally by telephone or in person, pursuant to section 690.36 of the criminal procedure law, to a family court judge when the court is not open. While the request is being made, law enforcement shall remain where the child or children are or are believed to be present if the child protective services investigator has requested law enforcement assistance. Provided, however, that law enforcement may not enter the premises where the child or children are believed to be present without a search warrant or another constitutional basis for such entry.” N.Y. FAM. CT. ACT § 1034 (2) (f).

Under New York State Law, a search warrant can only be issued by a local criminal court. N.Y. CRIM. PROC. LAW § 690.05 (1) (“Under circumstances prescribed in this article, a local criminal court may, upon application of a police officer, a district attorney or other public servant acting in the course of his official duties, issue a search warrant.”). An application for a search warrant can only be made to a local criminal court. N.Y. CRIM. PROC. LAW § 690.35.

Search warrants must contain the name of the local criminal court that issued the search warrant. N.Y. CRIM. PROC. LAW § 690.45 (1), *People v. Gavazzi*, 957 N.Y.S.2d 660, 20 N.Y.3d 907, 909 (2012). The Family Court of the State of New York is not a local criminal court, and does not have the authority to issue a search warrant. N.Y. CRIM. PROC. LAW § 10.10. The Family Court of the State of New

York is not “a local criminal court;” and the Family Court was acting solely in the exercise of its civil jurisdiction; therefore, Family Court did not have the authority to issue a search warrant. N.Y. CRIM. PROC. LAW § 10.10 (7).

Pursuant to the New York State Criminal Procedure Law, a search warrant must be addressed to a Police Officer – not an ACS worker or a Social Worker. N.Y. CRIM. PROC. LAW § 690.25 (1). Search Warrants are a creature of statute in the State of New York. New York Criminal Procedure Law § 690.36 states the procedure for a local criminal court to entertain a search warrant application outside of the Judge’s presence.

There are no oral search warrants under New York State Law. *See* N.Y. CRIM. PROC. LAW § 690.40 (3). The legislature made it clear that a police officer requires a search warrant to enter someone’s home (N.Y. FAM. CT. ACT § 1034 (2) (f)), and that process is governed by Article 690 (Search Warrants) of the New York State Criminal Procedure Law. The New York State Legislature – in-effect – incorporated this process into Family Court Act § 1034. *See e.g., B. T. Prods., Inc. v. Barr*, 405 N.Y.S.2d 9, 14, 44 N.Y.2d 226, 235-36 (1978) (“As is noted above, the powers of the Task Force are established by statute. The Task Force, as a creature of the State, has no power other than that given it by the Legislature, either explicitly or by necessary implication (*citation omitted*) The investigatory authority provided by section 70-a of the Executive Law clearly does not include the power to obtain a search warrant, and such power is not to be implied in light of the limited specific powers which are given. . . . In view of the absence of any statutory

authority to obtain a search warrant, it is clear that the Task Force lacked the power to make such an application, and thus the court exceeded its jurisdiction in issuing the warrant.”). New York State Criminal Procedure Law § 690.35 (3) and 690.35 (4) also sets out the requirements for an application for a search warrant.

In *Nicholson v. Scoppetta* this Court stated that “Given the “detailed administrative scheme” New York has crafted to protect its children, in which the New York courts themselves play an integral part, “we hesitate to interfere in and potentially disrupt [the State's] well-considered process for investigating child abuse--an area in which the federal courts have little familiarity or expertise.” *Sealed v. Sealed*, 332 F.3d 51, 59 (2d Cir. 2003).” *Nicholson v. Scoppetta*, 344 F.3d 154, 176 (2nd Cir. 2003). See also *In re Marino S.*, 763 N.Y.S.2d 796, 802, 100 N.Y.2d 361, 372 (2003) (“It has long been the public policy of this State to keep biological families together . . .”).

In *People v. Rech*, the Court restated the rule, “Secondly, the Order was not a warrant (see Family Court Act § 153-a) and gave no authority to the deputies to seize the defendant upon his refusal to deliver the child, let alone notice to the defendant that he was subject to arrest for failure to comply. Supreme Court could have issued a warrant upon a showing that the defendant was unlikely to respond to a summons issued pursuant to the custody Petition (see Family Court Act § 671). It could have issued an arrest warrant upon a finding of contempt following a hearing, in the event the defendant refused to give up the child and was unlikely to

appear for the hearing (*see* Family Court Act §§153, 153-a; *see further* *Greenberg v Greenberg*, 81 Misc 2d 180, 184, 365 N.Y.S.2d 400 [Sup Ct 1975]; *People v Lawler*, 140 Misc 2d 661, 665-66, 531 N.Y.S.2d 861 [NY Co Ct 1988]). What it could not do, absent the issuance of a valid warrant founded upon probable cause, was to authorize law enforcement to seize the defendant and take his child from him, within or without his house, in other words, to act with the authority of a warrant.” *People v. Rech*, 56 Misc. 3d 490, 494-95, 52 N.Y.S.3d 849, 852-53 (N.Y. County Ct. 2017).

In this case there was not an exception to the warrant requirement in the form of an emergency or exigent circumstances. In *Nicholson v. Scoppetta* this Court said that “While we give considerable deference to the decisions of a “neutral magistrate” in issuing a warrant (or the Family Court equivalent), our review is not a “rubber stamp.” *United States v. Travisano*, 724 F.2d 341, 345 (2d Cir. 1983). Plainly, if New York law does not authorize the removals the plaintiffs complain of, there can be no probable cause to carry out the removal. State law, then, is potentially dispositive of this issue.” *Nicholson v. Scoppetta*, 344 F.3d 154, 176 (2nd Cir. 2003).

The Family Court Orders did not provide any police officer, peace officer, or employee of the Administration for Children’s Services, with the authority to take any action towards Petitioner Daghrib Shaheed. Daghrib Shaheed was not a party to the family court action. And Family Court did not have subject matter

jurisdiction over Daghrib Shaheed. N.Y. CONST. art. VI § 13 (b); N.Y. CONST. art. VI § 13 (c). Daghrib Shaheed was over 21 years of age on the date of both incidents, she has no children (and had no children in June of 2012), she has never been married, and she is not the guardian of any minor children, and there is no evidence in the record to suggest otherwise. Daghrib Shaheed was residing at 26 East 29th Street, Apartment 3A in New York City in June of 2012: the afore-mentioned location was her primary residence in 2012.

The Shaheed family had an legitimate expectation of privacy in their home. And society has recognized an expectation of privacy in one's home as being reasonable. *Katz v. United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 516 (1967) (Justice Harlan concurring), *Kyllo v. United States*, 533 U.S. 27, 31, 121 S. Ct. 2038, 2041-42 (2001), *Silverman v. United States*, 365 U.S. 505, 511-12, 81 S. Ct. 679, 683 (1961) ("At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. (*citations ommited*) This Court has never held that a federal officer may without warrant and without consent physically entrench into a man's office or home. . .").

The Police entered the Shaheed residence without consent in June of 2012. See In June of 2012, the police admitted that they forced their way into the Shaheed's apartment based on their official authority as police officers. No one in the Shaheed family consented to a search of their apartment, by the Police, in June of 2012. *Bumper v. North Carolina*, 391 U.S. 543, 548, 88 S. Ct. 1788, 1791 (1968)

(“The issue thus presented is whether a search can be justified as lawful on the basis of consent when that "consent" has been given only after the official conducting the search has asserted that he possesses a warrant. We hold that there can be no consent under such circumstances.”), *Georgia v. Randolph*, 547 U.S. 103, 114, 126 S. Ct. 1515, 1523 (2006) (“Since the co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.”), and *Schneckloth v. Bustamonte*, 412 U.S. 218, 228-36, 93 S. Ct. 2041, 2048-52 (1973).

Mr. Noah Shaheed did not consent to the search, and forcible entry, by the Police in relation to the first incident involving the family court removal orders. He stated as much in his testimony. Vol. 6. p. A1434, line 8 to Vol. 6. p. A1441, line 18, Transcript p. 911, line 8 to p. 918. line 18. *Amos v. United States*, 255 U.S. 313, 317, 41 S. Ct. 266, 268 (1921) (“The contention that the constitutional rights of defendant were waived when his wife admitted to his home the Government officers, who came, without warrant, demanding admission to make search of it under Government authority, cannot be entertained. We need not consider whether it is possible for a wife, in the absence of her husband, thus to waive his constitutional rights, for it is perfectly clear that under the implied coercion here presented, no such waiver was intended or effected.”). In this case, there was no consent.

CONCLUSION

The Petition for a writ if certiorari should be granted. The Court's exercise of federal common law is dependant on state law, and the rule enunciated by the Second Circuit would be predicated on state law because civil removal court removal orders are generally issued by State Courts. In addition the rule conflicts with other Circuit Courts; and, the rule conflicts with New York State Law which requires that a New York State Criminal Court issue all search warrant, and criminal arrest warrants.

Respectfully,

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