

No.

19-6147

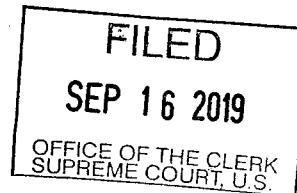
IN THE

SUPREME COURT OF THE UNITED STATES

19-6147  
PETITION FOR CERTIORARI

James Sardakowski — PETITIONER

VS.



Mike Romero — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Sardakowski

(Your Name)

R.N. 133162; C.T.C.F.; POB: 1010

(Address)

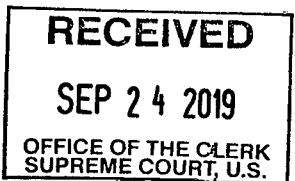
Cañon City, CO 81215-1010

(City, State, Zip Code)

N/A

(Phone Number)

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## **QUESTION(S) PRESENTED**

Does Mr. Sardakowski have a constitutional right to non-discrimination at a parole hearing with regards to a mental health disabilities?

Does Mr. Sardakowski have a right to be assisted under Colorado law for housing if he has none?

Does Mr. Sardakowski have a right not to be denied parole on the same grounds for the last four years?

Does Mr. Sardakowski have a right under Colorado law to have the main consideration of the denial of parole to be the possibility to reoffend?

## **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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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 Sardakowski v. Romero, 2019 U.S. App. LEXIS 26916; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.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 B 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:

N/A

## **JURISDICTION**

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was September 6, 2019.

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: \_\_\_\_\_, 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. § 1254(1).

For cases from state courts:

**N/A**

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### **First Issue:**

“[T]he ADA encompasses equal protection claims[.]” *Carten v. Kent State Univ.*, 282 F.3d 391, 395 (6th Cir. 2002). “[D]iscrimination is, within the letter of the last clause of the first section [of the Fourteenth Amendment under the Constitution], a denial of that equal protection of the laws[.]” *United States v. Stanley*, 109 U.S. 3, 56 (1883). Therefore, the Americans with Disabilities Act (“ADA”) and the Fourteenth Amendment work as one to prohibit discrimination; and as a result, a violation of the ADA is a violation of the Fourteenth Amendment.

“[S]tate Parole Boards fall squarely within the statutory definition of public entity[.]” *Coen v. Ga. Dep’t of Corr.*, 2018 U.S. Dist. LEXIS 156030, at \*37. And “the ADA prohibits a public entity from discriminating against a qualified individual with a disability on the basis of disability.” *Thompson v. Davis*, 295 F.3d 890, 895 (9th. Cir. 2002). A “[m]ental illness is a disability under the ADA.” *Scott v. Phila. Dep’t of Prisons*, 2019 U.S. Dist. LEXIS 57824, at \*4. As set forth above, Mr. Sardakowski was denied parole based in part on a disability. See “Response to Petition for Writ of Habeas Corpus” Motion (“Response Motion”), Ex. A-3. Of which is discrimination as defined by the ADA, 42 USCS § 12101, et seq., as well as the Fourteenth Amendment under the Constitution too. Therefore, Mr. Sardakowski is constitutionally protected from such discrimination and cannot be denied parole based on such grounds.

### **Second Issue:**

A state creates a liberty interest when a statute limits the discretion of the decisionmaker and uses "explicitly mandatory language" requiring a particular outcome if certain conditions are met. *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 462–463 (1989). “[A] State creates a protected liberty interest by placing substantive limitations on official discretion.” *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). C.R.S. § 17-22.5-403(8) (a) states in relevant part: “the division of adult parole shall provide … assistance in

securing [housing.]” (Emphasis added). The word “shall” means mandatory. See United States v. Myers, 106 F.3d 936, 942 (10th Cir. 1997) (“It is a basic canon of statutory construction that use of the word "shall" indicates a mandatory intent.”); see too, Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 661–662 (2007) (same). Therefore, Mr. Sardakowski has a protected liberty interest under the Due Process Clause to be given assistance to secure housing by the State of Colorado’s Board of Parole. And “[o]nce a State has granted prisoners a liberty interest, [the Supreme Court of the United States] held that due process protections are necessary to insure that the state-created right is not arbitrarily abrogated.” Vitek v. Jones, 445 U.S. 480, 488–489 (1980) (internal punctuation marks omitted). As set forth above, Mr. Sardakowski is not challenging early release. And, as relevant here, He has a constitutional right that to be given assistance to secure housing if He is to be paroled homeless. So, to deny Mr. Sardakowski parole based in part on this ground is violating a protected liberty interest. Furthermore, Due Process protections require prisoners not be subjected to arbitrary deprivations of liberty, despite prison officials’ interest in discretion and flexibility. Hatch v. D.C., 184 F.3d 846, 849 (D.C. Cir. 1999).

**Third Issue:**

After 14 plus years of being in continuous confinement (and being arrested at the age of 18, as well as only being independently living in His apartment for only about three months before He purportedly committed His crime) it is inconceivable that Mr. Sardakowski would have had any time to gain any community support whatsoever. So the claim of not having community support is moot.

**Fourth Issue:**

Mr. Sardakowski has a mandatory release date (“MRD”), of which means that He will be released soon, no matter what. And in addition, Mr. Sardakowski has to do 5 years of mandatory parole due to His sentenced to a class two felony. So Mr. Romero’s dispute in His response motion is that Mr.

Sardakowski "might" reoffend and that Mr. Sardakowski should be denied parole based on a hypothetical situation is irrational and ludicrous. Therefore, this claim of His has not established a rational basis for His decision to deny parole for Mr. Sardakowski pursuant to Lewis v. Beeler, 949 F.2d 325, 331–332 (10th Cir. 1991) ("The appropriate standard of review for the Parole Commission, in contrast, is "whether the decision is arbitrary and capricious or is an abuse of discretion."") (cites omitted).

**Fifth Issue:**

Since 2015, Mr. Sardakowski has seen and been denied parole three times within the last four years for the same reasons, see Response Motion, Ex. A-3. Mr. Sardakowski saw the Parole Board the first time in 2015, and was deferred for a year; in 2016, the Parole Board deferred Him for two more years; and in 2018 (this litigated one) He was once again deferred for one more year, until 2019. The Parole Board's guidelines to deny parole based on the claim of "severity of crime" is a panoptic statement that gives them power to deny anyone parole based on this claim of "severity of crime", of which is a violation of Mr. Sardakowski's Due Process rights because it is void for vagueness.

"[T]he "void for vagueness" doctrine [is] applicable to civil [ ] actions." Boutilier v. INS, 387 U.S. 118, 123 (1967). "The void-for-vagueness doctrine is embodied in the due process clauses of the fifth and fourteenth amendments." Isler v. N.M. Activities Ass'n, 893 F. Supp. 2d 1145, 1151 (N.M. Dist. Ct. 2012). Additionally, Mr. Romero establishes in His Response Motion (see Response Motion, pg. 3) that under statutory law (that Mr. Romero does not cite, but quotes) there is no authority of law to deny Mr. Sardakowski's parole based in part on His severity of crime. So, Mr. Romero lacks the authorization to justify the denial of Mr. Sardakowski's parole based in part of His crime. Therefore, Mr. Sardakowski cannot be denied parole based in part on His crime.

**Sixth Issue:**

Lastly, C.R.S. § 17-22.5-404 (1) (a) states that "[t]he risk of reoffense shall be the central consideration by the state board of parole[.]" (emphasis added). The

Parole Board never made any conclusion on the record regarding this mandated rule.

## **STATEMENT OF THE CASE**

James Sardakowski (“Mr. Sardakowski”), the Appellant, filed a Petition for a Writ of Habeas in November, 2018. The District Court ordered the Respondent to give a limited response (date unknown). They did so (date unknown) and Mr. Sardakowski filed a reply to it to it (date unknown) and the District Court filed an order (date unknown) and agreed with Mr. Sardakowski and ordered the respondent to file a Response on why Mr. Sardakowski should not be granted relief. The Respondent did so (date unknown), and Mr. Sardakowski filed a reply to the Respondent’s motion (date unknown). The Court agreed with the Respondent (date unknown), and denied Mr. Sardakowski’s Petition. Mr. Sardakowski filed an appeal to the United States Court of Appeals for the Tenth Circuit (date unknown). Mr. Sardakowski then filed an Appellant’s Combined Opening Brief and Application for a Certificate of Appealability (date unknown) to the United States Court of Appeals for the Tenth Circuit. It was denied on September 6, 2019 by the United States Court of Appeals for the Tenth Circuit. Now this petition follows.

## **REASONS FOR GRANTING THE PETITION**

A rule so that People will not be discriminated against when they see the parole board.

A rule that when laws requires something mandatory it will be adhered to.

A rule that when a law states that when a statute makes it mandatory for a state entity to aid in securing housing, that entity will do it.

A rule making requirements that if there exists no genuine reason to deny parole, and the parole board keeps stating the same reasons on their justification to deny parole repetitiously, and not requiring any type of classes (or the alike) to be paroled, then parole shouldn't be denied.

## **CONCLUSION**

The petition for a writ of certiorari should be granted for the reasons set forth above.

Respectfully submitted,

  
**James Sardakowski**

R.N. 133162

C.T.C.F.

POB: 1010

Cañon City, CO 81215-1010

Date: Sunday, September 15, 2019.