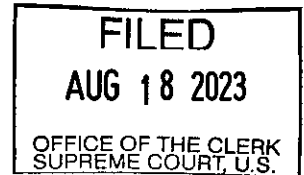


23-5411

ORIGINAL

In the Supreme Court of the United States

Case # \_\_\_\_\_



\_\_\_\_\_  
THOMAS DEMARTINO, *Petitioner*,

v.

ROGER ALDERIN et al, *Respondents*.

\_\_\_\_\_  
On Petition for a Writ of Certiorari to the  
Oregon Court of Appeals

\_\_\_\_\_  
ON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

August 18, 2023

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**QUESTIONS PRESENTED ON REVIEW:**

- 1) Given the parties' histories, Did the Oregon Appellate court err, denying (2) separate alarming contacts of live gunfire in the direction of an easement roadway within 100' of Plaintiff, under Oregon's Stalking statute (ORS 30.866), and should these 2 incidences have been prima facie and/or err apparent on the record?
- 2) Would the reckless driving alarming contact towards plaintiff's senior citizen father be considered an alarming contact for the purposes of two incidences necessary for a permanent SPO, and would a requesting judicial notice for those litigated prior cases within a 2 year period be sufficient for making a claim?
- 3) Would a Civil Jury trial be mandatory, independent to determine the facts for civil damages prior to a case in chief criminal misdemeanor stalking hearing under ORS 30.866, that Oregon also does not provide a criminal jury trial?
- 4) Whether the Oregon Appellate court can award Costs to Respondents in a misdemeanor stalking case contrary to statutes?

## **PARTIES**

ROGER ALDERIN, 7162 Darling St SE, Salem, Oregon 97317

NANCY ALDERIN, 7162 Darling St SE, Salem, Oregon 97317

## **RELATED CASES**

DEMARTINO v ALDERIN and ALDERIN, No. S070014, the Supreme Court of Oregon, Reconsideration Denied. Entered June 15, 2023

DEMARTINO v ALDERIN and ALDERIN, No. S070014, the Supreme Court of Oregon, Petition for Review Denied. entered April 20, 2023

DEMARTINO v ALDERIN and ALDERIN, No. CA A177669 (control) A177670), The Oregon Court of appeals Supplemental Order allowing costs to respondents entered Jan 11, 2023.

DEMARTINO v ALDERIN and ALDERIN, No. CA A177669 (control) A177670), The Oregon Court of Appeals denying reconsideration entered Dec 19, 2022

DEMARTINO v ALDERIN and ALDERIN, No. CA A177669 (control) A177670), The Oregon Court of appeals, Judgment entered allowing costs without opinion. Nov 16, 2022

DEMARTINO v ROGER ALDERIN, 21SK02987, The Circuit Court of Oregon, Marion County, Judgment entered Nov. 22, 2021

DEMARTINO v NANCY ALDERIN, 21SK02988, The Circuit Court of Oregon, Marion County, Judgment entered Nov. 22, 2021

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**In the Supreme Court of the United States**THOMAS DEMARTINO, *Petitioner*,

v.

ROGER ALDERIN et al, *Respondents*.

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully petitions for writ of certiorari from an Oregon Appellate Court judgment that was affirmed without opinion, and the supplemental order issued from the Oregon Appellate Court awarding costs and fees to Respondents.

**Opinions Below**

These decisions did not have opinions to designate for publication. The Court of Appeals of the State of Oregon affirmed judgment, without opinion and awarding costs to Respondents. Nov 16, 2022 (App.1a). The Circuit court of Oregon, Marion County denied stalking SPO, dated Nov. 22, 2021 (App. 8a,9a). The Oregon Court of Appeals: Order denying motion for transcript at public expense, and denying motion to proceed based on audio Feb 9, 2022. (App.6a) Oregon Court of appeals denying reconsideration Dec 19, 2022(App.3a). Oregon Court of appeals Supplemental Order issued allowing Costs to respondents on Jan 11, 2023. (App.2a). The Supreme Court of Oregon denied petition for review April 20, 2023 (App.4a). The Order of the Supreme Court of Oregon denied reconsideration June 15, 2023 (App.5a).

**Jurisdiction**

The Oregon Supreme Court denied a timely Petition for Reconsideration June 15, 2023 (App.5a). This Court has jurisdiction under 28 USC 1257 (a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### 14<sup>th</sup> amendment

*\*\*\*No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

### Amendment VI

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, \*\*\**

### Amendment VII

*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.*

### Administration of justice. Section 10

No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

### Jury trial in civil cases. Section 17

In all civil cases the right of Trial by Jury shall remain inviolate.

### Oregon Statutes

#### **ORS 30.866 Civil petition for Criminal Stalking hearing**

*(1) A petitioner may bring a civil action in a circuit court for a court's stalking protective order or for damages, or both, against a respondent if:*

*(a) The respondent intentionally, knowingly or recklessly engages in repeated and unwanted contact with the petitioner or a member of the petitioner's immediate family \*\*\* or coercing the petitioner; (b) It is objectively reasonable for a person in the petitioner's situation to have been alarmed or coerced by the contact; and (c) The repeated and unwanted contact causes the petitioner reasonable apprehension \*\*\**



(2) \*\*\*shall enter a temporary court's stalking protective order that may include, but is not limited to, all contact listed in ORS 163.730 (Definitions for ORS 30.866 and 163.730 to 163.750). \*\*\* (3)\*\*\*

(4) **The petitioner may recover:** (a) Both special and general damages, including damages for emotional distress; (b) Punitive damages; and (c) Reasonable attorney fees and costs.

### ***ORS 163.738 Criminal Stalking***

(2) (a) \*\*\*: (A)\*\*\*; or

(B) A court's stalking protective order if the court finds by a preponderance of the evidence that:

(I) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person's immediate family or household thereby alarming or coercing the other person;

(ii) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(iii) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

### **ORS 20.190 Prevailing Fees**

(6) The prevailing party fees provided for in this section **may not be awarded:**

(b) **To a respondent in proceedings under ORS 30.866 (Action for issuance or violation of stalking protective order) or 163.730 (Definitions for ORS 30.866 and 163.730 to 163.750) to 163.750 \*\*\* unless the court finds that the petitioner initiated the proceedings with malicious intent.**

## STATEMENT OF THE CASE

This case involves misdemeanor stalking using weapons/gunfire that should concern every state, the 14<sup>th</sup> amendment, equal protections and immunities under the law, and whether requiring Jury trials (criminal and civil), given Oregon's arbitrary, discriminatory application of laws. Oregon officials did not issue the SPO derived from the Oregon *civil* Stalking (ORS 30.866) petition that triggers a criminal hearing (ORS 163.738). No civil jury trial occurred to determine the facts, as required. No jury waiver on file. The use of weapons near plaintiff is err apparent on the record. No written findings on file. Controlling stalking case laws are not equally applied violating the due process clause of the 14<sup>th</sup> amendment.

### 1) Factual background

In 2010, Respondents purchased real property from Plaintiff's parents that includes a 20' easement roadway to Parent's current residence, where Plaintiff temporarily resides, holding a dominate right to the easement to enter/exit the property without being subject to gunfire, threats and/or harassment. Plaintiff's elderly parents reside adjacent to Respondent's property. In early 2018, Respondent (Roger) had stopped plaintiff's minor child twice and threatened him. Plaintiff talked with Respondent for him to cease from physically stopping his vehicle and from talking with his minor child, whereby Respondent disclosed his angst of the easement, its taxation, and minor child's grandfather. In July 2018, Respondents were soon grieved by plaintiff's poultry. In July 2018, Respondents made 2 home visits with yelling, insults, and threats, with video on record (TCR Ex. 4). Plaintiff removed poultry within a month, and plaintiff then answered their letter, cutting

all ties with Respondents, and provided notice of trespass in the future (TCR Ex.3).

Almost two years later, June 2020, Respondents placed 2 large pickup loads of boulders within the traditional easement roadway, that caused family members to hit them with their cars, or requiring evasive obstacle driving. Due to Respondents narrowing of the easement to ~10', which also affected service vehicles enroute; homeowners initiated a civil lawsuit. Plaintiff is Not party to civil suit.

In Nov. 2020, Plaintiff filed the first stalking petition regarding Respondent's vague threats, multi-harassment issues, and stopping minor's car. It produced one alarming contact: reckless driving incident, which was from a PO request filed a month prior. Respondent's reckless driving toward the plaintiff's (father); however, the homeowner withdrew his PO due to respondents agreement to no longer contact that plaintiff, as both homeowners were now represented by counsel on a separate civil suit.

In 2021, after the 2 spo's, several incidences of contacts continued to occur despite a Notice in 2018, and the verbal "no contact agreement" that Respondents still made insults, slander and vague threats toward plaintiff and plaintiff's father: video (TCR EX. 5, 7). Indeed, Unwanted contacts.

In May 22, 2021, and June 29, 2021, Respondents initiated two incidences of gunfire toward the easement roadway. The first incident both respondents were target practicing on the hillside shooting in the direction of the roadway easement in use; it caused caused plaintiffs' alarm that hindered his travel, essentially denying access to depart, that was *coercive*, an element of alarming contact in ORS 30.866. The second incident occurred while plaintiff was returning from errand and

was unaware of shooting, until Plaintiff arrived in a kill zone of rapid fire gunfire, which was in-line with the previous time that respondents were both shooting. The targets were within 100' feet of the roadway, as the property is ~200' wide at that point. They continued to shoot, given a car can be heard on a gravel road. The percussions were felt by plaintiff, and he immediately contacted the Marion County deputies, and made a report (TCR Ex.11). Further, Respondents had photographed Plaintiff, and that Respondents also have a digital motion sensor *and* game camera to surveillance the roadway easement at all times (TCR EX. 6,20).

Following the shooting incident, Respondent's counsel had sent a defective subpoena on plaintiff (not party), seeking items not germane to their civil complaint, and serving numerous times (3) by various forms of service. Counsel/respondents had created a conflict of interest by harassing plaintiff. Between photographing plaintiff, and constant roadway surveillance there is a possible *Intrusion on Seclusion* claim, *Thomas v. Corwin*, 483 F.3d 516, 531 (8<sup>th</sup> Cir. 2007), that a Jury might also find it to be highly offensive aspect of the Stalking petition, which was to protect plaintiff's elderly parents and other family members (ORS 30.866(1)(c)), as well.

#### **Proceedings Below:**

The case at issue: Plaintiff filed the second stalking petition requesting "judicial notice" on the previous PO and SPO, that both included a reckless vehicular incident toward plaintiff's father with admitted evidence. The trial court took judicial notice of the 2 prior PO/SPO's against Mr. Alderin. It also heard testimony of the 2 shootings. Probable cause existed and a criminal hearing

ordered. During pre-trial, Petitioner filed a motion to exclude Attorney Hunter Emerick, due to the conflict of interest, that listed him on the complaint. The motion was denied, trial proceeded then. The trial court would not allow attorney Emerick to be called as a witness in his subpoena harassment(App.11a); nor on the other historical stalking incidences (See Trial Memorandum TCR); the trial court gave no weight to parties' 4 year histories at the time over objections. Nor to the harassment of other family members, but focused solely on the 2 shooting incidents. Plaintiff testified seeing both respondents shooting, while unable to see the respondents shooting the second instance due to thick vegetation. Respondent testified he had used a 9mm to shoot, on the record (App.13a).

In Oregon, nobody shoots *toward* a roadway used by passing motorists. This was objectively deliberate because respondents had angst about the former stalking petition and the current civil litigation centered upon that roadway easement. The acts here would be worse than mere vague threats or vague speech regarding shooting. The respondents were represented by counsel and were presumably advised on their actions.

In trial, Respondents objected to the Reckless driving alarming contact due to the numeration in the complaint, although it was previously litigated as an alarming contact in 2 former complaints. Respondents admit they made "unwanted contacts" after 2018. The trial court did not allow the (Sept 2020) reckless driving contact because of its entry in the complaint: *requesting judicial notice of the 2 former previously litigated PO/SPO cases*, which was within the 2 year window. The trial court did not issue the SPO but did not award costs to Respondents either

because at least one alarming incident. On Nov 22, 2021, the trial court denied SPO and entered judgment (App.8a,9a).

On appeal, the Oregon Appellate Court approved Plaintiff's waiver of fees due to indigence. However, the Oregon Appellate court denied costs for Transcripts, which was recorded, and also denied the record to proceed based upon audio (App.6a). Plaintiff was allowed to proceed on the trial court record (without transcripts).

Plaintiff and Respondents filed opening briefs. Due to the absence of transcript, Respondents misconstrued the facts to deny in brief, "alleged use of firearms," saying "there is no *evidence* in the record before this court to support petitioner's arguments concerning these alleged contacts." After both parties' briefs were filed, the trial court contacted Plaintiff, requesting replacement copies of the record, because the Exhibit Folder was missing, save what was on record on computers. Plaintiff provided "duplicate" copies to the trial court staff; and informed the Appellate Court of missing public records. Respondent's claimed there was No evidence in the record, but they had had never examined the trial court file. Respondents made false claims. Respondents stated in briefs that there is No evidence of weapons allegations within the record, but court records indicate that respondents have misrepresented the facts (App.13a). The facts are not disputed that respondents fired weapons [towards a roadway easement], which respondents refer as a 'private shooting range' in their appellate brief (Resp. pg. 11).

The appellate court staff in a letter, that the exhibits would not be allowed by the Appellate court, and respondents had never examined the trial court records,

as no motion was filed. The Appellate court staff implied the replacement trial court records were not going to be allowed for consideration (App.10a). Due to missing exhibit files, Plaintiff was entitled to a new hearing but was denied in the appeal.

On Nov 16, 2022, The Oregon Appellate court denied plaintiff's case without opinion but departed from the trial court award and provided Respondent with costs (App.1a). Despite the Court did not make a finding that plaintiff's pleadings were malicious, awarded respondents *Prevailing fees and Costs for \$782*. The Oregon legislature specifically doesn't provide for respondents costs within ORS 30.866(4) (b) nor ORS 163.738. Plaintiff filed an objection. Plaintiff filed a motion for reconsideration, that was denied (App.3a). "*ORS 20.190 Prevailing Fees, (6) The prevailing party fees provided for in this section may not be awarded: (b) To a respondent in proceedings under ORS 30.866\*\*\*\*unless the court finds that the petitioner initiated the proceedings with malicious intent*" Respondents were not entitled to be awarded costs under the statutes, no malice intent on file.

On April 20, 2023, the Oregon Supreme Court denied review. Plaintiff filed a timely reconsideration in the Oregon Supreme court that was Denied on June 15, 2023.

### **Reasons For Granting Writ of Certiorari**

#### **A. Stalking case law (Controlling): Glances vs Live Weapons fire**

1) Simply, Respondents fired their weapons within 100' to intimidate Plaintiff (and Family) that was preceded by 4 year history of harassment, threats, slander and otherwise predatory tactics by the Respondents. The trial court had a *prima facie* case, and the Oregon appellate court had err apparent on the record, but ironically

awarded Respondents prevailing costs and fees (App.2a)

Petitioner had proved by preponderance of the evidence that respondent(s) made 3 qualified unwanted alarming contacts toward petitioner and family members, within a 2 year period, including 2 contacts of live gunfire within 100', and that those contacts subjectively alarmed petitioner and caused him to be alarmed for his safety and families', and that petitioner's alarm was objectively reasonable. The trial court erred and did not issue the SPO. All the statutory elements were properly met pursuant to ORS 30.866 and ORS 160.768. The Oregon Appellate Court had awarded costs to Respondents, reversing the trial court on awarding costs. This is wrong to award the perpetrators contrary to statutes.

The State of Oregon deprived Plaintiff: Administration of Justice, a clear judicial verdict, an SPO would have stopped the respondents from additional years of continued harassment against Plaintiff's and his 84-86 yo parents. Further, I could have been entitled up to (as in other case law) \$100,000 in damages: "ORS 30.866(4)(a) Both special and general damages, including damages for emotional distress; (b) Punitive damages; and (c) Reasonable attorney fees and costs." ie which is for civil damages, which required a civil jury trial to determine the facts.

Here, without written findings of fact on record, it is highly doubtful that the trial court made the required inquiries to determine the facts. If the parties were entitled to a Jury trial, the officers of the court did not ensure Due Process of Law, to enforce or maintain the Constitution(s). A Jury trial is required under the Constitution(s), if not for the Criminal hearing, then the Civil jury trial, under the 6<sup>th</sup> and 7<sup>th</sup> amendments to the US constitution, and section 17 of the Oregon



Constitution.

Oregon's stalking cases essentially began in 1993 with *Joy Delgado v Robert Hunter Souders*, to criminalize a *glance*, galvanizing what would be 2 additional decades of Delgado. In 1997, Oregon's DOJ had intervened to justify the lowest bar, tailored for the proper victim or perpetrator in mind. Evidence of a glance is no evidence at all. In 2002, the Oregon Supreme Court made *Delgado v Souders* controlling opinion. Just like the predicate to *Brown vs Education, Plessy v. Ferguson (1896)* their motto "separate but equal" did not work. Likewise, *Delgado v Souders* isn't applied equally. This violates the 14<sup>th</sup> amendment to the US constitution, equal protection and immunities under the law.

The Oregon Supreme court opinion of Delgado (2002) confirms that a "glance" was an alarming contact, characterized and clarified as a "Reckless Glance," a basis to arrest anyone, impervious to Oregon constitutional challenges (*Delgado v. Souders*, 334 Or. 122, 46 P.3d 729 (Or. 2002)), using Dungeons & Dragons techniques. Citizens are allowed to be targets, literally! Oregon wants *stare decisis* for its case laws but Delgado is remarkably primitive and needs to be applied equally or overturned. Oregon mocks serious cases of stalking in its fantasy opinions, that were obviously never intended to be applied equally.

The juxtaposition of mere glances in *Delgado* at a library *vs* trapped in a car with ongoing rapid gunfire being down range, the Oregon Court doesn't provide others with the "glance offense" nor be willing to strengthen stalking cases. The Oregon Supreme Court opinion protected Delgado, which didn't show any facts to support that Souders was even *bonehawking* on her, nothing more than casual

interaction in a small university town, nothing more than “unwanted contacts.” Yet, she never told him to stop. Souders himself never communicated nor threatened her, and Respondent was unaware of the stalking allegation until arrested, prompting his ID. The Delgado case law seems to be contrived, to protect or discredit very few citizens, that was from a 1990’s agenda until the U.S. Supreme Court takes this case-law to task.

The Oregon Courts ignored years of stalking acts at issue, including two live weapons fire. Plaintiff can only speculate there is animus, indifference by the State of Oregon for whistle blowing, possibly related to his surname or religion<sup>1</sup>.

At any rate, if stalking can be glances, then it wasn’t applied equally with Plaintiff. A judges’ objective, subjective tests or reasonable person standard for live gunfire was not applied. The trial court took judicial notice of the road-rage incident held within 2 PO/SPO hearings in respondent’s history but didn’t apply it. Oregon’s Appellate court erred in Not applying case law, not reversing err apparent on the record. Respondents were concurrently represented by counsel and had notice for no contacts; they were subjectively aware that it would provoke a response. And presumably a subjective analysis could implicate the lawfirm. Plaintiff is harassed, and the State of Oregon allows it to continue. In this situation, a first SPO in Oregon merely prevents Respondents from making further contacts. At minimum, an SPO was warranted.

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<sup>1</sup> Plaintiff may have been penalized because of whistle blowing on the Oregon State Bar (OSB), when reporting in 2021 on its former General Counsel Amber Hollister for destroying public records to the Chief Judge who oversees the OSB.

## **B. Independent Civil Jury Required for Damages *Prior to Case in Chief***

The Oregon court did not apply the minimal due process court necessary to hear the matter. The procedural violations benefited respondents who had paid counsel, without a required civil jury trial. The entire exhibit file went missing and a new trial was denied (and even if the Oregon court had remanded for another hearing, would it be a criminal, civil, or a civil jury trial first?). There wasn't a criminal jury trial as provided in other states. Plaintiff was denied justice, denied due process, denied equal protections and immunities and denied a constitutional jury trial, and denied a required civil jury trial. Presumably, Officers of the court were aware of the omission of the civil Jury trial.

The Oregon stalking statute (ORS 30.866) is a civil petition for a probable cause hearing to a criminal trial of stalking, except that neither party is provided a public, criminal Jury trial, which is a Right of the people. A civil jury trial is required to find the facts of damages *before* the case in chief for recovering civil damages. Plaintiff was entitled to damages, relief (See Petitioner's trial memorandum TCR). "The petitioner may recover: (a) Both special and general damages, including damages for emotional distress; (b) Punitive damages; and (c) Reasonable attorney fees and costs ORS 30.866(4)." The trial court was obligated to hold a civil jury trial, to find the facts, as found in Oregon case law, *M.K.F. v. Miramontes*, 352 Or. 401, 287 P.3d 1045 (Or. 2012), but at issue, the trial court didn't provide one. No waiver to a (civil) Jury trial is on file, and no written finding of fact detailing a proper civil inquiry. This is Err apparent on the record.

In *Miramontes*, the Court showed the duality of civil and criminal aspects of an

Oregon misdemeanor Stalking petition filed under:

“ORS 30.866 *Civil petition for Criminal Stalking hearing (1)* A petitioner may bring a civil action in a circuit court for a court’s stalking protective order or for damages, or both, against a respondent.”

That, the Oregon Supreme court remanded Miramontes, with the prevailing SPO in jeopardy against him, that remanded it to a civil jury to find the facts for damages erroneously awarded by judge. The criminal SPO case was Not the grand jury test for the civil trial; they are independent. It isn’t contingent upon a favorable SPO, otherwise the SPO wouldn’t be in jeopardy. Here, Plaintiff only obtained half of the inquiry, that required the civil jury trial first. The Oregon Courts erred in not providing a civil jury, as no waiver exists on file. This is in violation of the to the U.S. constitution (4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 14<sup>th</sup> Amendments).

In *Colorado v Counterman*, the State of Colorado provided a criminal Jury trial. Moreover, other states provide Jury trials for misdemeanor stalking in Washington State, Idaho, and Colorado stalking codes. At minimum, a civil jury trial for the facts was required. Oregon criminal stalking cases are based upon a Preponderance of the evidence standard *without* a jury (ORS 163.738). The hearing was by phone. Plaintiff was entitled to a public Civil Trial to determine the facts for emotional distress, special damages, determined from a civil Jury trial. This is basic jurisprudence.

### **C. Alarming Contacts [with Weapons] vs Unwanted Contacts**

Stalking cases are important cases, but commonly these take up to 5 years to resolve, rather than swift justice. People make contacts *and* unwanted contacts throughout the day, especially in retail stores and schools, etc. Not merely the *really*

*unwanted* contacts as in Delgado. Notices of trespass liability [for arrest] are issued to a citizens without the benefit of a hearing; it is common even upon public places, all incident to reported unwanted contacts.

Private corporations are deemed persons that stalk citizens and children as *In re Nickelodeon Consumer Privacy Litig.*, 827 F.3d 262 (3<sup>rd</sup> Cir. 2016), <sup>2</sup> which could be viewed as cyber-stalking, in the sense that Viacom, against its own policy notice, provided children's user "contact information" to Google, which partners with government, that would be reflected later as returned targeted advertising or "unwanted contacts."

Government agencies use social media to surveil citizens and "silently" stalk citizens daily. Government makes generic unwanted contacts; However, in Oregon, to obtain an SPO plaintiffs must prove 2 qualifying Alarming contacts within a 2 years period. Granted, the Respondent's weapons usage objectively exceeds the threshold of generic unwanted contacts into Alarming. The dichotomy between unwanted contacts and alarming contacts are objectively measured. In Oregon, target practice areas are most readily available 30 minutes away in any direction.

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2 The State of Oregon has defied the law for many Oregon children, including the repugnant internal policy of CPS taking children and placing them in motels, hotels, and sending them out of State. It was reported in 2020, that Oregon violated the settlement agreement to cease this practice that it has continued into 2023. The most vulnerable of Oregon's citizens are placed in facilities out-of-state, and are never visited by Oregon DHS, and allowed unwanted, and most egregious alarming contacts. Oregon children forced to other states, which belies the need for more uniform laws among states.

In 2020, a Long Island, Nassau County couple<sup>3</sup> was charged for “harassing” a negro woman and her daughter for 5 long years, that included shooting guns towards her backyard property; the victim had previously prevailed in small claims, without ever collecting on the verdict (Reported in news). Still, Police didn’t respond to her calls; the DA hadn’t prosecuted or convicted the couple for harassing until the case went viral. She was then represented by a high-profile lawyer. The couple still maintained their innocence despite videos of their acts. Ultimately, the weapons usage had caused their conviction.

In 2016, Michael Strickland displayed his concealed handgun during the Portland, Oregon riots, after being threatened and in fear, whereas his subjective analysis was denied in limine. *Michael Strickland v. Oregon, U.S.\_\_\_(2021)*. Oregon prosecuted Strickland for pointing (without discharging) a handgun in self-defense. In Strickland, while under a Fear for personal safety standard, pulling out a weapon and pointing it was the crime. When Fear provokes responses, Oregon courts can ignore subjective analysis and prosecute the person with the guns.

But here, Respondents were awarded costs for weapons usage *against* Plaintiff. Plaintiff is denied equal protections and immunities under the law.

#### **D. Clarity and Uniformity Needed Among States:**

1) The U.S. Supreme Court should clarify Weapons incidents in the Stalking category as juxtaposition to indirect, unwanted contact cases. This case should’ve been a *prima facie* case and err apparent on the record due to the weapons used near plaintiff, and also Plaintiff being deprived a civil jury trial to find the facts.

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<sup>3</sup> <https://news.yahoo.com/couple-charged-alleged-harassment-caused-134604096.html>

The trier of the fact should be standardized, a public jury or a Judge, whether criminal or civil, if the constitutions are still valid. Oregon still has no jury trial for criminal stalking, nor a civil jury. In this case, however, it should not be analyzed that plaintiff had clearly established constitutional rights that were violated, that is self-evident, but whether clearly established violations and constitutional rights against plaintiff occurred. Oregon does not apply minimal Constitutional protections to Oregonians that violates the 6<sup>th</sup> and 7<sup>th</sup> amendments to the US constitution, and the 14<sup>th</sup> amendment due process clause.

Whereas, Anti-Stalking legislation began in 1990 to 1993, much of that case law in Oregon derives from judges and not a jury of peers. This doesn't create uniform compliance among other states. After thirty years, it provides arbitrary outcomes, justice delayed, unnecessary arrests, heavy punishments, diminished rights, without any administrative investigations to timely resolve disputes. The States are divided in applying laws and punishments, and in applying Jury trials.

The Court overturned *Counterman v. Colorado*, 600 U.S. \_\_\_\_ (2023), under the True-Threat test, that had a Jury of his peers. The Court held the State did not prove Respondent was aware that he had committed the alleged stalking acts holding the Jury had to be informed of this test. The 2 dissenting opinions (Justices Thomas and Barrett) dissented under an objective, reasonable person standard. In Oregon, the Oregon State Bar members are the umpires of the hypothetical "reasonable person" standard, the judge solely decides the *reasonable person* and the subjective/objective analysis. But here, they threw the game. Still, in other states, a jury can still apply Jury Nullification to disregard unjust laws into an

*ordinary person* standard.

Yet, in *Counterman v Colorado* a jury created a 4-year prison sentence for internet trolling—making slaves of citizens, for non-violent, 1<sup>st</sup> amendment issues of speech—where parties chose to be on social media<sup>4</sup>, providing their “names” waiving rights to privacy. The public assumes that the creeper needs to be punished, but forgets government [employees] have a higher responsibility to prevent it. The *Counterman* case justifies a nationwide, controlling subjective opinion, but the victims also had a responsibility.

Neither “victim” in *Counterman* nor Delgado informed their admirers that the contact was unwanted, which would indicate *implied consent*. Here, at issue, In August 2018, Plaintiff penned a letter, emailed it, (TCR Ex.3), and also stated in open court, *that he and his family did not want to be bothered or harassed again*. But respondents disregarded that letter to continue to harass; disregarded their own verbal agreements in court (Oct 7, 2020) to stop contacts; that filing a stalking petition against respondents was necessary because they could not restrain themselves.

2)Lastly, the trial court did not take into account the parties’ histories, and focused only on 2 gunfire incidents, instead of the context of an entire family related to being stalked or harassed. *More generally, “unwanted contacts must be*

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4 Silent internet stalking is constant and part of the business model of Facebook, a private corporation that had an obligation to remedy unsafe products. Government may have allowed these abuses to continue or could have prevented it, as in this case.



*considered in the context of the parties' entire history.*" Pinkham v. Brubaker, 178 Or App 360, 372, 37 P3d 186 (2001); and Blastic v Holm, 248 Or App 414, 418 273, P3d 304 (2012). Oregon courts did not apply case law here either.

Plaintiff here provides the *Objective* and Subjective sampling (found in the audio record). Plaintiff Testified to excessive, unwanted historical contacts (some outside of 2 years): these are all standard hallmark stalking acts except the reckless driving, and the last two of live weapons firing.

- Respondent physically stopping minor child, and physically threatened him, putting his fist up to his face.
- Respondents Insults and name calling plaintiff, and family.
- Respondent alarming contact with vague threats against plaintiff and family.
- Respondents placed Blood on a pump-box next to property line.
- A dead skunk was placed near the property line.
- Respondent made threats against plaintiff's elderly parents.
- Respondent yelling at plaintiff and his parents at the front door. (TCR Ex.4)
- *Plaintiff informed respondents by letter August 2018 to stop all contact. (TCR Ex.3)*
- Respondents continued to threaten and yell at elderly parents
- **Respondent recklessly driving and almost sideswiping plaintiff's father's car.**
- Respondents defied a No contact agreement, more insults and threats followed.
- Respondent photographing Plaintiff and family repeatedly.

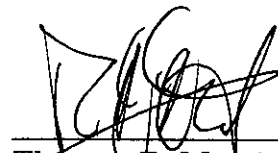
- Respondents Installed cameras pointing at both ends of Roadway.
- Respondents placing boulders in the roadway easement to cause injury.
- Respondents printed copies of plaintiffs former court files to share with others.
- Respondent photographed plaintiff and family members on numerous occasions and distributed them.
- Respondents contacted other neighbors about Plaintiff.
- **Respondents had 2 hours of gunfire toward the roadway on one day.**
- **Respondents fired weapons for 2 more hours, with an invited a guest, while Plaintiff drove through a "kill zone" setup by respondents—where Plaintiff testified to feeling the *percussion* of the rounds on his body. The weapons fire occurred on a slope in-line with Plaintiff in his vehicle. If respondents were shooting behind a building, Plaintiff would not have felt the percussions.**

### CONCLUSION

The Court should grant the Petition for Writ of Certiorari.

Respectfully Submitted,

8/18/2023  
Dated



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**Certificate of Word and Page count**

The petitioner certifies that there is 20 qualifying pages, and approximately 5235 words; as not to exceed the word limit of 9,000 words and 40 pages, not including front pages and appendices.

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 USC 1746.

8/18/2023

Executed on Date



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