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The following information has been submitted:

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Issue: *DEF*

Message Subject: *help, being tortured by US forces on American soil, surveillance violating kyllo v united states*

Message Text:

*Kyllo v United States bans through wall radar use on Americans as a 4th amendment violation for surveillance and human targeting/tracking, they're doing it to me anyway. Hi, I have faced murder attempts. the FBI is involved in covering this up. I was targeted by NSA, through the wall penetrating world scale scalar wave radar system for surveillance and also weapon to attack people with radiation. part of one of my attorney's briefs in court attached below, full PDF here:*

*[http://www.oregonstatehospital.net/d/legal541/protected/A157118\\_Appeal\\_Brief.pdf](http://www.oregonstatehospital.net/d/legal541/protected/A157118_Appeal_Brief.pdf) I have brain damage from having radiation/scalar waves penetrating my home, going into my body, brain, and torturing me. psych evals and more info on the weapons system: [www.oregonstatehospital.net](http://www.oregonstatehospital.net) & [www.drrobertduncan.com](http://www.drrobertduncan.com) I'm hooked up with DOD/CIA whistleblower on the matter, he confirmed a decade ago to US Senate Intelligence Committee and Judicial Committee that this was going on. Here's his report on the symptoms with info further about the surveillance/weapons system:*

*<http://www.drrobertduncan.com/dr-robert-duncans-neuropsychological-and-electronic-no-touch-torture-report.html> Please help before they finish murdering me entirely. "ORS 34.310 describes the purpose of the writ of habeas corpus and provides, in part, "Every person imprisoned or otherwise restrained of liberty \* \* \* may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom." (Emphasis added.) The issue in this case is whether plaintiff pleaded facts to support a claim that he is "otherwise restrained of liberty" for purposes of ORS 34.310. To interpret a statute, this court looks to the text and context of the statute, including any helpful legislative history offered by the parties. State v. Gaines, 346 Or 160, 171-72, 206 P3d 1042 (2009); PGE v. Bureau of Labor and Industries, 317 Or 606, 610-12, 859 P2d 1143 (1993). The plain text of the statute indicates that habeas corpus can address restraints of liberty outside the context of an ongoing criminal case. "Otherwise" can be defined as follows: "1 : in a different way or manner :*

*DIFFERENTLY \* \* \* 2 : in different circumstances : under other conditions \* \* \* 3 : in other respects \* \* \**

*Webster's Third New Int'l Dictionary 1598 (unabridged ed 2002). When read in context of the habeas corpus statute, ORS 34.310 applies to a person who is "imprisoned" or in a different way "restrained or liberty," and allows that person "to inquire into the cause of such imprisonment or restraint." Plaintiff's plain-text reading is consistent with how the Oregon Supreme Court has interpreted the statute: "That being 'restrained of his liberty' is not limited to being 'imprisoned' appears on the face of the statute.*

*Doubtless the term would include any physical restraint, for instance an allegation that one is illegally kept chained, or in a straitjacket, or blindfolded, though not confined in any closed space. One can be no less restrained by means of the deliberate threat or use of violence to one's person. Upon such an allegation, the issue is not whether the person on whose behalf the petition is filed is 'restrained of his liberty' but whether the restraint is illegal." Penrod v. Cupp, 283 Or 21, 24, 581 P2d 934 (1978). Similarly, the Supreme Court has interpreted the phrase to apply to restraint outside the context of an active criminal case where charges are pending: "The logical inference from the statute is that the kind of restraint to which reference is made is a physical restraint within the state of Oregon and within some county or judicial district of the state. A person may be subject to physical restraint when under arrest by a police officer or by any other person, without being in prison, but such restraint differs in kind from that imposed by rule upon a parolee." White v. Gladden, 209 Or 53, 60, 303 P2d 226 (1956). Therefore, the plain text of the statute supports plaintiff's argument that habeas corpus applies to restraints of liberty other than mere confinement pursuant to an ongoing criminal case. Plaintiff's reading is also consistent with case law that has held that habeas corpus is available to challenge imprisonment as well as "collateral consequences" from a conviction. For instance, in Baty v. Slater, 164 Or App 779, 782, 995 P2d 1176 (2000), this court rejected the state's argument that*

“habeas corpus relief is not available to an offender who has been released from custody,” instead concluding that “a habeas corpus petition is not moot if there are collateral consequences to resolution of the dispute that may result in plaintiff obtaining relief from a restraint of liberty.” Oregon courts have held that a restraint of “liberty” for purposes of ORS 34.310 is a state action that violates a person’s constitutional rights. See *Dunn v. Hill*, 211 Or App 590, 603, 156 P3d 72 (2007) (“We conclude that plaintiff has adequately pleaded facts that, if true, would constitute the deprivation of a constitutional right requiring immediate judicial scrutiny.”). For instance, Oregon courts have recognized habeas corpus claims that are framed in terms of an allegation that the state is violating the constitutional right to be free from cruel and unusual punishment. *Billings v. Gates*, 323 Or 167, 180-181, 916 P2d 291 (1996) (“To state a cognizable claim for habeas corpus relief under Article I, section 16, a prisoner must allege that the prisoner has a serious medical need that has not been treated in a timely and proper manner and that prison officials have been deliberately indifferent to the prisoner’s serious medical needs.”). This court found that habeas corpus was the proper way to address an alleged violation of the Article I, section 13, proscription against treating an arrested person “with unnecessary rigor.” *Schafer v. Maass*, 122 Or App 518, 523, 858 P2d 474 (1993) (“In summary, the allegation that petitioner is being subjected to ‘ongoing and periodical assaults’ is an allegation that he is being deprived of the constitutional right to be free from unnecessary physical abuse.”). Habeas corpus also is the proper vehicle to address alleged violations of due process rights. *Bekins v. Cupp*, 274 Or 115, 117, 545 P2d 861 (1976) (holding that habeas petition was the proper procedure to challenge the placement of a prisoner in segregation, alleged to be a violation of due process rights); *Dunn*, 211 Or App at 598-605 (addressing the issue of whether the plaintiff had sufficiently alleged a deprivation of his due process right to “access to the courts”). Under plaintiff’s reading of ORS 34.310, the question in this case is whether he sufficiently alleged that he was “restrained of liberty” by the state, meaning the state is violating his constitutional rights in a way that limits, or “restrains,” his freedom. “[P]etitions should be construed liberally and not voided for mere technical defects.” *Bedell v. Schiedler*, 307 Or 562, 566, 770 P2d 909 (1989). As an example of how liberally allegations should be read, this court engaged in the following analysis in *Fox v. Zenon*: “Taking as true his allegation that he has made several suicide attempts, we infer that he cannot control his suicidal impulses and that, at any time, he is likely to try again. Again taking his allegation as true that he has requested to see a psychiatrist on 15 to 20 occasions but that defendant has not provided him with any psychiatric or any psychological diagnosis or treatment, we infer from his allegations that defendant will continue to deny his requests to see a psychiatrist or be diagnosed or treated.” 106 Or App 37, 40-41, 806 P2d 166 (1991). In *Fox*, the court read the allegations liberally by taking statements of past actions to be read as alleging that the actions will recur in the future. When read liberally, plaintiff’s petition indicates that the dismissal of the underlying criminal case has not rendered his case moot. Plaintiff alleged that he is “experiencing numerous civil rights violations.” ER-1. Plaintiff has experienced “abuses by the state, retaliations, and covert harassment and surveillance” by state actors. ER-1. Specifically, law enforcement officers have used “directed energy weapons and military technology” to cause plaintiff “serious fatal physical/brain injury” and “chronic traumatic encephalopathy.” ER-1. Under the reading standard applied in *Fox*, plaintiff is alleging that the state actors who have been causing him unwarranted physical harm will continue to do so. That physical harm would constitute a restraint on plaintiff’s liberty cognizable under ORS 34.310. Plaintiff also alleged that his liberty was being restrained by violations of his Fourth, Eighth, and Fourteenth Amendment rights. ER-1. “[U]ndercover agents who work with the state to coordinate these abuses” against plaintiff “stalk[] and follow[]” plaintiff and employ “a number of illegal surveillance tactics on [plaintiff].” ER-1. Read liberally, plaintiff alleges that the state actors will continue to engage in “warrantless surveillance and illegal searches/seizures,” violating plaintiff’s Fourth Amendment rights. ER-1. Further, plaintiff alleges that “[t]he abuse [he] has experienced,” which would include the physical

*injury caused by the state's "directed energy weapons and military technology," "constitutes cruel and unusual punishment under the Eighth amendment, and it also violates my Fourteenth amendment rights to due process, including violating the liberty interest of this right." ER-1. Plaintiff has sufficiently alleged that he is unlawfully restrained of liberty. He has alleged that he is subjected to cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments, based on the deliberate use of weapons against him, causing him physical harm. Plaintiff has alleged that his liberty against unlawful searches and seizures, in violation of the Fourth and Fourteenth Amendments, has been infringed by warrantless surveillance by state actors who are stalking and following him. Therefore, plaintiff's case is not moot because his petition contains cognizable claims that have not been resolved by the dismissal of criminal charges against him. Cf. Anderson v. Britton, 212 Or 1, 5, 318 P2d 291 (1957) ("[T]he function of habeas corpus cannot be defeated by a transfer of custody after a ruling in the trial court and pending appeal to this court. To hold otherwise would permit the jurisdiction of the court to be thwarted after it has once attached."). The trial court erred in dismissing plaintiff's petition for a writ of habeas corpus. This court should reverse the decision of the habeas trial court and remand for further proceedings. See Bedell, 307 Or at 570 (after holding that the trial court erred in granting the state's motion to dismiss a petition for a writ of habeas corpus, affording such a remedy). // // // CONCLUSION Plaintiff asks this court to reverse the judgment of the circuit court and to remand to the circuit court for further proceedings. DATED December 2, 2014. Respectfully Submitted, /s/ Jed Peterson Jed Peterson OSB No. 084425 O'Connor Weber LLP 522 SW Fifth Avenue, Suite 1125 Portland, OR 97204 (503) 226-0923 jed@oconnorweber.com Attorney for Petitioner-Appellant Todd Giffen"*

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