

No. 20-247

In The
Supreme Court of the United States

Duane Ronald Belanus, - Petitioner,

VS.

Leo Dutton, et.al., - Respondents.

On Petition For A Writ Of
Certiorari To The United States Court
Of Appeals For The Ninth Circuit

Petition For Rehearing Of Order
Denying Petition For A Writ Of Certiorari

Pro Se

Duane Ronald Belanus

AO #3003449

Montana State Prison

200 Conley Lake Road

See Lodge, MT 59222

I) Issue Presented

1) A substantial circumstance arises from failing to clarify and equalize the split decisions dividing the Federal Circuits pertaining to the designation of a convicted and unsentenced individual as either a pre-trial detainee or a convicted prisoner in accordance with State law; it creates unfairness, an Equal Protection of the laws violation, and effectively violates State Sovereignty under the 5th, 11th, and 14th Amendments.

II) List of Parties

All parties appear in the caption of this case on the cover page. The Respondents are represented by MACo Defense Services.

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Rules:

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IV) Petition for Rehearing of the Denial
of the Petition for a writ of Certiorari

Petitioner Prays that this Petition
for Rehearing of the Denial of the Petition for
a Writ of Certiorari issue.

III) Reasons for Granting Petition for Rehearing

The Ninth Circuit Court of Appeals has entered a decision in conflict with the decisions of the Second and Third Circuits. The Ninth Circuit's decision is in conflict with the decisions of the Montana Supreme Court.

The division of the Circuits on this important matter of Constitutional dimension creates an Equal Protection of the laws violation and violates Montanans State Law Sovereignty for a statutorily guaranteed liberty Interest protected by the 14th Amendment. The argument is as follows:

VII) Argument

The convicted and unsentenced individual designated protection under the 8th Amendment or under the 14th Amendment, requires clarification ~~so~~ all individuals are treated alike.

The Equal Protection Clause of the Fourteenth Amendment requires that all persons treated similarly should be treated alike, see *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). Some Circuits provide pre-trial detainee protection and other Circuits provide convicted prisoner protection on the same point of law, the designated protection for a convicted and unsentenced individual. When the Federal Circuits disagree as to a point of law, the law cannot be considered 'clearly established'; this creates unfairness upon an important

matter of Constitutional law protection.

This Honorable Court has twice implied that the 14th Amendment protects the convicted and unsentenced individual, see *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977) and *Graham v. Connor*, 490 U.S. 386, 392 n.6 (1989) ("8th Amendment" does not "apply until after conviction and sentence").

Several Circuits follow this Court's implied point of law, see *Fuentes v. Wagner*, 206 F.3d 335, 341 (3rd Cir. 2001) (pre-trial detainee); *Lewis v. Downey*, 581 F.3d 467, 474 (7th Cir. 2009) (defendant is both convicted and sentenced); *Iqbal v. Hasty*, 490 F.3d 143, 163 n.8 (2nd Cir. 2007).

Other Circuits hold that the 8th Amendment protects the convicted and unsentenced

individual, see *Resnick v. Hayes*, 213 F.3d 443, 448 (9th Cir. 2000) (treated as prisoner); *Berry v. City of Muskegon*, 900 F.2d 1489, 1493 (10th Circuit 1990) (convicted prisoner); *Whitnack v. Douglas County*, 16 F.3d 954, 956-957 (8th Cir. 1994) (treated as prisoner); *Tilmon v. Proctor*, 368 F.3d 521 (5th Cir. 2004) (treated as convicted prisoner).

The "circuits are divided" as to which standard (the 14th Amendment or the 8th Amendment standard) applies in cases dealing with an unsentenced and convicted individual, see *Fisherman v. McGriff*, 2020 U.S. Dist. LEXIS 49165. The circuit's disagreement creates unfairness and treats similarly situated individuals differently.

Why should an individual in the Third Circuit be treated as a pre-trial detainee on the exact same matter of Constitutional law that the Ninth Circuit treats as a convicted prisoner? The Third Circuit provides additional Constitutional protection (as implied by the United States Supreme Court) than that provided by the Ninth Circuit. This creates an Equal Protection of Constitutional law violation.

This matter of law protection also implicates State Sovereignty. The Third Circuit's 29-year holding of applying the 14th Amendment pretrial detainee protections upon an unsentenced and convicted individual comes from Pennsylvania's Supreme Court

rulings and holdings upon its State laws provided by Statute. Montana's Supreme Court rulings and holdings upon its State laws provided by Statute declare that an unsentenced and convicted individual is a pretrial detainee until they are sentenced; an enhanced liberty protection, provided to Montana's Citizens. The Ninth Circuit's holding of *Resnick v. Hayes*, 213 F.3d 443, 448 (9th Cir. 2000) ruling that an unsentenced and convicted prisoner is protected under the 8th Amendment's lesser protections for a convicted prisoner, conflicts with Montana's clearly established laws on this point.

The holding of *Resnick* being applied to a Montana Citizen asserting a violation

of the United States Constitution against state officials acting under color of state law; which Montana's laws declare Mr. Belanus as a Pretrial Detainee, (thereby protected by the Fourteenth Amendment not the Eighth Amendment), intrudes upon and violates Montana's State Sovereignty to create its own laws providing greater protection than that provided by the Federal System.

Mr. Belanus asserted a 14th Amendment pre-trial detainee Constitutionally protected right violation for a failure to protect; and pursuant to Resnick, the Ninth Circuit ruled that Mr. Belanus was a convicted prisoner asserting a condition of confinement claim protected by the 8th Amendment. Mr. Belanus

was in the State of Montana's care and custody; and pursuant to Montana State law, M. Belanus was a pretrial detainee at the time of his claimed Constitutional violation.

Montana's State Sovereignty of its laws requires, equally as the Third Circuit upheld for Pennsylvania's laws, that a Plaintiff raising a 1983 civil claim in Federal Court upon state officials acting under color of state law triggers the State's law designation of custody to the unsentenced and convicted individual as either a pretrial detainee or a convicted prisoner, which governs the Federal Constitutional standard of protection afforded in the case.

Thus, the United States Supreme Court should grant this petition for rehearing for the denial of the petition for a writ of *Certiorari* for making clarification, unity, and equalization upon the Circuit Courts on deciding and making clearly established this substantial matter of Constitutional law protection for the unsentenced and convicted individual.

VIII) Conclusion

Wherefrom, Petitioner respectfully requests that this Petition for Rehearing of the denial of Writ of Certiorari Petition be granted.

Respectfully submitted this 16th
day of November, 2020.

Duane Ronald Belanus

Duane Ronald Belanus

IX) Declaration of Service

Pursuant to 28 U.S.C. 1746, I,

Dwaine Ronald Bellemus, swear and declare under the penalty of perjury that this Petition for Rehearing of the denial of my Petition for a writ of Habeas Corpus was timely filed in the prisons mailbox system satisfying timely service, see *Douglas v. Noelle*, 567 F.3d 1103, 1108-1109 (9th Cir. 2009); *Houston v. Lack*, 108 S.Ct. 2379, 2384-2385 (1988).

Dated this 16th day of

November, 2020.

Dwaine Ronald Bellemus

Dwaine Ronald Bellemus

X) Certificate of Service

I, Duane Ronald Belanus, certify
that a copy of the foregoing was sent
to:

Clerk of Court
United States Supreme Court
Washington, D.C. 20543-0001

MA6 Defense Services
2717 Skyway Drive, Suite F
Helena, MT 59620-1213

Respectfully Submitted this 16th

day of November, 2020.

Duane Ronald Belanus

Duane Ronald Belanus

XT) Certificate of Compliance

I, Duane Ronald Belanus, certify that this Petition for Rehearing Complies with Rule 44, and Rule 33.2(b) and Rule 34, for a Petition for Rehearing of the Denial of my Petition for a Writ of Certiorari. Pursuant to 28 U.S.C. 1746 and MCA 1-6-105, I, Duane Ronald Belanus, swear and declare under the penalty of perjury that the foregoing is true.

Dated this 16th day of
November, 2020.

Duane Ronald Belanus

Duane Ronald Belanus

Certificate of Restriction

I, Duane Ronald Belanus, certify
that this Petition for Rehearing is restricted
to grounds of a substantial effect not
previously presented; and is filed in
good-faith, and not for delay.

Duane Ronald Belanus

Duane Ronald Belanus

