

No. _____

22-6446

ORIGINAL

Supreme Court, U.S.
FILED

JAN - 4 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

James T. Burke, Pro-se, _____ — PETITIONER
(Your Name)

vs.

State of Washington, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dated: 12/22/2022.

James T. Burke Pro-se,
(Your Name) James T. Burke, VT.-#15001291

T.C.C.F.

(Address)

19351 U.S. Hwy. 49 North
Tutwiler, MS. 38963-5249

(City, State, Zip Code)

(i)

(Phone Number)

QUESTION(S) PRESENTED

#1. Whether Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), 104 L.Ed 2d 582, 57 USLW 4554 is relevant pursuant to United States Supreme Court, Justice Stevens and the (1989) majoritys holdings?

#2. Whether the Ninth Circuit U.S. Court of Appeals was obligated to take into consideration and follow this United States Supreme Courts (1998) majoritys holdings pursuant to: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998)??

#3. Whether the United States District Court for the Eastern District of Washington, State (Spokane), was obligated to take into consideration and follow this United States Supreme Courts (1998), majoritys holdings pursuant to: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998)???

#4. Whether both the U.S. District Court for the Eastern District of Washington, State and the Ninth Circuit U.S. Court of Appeals caused a circuit split that is contrary to this United States Supreme Courts (1998) majoritys holdings and sheperdized case[s] pursuant to Justice Stevens holdings in: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), when they deprived Petitioner of federal constitutional rights and dismissed the attempted murder unjuries complaint with prejudice as being "time-barred", in clear violation and disrespect of cited and argued: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998)????

LIST OF PARTIES

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

~~xx~~ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

James T. Burke, Pro-se
Plaintiff/ Appellant,

v.

State of Washington, Spokane County, Spokane
Sheriff's office, Dave Reagan, Eastern Wash. joint fugitive force
U.S. Marshal service (Unknown Officer)
Defendants/Appellees.

RELATED CASES

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASH.

District Court Case No. 2:22-cv-00004-MKD, &

UNITED STATES DISTRICT COURT FOR THE NINTH CIRCUIT,

9th Cir. Case No. 22-35357. (Attached).

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5, 6, 7, & 8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A-United States Court of Appeals For The Ninth Circuit,

APPENDIX B-United States District Court for the Eastern District of
Washington State @ (Spokane),

APPENDIX C-ORDER denying rehearing on 12/5/2022 @ page-#5 of #5,
and attachments-C's, together with MANDATE of 12/9/22,

APPENDIX D-APPELLANT'S INFORMAL OPENING BRIEF of June 10, 2022.

APPENDIX E-Justice Stevens, holdings pursuant to Hardin v. Straub,
490 U.S. 536, 109 S.Ct. (1998)-APPENDIX-E .

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	<u>Blankenhorn v. City of Orange</u> , 485 F.3d 463, 477 (9th Cir. 2007)	PAGE NUMBER -----#3,
	<u>Elliott v. City of Union City</u> , 25 F.3d 800, 803 (9th Cir. 1994)	-----#3,
	<u>Felder v. Casey</u> , 487 U.S. 131, 139 (1988)	-----#3, #6,
	<u>Hardin v. Straub</u> , 490 U.S. 536, 109 S.Ct. (1988)--#(ii),(iv), pg.-#3, #5, #6, #7 & =====	-----#8,
	<u>Heck v. Humphrey</u> , 512 U.S. 477, 7	-----#3, #6,
	<u>Mitchum v. Foster</u> , 407 U.S. 225, 239 (1972)	-----#3, #6,
	<u>Tennessee v. Garner</u> , 471 U.S. 1, 7-8, 105 S.Ct. 1694, 85 L.Ed. 2d 1 (1985)	-----#3, #6,
	Whistle-blower-act-provisions	-----#7,
	<u>Woods v. Candela</u> , 47 F.3d 545 (1995)	-----#3, #6.
STATUTES AND RULES		
	42 U.S.C. § 1983	-----#3, #5, #7,
	Cal. Civ. Proc. Code Ann § 352 (1989)	-----#6,
	Wash. Rev. Code § 4.16.190 (1987)	-----#6,

OTHER - Constitutional Provisions

4th, 5th, 8th, & 14.1 Amendment[s]-U.S. Consti.---#3, #8.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov. 17, 2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec. 5, 2022, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C.A. § 1983 deprivation of 4th, 5th, 8th & 14th Amendments to U.S. Constitutional Right[s] afforded Petitioner born in America pursuant to the NATIONAL SIGNIFICANCE of Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), 104 L.Ed. 2d 582, 57 USLW-#4554, See also; Woods v. Candela, 47 F.3d 545 (1995), U.S. App. LEXIS-#2495, See Cal. Civ. Proc. Code § 352(a)(3); Elliot, 25 F.3d at 802, disability provision that tolls the Statute of Limitations when a person is imprisoned on a criminal charge, all "over-looked", in violation of the 4th, 5th, 8th, & 14.1 Amendment[s] to are U.S. Constitutional Right[s] afforded a person (Petitioner), born in America, See also Elliott v. City of Union City, 25 F.3d 800, 803 (9th Cir 1994); See Heck v. Humphrey, 512 U.S. 477, 7, & Mitchum v. Foster, 407 U.S. 225, 239 (1972); See U.S. v. Price, 383 U.S. 787, 801 (1966) & Felder v. Casey, 487 U.S. 131, 139 (1988) & Wash. Rev. Code § 4.16.190 (1987).

The Fourth Amendment requires Police officers making an arrest of un-armed Petitioner, to use only an amount of force that is objectively reasonable in light of the un-armed Petitioners circumstances. See Tennessee v. Garner, 471 U.S. 1, 7-8, 105 S.Ct. 1694, 85 L.Ed. 2d 1(1985); Blankenhorn v. City of Orange, 485 F.3d 463, 477 (9th Cir. 2007)(internal-quotations-omitted).

STATEMENT OF THE CASE

On May 24th, 2005, Petitioner was informed over the phone that the 21 year old homeless hooker he had payed \$20.00 to in Chittenden County Vermont had made a false sexual assault claim against him and that a warrant was out for his arrest.

Petitioner was on his way to consult with an attorney to further look into the matter on his pedal bike and while riding across a parking lot in Spokane, WA., a State or Federal officer drove his patrol car or van into Petitioner causing this person to fly into the officers windshield breaking it and also Petitioners head which required several stiches during surgery to also repair a broken left leg that needed a 25" metal rod inserted into the center of the left lower leg with a needed cast to hold the shattered left leg together.

Petitioner appears to have been transported to a surgery Hospi. after the attempted murder upon him by officers employed by the State of Washington, et. al Respondent[s], Petitioner was in a temp. coma with head injuries that caused him to need several stiches to close his head wounds which also caused Petitioners brain to be bruised and bleed into his skull, as the officer who drove into the bike was driving a approx. 50 miles an hour.

Petitioner still has head scaring, together with the 25" metal rod still is in his left lower leg with surgical pins.

Petitioner has been un-lawfully denied discovery due to cover- of this attempted murder upon him by officers of Washington, State.

REASONS FOR GRANTING THE PETITION

#1. Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), is in truth and fact, still very much in play and relevant pursuant to this Honorable U.S. Supreme Court's, Justice Stevens and the majority's holdings and has never been over-turned as of this date.

#2. The Ninth Circuit U.S. Court of Appeals in this case was lawfully obligated to take into consideration and follow this Honorable and national U.S. Supreme Court's (1998), majority's holdings pursuant to: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998).

#3. The U.S. District Court For The Eastern District Of Washington, State at (Spokane), was also obligated to take into consideration and follow this Honorable national U.S. Supreme Court's (1998), current majority's holdings pursuant to: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998).

#4. The U.S. District Court For The Eastern District Of Washington, State at (Spokane), and also the Ninth Circuit U.S. Court Of Appeals (APPENDIX-A, B, & C), caused a unlawful circuit split that now needs to be resolved because it is contrary to this United States Supreme Court's (1998) majority's holdings and also sheperdized case[s] pursuant to Justice Stevens holdings in: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), because said Ninth Circuit Court[s] unlawfully deprived Petitioner of federal constitutional 4th, 5th, 8th, & 14.1 Amendment rights and dismissed to "cover-up" the attempted murder injury complaint under 42 U.S.C. § 1983, with prejudice as being "time-barred", in clear contradiction of cited and argued: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), See: APPENDIX-D.

#5. The Ninth Circuit has a bad habit of disrespecting and "over-looking" this Honorable United States Supreme Court's majority holdings and president[s], cited and argued case law rulings pursuant to this 42 U.S.C.A. § 1983, attempted murder injury of Petitioner in this case, that has clear, current and cited/argued NATIONAL SIGNIFICANCE because of this United States Supreme Courts majority holdings In Re: Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), 104 L.Ed. 2d 582, 57 USLW-#4554; See APPENDIX-E @ page-#5 of #7, Wash.Rev.Code § 4.16.190 (1987) & Cal.Civ.Proc.Code Ann § 352 (West Supp. 1989) also Woods v. Candela, 47 F.3d 545 (1995), U.S. App. LEXIS-#2495; slso; Heck v. Humphrey, 512 U.S. 477, 7,; Mitchum v. Foster, 407 U.S. 225, 239 (1972); U.S. v. Price, 383 U.S. 787, 801 (1966); Felder v. Casey, 487 U.S. 131, 139 (1988) and Tennessee v. Garner, 471 U.S. 1, 7-8, 105 S.Ct. 1694, 85 L.Ed. 2d 1 (1988), @ APPENDIX'S-D & E, not only has all the above United States Supreme Court case law listed and argued that was "over-looked" and disrespected by the Ninth Circuit bad habit of doing this, but also page-#5 of #7, Wash.Rev.Code § 4.16.190 (1987) & also; Cal.Civ.Proc.Code Ann § 352 (West Supp. 1989), a lawful issue both States jurisdiction agreed upon pursuant to the holding[s] of said APPENDIX-E, Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), 104 L.Ed. 2d 582, 57 USLW-#4554, again APPENDIX-E, @ Pg.-#5 of #7.

#6. Discovery that Respondent[s] prevented in this case, will document that their officers involved in Petitioners arrest have "terrorized" to the point of death, in some cases, residents in the past by subjecting them to false arrests, excessive force and intimidation, as is documented by WEST-LAW research on computer

pursuant to excessive force law-suites filed naming Washington, State Respondent[s], as in this case.

#7. The Ninth Circuits contrary decision in this case documents that they are moving their jurisdiction in the opposite direction of what they originally agreed with pursuant to Justice Stevens holdings in Hardin v. Straub, 490 U.S. 536, 109 S.Ct.1998, by halting lawful consideration of this U.S. Supreme Courts holdings pursuant to: Hardin v. Straub, 490 U.S. 536, 109 S.Ct 1998, in Petitioners case at hand, thus putting Petitioner in the same situation as(Tyrone Victor Hardin), and again needed intervention by this Honorable United States Supreme Court to address said Respondent[s] pattern of excessive force by their now un-checked officer[s] in this case.

#8. Petitioner has a 4th, 5th, 8th, & 14.1 Amendment rights to be free from excessive force and also to address excessive force by way of 42 U.S.C. § 1983 and Hardin v. Straub, 490 U.S. 536, 109 S.Ct (1998), when that attempted murder excessive force happens to him, as happend in this case.

#9. Petitioners WHISTLE-BLOWING 42 U.S.C. § 1983 civil complaint in the lower court[s] against Respondent[s] also falls into free speech category of the WHISTLE-BLOWER-ACT-PROVISIONS and is entitled to First Amendment special protection on a attempted murder complaint issue and facts that concerns a nation wide excessive force issue pursuant to the whistle-blowing act complaint[s] in the lower court[s], APPENDINDIX-A, B, C, D, & E.

#10. The long standing holdings of Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), were unlawfully over-looked not followed in this case pursuant to Petitioners whistle-blowing injury complaint.

#11. This case presents issues of national 4th, 5th 8th & 14.1 Amendment importance that are beyond the particular attempted murder facts upon Petitioner of this case and the parties involved because of the now existence of several conflicts between the decisions lower Ninth Circuit and this clearly more legally educated higher U.S. Supreme Court, Justice Stevens holdings with Hardin v. Straub, 490 U.S. 536, 109 S.Ct (1998), regarding are national 4th, 5th, 8th & 14.1 Amendment rights and protections that the bias Ninth Circuit in this case refuses to understand or follow the correct of Hardin v. Straub, 490 U.S. 536, 109 S.Ct. (1998), that is correct guidance for all lower courts to follow and the law of the U.S. jurisdiction land pursuant to the facts and circumstances of this attempted murder excessive force upon Petitioner by Respondent[s].

Respectfully submitted,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Brito Pro-Se, VT.-#15001291

Date: Dec. 22, 2022 at:

T.C.C.F.
19351 U.S. Hwy. 49 North
Tutwiler, MS. 38963-5249