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United States v. Lanier (95-1717), 520 U.S. 259 (1997).

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SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES v. LANIER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 95-1717. Argued January 7, 1997 -- Decided March 31, 1997

Respondent Lanier was convicted under 18 U.S.C. § 242 of criminally violating the constitutional rights of five women by assaulting them sexually while he served as a state judge. The jury had been instructed, *inter alia*, that the Government had to prove as an element of the offense that Lanier had deprived the victims of their Fourteenth Amendment due process right to liberty, which included the right to be free from sexually motivated physical assaults and coerced sexual battery. The en banc Sixth Circuit set aside the convictions for lack of any notice to the public that §242 covers simple or sexual assault crimes. Invoking general interpretive canons and *Screws v. United States*, 325 U.S. 91 (plurality opinion), the court held that §242 criminal liability may be imposed only if the constitutional right said to have been violated is first identified in a decision of this Court, and only when the right has been held to apply in a factual situation "fundamentally similar" to the one at bar. The court regarded these combined requirements as substantially higher than the "clearly established" standard used to judge qualified immunity in civil cases under 42 U.S.C. § 1983.

Held: The Sixth Circuit employed the wrong standard for determining whether particular conduct falls within the range of criminal liability under §242. Section 242's general language prohibiting "the deprivation of any rights . . . secured . . . by the Constitution" does not describe the specific conduct it forbids, but--like its companion conspiracy statute, 18 U.S.C. § 241--incorporates constitutional law by reference. Before criminal liability may be imposed for violation of any penal law, due process requires "fair warning . . . of what the law intends." *McBoyle v. United States*, 283 U.S. 25, 27. The touchstone is whether the statute, either standing alone or as construed by the courts, made it reasonably clear at the time of the charged conduct that the conduct was criminal. Section 242 was construed in light of this

due process requirement in *Screws, supra*. The Sixth Circuit erred in adding as a gloss to this standard the requirement that a prior decision of this Court have declared the constitutional right at issue in a factual situation "fundamentally similar" to the one at bar. The *Screws* plurality referred in general terms to rights made specific by "decisions interpreting" the Constitution, see 325 U. S., at 104; no subsequent case has confined the universe of relevant decisions to the Court's opinions; and the Court has specifically referred to Court of Appeals decisions in defining the established scope of a constitutional right under §241, see *Anderson v. United States*, 417 U.S. 211, 223-227, and in enquiring whether a right was "clearly established" when applying the qualified immunity rule under §1983 and *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, see, e.g., *Mitchell v. Forsyth*, 472 U.S. 511, 533. Nor has this Court demanded precedents applying the right at issue to a "fundamentally similar" factual situation at the level of specificity meant by the Sixth Circuit. Rather, the Court has upheld convictions under §241 or §242 despite notable factual distinctions between prior cases and the later case, so long as the prior decisions gave reasonable warning that the conduct at issue violated constitutional rights. See, e.g., *United States v. Guest*, 383 U.S. 745, 759, n. 17. The Sixth Circuit's view that due process under §242 demands more than the "clearly established" qualified immunity test under §1983 or *Bivens* is error. In effect that test is simply the adaptation of the fair warning standard to give officials (and, ultimately, governments) the same protection from civil liability and its consequences that individuals have traditionally possessed in the face of vague criminal statutes. As with official conduct under §1983 or *Bivens*, liability may be imposed under §242 if, but only if, in the light of pre-existing law the unlawfulness of the defendant's conduct is apparent. Pp. 4-13.

73 F. 3d 1380, vacated and remanded.

Souter, J., delivered the opinion for a unanimous Court.