

No. _____

In The
Supreme Court of the United States

JUAN FRANCISCO VEGA &

JAMAAL ALI BILAL, Residents of FCCC,

Petitioners,

v.

MIKE CARROLL, Secretary,

FLORIDA DEPARTMENT OF CHILDREN AND

FAMILIES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
FIRST DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

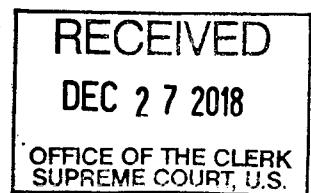
JUAN FRANCISCO VEGA &

JAMAAL ALI BILAL, Pro Se.

FLORIDA CIVIL COMMITMENT CENTER,

13619 S.E. HIGHWAY 70,

ARCADIA, FLORIDA 34266.



QUESTIONS PRESENTED

- I. MAY A FOR PROFIT CORPORATION ENACT A SYSTEM OF RETRIBUTION AND DETERRENCE BY WAY OF POLICY, IN DESECRATION OF THE DICTA OF KANSAS V. HENDRICKS, 521 U.S. 346 (1997), AT A CIVIL COMMITMENT CENTER?
- II. MAY FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES RELINQUISHED ITS EXECUTIVE AND ADMINISTRATIVE SUPERVISION OF THE SEXUALLY VIOLENT PREDATOR PROGRAM AND BAKER ACT PROGRAM TO A FOR PROFIT CORPORATION, IN VIOLATION OF THE FLORIDA STATUTES?

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.

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No. _____

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.

OPINION BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at _____ 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[] is unpublished.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 court appears at _____ 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[] is unpublished.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 Florida First District Court of Appeal

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is unpublished.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 Florida Division of Administrative

Hearings appears at Appendix-B 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 Appeal
decided my case was _____

No petition for rehearing was timely filed in my case.

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

[] 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 Florida First District Court of Appeal decided my case was September 27, 2018.

A copy of that decision appears at Appendix-A.

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

[] 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**

Article 1 §§ 2 & 9, Fla. Const., Amendment XIV, U.S. Const., Section 394.457, Fla. Stat., Chapter 394, Part-I and Part-V., Fla. Stat.

STATEMENT OF THE CASE

1. This case arose from an appeal of an adverse ruling entered by Florida's First District Court of Appeal and Florida's Division of Administrative Hearings, where Petitioners challenged a non-rule policy codified as PRG-11 that was created by Correct Care, LLC, a for Profit Corporation.
2. Petitioners challenged PRG-11 as a defacto agency rule as applied to all residents of the Florida Civil Commitment Center (FCCC) which houses Sexually Violent Predators and Baker Act residents.
3. Petitioners claimed that said policy was reviewed and approved by the Florida Department of Children and Families (FDCF) prior to its enactment at the FCCC which makes it a defacto agency rule; that said policy is an agency statement; and that said policy is an

“unadopted rule” requiring promulgation under Florida’s Administrative Procedure Act (APA).

4. Petitioners averred that PRG-11 is an internal operating policy of Correct Care, LLC, a for Profit Corporation, and that FDCF and FCCC is governed by the Baker Act and the Sexually Violent Predator Act; as a consequence, requiring FDCF to promulgation the rules.

5. Petitioners averred that FDCF may not divest itself of its obligation under Section 394.457, Fla. Stat, to maintain executive and administrative supervision over all mental health facilities, programs, and services in Florida, by way of a contract with a Private for Profit Corporation.

6. The DOAH found that PRG-11 is an internal operating policy of Correct Care, LLC, a private entity; and hence, that Petitioners failed to meet their burden of proving that PRG-11 is an “unadopted rule” that violates Section 120.54 (1) (a), Fla. Stat.

REASONS FOR GRANTING THE PETITION

Point-1: A FOR PROFIT CORPORATION MAY NOT ENACT A SYSTEM OF RETRIBUTION AND DETERRENCE BY WAY OF A POLICY IN DESECRATION OF THE DICTA OF KANSAS V. HENDRICKS, 521 U.S. 346 (1997) AT A CIVIL COMMITMENT CENTER.

1. On May 19, 2017, before the DOAH, the Petitioners proved that PRG-11 had been reviewed and approved by FDCF, prior to its enactment at the FCCC, and that PRG-11 is a rollover policy from GEO Care, LLC to Corrective Care, LLC that was lastly reviewed by the Sexually Violent Predator Program Director on March of 2014, without a further need of approval from FDCF.

2. Black's Law Dictionary (8th Edition) defines review and approve as follows:

Review: 1.) Consideration inspection or examination of a subject or thing. 2.) Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.

Approve: 1.) To give formal sanction to; to confirm authoritatively. 2.) Parliamentary Law. **To adopt**.

3. Based on the doctrine of "noscitur a sociis" FDCF by having reviewed and approved PRG-11 prior to its enactment at the FCCC adopted said policy; and consequently, made it an agency statement that meets the definition of the term "rule".

4. The legal issues requiring a finding by the DOAH were: 1.) Whether FDCF reviewed and approved PRG-11 prior to its enactment at the FCCC; 2.) Whether PRG-11 is an agency statement; and 3.) Whether PRG-11 is an "unadopted rule" requiring promulgation under the APA.

5. Black's Law Dictionary, by way of its definition of review and approve, decrees that FDCF by having review and approve PRG-11, prior to its enactment at the FCCC, adopted said policy, and hence it became an agency statement requiring promulgation under the APA.

6. Mr. Timothy Budz (the former FCCC Administrator and Author of PRG-11) during his testimony admitted

that he submitted PRG-11 to FDCF for review and approval prior to its enactment at the FCCC.

7. Ms. Kristin Kanner, SVPP Director, testified that PRG-11 had previously been reviewed and approved by FDCF prior to its enactment at the FCCC and, that since it's a rollover policy, which started with GEO Care, LLC and ended with Correct Care, LLC; therefore, it did not require further review and approval from FDCF.

8. Based on the foregoing undisputable facts, PRG-11 became a "**defacto agency rule**" when FDCF reviewed and approved said policy prior to its enactment at FCCC.

9. Florida's Legislature found that the prognosis for rehabilitating sexually violent predators in a prison setting is poor. Section 394.910, Fla. Stat.

10. RFP No.: 06105KL at page 1, 3, and 4 additionally delineates FDCF's responsibilities in that the FCCC is not converted into a prison type environment.

11. Florida Legislatures modeled Ch. 394 Part V, Fla. Stat., on similar legislation in Kansas and this Court

upheld the Kansas law in *Kansas v. Hendricks*, 521 U.S. 346 (1997).

12. The Kansas law survived challenges to its facial constitutionality on equal protection, due process, double jeopardy (the prohibition against being punished twice for the same crime), and ex post facto grounds.

13. This Court reasoned **that the aim of the law was not to punish**, as with criminal law, but to protect society and treat the offender. This Court cited a long history of established state authority to involuntarily civilly commit the mentally ill. In short, this Court held that if a program provides bona fide treatment **in a non-punitive environment**, it is constitutional.

14. This Court's decision guided Florida's policy because it upheld the constitutionality of the dual mission of providing viable treatment while at the same time assuring adequate public safety. The mental health mission resulted in the placement of Florida's program within FDCF as opposed to the Florida Department of Corrections or a similar agency.

15. The challenge of Florida's Sexually Violent Predator Program is to provide a civil facility that affords a safe environment in which residents and staff may live and work, and attend and provide treatment. While the facility may be highly secure, conditions may not be such that confinement amounts to **de facto punishment** for past crimes.

16. Policy PRG-11 that was implemented by Correct Care, LLC, at FCCC, consist of *progressive* discipline (a prison setting) whereas CF Operating Procedure 155-20 that was created by FDCF consists of *regressive* discipline (a mental health setting). Progressive discipline is delineated in Fla. Admin. Code R. 33-601.301-314 and was originally created by the Florida Department of Corrections; and PRG-11 is a **copycat** of Fla. Admin. Code R. 33-601.301-314. (Emphasis added)

17. In a *progressive* discipline system the prisoner receives a disciplinary report (named Behavior Management Report in PRG-11) for a rule violation and is placed on lock down status and subsequently retribution is administered by way of a list of range of penalties

which consist of how long the resident will remain punished for the rule violation.

18. *Regressive* discipline is delineated in CF Operating Procedure 155-20, and was created by FDCF and designed for FCCC.

19. In a *regressive* disciplinary system the resident receives an incident report and is placed on time out, temporary restraint, or temporary seclusion and a mental health professional immediately evaluates the resident to determine if it's safe to release him from said status.

20. On the contrary to CF Operating Procedure 155-20, policy PRG-11 *imposes* punishment, while CF Operating Procedure 155-20 *eradicates* punishment. (One is progressive while the other is regressive.)

21. *Progressive* discipline is delineated in Fla. Admin. Code R. 33-601.301-314 and it's administered in a prison setting. *Regressive* discipline is delineated in CF Operating Procedure 155-20 and it's administered in a mental health setting.

22. FDCF by way of Amendment #0012 of Contract # LI702 took a hands off approach as stated in the following portion of the Contract: "Amendment #0012: Articles of Amendment to the Articles of Organization for GEO Care, LLC, were filed with the Florida Division of Corporations on August 26, 2014, to change the company's name to Correct Care, LLC. Therefore, the Provider's new name is Correct Care, LLC. The purpose of this amendment is to formalize all contract references to the Provider's new name and *to remove requirements that require the Provider to submit all policies they develop to the Department for review and approval.* (This violates Section 394.457, Fla. Stat.)

23. FDCF by way of Amendment #0012 of Contract # LI702, has allowed a private for Profit Corporation to impose punishment upon SVP Act and Baker Act residents at the FCCC, through policy PRG-11, and as such, to convert the facility into a prison type setting (prison environment) in violation of Section 394.910, Fla. Stat., RFP #: 06105KL, *Kansas v. Hendricks*, 521 U.S. 346 (1997), Article 1 §§ 2 & 9, Fla. Const., Amendment XIV, U.S. Const.

Point-2: FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES MAY NOT RELINQUISHED ITS EXECUTIVE AND ADMINISTRATIVE SUPERVISION OF THE SEXUALLY VIOLENT PREDATOR PROGRAM AND BAKER ACT PROGRAM TO A FOR PROFIT CORPORATION.

1. Dr. Donald Sawyer (the current FCCC Administrator) during his testimony admitted that FCCC is a mental health facility but professed that PRG-11 was not being applied to the Rivers Unit where the special needs and Baker Act residents are housed.
2. Dr. Sawyer's testimony was proven to be false by way of Petitioners submission into evidence of a memorandum of Dr. Rebecca A. Jackson (the FCCC Clinical Director that oversees and participates in the Behavioral Management Hearings) demonstrating that residents housed in St. John's (A wing of River's Unit — Baker Act — residents) were on the PRG-11 Behavior Management Hearing List and were being subjected to the same disciplinary actions and sanctions as all other residents at the facility.

3. Section 394.457, Fla. Stat., requires that FDCF exercise executive and administrative supervision over all mental health facilities, programs, and services in the State of Florida. The statute also requires that FDCF adopt rules establishing forms and procedures relating to the rights and privileges of patients.

4. The statute states: "The department shall adopt rules necessary for the implementation and administration of the provisions of this part, and a program subject to the provisions of this part shall not be permitted to operate unless rules designed to ensure the protection of the health, safety, and welfare of the patients treated through such program have been adopted. The statute further states that rules adopted under this subsection must include provisions governing the use of restraint and seclusion which are consistent with recognized best practices and professional judgment; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion; establish procedures for staff to

follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; and establish mandatory reporting, data collection, and data dissemination procedures and requirements. That rules adopted under this subsection must require that each instance of the use of restraint or seclusion be documented in the record of the patient.”

5. The final judgment entered by the DOAH on June 23, 2017, by mistake or inadvertence eludes the fact that FDCF is governed by Section 394.457, Fla. Stat., which makes Amendment #0012, of Contract #LI702 null and void, because Section 394.457 *requires that Respondent exercise executive and administrative supervision over all mental health facilities, programs, and services in the State of Florida* and doesn't allow the Respondent to relinquish this obligation by way of any Contract with a private for Profit Corporation. RFP #: 06105KL that was submitted into evidence, at page 22, Section 4.2, **states:** that Section 394.9151, Fla. Stat., and Chapter 2005-222, § 5, Laws of Fla., authorizes the

Department (FDCF) to contract for the services sought in this RFP and Section 4.2.1 stipulates that part of the services are Chapter 394, Part-I and Part-V (Part-I is the Baker Act and Part-V is the SVP Act).

6. The Respondent is bound by the provisions of Section 394.457 and the conditions of that statute prohibits FDCF from taking a hands off approach and allowing a private for Profit Corporation (Correct Care, LLC) *to exercise executive and administrative supervision over the mental health facility, programs, and services* at the FCCC.

7. The FCCC houses residents that are under the SVP Act and Baker Act. Therefore, the Respondent cannot take a hands off approach by way of Contract Amendment # 0012 and allow a private for Profit Corporation to create its own policies (prison type setting rules) to control a residents behavior, such as policy PRG-11 which is punitive.

8. Based on the foregoing undisputable facts, the Respondent has violated the mandate of Section 394.457, Fla. Stat., by having allowed a private for Profit

Corporation (Correct Care, LLC) *to exercise executive and administrative supervision over the mental health facility, programs, and services* at the FCCC; and to create and implement policy PRG-11 governing the use of restraint and seclusion; thus contrary to the requirements of Section 394.457, Fla. Stat., Article 1 § 9, Fla. Const., and Amendment XIV, U.S. Const.

CONCLUSION

Based on the erroneous findings of facts and conclusions of law made by the First District Court of Appeal and DOAH it is urged by theses Petitioners that this Honorable Court grants certiorari review.¹

¹ Additionally, this Court should find that FDCF violated Section 394.457, Fla. Stat., which requires it to exercise executive and administrative supervision over all mental health facilities, programs, and services in the State of Florida (including FCCC) and requires it to create rules implementing regressive discipline as delineated in CF Operating Procedure 155-20, for a mental health setting. Finally, this Honorable Court should find that PRG-11 results in progressive discipline as delineated in Rule 33-

OATH

We declare under penalty of perjury that the foregoing is true and correct. Executed on Wednesday, December 12, 2018.

/s/ 

Jamaal Ali Bilal

Petitioner

/s/ 

Juan Francisco Vega

Petitioner

601.301-314, Fla. Admin. Code, which creates a prison setting in violation Section 394.910, Fla. Stat., RFP # 06105KL, Page 1, 3, & 4, *Kansas v. Hendricks*, 521 U.S. 346 (1997), Article 1 § 9, Fla. Const., and Amendment. XIV, U.S. Const.