

No. 19- 1036

In the
Supreme Court of the United States

TERESA ANN WATERS,

Petitioner,

v.

TEXAS ATTORNEY GENERAL, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

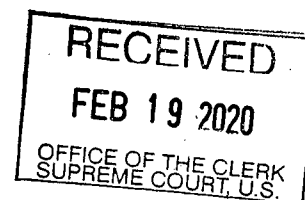
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QUESTIONS PRESENTED

Petitioner seeks prospective, declaratory and injunctive relief from state actors who are applying and enforcing state and federal statutes in a manner that violates the due process, substantive due process and equal protection of the 14th Amendment to the U.S. Constitution and the Dictionary Act 1 U.S.C. § 1.

In 2002, Petitioner Ms. Waters' conviction required lifetime registration as a Texas sex offender; however, after implementation of the Adams Walsh Child Protection Act of 2007, Ms. Waters was eligible for deregistration. In an attempt to continue collecting federal funding, Respondents registered Ms. Waters as a Tier III sex offender under 18 U.S.C. § 2241(c) which requires a conviction of crossing state lines with a victim under 12 years of age. Ms. Waters never had any state or federal conviction of crossing state lines and her victim was over 12 years of age.

1. Whether Ms. Waters is a Tier III sex offender according to 18 U.S.C. § 2241(c).

2. Whether Ms. Waters is a Tier I sex offender according to Adam Walsh Act (2007).

3. Whether Respondents are violating the U.S. Constitution, 14th Amendment by restraining Ms. Waters' civil liberties under the provisions of 18 U.S.C. § 2241(c) where no such convictions exist and no such crimes were committed by Petitioner.

PARTIES TO THE PROCEEDINGS

Petitioner

- Teresa Ann Waters

Respondents

- Texas Attorney General,
in their Official Capacity
- Harris County District Attorney's Office,
in their Official Capacity
- Texas Department of Public Safety,
in their Official Capacity
- Texas Department of State Health Services,
in their Official Capacity
- John Hellerstedt, in his Official Capacity
- Steve McCraw, in his Official Capacity
- Kim Ogg, in her Official Capacity
- Ken Paxton

LIST OF PROCEEDINGS

United States Court of Appeals for the Fifth Circuit

No. 19-20414

Teresa Ann Waters, Petitioner v. *Texas Attorney General, et al.*, Respondents

Decision Date: November 22, 2019

United States District Court for the Southern District
of Texas, Houston Division

Civil Action No. H-18-2857

Teresa Ann Waters, Petitioner v. *Texas Attorney General, et al.*, Respondents

Date of Final Judgment: June 4, 2019

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PETITION FOR A WRIT OF CERTIORARI

Teresa Ann Waters respectfully prays that a Writ of Certiorari issue to review the November 22, 2019 order of the United States Court of Appeals for the Fifth Circuit affirming the district court's granting of Respondents' Motions to Dismiss.



OPINIONS BELOW

The order of the Fifth Circuit Court of Appeals appears at App.1a to this petition. The orders of the U.S. District Court for the Southern District of Texas, Houston Division appear at App.3a, 10a to this petition. These opinions and orders have not been designated for publication.



JURISDICTION

The decision of the Fifth Circuit Court of Appeals affirming without opinion the District Court's granting of Respondents' Motions to Dismiss was issued on November 22, 2019. This petition is timely filed within 90 days of this decision. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV

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 the life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Tex. Crim. Proc. Code Ann. § 62.003(a)

(a) for the purposes of this chapter, the department (Texas Dept. of Public Safety) is responsible for determining whether an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of military justice contains elements that are substantially similar to the elements of an offense under the laws of this state.

42 U.S.C. § 16911

Sex Offender Registration and Notification

In this Title the following definitions apply:

(1) **SEX OFFENDER**—The term “sex offender” means an individual who was convicted of a sex offense.

(2) TIER I SEX OFFENDER.-The term “tier I sex offender” means a sex offender other than a tier II or tier III sex offender.

(3) TIER II SEX OFFENDER.-The term “tier II sex offender” means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:

- (i) sex trafficking (as described in § 1591 of Title 18, United States Code);
- (ii) coercion and enticement (as described in § 2422(b) of Title 18, United States Code);
- (iii) transportation with intent to engage in criminal sexual activity (as described in § 2423(a) of Title 18, United States Code);
- (iv) abusive sexual contact (as described in § 2244 of Title 18, United States Code);

(B) involves—

- (i) use of a minor in a sexual performance;
- (ii) solicitation of a minor to practice prostitution; or
- (iii) production or distribution of child pornography; or

(C) occurs after the offender becomes a tier I sex offender.

(4) **TIER III SEX OFFENDER.**—The term “tier III sex offender” means a sex offender whose offense is punishable by imprisonment for more than 1 year and—

- (A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:
 - (i) aggravated sexual abuse or sexual abuse (as described in § 2241 and 2242 of Title 18, United States Code); or
 - (ii) abusive sexual contact (as described in § 2244 of Title 18, United States Code) against a minor who has not attained the age of 13 years;
- (B) involves kidnapping of a minor (unless committed by a parent or guardian); or
- (C) occurs after the offender becomes a tier II sex offender.

Tex. Penal Code § 22.011(a)(2)(c)
Sexual Assault

- (a) A person commits an offense if the person:
 - (2) Intentionally or knowingly,
 - (c) Causes the sexual organ of a child to contact or penetrate the sexual organ of another person, including the actor.

Tex. Penal Code § 22.021
Aggravated Sexual Assault

- (a) A person commits an offense;
 - (2) if:

(B) the victim is younger than 14 years of age.

18 U.S.C. § 2241

Aggravated Sexual Abuse

(a) By Force or Threat

(b) By Other Means

(1) Renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) Substantially impairs the ability of that other person to appraise or control conduct . . .

(c) With Children

whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years . . .



STATEMENT OF THE CASE

Petitioner Ms. Waters pled guilty in 2002 under a plea bargain agreement for a 10-year prison sentence under Texas Penal Code 22.021(a)(2)(B) Aggravated Sexual Assault, which is only aggravated due to the victim's age. Ms. Waters committed this offense with a sexually active and consenting 12½ year old male. There was no trial. Ms. Waters was paroled in 2012

and placed on annual registration as a non-violent, non-predator, low risk offender (equivalent to federal Tier I sex offender). In October 2016, Ms. Waters applied to the Texas Department of State Health Services (TDSHS) for deregistration under the Adam Walsh Child Protection Act (2007) (AWA) and was denied because Respondents had placed Ms. Waters in the federal Tier III category under 18 U.S. Code § 2241(c) which is reserved for violent predators and requires Ms. Waters be convicted of crossing state lines with a victim under 12 years of age. Ms. Waters has never had any state or federal conviction for crossing state lines and her victim was over 12 years of age.



REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The Fifth Circuit Court of Appeals decided the instant case in conflict with this Honorable Court's decision in *Carr vs. United States*, 560 U.S. ____ (2010). In an attempt to continue collecting federal funds under the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 *et seq.*) (§ 125) and in compliance with the Sex Offender Registration and Notification Act (SORNA) as part of the Adam Walsh child Protection and Safety Act (AWA), Pub. L 109-248, Tit. I, 120 stat. 590, Respondents registered Petitioner Ms. Waters as a federal Tier III sex offender under 18 U.S. Code § 2241(c) which is reserved for violent

predators and repeat sex offenders and further requires Ms. Waters be convicted of crossing state lines with a victim under 12 years of age. Ms. Waters has never had any state or federal conviction for crossing state lines and her victim was over 12 years of age. Defendants receive federal funds for implementing the AWA and are required to abide by its requirements to continue to receive funding and this non-compliance revokes funding under 42 U.S.C. § 3752 *et seq.* & § 3750 *et seq.* & § 125. Petitioner Ms. Waters contends these acts violate the due process, substantive due process and equal protection clauses of the 14th Amend. to the U.S. Constitution.

The district court dismissed Ms. Waters' suit for failure to state a 14th Amendment violation and Fifth Circuit affirmed without opinion. Both courts agree Respondents, in their official capacity do not have immunity from Constitutional violations (ROA.106 & 147). The courts' error is not finding a constitutional violation where Respondents have taken Texas Penal Code 22.021(a)(2)(B) which is classified as a sexually violent offense under Tex. Crim. Code § 62.001(6)(A) (ROA.55) and interpreted it as being equal to 18 U.S.C. § 2241(c) Aggravated Sexual Abuse (ROA.56) where the two statutes have nothing in common except the word "aggravated", which is defined differently in each statute. The elements of 18 U.S.C. § 2241(c) require Ms. Waters to be convicted of crossing state lines with a victim under 12 years of age where no such conviction exists and her victim was over 12 years of age. Both courts completely avoided the elephant in the room, which is the well-pleaded fact that Petitioner has proven by federal statute that she is a Tier I sex offender that has been unlawfully denied her state and

federal right to deregister as such, thus meeting the district court's demand under the Rule 12(b)(6) standard. (ROA.148). Justice Sotomayor delivered the opinion of this Honorable Court in *Carr v. United States*, and reversed the opinion of the U.S. Court of Appeals for the Seventh Circuit because the Court drew an absurd analogy to state statutes and modified statutory intent to justify the court's decision, as does Fifth Circuit, which clearly violates the Dictionary Act, 1 U.S.C. § 1.

Justice Sotomayor stated that it would be absurd to disregard statutory text. *Cf. Arlington Central School Dist. Bd. of Ed. v. Murphy*, 584 U.S. 291, 296 (2006) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the statutory language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms" (internal quotation marks and citation omitted)).

A. Violations of Fourteen Amendment of the U.S. Constitution

The 14th Amendment prohibits deprivation of "life, liberty, or property, without due process of law", and prohibits denial of "equal protection" under the law Ms. Waters need only be subject to significant restraints on liberty that are not otherwise experienced by the general public. *Lehman v. Lycoming Cty. Children Servs. Agency*, 458 U.S. 502, 510 (1982). Therefore, Ms. Waters is being held "in custody" by the lifetime registration requirements for a Tier III sex offender. Ms. Waters is being deprived of the equal protection

of the Adams Walsh Act (AWA), which classifies her as a Tier I sex offender and which dictates that a Tier I sex offender must register for 15 years, but with a clean record (as defined in the act) the registration is reduced to 10 years (§§ 111, 115). Ms. Waters has a clean record as defined in the Adams Walsh Child Protection Act 2007.

B. Plaintiff's Deregistration Is Retroactive

Federal law required Respondents to register Ms. Waters as a sex offender "retroactive" to implementation of the AWA (42 U.S.C. § 16911 et seq.) (SORNA). The State of Texas registered Ms. Waters as a sex offender upon conviction in 2003 and during her nine year, 6 month incarceration and even though not published on the DPS website until her 2012 parole, it was published on the internet site of The Texas Department of Corrections ("TDC"). The TDC publicly registered Ms. Waters as a sex offender and anyone could "Google™" her name and find her incarcerated as a sex offender in the TDC from 2003 to 2012. The DPS continued Ms. Waters' sex offender registration and publication to the present, exceeding the ten (10) years required to deregister as a Tier I sex offender with no prior or post convictions under SORNA §§ 111, 115, 42 U.S.C. § 16915 and 28 C.F.R. § 72.3:

"(7) Retroactivity. A jurisdiction will be deemed to have "substantially implemented" SORNA with respect to sex offenders whose convictions predate the enactment or implementation of SORNA if that jurisdiction registers the following offenders: (1) those who are incarcerated or under supervision for the registration offense or for some other crime;

From the date of the jurisdiction's implementation of SORNA, these "retroactive" sex offenders must be "recaptured" and registered within the following time frames: Tier I offenders within one year; . . ."

Per statute, Respondents must 'automatically' remove from the registry and the database the names and identifying information of persons whose duty to register has expired and Ms. Waters' duty to register has expired. *See*, Section 62.251, Texas Code of Criminal Procedure.

II. THE DECISION BELOW CONFLICTS AND UNDERMINES THE LEGITIMACY, RELIABILITY AND STABILITY OF JUDICIAL PROCESSES AND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AND SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

The Tex. Code of Crim. Proc., Title 1 Chapter 62. Art. 62.003 requires the Department of Public Safety (DPS) and subsequently the Texas Department of State Health Services (TDSHS) to evaluate Ms. Waters for deregistration based upon the elements of Texas Penal Code 22.021(a)(2)(B) and the elements required by Title 18, U.S.C. 2241 thru 2244 and 42 U.S.C. § 16911 et seq. to determine if Ms. Waters' conviction falls under Tier I for deregistration.

Tex. Code of Crim. Proc. Title 1 Chapter 62. Art. 62.003 Determination Regarding Substantially Similar Elements of Offense: "(a) For the purposes of this chapter, the department (DPS) is responsible for determining whether an offense under the laws of another

state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice contains elements that are substantially similar to the elements of an offense under the laws of this state.” Respondents John Hellerstedt and Steve McCraw are responsible for respectively interpreting and implementing the Adams Walsh Act (AWA) and Sex Offender Registration and Notification Act (SORNA). Respondents Ken Paxton and Kim Ogg are responsible for enforcing sex offender registration in Harris County and the state of Texas.

Criteria under 42 U.S.C. 16911, Chapter 109(A) (4)(ii) for Tier III placement requires” abusive sexual contact” (as described in § 2244 of Title 18, United States Code); therefore, we look to § 2244 for the description of these offenses and find that § 2244(a)(3) looks to § 2243(a) that Respondents used in part, for their decision. At first glance, Title 18 U.S.C. § 2243(a) appears to resemble Ms. Waters’ offense in that both she and her victim fall within the age requirement for its violation. However, Title 18 U.S.C. §2243(a) contains the word “and” connecting it to element (1) which allows a fine; and excludes application of 42 U.S.C. 16911 (4).

“§2243—Sexual abuse of a minor or ward

(a) Of a Minor.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—has attained the age of 12 years but has not attained the age of 16 years; and (1) is at least four years younger than the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.”

42 U.S.C. 16911 (4) Tier III mandates that the offense "be punishable by imprisonment for more than one year" and does not make provisions for the option of a fine to replace imprisonment; whereas, Texas Penal Code 22.021(a)(2)(B) Aggravated Sexual Assault is a first degree felony and a fine may be imposed in "addition" to imprisonment but not as a replacement.

"Texas Penal Code Sec. 12.32.—First Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years. (b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000." Under 1 U.S.C. § 1 ("Dictionary Act") the word "or" is not included in the strict requirements of 42 U.S.C. 16911 (4) to allow for a fine to replace imprisonment; Ms. Waters' state punishment includes the word "and" a fine but not "or" a fine; therefore, Ms. Waters offense is not comparable to Title 18 § 2243. Ms. Waters' offense is not more severe than Title 18 § 2243 because imprisonment for her offense starts at five years which is within the 15 year imprisonment cap of § 2243. In fact, evaluation of Ms. Waters' offense stops at 42 U.S.C. 16911 (4) and proceeds no further. The elements of both state and federal statutes must substantially match and being able to simply pay a fine

and walk away from 15 years in prison is considerably disproportionate. *See, U.S. v. Bobby Smith*, 481 F.Supp.2d 846, 2007 (ED Mich., Mar. 8, (2007); and *U.S. v. Jackson*, 480 F.3d 1014 (9th Cir. 2007). These successful arguments against the provisions of the AWA invoked the Dictionary Act where one case concerned the word “travels” (future tense) in comparison to “traveled” (past tense) and is supported by the Honorable Justice Sotomayor’s opinion in *Carr vs. United States*, 560 U.S. ____ (2010).

Further, Respondents agree AWA is controlling law, quote authority under 18 U.S.C. § 2241(c) and concede their possible misapplication of it, but claim sovereign immunity, telling the Courts that it cannot tell them “... how to do their job”. (ROA.56). Ms. Waters does not fit into either federal Tier II or III categories but meets the definition of a sex offender in Section 111(A) of the Adam Walsh Act; therefore, according to 42 U.S.C. § 16911 (2) Ms. Waters is a Tier I sex offender and her current lifetime registration exceeds federal law.



CONCLUSION

Respondents have misinterpreted, misapplied, unconstitutionally substituted words and elements of a crime, modified legislative intent and unlawfully enforced it under the Adam Walsh Act and SORNA, in attempts to continue collecting federal funds for registering Ms. Waters as a Tier III sex offender and restricting her civil liberties for a lifetime without the authority of law, without notice, without the right to discover the evidence relied upon, without a hearing in which to present evidence, without a neutral decision maker and without any mechanism for appealing this unconstitutional decision. Respondents have taken Texas Penal Code 22.021(a)(2)(B) which is classified as a sexually violent offense under Tex. Crim. Code § 62.001(6)(A) (ROA.55) and interpreted it as being equal to 18 U.S.C. § 2241(c) Aggravated Sexual Abuse (ROA.56) where the two statutes have nothing in common except the word “aggravated” which is defined different in each statute.

The elements of 18 U.S.C. § 2241(c) require Ms. Waters to be convicted of crossing state lines with a victim under 12 years of age and no such convictions exist and her victim was over 12 years of age. Respondents are in clear violation of the Dictionary Act, 1 U.S.C. § 1, the oldest and simplest code to understand and apply. Respondents are required by their own state statutes to automatically remove Ms. Waters from sex offender registration after her time to register has expired and it has expired. The Fifth Circuit Court of Appeals affirmation of the U.S. District Court’s final judgment conflicts and undermines the legitimacy,

reliability and stability of judicial processes and has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

Respectfully submitted,

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