

No. _____

19-8871

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Joshua Adam Schulte PETITIONER
(Your Name)

FILED

MAY 22 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Adam Schulte #79471-054
(Your Name)

MCC, 150 Park Row
(Address)

NY, NY 10007
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Does an aggrieved party have no right to appellate review of a district court order that 'administratively' unconditionally ends the case

Such as, in the instant case, a district judge 'administratively closed' a 28 U.S.C. § 2241 pretrial habeas corpus civil action challenging pretrial conditions of confinement including Special Administrative Measures (SAMs) and Prisoner Litigation Reform Act (PLRA) violations until after the conclusion of the criminal case at which point the civil case would be moot; the court of appeals found it had no jurisdiction on appeal even after the Petitioner invoked the Collateral Order Doctrine on rehearing, and therefore Petitioner had no due process right to appellate review — in fact, no due process at all.

The original question presented in the petition for writ of habeas corpus was, can a judge impose the ban of the entire internet and all electronic devices pretrial without stating on the record the necessity for such a ban or why less restrictive options were not even considered and then modify this ban to include third parties ex post facto and remand a defendant?

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:

Technically all parties are from United States Government.
U.S. Attorney General, Department of Justice, Federal Bureau of Investigation, United States Attorney for the Southern District of New York, and the Federal Bureau of Prisons

RELATED CASES

Criminal Case against Petitioner:

United States of America v. Joshua Adam Schulte,
17 cr. 548 (PAC),
Southern District of New York — Pending trial —

The instant case is 19 Civ. 3346 (PAC) SDNY
19-2940 2nd Circuit Court of Appeals

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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 _____; 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.

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JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was JANUARY 30, 2020.

☐ 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: April 1, 2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

Petition for writ of certiorari due on Tuesday, June 30, 2020.

☐ 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

The Fifth Amendment to the United States Constitution states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; Nor shall be compelled in any Criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; Nor shall private property be taken for public use, without just compensation

28 U.S.C. § 2241

42 U.S.C. § 1997e

28 C.F.R. § 501

18 U.S.C. § 3142

18 U.S.C. § 3148

STATEMENT OF THE CASE

This question has essentially been answered by this Court in its Collateral Order Doctrine. Yet, the courts of appeals continue to disregard or ignore this critical doctrine, and the Supreme Court should intervene not only in the due process interests of the Petitioner but also to clarify and eliminate gross abuses of power from the lower courts; these courts are wielding "administrative closures" as a powerful tool to deny due process to the poor and further oppress those with no advocate, who file pro se. Until this issue and others like it are resolved, there will continue to be two justice systems in America: one where the rich and powerful are granted due process and one where the poor and oppressed cannot even have the merits of their cases reviewed by any court.

On January 30, 2020, the Second Circuit Court of Appeals "determined sua sponte that it lack[ed] jurisdiction over this appeal because a final order ha[d] not been issued by the district court as contemplated by 28 U.S.C. § 1291," (Appendix A). The district court's order administratively closing the civil case was a final decision because it conclusively ended the Petitioner's pretrial petition for habeas corpus and motions for relief under the Prisoner Litigation Reform Act (PLRA). The district court's order conclusively ordered the civil case closed until after the conclusion of the criminal case. The Petitioner's challenges to pretrial incarceration and various conditions of confinement under 28 U.S.C. § 2241 would be moot after the conclusion of the Petitioner's criminal case and would therefore deprive the Petitioner of due process. Accordingly, the district court's order was final and appealable under the collateral order doctrine.

INTRODUCTION AND BACKGROUND

The Petitioner was arrested in New York City on August 24, 2017 and later released on bond in September 2017 on conditions of release that were overbroad, excessive, and unconstitutional; the district court violated the First Amendment and Packingham v. North Carolina, 137 S. Ct. 1730 (2017), when it ordered the Petitioner banned from not only the entire internet, but all electronic devices. The Petitioner was also subject to 24/7 GPS monitoring in violation of the Fourth Amendment and Grady v. North Carolina, 135 S. Ct. 1368 (2015). Finally, the Petitioner was held under house incarceration and prevented from leaving his apartment to work, assist in his own defense, or even attend religious services in violation of the First, Fifth, Sixth, and Eighth Amendments. The record failed to explain the necessity of such harsh conditions as required by 18 U.S.C. § 3142.

In December 2017 the Petitioner was arrested in his apartment on Virginia sexual assault charges allegedly committed in 2015, ~~two~~ ^{two} years before his first arrest in August 2017 on the federal charges. These new Virginia charges were not brought by any victim, but were the result of a warrantless search of the Petitioner's cell phone. 3500 materials released to the Petitioner in 2020 showed FBI malfeasance as they directed the State of Virginia to convene a grand jury despite the lead detective's statement that he had no crime to prosecute; to this date the Petitioner has never been formally charged. The Government then moved to remand the Petitioner using this arrest and additional allegations that the Petitioner violated his excessive bail conditions; the Petitioner previously sought and received permission from pretrial services, who was authorized to make modifications to the court's order, to permit his roommate to access the internet on his behalf. The district court decided to expand the

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already overbroad, unconstitutional release conditions ex post facto to ban not only the entire internet and all electronic devices, but also ban third parties from using the internet or electronic devices on the Petitioner's behalf; this new condition was applied retroactively after it was violated and notwithstanding pretrial service's acquiescence to the request. Hence, the Petitioner was remanded. This decision to remand was upheld by the Second Circuit Court of Appeals in March 2018 in an unpublished opinion.

In June 2018 the Petitioner filed his own bail application after his court-appointed counsel refused to do so and was accused of releasing classified information in the bail application (the application was never considered). Several months later, while still incarcerated pending trial, then Attorney General Jeffrey Sessions imposed Special Administrative Measures (SAMs) on the Petitioner pretrial. This SAMs

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authorized the BOP to torture the Petitioner in solitary confinement, indefinitely — the same punishment imposed upon those convicted of the most heinous crimes of mass murder and terrorism and held at the U.S. Penitentiary Administrative Maximum (ADX) federal prison. This imposition of SAMs pretrial was done without any judicial proceedings.

After suffering solitary confinement in a cage the size of a parking space — which would be illegal to confine any other animal — the Petitioner filed for habeas corpus relief in April 2019. In addition to challenging the imposition of SAMs without due process and his indefinite incarceration pretrial, the Petitioner challenged issues that he exhausted through administrative remedy pursuant to the PLRA including sleep deprivation through constant cage lighting, dysfunctional plumbing, the ban of the Institution's library and all books, the ban of outside recreation, the blacked out windows in the cages to prevent looking

outside, limited and monitored social calls and visits, lack of cleaning supplies, lack of medical care and treatment, and the arbitrary denial of commissary items such as "Cheerios" cereal (where "raisin brand" is permitted and both are sold in the same bag), among countless other issues.

The District Court did not hold a single conference, and on August 14, 2019, the very day the Government finally appointed an attorney to the case and made an appearance, the judge ordered the case "administratively closed" pending the outcome of the criminal trial (Appendix C). What about the 28 U.S.C. § 2241 petition? What about the PLRA violations? What about SAMs? If the petitioner waited until after the conclusion of the criminal trial, whether the petitioner was convicted or acquitted, all these issues would then be moot.

The Petitioner timely appealed on September 6, 2019. The Petitioner filed for an expedited appeal that was never considered and then

filed a Brief on October 29, 2019. The Government requested the full 90 days to file a response, but did not file anything by the deadline. Finally, on January 30, 2020, the court of appeals raised jurisdiction sua sponte and held that it did not have jurisdiction because the order "administratively closing" the case was not a final order (Appendix A). The Petitioner filed for rehearing raising the Collateral Order Doctrine, but the court of appeals denied the petition for rehearing on April 1, 2020 (Appendix B).

The Government tried the Petitioner for espionage in a 10-count indictment in the Southern District of New York during the month of February 2020. After a month of Government witnesses, theories, and evidence, the majority of the jury voted to acquit, but no unanimous decision was reached therefore resulting in a Mistrial (excepting convictions for contempt of court and making false statements that are pending Rule 2d dismissal). Petitioner remains on SAMs in solitary for espionage despite no guilty verdict.

REASONS FOR GRANTING THE PETITION**A. Without certiorari, Petitioner has no due process**

The courts simply disregarded the Petitioner's civil rights complaint and never reviewed the merits. Despite numerous requests for a conference, the District judge simply chose to ignore the Petitioner—a man incarcerated with no advocate. It is easy to ignore someone who is locked in a cage and who cannot complain to anyone. The District judge ignored the Petitioner until the very day the Government entered an appearance and then immediately ended the case without a decision, effectively denying the Petitioner due process guaranteed by the Fifth Amendment. The Court of appeals then refused to intervene, claiming they had no jurisdiction. Where does that leave the Petitioner? He is stalemated, deadlocked. His case cannot progress because it is administratively closed yet he cannot appeal because the closure is not "final".

This is not justice. This is injustice. This is oppression. This is tyranny. The courts have manipulated the broken legal system to oppress the poor — to deny due process to anyone who cannot afford to purchase one of their club members — an attorney. If the Supreme Court does not intercede and stop this despicable practice — not just on behalf of the Petitioner, but all those oppressed — the Fifth Amendment will cease to exist in America.

B. Certiorari should be granted because the cost is small, but the effect enormous

The answer to the question presented is, of course an aggrieved party should have access to the legal system and the right of appeal.

The court need not even grant certiorari to review the issue: the facts speak for themselves. This Court need only apply its own Collateral Order Doctrine.

1. District Court's Order is Final

Judge Crotty's 8/14/19 Order is a final order because it conclusively ended the case until the criminal proceedings finished at which point all challenges to pretrial incarceration and conditions of confinement would be moot. Indeed, this order is an implicit denial of the petition for habeas corpus and PLRA relief.

"A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Caithin v. United States, 324 U.S. 229 (1945). In determining whether a decision is "final" within the meaning of § 1291, courts must give that section a "practical rather than a technical construction," Cohen v. Beneficial Industrial Loan Corp., 337 US 541, 546 (1949), and a decision "by which a District Court disassociates itself from a case" is deemed to be final, Swint v. Chambers County Commission, 514 US 35, 42 (1995); see, e.g.,

Bankers Trust Co. v. Mallis, 435 U.S. 381, 385 n.6 (1978) ("courts of appeals must determine whether the district court intended the judgment to represent the final decision in the case.")

The circumstances of the instant case are not unlike the very case the court of appeals referenced in its denial order, Leftridge v. Conn State Trooper Officer No. 1283, 640 F.3d 62 (2d Cir. 2011): "In the present case, it appears that the district court intended its [---] Order, although not addressing the merits of the case or any issue in it, to be its final decision," *Id.* at 66; "Even if that were not the court's intent, the [---] Order plainly ended [the] case in the district court as a practical matter," *Id.* at 67. Indeed, here as in Leftridge, the district court's Order plainly ended the case as a practical matter. The Order administratively closing the case until the conclusion of the criminal case essentially denied all issues challenging pretrial conditions of confinement. Since the Petitioner could not address his pretrial habeas

petitions, it was not only appropriate, but the only judicial mechanism left to file an appeal. Therefore this Court should reach the same conclusion here as the Court of appeals did in Leftridge: "Accordingly we view the [...] Order as a final decision within the meaning of § 1291. We cannot, as a matter of sound jurisprudence, conclude that an aggrieved party has no right to appellate review of a district court order that 'administratively' unconditionally ends the case." *Id.* (emphasis added).

2. Order is Appealable under the Collateral Order Doctrine

Judge Crotty's 8/14/19 Order is a final order under the collateral order doctrine because it conclusively ends all challenges to pretrial incarceration and conditions of confinement.

This Court has developed a collateral order doctrine, to the effect that 28 U.S.C. § 1291 permits appeals not only from a final decision by which a District Court disassociates itself from a case,

but also from a small category of decisions which, although they do not end the litigation, must nonetheless be considered "final" — that small category includes only decisions that are (1) conclusive, (2) resolve important questions separate from the merits, and (3) are effectively unreviewable on appeal from the final judgment in the underlying action; the collateral order test disallows appeal from any decision which is tentative, informal, or incomplete." Swint at 42.

Here, Judge Crotty's Order (1) conclusively ends all challenges to pretrial conditions of confinement, (2) stays all other separate issues in the civil case, and (3) effectively renders the denial of Habeas Corpus and pretrial detention conditions unreviewable on appeal from the final judgment in the underlying action. Therefore, the Petitioner properly filed for appeal, and the court of appeals had jurisdiction.

C. Certiorari should be granted and this Court should review the merits of the Petition for habeas corpus due to the extraordinary circumstances

Since there is no question that the district court violated the due process clause by refusing to hear the petition for habeas corpus and then the court of appeals disregarded Supreme Court precedent by refusing to accept jurisdiction, the Petitioner requests that, in the interests of due process and justice, this Court rule in the Petitioner's favor and grant certiorari to review the merits of the Petitioner's underlying petition for habeas corpus. The Petitioner could have simply filed for writ of habeas corpus as an extraordinary writ to this Court addressing the merits of his petition and arguing that there was no due process left but to file directly with the Supreme Court. However, it was critical that the Court first address the court of appeal's refusal to acknowledge the collateral order doctrine. Once that jurisdiction issue is settled, the underlying petition for habeas corpus must be considered.

Since the Petitioner's petition for writ of habeas corpus is a petition for pretrial relief and since it has already been unnecessarily delayed by unconstitutional decisions from the lower courts, due process requires a speedy and just consideration of the habeas corpus merits by this Court. See, specifically, the Petitioner's Reply Brief to the court of appeals (19-2940), Dkt# 115.

1. The district court imposed overbroad, excessive, and unconstitutional conditions of release that cannot legally be enforced

The same district court that issued the unconstitutional order "administratively closing" the pretrial petition for writ of habeas corpus until the petition would be moot also imposed outrageous conditions of release on the Petitioner. The district court disregarded the First Amendment and the rulings of this Court in Packingham v. North Carolina, 137 S. Ct. 1730 (2017), when it banned the Petitioner from the entire internet and all electronic devices. The district court did not state on the record any reasons for

these harsh conditions or why less restrictive options such as monitored internet access were not considered. The District Court clearly intended to suppress lawful speech as the means to suppress unlawful speech—taking the extraordinary measure of banning the entire internet and all electronic devices to ensure the Petitioner could not engage in unlawful speech; this is unconstitutional, see Ashcroft v. American Civil Liberties Union, 535 US 564 (2002). Since these bail conditions violated the Constitution and Supreme Court precedent, this Court should grant the Petitioner's writ of habeas corpus.

2. The District Court's revocation of bail was unconstitutional

Additionally, the same District judge also expanded the already overbroad, illegal release conditions ex post facto to include third parties. The Petitioner followed the District judge's bail conditions and requested confirmation from pretrial services, who had the authority to modify the conditions of bail, whether or not his roommate could access the internet on his behalf;

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pretrial services consented that this was allowed. Four months later, however, the District judge stated that his release conditions banning the entire internet and all electronic devices also applied to third parties despite no such condition in the ruling. He found that the Petitioner violated these conditions and ordered him remanded into federal custody indefinitely, pending trial. Under the District judge's interpretation of his release conditions, if the Petitioner asked about the weather, the price of a stock, a news article, the latest ruling in this Court, or any other innocuous question that prompted an individual to use a computer or the internet—the Petitioner's bail would be revoked. This is absurd. Since the revocation of bail was applied *ex post facto* to the conditions of release despite the Petitioner's good faith dialogue with pretrial services, this Court should grant the Petitioner's writ of habeas corpus.

3. Special Administrative Measures are facially unconstitutional

The federal government's imposition of SAMs to confine the Petitioner in indefinite solitary confinement is barbaric torture that violates Separation of powers and the 1st, 4th, 5th, 6th, and 8th Amendments to the Constitution.

The power to sentence an individual is power granted to judges after a conviction by a jury. SAMs are facially unconstitutional because they permit the executive branch to usurp the judicial branch's authority to impose sentences and takes that power for themselves. Additionally, the Government can impose the most severe punishment in the land without any due process. Those convicted of the most heinous crimes—Mass Murder and terrorism—are held in the U.S. Penitentiary Administrative Maximum (ADX) Federal prison in solitary confinement. This same punishment—the most severe punishment that the United States can impose besides death—is also imposed upon the Petitioner. How is this possible? How can the United States torture a pretrial inmate who has

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never been convicted of any crime? To impose the harshest punishment in the land, the United States Government does not need a jury conviction or even a federal judge's concurrence — it need only issue a Memorandum and direct the BOP to torture.

There is no due process here. There is no procedural due process — the executive branch issues a declaration of torture, and the executive branch commences that torture. This also offends substantive due process as it truly shocks the conscience that torture and infinite punishment can be imposed upon any un-convicted United States Citizen indefinitely. This torture, if imposed upon enemy soldiers during a time of war, would violate the Geneva Convention — it is a torture that permanently and completely destroys an individual from the inside out. The United Nations condemns indefinite solitary confinement as despicable torture. Since SAMs are facially unconstitutional, this Court should declare them as such and grant the Petitioner relief.

CONCLUSION

The Petitioner has been unconstitutionally incarcerated for over 1000 days—his life completely destroyed by a single district judge who disregarded the Constitution and Supreme Court precedent. The Petitioner is currently tortured by the United States Government, held in Solitary Confinement indefinitely—in a cage the size of a parking space, despite a jury's failure to find guilt beyond reasonable doubt for espionage.

This Court could resolve this case by remanding back to the Court of appeals and ordering it to accept jurisdiction of the Petitioner's appeal. Since the Government did not move to dismiss for lack of jurisdiction and did not file any Opposition Brief before the 90-day deadline that it requested, the Government should be precluded from filing a response; only the Petitioner's Brief and Reply Brief should be considered by the Court of appeals. The appeal should also be expedited.

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Alternatively, the Petitioner requests, and the extraordinary circumstances permit, that this Court grant certiorari and hear arguments for the Petitioner's underlying petition for writ of habeas corpus—sending back the remaining issues to the court of appeals for consideration.

Finally, this Court should prevent this issue from arising in the future by limiting the district court's ability to "administratively close" cases and requiring the courts of appeals to recognize the collateral order doctrine or however it sees fit to guarantee the Due Process Clause of the Fifth Amendment.

Joshua Adam Schulte

Josh Schulte

Petitioner, pro se

Date: 5/10/20