

IN THE  
**Supreme Court of the United States**

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SHADRECK KIFAYATUTHELEZI A/K/A NORMAN HAYES,

*Petitioner,*

*v.*

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
AND MICHAEL STOBBE,

*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**REPLY BRIEF**

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## **REPLY BRIEF FOR PETITIONER**

The Respondents' oppositional brief makes no persuasive argument for denying certiorari. Instead, it buries important factual and legal issues to focus the Court on everything except for the fact that: 1) Petitioner's sentence was miscalculated by the Respondents in violation of clear South Carolina law; 2) Petitioner brought the sentence calculation error to the Respondents' attention during his incarceration without any meaningful investigation from the Respondents; 3) Respondent Stobbe has admitted that various rights were clearly established at the time of the violation, including the Petitioner's right to have his sentence calculated pursuant to applicable law and to be released at the conclusion of his lawful sentence; 4) the South Carolina Court of Appeals held that Respondent's calculation of the Petitioner's sentence violated South Carolina law; and 5) the Petitioner was incarcerated over six months past his release date as a direct result of the Respondents' violations of clearly established law. The fact remains that the district court's adoption of the magistrate judge's report and recommendation, and the unpublished Fourth Circuit's opinion, are inconsistent with decisions from other Circuits. These inconsistencies warrant certiorari.

**I. State law was clear prior to the Petitioner's incarceration and the Petitioner's right was clearly established.**

The Respondents' position is that they were allowed to violate the applicable South Carolina sentencing statute without consequence until an appellate court told them they had to stop violating the sentencing statute. This position is communicated by the Respondents with a straight face, despite that when shown the text of the sentencing statute in his deposition, Stobbe agreed that the language of the statute was clear and that a plain reading of it led to the conclusion reached by the Petitioner and the South Carolina Court of Appeals. The explanation for why the Respondents violated the statute is that they were following a policy that had been in place for years which required the Respondents to divert from applicable law when calculating these types of sentences.

While there was no opinion from a Court cautioning SCDC against their practice of illegally calculating sentences, defendants "can still be on notice that their conduct violates established law even in novel factual circumstances, so long as the law provided fair warning that their conduct was unconstitutional." *Hope v. Pelzer*, 536 U.S. 730, 741, 122 S. Ct. 2508, 153 L.Ed.2d 666 (2002) (cleaned up); *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533 (4th Cir. 2017); *Alexander v. Perrill*, 916 F.2d 1392 (9th Cir. 1990) ("Thus, we reaffirm our decision in Haygood that prison officials who are under a duty to investigate claims of computational errors in the calculation of prison sentences may be liable for their failure to do so when a

reasonable request is made."); *Sample v. Diecks*, 885 F.2d 1099 (3rd Cir. 1989) ("We think there can be no doubt that imprisonment beyond one's term constitutes punishment within the meaning of the eighth amendment."). Here, the applicable state statute was clear by Respondent Stobbe's own admission well before a Court told the Respondents to stop violating the statute.

**II. There is a split of authority as to whether the 8<sup>th</sup> or 14<sup>th</sup> Amendment standard applies.**

The Respondents suggest that the Petitioner has made "no mention of a circuit split, nor any reference to any other sort of consideration that might support a grant of certiorari." This statement ignores the fact that it is unclear whether the 8<sup>th</sup> Amendment prohibition against cruel and unusual punishment applies in this scenario or whether the 14<sup>th</sup> Amendment prohibition against any punishment applies in this scenario. U.S. Const. amend. XIV, § 1 (" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .") (emphasis added); *Russell v. Lazar*, 300 F. Supp. 2d 716, 725 (E.D. Wis. 2004) (8<sup>th</sup> Amendment); *Douglas v. Murphy*, 6 F.Supp.2d 430, \*433 (E.D. Pa. 1998) (8<sup>th</sup> Amendment), *aff'd*, 248 F.3d 1129 (3d Cir. 2000) (table); *Plumb v. Prinslow*, 847 F.Supp. 1509 (D. Or. 1994) ("Eighth Amendment clearly applies to the state defendants..."); *Baldwin v. Erickson*, No. 92-2437, 1993 WL 387898, at \*4 (E.D. Pa. Sept. 28, 1993) (8<sup>th</sup> Amendment);

*United States v. Lovett*, 328 U.S. 303, 317-318, 66 S. Ct. 1073, 1079-1080, 90 L. Ed. 1252 (1946) (“ . . . [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment.”). The Petitioner would argue that the Fourteenth Amendment standard applies since the right to incarcerate the Petitioner expired at the conclusion of his lawful sentence, but in any event, whether the Eighth Amendment prohibition on cruel and unusual punishment or the Fourteenth Amendment prohibition of any punishment applies to an inmate held past his release date is worthy of this Court’s consideration.

### **III. Respondents fail to meaningfully address the Seventh Amendment.**

The Seventh Amendment to the United States Constitution provides that “[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of **trial by jury shall be preserved**, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to

the rules of the common law.” (emphasis added). “As is often true in §1983 actions, the disputed questions were whether the government had denied a constitutional right in acting outside the bounds of its authority, and, if so, the extent of any resulting damages. **These were questions for the jury.**” *City of Monterey v Del Monte Dunes*, 526 U.S. 687, 119 S. Ct. 1624, 143 L.Ed.2d 882 (1999) (emphasis added). “As Justice Scalia notes, see post, at 3 5, we have declined in other contexts to classify §1983 actions based on the nature of the underlying right asserted, and the city provides no persuasive justification for adopting a different rule for Seventh Amendment purposes.” *Id.* This is a case seeking damages under state and federal common law. As such, the Petitioner is entitled to a jury trial on those claims under the Seventh Amendment to the United States Constitution, and the lower courts’ decisions to deprive the Petitioner of a jury trial on these claims was reversible error.



## CONCLUSION

This Court should grant the petition for certiorari.

Dated: December 16, 2020.

Respectfully submitted,

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