No. 20-931

The Supreme Court of the United States

Wynship W. Hillier

v.

Central Intelligence Agency and
United States Department of State

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Petition for Rehearing of Petition for Certiorari

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Introduction

Petitioner Wynship W. Hillier (Pet'r) hereby submits his Petition for Rehearing of the Court's Order of March 1, 2021, denying his Petition for Certiorari, on the basis of the following substantial grounds not previously presented:

This is a suit for notice of the existence of records regarding ourselves held by respondent agencies. The agencies responded to Pet'r's requests by stating that no records were found, but this is the standard response when the existence of records is classified and subject to exclusion through 5 U.S.C. § 552(c) and exemption from the notice provision of the Privacy Act, 5 U.S.C. § 552a(j) and (k) (2018 and Supp. II). The government conceded that all of the issues we raised were properly before the Court. This Court denied certiorari.

The Pet. Cert. Did Not Mention Another Benefit to Pet'r – Identity as Involuntary Patient.

In our *Pet. Cert.*, we failed to mention the benefits that official acknowledgement of our terrorist status (i.e., the existence of records about us in the possession of the respective agencies) would have for us, *apart from* as an intermediate step towards the acquisition of such records. It was held in *Bassiouni v. CIA*, 392 F.3d 244, *247 (7th Cir. 2004) (Circuit Judge Easterbrook) ("Bassiouni is better off under a system that permits the CIA to reveal some things . . . without revealing everything. . . .") that notice of the existence of responsive records *was something of value* in its own right, i.e., other than as an intermediate step towards the acquisition of records themselves. Specifically, it would bestow a *political identity* to us. As things stand currently, *we do not exist*. The conventional wisdom is that United States persons are not terrorists unless they take up arms against the United States. *In fact, they are. In fact, the War on Terror is a means to subvert Constitutional limits to involuntary mental health*

treatment in the United States established by this Court. Why is this Court reluctant to support its own standards? The War on Terror is nothing more than a pretext upon which to inflict such Unconstitutional treatment upon U.S. persons, whatever it may be to non-U.S. persons.

That involuntary mental health treatment of people who are dangerous to neither self nor others was ruled Unconstitutional by this court in *Washington v. Harper*, 494 U.S. 210, *227 (Justice Kennedy) (1990) (unanimous on this point). There, this Court unanimously held that involuntary administration of antipsychotic medication was a significant deprivation of liberty, warranting due process protections. *Id.* 494 U.S. at *221-22 (Justice Kennedy), *237-38 (Justice Stevens, *diss.*). We are dealing here with far worse things, i.e., psychosurgery, the permanent, irreversible destruction of healthy tissue in the human brain to effect a more severe deprivation of liberty for the subject's entire remaining life. This procedure, outlawed in California and other states, was called "more harmful than the disease" by a California state appellate justice, *Aden v. Younger*, 57 Cal. App. 3d 662, 678, 129 Cal. Rptr. 535 (1976) (Justice Brown), when administered to the most severely disabled patients, i.e., far worse than ourselves. This is an useless and pointless waste of human life that will be not only condoned but condemned to silence by this Court if its denial of our Petition for Certiorari is allowed to stand.

That the importance of notice of the existence of responsive records, i.e. political identity, is of Constitutional significance, we only alluded to at the end of our Petition for Certiorari. In fact, it was held as *the sole basis for noninterpretive review* in a venerable and oft-cited work, *John Hart Ely, Democracy and Distrust: A Theory of Judicial Review* (1980). This work held that the Court is justified in striking down the will of the people when such will serves to exclude voices from the political process. (In *Michael J. Perry, The Constitution, the Courts,*

and Human Rights: An Inquiry into the Legitimacy of Constitutional Policymaking by the Judiciary (1982), the basis for noninterpretive review was extended further, beyond such "process-based" noninterpretive review.) Our voice is excluded from the political process by denial of notice of the existence of records because we otherwise cannot prove that the War on Terror is being used as a pretext to inflict long-term involuntary mental health treatment upon the populace in violation of Constitutional norms, even though pretexts are common in mental-health law. *See, generally, Michael J. Perlin, Pretexts and Mental Disability Law: The Case of Competency*, 47 *U. Miami L. Rev.* 625 (1993). Although our terrorist status is used to subject us to highly intrusive surveillance, used to effect degrading, unethical, and ineffective behavioral treatments upon us, *surveillance is not voice*. We cannot direct to whom the product of our surveillance goes. We do not even know exactly who receives it. Indeed, we do not know upon what basis it is determined who gets access to the product of surveillance of us and who does not. The inability to control or even predict who gets what information about us distinguishes this information from voice. The injustice of our situation is heightened still further by the fact that *we are not even asking for noninterpretive review of any statute. We are not even asking for interpretive review. We are asking for simple application of the law on the books*. Why is the court system held out to us as an arbiter of justice when in fact our access to it is illusory? When in fact what we get are administrative decisions based on social position, not justice? Why are we not governed by laws? Who decides whom is governed by laws and whom by an inscrutable administration that knows no law?

The War on Terror Was and Is a Pretext for Involuntary Mental Health Treatment of U.S. Persons in Derogation of Constitutional Standards.

This Court nevertheless cannot hide behind the pretext that it perpetuates by denying review of the application of inconvenient law. *See, generally, Alexander Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (1962) (the Court uses various means to avoid taking cases for political reasons). Here in San Francisco, San Francisco Behavioral Health Services claimed it had appx. 27,980 active patients in 2019, appx. 3.4% of 850,000, the concurrent population of the City and County of San Francisco. *Mental Health Board of San Francisco, Fiscal Year 2018-2019 Annual Report* 33, https://www.sfdph.org/dph/files/commTaskForcesDocs/mentalHlthBdDocs/newMntlHlth/uploadedfiles/Annual%20Report%202019%20-%20final%2006-30-2019.pdf. The California Legislature reported that 5.53% of the population of California were adults suffering from severe mental illness, or were adolescents, ages 9-17, suffering from severe emotional disturbance with functional impairment, in 1999. *A Report on the Public Hearings of the Joint Committee on Mental Health Reform, and Findings and Recommendations as Adopted by the Senate Select Committee on Developmental Disabilities and Mental Health, Senator Wesley Chesbro, Chair,* June 1999, The Senate of the State of California, 1042-S. California law requires that the local mental health system must prioritize treatment of these as well as acute patients and victims of natural disasters. *Cal. Welf. & Inst. Code* § 5600.3(a)(1), (b)(1), (c), and (d) (2021). Assuming constant rates over two decades and interpolating to San Francisco, one may infer from these figures that nearly 2/3 of these populations in San Francisco are currently being treated by the public mental health system. But how can this be, when treatment is

onerous and of marginal effectiveness, such that the vast majority of patients would opt out of it? Specifically, among criminals who were given the opportunity of leaving prison contingent on their participation in mental health treatment, one third of them chose to *return to prison rather than continue with treatment*. How many more would opt out of treatment if the alternative were not prison? Certainly, a very substantial portion. Therefore, one must infer that these patients in San Francisco are being treated involuntarily. But how can this be, when Constitutional norms set the standard for involuntary treatment at a high level, such that very few patients meet its criteria? One must further infer that most of the involuntary patients are also being treated in violation of Constitutional norms laid down by this Court.

Fig. 1. Petitions for long-term involuntary mental health treatment in San Francisco.

Examination of statistics from the Judicial Council of California confirm this, and tie it to the War on Terror. These statistics show the number of long-term involuntary mental health treatment orders filed each year in San Francisco Superior Court ("SFSC"). Prior to 50 U.S.C. § 1541 note ("Authorization for the Use of Military Force") (2018 and Supp. II) ("AUMF"), these statistics show appx. 100 petitions filed in SFSC per year, a sleepy rate of appx. two per week, about what one would expect in a city of this size, given prevailing Constitutional norms. Beginning in fiscal year 2001-2002 (California's fiscal year beginning in June) these figures immediately "launch" to appx. 2,000 such petitions per year, or appx. eight per day. Applying reasonable rates of failure and attrition, one may arrive at the current 27,980 figure. No change in the way in which the statistics were reported accounts for this dramatic uptick in petitions. It must be inferred that the AUMF gave SFSC license to adjudicate these patients into long-term involuntary mental health treatment in violation of Constitutional norms. (In order to insulate these cases from a review they would not survive, the orders had to have issued *ex parte*, in total-sealed cases, for an added Constitutional violation to hide the first one.)

For further circumstantial evidence, one may look to the history of involuntary mental health treatment in the United States. Following federal failure in the area of mental health treatment and the strengthening of civil commitment laws in earlier decades, a public outcry for involuntary treatment followed a Surgeon General's Report and a White House Conference on mental health in 1999. In 2000 in California, the home of the Lanterman-Petris-Short Act (Pt. 1 of Div. 5 of *Cal. Welf. & Inst. Code*) ("LPSA"), the toughest involuntary mental health treatment law in the United States, substantially anticipating this Court's decision in *O'Connor v. Donaldson*, 422 U.S. *575, *576 (1975) (Justice Stewart) by eight years, a new involuntary

mental health treatment law, A.B. 1800 (2000), was proposed, which would substantially weaken California's tight standards, allowing involuntary detention based on predictions as to the course a patient's illness might take. The law passed the California Assembly with a mandate of a very veto-proof majority of 53 to 16. However, the President of the California Senate, John Burton (D – San Francisco), publicly vowed opposition to the bill and never assigned it to a committee, such that it never came up for a vote in his house. How could a single man politically survive so opposing the will of the people? One must infer that the political capital behind the bill had dried up. Indeed, Mr. Burton seems to have engaged in some slight-of-hand: As reason for the delay, he cited the need for more study of the issue, and arranged for commission of the RAND Corporation to do it. When RAND came back seven months later, after the President had been chosen, a much more benign version of A.B. 1800 (A.B. 1421 (2001)), modeled closely on the RAND findings and amounting to almost nothing, was submitted and eventually passed. The political will backing A.B. 1800 really had dried up.

Absent any intervening factor, one must look at what else was going on at this time, in order to explain the problem of the vanishing political will. An important and highly-contested Presidential election was pending in 2000. It must be inferred that the missing political will had repositioned itself behind one of the candidates in this election. This case is nontrivial to sustain. Despite high visibility in the public consciousness during the 2000 Presidential race, mental health was not even raised by the candidates, especially the candidate who would prevail. However, voters indicated a strong sense that the country was on the wrong moral track, and this vague and amorphous theme was harped-upon strongly by the prevailing contender. By wrong moral track, they did not only mean the Lewinsky and related scandals

affecting the Clinton administration. Voters specifically mentioned the country as a whole. Suffice it to say, morals are closely related to the issue of mental illness. *See, generally, Alan A. Stone, Psychiatry and Morality* (1982). It must be further inferred that the Presidential candidate who won knew something about the terrorist attacks that were to rack the country the following year and the likely response to them, and that he let this on to certain people who then pushed him to victory. This is complicated by the fact that losing Presidential candidate Al Gore beat George W. Bush with a comfortable margin in California. But this may merely express the fact that Californians, at least at that time, preferred a legislative, above-the-board response to the issue, rather than a secret policy masked by a protracted war in response to a supposed terrorist attack.

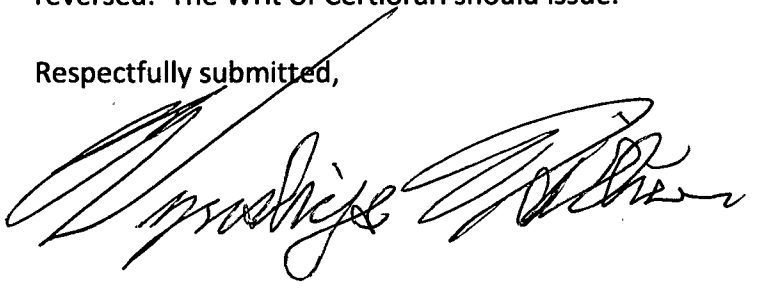
Furthermore, this Court had built a Constitutional wall behind the LPSA, such that it could only be weakened somewhat. The terrorist attacks of 9/11 (incidentally mirroring the Twin Towers bombing and the Waco siege at the beginning of the Clinton administration, which supported the Antiterrorism and Effective Death Penalty Act of 1996) came at a very convenient time, for they allowed a way around this Constitutional wall through Presidential war powers. "A citizen, no less than an alien, can be part of or supporting forces hostile to the United States, or coalition partners, and can be engaged in armed conflict against the United States . . ." *Hamdi v. Rumsfeld*, 542 U.S. 507, *519 (2004) (Justice O'Connor) (quotation marks omitted). "There is some debate as to the proper scope of this term ['enemy combatant' – WH], and the Government has never provided any court with the full criteria that it uses in classifying individuals as such. . . ." *Id.* at *516 (square brackets added). *See*, 50 U.S.C. § 3001 note (2018 and Supp. II) ("Exec. Order No. 12,333" Sec's 1.1(f) and 1.4(g)) (Sections added by

Exec. Order No. 13,470 (July 30, 2008)) (requiring the Intelligence Community to take into account needs, responsibilities, and requirements of local authorities (such as mental health authorities – WH)). It may be inferred that the War on Terror was and is used as a pretext to impose involuntary mental health treatment on a large portion of this nation's populace. Supporting this thesis, pretexts are common in mental health law. *Michael J. Perlin, supra.*

If these inferences be correct, then the War on Terror is being used to impose involuntary mental health treatment on Pet'r in violation of Constitutional norms. The various illegalities in the processing of his requests take on monumental significance, then, for they serve to perpetuate this Unconstitutional policy by continuing to hide it, thus not only to continue to insulate it from challenge, but to deny him any political identity at all. Pet'r did not mention in his *Pet. Cert.* that even notice of the existence of responsive records, without more, would itself be a considerable boon, and should avail him of the higher standards applicable to keeping this information from him. *Bassiouni v. CIA, supra*, 392 F.3d at *247. Petitioner's life is potentially on the line, because medical personnel cooperate with the War on Terror to the detriment of their medical ethics. *See, generally, Neil Krishnan Aggarwal, Mental Health in the War on Terror: Culture, Science, and Statecraft* (2015) (documenting U.S.-employed military doctors assisting in torture operations, in derogation of their medical ethics). Consequently, he cannot obtain medical recognition of the debilitating symptoms of psychosurgery that prevent him from working, to say nothing of the ongoing electronic surveillance, for which he ought to collect $200 per day in 1978 dollars, 50 U.S.C. § 1810(a) (2018 and Supp. II), because he is not an agent of a foreign power, 50 U.S.C. § 1805(a)(2)(A) (2018 and Supp. II). An admission that responsive records exist may allow a *writ of habeas corpus* to issue. Pet'r is close to his limits

financially, physically, and emotionally. He has committed no crime, and must have justice in order to survive. The Circuit Court of Appeals has issued a ruling wrong on its face, asking to be reversed. The Writ of Certiorari should issue.

Respectfully submitted,



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