No. 24-

IN THE

Supreme Court of the United States

CHRISTOPHER G. WHITE,

Petitioner,

v.

DONALD T. SLOAN, SHERIFF OF LYNCHBURG, VIRGINIA; RYAN ZUIDEMA, CHIEF OF POLICE, LYNCHBURG, VIRGINIA; KRISTEN BORAK, FREEDOM OF INFORMATION OFFICER, BLUE RIDGE RE-GIONAL JAIL AUTHORITY; CITY OF LYNCHBURG VIRGINIA,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I.

In the United States today, law enforcement acting on their own accord engaging in arbitrary government decision making, can destroy an individual's personal life and, constitutionally protected employment prospects. A booking photo is the photo that is taken by authorities when an individual is arrested. Under many state laws and, Virginia Statute § 2.2-3706 an individual arrested automatically has their booking photo released to the public on the internet without a fair opportunity to cross-examine the evidence against them in a full and final hearing. This destroys personal lives and U.S. Constitutionally protected employment prospects in the internet age. Does due process require a meaningful opportunity to be heard, before the release of booking photos absent guilty plea, conviction or a fugitive of justice?

PARTIES TO THE PROCEEDING

Petitioner Christopher G. White was the Appellant/Petitioner below in the United States Court of Appeals for the Fourth Circuit.

Respondents Donald T. Sloan, Sheriff of Lynchburg, Virginia; Ryan Zuidema, Chief of Police, Lynchburg, Virginia; Kristen Borak, Freedom of Information Officer, Blue Ridge Regional Jail Authority; City of Lynchburg Virginia were the Appellees/Respondent below in the United States Court of Appeals for the Fourth Circuit.

Respondent The Commonwealth of Virginia was the Appellee/Intervenor below in the United States Court of Appeals for the Fourth Circuit.

STATEMENT OF RELATED PROCEEDINGS

Court Name : United States District Court for the Western District of Virginia, Lynchburg Division
Trial Court Case : 6:23-CV-00007-NKM
Case Name : Christopher G. White; Plaintiff v. Devon Key, Allison Maher a/k/a Marie Smith, Tucows Inc., Cloudflare, Inc., Robert Wiggen d/b/a Arrest.org, Chelsea Webster, Crystal Stevenson, Donald T. Sloan, Ryan Zuidema, Kristen Borak, City of Lynchburg Virginia; Defendants and Commonwealth of Virginia, Intervenor.
Date of Opinion/ Order : June 8, 2023 (That Order is attached at Appendix ("App.") 1-2)
Court Name : United States Court of Appeals for the Fourth Circuit.
Case No. : 23-1683
Case Name : Christopher G. White; Petitioner/Plaintiff v. Devon Key, Allison Maher a/k/a Marie Smith, Tucows Inc., Cloudflare, Inc., Robert Wiggen d/b/a Arrest.org, Chelsea Webster, Crystal Stevenson, Donald T. Sloan, Ryan Zuidema, Kristen Borak, City of Lynchburg Virginia; Defendants/ Appellees and Commonwealth of Virginia, Intervenor/Appellee.
Date of Opinion/ Order : April 15, 2024 (Affirming by unpublished per curiam opinion) and is attached at App. 3-6

Counsel/Pro Se litigant is unaware of any related proceedings arising from the same trial court and appellate case as this case than those proceedings appealed here.

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The United States Court of Appeals for the Fourth Circuit's opinion is an unpublished per curiam opinion and attached herein at App. 1-2. Other Opinions below are attached herein at App. 3-6.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued its opinion on April 15, 2024, which is an unpublished per curiam opinion. Petitioner Christopher G. White invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for writ of certiorari within ninety (90) days of the Federal Appellate Court Order.

CONSTITUTIONAL/STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution and relevant portions of the Virginia Code are reproduced here.

United States Constitution

Fourteenth Amendment, 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.

Virginia Statute

Virginia Code §2.2-3706—

> Sec. 2.2-3706. Disclosure of law-enforcement and criminal records; limitations.
>
> A. Records required to be released. All public bodies engaged in criminal law-enforcement activities shall provide the following records when requested in accordance with the provisions of this chapter: 1. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation; 2. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest; and . . .

STATEMENT OF THE CASE

Petitioner Christopher G. White lost is his business as an attorney as a direct result of the unconstitutional release of his booking photo, was harassed in the community and, to this day faces decreased personal life

and negatively affected employment prospects. If a solo practitioner of a legal services business has a booking photo released on the internet described by a sex crime, business stops. There is no legitimate state purpose to release a booking photo absent a fugitive of justice, guilty plea, or conviction. Petitioners case was a shame in general lacking foundational basis for the proceedings.

The prosecutor in the case committed various acts that display ethical violations, court room fraud and, just gets away with it because of some whole sale unwarranted immunity. The Police officer in the case falsely arrested petitioner after no due diligence and utter incompetence. The allegations against the petitioner were derived from arbitrary government decision making and a false accuser prescribed anti-psychotics. There is no reasonable grounds to release a booking photo absent due process because the fact is there will always be people in power that should not be. Waiting for a hearing before the government destroys a Citizens name, image and reputation is a small price to pay to make sure they are doing the right thing before they do it. And, in concurrence with the case law, in a reputation based business this affects employment, most certainly.

When a U.S. Citizen has there booking photo released their employment prospects for the rest of their natural life is diminished, that is undeniable in the internet age. This is true for any charge but, certainly a sex crime charge. The booking photos are never taken off the internet and, an expungement proceeding upon a finding of innocence does absolutely nothing to change that. This is an unconstitutional, due process violating, taking from the government and must stop.

REASON FOR GRANTING THE PETITION

I. Automatically releasing a booking photo prior to a proper due process hearing is an unconstitutional due process violation under the fourteenth amendment.

Injustice and utter disregard for some of the most basic U.S. Constitutional rights is continually infringed upon by state and local law enforcement. The automatic disclosure of booking photos is a U.S. Constitutional Due Process Clause violation and therefore unconstitutional. Booking photos are the photographs taken during the intake process of arrestees by law enforcement. Upon arrest, most U.S. state governments immediately release booking photos on the internet. Anything released on the internet is permanent and never taken down. The U.S. federal government no longer releases booking photos of arrestees unless, there are extenuating circumstances (i.e. fugitive from justice) because they are *"the vulnerable and embarrassing moments immediately after [an individual is] accused, taken into custody, and deprived of most liberties and fit squarely within this realm of embarrassing and humiliating information."*[1]

1. The Background of "booking photos"

a. Legitimate state purposes:

Whenever the government seeks to impose its power or interfere in the lives of natural born United States citizens, it must do so within the bounds of the U.S.

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1. *Detroit Free Press, Inc. v. United States DOJ*, 829 F.3d 482

Constitution, and that requires laws be "*rationally related to legitimate government interests.*"[2] Objectively, it is a legitimate government interest for the authorities to take a booking photo during the intake process of an arrestee. The sole purpose of which must be for release if an accused absconds or is generally a fugitive from justice. There is no other legitimate state purpose in the pre-hearing release of booking photos, none. To the contrary, in a charge anyone for anything without even basic probable cause atmosphere, the prehearing release of booking photos only serves an abhorrent agenda, or equally as worse the local incompetent law enforcement officer's personal bias.

If there is a conviction and the nature of the charge warrants notice to the public, then it would be a legitimate state interest to release a booking photo after the conviction, but not before United States Constitutional Due Process has taken place.

b. Illegitimate purposes:

The illegitimate purposes related to the pre-hearing release of booking photos are insurmountable and undeniable. Today, there are people working within our federal, state and local governments that would utilize their citizen entrusted power to harass others and engage in arbitrary government decision making. What is immensely important with that assertion is that there really is no legitimate state purpose in the pre-hearing release of booking photos because the motives of authorities in our nation is not always legitimate.

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2. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997)

c. Damages:

The definition of "what damages are?" related to mugshots can be straightforward and at the same time, elusive.[3] The Supreme Court of the United States has examined damages in multiple defamation suits and, as part of that analysis utilizes all of the facts and circumstances surrounding a case. For example, the application of a "malice standard."[4] If an official state actor, like a law enforcement officer, is acting without diligence or worse under an unconstitutional "I don't like this person" analysis, gross incompetence, there is malice. And, certainly arbitrary government decision making.

In any event, the pre-hearing release of booking photos amounts to an extreme defamation and taking by state governments. The monetary economic damages of which are astronomical and permanent. Most employers do a background check of some sort on new employees today. Or, at least a quick internet search. If a booking photo of a potential employee pops up regardless of innocence, they are less likely to get hired. That fact is undeniable. For that sole purpose, there serves little legitimate argument that there is no "government taking" when there is a pre-hearing release of a booking photo. A "government taking," is what triggers the right to United States Constitutional Due Process.[5]

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3. George C. Christie, Injury to Reputation and the Constitution: Confusion Amid Conflicting Approaches, Michigan L. Rev. Vol. 75 No. 1 pp. 43-67 (November 1976).

4. Supra Note 4 at 59

5. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

Affecting someone's employment prospects, certainly permanently, is a matter the Supreme Court of the United States recognizes as a Constitutional Right.[6] Because, it is not the governments place to take from U.S. citizens without a hearing. Government taking without an opportunity to be heard, is a general usurpation of the Due Process Clause of the Fourteenth Amendment.

2. Freedom of Information Act (FOIA) and Virginia Statute § 2.2-3706

Legislatures rest their analysis on the reasoning of government transparency as to why a prehearing release of booking photos is warranted. However, this is a false analysis, because booking photos are minimally related to the government conduct at the center of FOIA's reasoning. FOIA was enacted to shed light on government conduct, not to harass, embarrass and permanently affect employment prospects of natural born United States Citizen.

a. Background of FOIA and Virginia Statute § 2.2-3706:

The Freedom of Information Act was enacted so that concerned citizens could monitor government conduct. Previous to FOIA government agencies had a tendency not to disclose requested information to the public.[7] The Freedom of Information Act was meant to change

6. *Paul v. Davis*, 424 U.S. 693 (1976)

7. Kathryn Shephard, Mug Shot Disclosure Under FOIA: Does Privacy or Public Interest Prevail?, Northwestern Univ. L. R. Vol. 108, No. 1, 350 (2014).

that. Upon the enactment of FOIA, state legislatures followed suit and some had already enacted their own form of FOIA. In Virginia, the FOIA Statute is § 2.2-3706. Unfortunately, this conflagration of different FOIA regulations has resulted in disjointed interpretations by Federal Courts regarding FOIA and a whole separate analysis for State Courts. But any way the laws are interpreted, the United States Constitution's due process clause is violated with respect to automatic booking photo disclosure.

FOIA has an exemption to disclosure that mentions privacy. This exemption directly, references that which would "*... constitute an unwarranted invasion of personal privacy.*"[8] Since the establishment of this exemption to FOIA disclosure, only one of the four Supreme Court of the United States cases have favored disclosure over non-disclosure.[9] The Court in the unfavorable non-disclosure case of *Department of the Air Force v. Rose*, relied on the legislative history for statutory interpretation.[10]

b. Privacy Analysis and FOIA:

The Court in *World Publ'g Co. v. United States DOJ* asserted that there is a test in order to determine if there is an unwarranted invasion of personal privacy in favor of non-disclosure. *"A court must (1) determine if the information was gathered for a law enforcement purpose;*

8. Supra Note 7 at 343

9. Supra Note 7 at 346

10. Supra Note 7; *Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976)

(2) determine whether there is a personal privacy interest at stake; and if there is (3) balance the privacy interest against the public interest in disclosure."[11]

The first prong of this test is satisfied, for there is little dispute that booking photos are taken for a legitimate law enforcement purpose. For example, if an accused absconds, becomes a fugitive from justice or is convicted of a crime warranting notice to the public. For those reasons a booking photo should be taken to later release to the public if the condition arises. Therefore, it is reasonable that law enforcement take booking photos.

For the second prong of the test, the Court found that *"the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information."* A *"booking photo is intended for use only by a specific and small group of people—further reason for a court to protect an individual's privacy interest in that photo."*[12] Just because there is a legitimate government interest rationally related to booking photos, does not mean the government should be disclosing these booking photos publicly to just anyone automatically.

An analogy to this assertion is that in all jurisdictions a litigant or person of subject in litigation has a right that their social security number not being disclosed publicly, why should a booking photo be any different absent

11. *World Publ'g Co. v. United States DOJ*, 672 F.3d 827, 2012.

12. *Id.* at 828.

purpose and circumstance?[13] If you have a right to privacy in your social security number, a number on a piece of paper, then in what realm does logicality proffer that you have no right to privacy in a photo forced on you? In one of the most vulnerable moments after your rights have been stolen from you, something that is later used for nothing short of extortion, harassment and Unconstitutional conduct? Through very basic reason, we see that there is a foundational privacy interest.

The third and final prong of the test dictated is the balance of the first two. The Court opines that release of a booking photo:

> *"is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct. In this case—and presumably in the typical case in which one private citizen is seeking information about another—the requester does not intend to discover anything about the conduct of the agency that has possession of the requested records."*[14]

In most of the cases surrounding automatic prehearing disclosure, it is the media that is the proponent of automatic disclosure. Congress did not intend for those that run the national media's schadenfreude departments

13. CUS-SEP/OCT 01, pp. 48-50 and JCUS-SEP 03, pp. 15-16; Fed. R. App. P. 25(a), Fed. R. Bankr. P. 9037, Fed. R. Civ. P. 5.2, and Fed. R. Crim. P. 49.1.

14. *Supra*, note 14 at 830.

to be served by FOIA, to sully the good names of United States Natural Born Citizens whom may themselves be the victim of some setup, predatory act, or lack of law enforcement diligence.[15] Not everyone who has had their booking photo taken has been the subject of proper cause, objective law enforcement action or general fairness and reason. Some have actually been the subject of a predatory act of the accuser.[16]

In sum, we see by careful examination of the case law surrounding privacy and the Freedom of Information Act, that controlling Courts recognize a legitimate privacy interest in booking photos and, in favor of non-disclosure. Courts have had this issue presented to them numerous times throughout the history of FOIA and more often than not they find in favor of the individual's privacy interest. The issue is no longer at the federal level but at the state level. Virginia Statute § 2.2-3706 must be reigned in because at its foundation, there is a legitimate privacy

15. Belinda Palmada, Man's life destroyed after woman falsely accused him of rape, News.com.au, (January 18, 2023) at https://www.news.com.au/world/europe/mans-life-destroyed-after-woman-falsely-accused-him-of-rape/news-story/9d5cd767fc69ab526c97d5cfd26cadc0

16. Rachel Mahoney, Jury Finds Lynchburg Man Not Guilty Thursday, The News & Advance, (December 19, 2019); The Associated Press, After more than 70 years, 4 Black men wrongly accused of rape have been exonerated, NPR (November 22, 2021) at https://www.npr.org/2021/11/22/1058169726/groveland-four-exonerated; Cindy E. Rodriguez, Woman Who Falsely Accused Duke Lacrosse Players of Rape Charged With Stabbing Boyfriend, ABC News, (April 4, 2011) at https://abcnews.go.com/US/woman-accused-duke-lacrosse-team-members-rape-charged/story?id=13295161; Eugene J. Kanin, False Rape Allegations, Polygrah Vol. 30 Issue 3 163-171 (2001).

interest in the non-disclosure of booking photos taken of natural born United States Citizens.

3. United States Constitution

Due process is a basic requirement under the Fourteenth Amendment of the U.S. Constitution.[17] It is well founded that your name, image and likeness (a photo of you) is your property and especially if a person or entity attempts to use it for commercial purposes or if the government seeks to deprive you of your property.[18] Your employment prospectus is your property.

a. Background of Due Process:

The Due Process Clause of the United States Constitution provides foundational protection against arbitrary decisions by legislatures, law enforcement and institutional injustice.[19] Due process is a basic requirement under the U.S. Constitution that *"a person may not constitutionally be deprived of "life, liberty or property" by governmental action without notice and a meaningful opportunity to be heard."*[20] The following case

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17. Amendment 14, USCS Const. Amend. 14 (1868).

18. Borger, John P., et al., Recent Developments In Media, Privacy, and Defamation Law, Tort Trial & Insurance Practice Law Journal, vol. 39, no. 2 (2004)

19. Leonard G. Ratner, The Function of the Due Process Clause, University of Pennsylvania Law Review 116, no. 6 1048–1117 (1968).

20. Kuckes, Niki. Civil Due Process, Criminal Due Process, pp.1-61 *Yale Law & Policy Review*, vol. 25, no. 1, (Fall, 2006).

is controlling law to determine if the Due Process Clause of the U.S. Constitution applies to a government taking.

In *Mathews v. Eldridge*, the court prescribes a test as to whether a matter is a Due Process violation.[21] The factors that are described by the court for due process are essential to our understanding of what due process protects. Due Process protects against erroneous deprivations by the government. The Court described the following test:

> " . . . *due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.*"[22]

b. Analysis of Due Process to Booking photos:

When applying the *Mathews* test we look at each factor. With the first factor, it becomes clear that the private interest affected by law enforcement charging and arresting a citizen; and then releasing a booking

21. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

22. Supra Note 24.

photo without a hearing is an erroneous and capricious deprivation. The systemic inherent effect on the future trajectory of a person who has had their booking photo released is obvious, and certainly so in the internet age. In other words, there is a clear taking by the government when they post these photos on the internet. For anytime something is posted on the internet, it is there in perpetuity permanently. It is there for any future employer, associate, third party or those that would seek to defame but for the sole purpose of their own salaciousness. The first prong of the Due Process Clause test is violated, unequivocally.

Next, we turn to the Courts second factor in *Mathews*, which is far simpler to address. This factor, when evaluating booking photo releases, is clearly violated and requires little discussion because there is no hearing or procedure whatsoever. Currently, there is no hearing before the government releases a booking photo to the public. Unless a citizen is arrested by the Federal Government or two states in the U.S., their booking photo is released.[23] They have achieved this by disregarding the right to cross-examine evidence in an open public court.[24]

Finally, we address the Courts last prong of the *Mathews* test as to whether a matter violates Due Process. The Government has no legitimate interest in the pretrial, pre-hearing release of booking photos. To the contrary, this has economic implications on those that are falsely accused and matters that are generally unfounded. Unless a person is convicted or a fugitive from justice

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23. *Detroit Free Press, Inc. v. United States DOJ*, 829 F.3d 478

24. Amendment 6, USCS Const. Amend. 6 (1791).

there serves no legitimate state interest in the release of booking photos. And, let's say hypothetically for some unclear reason that the government interest were served by releasing these booking photos pre-conviction. The burden of including a hearing on the matter is de minimis and could easily be addressed at the first hearing related to matters (i.e. bond hearing, arraignment, preliminary hearing). Our judicial system in general is a slow engine, there serves no legitimate purpose in expeditiously releasing booking photos as opposed to waiting for a proper hearing. In any event, the burden would not be great for courts but, that's only if you get to that prong of the test, which we do not because of the former.

c. Analysis Competing Opinions:

The United States Supreme Court has addressed the issue of booking photo disclosure and Due Process in *Paul v. Davis* in 1976. In a Split decision the Court asserted that a person does not have a Due Process interest in that *"The words "liberty" and "property" as used in the Fourteenth Amendment do not in terms single out reputation as a candidate for special protection over and above other interests that may be protected by state law."*[25] But, we must bear in mind that Justice Rehnquist wrote this opinion well over forty eight years ago in 1976, decades before the public use of the internet and therefore the permanent employment effects of these acts were not fully recognized as herein today. To the contrary, in 1976 TV's were large cub boxes, most got their news from a piece of paper and phones were tied to wires.

25. *Paul v. Davis*, 424 U.S. 693 (1976).

The employment discussion is important, because today you will be looked over for employment based solely on things like internet booking photos.[26] In Justice Rehnquist's opinion he specifically cited employment as a reasonable Due Process applicable right in that the "*drastic effect of the "stigma" which may result from defamation by the government in a variety of contexts, this line of cases does not establish the proposition that reputation alone, apart from some more tangible interests such as employment.*" Today the internet is used to harass on a level not cognizable in 1976, nefarious groups can incessantly molest others through its maleficent use, and the authorities do little to curb this.[27] In 1976, it just was not the case as today.

Within *Paul v. Davis*, the Court specifically references privacy law and this is a vital consideration because the evolution of privacy law since 1976 has been substantial.[28] The Supreme Court of the United States, over the decades has increasingly recognized privacy interest since it issued the *Davis* opinion.

Furthermore, three Justice's Brennan, Marshall and White dissented in *Paul v. Davis*. The distinguished

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26. David Cotriss, Keep It Clean: Social Media Screenings Gain in Popularity, Business News Daily (January 23, 2023) at https://www.businessnewsdaily.com/2377-social-media-hiring.html

27. Alan Dershowitz, Guilt by Accusation: The Challenge of Proving Innocence in the Age of #MeToo, (Skyhorse Publishing, 2019); Karlyn Borysenko, The Dark Side of #MeToo: What /

28. Borger, John P., et al., RECENT DEVELOPMENTS IN MEDIA, PRIVACY, AND DEFAMATION LAW" Tort Trial & Insurance Practice Law Journal, vol. 39, no. 2 (2004)

dissenting justices with Brennan writing, opined that "*The Court accomplishes this result by excluding a person's interest in his good name and reputation from all constitutional protection, regardless of the character of or necessity for the government's actions. The result, which is demonstrably inconsistent with our prior case law and unduly restrictive in its construction of our precious Bill of Rights, is one in which I cannot concur.*."[29] As with a lot of matters in the law, often it becomes necessary to reexamine issues that have been presented in the past.[30] Otherwise old and generally antiquated opinions and analysis would remain in effect indefinitely, even when the circumstances of the world have changed. At its foundation, *Davis* no longer applies because the analysis used in *Davis* is antiquated and has been changed by the Court.

4. The Supremacy Clause

The U.S. Constitution, because it is the supreme law of the land has in its inherent ability and applicably the authority to invalidate state law. Because, "*the court is "bound" by the statute; the legislature is "bound" by the constitution.*"[31] The Court can invalidate state statutes when they are found to violate the United States Constitution.[32] This is known as judicial review. Judicial

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29. *Paul v. Davis*, 424 U.S. 693 (1976)

30. *Roe v. Wade*, 410 U.S. 113 (1973); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022)

31. Harold J. Berman, Faith and Order, The Reconciliation of Law and Religion, p.12 (John Witte, Jr. 1993).

32. *Marbury v. Madison*, 5 U.S. 137 (1803)

review is a tool used by courts and is a part of the basic notion of checks and balances in the government.[33] Because, when we think about our rights as U.S. citizens, we should not be thinking about one branch of government over the other. The Founders intended for each branch of government, the legislature, the executive, and the judiciary to protect our rights as natural born United States Citizens.

Nothing is safe while legislature is in session and the U.S. Supreme Court understood this over two hundred years ago when it issued its opinion in *Marbury v. Madison*. In *Marbury*, the Court first established that it had the power to overturn an act of legislation when it violated the U.S. Constitution.[34]

a. Federal Law Enforcement Standard:

After significant opposition from only media organizations, Federal law enforcement no longer automatically releases booking photos of arrestees. Today, if you are arrested by federal law enforcement your booking photo will not be released automatically.[35] This is also true in two states, but not most. United States Federal Courts have directly addressed this issue, and

33. Abner S. Greene, Checks and Balances in an Era of Presidential Lawmaking, The University of Chicago Law Review, vol. 61, no. 1, 123–96 (1994).

34. *Marbury v. Madison*, 5 U.S. 137 (1803)

35. *Karantsalis v. United States DOJ*, 635 F.3d 497, 2011; *World Publ'g Co. v. United States DOJ*, 672 F.3d 825, 2012; *Times Picayune Publ'g. Corp. v. United States DOJ*, 37 F. Supp. 2d 472, 477 (E.D. La. 1999).

since the last time the Supreme Court of the United States has addressed this in *Paul v. Davis*, the privacy analysis has changed substantially:

> *"In the vulnerable and embarrassing moments immediately after an individual is accused, taken into custody, and deprived of most liberties, fit squarely within this realm of embarrassing and humiliating information. More than just vivid symbols of criminal accusation, booking photos convey guilt to the viewer. Indeed, viewers so uniformly associate booking photos with guilt and criminality that we strongly disfavor showing such photos to criminal juries. The Sixth Circuit has condemned the practice of showing 'mug shot' evidence to a jury as effectively eliminating the presumption of innocence and replacing it with an unmistakable badge of criminality. This alone establishes a non-trivial privacy interest in booking photos."*[36]

We can easily draw the analytical chain to a multi-day jury using a basic google search to find a booking photo of accused persons on the internet. A booking photos mere image projects guilt on to the viewer, this is undisputable prejudicial conduct. Even without any evidentiary indication, a viewer is likely to perceive an accused as guilty even though they themselves may be the victim of a crime perpetuated by the local medically diagnosed psychiatric patient filing false police reports, a

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36. *Detroit Free Press, Inc. v. United States DOJ*, 829 F.3d 478, 482 (6th Cir. 2016)

law enforcement officers lack of even basic due diligence, or prosecutorial arbitrary government decision making and court room fraud. This is a permanent employment effecting due process triggering event by the government.

CONCLUSION

The United States Constitution was signed on September 17th, 1787. Due Process of law is a basic principle that is triggered and violated by automatic booking photo disclosure. A small but at the same time significant secession from the powers that be incessant and generally cruel befuddlement of releasing their harassing booking photos is but little price to pay to make sure they are doing the right thing before they do it.

Respectfully submitted,

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