

23-5582

No. _____

FILED
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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

JUAN MANUEL REYES – Pro Se, - PETITIONER

vs.

COUNTY OF WASHINGTON OREGON; et al., - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9th CIRCUIT COURT OF APPEALS

ORDER filed on April 19, 2023

Case no. 22-36006 / DC no. 3:21-cv-00509-YY

Circuit Court Judges; PAEZ, WATFORD, FORREST

PETITION FOR WRIT OF CERTIORARI

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Eastern Oregon Correctional Institution (EOCI)
2500 Westgate Ave.
Pendleton, OR 97801

QUESTION(S) PRESENTED

A.) Does a Fourth Amendment or any other United States Constitutional Amendment violation have a federal expiration date or time limitation other than the relied upon State's 2-year statute of limitation for personal injury claims from an unlawful or illegal conduct by state government action, by police officers or participating agents, and then claim that the aggrieved is placed on *constructive notice* at the time of the alleged constitutional violation, Fourth Amendment? The conflict between the decision of the 9th Circuit Court of Appeals, which review is sought, a decision of other circuit court of appeals on the same issue. Petitioner moves the U.S. Supreme Court to resolve the disagreement of the court of appeals about the specific legal question of "*constructive notice*" and the "accrual of discovery" date. The importance of this question applies to the public's constitutional rights to file a § 1983 when their Fourth Amendment is violated and protection from being removed from their home when accused of any form of abuse by the Department of Human Services (ODHS) and local police detectives.

B.) How is a *constructive notice* different from an illegal or unlawful governmental act that violates a citizen's Fourth Amendment right and time-barred after 2-years of the state's statute of limitation in comparison, *for example*, the #MeToo movement of women coming forward to allege and sue a male who is a celebrity, government official, justice of the court, former presidents, or any other ordinary man who may have, many years or decades ago, allegedly touched or assaulted a woman without her consent in a possibly sexual manner? Were these women placed on *constructive notice* at that time of their claim or when the alleged violation occurred?

C.) The federal rule of discovery does not state anything about constructive notice nor time limitation, yet state agencies and agents protect themselves with this umbrella when being suit under § 1983 for their wrongful and unlawful conduct. If one district court renders an opinion or ruling on a specific constitutional violation, at what point does an ordinary or common person, citizen, is advised of or told about their constitutional rights and its protection against unlawful or illegal conduct of a state government, agency or agents?

LIST OF PARTIES

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

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:

(a) Washington County, Oregon
155 N. First Ave. Suite-340, MS 24
Hillsboro, OR 97124-3072

(c) City of Beaverton and Police Department
Law offices of Montoya, Hisel, and Ass.
901 Capitol St., NE
Salem, OR 97301

(1) Chris Crosslin (Lead Detective)
(2) John Doe (Detective)
(3) Jane Doe (Detective)

(b) CARES NW
Keating Jones Hughes, P.C.
200 SW Market Street, Suite-900
Portland, OR 97201-5730

(d) Oregon D.H.S.
500 Summer Street NE
Salem, OR 97301-1017

(1) Jennifer Harsh (DHS-Lead Investigator)
(2) Jane Doe (Investigator)
(3) Jane Doe (Investigator)
(4) Jane Doe (Investigator)

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DEFINITION OF CONSTRUCTIVE NOTICE

The Merriam-Webster's Dictionary of Law describes constructive notice as a *creation by legal fiction*, or, *not actual* but implied by operation of the law. Imputed by law rather than from fact.

Black's Law Dictionary, 11th Edition; A notice arising by *presumption* of law. . . notice *presumed* by law to have been acquired by a person and thus imputed to that person.

Bouvier Law Dictionary, 2012 edition; Notice construed as a matter of law. Constructive notice is charged to a person or entity as a matter of law, regardless of whether or not the person or entity has actual notice of the information. It is information provided according to some means for which the person or entity is responsible for recognizing, such as official records.

Claims under 42 U.S.C. § 1983

"To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under color of state law." *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1149 (9th Cir.2011). The crux of Plaintiff's § 1983 claims against all Defendants is that each violated his Fourth Amendment right to be free of unreasonable searches and seizures while acting under color of state law and they were all active participants.

In typical Fourth Amendment violations, "federal law holds that a cause of action for illegal search and seizure accrues when the wrongful act occurs ... even if the person does not know at the time that the search was warrantless." *Belanus v. Clark*, 796 F.3d 1021, 1026 (9th Cir. 2015) (citation omitted); *see also Klein v. City of Beverly Hills*, 865 F.3d 1276, 1279 (9th Cir. 2017) ("In a traditional Fourth Amendment case, the plaintiff is placed on constructive notice of the illegal conduct when the search and seizure takes place."). The victim of a Fourth Amendment false arrest or a *defacto* arrest is charged with actual knowledge—he knows that he is innocent and that he has been arrested. *See Wallace*, 549 U.S. at 390 n.3 (stating the petitioner "was injured and suffered damages at the moment of his arrest, and was entitled to bring suit at that time").

To the contrary, the *Poffenberger* opinion specifically referred to imputed knowledge as constructive notice and held that type of notice "does not constitute the requisite knowledge within the meaning of the [discovery] rule." *Id.* at 681. This point has been reaffirmed in Maryland cases. *See, e.g., Windesheim v. Larocca*, 443 Md. 312, 116 A.3d 954, 963 (2015) ("constructive notice is notice presumed as a matter of law. Unlike inquiry notice, constructive notice does not trigger the running of the statute of limitations under the discovery rule."). *See also Dominion Nat'l Bank v. Sundowner Joint Venture*, 50 Md.App. 145, 436 A.2d 501, 511 (1981) ("constructive notice (or knowledge) is a legal fiction; it is a useful and perhaps a necessary fiction, but it is a fiction nevertheless. It presumes as fact that which is not fact....").

Rogers makes it clear that when social workers investigating suspected abuse or neglect can reasonably obtain a warrant without significantly risking serious bodily harm to the child in question, the Fourth Amendment mandates that they do so. This conclusion finds support in long-standing Fourth Amendment precedent. *See, e.g., Mincey v. Arizona*, 437 U.S. 385, 394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978) (finding "no exigent circumstances" supporting a warrantless search because "[t]here was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant"); *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978) ("[A] warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant."); *United States v. Echegoyen*, 799 F.2d 1271, 1279 n.5 (9th Cir. 1986) ("Exigent circumstances necessarily imply that there is insufficient time to get a warrant."); *United States*

v. Good, 780 F.2d 773, 775 (9th Cir. 1986) ("Exigent circumstances alone, however, are insufficient as the government must also show that a warrant could not have been obtained in time."). This rule is the logical corollary to the Constitution's proscription of warrantless seizures absent exigent circumstances; if the state had time to obtain a warrant, it stands to reason that there can be no "exigent circumstance."

City of Beaverton Police Detectives here, under the color of state law, violated Plaintiff's Fourth Amendment right, constituting an unreasonable *defacto arrest* or seizure, as Plaintiff was told that he was not at liberty to leave or reenter his home per their orders and detectives physically blocking the front door to his home. Defendants do not deny any claim but assert that this suit is time-barred and fails to state a claim in which relief may be granted. If government offices admit, indirectly, their illegal or unlawful acts and hide under the umbrella of justice with impunity, should they be allowed to continue their custom or routine business that violates citizens' constitutional rights where relief is just outside or barely out of reach?

Kirk v. Louisiana, 536 U.S. 635 (2002) states that the Court found police actions that approximate the conditions of an arrest by show of force and authority did not allow the freedom to leave or not to answer any questions or not free to re-enter his/her home. Such action by police constitutes a "defacto arrest." Absent any exigent circumstances or emergency, the threshold [of the home] may not reasonably be crossed without a valid warrant. And, in *Groh v. Ramirez*, 540 U.S. 551, 124 S.Ct. 1284 (2004) the United States Supreme Court held that having firmly established the basic principles of Fourth Amendment law, a search and seizure in a home without a valid warrant is presumptively "unreasonable." In *State v. Hall*, 339 Or 7, 115 P.3d 908 (2005) the Court stated that any temporary restraint of a person's liberty for investigatory purposes constitutes a type of "seizure" of a person under Oregon Constitution Article I § 9 and the Fourth Amendment to the United States that must be justified by a reasonable suspicion of any criminal activity to constitute probable cause. And, in *State v. Holmes*, 311 Or 400 (1991) the Court held that a "seizure" of a person occurs when either (1) a police officer intentionally and significantly interferes with a person's liberty of movement or (2) a person believes that his or her liberty of movement has been so restricted and such a belief of objectively reasonable under the circumstances. This very same action was taken against Plaintiff herein as in these cases above.

Riley v. California, 134 S. Ct. 2473, 189 L.Ed 2d 430, 573 U. S. 373 (2014). “The United States Supreme Court found a privacy interest in cellular phones because of the vast amount of data about an individual that can be found on the device.” Plaintiff’s iPhone was unreasonably seized and searched after an illegal confiscation by Beaverton Police Detectives.

Petitioner here contends and asserts that the Fourth Amendment has been violated multiple times without just nor probable cause under the circumstances at that time. Illegal and unlawful acts by local government officials and other participating actors represent themselves under the guise of authority and positional power. The lack of or insufficient evidence or exigent circumstance is no excuse for not applying for a search and seizure warrant or follow the statutory procedures in these situations of allegations of abuse to investigate. The removal of any person from their home on mere unsubstantiated accusations in order to investigate, is unconstitutional.

“The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples. Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment.”

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

[X] For cases from federal courts:

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

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

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

[X] reported at *Reyes v. Wash. Cnty. Or.*, CIVIL 3:21-cv-00509-YY (D. Or. Aug 29, 2022);
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 State Court of Appeals decided my case was April 19, 2023 and mandate order on May 11, 2023.

No petition for rehearing was timely filed in my case.

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

An extension of time to file the petition or 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). Petitioner seeks review of the 9th Circuit Court of Appeals' order of dismiss as frivolous filed April 19, 2023 on case no. 22-36006 pursuant to 28 U.S.C. § 1915(e)(2).

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

United States Constitution, Article VI; section 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, **under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby**, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

United States Constitution, Amendment IV;

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.

United States Constitution, Amendment V;

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, 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 re-examined in any Court of the United States, than according to the rules of the common law.

United States Constitution, Amendment XIV;

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Oregon Revised Statute of limitation (ORS) 12.110(1) An action for assault, battery, false imprisonment, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.

Oregon Revised Statute of limitation (ORS) 419B.020(1) If the Department of Human Services or a law enforcement agency receives a report of child abuse, the department or the agency shall immediately: (a) Cause an investigation to be made to determine the nature and cause of the abuse of the child.

officers or detectives to make warrantless entries into a residence or private property to investigate such claims of abuse. Nothing in the statute expressly gives DHS or law enforcement any authority to invade, intrude, or violate citizen's privacy, sanctity and security of their home, which is strenuously protected by both State and Federal Constitutions; Oregon Article I § 9 and the Fourth Amendment to the United States. *State v. Weaver*, 214 Or. App. 633 (2007).

ORS 419B.020(1)(a) ("If [DHS] or a law enforcement agency receives a report of child abuse, the department or the agency shall immediately * * * [c]ause an investigation to be made to determine the nature and cause of the abuse of the child.") and ORS 419B.023 (specifying in detail certain duties of a person conducting an investigation under ORS 419B.020). ORS 419B.010 to 419B.050 mandate that child abuse be reported and that each report be investigated by DHS or law enforcement. Those provisions do not govern or even address the arrest of a perpetrator. Thus, even though a child abuse report and resulting investigation may lead, ultimately, to the arrest of a perpetrator, it does not follow that the arrest is made "under the provisions of ORS 419B.010 to 419B.050." Similarly, because those provisions neither authorize nor require any agency to keep records of such arrests, it would defy common understanding to conclude that reports containing information about an arrest, like the ones sought here, are reports or records "compiled under" those provisions.

In *State v. Fair*, 353 Ore. 355, 302 P.3d 417 (2013), as in this case, "The Oregon Supreme Court found that the defendant was seized because the police officers' conduct in '*ordering*' defendant to step out of her home was a show of authority that significantly intruded on her liberty and amounted to a seizure. The subsequent order to remain on the porch while one officer questioned her immediately following the order to step out of her house. That '*second order*' continued the initial intrusion by restraining defendant from being free to reenter her home. That show of authority, too, was sufficient intrusion on defendant's liberty to constitute a seizure for purposes of Oregon Constitution Article I § 9."

The right of a person to retreat into his own home and be free from unreasonable government intrusion. The presumptive protection accorded people at home extends to outdoor areas traditionally known as "curtilage" areas that, like the inside of a house, harbor the intimate activity associated with the sanctity of a person's home and the privacies of life. *United States v. Struckman*, 603 f.3d 731 (2010).

bring an action. Rather, the Court went on to explain that the six-year limitations period incorporated "the standard rule that the limitations period commences when the plaintiff has a complete and present cause of action," meaning that the cause of action "does not become 'complete and present' for limitations purposes until the plaintiff can file suit and obtain relief."

This court explained in *T. R.* that "the accrual rule that applies to determine when plaintiff's section 1983 claim accrued is a 'discovery' accrual rule." 344 Or. at 291, 181 P.3d 758. That rule—which the court explained is similar under Oregon law and generally applicable common law—provides that "the statute of limitations does not begin to run until a reasonably prudent plaintiff perceives both the injury and the role that the defendant has played in that injury." *Id.* at 291-92, 181 P.3d 758 (citation omitted). The *T. R.* court distinguished between the role of the perpetrator, who had been the immediate cause of the plaintiff's abuse, and the role of the city, which had failed to implement policies and procedures to prevent the abuse. *Id.* at 296, 181 P.3d 758. Furthermore, it determined that a reasonable jury could have concluded that the plaintiff reasonably did not suspect the city's role at the time of the abuse and, therefore, that the plaintiff's claim against the city did not accrue until later. *Id.* at 297, 181 P.3d 758.

It is well settled that Oregon courts are bound by the Oregon Supreme Court's interpretation of federal law, regardless of any competing pronouncement by a lower federal court. *See State v. February*, 274 Or. App. 820, 830, 361 P.3d 661 (2015), *aff'd*, 361 Or. 544, 396 P.3d 894 (2017) ("[W]e are not bound by the decisions of the United States Court of Appeals for the Ninth Circuit * * *."); *State v. Bailey*, 258 Or. App. 18, 29, 308 P.3d 368 (2013), *rev'd on other grounds*, 356 Or. 486, 338 P.3d 702 (2014) ("On questions of federal law, we are bound by decisions of the United States Supreme Court and of the Oregon Supreme Court."); *Fox v. Collins*, 213 Or. App. 451, 464-65, 162 P.3d 998, *rev. den.*, 343 Or. 223, 168 P.3d 1154 (2007); *Miller v. Pacific Trawlers, Inc.*, 204 Or. App. 585, 612, 131 P.3d 821 (2006). The only federal court that controls over the Oregon Supreme Court on matters of federal law is the United States Supreme Court. *State v. Moyle*, 299 Or. 691, 707, 705 P.2d 740 (1985) ("As to the meaning of the federal Constitution and laws * * * we are bound only by the interpretations given those laws by the Supreme Court of the United States."); *see also Van De Hey v. U.S. National Bank*, 313 Or. 86, 95 n. 9, 829 P.2d 695 (1992) (stating that the Ninth Circuit's decisions are "not binding on this court" and that "only decisions of the Supreme Court of the United States are binding on this court in the interpretation of federal law").

REASONS FOR GRANTING THE PETITION

Thousands of men and some women, in Oregon, have been and will be removed from their home without any judicial or legislative authority, without probable cause, without a warrant, but by merely an accusation of abuse. Oregon police officers escort social workers of the Department of Human Services (ODHS) to the home of an accused person to investigate allegations of some form of abuse. In this case, these agents of the State of Oregon made their way into Plaintiff's home by intimidation, threats, coercion, and by their show of force without proper consent to intrusively invade his home, his person and is property. Their investigation lacked probable cause and insufficient information to intrude upon the sanctity of his family home. The Fourth Amendment means nothing if an ordinary or common citizen does not know what their constitutional rights are and their protection thereof. A warrantless search and seizure of a citizen's person, property, iPhone, and entry into his home under the guise of government or judicial authority to investigate allegations of abuse is not an ordinary illegal or unlawful incident to label as *constructive notice*. Now, years later after the discovery of these Fourth Amendment violations, the State actors acknowledge and bolster that Petitioner's claims are time-barred from the time of the illegal or unlawful conduct and constitutional violation. A United States Constitutional violation is devalued or *de minimis* with a 2-year expiration date or statute of limitation to file a claim against actors of the State agencies for their unlawful or illegal conduct. To allow this type of conduct to continue will only empower these actors to commit more constitutional violations against other citizens with impunity and miscarriage of justice.

The United States Supreme Court has ruled that most of its guarantees protect all citizens against abuse and violations by state governments, its agencies, and actors. *Williams v. Smith* (1986). In *Ingraham v. Wright*, the court noted that the Fourth Amendment is incorporated against the states by the Fourteenth Amendments. Deprivation of any Constitutional rights, privileges, or immunities are secured by the United States Constitution and laws.

Petitioner is a victim of the Oregon government agents and participating actors', abuse of discretion, abuse of their imputed power, their miscarriage of justice, and their violation of constitutional rights under both state and federal.