19-5485

_____TERM_____

SUPREME COURT OF THE UNITED STATES

ORIGINAL

JUSTIN JAMES THRASHER,
PETITIONER

-VS-

STATE OF ARIZONA
RESPONDENT

PETITION FOR A

WRIT OF CERTIORARI TO

THE ARIZONA SUPREME COURT

JUSTIN JAMES THRASHER
256945
ARIZONA STATE PRISON
P.O. BOX 5000
FLORENCE, AZ 85132

QUESTION PRESENTED

The Decision Of The

Arizona Supreme Court

Violates *Brown –v- Plata*

131 S. Ct. 1910(2011)

TABLE OF CONTENTS

TABLE OF EXHIBITS

TABLE OF AUTHORITIES

U.S. Constitution

Article VI
Eighth Amendment

JURISDICTION

THE ARIZONA SUPREME COURT

DENIED REVIEW MAY 10, 2019 (EX.A)

THE DECISION OF THE APPEALS

COURT IS MARKED (EX.B)

THE TRIAL COURTS DECISION IS

MARKED (EX.C)

NO PETITION FOR HEARING

WAS FILED.

The Eighth Constitution Amendment

8th Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S Constitution Article VI

This constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be supreme law of the land, and Judges in every state shall be bound thereby, and anything in the constitution or laws of any state to be contrary notwithstanding (emphasis added)

STATEMENT OF THE CASE

Arizona Prisons

1. Inmates in the custody of Arizona Department of Corrections (ADC) Brought putative class action alleging systems eighth amendment violations in Arizona prison system. In Oct. 2014, the parties settled the case and signed a stipulation to end the litigation.

2. On 06/22/2018 the Arizona District Court found "The evidence shows the mere threat of monetary sanctions was not sufficient to generate ADC's compliance with the stipulation. More importantly, the evidence presented to the court indicates that wide-spread and systemic failures remain." (Ex F p.10)
   The court also found:

   "The inescapable conclusion is that Defendants are missing the mark after four years of trying to get it right. Their repeated failed attempts, and too-late efforts, to take their obligation seriously demonstrate a half-hearted commitment that must be braced. The evidence suggests that the State's recalcitrance flows from its fear of losing its contracted healthcare. But even if true, such hear is not a factor that can properly be considered in deterging what steps the State must take to meet the health care needs of its inmates. If a private contractor is pushed to the door because it cannot meet the State's obligations, then so be it. Such a result would flow directly from the State's decision to privatize health care to save money. That goal of privatization cannot be achieved at the expense of the health and safety of the sick and acutely ill inmates. Indeed, Arizona for most of its history and many States, do not privatize their healthcare."

   The court must place a clear and focused light on what is happening here: The State turned to a private contractor which has been unable to meet the prisoner's health care needs. Rather than push its contractor to meet those needs, the State has instead paid them more and rewarded them with financial incentives while limiting the financial penalties for non-compliance"

STATEMENT OF FACTS

Petitioner, a dual citizen of Poland and The United States suffered injury in prison which now is permanent. The state refused and continues to refuse to provide the proper timely treatment. Petitioner unnecessarily continues to suffer pain which is often unbearable.

When the state declined to treat petitioner he sought to transfer pursuant to the council of Europe Treaty to Poland to receive treatment.

[EX D] Without complying with the mandatory provisions of DO 1104.1.9.1.2 which provides for the state to obtain the input from the Presiding Judge prior to deciding on any treaty transfer request, the State denied the transfer.

[EX E] Petitioner is now permanently injured and is unable to receive the proper treatment suffering unbearable pain.

Petitioner is being denied his liberty interests by the failure to comply with the mandatory provisions of the treaty, which is the supreme law of the land.

Hewitt V Helms, 459 US 460, 472) 1985) provides that when the mandatory language a prison regulations provides for what must be done prior to exercising discretion, that provision must be followed. Professor Carlos Vazquez argues that the Constitution mandates all such treaties should have automatic effect with the force of law, regardless of whether Congress implements them with legislation. The Supremacy law Clause makes it clear that the corpus of federal law encompasses the nation's treaties; treaties, like any other federal law, preempt any conflicting state law. Pursuant to ratification, federal courts can enforce COE rights when asserted defensively to prevent the government from breaching the treaty obligation it undertook.

PCR IS THE PROPER REMEDY AND THE CLAIMS ARE NOT PRECLUDED

¶6 When a prisoner seeks release from custody PCR and 1983 is the proper remedy. [2] Likewise the claims are not precluded as they relate to punishment since sentencing.

Conditions of confinement Litigation

¶7 Conditions of confinement jurisprudence is closely related to sentence litigation, in that it also generally rests on basic premises of human dignity. Indeed, *Weems* and *Trop* provided the frame for *Estelle v. Gamble*, the first modern case to conceptualize prison conditions alone, separate and apart from a criminal sentence, as punishment under the Eighth Amendment. [3] Like the sentencing cases resolving challenges to capital punishment, *Estelle* looked both to *Weems* and *Trop* to establish that the Eighth Amendment applies not only to corporal punishments but also to treatment incompatible_____

[2] *Streeter v. Hopper*, 618 F.2d 1178, 1181-82 (5th Cir.1980) (holding in a § 1983 case that the district court properly ordered plaintiff prisoners removed from a prison where they faced a serious threat of injury from officers and other prisoners; defendants were given latitude to select the prison to which plaintiffs were transferred "where their safety could be assured"); *Kidd v. Perry,* No. 9:10cv57, 2010 WL 2990942, at *1,*3 (E.D. Tex. July23,2010) (finding that a transfer under the authority of *Streeter* was not in order because "the Court cannot say at this juncture that all options within the Texas prison system have been exhausted and that nothing remains other than a transfer to another system" where safety could be assured).*See, e.g. Boudin v. Thomas,* 732 F.2d 1107, 1112 (2d Cir. 1984) (finding that when a prisoner sought relief sounded in habeas corpus); *Abdula Hakeem v. Koehler,* No.89 Civ. 3142 (MBM), 1989 WL 85173, at *2-3 (S.D.N.Y. July 21, 1989) (distinguishing *Walker* and *Streeter* and holding that "any prisoner who seeks or wishes to avoid transfer from one of confinement to another should his suit treated as a petition for a writ of habeas corpus, especially where the government defendants request it").

[3] *429* U.S 97 , 103-04 (1976).

with evolving standards of decency or involving the unnecessary imposition of pain.[4] With these standards in mind, the *Estelle* Court held that the government had some obligation to provide medical care to prisoners, because the absence of such care could cause suffering with no penological purpose. [5]Such deprivations of medical care that amounted to deliberate indifference to serious medical needs were equivalent, in the Court's view, to unnecessary infliction of pain.[6] *Estelle* is also significant for a discussion that is further analyzed later—it explicitly held that conditions of confinement imposed by prison officials, rather than by statute, can constitute punishment under the Eighth Amendment.

¶8 In *Estelle*, the Court prohibited the imposition of *additional* punishment for escape when prisoners face inhumane conditions of confinement. But they also imply that if every prison exposed the offender to these conditions, continued confinement would be

---

[4] *Id.* at 102-03; *see also* Hope v. Pelzer, 536 U.S. 730, 737-38 (2002) (linking the Eighth Amendment to dignity and finding that an Eighth Amendment violation was obvious because there was no safety justification for discipline that exposed the prisoner to risk of physical harm); Hutto v. Finney, 437 U.S. 678, 685 (1978) (noting that the Eighth Amendment prohibits disproportionate punishments and those that are inconsistent with contemporary standards of decency).

[5] 429 U.S. at 103.

[6] *Id.* at 104. The deliberate indifference standard is the subject of much Eighth Amendment litigation, but it essentially is akin to criminal recklessness. *See* Farmer v. Brennan, 511 U.S. 825, 839-40 (1994) (adopting a subjective recklessness standard as used in criminal law as the test for deliberate indifference under the Eighth Amendment). 79. 429 U.S. at 104-05. It did so with little substantive analysis—an aspect of *Estelle* that has been criticized by Justices Scalia and Thomas, who argue that conditions of confinement imposed by prison officials should never be considered punishment for Eighth Amendment purposes. *E.g.*, Helling v. McKinney, 509 U.S. 25, 40-42 (1993) (Thomas, J., dissenting). In so recognized that early Eighth Amendment cases focused on whether punishments involved torture or other repulsive modes of punishment.

impermissible. But *Estelle* turned to *Weems*, death penalty jurisprudence, and *Trop* to acknowledge that concepts of human dignity and civilized standards of decency had expanded the categories of punishment deemed prohibited by the Punishment Clause.

¶9 The basic principles of *Estelle*—that certain conditions of confinement, when imposed with specified states of mind, can constitute punishment that goes beyond that permitted by the Eighth Amendment—has been extended in many directions.

¶10 When prison officials fail to protect offenders from the risk of serious harm—be It occasioned by other offenders, correction officers, medical personnel, or the atmospheric conditions of confinement at issue in *Rhodes v. Chapman* [7]—they can be held liable under the Eighth Amendment, so long as the officials possess the required culpable state of mind. [8]

¶11 The Court has made it clear that conditions of confinement, whether imposed by statute; system- or facility-wide prison policies, or individual state officials, are considered punishment. [9]And when this punishment exceeds the bounds of decency, the

---

[7] Rhodes v. Chapman, 452 U.S. 337, 347-48 (1981).

[8] *Helling*, 509 U.S. at 32-33, 36 (holding that conditions of confinement that pose a risk of future harm can violate the Eighth Amendment); *Rhodes*, 452 U.S. at 345 (stating that confinement is a form of punishment); Hutto v. Finney, 437 U.S. 678, 685 (1978) (noting that confinement in an isolation cell is punishment subject to scrutiny under the Eighth Amendment).

[9] *E.g.*, Hudson v. McMillian, 503 U.S. 1, 5-7 (1992) (noting that the core judicial inquiry when evaluating an accusation of excessive punishment is whether the force was applied in good-faith effort to maintain order, or maliciously to cause harm); Whitley v. Albers, 475 U.S. 312, 319 (1986) ("It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause.").

Eighth Amendment rights of the offender are violated. [10] Harsh conditions of confinement may constitute cruel and unusual punishment unless such conditions "are part of the penalty that criminal offenders pay for their offenses against society."[11]

¶12 For conditions or treatment to count as punishment, they must be administered with a required state of mind.[12]

¶13 In so doing, the Court has rejected alternative proposals at both extremes: it has declined to adopt a prisoner-protective standard and hold that *all* prison conditions, without regard to officials' actual or constructive knowledge of them, constitute punishment for purposes of the Constitution, [13] and it has rejected the minimalist argument that prison conditions, other than those imposed pursuant to statute or by a

---

[10] *E.g.*, Farmer v. Brennan, 511 U.S. 825, 833-34 (1994). More recent cases acknowledge that imposing a risk of future harm, even if unaccompanied by actual pain, can in certain circumstances cross the line for Eighth Amendment purposes. *See, e.g.*, Helling v. McKinney, 509 U.S. 25, 33-34 (1993). Thus, in rejecting a challenge to a lethal injection procedure, a plurality of the Court noted that to establish a claim, a condemned prisoner must show that there is an alternative procedure for causing death that is "feasible, readily implemented, and [will] in fact significantly reduce a substantial risk of severe pain." Baze v. Rees, 553 U.S. 35, 52 (2008) (plurality opinion).

[11] 511 U.S. at 834 ("Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society." (internal quotation marks omitted)).

[12] Wilson v. Seiter, 501 U.S. 294, 300 (1991) ("The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual *punishment*. If the pain inflicted is not formally meted out *as punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify.").

[13] *E.g.*, Farmer v. Brennan, 511 U.S. 825, 842-43 (1994) (requiring that the plaintiff show deliberate indifference when alleging that prison officials failed to protect a prisoner from assault by other detainees); *Hudson*, 503 U.S. at 9 (holding that excessive force is actionable under the Eighth Amendment if the official used force "maliciously and sadistically" to cause harm and not for a legitimate penological reason).

sentencing judge, never constitute punishment under the Punishment Clause.[14] The Court also has dispelled the contention that there is any significant distinction between discrete instances of abuse, like deprivation of medical care, and more systemic deprivations, such as those at stake in *Rhodes*. [15]

¶14 As for remedies available for unconstitutional conditions of confinement, judges have exercised the extraordinary power to order release only when there was a threat of ongoing violations. [16] This power was comprehended, at least theoretically, by some lower federal courts in the late 1940s that applied *Weems* to hold that prisoners should be

---

[14] *See* Estelle v. Gamble, 429 U.S. 97, 104-05 (1976) (concluding that deliberate indifference to a prisoner's medical needs can violate the Eighth Amendment).

[15] . *See* Brown v. Plata, 131 S. Ct. 1910, 1947 (2011) (upholding lower court's order requiring the release of prisoners to remedy overcrowding in California's state prisons); Ramos v. Lamm, 639 F.2d 559, 586 (10th Cir. 1980) (cited with approval in Rhodes v. Chapman, 452 U.S. 337 (1981)) (acknowledging the district court's power to order the closure of a prison but remanding for district court to consider the scope of the remedy based on progress made by Colorado on appeal).

[16] *See* Johnson v. Dye, 175 F.2d 250, 253, 256 (3d Cir. 1949) (ordering that prisoner be released because evidence indicated that Georgia prison officials "treat chain gang prisoners with persistent and deliberate brutality" and that "the State of Georgia has failed signally in its duty as one of the sovereign States of the United States to treat a convict with decency and humanity"); Harper v. Wall, 85 F. Supp. 783, 787 (D.N.J. 1949) (following *Johnson* in a case involving a fifteen-year-old escapee from Georgia who had been sentenced to ten years of imprisonment). The Supreme Court reversed and remanded *Johnson*, not on the merits but because the lower court had not required that the petitioner first exhaust his state law remedies prior to filing his federal habeas petition. Dye v. Johnson, 338 U.S. 864, 864 (1949) (reversing in light of *Ex parte* Hawk, 321 U.S. 114 (1944)). The Supreme Court, although not passing on the question whether release on a habeas petition was a proper remedy for experiencing cruel and unusual punishment, eventually made clear that state law remedies must be pursued in the state in which the sentence was carried out, and not in the asylum state. Sweeney v. Woodall, 344 U.S. 86, 89-90 (1952).

set free rather than returned to experience further cruel and unusual punishment in Georgia's prison system. [17]

¶15 After *Weems*, lower courts accepted that there was judicial power to order release as a remedy for *future* Eighth Amendment violations likely to be experienced by a particular prisoner. Of course, as in other areas of constitutional litigation, [18]courts may not order broad equitable remedies, such as release, without first giving prison officials ample leeway to correct violations. [19]

¶16 Courts became more open to exercising the power to release offenders for ongoing Eighth Amendment violations in the 1970s and 1980s, when prison reform litigation was at its peak.[20] Even so, such orders were rare because of the extreme nature of the remedy. And after passage of the Prison Litigation Reform Act (PLRA) in 1996,[21] statutory restrictions were placed on courts' power to enter prisoner release orders. But these

---

[17] *E.g.*, *Ex parte* Pickens, 101 F. Supp. 285, 289-90 (D. Alaska 1951); *see also Ex parte* Ellis, 91 P. 81, 83 (Kan. 1907) ("It must be obvious, however, that we cannot order the petitioner released on account of the condition of the jail. To do so would require us on similar applications to order the release of all prisoners confined there."); *cf. Ex parte* Terrill, 287 P. 753, 755 (Okla. Crim. App. 1930) (declining to entertain a habeas petition alleging that conditions amounted to cruel and unusual punishment when prisoner had not first attempted to pursue state law remedies).

[18] *See, e.g.*, Milliken v. Bradley, 433 U.S. 267, 281 (1977) (noting that school authorities have the primary responsibility for managing and solving their obligations).

[19] Hutto v. Finney, 437 U.S. 678, 687 & n.9 (1978) (noting that the power of a district court to order an equitable remedy is broad—but must take into account the opportunities prison officials have to correct violations).

[20] *See* Giovanna Shay, *Ad Law Incarcerated*, 14 BERKELEY J. CRIM. L. 329, 332-33 & n. 22 (2009).

[21] Pub. L. No. 104-134, §§ 801-10, 110 Stat. 1321, 1321-66 to -77 (1996) (codified in scattered sections of 11, 18, 28, and 42 U.S.C.). 18 U.S.C. § 3626(a)(3) (2006).

Limitations are not insuperable, as the Supreme Court recently held in *Brown v. Plata.*[22] Indeed, the Supreme Court found that the remedy of release was appropriate in *Plata* even though many of the prisoners benefiting from the release were not contemporaneously experiencing harm caused by prison overcrowding.[23]

PETITIONER IS BEING DENIED HIS LIBERTY INTERESTS BY THE FAILURE TO COMPLY WITH THE MANDATORY PROVISIONS OF THE TREATY, WHICH IS THE SUPREME LAW OF THE LAND

17 Hewitt v Helms, 459 US 460, 472) 1985) provides that when in mandatory language a prison regulations provides for what must be done prior to exercising discretion, that provision must be followed. Professor Carlos Vasquez argues that the Constitution mandates all such treaties should have automatic effect with the force of law, regardless of whether Congress implements them with legislation. [24] The Supremacy Clause makes it clear that the corpus of federal law encompasses the nation's treaties; [25] treaties, like any other federal law, preempt any conflicting state law.

18 Pursuant to ratification, federal courts can enforce COE rights when asserted defensively to Prevent the government from breaching the treaty obligation it undertook.

---

[22] 131 S. Ct. 1910, 1932-44 (2011) (finding that lower court's release order satisfied PLRA's requirements).

[23] Id. At 1940.

[24] Carlos Manuel Vazquez, Response: Laughing At Treaties, 99 COLUM. L. REV. 2154, 2156-59 (1999).

[25] SEE IDAHO V. COEUR D'ALENE TRIBE OF IDAHO, 521 U.S. 261, 270-78 (1997)

¶19 By ratifying the COE, the United States made a promise to enforce the treaty's rights domestically. A close reading of the ratification documents reveals that the contours of the original promise remain intact.

¶20 By failing to first seek the input of the Presiding Judge prior to deciding the treaty transfer request the State denied Petitioner his liberty interests guaranteed the regulation. Nothing in the Supremacy Clause Requires congressional implementation of a treaty before that treaty supersedes State law.

¶21 The treaty automatically supersedes state law by Constitutional Command the moment it takes effect. The absence of congressional implementing legislation merely displaces the primary implementation burden from the national government to each of the states. Indeed, one can read Congress's inaction as deliberate deference to the states, permitting States to implement the treaty through their own courts and legislatures. Such local implementation of the treaty's baseline standards and procedures encourages unique enforcement solutions tailored to each state's specific situation. In the absence of proper state implementation, however, State courts have a duty to enforce such treaties as "supreme Law of the Land," 26 regardless of the treaty's implementation status before Congress.

---

26 U.S. CONST. Art. VI.

THE FEDERAL SENTENCING GUIDELINES IS PURSUASIVE GUIDE AS TO THE REMEDY DUE TO SYSTEMIC VIOLATIONS IN ARIZONA[27]

¶22 Courts might rely on a framework similar to the Federal Sentencing Guidelines so that particular kinds of mistreatment are associated with different levels of reductions in sentences.[28] Courts may also have difficulty determining whether proportionality principles or evolving standards of decency should guide remedial determinations, although it is worth recognizing that disproportionate sentences can be said to implicitly violate evolving standards of decency.

¶23 It may also become necessary to distinguish between conditions of confinement that are the result of systemic customs, practices, or policies and those conditions that are imposed by individual corrections officers acting without any facilitation from senior corrections officials. In the former case, the disjunction between remedies discussed above is more prominent. Indeed, it might be said that the best way to equalize the treatment is to limit the remedy of release to offenders who experience unconstitutional conditions that are closely tied to official custom, policy, or practice.

---

[27] In Parsons v Ryan, CIV 12-0601 PHX ROS the United States District Court in Arizona has found systemic violations in the Arizona Prison system.

[28] *See* 18 U.S.C. § 3553(a)(2)(A) (2006) (listing factors to be considered in imposing a sentence under Federal Sentencing Guidelines).

¶24 Courts have long recognized that legal remedies are not a complete remedy for the violation of a constitutional right. [29] This is particularly the case when the violation also involves physical injury or emotional distress. Damages simply cannot purchase the right of the individual to be free from the treatment described here. [30] Second, depending on how one conceptualizes the injury here, it may be that the remedy of release is the *only* remedy that will come close to fully addressing the past unconstitutional abuse.

¶25 If one believes that an abusive condition, in addition to the time already spent in prison, has imposed a total punishment that is disproportionate to an offender's crime of conviction, then the remedy of release is necessary not only to remedy the prior imposition of the abusive condition but also to prevent any further punishment. Additional punishment beyond that which is already disproportionate would quite clearly constitute a distinct constitutional injury that can be most directly remedied by release. Analogously, if someone is shown to be wrongly incarcerated, no barrier exists to providing him compensation for the years of unjust punishment he experienced and also ordering his release to prevent the imposition of any further unjust punishment.

---

[29] *See* Pamela S. Karlan, *The Irony of Immunity: The Eleventh Amendment, Irreparable Injury, and Section 1983*, 53 STAN. L. REV. 1311, 1326 (2001).

[30] *See id.* at 1328-30 (noting that when constitutional injuries are noneconomic and therefore incapable of being fully remedied by damages, courts usually find that plaintiffs have met the irreparable injury prong for injunctive relief); *see also* JEFFRIE G. MURPHY, RETRIBUTION, JUSTICE AND THERAPY 241 (1979) (comparing the relative ease of compensating individuals for wrongful imprisonment with the difficulty of compensating for torture or other deprivations of dignity).

¶26 Moreover, even if we think of the injury as a violation of conceptions of human dignity and the minimum requirements of a civil society, subjecting an offender to inhumane treatment may also justify release in addition to the awarding of damages, depending on the nature of the treatment. In this respect, we might be more concerned about injuries that are caused by systemic deficiencies rather than an individual bad actor, especially if we are willing to attribute those deficiencies to the State. [31]

¶27 Finally, there will be many cases in which the availability of damages will simply not provide an adequate remedy. The PLRA and its state analogs, for instance, have provisions limiting the availability of damages in prisoners' rights litigation. [32] Most notable is the "limitation on recovery" provision of the PLRA, which states that "[n]o Federal civil action may be brought by a prisoner ... for mental or emotional injury suffered while in custody without a prior showing of physical injury." [33]

¶28 All of this suggests that, although one must grapple with the law of remedies it does not make the remedy of release unavailable. In particular, the law might suggest, consistent with previous discussion, that the remedy of release be limited to those circumstances in which abusive treatment is the product of widespread customs, practices, and not simply the isolated misconduct of an individual corrections officer. In these instances, an injunction calling for release will be properly directed to state

---

[31] *See, e.g.*, Tyler v. State, 28 Ill. Ct. Cl. 90, 91, 98 (1972) (releasing the plaintiff and awarding him $6000 in compensation for wrongful incarceration).
[32] 42 U.S.C. § 1997e (2006). For a state analog, see, for example, LA. REV. STAT. ANN. § 15:1184 (2011).
[33] 42 U.S.C. § 1997e(e).

authorities who bear some responsibilities both for administering punishment and eliminating abusive conditions. Such a law might also call for a limited remedy of release-essentially a framework for deciding when abuses are serious enough that they warrant a reduction in sentence in addition to whatever compensation an offender may warrant.

CONCLUSION

¶29 Certiorari should be granted and the court should direct an evidentiary hearing be held.

¶30 The remedy proposed here for discrete Eighth Amendment violations –release or a reduction in total period of confinement might properly be narrowly applied to those instances in which prisoners are subjected to abuse as a result of systemic policies, customs, or practices.

¶31 As the State has refused to treat the Petitioner and violated the implementing language of The Council Of Europe Treaty, any attempt to read the non-self–execution declaration as making all of the Treaty's rights and obligations unenforceable in American courts would lead to the conclusion that the United States chose to "ratify" the treaty by "breaching" the treaty.

¶32 undertaking an obligation to provide an effective judicial remedy while at the same time making such a remedy effectively impossible in U.S courts. The manifestly absurd results of such a broad reading of the declaration argue for its implausibility.

¶33 At the state level, even non-self-executing treaties must have effect under the Supremacy Clause.

¶34 State courts thus have a constitutional duty to enforce such treaties above their own laws, even in the absence of implementing legislation.

¶35 Arizona's Senators, like those of other states, had an opportunity to consider the treaty and consider withholding their consent to Ratification which they declined to.

¶36 Although the treaty now trumps local democracy, it does so only because it was initially adopted pursuant to the Constitution's National, democratic safeguard on the treaty power.

¶37 In light of this situation, Arizona Supreme Court should embrace its constitutional duty to uphold the treaty. This mandates the State follow the implementing regulations and have the Presiding Judge make his/her position known prior to final decision.

¶38 In the event the State refuses to treat Petitioner's serious medical needs, release must be ordered.

¶39 In the alternative this court should treat this as a habeas corpus and direct a special master to hold a hearing.

Respectfully submitted,

JUSTIN JAMES THRASHER
ADC 245945 P.O. Box 5000
Florence, AZ 85132