

IN THE SUPREME COURT OF THE UNITED STATES

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No. 17-21

FANE LOZMAN, PETITIONER

v.

CITY OF RIVIERA BEACH, FLORIDA

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States as amicus curiae, respectfully moves that the United States be granted leave to participate in oral argument in this case and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting respondent. Respondent has agreed to cede ten minutes of its argument time to the United States.

This case concerns whether a constitutional tort claim for damages under 42 U.S.C. 1983, predicated on an alleged

retaliatory arrest in violation of the First Amendment, is foreclosed when the arrest was supported by probable cause. The United States participated as amicus curiae in Reichle v. Howards, 566 U.S. 658 (2012), which presented the same issue in the context of a claim against federal officers under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The United States has a substantial interest in the circumstances in which federal officers may be held liable for damages in civil actions for alleged violations of constitutional rights. It also has a substantial interest in safeguarding those rights, including through the use of federal criminal and civil enforcement authorities.

The United States has filed a brief as amicus curiae supporting respondent in which it argues that this Court's decision in Hartman v. Moore, 547 U.S. 250 (2006), which held that a damages claim for retaliatory prosecution requires the plaintiff to establish the absence of probable cause, also applies in the context of a damages claim for retaliatory arrest. The United States further argues that the Court should adopt that requirement as an element of the constitutional tort but not as a limit on the scope of the First Amendment.

The United States has previously participated as amicus curiae in the oral argument in Reichle, supra, and in the oral arguments in other cases concerning damages liability under

Section 1983, see, e.g., District of Columbia v. Wesby, No. 15-1485 (Jan. 22, 2018); County of Los Angeles v. Mendez, 137 S. Ct. 1539 (2017) (No. 16-369); Manuel v. City of Joliet, 137 S. Ct. 911 (2017) (No. 14-9496). The United States participated as a party in Hartman, supra.

The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

JEFFREY B. WALL\*  
Acting Solicitor General  
Counsel of Record

FEBRUARY 2018

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\* The Solicitor General is recused in this case.