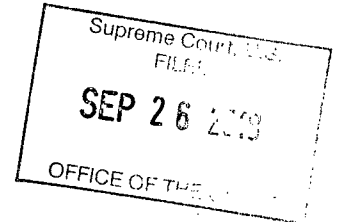


18-6602

No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

DARNELL NOLLEY — PETITIONER
(Your Name)

vs.

GREGORY McHAUGHLIN ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court Of Appeals For The Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARNELL NOLLEY GDC No. 1000775247
(Your Name)

Valdosta State Prison, P.O. Box 310
(Address)

Valdosta, GA. 31403-0310
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.

Whether the ~~condition~~ confinement conditions characterizing assignment to the Georgia Department of Corrections' (GDC) Tier II Administrative Segregation Program (Tier II Program) impose atypical and significant hardship when compared to the ordinary incidents of prison life.

2.

Whether a prisoner's assignment to the Tier II Program constitutes a change in his conditions of confinement so severe that it essentially exceeds the sentence imposed by the court.

3.

Whether assignment to the Tier II Program constitutes punishment beyond the original, ordinary incarceration of prisoners in the Georgia prison system.

4.

Whether prisoners have a protected liberty interest in avoiding assignment to the Tier II Program.

5.

Whether, to the extent the Tier II Program is operated statewide at all maximum security level prisons in a uniform manner pursuant to a ~~single~~ single formal GDC policy, a prisoner's assignment to the Tier II Program unit at one prison is related to his continued, uninterrupted assignment to the Tier II Program unit of another prison upon transfer.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The Petitioner is Darnell Nolley, a prisoner at Valdosta State Prison, in Valdosta, in Valdosta, Georgia. The Respondents are Gregory McLaughlin, the Warden at Macon State Prison (Macon); Trevon Z. Bobbitt, the ~~TIER II Admin~~ Unit Manager of the ~~TIER II Program~~ Administrative Segregation Program (TIER II Program) housing unit at Macon; Samuel Ridley, a Corrections Lieutenant and Officer in Charge of the TIER II Program housing unit at Macon; Stephen Bostick, a Corrections Counselor and Assigned Counselor to prisoners assigned to the TIER II Program at Macon; and Dorian Gites, a Corrections Counselor at Macon.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 11, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JUNE 28, 2018, and a copy of the order denying rehearing appears at Appendix E.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation the provisions of this article.

The Amendment is enforced by Title 42, Section 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law; suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

PETITIONER'S VERIFIED COMPLAINT ALLEGED THAT HE WAS ARBITRARILY ASSIGNED TO THE GEORGIA DEPARTMENT OF CORRECTIONS' (GDC) TIER II ADMINISTRATIVE SEGREGATION PROGRAM (TIER II PROGRAM) WITHOUT A POLICY-MANDATED HEARING AND DEPRIVED OF THE OPPORTUNITY TO APPEAL HIS SEGREGATION ASSIGNMENT. IT FURTHER ALLEGED THAT THE CONFINEMENT CONDITIONS CHARACTERIZING A PRISONER'S ASSIGNMENT TO THE TIER II PROGRAM INCLUDES SUBJECTION OF THE PRISONER TO COMPULSORY BEHAVIOR MODIFICATION PROGRAMS; MANDATED SOLITARY CONFINEMENT GENERALLY FOR 24 HOURS A DAY; THE UTILIZATION OF ISOLATION CELLS (AKIN TO SENSORY DEPRIVATION TANKS) INTENTIONALLY STRIPPED OF THEIR FURNISHINGS (INCLUDING EVEN THE WALL-MOUNTED MIRRORS SO THAT THE PRISONER IS DEPRIVED OF THE SIGHT OF HIS OWN REFLECTION); THE DEPRIVATION OF VIRTUALLY ALL HUMAN CONTACT AND ENVIRONMENTAL OR SENSORY STIMULI DUE TO NOT ONLY THE PRISONER'S SOLITARY CONFINEMENT BUT ALSO DUE TO THE METAL STRIPS WELDED TO THE WINDOW ON THE DOORS OF CELLS IN THE TIER II PROGRAM HOUSING UNITS AND METAL COVERINGS OVER THE WINDOWS LOCATED AT THE BACK OF THOSE CELLS WHICH ARE INTENDED TO PREVENT TIER II PROGRAM SITUATED SITUATED PRISONERS FROM BEING ABLE TO SEE OUTSIDE THEIR CELL, THE LIMITATIONS ON PHONE CALLS AND VISITATION, THE DENIAL OF ACCESS TO GROUP RELIGIOUS WORSHIP SERVICES, THE GENERAL AND LAW LIBRARIES, EDUCATIONAL AND VOCATIONAL PROGRAMS, TELEVISIONS, AND THE COMPLETE BAN ON POSSESSING ANY MAGAZINES, NEWSPAPERS, PERIODICALS, BOOKS, PERSONAL PHOTOS, RELIGIOUS LITERATURE, AND EDUCATIONAL AND LEGAL MATERIALS. THE COMPLAINT ALLEGED THAT THESE CONDITIONS STARKLY CONTRAST WITH THOSE EXPERIENCED BY PRISONERS IN EITHER THE GENERAL PRISON POPULATION, DISCIPLINARY SEGREGATION, OR HIGH MAX. IT ALLEGED THAT THE TIER II PROGRAM IS A PUNITIVE ISOLATION PROGRAM UNDER THE GUISE OF ADMINISTRATIVE SEGREGATION AND IS THE MOST RESTRICTIVE AND PUNITIVE FORM OF HOUSING USED BY THE GDC. FINALLY, THE COMPLAINT ALLEGED THAT ASSIGNMENT TO THE TIER II PROGRAM IS INDEFINITE APPARENTLY INDEFINITE.

PETITIONER was transferred twice between the filing of his complaint and the filing of his notice of appeal from the final judgment of the district court, first from Macon State Prison (Macon) to Valdosta State Prison (Valdosta), and then to Ware State Prison (Ware) and immediately placed in the Tier II Program housing unit of both Valdosta and Ware upon arrival. PETITIONER'S continued, uninterrupted assignment to the Tier II Program -- following his transfer from Macon -- at Valdosta and Ware was predicated on a label initially affixed to PETITIONER at Macon noting him as a "threat to the ~~operation~~ safe and secure operation" of Hay's State Prison (Hay's). PETITIONER attempted to supplement his complaint with additional allegations concerning his continued assignment to the Tier II Program, but the district court denied leave to supplement on the grounds that: (1) PETITIONER'S continued confinement in the Tier II Program upon his arrival at other prisons was "wholly unrelated" to his assignment to the Tier II Program at Macon; (2) the Middle District of Georgia "is not the proper forum" for PETITIONER'S allegations against prison authorities in the Southern District of Georgia; and (3) PETITIONER "NEVER asserts" that the Tier II Program is a statewide policy that operates to strip prisoners of their due process rights. PETITIONER has since been transferred five more times and was immediately placed in the Tier II Program housing unit of each respective prison upon arrival; throughout these several transfers PETITIONER has continued to receive Tier II Program documents explicitly stating that the basis for his continued assignment to the Tier II Program is based on events which allegedly occurred at Hay's in connection to his initial placement in the Tier II Program housing unit there, on January 14, 2019.

The district court, relying on a distinguishable -- and unpublished -- Eleventh Circuit decision, granted summary judgment to defendants on the ground that the Tier II Program does not impose an atypical and significant hardship compared to ordinary prison life; that PETITIONER failed to show that he was deprived of a liberty interest in violation of the Constitution. The Court of appeals dismissed PETITIONER'S appeal from the final

Judgment of the district court as frivolous.

REASONS FOR GRANTING THE PETITION

A. Lack Of Guidance From The Eleventh Circuit

The Eleventh Circuit has said very little about what does constitutes atypical and significant hardship under Sandin v. Conner, 515 U.S. 472 (1995) rather than what doesn't. The district court, in reaching its conclusion that the conditions in the Tier II Program do not impose atypical and significant hardship compared to ordinary prison life, relied on a single, unpublished Eleventh Circuit decision which was readily distinguishable. See Turner v. Warden, 650 F. App'x 695 (CA11 2016).

B. Conflicts With Decisions Of Other Courts

The holding of the district court that assignment to the Tier II Program does not impose atypical and significant hardship in relation to the ordinary incidents of prison life is directly contrary to the holding of each of the federal circuits in which the law is more completely developed on this point. See Palmer v. Richards, 364 F.3d 60, 64 (CA2 2004); Davis v. Barrett, 576 F.3d 129, 135 (CA2 2009); Kalwasinski v. Morse, 201 F.3d 103, 106-7 (CA2 1999); Giano v. Selsky, 238 F.3d 223, 226 (CA2 2001); Mitchell v. Horn, 318 F.3d 523, 532 (CA3 2003); Hardin-Bey v. Rutter, 524 F.3d 789, 793 (CA6 2008); Serrano v. Francis, 345 F.3d 1071, 1078 (CA9 2003); Ramirez v. Galaza, 334 F.3d 850, 861 (CA9 2002). In addition, this Court has said that certain changes in conditions may be so severe or so different from ordinary conditions of confinement that the state authorities may not impose them "without complying with minimum requirements of due process." See Vitek v. Jones, 445 U.S. 480, 491-94 (1980) ("involuntary commitment to a mental hospital"); Washington v. Harper, 494 U.S. 221, 221-22 (1990) ("unwanted administration of antipsychotic drugs"). Based on this reasoning, it has been held that the subjecting of prisoners to a compulsory behavior modification program without a showing of individual need denies due process.

CANTERINO V. WILSON, 546 F. Supp. 174, 208-9 (W.D. Ky. 1982), vacated and Remanded and on other grounds, 869 F.2d 948 (CA6 1989); cf. BROWN V. OREGON DEPT OF CORRS., 151 F.3d 983, 986-88 (CA9 2014).

C.

Importance Of The Question Presented

THIS CASE PRESENTS FUNDAMENTAL QUESTIONS OF THE INTERPRETATION OF THIS COURT'S decision in Sandin V. CONNER, 515 U.S. 472 (1995). THE QUESTIONS PRESENTED ARE OF GREAT public importance because they affect the operations of the prison systems in all 50 states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and hundreds of city and county jails. IN VIEW OF THE PROLIFERATION OF LITIGATION OVER PRISON SEGREGATION PROCEEDINGS -- BOTH ADMINISTRATIVE AND DISCIPLINARY ALIKE -- GUIDANCE ON THE QUESTIONS IS ALSO OF GREAT IMPORTANCE TO PRISONERS, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDINGS THAT MAY RESULT IN MONTHS OR YEARS IN UNDULY HARSH, PUNITIVE ISOLATION CONFINEMENT.

THE ISSUES' IMPORTANCE ARE ENHANCED BY THE FACT THAT "(i) IN Sandin'S WAKE THE (LOWER COURTS) HAVE NOT REACHED CONSISTENT CONCLUSIONS FOR IDENTIFYING THE BASELINE FROM WHICH TO MEASURE WHAT IS ATYPICAL AND SIGNIFICANT IN ANY PARTICULAR PRISON SYSTEM, "WILKINSON V. AUSTIN", 545 U.S. 209, 223 (2005), and this Court has not "RESOLVED" THE ISSUE(.)" Id. THIS COURT HAS, HOWEVER, EMBRACED A TOTALITY OF CONDITIONS STANDARDS AND ALSO ACKNOWLEDGED THAT SEGREGATION OF AN APPARENTLY INDEFINITE NATURE WEIGHS IN FAVOR OF FINDING ATYPICAL AND SIGNIFICANT HARDSHIP. WILKINSON, 545 U.S. at 216-17, 223-24.

THE DISTRICT COURT'S REASONING THAT THE CONDITIONS IN THE TIER II PROGRAM DO NOT IMPOSE ATYPICAL AND SIGNIFICANT HARDSHIP COMPARED TO ORDINARY PRISON LIFE IS UNCONVINCING. AS NOTED ABOVE, IT RELIED ON AN UNPUBLISHED OPINION FROM THE ELEVENTH CIRCUIT THAT WAS READILY DISTINGUISHABLE. SEE TURNER V. WARDEN, 650 F. App'x 695 (CA11 2016). THE TURNER COURT, ON THE ONE HAND, FOUND THAT THE PLAINTIFF DID NOT HAVE A PROTECTED LIBERTY INTEREST ARISING FROM THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT ITSELF "BECAUSE (HE) WAS ONLY

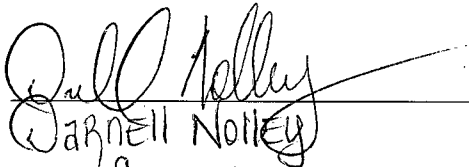
Placed in a more restrictive section of the prison.") Id. at 699-700. On the other hand, the Turner Court held that the plaintiff failed to show that he had a state-created liberty interest in avoiding the particular conditions of his confinement arising from state policies or regulations because "the conditions in the SMU were similar to those in the general population." Id. at 700-1. The Turner Court specifically pointed out that there was "no combination of factors demonstrating that Plaintiff's incarceration in the SMU imposed an atypical and significant hardship compared to ordinary prison," and that Plaintiff, consequently, "had no liberty interest in avoiding confinement in the SMU." Id. at 701. This Court in Wilkinson, however, held that confinement conditions substantially similar to those synonymous with assignment to the Tier II Program constituted atypical and ~~significant~~ significant hardship "under any plausible baseline," and that a prisoner therefore had a right to due process protections prior to being subjected to such conditions. Wilkinson, 545 U.S. at 246-47, 223-24.

Thus the district court seriously misinterpreted Sandin, presumably due to the dearth of guidance from the Eleventh Circuit. And as this Court has acknowledged that "the Courts of Appeals have not reached consistent conclusions for identifying the baseline from which to measure what is atypical and significant in any particular prison system," that "[t]his divergence indicates the difficulty of locating the appropriate baseline," and that the Court has "not resolve(d) the issue," Wilkinson, 545 U.S. at 223; cf. Sandin, 515 U.S. at 490 n.2 (Ginsburg, J. dissenting), the Court should take this opportunity either to resolve these inconsistencies among the lower courts' decisions or settle this important question of federal law ~~altogether~~ altogether. See Rule 10(a)(c), Rules of The Supreme Court of The United States.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



DARRELL NOLLEY

Date: SEPTEMBER 26, 2018