NO._____

In The Supreme Court of the United States

Lonnie Kade Welsh

VS.

Correct Care Recovery Solutions

On Petition for a Writ of Certiorari

From

United State Court of Appeals Fifth Circuit

Court of Appeals Cause No. 19-10825

I. Questions Presented for Review

There is a class in America today, that it has become fashionable to diminish their rights and lives, to where they are of little value. In keeping with this new tradition, the Fifth Circuit has created an American case system by pronouncing a form of civil death upon the petitioner. By manipulating the truth, The Fifth Circle Panel expressed in their opinion that petitioner is not to be afforded protection for his liberty or property under any constitutional provision, both to be forfeited to the state, being considered de minimis restrictions that do not impose atypical and significant hardship. There was no right to treatment interest because it is not in the states. His legal Mail can go undelivered for months to be considered only negligent. The Force can be used that caused bruising, bleeding, scarring of hands with nerve damage to be considered only de minimis injury. He does not deserve human dignity when it causes only psychological injury. And the state is allowed to punish the spoken word. The class is considered as patients not prisoners referred to as Sexual Violent Predator. Therefore, the questions proposed are:

1. Does petitioner retain any rights, if so, what are they, and by what standard should they be judged?

2. Does the privileges and immunities clause impose a duty protection by the sovereign's criminals' law?

3. If no defendants have been served and the appeal court dismisses the claim for failure to brief should the pro se litigant should be allowed to rebrief?

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IX. REASON TO GRANT THE WRIT

1. this is bedlam in the lower court based upon how to apply the constitution to the sexually violent predator class between the circuit courts and this court's decision in case Kansas versus Hendricks 521 U. S. 346. This court should take the time to establish the rule of law for this case.

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2. The court should take the opportunity to decide if the 14th amendment's privilege an immunity's clause applies to the protection of the citizens by the state enforcing its criminal laws.

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3.The result of this case should give the court pause to reconsider. Not because it was wrongly reached, but because of the manipulation the 5th circuit used to reach the opinion.

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3. Scholarly Opinion

4. **Opinions by Scientific Scholars**

In The Supreme Court Of The United States

IV. Petition For Writ of Certiorari

Petitioner respectfully prays the court grants this Writ of Certiorari to review the judgment of the Fifth Circuit, to bring conformity within constitutional law as this case deals with issue federal circuits are split upon and opinions that are fundamentally different from this court's prior opinions. This case also deals with how to apply the constitution in its historic meaning upon a class of American citizens that has not been reached by this court but should be. Finally, petitioner additionally prays the court grants this writ of certiorari to prevent the Fifth Circuit panel from manipulating constitutional law, so they do not have to issue an opinion consistent with this court's prior opinions, Fifth Circuits precedents, or issues new to the Fifth Circuit. The Fifth Circuit's opinion flaunts the rule of law, making prior Supreme Court opinions and Fifth Circuits presidents applicable by election only.

V. Opinion Below

The Fifth Circuit opinion affirmed in part and dismissed in large part in cause No. 19-10825 the opinion of the Northern District of Texas, Lubbock division and cause No. 5: 18 -cv-020.

The opinion for the Fifth Circuit is not published and is designated at Lonnie Welsh v Correct Care Recovery solutions decided February 9th, 2021, at case No. 19 -10825. See Appendix A Fifth Circuit Panel Opinion

Petition for rehearing en bunc denied, on March 12, 2021. See: Appendix B.

Appendix C: Applet Brief

Appendix D: Texas Health and safety cod 841.0831 (b)

VI. Jurisdiction

The Fifth Circuit decided case No. 19 - 10825 on February 9, 2021. Welsh subsequently filed for petition for rehearing en banc that was denied on March 12, 2021. The petition for writ of certiorari is timely filed within 90 days placed with United States Postal Service postage prepaid to The United States Supreme Court rule 29(2) and 13 (1). jurisdiction under statute 28 U.S.C. 1254 allows discretionary jurisdiction from a decision of the Court of Appeals.

VIII. Constitutional Issues

1. United States Constitutional First Amendment:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

2. United States Constitutional Fourth Amendment:

The right of the people to be secure and their person, houses, papers and effects against unreasonable searches and seizures and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

3. **United States Constitutional Fourteenth Amendment:**

Amendment Section 1.

All persons born and naturalized in the United states and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any persons, of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction to equal protection of the laws.

VIII. Statement Of The Case

This case comes to the court based on a judgment on the pleading. Petitioner lives under a rule of law that are amorphous in their application, being the very concept of arbitrary and capricious contrary to the purpose of a written constitution. The very pride of American principles says Mr Paine to Mr Burke was to establish the rights of man by a written charter.

Not only does petitioner Welsh a member of a class of despised human beings, having to worry about the legislative an executive branch of government imposing oppressive living conditions, but he must worry about the federal judiciary honoring the oppressive conditions despite the very history of natural rights and the reason our ancestors join society for the protection of those rights. The Fifth Circuit used subjective standards such as atypical and significant hardship, de minimis, restrictions, significant injury requirements, state interest in supervision and treatment, and the states interest in security, order, and rehabilitation.

The Fifth Circuit dismissed claims of property rights and liberty by the placement in solitary confinement under "atypical and significant hardship" and" de minimis restrictions"-all

without due process of law, or even an inquiry into prison solitary confinement conditions and civil commitment solitary confinement conditions the Fifth Circuit used cases like Sandin v. Connor 515 U. S. 472; Deavers v. Santiago 243 F. App'x 719 721 (COA3 2007); Thielman v. Leean 2828 F. 3d 478 (COA7 2002); and Senty – Haugen v. Goodno 462 F. 3d 876 (COA8 2006); to dismiss Welsh's claim of placement in solitary confinement for a period of ten-month; Fifth Amendment taking claim; a Fourth Amendment unreasonable seizure claim; an First Amendment right to news and information; and a Fourteenth Amendment right to acquire use, and dispose of property.

The Fifth Circuit denied a right to treatment for the ten-month that included a period in solitary confinement basing in their opinion the three hours of treatment that Welsh did receive was within, they claim in the State's "long-term supervision and treatment goals of the state and how Welsh could not prove he would be released. Citing Brown v. Taylor 911 F.3d 235, 243-244 (COA5 2018) and Senty- Haugen v. Goodno 462 F. 3d 876, 887 (COA8 2006). This dismissal did not even consider the fact that the State of Texas has outlined its interest in treatment in Texas Health and Safety Code 841.0831 that requires treatment for the seamless transition to release Welsh from State Custody. See Appendix E.

The Fifth Circuit would dismiss an excessive use of force claim using it on subjective beliefs of objective standards regardless that the state of Texas has a Ford its own objective requirements for the use of force by statute Texas Health and safety code 841.0838 a contract between the state of Texas and Correct Care Recovery.

Solutions. Then the court would deny the protection of personal security by claiming the bruising, swelling, bleeding, scarring and nerve damage produced by the salt did not constitute enough of an injury for constitutional protection See Appendix F, Texas Health and safety code 841.0838.

the Fifth Circuit would determine that demeaning, dehumanizing and indignant conditions of confinement that forced Welsh to eat his food with his bare hands, piled all together like a pig's slop bucket for 14 days without the ability to wash or clean himself properly except once every three days was acceptable. The Fifth Circuit determine that these arbitrary conditions serve the state's securities interest in disciplining Welsh and therefore was in the interest of "supervision" and "treatment" under its precedence Brown v. Taylor 911 F. 3D 235, 243 244(COA5 2018). The Circuit Court also rationalize that because well she only showed mental and emotional injuries it did not amount to a due process violation.

Our ancestors entered society for the purpose of personal security the broad right encompasses his right not to be assaulted and the protection of his property. Welsh made a class of one equal protection claim against the city of Littlefield denying him the right to its Protective Services and the privileges and immunities of the 14th amendment to call upon the government for protection, the very reasoning to enter society. The Fifth Circuit said that Welsh did not make an equal protection claim because he only asserted that he was denied his right to criminal charges against those who assaulted him, and that equal protection was inapposite because it only keeps governmental officials" treating different persons who are in all relevant respects alike." Citing Harris v. Hahn 827 F. 3d 359, 365(COA5 2016). The Circuit Court also determined that the privilege an immunities clause only prevents the state from" discriminating against citizens of another state in favor of its own citizens" citing White v. Thomas 660 F. 2d 680, 685, (COA5 1981). The lower circuits denial of equal protection and privileges and immunities amount to injustice.

Next the Fifth Circuit would deny the right to even speak out against a state employee in private based upon the way that employee was treating him confusing the facts which in itself is a

jury question all in contravention to the First amendment which has done all the balancing that was do in this area. The Circuit Court would conclude that restrictions on these rights 'are permissible so long as they advanced the state's interest in security, order and rehabilitation." Citing Bohannon v. Doe 527 App'x 283, 294 (COA5 2013).

Finally, the Fifth Circuit does not consider that Welsh is pro se and that both his briefs and his pleadings were dismissed for failing to plead or brief a certain level of facts in case laws, therefore, dismissed the appeal and case with prejudice. The Circuit Court claimed that Welsh did not brief a different standard than atypical and significant hardship and de minimis restrictions despite the eighteen pages devoted to countering the dismissal of his conditions of confinement central to those issues; that he did not adequately brief his privacy claim despite citing two cases in support, that he did not show the defendants intentionally interfered with his legal mail despite knowing he was in County jail and refusing to forward the Mail; how the facts were misstated by the Fifth Circuit in the First Amendment retaliation claim despite what was plead; and the claim of inaccurate diagnosis under the diagnostic and statistic manual of mental health disorders that failed to present facts or are arguments indicating error therefore inadequately briefed despite Welsh did brief that determined by professionals that Ephebophilia is not professionally recognized by medical professionals; that the Biannual Review opinion failed to connect an emotional or volitional disorder and how even the District Court recognized how the opinion was predicated on disciplinary infractions and not a sexual disorder. Given all the above there should not be a sua sponte dismissal with prejudice for failure to brief adequately without an opportunity to amend the brief before dismissal in light of the fact that no defendant had been served in the case unless it appears beyond doubt that the plaintiff cannot adequately brief the claim.

What plaintiff ask is what has always been asked of the courts. A determination on how such arbitrary conduct should be checked, what remedies against it should be afforded, the means by which the right should be made effective, are all questions that cannot be so dogmatically answered that has to preclude the various solutions which spring from an allowable range of judgment on issues not susceptible to quantitative solutions.

The touchstone of the due process clause can be traced back in time 800 years to the Magna Carta that prevents arbitrary and capricious enforcement of the law. Therefore, in the ordinary sense we quite naturally assume that our constitution is born of principles to invest in all legitimate governments the duty to secure equally the rights of every person to life, liberty, and the pursuit of happiness whose ends are compatible mutually enhancing and coincidental thus made in alienable to the endeavors of freedom. "Always should the right of a citizen to due process of law... rest upon a basis more substantial than favor of discretion." Roller v. Holly 176 U.S. 398,409.

IX. Reason To Grant The Writ

1. THERE IS BEDLAM IN THE LOWER COURT BASED UPON HOW TO APPLY THE CONSTITUTION TO THE SEXUALLY VIOLENT PREDATOR CLASS BETWEEN THE CIRCUIT COURTS AND THIS COURT'S PRIOR DECISIONS IN KANSAS V. HENDRICKS 521 U.S. 346. THIS COURT SHOULD TAKE THE OPPORTUNITY TO ESTABLISH THE RULE OF LAW FOR THIS CLASS.

The Fifth Circuit has adopted the Sandin v. Connor "atypical and significant hardship standard" joining the Third Circuit opinion in Deavers v. Santiago 243 F. App'x 719, 721, (COA3 2007). The Fifth Circuit would also claim that the Seventh Circuit opinion in Thielman v. Leean 282 F.3d 478 3d (COA72002) would also support their opinion but a closer look at that case would show that it used the" atypical and significant hardship standard" for the state created Liberty interest and Bell v. Wolfish 441 U.S. 520 for substantive rights. See Thielman v. leean Supra at 485, N.3.

The reading of Sandin v. Connor supra at 484, would preclude it used against a pretrial detainee class holding, "Bell dealt with the interest of pretrial detainees and not convicted prisoners. The court in bail correctly noted that a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law. The court expressed concern that a state would attempt to punish a detainee for the crime for which he was indicted be a pre conviction holding conditions."

The vast majority of circuit appeals courts would refrain from applying Sandin v. Connor to even the state created Liberty interest, choosing instead to apply Hewitt v Helms 459 U.S. 460. See Benjamin v Fraser 264 F. 3d 175 188- 189, N. 11 (COA2 2001); Fuentes v. Wagner 206 F. 3d 335, 341- 342, N. 9 (COA3 2000); Jacoby v. Baldwin County 835 F.3d 1338, 1347-1348 (COA11 2016); Mitchell v. Dupnik 75 F. 3d 517, 524 (COA9 1996); Rapier v. Harris 172 F.3d 999, 1005 (COA7 1999); Surpenant v. Rivas 424 F. 3d 5, 17 (COA1 2005); Williamson v Stirling 912 F. 3d 154, 174 (COA4 2018).

The Eighth circuit recently decided Karjens v Lourey No. 18-3343 decision date February 24, 2021 that brought it into line with the Fourth Circuit opinion in Matherly v. Andrews 859 F.3d 264,274-276 (COA4 2017). These opinions would hold that a civilly committed individual should be treated as pretrial detainees under the Bell v. Wolfish 441 U.S. 520 case laws.

The Eight Circuit would also cite to the First Circuit case in Healey v. Spencer 765 F.3d 65,78-79 (COA1 2014) and Allison v Snyder 332 F.3d 1076, 1079 (COA7 2003). But the Eighth Circuit is mistaken in its assessment; Allison v. Snyder dealt with pre-trial detainees awaiting civil commitment trial. and Healey v. Spencer citing to Bell v. Wolfish had nothing to do with the confinement conditions. Healey Supra at 78-79 cited Selling v. Young 531 U.S. 250, 265 and Youngberg v. Romeo457 U.S. 307, 316, basically stating that the confinement conditions must bear a reasonable relation to the purpose to commitment based upon professional judgement.

The Healey v. Spencer case from the First Circuit resembles cases from the Seventh Circuity West v. Schwebke 333 F. 3d 745, 749 (COA7 2003) ("all the constitution requires is that punishment be avoided and medical judgment be exercised); the Ninth Circuit Hydrick v. Hunter 500 F. 3d 978, 997 (COA9 2007) "The Fourteenth Amendment requires that civilly committed person not be subjected to the conditions that amount to punishment with the bounds of professional judgement."); Bilal v Geo Care L.L.C. 981 F.3d 903,912 (COA11 2020) ("the constitution only requires that the courts make certain that professional judgment in fact was exercised' in the times and way the institution restrains the persons liberty: quoting Youngberg 321).

The Fifth Circuits holding in Brown v. Taylor 911 F. 3d 235 would uphold any state interest regardless of punitive confinement and harsh living conditions without any inquiry into its constitutionality based on the states interest in "supervision and treatment." The Fifth Circuit said the reason Welsh was committed was within the States interest to hold him in solitary confinement while he was on bail. See Appendix A 19-20. But "Mr. Justice Holms one of the profoundest thinkers who ever sat on this Court, expressed the conviction that 'I do not think the United States would come to an end if we lost our power to declare an Act of Congress void, I do think the union would be imperiled if we could not make the declaration as to the laws of the

several states. "Holmes's speeches 102" Justice Frankfurter, with whom Justice Burto. Clark and Harlan joined dissenting in Trop v. Dulles 356 U. S. 86,128.

The Fifth Circuits jurisprudence in this area of the First Amendment rights also tracks the "states interest in security, order, and rehabilitation." Bohannan v. Doe 527 F. App'x 283, 294 (COA5 2013). Other circuits would use the Turner v. Safely 482 U.S. 78 rational relationship test See Brown v. Phillips 801 F.3d 849, 853-854 (COA7 2018); Pesci v. Budz 935 F.3d 1159, 1165 (COA4 2017); Matherly v Andrews 859 F. 3d 264, 282 (COA4 2017).

There is a problem with all the case laws that use the rational relationship test of the state's interest test and that is Welsh and those similarly situated, cannot be punished at all, then there is a long list of cases from the Federal sentencing guidelines 18 U.S.C. § 3583 (d) (2), See Appendix G. That restriction can involve no greater deprivation of liberty than is reasonably necessary to advance the protection of the public for future crimes of probations and parolees.

With respect to the treatment that was provided only allowing three hours of treatment in a ten-month span while in solitary confinement the state had created its own interest by statute. See Appendix E. Texas Health and Safety Code 841. 0831.Though its terms are specific that through treatment Welsh would have seamless transition through the tier system to release. The Fifth circuit through its holding in Brown v. Taylor Supra and Senty – Haugen v. Goodno Supra that the states interest in supervision and treatment was not to provide treatment and Welsh could not show the treatment would have provided release. In this case "the Due Process Clause protects against arbitrary acts of government by promoting fairness in procedure and 'barring certain governmental actins regardless of the fairness of the procedures used to implement them." Zinermon v Burch 494 U.S. 133, 125-126 (quoting Daniels v. Williams 474 U.S. 327,331. Like elsewhere in standards applying to the sexual violent predator there is a circuit split on the issue of treatment, protected by the Due Process Clause when the state creates the interest. See Leamer v. Fauver 288 F.3d 532, 534 (COA3 2002) ("Here, the state has created a scheme in which

therapy is both mandated and promised, and the Department of Corrections is without discretion to decline the obligations.')

The use of force is also a standardless amorphous principle. First, the State of Texas grounds its protection preventing force under certain limited situations. Relative here, force is to be only used when the mentally impaired like Welsh is an imminent threat to himself or others, is to be used as a last resort and by the least restricted means. See Appendix F. Texas Health and Safety Code 841.0838 (a) (2) (B) (1); Mills v Rogers 457 U.S. 291, 300 "because state-created liberty interests are entitled to the protection of the Federal Due process Clause, the full scope of the patient's due process rights may depend in part on the substantive liberty interest created by state as well as Federal law.

The State protected right played no part in the Fifth Circuits judgement. Instead, it begins by resolving fact questions of the reasonableness to use force without regard if they were "objectively authorized and legally permitted to: use force. United States v. Castro 166 F. 3d 728, 734 (COA5 1999). Instead it solely relied on the Kinsley v. Hendrickson 135 S.Ct. 2466, 2473, relying on "the extent of the plaintiff's injury."

The case was dismissed because Welsh's bleeding, bruised, swollen, and scarred hand did not fulfill an injury requirement for excessive force. This is an inappropriate reading of Kingsley v. Hendrickson and can only produce bad social effects if followed. Further, such a reading would be contrary to this Courts Fourth and Eighth Amendment case law. See Tennessee v. Garner 471 U.S. 1, 8-9 and Wilkins v Gadddy 559 U.S. 34, 38,

In the prison context the Eleventh Circuit would determine that force against an inmate who is mentally ill who places his hand in a food port is not an emergency to warrant force absent professional medical judgment in violation of the evolving standards of decency and indifferent to the inmate's serious medical needs. See Thomas v. Bryant 614 F. 3d 1288, 1299-1300,1303- 1304

(COA11 2010) (citing Hudson v. McMillian 503 U.S. 1,8-9; Farmer v. Brennan 511 U.S. 825, 834'.

The court should take the opportunity to decide that the solitary confinement of the mentally ill for long periods of time and absent professional judgment is prohibited by the 14th amendment. several circuits have expressed the same in fear that it invokes long-term psychological harm for the mentally ill regardless of if the individual is civilly committed as an SVP or a prisoner in a prison or jail. See e.g., King v. Greenbalt 149 F. 3d 9, 21-23 (COA1 1998); Cameron v. Tomes 990 F. 2d 14, 19 (COA1 1993); West v. Macht 235 F. Supp 2d 966, 984 (E.D. Wis 2002); Dilworth v. Adams 841F. 3d 246,253 (COA4 2016); Kervin v Barnes 787 F. 3d 833, 837 (COA7 2015); Wallace v. Baldwin 895 F. 3d 481, 485 (COA7 2018); J. H. v Williamson County 951 F. 3d 709,719 (COA6 2019). Buckley v Rogerson 133 F. 3d 125, 129 (COA8 1998); Grissom v. Roberts 902 F. 3d 1162, 1176-1177 (COA10 2018); Palakovic v Wetzel 854 F.3d 209, 225-226 (COA3 2017).

Justice Kennedy pointed out even in those who are not extremely mentally ill that over "One hundred and twenty-five years ago, this court recognized that, even for prisoners' sentence to death, solitary confinement bears 'a further terror and peculiar mark of infamy.''' Davis v. Ayala 135s. ct. 2189, 2209 (J. Kennedy concurring)(quoting In re Medley 134 U. S. 160, 170; See also In re Medley Supra at 168 "a considerable number of the prisoners fell, after even as short [solitary] confinement, into a semi- fatuous condition ... and others became violently insane; others still, committed suicide; while those who stood the ordeal better we're not generally reformed, and in most cases did not recover sufficient mental activity to be any subsequent service to the community.

The court should also examine the right to personal security, if it would prevent the government from placing an individual in solitaire without hygiene products and forcing him to eat like an animal is a sordid aspect of confinement with devastating impact upon constitutional guarantees when it affects the mental condition of the imprisoned as this is a form of "torture of the mind" remanding this case declaring "protection against torture, physical or mental." Palko v. Connecticut 302 U. S. 319, 326. there must come 'a point for this court should not be ignorant as judges of what [they} no as men [and women]." Watts v. Indiana 338 U.S. 49, 52. This type of injury should also be considered as harming "human dignity inherent in all persons." See Brown v. Plata 563 U.S. 493, 510.

There also seems to be confusion on the part of the Fifth Circuit that stating mental and psychological harm is not significant injury. Justice Blackmun stated in Hudson v. Mcmillian 503 U.S. 1, 16 he was "unaware of any precedent of [the Supreme] Court to the effect that psychological pain is not cognizable for constitutional purposes." (concurring opinion). Several circuit courts recognize mental and physiological injury including the Fifth Circuit and the court should make it clear that it is a cognizable injury. See Partridge v. Two Unknown Police Officers 791 F. 2d 1182, 1187 (COA5 1986); Ikerd v Blair 101 F. 3d 430, 434-435 (COA5 1996); Chandler v Baird 926 F.2d 1057, 1066 (COA11 1991); Cowans v 862 F. 2d 697, 700 (COA8 1988); Hobbs v. Lockhart 46 F.3d 864, 869 (COA8 1995); Delaney v De Tella 256 F. 3d 679. 685 (COA7 2001); Jordan v. Gardner 986 F. 2d 1521, 1525 (COA9 1993) (en banc); Cortez v McCauley 478 F. 3d 1108, 1129 (COA10 2007).

Can a provision of the constitution be de minimis? The right to acquire, possess, use, and dispose of property is what the due process clause was meant to protect. See Senate Legislative Journals, Journal of the First Session of the Senate of the United States, reprinted in 1

Documentary History of the First Federal Congress of America 4 March 1789-3March 1791 at 160, (Linda Grant De Pauwet al eds. 1972). See also Amendments to the Constitution purposed by the states of Virginia, New Hampshire, Vermont, New York, and Massachusetts reprinted at The Complete Bill of Rights, The Drafters Debates, Sources and Originals 634-340 (Neil H Cogan ed., 1997).

This is no less what the Supreme Court has held what the Due Process Clause protects time after time. See Lynch v. Household Finance Corp. 405 U.S 538,545; Shelly v. Kraemer 334 U.S. 1, 10; Loretto v. Teleprompter Manhattan CATV 458 U.S. 419, 435; Buchana v. Warley 245 U. S. 60, 74; "Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of the property.

There is also a misunderstanding of what constitutes punishment the court should decide if the taking of personal property and confinement in an isolation cell for ten months is historical punishment. The nature of punishment in the history of Anglo – American tradition, has exercised its power to punish by the effective loss of Liberty and that of rights retained in an impoverished measure a concept that has "historically been regarded as a punishment. Kennedy v. Mendoza Martinez 372 U.S. 144, 168 (citing Cummings v Missouri 4 Wall 277, 320, 321). Therefore, tracing the historic idea of punishment to Cummings v. Missouri the text of that great case is clear, the act "to inflict punishment by depriving the parties, who had committed them, of some of the rights and privileges of citizens." Id at 320.

The meaning of both de minimis and punishment should take its meaning from our most ancient law. "No Freeman shall be taken or imprisoned, or be outlawed, or exiled, or any other wise destroyed, nor will we pass upon him, nor condemn him but by lawful judgement of his

peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.: Magna Carta Article 29, in 25 Edw. 1 c. 9 (1297) (Article 29 in the text of the Magna Carta in 1215).

Finally, turning to the court's opinion in Kansas v. Hendricks 521 U.S. 349 and Kansas v. Crane 534 U.S. 407 the court spoke upon shared status under the law, considering it to be non-punitive id at 368. Similarly situated, and condition of confinement resembling between civil commitment classes. In Kansas v. Hendricks the court concluded that the "dangerously mentally ill "is a "legitimate nonpunitive" objective being "historically so regarded." id at 363. The court determine that since the two commitment types "experience essentially the same conditions" in the confinement conditions and "afforded the same conditions" in the civil confinement and are afforded the same status" under the law. id at 368.

Likewise, in Kansas v. Crane 534 U.S. 407, 415 the court recognized, "as in other areas of psychiatric, there may be 'considerable overlap between a... defective understanding or appreciation and... [an] ability two control... behavior.' Nor, when considering civil commitment, have we ordinarily distinguished for constitutional purposes among volitional, emotional, and cognitive impairments. (quoting American Psychiatric Association 681, 685 (1983) (discussing "psychotic" individuals:' (citing United States v. Jones 463 U.S. 354; Addington v. Texas 441 U.S. 418).

Similarly, the nature of the states defined "behavioral abnormality" as expressed in United States v. Lyons 731 F. 2d 243, 249 (COA5 1984) (en banc), "Most psychotic persons who fail a volitional test would also fail a cognitive test, thus rendering the volitional test superfluous for them."

This distinction between volitional capacity and cognitive capacity has been identified with peer studies within the psychological medical field. In a recent study by Dr. Fabian published book Neuropsychology, Neuroscience, Volitional Impairment and Sexual Violent Predators: A review of the literature and the law and their application to Civil commitment Proceedings, Vol. 17, Issue 1, (2012), the doctor identifies neurodevelopment abnormalities in the subcortical and prefrontal cortex of the brain structure that indicated sexual violent impairment and cognitive impairment linked through the neuro-abnormalities.

The study of neurological defects and behavioral dyscontrol for sex offenders has been linked in other studies in neuropsychological research of prefrontal cortex and subcortical development in Spinella & White Neuro anatomical substance for sex offenders. International Journal of Forensic Psychology, 1 (3), 84-104 (2006); Saver and Damasio Preserved Access and Processing of Social Knowledge in a patient with acquired sociopathy Due to Ventromedial Frontal damage, neuropsychologia 29, 1241 – 1249 (1991); Stone & Thompson Executive Function Impairment In Sexual Offenders, Journal of Individual Psychology, 57 (1), 51-59 (2001).

The connection to the cognitive and volitional decision matrix has been established by researcher's who have proposed neuroanatomical and neuro –physiological correlations. Accordingly, this neurocognitive compromise consistent with the executive functioning of the brain in the volitional impaired CF Kalis, Mojzisch, Schweizer, Kaiser, and Akrasia, Weakness of will. The Neuropsychiatry of Decision-Making: An Interdisciplinary perspective, cognitive, Affective & Behavior Neuroscience, 8 (4) 402 -417-(2008); Pirtosek, Georgiev, & Gregoric – Kramberger, decision making and The Brain:

Neurologist' View, Interdisciplinary description of complex systems, 7, 38-53 (2009); Denny, Criminal Responsibility and other criminal forensic issues, In Larrabee (Ed.), Forensic Neuropsychology: A Scientific Approach (pp 425-463) at 443 (2005), New York Oxford University Press.

Instituting the rule of law, by laws that have been accepted by a state's secretary in the administration code and promulgated by statute, reflects professional judgement under the Youngberg v. Romero standard allowing individuals to live under a set rule of law instead of by arbitrary fait have been applied equally to the two types of civil commitment. See e.g. West v. Macht 235 F. Supp. 2d 966, 984 (E.D. Wis. 2002); Thomas s. by Brooks v., Flaherty 902 F.2d 250,258 (COA4 1990); Wells v. Franzen 777 F.2d 1258, 1264 COA7 1985); See also Christopher L. Coffin, case law and clinical considerations involving physical restraint and seclusion for institutionalized persons with mental disabilities 23 Mental & Physical Disability L. Rev 597, 599 (1999), "Many states, by statute or regulation, dictate procedures that mental health clinicians must follow when ordering physical controls and monitoring their uses. In States that do not outlined such procedures, clinicians should observe standards that have been published by professional mental disability organizations [citing the APA Task Force Report] or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).")

Justice Gorsuch discussed in a dissenting opinion the area of law on point for this discussion, "After all, 'living under a rule of law entails various suppositions, one of which is that 'all persons are entitled to be informed as to what the state commands of forbids.' Papachristou v. Jacksonville 405 U.S. 156,162 (quote modified), The existence of an administrable legal test even lies at the heart of what makes a case justifiable standard for resolving it.' Rucho v. Common Cause 139 S.Ct. 2484 (slip op., at 11). Nor does the need for

clear rules dissipate as the stakes grow. If anything, the judicial responsibility to avoid standardless decision making is at its apex 'the most heated partisan issues. 'slip op. at 15." June, Med. Servs. L.L.C. v. Russo 140 S.Ct. 2103,2179 (J. Gorsuch dissent).

Regardless, when applying a police power such as civil commitment regulations that impart rights and privileges unto one group must be permitted to the other as well. Anything less would be invidiously imposed against one name group in contravention to the equality of civil rights all others enjoy. CF Barbier v. Connolly 113 U.S 27, 30-31; Minneapolis & St. L.R. co. v. Beckwith 129 U.S. 26, 29; Bowman v. Lewis 101 U.S. 22,31; Ex Parte Virginia 1 100 U.S 339, 347; Strauder v. West 100 U.S. 303, 306; Mayflower Farmers v. Ten Eyck 297 U.S. 266, 274.

But in both civil commitment classes even "while the state has a compelling and legitimate interest in public safety, it cannot satisfy that interest 'by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.: Bilal v. Geo Care, L.L. C. 981 F.3d 903,916 [COA11 2020] (quoting Lynch v Baxley 744 F. 2d 1452, 1459 (COA11 1984); Shelton v. Tucker 364 U.S. 479 488.

The distinction between the institutions was made clear my justice Stevens in dicta when he wrote the majority opinion in Collins v. City of Harker Heights 503 U.S. 115, 127-128 "we have held, for example, that apart from the protection against cruel and unusual punishment provided by the 8th amendment, CF, Huto v. Finney 437 U.S. 678, the due process clause of its own force requires that conditions of confinement satisfy certain minimal standards for pretrial detainees, see Bell v Wolfish 441U.S. 520, 535, N. 1/6, 545, four persons in mental institutions, Younberg v. Romero 457 U.S. 307, 315- 316, for convicted felons, Turner v. Safley 482 U.S. 78, 94- 99, and for persons under arrest, Revere v Massachusetts General Hospital

463U. S. 239, 244- 245. The 'process' that the constitution guarantees in connection with any deprivation of Liberty thus includes a continuing obligation to satisfy certain minimal custodial standards. "(other citations omitted).

It would become a different interpretation of the constitution to consider an institution under a color of a different threshold then what it is purported to be. The natural colloque begets when the standard is to be the mirror "the punishment of imprisonment, which is the paradigmatic: affirmative disability or restraint" Smith v Doe 538 U.S. 84, 100; we then have lost sight of are ethical traditions, watering down our principles to serve special interests making the terms of the constitution that prevents punishment absent a crime empty in its semantics. "The principle then lies about like a loaded weapon ready for the hand of any authority it can bring forward a plausible claim of an urgent need. Every repetition in beds that principle or deeply in our law and thinking an expands it to new purposes. All who observe the work of court are familiar with what judge Cardozo describe as 'the tendency of a principle to expand itself to the limit of its logic.' a military commander may overstep the bounds of constitutionality, and it is an incident. but if we receive and approve that passing incident becomes the doctrine of the constitution. there it has a generative power of its own and all that it creates will be in its own image" Korematsu v. United States 323 U.S. 214,246 (J. Jackson dissenting).

And it is that very concept that will start the death of liberty if the Court denies Certiorari. In no time at all other courts will cite to the Fifth Circuits opinion that would deny liberty and property rights procedural steps to refrain from mistaken deprivation given it the hashtag cert denied allowing silent validity to the use of draconian measures by the standards of atypical and significate hardship and de minimis restrictions, is how "illegitimate and unconstitutional practices get their first deviations from legal modes of procedure. This can only be obviated by

adhering to the rule that constitutional provisions for the security of persons and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of court's to be watchful for the constitutional rights of the citizens, and against any stealthy encroachments there on. Their motto should be 'obsta principiis. ''' Boyd v. United States 116 U.S. 616, 635.

2. THE COURT SHOULD TAKE THE OPPORTUNITY TO DECIDE IF THE FOURTEENTH AMENDMENT PRIVILEGES AND IMMUNITIES CLAUSE APPLIES TO THE PROTECTION OF THE CITIZENS BY THE STATE ENFORCING ITS CRIMINAL LAWS.

Petitioner Welsh claimed that the city of Littlefield refusal to enforce the State of Texas criminal laws found within its Penal Code violated and abridged is privilege of citizenship found within the Fourteenth Amendment. The Fifth Circuit responded that "the privileges and immunities clause is inapt because it 'prevents a state from discriminating against citizens of another state in favor of its own citizens,' and Welsh does not allege that he was treated differently than a citizen of another state." See Appendix A pg. 12-13 (quoting White v. Thomas 660 F. 2d 680, 685 (COA5 2016).

In book one, chapter one, Blackstone in his Commentaries on the laws of England states "It is ordained by Magna Carta, that no free man shall be outlawed, that is, put out of the protection and benefit of the laws, but according to the law of the land."

Where he spoke obligations in the form of a duty, as allegiance is "considered as the duty of the people, and protection is the duty of the magistrate." But he also spoke of it as a right, "allegiance is the right of the magistrate, and protection the right of the people." Making clear they are, reciprocally, the rights as well as duties of each other." See Blackstone Book One, Chapter 1 of The Absolute Rights of the Individual. (Lonang ed 2005).

This court has recognized that Justice Washington opinion in Corfield v. Coryell, 6 F. Cas. 546, 551- 552 (NO. 3230) (CCED Pa 1825) was instrumental informing the Fourteenth Amendment Privileges and immunities Clause. See Lynch v. Household Finance Corp. 405 U.S. 538, 545 (citing Long. Globe, 42 Long. 1st Sess, App 69 (1871) (Rep Shellabarger, quoting from Corfield v. Coryell, 6 F. Cas 546, 551-552 (No. 3230) (CCED Pa 1825) See also McDonald v. City of Chicago 130 S. Ct. 3020, 3067 (Justice Thomas Concurring) ("What were the 'Privileges and Immunities of Citizens in the several states?)" That question was answered perhaps most famously by Justice Burshord Washington sitting as Circuit Justice in Corfield v. Coryell T f. Cas 546, 551-552 (No. 3230) (CCED Pa 1825).

So, what are these privileges and immunities? Justice Washington thought them "fundamental, which are rights that belong to citizens of a free government." Which when he compiled them under the list of "general heads" listing the "protection of the government as a fundamental privilege and immunity." Corfield v. Coryell Supra at 551-552.

Even the very controversial United States v. Cruikshank 92 U.S. 542, 549 track the language of Blackstone of the duty the sovereigns. We have in our political system a government of the United States and a government of each of the several states. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect." The court went on to say,

"when called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction." Ibid.

This is not a right to be found in the equal protection clause, it is not dependent if the government is protecting one group or not protecting another it comes from privilege of society over the state of nature. In chapter 2 of his Two Treatise of Government John Locke pg. 74§ 11 of The State of Nature, that " comes to pass that the magistrate, who by being the magistrate have the common right of punishing put into his hands, can often, where the public good the man's not the execution of the law, remit the punishment of criminal offenses by his own authority, but yet cannot remit the satisfaction do to any private man for the damage he has received. That he who had suffered the damage is as a right to demand his own name and he alone can remit." (Lonang Institute ed. 2005).

Petitioner is aware that damages in a newly declared right will be non-existent. Yet still I persist as it is my duty as it is ever other member of society to realize the full potential of our constitution as it relates to our heritage, like all the rights put forth in this petition this one is no less important.

3. THE RESULT OF THIS CASE SHOULD GIVE THE COURT PAUSE TO RECONSIDER. NOT BECAUSE IT WAS WRONGLY REACHED, BUT BECAUSE OF THE MANIPULATION THE FIFTH CIRCUIT USED TO REACH THEIR OPINION.

Petitioner ask the court to establish new protections for the pro se advocate to prevent judicial abuse. The facts of the case cannot be denied based on a simple comparison to the Fifth Circuits opinion and the brief placed in that court, to determine that the court, purposely

misstated the brief in order to take a particular course of action in order to oppress the defendant that caused a fundamental miscarriage of justice by stating Welsh did not adequate brief several issues. CF Appendix A. to Appendix C.

The Fifth Circuit claims that Welsh failed to object to the atypical and significant hardship or de minimis standard or offer an alternative for the court to consider. See Appendix A pg. 19-20 Welsh clearly challenged the use of these standards, made comparisons to the claims upon property that was previously not to be found de minimis by the court; cited to Welsh's mental illness and how the conditions of confinement by the professional judgment standard should determine any loss of liberty; indicated he was being punished, cited this court precedents on procedural due process, and cited to in Kansas v. Hendricks Supra at 368 that Welsh shares the same status as the other mental ill class. See Appendix C pg. 18-37 Appeal Brief.

The Fifth Circuit went against its own precedence and United States Supreme court case law in order to decide against Welsh. Why? This case manifest malevolent injustice to a targeted class. The Fifth Circuits ruling is unquestionably repugnant to the letter and spirit at the constitutional core values.

The law comes from the Supreme Court, "it is this court's responsibility to say what a statute means, and once the court has spoken, it is the duty of other courts to respect the understanding uh the governing rule of land Rivers v. Roadway Express, Inc. 511 U. S. 298, 312; see also Thurston Motor Lines, Inc. v. Jordan Rand Ltd. 460 U.S. 533, 535 "only this court may overrule one of its precedents." As it is the court's responsibility beyond all others to "say what the law is. Marbury v Madison 1 Cranch 137, 177. Also, the Fifth Circuit has a "rule of orderliness, we may not overrule a prior panel this decision absent an interviewing charge in the

law, such as a statutory amendment or a decision from either the Supreme Court or our en banc court." Thomas v. Dallas City Attorney's Office 913 F. 3d 464,467-468 (COA5 2019).

Welsh cited numerous cases that explain why Sandin v. Connor supra does not apply, why he should be considered mentally ill, how de minimis is at least controlled by the $20 rule of the Seventh Amendment, and how he was entitled to procedural due process. But the prejudice does not begin or end there, both the Northern District Court, Lubbock division of Texas and the Fifth Circuit held Welsh to standards a pleading outside Haines v. Kerner 404 U.S. 519, 520-521 and Ericson v. Pardus 551 U.S. 89,94. Moreover, the courts would dismiss the claim without, "opportunity to discover information that is essential to his opposition." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 250, N.5. Especially since, "The need to develop all relevant facts in the adversary system is both fundamental and comprehensive." United States v. Nixon 418 U.S. 683, 709.

The Fifth Circuit dismissed other claims relating to the misdiagnosis, the unlawful restraint, and privacy. The whole case is on a sua sponte dismissal without service. Therefore, in order to protect the rights of Pro Se litigants who do not understand the appeal and the pleading process, the Appellant should be allowed to amend his brief before final dismissal for failure to adequately brief an issue.

Prayer

For the foregoing reasons petitioner Lonnie Kade Welsh respectfully praise that the court issue a writ of Certiorari to review the judgment of the Fifth Circuit Court of Appeals.

Respectfully submitted, Lonnie Kade Welsh

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No._____

In The United State Supreme Court

Lonnie Kade Welsh

VS

State of Texas

Certificate of Compliance

I Lonnie Kade Welsh petitioner and prepare of the petition for writ of certiorari do herby swear under penalty of perjury that the aforementioned petition is in compliance with word limit of under 9,000 words and under forty pagers, at 11 points in accordance with Supreme Court Rules 33.2.

Respectfully submitted, Lonnie Kade Welsh

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