

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-485

EDWARD G. MCDONOUGH, PETITIONER

v.

YOUEL SMITH, INDIVIDUALLY AND AS SPECIAL DISTRICT
ATTORNEY FOR THE COUNTY OF RENSSELAER,
NEW YORK, AKA TREY SMITH

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

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

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting reversal and that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

The question presented in this case is when the statute of limitations begins to run on a claim against local officials under 42 U.S.C. 1983 based on the alleged use of fabricated evidence to institute criminal proceedings. The court of appeals held that the statute of limitations begins to run on such a claim when the plaintiff learns or should have learned that fabricated evidence

was used against him, and his liberty has been deprived in some way. Pet. App. 1a-19a. The United States has filed a brief as amicus curiae supporting reversal, contending that the statute of limitations on such a claim does not begin to run until the criminal proceedings initiated on the basis of the fabricated evidence are terminated in the criminal defendant's favor.

The United States has a substantial interest in the issue in this case. The courts of appeals generally apply the same accrual rules for constitutional tort claims against state officers under Section 1983 to claims against federal officers under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). See Ruff v. Runyon, 258 F.3d 498, 502 (6th Cir. 2001) (collecting cases). The United States has a significant interest in the circumstances in which federal officers may be held liable for damages in civil actions for alleged violations of constitutional rights, as well as in the procedures available for safeguarding those rights.

The government has previously presented oral argument as amicus curiae in cases concerning the contours of constitutional tort claims under Section 1983 and related questions. See, e.g., Nieves v. Bartlett, No. 17-1174 (argued Nov. 26, 2018); Lozman v. City of Riviera Beach, 138 S. Ct. 1945 (2018); Manuel v. City of Joliet, 137 S. Ct. 911 (2017). As in those cases, we believe that

participation by the United States in the oral argument in this case could be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

APRIL 2019