

COURT OF APPEALS  
STATE OF NEW YORK

Oral Argument Requested  
Arthur N. Eisenberg: 25 minutes

-----X  
ARTEMUS LYLES, :

Claimant-Appellant, :

-against- :

THE STATE OF NEW YORK, :

Defendant-Respondent. :

-----X

BRIEF SUBMITTED ON BEHALF OF CLAIMANT-APPELLANT

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## QUESTIONS PRESENTED

1. Under this Court's decision in *Brown v. State of New York*, 89 N.Y. 2d 172 (1996), can state constitutional claims be pursued in the Court of Claims where common-law tort remedies, involving different and non-constitutional causes of action, might have been available to a claimant? The courts below concluded that, in such circumstance, state constitutional claims are foreclosed.

2. Where, as here, common-law tort-claims are not co-extensive with a claimant's state constitutional claims and do not adequately reach the conduct about which Claimant complains, can such constitutional claims, nonetheless, be foreclosed in the Court of Claims on the theory that these common-law tort claims provide sufficient relief? The courts below implicitly concluded that state constitutional claims are foreclosed even in such a circumstance.

3. Under the Court of Appeals decision in *Brown v. State of New York, supra*, is a claimant foreclosed from pursuing, in the Court of Claims, a federal constitutional claim arising directly under the Fourth Amendment to the U.S. Constitution? The courts below concluded that such federal claims are foreclosed.

## INTRODUCTION

In *Brown v. State of New York*, 89 N.Y. 2d 172, 652 N.Y.S. 2d 223 (1996) this Court issued a landmark decision holding that damage claims against the State based upon violations of the State Constitution can be pursued in the Court of Claims. The *Brown* case involved allegations that the State Police and other state officials engaged in or participated in a pattern of “racial profiling” and police stops in violation, *inter alia*, of the equal protection clause set forth in Article I § 11 of the New York Constitution and in violation of the prohibition against unreasonable searches and seizures set forth in Article I § 12 of the New York Constitution. The case at bar, brought by Artemus Lyles, rests upon this Court’s decision in *Brown*. Like *Brown*, it involves claims of unreasonable searches and seizures and of “racial profiling” that, while not as extensive as those alleged in *Brown*, were nonetheless intrusive, demeaning and deserving of adjudication and remediation under this Court’s precedent established in *Brown*.

The Court of Claims, however, dismissed Mr. Lyles’ lawsuit. It did so by offering a narrow and illogical interpretation of this Court’s decision in *Brown*. And the Appellate Division affirmed the Court of Claims decision upon the same erroneous interpretation. The courts below concluded that, under this Court’s decision in *Brown*, a state constitutional claim cannot be advanced in a lawsuit where a common-law tort remedy might have also been available to a claimant. This conclusion of the courts below, however, cannot be squared with the facts, the reasoning and the holding of *Brown*.

The decisions of the courts below are inconsistent with this Court’s decision in *Brown* for four basic reasons: First, the decision of this Court in *Brown v. State, supra* does not, in any respect, hold that constitutional claims can only be pursued where common-law tort claims are unavailable. Second, the suggestion of the courts below that such a conclusion can be inferred

from *Brown* is deeply at odds with the reasoning of this Court in *Brown* which recognized that constitutional and common-law torts are very different and that the causes of action for constitutional and common-law torts involve different elements and “are not co-extensive.” *Brown*, 89 N.Y. 2d at 178; 652 N.Y.S. 2d at 227. Third, the central theory of the decisions below conflicts directly with language in the *Brown* opinion stating: “Nor should claimants’ right to recover damages be dependent upon the availability of a common-law tort cause of action.” *Brown*, 89 N.Y. 2d at 191; 652 N.Y.S. 2d at 234. Fourth, the lower court conclusions in this case ignore the facts of *Brown* itself. In *Brown*, claimants were pursuing several common-law tort causes of action in federal court and one common-law tort cause of action in the Court of Claims while, at the same time, they were permitted by this Court to pursue state constitutional claims in the Court of Claims. *See Brown*, 89 N.Y. 2d at 197. *See also* the Amended Complaint filed in federal court by the *Brown* claimants as set forth in the Record on Appeal at R-165-166, 178.

Notwithstanding the language, logic and facts of this Court’s decision in *Brown*, the courts below attempted to support their narrow reading of *Brown* by relying upon this Court’s subsequent decision in *Martinez v. City of Schenectady*, 97 N.Y. 2d 78, 735 N.Y.S. 2d 868 (2001). But *Martinez* does not support the constricted reading of *Brown* offered by the lower courts in this case. This is so for several reasons. First, *Martinez* was not a Court of Claims case and did not involve questions respecting the jurisdiction of the Court of Claims. Second, the *Martinez* decision did not even address the question of whether state constitutional claims should be dismissed upon a finding of adequate common-law tort claims. Instead, in *Martinez*, the constitutional claims were dismissed because this Court found that the plaintiff had already vindicated her constitutional rights in a previous proceeding. For this reason and for the reasons

suggested above, the courts below erred in dismissing Mr. Lyles' state constitutional causes of action. These matters are amplified in Point IA of the Argument below.

Moreover, even if *arguendo*, the *Brown* and *Martinez* decisions could be read in support of the proposition that constitutional claims cannot be pursued in the Court of Claims if analogous common-law claims could have been presented, the decision of the courts below must be reversed because the common-law claims are not analogous to the constitutional claims that Appellant seeks to advance. This matter is addressed in Point IB of the Argument set forth below.

Finally, Respondent has argued in the Appellate Division that, even if not foreclosed by this Court's decisions in *Brown* and *Martinez*, Appellant's constitutional claims are foreclosed by applicable statutes of limitations. Respondent is, however, wrong about this. The applicable statute of limitations for constitutional torts in this State is, at least, three years; and this suit was filed within three years of the transactions and occurrences at issue. This matter is addressed in Point IC of the Argument.

The Court of Claims also dismissed claimant's federal constitutional claims. In so doing, the court reasoned that neither 42 U.S.C. § 1983 nor 42 U.S.C. § 1981 can confer authority to sue the State for violations of federal constitutional rights because both statutory provisions authorize only suits directed at "persons" acting under color of state law and the Supreme Court has held that a state is not a "person" within the meaning of Sections 1983 and 1981. But, Mr. Lyles did not and does not contest that conclusion. Rather, Appellant has argued that the United States Supreme Court has held, in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), that federal constitutional claims under the Fourth Amendment are self-executing and do not need to be authorized by 42 U.S.C. § 1983 or 42 U.S.C. § 1981; and that, therefore,



Claimant's federal constitutional claims involving alleged violations of the Fourth Amendment do not depend upon 42 U.S.C. §§ 1983 or 1981; that federal constitutional claims can, therefore, be pursued against the State in the Court of Claims directly under the Fourth Amendment; and that the reasoning of this Court's decision in *Brown*, in fact, supports such a conclusion. The Appellate Division rejected these arguments and erroneously upheld the dismissal of Appellant's federal constitutional claims upon the unexplained conclusion "that [the Court of Claims] lacked subject matter jurisdiction."<sup>1</sup> (R-6). These matters are addressed in Point IIA of the Argument below. In light of these dismissals, the Appellate Division further concluded that it was "not necessary to address the issue of the applicable statute of limitations." (R-6). Nevertheless, in Point IIB of the Argument, Respondent demonstrates that his viable federal constitutional claim is not time-barred.

Before reaching these matters, however, a statement of the facts of this case, along with a discussion of the procedural developments in this case and the jurisdictional basis for this appeal will be presented in brief compass.

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<sup>1</sup> References preceded by "R" are to the pagination in the Record on Appeal.

## STATEMENT OF THE CASE

### Statement of Facts

This is a suit for damages, filed in the New York Court of Claims, arising out of an entirely unlawful and unreasonable search and seizure conducted by officers of the New York State Police.

As alleged in the Claim initiating this lawsuit, at approximately 12:30 a.m. Saturday morning March 27, 1999, Artemus Lyles was traveling home to New York City from Westchester County in a 1986 Cadillac that Mr. Lyles had recently purchased at an auction. Mr. Lyles had been driving westbound along Highway 287 toward the New York State Thruway for approximately five minutes, when he was pulled over by two New York State Troopers, Trooper Morgan and Trooper Allen. (R-42).

After providing his driver's license and registration to Trooper Morgan, Mr. Lyles was told that he was pulled over because there was smoke coming from his tailpipe. Mr. Lyles explained to Trooper Morgan that he had just registered the car the day before and that he was unaware of any smoke emanating from the car's exhaust. Trooper Morgan then told Mr. Lyles that the 10 day temporary inspection sticker issued by the Department of Motor Vehicles had expired. Mr. Lyles explained that that was impossible as he had just registered the car the previous day, March 26, 1999. Trooper Morgan returned to the patrol car (R-42) and Trooper Allen then approached Mr. Lyles' car with a ticket in his hand asking Mr. Lyles to step out of the car. Mr. Lyles got out of the car and Trooper Allen asked Mr. Lyles if he could search him for any weapons or contraband. Mr. Lyles agreed to a search of his person. Trooper Allen found nothing on Mr. Lyles' person and began to explain the options for paying the ticket being issued. (R-42).

With Trooper Morgan standing directly behind Mr. Lyles, Trooper Allen began to search the side door on the driver's side of the car. This search of the vehicle was undertaken without consent. Mr. Lyles asked Trooper Allen what he was doing but Trooper Allen offered no reply. Mr. Lyles then asked Trooper Morgan what Trooper Allen was doing and Trooper Morgan replied: "That is him not me." Trooper Allen continued to pull apart the panel on the side door of the driver's side of the car. (R-43).

It is estimated that Troopers Allen and Morgan detained Mr. Lyles for over one hour. During most of that time, Mr. Lyles was required to stand out in the cold. Finally, Mr. Lyles was told he was free to leave. Mr. Lyles then proceeded to drive away. (R-43).

After approximately three minutes of driving, Mr. Lyles was pulled over again by the same police officers. Trooper Allen told him he had another violation: an obstruction on the windshield from an air freshener hanging from the rear-view mirror. Mr. Lyles reiterated that he had just purchased the car and stated that he did not have a chance to remove the air freshener and had simply overlooked it. Mr. Lyles explained that he had to go to work in the morning and was very tired and requested that he be permitted to continue home. Trooper Allen then asked Mr. Lyles what was in the trunk. And again Trooper Allen began searching the car door and also began to search under the dashboard, pulling things apart as he searched. This search was conducted without Mr. Lyles' consent. (R-43).

By this time a second State Trooper vehicle, driven by a Sergeant Stamps, appeared at the scene. Sergeant Stamps asked Mr. Lyles if he had any sharp instruments in his pockets that could cause any harm. Mr. Lyles replied that he did not and Sergeant Stamps proceeded to search Mr. Lyles' pocket, ultimately finding no weapons. This search was conducted without consent. Sergeant Stamps then told Mr. Lyles that he needed to know exactly what was in the

trunk and that if Mr. Lyles did not agree to open the trunk he would be arrested. The trunk could not be opened with a key because the cylinder to the trunk lock was missing. Sergeant Stamps then proceeded to handcuff Mr. Lyles in an effort to coerce him into opening the trunk. (R-44).

Mr. Lyles then agreed to try to use a screwdriver to open the trunk. Trooper Allen removed Mr. Lyles' handcuffs and Mr. Lyles proceeded, under coercion, to pry open the trunk. Mr. Lyles was then told to stand next to the guardrail and Sergeant Stamps instructed Troopers Allen and Morgan to begin searching the trunk. Trooper Allen threw items including Mr. Lyles' guitar from the trunk of the car onto the ground. Sergeant Stamps then instructed Trooper Allen to return the items to the trunk of the car. The items were returned to the car and Mr. Lyles was told that he was free to leave and he drove away. (R-44).

Pursuant to New York Court of Claims Act § 11, a Notice of Intention to File a Claim was served upon the Attorney General of the State of New York on June 22, 1999 and filed with Clerk of the Court of Claims on June 25, 1999. (R-34). This suit was commenced with the service of a Claim upon the State of New York on March 18, 2002 (R-49) and filed with the Court of Claims on March 19, 2002. (R-44).

The Claim advanced causes of action resting directly upon the search and seizure provisions of the federal and state constitutions and upon the equal protection clauses of the state and federal constitutions. (R-45, 46). On or about April 27, 2002, Respondent State of New York moved to dismiss the Claim. (R-53, 54). Respondent's initial moving papers rested principally upon the contention that Mr. Lyles' suit was barred by the statute of limitations. (R-57).

In response to the State's initial moving papers, however, Claimant demonstrated that the statute of limitations for state constitutional claims in this state has generally been found to be six

years; that in *Brown v. State of New York*, 250 A.D.2d 314, 681 N.Y.S.2d 170 (3<sup>rd</sup> Dept. 1998) the Third Department affirmed a decision of the Court of Claims holding that the statute of limitations for state constitutional claims brought in the Court of Claims is three years; and that, whether the statute of limitations for state constitutional claims is regarded as six years or three years is inconsequential, in this case, because Claimant's suit had been commenced within three years of the transactions and occurrences giving rise to this action. In a similar respect, Claimant also pointed out that the statute of limitations for federal constitutional claims in this state is three years. (R-65-73).

In response to Claimant's Memorandum of Law in Opposition to the Motion to Dismiss, Defendants altered their principal theory as to why this suit should be dismissed. In their Reply Affirmation, Defendant's principal argument in support of its motion to dismiss rested upon an entirely new argument not made in the initial motion to dismiss, namely, that the constitutional claims could not be pursued in this case because, under this Court's decision in *Brown v. State*, 89 N.Y.2d 172, 652 N.Y.S.2d 223 (1996), a state constitutional claim cannot be advanced in a case where a common-law tort remedy might have also been available to a claimant. (R-81).

This new theory advanced by Defendant provoked a new round of briefs. Accordingly, Claimant filed a Sur-Reply in Opposition to the Motion to Dismiss which was almost entirely devoted to a refutation of Defendant's claim that *Brown* could be read to foreclose the constitutional claims advanced here. (R-160). And Defendant responded with a document that it styled as a "Further Reply Affirmation" that reasserted the arguments that, under *Brown*, a state constitutional claim cannot be recognized where common law tort claims were available to a claimant; that the Court of Claims is without jurisdiction to entertain a federal constitutional claim; and that the claim filed in the case was not sufficiently specific as to the location of the

incident and the nature of the injury to survive a motion to dismiss. (R-264-266). Notably, the “Further Reply Affirmation” did not continue to assert that Claimant’s constitutional claims were time-barred, just as the State’s Reply Affirmation had not asserted that the constitutional claims were time-barred. (R-80, 263).

In a decision rendered on September 26, 2002 and filed on October 8, 2002, the Honorable Terry Jane Ruderman, a Judge of the Court of Claims, agreed with the position advanced by the Defendant State of New York and concluded that claimants have no right to pursue state constitutional claims in the Court of Claims where there might be an adequate tort remedy available to them. (R-19, 20). Upon this basis Judge Ruderman dismissed Mr. Lyles’ state constitutional causes of action. (R-20).

The Court of Claims also dismissed claimant’s federal constitutional claims. In so doing, Judge Ruderman reasoned that neither 42 U.S.C. § 1983 nor 42 U.S.C. § 1981 can confer authority to sue the State for violations of federal constitutional rights because both statutory provisions authorize only suits directed at “persons” acting under color of state law and the Supreme Court has held that a state is not a “person” within the meaning of Sections 1983 and 1981. The Court of Claims further concluded that Claimant’s Fourth Amendment cause of action could not be pursued on the basis of *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1977). The Court reached this conclusion upon two grounds. First, Judge Ruderman held that a *Bivens* cause of action is only available against federal officials or officers acting under color of federal law. Second, Judge Ruderman held that the recognition of a federal constitutional claim “would raise serious Eleventh Amendment policy concerns.” (R-18, 19).

A Notice of Entry of the Court of Claims decision was served by counsel for Defendant on or about October 17, 2002 and a Notice of Appeal from that decision and order was served on

November 8, 2002. (R-7, 13). On appeal, the Appellate Division, Second Department, in a decision rendered on December 22, 2003, affirmed the dismissal of the decision of the Court of Claims. (R-5). In doing so, the Appellate Division concluded that under this Court's decisions in *Brown* and *Martinez*, claimants' state constitutional causes of action were properly dismissed because the alleged wrongs could have been redressed by common law tort claims. (R-6). In reaching this conclusion, however, the Appellate Division never explained what common law tort would redress claimant's race discrimination claim under the State equal protection clause. The Appellate Division further affirmed the dismissal of claimant's federal constitutional claims for lack of subject matter jurisdiction. The Appellate Division decision, however, offered no explanation for this conclusion. (R-6). In light of these holdings, the Appellate Division further concluded that it was not necessary to address the issue of the applicable statute of limitations for the pursuit of state and federal constitutional claims. (R-6).

#### Jurisdictional Statement

A Notice of Entry of the Appellate Division decision was served by counsel for Defendant on or about January 6, 2004. On February 3, 2004, a Notice of Appeal was served and it was filed on February 4, 2004. This appeal is being pursued as an appeal "as of right" pursuant to CPLR 5601(b)(1). This is an appeal "from an order of the Appellate Division that finally determine[d] an action where there is directly involved the construction of the constitution of the state [and] of the United States." CPLR 5601(b)(1). Rights and remedies go hand-in-hand. In dismissing this case, the lower courts effectively nullified Mr. Lyles' constitutional rights for they left him without a forum to vindicate those rights in a suit against the State. The courts below did so by seriously misreading this Court's decision in *Brown*. As suggested above and as amplified in the Argument below, Appellant Lyles is not foreclosed from

pursuing state constitutional claims in the Court of Claims. This argument was preserved by Appellant both in the Court of Claims and in the Appellate Division. (R-80, 160, 263; App. Div. Br. at 10; Resp. App. Div. Br. at 11; App. Div. Reply Br. at 1) and addressed by both courts below (R-19; *Lyles v. State of New York*, 99-010147-A1 (N.Y. App. Div., Dec. 22, 2003)). Moreover, Appellant Lyles is not foreclosed from pursuing a cause of action in the Court of Claims directly under the Fourth Amendment to the federal Constitution. This argument was also preserved by Appellant in the courts below (R-80, 160, 264; Claimant's App. Div. Br. at 21; Resp. App. Div. at 11; App. Div. Reply Br. at 19 ) and addressed by the Court of Claims and, in a conclusory fashion, by the Appellate Division below. (R-18; R-6).



## ARGUMENT

### I. APPELLANT LYLES IS NOT FORECLOSED FROM PURSUING STATE CONSTITUTIONAL CLAIMS IN THE COURT OF CLAIMS.

A. Neither the holding of this Court in *Brown v. State*, nor the text of the Court's opinion, nor the reasoning of the Court in that case support the proposition that state constitutional claims may be foreclosed in the Court of Claims if a litigant could have pursued common-law tort causes of action.

In *Brown v. State of New York*, 89 N.Y.2d 172, 652 N.Y.S.2d 223 (1996), this Court made clear, for the first time, that the jurisdiction of the Court of Claims is not limited to contract or to common-law tort causes of action and that damage claims against the State based upon violations of the State Constitution can also be pursued in the Court of Claims.<sup>2</sup> This Court did not limit this holding to circumstances where a claimant could not have pursued common-law remedies.

Indeed, the analysis employed by this Court in *Brown* -- in concluding that constitutional claims should be available in the Court of Claims -- turned, in large measure, upon the recognition that constitutional claims are quite distinct from common-law torts. In this regard, the Court observed:

“Although ... constitutional and common-law torts frequently protect similar interests, the causes of action are not co-extensive [citations omitted]. The common law of tort deals with the relation between individuals by imposing on one a legal obligation for the benefit of the other and assessing damages for harm occasioned by a failure to fulfill that obligation [citations omitted]. Common-law duties arise in virtually all relationships and protect against most risks of harm. Constitutional duties, by contrast, address a limited number of concerns and a limited set of relationships. Constitutions assign rights to individuals and impose duties on the government to regulate the government's actions to

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<sup>2</sup> In reaching this conclusion, this Court reasoned from earlier precedent that the statute waiving sovereign immunity and conferring jurisdiction on the Court of Claims “is to be construed broadly.” *Brown*, 89 N.Y. 2d at 180. This Court further examined Section 9 (2) of the Court of Claims Act which confers jurisdiction on the Court of Claims “[t]o hear and determine a claim of any person ... against the state ... for the torts of its officers or employees while acting as such officers and employees” and concluded that this provision embraces “constitutional torts” as well as statutory and common-law torts. *Brown*, 89 N.Y. 2d at 180. And this Court also interpreted Sections 8 and 12 of the Court of Claims Act as permitting the pursuit of constitutional claims against the State. *Brown*, 89 N.Y. 2d at 183.

protect them. It is the failure to fulfill a stated constitutional duty which may support a claim for damages in a constitutional tort action.” *Brown*, 89 N.Y.2d at 178-179; 652 N.Y.S.2d at 226-227 (emphasis supplied).

Thus, this Court has recognized that constitutional torts are quite distinct from common-law torts and that they address different relationships. Moreover, it is also clear, as this Court implicitly recognized, that constitutional and common-law torts rest upon different doctrinal models and involve different elements of proof. Nevertheless, the State has argued -- and the courts below found -- that the jurisdiction to entertain constitutional claims should extend only to circumstances where common-law torts could not have been pursued. In advancing this claim in the Court of Claims below, the State quoted the following language from this Court’s opinion in *Brown*:

“... the duties imposed upon government officers by these [constitutional] provisions address something far more serious than the private wrongs regulated by the common law. To confine claimants to tort causes of action would produce the paradox that individuals, guilty or innocent, wrongly arrested or detained may seek a monetary recovery because the complaint fits within the framework of a common-law tort, whereas these claimants, who suffered similar indignities, must go remediless because the duty violated was spelled out in the State Constitution.

“Damages are a necessary deterrent for such misconduct. The remedies now recognized, injunctive or declaratory relief, all fall short. Claimants are not charged with any crime as a result of their detention and thus exclusion has no deterrent value. Claimants had no opportunity to obtain injunctive relief before the incidents described and no ground to support an order enjoining future wrongs. For those in claimants’ position ‘it is damages or nothing.’” *Brown*, 89 N.Y.2d at 191-92; 652 N.Y.S.2d at 234-35.

But this passage fails to carry the weight that the State has attempted to ascribe to it. Indeed, this passage supports Appellant’s reading of the *Brown* decision. And this is the case for several reasons.

First, by its terms, the passage upon which the State relied does not expressly limit the availability of constitutional claims to circumstances where no common-law tort or statutory cause of action can be pursued.

Second, such a limitation cannot be fairly implied from the above-quoted passage. The passage, by its terms, addresses three matters. The passage observes that violations of constitutional duties are “far more serious than the private wrongs regulated by the common law.” The quoted language then points out that, given the more serious nature of constitutional claims, it would be paradoxical to recognize and remedy common-law torts and not to recognize and remedy constitutional torts. And then the passage concludes that, if the claimants who were before the Court in the *Brown* case were not permitted to vindicate their constitutional injuries in damages actions brought in the Court of Claims they would have no opportunity to redress the constitutional violations since constitutionally-based suits for injunctive or declaratory relief were unavailable to them. Accordingly, this portion of the *Brown* opinion concluded simply that in order for the claimants before the Court to redress their constitutional injuries “it [was] damages or nothing.” *Brown*, 89 N.Y.2d at 192. In this respect, Mr. Lyles is in the same position as the *Brown* claimants. As with the *Brown* claimants, Mr. Lyles would have no standing to pursue constitutionally-based suit for prospective injunctive or declaratory relief because there is no basis to believe that he would again be subjected to such unconstitutional conduct in the future. For Mr. Lyles, as with the *Brown* claimants, in order to redress his constitutional injuries “it is damages or nothing.” *Id.* at 192.

Moreover, to interpret this passage in the manner urged by the State would require reading the passage entirely out-of-context and ignoring other statements in the *Brown* opinion that recognize that constitutional claims are quite different from common-law torts, that they address different interests and policies and that proof of such claims turns upon different elements. Thus, as noted above, in a passage that appears earlier in the *Brown* opinion the Court observed that constitutional torts and common-law torts “are not co-extensive.” *Brown*, 89

N.Y.2d at 178; 652 N.Y.S.2d at 227. The Court had further observed that Article I § 12 of the State Constitution established “a duty sufficient to support causes of action to secure the liberty interests guaranteed to individuals by the State Constitution independent of any common-law tort rule.” *Brown*, 89 N.Y.2d at 173; 652 N.Y.S.2d at 234 (emphasis supplied). And, perhaps most significantly, the two sentences that immediately precede the passage quoted by the State read as follows:

“Nor should claimants’ right to recover damages be dependent upon the availability of a common-law tort cause of action. Common-law tort rules are heavily influenced by overriding concerns of adjusting losses and allocating risks, matters that have little relevance when constitutional rights are at stake.” *Brown*, 89 N.Y.2d at 191.

It is, therefore, apparent that contrary to the State’s contention that constitutional claims cannot be pursued in the Court of Claims if common-law tort claims might have been available, the *Brown* opinion, fairly read and interpreted, supports the view that the right to recover for constitutional violations should not be dependent upon the availability of common-law tort claims.

Finally, the State’s interpretation of *Brown* is further refuted by the facts in *Brown* itself. *Brown* arose out of an incident in which an elderly woman claimed to have been attacked at knifepoint in a house outside of Oneonta near the State University at Oneonta. The victim claimed that she did not see the face of her assailant but that her observation of the assailant’s hands and of the quickness with which he ran away led her to conclude that she was attacked by a young, black male with a cut on his hand. *Id.* at 176-177. In investigating this crime, State police officers and State University security personnel obtained from the university a list of all of the black male students attending the State University. The State officers along with local police then attempted to interrogate every black male on campus. When that effort failed to yield any suspects, the officers proceeded over a five-day period to stop and interrogate any black male

(and some black females) that they observed on the streets of Oneonta. That detention and interrogation process was similarly unyielding. *Id.* at 177.

The behavior of the officers resulted in a class action in federal court that was filed against the City of Oneonta, the New York State Police, individually named state police officers, the State University Department of Public Safety, individually named public safety officers, the Oneonta Police Department and individually named members of the local police department. In addition to pursuing a federal court action, the students also pursued a claim for damages in the Court of Claims against the State of New York.

In the federal court case, the students pursued claims under the Fourth Amendment and the Equal Protection Clause of the federal Constitution as well as claims under 42 U.S.C. § 1981, 1985 (3) and 1986, under 42 U.S.C. § 2000d (Title VI of the 1964 Civil Rights Act) and various state and common-law claims. Thus, the Second Amended Complaint filed in federal court by the plaintiffs alleged that

“[b]y seeking out, approaching, questioning, seizing and/or searching [plaintiffs] without the requisite articulable suspicion or probable cause, defendants law enforcement officials violated the rights secured to these plaintiffs by New York State Constitution Article I § 12, New York Civil Rights Law § 8 and New York common law.” *Brown v. Oneonta* (U.S. Dist. Ct., N.D.N.Y., 93-CV-0349; TJM/DNH) (R-231)<sup>3</sup>

The *Brown* suit brought in the Court of Claims involved eleven causes of action: Three rested upon a combination of 42 U.S.C. § 1981 and various federal constitutional provisions. One rested upon the State constitutional prohibition against unreasonable searches and seizures in combination with 42 U.S.C. § 1981 and the State Civil Rights Law. One rested on a combination of the State Equal Protection Clause in combination with 42 U.S.C. § 1981 and the

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<sup>3</sup> Similarly, paragraph 334 of the Second Amended Complaint in federal court provided: “By seeking out, approaching, questioning, seizing and/or searching [plaintiffs] without the requisite articulable suspicion, reasonable suspicion or probable cause, defendants law enforcement officials violated the plaintiffs’ rights secured by Article I § 12 of the New York State Constitution, and New York Civil Rights Law § 8 and the common law of the State of New York.” (R-254).

State Civil Rights Law. One rested on 42 U.S.C. § 1985. One rested directly on the prohibition against unreasonable searches and seizures set forth in the State Constitution along with the New York Civil Rights Law § 8. One rested directly on the state constitutional Equal Protection Clause and the New York Civil Rights Law §40-l. One rested directly on the New York Civil Rights Law § 40-c. One -- which was abandoned on appeal -- rested on the Personal Privacy Protection Law set forth in the New York Public Officers Law. The eleventh cause of action was a common-law tort claim described as “Negligent training and/or supervision of officers and investigators.” *Brown*, 89 N.Y.2d at 184 n. 4; 652 N.Y.S.2d at 230 n. 4. This eleventh cause of action survived the Motion to Dismiss and the appeal in *Brown*. *Brown*, 89 N.Y.2d at 197; 652 N.Y.S.2d at 238.

It is thus apparent that the claimants in *Brown* were expressly permitted to pursue constitutional causes of action in the Court of Claims while at the same time they were simultaneously pursuing other claims -- including common-law tort claims -- in federal courts and in the Court of Claims itself. So understood, the facts of *Brown* clearly refute the State’s contention that state constitutional claims can be asserted only if common-law claims are unavailable.

The courts below were, therefore, left to rely principally upon this Court’s decision, *Martinez v. City of Schenectady*, *supra*, as narrowing the earlier decision in *Brown* and as support for their conclusion that state constitutional claims can only be pursued in the Court of Claims when common-law tort claims are unavailable. But, the *Martinez* case is entirely inapposite for several reasons. First, the *Martinez* case was never filed in the Court of Claims and did not involve the jurisdiction of the Court of Claims. *Martinez* involved a damage suit against a municipality and local law enforcement officials filed in State Supreme Court. Second,

although the plaintiff asserted both state constitutional and common-law tort claims in *Martinez*, this Court never discussed the proposition that the constitutional claims could not be pursued because plaintiff could secure adequate relief by asserting her common-law tort claim. And certainly the *Martinez* decision never held that constitutional claims could not be pursued where adequate relief was provided by common-law claims. But, this Court's decision in *Martinez* did discuss whether a damage claim for constitutional violations should be permitted to proceed in light of the precedent set forth in *Brown v. State of New York*, 89 N.Y. 2d 172 (1996). And in considering *Brown*, the Court noted that the *Brown* plaintiffs had no other means to vindicate their constitutional rights because neither declaratory nor injunctive relief with respect to their constitutional claims was available to those plaintiffs. The *Martinez* Court then contrasted the situation in *Brown* with Ms. Martinez' situation and concluded that Ms. Martinez had already vindicated her constitutional rights by the exclusion from her criminal prosecution of unconstitutionally seized evidence and by the consequent dismissal of the criminal prosecution.

Thus, the issue in *Martinez* was whether a constitutional damage claim should be permitted to go forward when the plaintiff's constitutional rights were already vindicated. In this case, in contrast to *Martinez*, Mr. Lyles' constitutional injuries have not been remedied. As noted above, like the claimants in *Brown*, Mr. Lyles had no opportunity to vindicate his constitutional rights in a suit for declaratory or injunctive relief. As in *Brown*, a damage claim is the only means by which to remedy his constitutional injury.

- B. Even if, *arguendo*, the *Brown* decision could be read in support of the proposition that constitutional claims cannot be pursued in the Court of Claims if analogous common-law claims could have been presented, the decision of the court below must be reversed.

As this Court noted in *Brown*, constitutional and common-law torts are “not co-extensive.” *Brown*, 89 N.Y.2d at 178; 652 N.Y.S.2d at 227. For example, the common-law tort that most closely approximates a constitutional claim of “unreasonable seizure” is the common-law tort of “false imprisonment” or “false arrest.” The common-law tort of “false imprisonment” or “false arrest” contains four elements. A plaintiff pursuing such a tort claim must allege and prove that (1) defendant intended to confine the plaintiff; (2) plaintiff did not consent to the confinement; (3) plaintiff was aware that she was confined; and (4) the confinement was undertaken without “a privilege” such as a warrant or probable cause. *Lehman v. Kornblau*, 134 F.Supp.2d 281 (E.D.N.Y. 2001). In this regard, the courts have held that the absence of a “principal” seizure is a necessary element to a cause of action for “false imprisonment” or “false arrest” and a finding of probable cause is a complete defense to the common-law claim of “false arrest” or “false imprisonment.” *Csoka v. County of Suffolk*, 85 F.Supp.2d 117 (E.D.N.Y. 2000).

By contrast, a constitutional claim of “unreasonable search or seizure” can be pursued even in circumstances where the initial detention is lawful and rests upon probable cause. For while many “search and seizure” claims turn upon the existence of probable cause or a warrant, a great many other “search and seizure” cases turn upon the reasonableness or unreasonableness of the police behavior while conducting a search or undertaking a seizure. *Graham v. Connor*, 490 U.S. 386, 393-97 (1989). This is such a case. And, therefore, the differences between Mr. Lyles’ search and seizure causes of action and any common-law claim of “false arrest” or “false imprisonment” are significant. The officers who stopped Claimant’s automobile may have been



privileged to do so under New York law. But, the duration of the detention and the manner in which Mr. Lyles was held give rise to a constitutional claim of an unreasonable seizure.

Consequently, even if, *arguendo*, the State were correct in its assertion that, under *Brown*, constitutional claims can only be pursued in the Court of Claims in circumstances where analogous common-law claims could not be presented, the State's motion to dismiss should have been denied. A common law claim of "false arrest" or "false imprisonment" is not necessarily identical with a constitutional claim of "unreasonable seizure"; and, therefore, under the facts of this case, a constitutional claim can be established even if a claim of "false arrest" or "false imprisonment" might not.

Moreover, when one turns to Mr. Lyles' other constitutional claims the unavailability of analogous common-law claims is even more apparent. Mr. Lyles advances an equal protection claim arising out of the fact that the conduct of the police officers in this case was so inexplicable and so unwarranted as to invite the inference that he was treated in the manner that he was only because he is a black man and that, accordingly, the officers were engaged in "racial profiling" in their treatment of him. Again, no analogous common law tort embraces this claim.

C. Claimant's state constitutional claims are not time-barred.

In the Court of Claims, Defendant initially moved to dismiss Claimant's constitutional causes of action upon the ground that they were time-barred. At the heart of this motion was the assertion that suits to recover damages for personal injuries caused by intentional torts had to be filed within one year of the accrual of such claims and that causes of action resting upon negligence or unintentional torts had to be filed within two years. Defendant argued that, since this suit was filed more than two years after the incidents at issue, it was time-barred. (R-57-59).

In response to this motion, Claimant pointed out that, in this State, constitutional claims are not subject to the same limitation periods that are applied to common-law torts; that the statute of limitations for federal constitutional claims has been held to be three years; that, while in many instances the statute of limitations for state constitutional claims had often been found by New York courts to be six years,<sup>4</sup> in the *Brown* case the Third Department found the statute of limitations to be three years (681 N.Y.S.2d 170 at 173 (3<sup>rd</sup> Dept. 1998)); 250 A.D.2d 314 at 318-319 (3<sup>rd</sup> Dept. 1998)); and that whether the statute of limitations is six years or three years is inconsequential because Appellant's suit was filed within three years of the incidents at issue. The incidents occurred on the morning of March 27, 1999; a notice of intention to file a claim was served on June 22, 1999; this suit was filed on March 19, 2002.

In response to Claimant's argument on the statute of limitations issue, the State appeared to change entirely its argument in support of its motion to dismiss. After Claimant pointed out that the statute of limitations for constitutional claims, in this State, is not measured by the time-limits imposed by statutes applicable to intentional or unintentional torts, Appellee submitted a Reply Affirmation that did not respond to Claimant's arguments with respect to the statute of limitations for constitutional claims in this State but argued, instead, that Claimant's lawsuit should be dismissed upon an alternative ground. Appellee argued that since Claimant could have pursued common-law tort claims against the State but failed to do so he could not rely upon the precedent of *Brown* for authority to pursue constitutional claims in the Court of Claims. Because Appellee had dramatically changed its theory of the case, the parties agreed to an additional round of briefs addressing the State's re-stated motion to dismiss. Accordingly, Claimant was

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<sup>4</sup> *Constantakos v. Board of Education*, 105 A.D. 2d 825, N.Y.S. 2d 27 (2<sup>nd</sup> Dept. 1984); *Harby Associates v. City of Gloversville*, 82 A.D. 2d 1003, 442 N.Y.S. 2d 586 (3<sup>rd</sup> Dept. 1981); *Almor Associates v. Town of Skaneateles*, 231 A.D.2d 863, 647 N.Y.S.2d 316 (4<sup>th</sup> Dept. 1996); *DeLuca v. Kirby*, 441 N.Y.S. 2d 1005 (2<sup>nd</sup> Dept. 1981); *NYPIRG v. Levitt*, 62 A.D. 2d 1074, 404 N.Y.S. 2d 55 (3<sup>rd</sup> Dept. 1978).

permitted to file a Sur-Reply in opposition to the new theory advanced by the State -- a theory that did not involve an argument that Claimant's constitutional claims were time-barred. (R-160). And, under this extended briefing arrangement, the State submitted a document entitled "Defendant's Further Reply Affirmation." That document, again, did not argue that the constitutional claims were time-barred. (R-263).

So understood, the State's statute of limitations argument might be said to have been abandoned. *Cerilli v. Kezis*, 306 A.D.2d 430, 761 N.Y.S. 2d 311 (2<sup>nd</sup> Dept. 2003). ("Although the defendants asserted the applicable statute of limitations defense in their answer, during the course of discovery, they withdrew that defense. Accordingly, the defendants waived the defense of the statute of limitations"). In this case, Defendant's submission in support of its motion to dismiss conveyed the impression that between its initial motion to dismiss and its "Further Reply Affirmation" it had chosen to withdraw its argument that Claimant's constitutional causes of action were time-barred.

But, even if not abandoned, the State's argument in this regard is wrong. Again the *Brown v. State of New York* litigation is dispositive. After concluding, in that case, that claimants should be permitted to pursue state constitutional claims in the Court of Claims, the case was remanded by this Court to the Court of Claims. On remand, the Court of Claims found that the statute of limitations for state constitutional claims is three years and this conclusion was affirmed by the Appellate Division, Third Department. *Brown v. State of New York*, 250 A.D. 2d 314, 681 N.Y.S. 2d 170 (3<sup>rd</sup> Dept. 1998).

So understood, the limitation periods applicable to common-law torts do not fit and have been found by the New York courts, specifically, not to apply to state constitutional claims.<sup>5</sup>

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<sup>5</sup> As noted above at fn. 4, many New York courts have held that the statute of limitations for state constitutional claims is governed by CPLR § 213(1) ("action[s] for which no limitation is specifically prescribed by law") and that

Accordingly, the Third Department, in *Brown*, looked to the reasoning of the United States Supreme Court and of the federal courts in recognizing a three-year statute of limitations for the pursuit of federal constitutional claims and concluded that “the same Statute of Limitations is appropriate for a constitutional tort under our State Constitution.” *Brown*, 250 A.D. 2d at 318; 681 N.Y.S. 2d at 173. Thus, the Third Department held that “CPLR 214 (5) is New York’s limitation period governing general personal injury actions, and, therefore, a three-year Statute of Limitations applies to a State constitutional tort claim.” *Brown*, 250 A.D. 2d at 319; 681 N.Y.S. 2d at 173.

Moreover, even if, for some reason, the Third Department decision is found to provide insufficient authority for the imposition of a three-year statute of limitations in this case, there remains considerable additional authority in support of the view that state constitutional damage claims are subject to a six year statute of limitations. *See* note 4 and 5, *supra*.

Finally, if this Court were to craft a new statute of limitations for constitutional claims in the Court of Claims it should only do so prospectively. In *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), the Supreme Court addressed the issue of the retroactive application of a new statute of limitations that was judicially-fashioned for the first time. This opinion is instructive. The Court, in *Chevron Oil*, refused to apply retroactively a new precedent which established that state personal injury statutes of limitations should be applied to tort actions occurring on oil rigs in navigable waters. In reaching this conclusion, the Court identified three factors that should generally be considered in addressing the issue of retroactivity or nonretroactivity:

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the limitation period is consequently six years -- except in circumstances, not applicable here, where a constitutional claim can be pursued under CPLR Article 78. *Constantakos v. Board of Education*, 105 A.D. 2d 825, 482 N.Y.S. 2d 27 (2<sup>nd</sup> Dept. 1984); *Harby Associates v. City of Gloversville*, 82 A.D. 2d 1003, 442 N.Y.S. 2d 586, 587 (3<sup>rd</sup> Dept. 1981); *Almor Associates v. Town of Skaneateles*, 231 A.D. 2d 863, 647 N.Y.S. 2d 316, 317 (4<sup>th</sup> Dept. 1996); *DeLuca v. Kirby*, 441 N.Y.S. 2d 1005, 1006 (2<sup>nd</sup> Dept. 1981); *NYPIRG v. Levitt*, 62 A.D. 2d 1074, 1075, 404 N.Y.S. 2d 55 (3<sup>rd</sup> Dept. 1978).

“First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling a clear past precedent on which litigants may have relied, *see, e.g., Hanover Shoe v. United Shoe Machinery Corp., supra*, or by deciding an issue of first impression whose resolution was not clearly foreshadowed, *see, e.g., Allen v. State Board of Elections, supra*, at 572. Second, it has been stressed that ‘we must ... weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.’ *Linkletter v. Walker, supra*, at 629. Finally, we have weighed the inequity imposed by retroactive application, for ‘[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the “injustice or hardship” by a holding of nonretroactivity. *Cipriano v. City of Houma, supra*, at 706.’ *Chevron Oil Company*, 404 U.S. at 106-107.

In this case, for the reasons discussed above, a decision that would impose a statute of limitations of less than three years for constitutional claims when such claims are pursued in the Court of Claims would constitute a new rule -- one of “first impression” after *Brown*. Second, applying a new rule prospectively and not retroactively will not retard, in any significant way, the operation of the new rule. Indeed, the application of the new rule on a prospective basis only would provide the State Legislature with the opportunity to consider whether this judicially-crafted limitation period is or is not appropriate. Finally, the retroactive application of a new and shorter statute of limitations would work a grave injustice on Claimant and others similarly situated who reasonably relied on prior judicial precedent holding that six years is the general statute of limitations for state constitutional claims or that, based upon the Third Department decision in *Brown*, a three year statute of limitations would apply to state constitutional claims in the Court of Claims.

Statutes of limitations always involve a balance of interests. They seek to balance the interest in providing a fair opportunity to vindicate legal rights against countervailing interests in repose and finality. After significant consideration of that balance the federal courts in this state have concluded that the appropriate statute of limitations for federal constitutional claims is three years and the Third Department has agreed with that analysis in arriving at a three year statute of

limitations for state constitutional claims in the Court of Claims. In both instances, legislative bodies (either the State Legislature or Congress) have had opportunities to alter that balance and have chosen not to do so. These precedents create expectations. And any retroactive application of a new and shorter limitation would work an injustice.

II. APPELLANT LYLES IS NOT FORECLOSED FROM PURSUING CAUSES OF ACTION IN THE COURT OF CLAIMS DIRECTLY UNDER THE FOURTH AMENDMENT TO THE FEDERAL CONSTITUTION.

- A. A private right of action is directly available under the Fourth Amendment; the reasoning of this Court in *Brown* does not preclude and, indeed, supports the pursuit of such a cause of action in the Court of Claims.

In *Brown, supra*, this Court held that constitutional claims could be pursued against the State in the Court of Claims. The Court went on to consider the constitutional claims that were presented by the claimants in that case. As noted above, eleven claims were originally presented in that case. *Brown*, 89 N.Y.2d at 184, 652 N.Y.S.2d at 230. The first, second and fourth causes of action involved allegations of “racially motivated violation[s]” of federal constitutional provisions that were made actionable as private rights of action under 42 U.S.C. § 1981. The third and fifth causes of action also depended upon 42 U.S.C. § 1981 to pursue asserted violations of the State Constitution and state law. The sixth and tenth causes of action were apparently discontinued by the claimants before the case reached by this Court. Claimants also apparently abandoned the ninth causes of action, resting upon Section 40-c the Civil Rights Law, because damages were unavailable under that provision. The seventh and eighth causes of action involved alleged violations of the State Constitution that were brought directly under the State Constitution on the theory that state constitutional rights were self-executing and required no enabling legislation to create a private right of action with respect to such claims. *Id.* And the eleventh cause of action involved a common law tort claim of “negligent training or supervision of officers.”

In *Brown*, this Court dismissed those constitutional claims that were dependent on 42 U.S.C. § 1981 for their execution. It did so properly upon the ground that, in *Jett v. Dallas Independent School District*, 491 U.S. 701 (1989), the Supreme Court had previously held that “[t]he State is not a ‘person’ within the [meaning of Section 1981] and it cannot be liable in an action based upon section 1981.” *Brown*, 89 N.Y.2d at 185; 652 N.Y.S.2d at 231.

But, the *Brown* decision further concluded that, in contrast to many federal constitutional claims, state constitutional claims are self-executing and are not dependent upon enabling statutes such as 42 U.S.C. § 1981 and 42 U.S.C. § 1983 to create a private right of action. Accordingly, this Court concluded that “a cause of action to recover damages may be asserted [directly] against the State for violation of the Equal Protection and Search and Seizure clauses of the State Constitution.” *Brown*, 89 N.Y.2d at 188; 652 N.Y.S.2d at 232-233.

In the courts below, the State contended that, in *Brown*, the Court of Appeals concluded that federal constitutional claims cannot be pursued in the Court of Claims. But, such a contention rested upon a further misreading of this Court’s decision in *Brown*. For this Court never held that federal constitutional claims could not be pursued in the Court of Claims. Rather, it held -- as discussed above -- that 42 U.S.C. § 1981 could not be applied to the State and that all claims that were dependent upon or “based on 42 U.S.C. § 1981, were properly dismissed.” *Brown*, 89 N.Y.2d at 186; 652, N.Y.S.2d at 231.

Counsel for the claimants in *Brown* asserted all of the federal constitutional claims under 42 U.S.C. § 1981. These claims were, therefore, dismissed. The two state constitutional claims were permitted to survive precisely because they were not dependent upon 42 U.S.C. § 1981. Consequently, the lesson to be drawn from *Brown* is that constitutional provisions that are self-



executing and are not dependent for their viability on 42 U.S.C. § 1981 can be pursued in the Court of Claims.

Claims under the Fourth Amendment to the federal constitution are self-executing. In *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), the Supreme Court held that the Fourth Amendment prohibition against unreasonable searches and seizures confers, by its terms, a private right of action and that a cause of action for a violation of the Fourth Amendment can be pursued directly under the Constitution and is not dependent upon enabling legislation enacted by Congress. Accordingly, under the reasoning of the Supreme Court in *Bivens* and under the reasoning of this Court in *Brown*, Mr. Lyles can pursue causes of action under the Fourth Amendment to the federal Constitution in the Court of Claims.

In this case, the Court of Claims seemed to recognize that the reasoning employed by this Court in *Brown* would not foreclose federal constitutional claims -- such as those recognized in *Bivens* -- that are self-executing and can be pursued directly under the Fourth Amendment. Nevertheless, the Court of Claims dismissed Mr. Lyles' *Bivens* claims. It did so upon two grounds both of which are erroneous.

First, the Court of Claims concluded that federal constitutional claims under *Bivens* can only be invoked to challenge the conduct of federal officers or officials acting under color of federal law. However, such a conclusion ignores the reasoning of the Supreme Court in *Bivens*. The *Bivens* case arose only because 42 U.S.C. § 1983 provides statutory authority for constitutional claims against "persons acting under color of state law" but there was no analogous federal statute that authorized suits to redress constitutional violations brought about by "persons" acting under color of federal law. Consequently, with no federal statute authorizing a private right of action under the Fourth Amendment, the *Bivens* plaintiffs would have been

unable to assert a claim against federal officers unless the Fourth Amendment were found to be self-executing and not dependent upon a separate statute to create a private right of action. And in *Bivens*, the Supreme Court held that the Fourth Amendment was self-executing. Thus, the reasoning of the Court in *Bivens* did not turn upon the theory that the Fourth Amendment could apply only against federal officers because clearly that is not the case. See, e.g., *Mapp v. Ohio*, 367 U.S. 643 (1961). Rather, the decision rested upon the concept that the Fourth Amendment was self-executing and that it permitted individuals to sue directly under its provisions “to recover money damages for any injuries ... suffered as a result of the ... violation of the Amendment.” *Bivens*, 403 U.S. at 397. So understood, where, as here, Mr. Lyles seeks to pursue a damage claim directly under the Fourth Amendment, nothing in this Court’s decision in *Brown* forecloses such a claim. Indeed, such a claim is consistent with the reasoning of the Court of Appeals decision in *Brown* and with the Supreme Court decision in *Bivens*.

The second reason offered by the Court of Claims below for dismissing Mr. Lyles’ federal claims is similarly erroneous. The Court of Claims below concluded that to permit Claimant to pursue a cause of action directly under the Fourth Amendment “would raise serious Eleventh Amendment policy concerns.” (R-29). But the Eleventh Amendment has nothing to do with this case. The Eleventh Amendment applies only to suits in federal court. By its terms, the Eleventh Amendment provides: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” The Eleventh Amendment simply has no application in the state courts. And it was error for the Court of Claims below to rely upon the Eleventh Amendment in dismissing Mr. Lyles’ Fourth Amendment claim. The Appellate Division compounded these errors by simply affirming the

Court of Claims decision with respect to this issue without any discussion whatever except for the conclusory assertion that “the Court of Claims properly dismissed the Federal constitutional claims on the ground that it lacked subject matter jurisdiction.” (R-6).

B. Claimant’s Fourth Amendment causes of action are not time-barred.

Claimant’s federal constitutional claim is not barred by the statute of limitations which, in this State, is three years. In *Owens v. Okure*, 488 U.S. 235 (1989), the Supreme Court expressly addressed the issue of the statute of limitations for federal constitutional claims brought under 42 U.S.C. § 1983. The Supreme Court’s need to address this issue arose because, for a number of years prior to *Owens*, the lower courts had been unable to resolve the question of the appropriate statute of limitations for the pursuit of federal claims brought under 42 U.S.C. § 1983. Section 1983 had long served as the enabling statute that conferred a private right of action upon individuals allowing such individuals to pursue federal constitutional claims in state or federal courts.<sup>6</sup> But, when Congress enacted Section 1983 it failed to provide a specific statute of limitations to govern constitutional claims brought pursuant to that provision. To fill the void, the Supreme Court directed lower courts to select and apply the state statute of limitations that was “most analogous” to the constitutional claim that was being asserted. *Board of Regents v. Tomanio*, 446 U.S. 478, 488 (1980).

Unfortunately, the directive of the *Tomanio* Court failed to resolve the matter. Indeed, the *Tomanio* decision became the source of greater “confusion and inconsistency in the lower courts ... [as] [s]ome courts found analogies in common-law tort, others in contract law, and still others in statutory law.” *Owens*, 488 U.S. at 240. In attempting to apply the *Tomanio* ruling,

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<sup>6</sup> 42 U.S.C. § 1983 was necessary to create a private right of action for constitutional violations because most, but not all, provisions of the federal constitution were thought not to be self-executing.

limitation periods would vary from case to case depending upon the constitutional claim that was being asserted in each case.

Accordingly, the Supreme Court again addressed the issue in *Wilson v. Garcia*, 471 U.S. 261 (1985) in an effort to end the “conflict, confusion and uncertainty” created by this case-by-case approach. *Wilson*, 471 U.S. at 286. In *Wilson*, the Court concluded that, in deciding upon the statute of limitations for constitutional claims brought under Section 1983, lower courts should employ “the one most appropriate [state] statute of limitations . . .” *Wilson*, 471 U.S. at 275 (emphasis supplied). It further held that because Section 1983 “confer[s] a general remedy for injuries to personal rights” a state’s personal injury statute of limitations should be applied to constitutional claims brought under Section 1983. *Wilson*, 471 U.S. at 278-279.

But, *Wilson* resolved the confusion only in those states where one statute of limitations applied to all personal injury claims. *Wilson* did not resolve matters in states such as New York with more than one statute of limitations for personal injury actions. Consequently, in *Owens*, the Supreme Court was required to revisit the issue in a case involving allegations of police abuse and unconstitutional conduct by New York State university police officers. At issue in *Owens* was which statute, among the range of New York State’s statutes of limitations, was most appropriate for federal constitutional claims.

Prior to the Supreme Court’s decision in *Wilson*, there might have been a broad array of limitation periods that could have been considered. One possible consideration could have involved New York’s one-year statute of limitations applicable to intentional torts as set forth in CPLR § 215 (3). A second possibility could have been New York’s residual personal injury statute of limitations of three years set forth in CPLR § 214 (5). A third possibility could have been New York’s six year omnibus statute of limitations set forth CPLR § 213 (1) and applicable

to “an action for which no limitation is specifically prescribed by law.” Indeed, as noted above at footnotes 4 and 5, for years the courts of this State had applied this six year statute of limitations to state constitutional claims -- at least, in circumstances where the claims could not be pursued under Article 78 of the CPLR. Finally, a fourth choice might have been the six year statute of limitations resting upon CPLR § 214 (2) and applicable to “an action to recover upon liability ... created or imposed by statute.” The Second Circuit had previously adopted this statutory provision as applicable to Section 1983 actions in *Pauk v. Board of Trustees*, 654 F.2d 856, 866 (2<sup>nd</sup> Cir. 1981).

But, because the Supreme Court in *Wilson* had previously indicated that, in applying Section 1983 as a matter of federal law, courts should look to the states’ “personal injury” statutes of limitations, the *Owens* Court gave serious consideration only to two potential statutes: New York’s one-year statute of limitations as set forth in CPLR § 215 (3) and applicable to intentional torts; and New York’s residual personal injury statute of limitations of three years set forth in CPLR § 214 (5).

In *Owens*, the Court rejected the contention that constitutional claims were analogous to intentional torts. In this regard, the Court observed that “[e]ven where intent is an element of a constitutional claim or defense, the necessary intent is often different from the intent requirement of a related common-law tort.” *Owens*, 488 U.S. at 249. In essence, the *Owens* Court concluded that constitutional claims brought under Section 1983 embrace such a distinct variety of doctrinal principles and elements that New York’s one year intentional tort statute was inappropriate and that, instead, New York’s residual personal injury statute of limitations of three years should be applied.

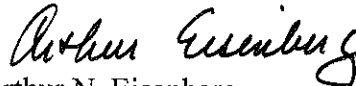
*Owens* addressed the narrow question of the statute of limitations for federal constitutional claims that were brought under 42 U.S.C. § 1983. But, subsequent to *Owens*, the Second Circuit has held that the three-year limitation period set out in CPLR § 214 (3) should also apply to constitutional claims that are brought directly under the federal constitution -- claims known as *Bivens* actions -- and that do not require Section 1983 as an enabling statute. *See Chin v. Brown*, 833 F.2d 21 (2d Cir. 1987). That is the federal constitutional claim that Mr. Lyles is seeking to pursue in this case. Accordingly, the statute of limitations for that claim is three years. And Appellant Lyles has satisfied that limitation period in this case.

CONCLUSION

For the foregoing reasons, the decision and order of the court below should be reversed.

Dated: New York, New York  
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Respectfully submitted,



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