No. 24-59

IN THE SUPREME COURT
OF THE UNITED STATES

STEPHEN LYNCH MURRAY, Petitioner

v.

PHIL ARCHER, CHRIS SPROWLS, OKEECHOBEE SHERIFF, PINELLAS SHERIFF, RON DESANTIS, Respondents

On Petition for a Writ of Certiorari to the 11th Circuit

PETITION FOR REHEARING OF PETITIONER

US-FL-MD recently dismissing paragraphs in 6:24-cv-6, and Defendants' lack of even responding much less producing a witness, show the mismatch between burden of proving a cop innocent of imagining a possibility and plaintiff as witness, after this Court's doctrine repeals examining factual false color to just law appeals.

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Table of Contents

Petition for Rehearing

Petitioner requests rehearing on emergent grounds that the discovery problem is a symptom of pleading burden, which is both more fatal and simpler to remedy. Emerging events recast the discovery problem in Fourth Amendment cases, as the pleading burden on plaintiffs to get to discovery. Suggesting a Mt. Healthy burden for states to prove cause in all speech-arrest cases.

Summary of Arguments

The district blindly dismissing paragraphs in US-FL-MD-6:24-cv-6, and Defendants never having to respond here, demonstrate that doctrine creates a mismatch between burden of proving a cop innocent of imagining a possibility, on plaintiff as witness, to repeal venue for examining factual "false color" complaints, leaving just disagreements (appeals) about the law applied to facts.

After Petitioner filed, two intervening events clarified the issue as one of fact-pleading burden rather than fact-producing process, with a remedy of simply asking facts of the correct witness.

On July 31, 2024, the Magistrate in 6:24-cv-6 recommended dismissing all plaintiff's paragraphs as irrelevant to any known doctrine (effectively interpreting "due process" as a finite list of exceptions to state power). In a second event, Respondents in the present matter interpreted this Court's doctrine for producing fact, as putting them under no burden to respond.

These events illustrate emerging interpretation and application of doctrine by the legal community, which puts an impossible pleading burden on the plaintiff in speech-retaliation cases involving an arrest, and gives district courts discretion to dismiss categories of valid complaints without defendants even to having respond.

I. Alleging State Action Mismatches Witness and Burden

These events homologate two different fact-pleading burdens, in cases 1) involving non-police state actors who fire employees or allocate grants, versus 2) with state actors using criminal-justice powers:

	plaintiff vantage point	state-actor vantage point
non-cop state actors (Mt. Healthy)	**1.** plaintiff alleges speech infringement as witness in federal court	**2.** defendants prove cause of state action as witness in federal court
cop state actors (Nieves-Thomas)	**2.** plaintiff disputes cause from cop's vantage point as witness in federal court	**1.** cops lie about (color) cause of state action in state court

In non-arrest cases, the plaintiff needs only plead a state-created injury, and plausibility of a causal connection to speech. These are both things the plaintiff witnessed, and therefore an appropriate pleading burden to put on the plaintiff. This shifts the burden to state actors to appropriately plead things the state witnessed, to supplement facts already produced and prove the "real cause" of their actions.

But in cases involving an arrest, the burden is on the plaintiff to plead from things he witnessed, that a cop at another vantage point - a cop the plaintiff never met - did not imagine the possibility of a crime based on things the cop witnessed. This burden is prerequisite to pleading whether extended events, such as being held in solitary, detained months later, or defamed with state license, are legitimate state interests based on probable cause.

In cases involving assertions of state Fourth Amendment powers, there is never a burden on defendants to prove a cop did imagine the possibility of a crime, unless the State tries to convict. Therefore, rather than examine the plausibility of a speech cause, the state needs only protect the plausibility of a possibility of a crime at an obfuscated vantage point by hiding information, with no burden to testify or produce discovery.

The asymmetric legal burden is minimized imagining cops are good-faith actors who willingly produce information and never lie. So that the

plaintiff can use facts already provided by the State, to prove the State's crimes.

In popular cases, state actors provided information because they believed what they did was legal, rather than hiding it because they knew they broke the law. Or the plaintiff was fortunate to be witness to the same things the cop witnessed, otherwise incurable. In such cases the plaintiff could confront state actors with witness and discovery in his complaint, without a district needing to create a venue for state discovery and confrontation. These popular cases where there is minimal need for federal fact-producing venue can be called "State Actor Type", where there is just a disagreement about what it is legal for a state to do.

But in cases involving false color in criminal justice, there is no burden to prove a cop did imagine the possibility of a crime - to produce discovery or testimony or even a witness - unless the State tries to convict. The burden for such federal defendants is to stop plaintiffs disproving that a cop imagined a possibility, by hiding information, and by remaining silent as Respondents have demonstrated here. Such cases can be called "False Color Type", where it is necessary to supplement the state record with a federal fact-producing process.

Unlike non-police actors, police are accustomed to having their actions reviewed by courts. By habit, police come up with the color of a legal justification at the time they take actions. And unlike non-police

actors, police can use false color to legalize a variety of things which "the people" want them to do, like torture witches and undesirables. Federal venue was created for the wide variety of abuses police activity lends itself to, which the State can otherwise do without a jury trial.

Pleading grounds that a cop is innocent of imagining the possibility of a crime, from the vantage point of a person who only knows that he was injured without committing a crime and without due process to prove a cop even imagined it, without the cop's cooperation, requires a massive examination of circumstances the plaintiff witnessed bolstered by logic and theory. This to substitute for simply asking the cop to provide documentation and testify in an adversarial setting.

It is an entire fact-finding trial in a complaint prior to answer or discovery, when the cop is under no burden to prove he did imagine something and chooses not to, and rather to hide evidence to frustrate proving he didn't. District courts will call it conclusory and shotgun, rather than doing the honest thing having the State testify, which they do when cops aren't involved.

II. Why Burden on Police was Repealed

This gray area of what process is necessary to produce fact before dismissing a case, leaves plaintiffs with no doctrine for facts to be relevant to. It devolves federal venue for legitimate cases, by

relying on and out-sourcing to state fact production.

This is intentional based on the theory that state actors will drive all kinds of virtuous activity through this gray area, that would otherwise be mucked up by federal judges. But the opposite is true, this abdication enables ill-informed collectivist decisions to be made attacking the rights of private parties, without federal protection from the clumsy collective. (Far from possessing "collective wisdom", the people of Florida will let their condo highrises collapse absent the exoskeleton of law.)

A Fourth Amendment process which is supposed to legalize very little without discovery and confrontation, is then used to legalize a variety of state actions by blindly dismissing claims for any events which are plausibly connected, even when such actions have a connection to political speech. The possibility that a cop imagined a crime – a possibility contrived at some vantage point by missing information and lack of fact-producing process – is used to excuse some unpredictable variety of state activity beyond searching people's cars and making them come to trial. Like following the plaintiff around for months, threatening his speech, holding him with false bond conditions, putting him in solitary confinement, or exempting people who defame him from needing witnesses.

Federal courts have a prejudice that the "possibility loophole" is entrusted to states and not a federal court's business. They imagine police are virtuous

with their lies checked by local voters, that validating information is done at the state level, and state criminal-justice action is immune to federal oversight. The opposite is true, executive-branch actors create false color to violate rights, to get elected, and to protect their power. Particularly controlling speech so the voters don't even know about misconduct.

In non-arrest cases, it's clear who decides what's true and what causes for state actions are legal – a federal court. Because there is no state process as with crime, and therefore no original false color to game that process. But with arrests, it is obfuscated who decides what is "true" requiring what process. District courts are not equipped with strong standards for how to produce such missing fact, just interpret law upon fact and dismiss cases. Districts and plaintiffs are rudderless over issues like:

1) who decides what is true, requiring what fact-producing process?
2) who will decide what set of facts is true based on what witness?
3) whether missing information can be subpoenaed from state witnesses before applying law to fact
4) what state actors are allowed to do, prior to or without a fact-producing process.
5) what state action is thereby legitimized?
6) who decides what the causes of the state's actions were, requiring what fact-producing process?
7) who decides what is a "true" description of plaintiff's and the government's activities?

8) who decides whether anything such as a search or arrest was legalized by an evasive affidavit with material perjury, no witness, and that did not meet the cited statute
9) whether a cop possibly imagining a possibility of a crime blindly dismisses all claims such as being held in solitary or pulled over in apparent retaliation for political speech, when a person has been arrested at another time
10) whether a court saying a plaintiff cannot foreclose from his own vantage point that a cop imagined the possibility of a crime at another vantage point, makes it impossible to stop the State doing things for hidden reasons under color of criminal justice; whether a different standard compared to Mt. Healthy is applied so that injuries and an apparent targeting of political speech are not enough to allege the secret causes of a cop's behavior
11) whether executive action in criminal justice, by design regulated by the voters, is a state action process in the jurisdiction of federal courts
12) what a plaintiff can put in his complaint to address these doctrine uncertainties, to show grounds to survive dismissal.

The intentionally-confused overlapping jurisdiction between state and federal courts makes it impossible for plaintiffs to know what law districts will apply to what fact, and what pleading can meet this burden. This gives district courts discretion to provide no process. So that state actors don't even have to answer or ever prove a thing in court. And it is not even clear to a plaintiff or a district court and is open

to argue, what burden or doctrine the plaintiff's complaint can meet or apply, with what paragraphs.

The purpose of creating this gray area was always to stretch the law, to allow arbitrary executive action based on some "states' rights" ideology. This by using the color of a Fourth Amendment process that requires neither confrontation nor discovery nor summoning the public as jurors, nor even the prosecution of perjury, and which predictably includes subverting both federal court oversight, and First Amendment press or voter oversight.

For injuries without arrest, there is a burden for state actors to show cause is a legitimate state interest. For events that include an arrest, nearby state action is no longer scrutinized for cause, nor state actors burdened to prove legitimate interest. There is like a Younger abstention where federal courts say anything is legal and only look at the cause of the arrest.

Law did not demand federal courts to tie themselves into knots over what it is legal for a state to do without discovery or confrontation. This creates confusion in district courts, an uncertain burden on complaints, and an invitation to state actors to jam up federal court access with lies and then go hide like Respondents in this case.

District courts are not equipped with strong standards for how to produce missing fact, just interpret law upon fact and dismiss cases. The effect

is to repeal 42 USC 1983 by assuming State false color doesn't exist, and there are just legal disagreements about what states can do.

III. "False Color" Fact Venue Abdicated for "State Actor" Legal Disagreements

Consider four types of cases:

1. Criminal Justice	1A - dishonest about what police saw and did in criminal justice
	1B - dishonest reason why in criminal justice
2. Other State Actor	2A - honest disagreement about law outside criminal justice
	2B - dishonest about why

Petitioner's case is in an applied category of Fourth Amendment rather than non-police (Type 1); the plaintiff alleges a false-color fact dispute rather than just state-actor legal disagreement (1A-B), the plaintiff did not witness what the cop witnessed, and defendants did not willingly provide information or hid facts with false color; 1A / Fourth Amendment / False Color / cops hide information.

In such cases, district courts basically say combining 42 USC 1983 with state immunity doctrine, we don't have jurisdiction to make state criminal-justice actors produce fact. Oversight of due process is

outsourced to state courts and voters overseeing executive-branch discretion. State immunity doctrine and federal due process jurisdiction are combined, to apply law to fact without producing fact.

Federal doctrine assumes original "false color" type 1A complaints don't exist (cops lying), or are taken care of at the state level. And instead prefer to treat everything as 2A, disagreements about what states can legally do. The effect is that original "false color" complaints no longer exist, in favor of new "state actor" complaints, where there is only a disagreement about law not fact.

42 USC 1983 is reduced to an appeal about what state action is legal when everyone is open and honest, assuming the facts to interpret law upon have willingly been produced in the state. So that law can be applied to facts to legalize speech infringements, without Respondents ever having to produce a single witness or even respond here.

Even type 1B is reduced to disagreements about whether jaywalking is a real legal cause, as if the cop never lies about what he witnessed. And 2B complaints hiding the "why" state actors did something, don't make it up the Supreme Court. Only when state actors admit why because they thought it was legal. Even then, 2B complaints only get venue with the discretion of an appeals court, when the case is famous or popular.

This creates venue for businesses opposed to

regulation, while leaving voters to abuse nobodies with false color.

IV. Doctrine Leaves Speech Attacked with Silence and Obfuscation

You don't need a jury conviction to chill speech, just harass someone. This gives police a motive to harass somebody, even when they know they can't get a jury conviction.

Fourth Amendment process is supposed to be a preliminary process, to justify further fact-producing process, like searching your car or going to trial. But if the State never wanted further process – detention achieved the result – they can chill your speech without ever producing a witness of a crime, by arresting you or searching your property, without subsequently trying to prove a cop imagined a possibility.

Chilling speech provides sufficient motive to arrest someone under superficial color, without any hope to follow it up with a charge and discovery. So speech attacks are done where federal courts abdicate jurisdiction, specifically because the State knows their color can't survive discovery and confrontation.

The cop swore your name appeared in a list inside a package of drugs. The cop was wrong, it was an honest mistake. No, you never get to see the list. Your claim in federal court that the list never existed is conclusory. Your theory the cop hates Democrats is

conclusory.

By picking and choosing what to claim he saw and didn't see, a cop can contrive a vantage point from which something looks probable. So attacks on political speech can be carried out not by proving what you did, but by hiding what a cop knew, to blindly foreclose further process, and dismiss a wide variety of claims colored as incident to your status as a criminal.

Conclusion

A mismatched witness and burden allows 42 USC 1983 to be nullified as Respondents have done, by remaining silent and hiding information. The district magistrates essentially said there are no facts a plaintiff can plead, which will enable them to apply some previous case or doctrine to measure whether there was violation of rights.

Arguments on overlapping jurisdiction of state and federal courts are complex, resulting from doctrine biased to outsource to the very state processes federal courts are supposed to supplement in the absence of a state jury trial. How this supplementary jurisdiction is interpreted and manifests in the events is a mess. This mess intentionally creates broad discretion to dismiss cases based on a wishy-washy bench trial.

The length and complexity of these issues, and the fact that their messy result serves a states-rights ideology and facilitates discretion to rule along lines of political convenience, cannot be used to arbitrarily

exclude discussing these issues as novel interpretations of law surfaced by the intervening events.

All this can be simplified by doing the logically and legally correct thing, of applying a Mt. Healthy burden to arrest cases, and making the State respond. The same as if there was no State Fourth Amendment process, which process proves nothing. The bias to defer to states conflicts with 14A-1 and 42 USC 1983.

If the standard is cops can say they imagined you were committing a crime, the very least federal courts need to provide is discovery and confrontation of assertions made in the arrest affidavit. It is not a huge interference with state sovereignty, that the State should provide documents and witnesses cited in an affidavit, when they arrest political speakers.

Respectfully submitted on October 11, 2024 by:

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PETITION FOR REHEARING OF PETITIONER

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Petition for Rehearing in the above-titled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in Century Schoolbook 12 point for the text and 10 point for the footnotes with at least two point line spacing, and the petition brief complies with the word limit of Supreme Court Rule 33.1(g)(xv) by containing 2,982 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d) and the bound Rule 44.2 certification.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 11, 2024,

s/Stephen Lynch Murray/

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CERTIFICATE OF SERVICE

I, Stephen Lynch Murray declare and certify that, in accordance with Supreme Court Rule 29.5(c), all parties required to be served have been served with three copies of the above-titled PETITION FOR REHEARING. I, Stephen Lynch Murray, of lawful age, hereby swear that I did on the _____ day of October, 2024 present properly addressed envelopes each with three copies of the Petition booklet at the United States Post Office, with Priority postage paid for delivery in three days, and also sent copies of the Petition by email, to all parties at the addresses listed below.

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I declare under penalty of perjury that the foregoing is true and correct.

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V. CERTIFICATION

Petitioner therefore certifies to the Clerk of the Supreme Court as Judge under the United States, or to any other Judge deciding this Material Dispute, that his Petition for Rehearing of his Petition for a Writ of Certiorari is based on grounds with substantial effect (to illuminate the application of doctrine and need for remedy) which did not present themselves to Petitioner, and which could not have been known or brought to the Court's attention (which may never have previously existed as legal interpretations in a way that could be isolated), except upon being raised, elucidated, and clarified by intervening legal events.

Petitioner hereby certifies his Petition for Rehearing is presented in good faith based on a belief these are important legal issues, and not for delay.

I, Stephen Lynch Murray, being of lawful age, declare and swear under penalty of perjury that the foregoing is true and correct.

Executed on October 11, 2024,

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Additional material from this filing is available in the Clerk's Office.