

No. **20 - 254**

In The

Supreme Court of the United States

KUANG-BAO OU-YOUNG,

Petitioner

v.

JOHN G. ROBERTS, JR.,  
Chief Justice of the United States,  
et al.,

Respondents

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

PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

On May 2, 2017, the U.S. attorney's office for northern California instituted a criminal action against petitioner. On December 19, 2017, the U.S. district court for northern California committed petitioner to competence restoration at Federal Medical Center, Butner, North Carolina. As a result, petitioner applied for a writ of habeas corpus with the U.S. district court for eastern North Carolina on April 5, 2018. The latter district court dismissed the application on September 17, 2018. The denial led to petitioner's September 28, 2018 complaint based on Federal Tort Claims Act ("FTCA"). The FTCA complaint challenges the constitutionality of certain federal statutes as well. On October 30, 2018, the California district court dismissed the criminal case without prejudice. On October 2, 2019, the district court for eastern North Carolina dismissed the FTCA case. U.S. Court of Appeals for the Fourth Circuit upheld said dismissal on March 12, 2020 and denied the ensuing petition for rehearing en banc on May 26, 2020. Thus, the following questions are presented for review:

1. Should a three-judge court instead of a single judge at the North Carolina district court adjudge the FTCA case?
2. Does denial of certiorari justify dismissal of said FTCA case?

## PARTIES TO PROCEEDING

Petitioner Kuang-Bao P. Ou-Young is a citizen of the State of California and the United States.

Respondents are John G. Roberts, Jr., Chief Justice of the United States; Anthony M. Kennedy, retired Associate Justice, U.S. Supreme Court; Stephen G. Breyer, Associate Justice, U.S. Supreme Court; Ruth Bader Ginsburg, Associate Justice, U.S. Supreme Court; Samuel A. Alito, Jr., Associate Justice, U.S. Supreme Court; Maxine M. Chesney, district judge, U.S. district court for northern California; William H. Orrick, district judge, U.S. district court for northern California; Lucy H. Koh, district judge, U.S. district court for northern California; Beth Labson Freeman, district judge, U.S. district court for northern California; D. Lowell Jensen, retired district judge, U.S. district court for northern California; Terrence B. Boyle, chief judge, U.S. district court for eastern North Carolina; Joseph C. Spero, chief magistrate judge, U.S. district court for northern California; Susan van Keulen, magistrate judge, U.S. district court for northern California; Susan Y. Soong, clerk, U.S. district court for northern California; Alex G. Tse, former acting U.S. attorney for northern California; Brian J. Stretch, former U.S. attorney for northern California; Barbara J. Valliere, assistant U.S. attorney, U.S. attorney's office for northern California; Daniel Kaleba, assistant U.S. attorney, U.S. attorney's office for northern California; Shiao Lee, assistant U.S. attorney, U.S. attorney's office for northern California; Maia Perez, assistant U.S. attorney, U.S. attorney's office for northern California; Donald M. O'Keefe, U.S. marshal for northern California; Robert D. Pettit, former acting U.S. marshal for eastern North Carolina; Marc A. Harwell, supervisory deputy U.S. marshal, San Jose office, U.S. marshal for northern California; Chris Yamaguchi, court

security officer, San Jose courthouse, U.S. district court for northern California; Mary Gutturuson, court security officer, San Jose courthouse, U.S. district court for northern California; J. C. Holland, complex warden, Federal Correctional Complex, Butner, North Carolina; T. Smith, warden, Federal Medical Center (“FMC”), Butner, North Carolina; A. W. Rupska, associate warden, FMC, Butner, North Carolina; L. Wheat, chief psychologist, FMC, Butner, North Carolina; R. Koch, forensic psychologist, FMC, Butner, North Carolina; Joseph S. Zonno, forensic psychologist, FMC, Butner, North Carolina; L. Graddy, staff psychiatrist, FMC, Butner, North Carolina; Charles L. Griffin, case manager, FMC, Butner, North Carolina; J. Wiggins, counselor, FMC, Butner, North Carolina; and James McNair Thompson, counsel appointed by U.S. district court for northern California under Criminal Justice Act.

## RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii).

- *Kuang Bao Ou-Young v. John G. Roberts, Jr., et al.*, Case No. 19-2216 (4th Cir.), judgment entered on March 12, 2020;
- *Kuang Bao Ou-Young v. John G. Roberts, Jr., et al.*, Case No. 5:18-ct-3272-D (E.D. NC), judgment entered on October 2, 2019; and
- *Kuang Bao Ou-Young v. J. C. Holland*, Case No. 5:18-hc-2081-BO (E.D. NC), judgment entered on September 19, 2018.

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## PETITION FOR WRIT OF CERTIORARI

Kuang-Bao Ou-Young respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

## OPINIONS BELOW

The panel opinion of the United States Court of Appeals for the Fourth Circuit is reproduced in Appendix (“App.”) A at 1a-3a. The judgment of the United States District Court for the Eastern District of North Carolina is reproduced in App. B at 4a-5a. The en banc order of the Fourth Circuit is reproduced in App. C at 6a-7a.

## JURISDICTION

The judgment of the court of appeals was entered on March 12, 2020. A petition for rehearing en banc was denied on May 26, 2020. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

The statutory provisions involved including 18 U.S.C. §§ 242, 4241(a), 4241(d) and 28 U.S.C. §§ 455(a), 1253, 2284(a), 2284(b)(3) are reproduced in App. F at 64a-67a.

## STATEMENT

In *Estelle v. Smith*, 415 US 454, 462-463 (1981) this Court has held that pretrial psychological examination violates a criminal defendant’s Fifth Amendment right against self-incrimination. Yet



federal trial courts routinely commit defendants to such examinations under provisions of 18 U.S.C. §§ 4241(a), 4241(d).

On May 2, 2017, the U.S. attorney's office for northern California instituted a criminal action against petitioner. On December 19, 2017, the U.S. district court for northern California committed petitioner to competence restoration at Federal Medical Center ("FMC"), Butner, North Carolina under 18 U.S.C. § 4241(d). Thus, petitioner applied for a writ of habeas corpus with the U.S. district court for eastern North Carolina on April 5, 2018.

Under 18 U.S.C. § 4241(a) the California district court committed petitioner to competence evaluation at FMC-Butner on June 26, 2018. The district court for eastern North Carolina dismissed petitioner's application for writ of habeas corpus on September 17, 2018 because "the California district court [was] in the process of determining petitioner competency to stand trial." In response, petitioner filed a complaint with the North Carolina district court based on Federal Tort Claims Act ("FTCA") on September 28, 2018. The FTCA complaint is reproduced in App. D at 8a-53a.

On October 30, 2018, the California district court dismissed the criminal case without prejudice. Petitioner regained his freedom the next day. On October 2, 2019, the North Carolina district court dismissed the FTCA case. U.S. Court of Appeals for the Fourth Circuit upheld said dismissal on March 12, 2020 and denied the ensuing petition for rehearing en banc on May 26, 2020.

## REASONS FOR GRANTING THE WRIT

### A. 28 U.S.C. § 2284 Entitles Petitioner to Make His Case before a Three-Judge Court

Claim 23 of the FTCA complaint, App. D at 49a, challenges the constitutionality of 18 U.S.C. §§ 4241-4248; Claim 24, App. D at 49a-50a, 18 U.S.C. § 3006A; and Claim 25, App. D at 50a-51a, 28 U.S.C. §§ 351-364.

28 U.S.C. § 2284(a) requires a district judge to refer petitioner's FTCA case to a three-judge court. Furthermore, 28 U.S.C. § 2284(b)(3) forbids a single judge from entering judgment on the merits. See *Shapiro v. McManus*, 577 US \_\_\_ (2015). Thus, 28 U.S.C. § 2284 entitles petitioner to make his case before a three-judge court.

### B. Dismissal of the FTCA Complaint Constitutes a Criminal Offense

Federal Rule of Civil Procedure 41(b) permits a district judge to dismiss a complaint upon motion by an adverse party if the plaintiff fails to comply with a court order. Accordingly, the North Carolina district court dismissed the FTCA complaint because of petitioner's failure "to file an amended complaint together with proposed summons," App. B at 4a.

However, "constitutional claims will not lightly be found insubstantial for purposes" of the three-judge-statute. *Washington v. Confederated Tribes of Colville Reservation*, 447 US 134, 147-148

(1980). Because § 2284(b)(3) forbids a single judge from entering judgment on the merits, *supra*, the order requiring petitioner to “to file an amended complaint” violates said statute.

Furthermore, “[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” *Goldberg v. Kelly*, 397 US 254, 269 (1970). Since the district court summarily dismissed the FTCA complaint, the dismissal has violated the due process clause of the Fifth Amendment.

Thus, dismissal of the FTCA case has deprived petitioner of the Fourth Amendment right against unreasonable seizures, the Fifth Amendment right against self-incrimination, and due process of law under the Fifth Amendment.

18 U.S.C. § 242 prohibits deprivation of rights under color of law. And “an offense under § 242 is properly stated by allegations of willful deprivation, under color of law, of life and liberty without due process of law.” *United States v. Price*, 383 US 787, 793 (1966). Accordingly, dismissal of the FTCA case constitutes a criminal offense.

### C. The Fourth Circuit Has Deprived Petitioner of Constitutional Rights

Federal Rule of Appellate Procedure 34(a)(2)(B) allows oral argument to be disposed of if a panel of three judges who have examined the briefs and record unanimously agree that “the facts and legal arguments are adequately presented in the briefs

and record, and the decisional process would not be significantly aided by oral argument.” Therefore, a Fourth Circuit panel upheld dismissal of the FTCA case on March 12, 2020 without a hearing or oral argument, App. A at 3a.

However, the Fourth Circuit has filed petitioner’s motion for summary reversal as opening brief, App. E at 61a. And the U.S. Department of Justice had failed to respond to said motion or opening brief. Moreover, it goes without saying that the North Carolina district court lacks the record that the California district court dismissed the criminal case against petitioner on October 30, 2018. Therefore, by upholding the district court’s ruling without a hearing or oral argument, the Fourth Circuit panel has denied petitioner the Fourth Amendment right against unreasonable seizures, the Fifth Amendment right against self-incrimination, and due process of law under the Fifth Amendment according to *Goldberg v. Kelly*.

The Fourth Circuit denied petitioner’s petition for rehearing en banc without a hearing or oral argument on May 26, 2010, App. C at 7a. Based on *Goldberg v. Kelly*, the ruling has deprived petitioner of the Fourth Amendment right against unreasonable seizures, the Fifth Amendment right against self-incrimination, and due process of law under the Fifth Amendment.

#### D. Denial of Certiorari Perpetuates Violations of Petitioner’s Constitutional Rights

“[A]ll that a denial of a petition for a writ of

certiorari means is that fewer than four members of the Court thought it should be granted, the Court has rigorously insisted that such a denial carries with it no implication whatever regarding the Court's views on the merits of case which it has declined to review.

*Maryland v. Baltimore Radio Show*, 338 US 912, 919 (1950). Nonetheless, denial of certiorari in the present case enables the Fourth Circuit to sustain its deprivation of petitioner's constitutional rights.

Specifically, denial of certiorari in this case deprives petitioner the opportunity to confront and cross-examine the Fourth Circuit judges who have rendered the unconstitutional rulings against him. Accordingly, denial of certiorari itself deprives petitioner of the Fourth Amendment right against unreasonable seizures, the Fifth Amendment right against self-incrimination, and due process of law under the Fifth Amendment.

28 U.S.C. § 1253 permits direct appeals from decisions of three-judge courts. Thus, the district court for North Carolina has dismissed the FTCA case in order to evade referring said case to a three-judge court. The Fourth Circuit has upheld the district court's illegal decision without a hearing or oral argument so as to persist the violations of petitioner's constitutional rights. Thus, the Fourth Circuit has to rely on denial of certiorari to sustain the unconstitutional rulings.

28 U.S.C. § 455(a) requires any justice or judge of the United States to disqualify himself in any

proceeding in which his impartiality might reasonably be questioned. As chief justice Roberts, associate justices Breyer, Ginsburg, and Alito are being sued in the FTCA case, this Court lacks a quorum to review the Fourth Circuit's rulings. Therefore, petitioner submitted a petition for impeachment to the House Judiciary Committee on August 10, 2020 in order to break the stalemate. The petition for impeachment is reproduced in App. E at 54a-63a.

#### CONCLUSION

The Fourth Circuit's unconstitutional rulings have resulted in a legal impasse entailed by this petition for a writ of certiorari. It is incumbent on Congress to support the Constitution as well as to impeach and remove from office the circuit and district judges incriminated in the aforementioned petition for impeachment.

Respectfully submitted this 24<sup>th</sup> day of August 2020.

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