

No. _____

**In The
Supreme Court of the United States**

ROBERT PALMER,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**On Petition For Writ Of Certiorari
To The South Carolina Court Of Appeals**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Constitution require South Carolina to provide a remedy for a wrongful conviction?

PARTIES TO THE PROCEEDING

Petitioner Robert Palmer was the plaintiff in the circuit court proceedings and the appellant in the South Carolina Court of Appeals and South Carolina Supreme Court.

Respondent State of South Carolina was the defendant in the circuit court proceedings and the appellee in the South Carolina Court of Appeals and South Carolina Supreme Court.

RELATED CASES

- *Robert Palmer v. State of South Carolina, Horry County and David Weaver*, Case No. 2016-CP-26-01614, Horry County Court of Common Pleas, Judgment entered November 17, 2016.
- *Robert Palmer v. State of South Carolina*, Appellate Case No. 2017-000567, South Carolina Court of Appeals, filed April 17, 2019.
- *Robert Palmer v. State of South Carolina*, Appellate Case No. 2019-001316, South Carolina Supreme Court, filed May 28, 2021.
- *The State v. Robert Palmer*, Appellate Case No. 2014-000954, South Carolina Supreme Court, filed July 19, 2015.
- *The State v. Robert Palmer*, Appellate Case No. 2011-203707, South Carolina Court of Appeals, filed February 12, 2014.

RELATED CASES – Continued

- *State of South Carolina v. Robert Palmer*, Case Nos. 10-GS-26-2195/10-GS-26-2195/10-G5-26-2196 and 08-GS-26-04120, Horry County Court of General Sessions, filed November 18, 2011.

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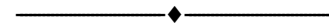
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PETITION FOR A WRIT OF CERTIORARI

Robert Palmer petitions for a writ of certiorari to review the judgment of the South Carolina Court of Appeals and the denial of certiorari by the South Carolina Supreme Court.



OPINIONS BELOW

The South Carolina Court of Appeals opinion is reported at *Palmer v. State of South Carolina, Horry County and David Weaver*, 427 S.C. 36, 829 S.E. 2d 255 (S.C. App. 2019). The South Carolina Court of Appeals denied Palmer's Motion for Rehearing and hearing *en banc* and Palmer then petitioned for certiorari to the South Carolina Supreme Court which was also denied. (App. 1) The opinions of the trial court of the State of South Carolina are produced at App. 13. The previous criminal proceedings in the South Carolina Court of Appeals are reported in *State of South Carolina v. Palmer*, 408 S.C. 218, 758 S.E. 2d 195 (Ct. App. 2014) and the opinion of the South Carolina Supreme Court is reported at *State of South Carolina v. Palmer*, 413 S.C. 410, 776 S.E. 2d 558 (S.C. 2015).



JURISDICTION

The South Carolina Supreme Court denied Petitioner's request for certiorari on May 28, 2021. This Court by Order dated March 19, 2020 extended the time for filing a petition for writ of certiorari to 150

days from the filing of the lower court judgment. This Court has jurisdiction under 28 U.S.C. § 1257(a).



STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth and Fourteenth Amendments of the United States Constitution. The pertinent portion of the Fifth Amendment is: “nor be deprived of life, liberty or property without due process of law.”



INTRODUCTION AND STATEMENT OF THE CASE

The issues presented in this case are whether or not South Carolina must, under the United States Constitution, provide a civil remedy for wrongful conviction. The case concerns matters of substantial public importance and fundamental fairness since wrongful convictions arise around the country. In simplistic terms, the question for this Court is whether a state is required to provide a civil remedy for one who is convicted, and if it does not, does the United States Constitution mandate it? Petitioner believes the answer to this question is a resounding “Yes.” *See Marbury v. Madison*, 5 U.S. 137, 163 (1803) (“the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury.”) *See also Allgeyer v. Louisiana*,

165 U.S. 568 (1897) (“the liberty mentioned in that (Fourteenth) Amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes mentioned above.”) (165 U.S. at 589).

The issue of a constitutional remedy for a wrongful conviction is of enormous importance in that fifteen states do not provide for such a remedy. American constitutional history, and the deeply rooted principle that innocent people should not be criminally punished, suggests that there must be a freestanding claim for a civil remedy for wrongful conviction. Indeed, no command is rooted more deeply in the American legal tradition and its antecedents than the legal, moral and philosophical injunction against punishing the innocent. *In re Winship*, 397 U.S. 358 (1970) (Harlan, J., concurring) (“a fundamental value determination of our society that it is far worse to convict an innocent man than let a guilty man go free.”). Read in this context, the Fourteenth Amendment right to due process encompasses a freestanding claim for civil remedies for wrongful conviction. *See Poe v. Ullman*, 367 U.S. 497 (1961) (rights protected under substantive due process must be left to a case-by-case basis and must be deeply

rooted in the nation's history and traditions and implicit in the concept of ordered liberty.) William Blackstone famously declared in his *Commentaries on the Law of England*: "Better that ten guilty persons escape than one innocent suffer." (*Commentaries of the Law of England*, 1st Ed. (1765)). Thus, aversion to punishing the innocent became a central precept of the American system of justice. In 1682, William Penn's *Great Law of Pennsylvania* provided that "all persons wrongfully convicted or prosecuted at law were to recover double damages against the informer or prosecutor." This commitment to protecting the innocent is deeply rooted in the Constitution and in the psyche of the American people. Judge Learned Hand wrote in *United States v. Garsson*, 291 F. 646, 649 (S.D.N.Y. 1923): "Our procedure has always been haunted by the ghost of the innocent man convicted. It is an unreal dream." Basic fairness requires that individuals who are wrongfully convicted have a civil remedy as a matter of Constitutional law.¹

Palmer was convicted in a state court of the charge of homicide by child abuse and aiding and abetting homicide by child abuse along with an unlawful conduct towards a child. Palmer's 2011 conviction was appealed to the South Carolina Supreme Court while Palmer was held in the South Carolina Department of Corrections and was serving a 45-year sentence. The South Carolina Supreme Court in the underlying criminal action, *State of South Carolina v. Palmer*, 413 S.C.

¹ The National Registry of Exonerations estimates that there have been 2,872 exonerations since 1989.

410, 776 S.E. 2d 558 (S.C. 2015) found Palmer not guilty of all charges. In reaching that ruling, the South Carolina Supreme Court stated:

We find there is no evidence in this record that Palmer either harmed the victim or was aware Gorman was harming him. . . . there is no evidence other than rank speculation that such an incident occurred. . . . there is no evidence that more prompt treatment would have mitigated the victim's injuries and thus we do not perceive potential liability for the non-abuser even if he or she was aware of the abuse. For this reason, even were there evidence that Palmer had hurt the victim during the day while alone, there is no evidence that any delay in seeking medical attention by Gorman caused the victim harm beyond that inflicted by the perpetrator.

(413 S.C. at 423). (App. 35-37).

As a result of the South Carolina Supreme Court's opinion in *Palmer*, Petitioner's conviction was reversed, and he was released after four years in prison. Thereafter Palmer brought this civil action in the Horry County Court of Common Pleas, Conway, South Carolina. Petitioner's Complaint alleged multiple causes of action including causes of action for malicious prosecution, false arrest, negligence, violation of 42 U.S.C. § 1983 and for a declaratory judgment. Specifically, the declaratory judgment cause of action requested the trial court declare a remedy was required for a wrongful conviction pursuant to the United States Constitution. The State of South Carolina filed

a motion to dismiss which was granted by the trial court. The trial court held “Plaintiff received due process. His conviction was vacated and he was released. He received all the due process available in South Carolina.” (App. 19). Petitioner filed a motion for reconsideration which the trial court denied. An appeal was timely filed in the South Carolina Court of Appeals which denied Palmer’s appeal and issued a written opinion holding that there was no constitutional violation. (App. 2-12). Palmer subsequently filed a petition for rehearing with the South Carolina Court of Appeals and also requested an *en banc* hearing before the entire Court of Appeals which was denied on July 12, 2019. Subsequently, Palmer filed a Petition for Certiorari with the South Carolina Supreme Court which was denied by vote of the Court on May 28, 2021. (App. 1).



REASONS FOR GRANTING THE PETITION

I. THE UNITED STATES CONSTITUTION REQUIRES SOUTH CAROLINA OFFER A REMEDY FOR WRONGFUL CONVICTION.

The issue in this case involves whether or not, pursuant to the United States Constitution, South Carolina is required to provide a civil remedy for one who is wrongfully convicted. Specifically, does the “liberty” clause of the Fifth Amendment mandate a remedy.

South Carolina does not provide a statutory remedy for wrongful conviction. Currently, thirty-five

states, the District of Columbia and the federal government have all enacted statutes establishing a claim procedure against the government for wrongful conviction and incarceration. Petitioner refers to the following statutes which allow for relief:

See 28 U.S.C. § 1495 (2000); 28 U.S.C. § 2513 (2000 & Supp. 2005); ALA. CODE §§ 29-2-150 to -165 (Lexis Nexis 2003); CAL. PENAL CODE §§ 4900-4906 (West 2000 & Supp. 2008); D.C. CODE § 2-421 to -425 (2001); 705 ILL. COMP. STAT. ANN. 505/8(C) (West 2007); IOWA CODE ANN. § 663A.1 (West 1998); LA. REV. STAT. ANN. § 15:572.8 (Supp. 2008); ME. REV. STAT. ANN. tit. 14, § 8241–8244 (1964); MD. CODE ANN., STATE FIN. & PROC. § 10-501 (Lexis Nexis 2006); MASS. GEN. LAWS ANN. ch. 258D, §§ 1–9 (West 2006); MO. ANN. STAT. § 650.055 (West 2006); MONT. CODE ANN. § 53-1-214 (2007); N.H. REV. STAT. ANN. § 541-B:14(II) (2006); N.J. STAT. ANN. §§ 52:4C-1 to -6 (West 2001); N.Y. CT. CL. ACT § 8-b (McKinney 1989); N.C. GEN. STAT. § 148-82 to -84 (2005); OHIO REV. CODE ANN. § 2743.48–.49 (Lexis Nexis 1994); OKLA. STAT. ANN. tit. 51, § 154 (2008); TENN. CODE ANN. § 9-8-108(a)(7) (Supp. 2007); TEX. CIV. PRAC. & REM. CODE ANN. § 103.001–.003 (Vernon 2005); VT. STAT. ANN. tit. 13, § 5574 (Supp. 2007); VA. CODE ANN. §§ 8.01-195.10 to .12 (2007); W.VA. CODE ANN. § 14-2-13a (Lexis Nexis 2004); WIS. STAT. ANN. § 775.05 (West 2001).

Significantly, fifteen states, including South Carolina have no legislative remedy for wrongful conviction. South Carolina did consider enacting such a statute, but it did not become law.²

The South Carolina Court of Appeals in deciding *Palmer*, 829 S.E. 2d 255, considered the Takings Clause of the United States Constitution which provides in pertinent part: “No person shall be . . . deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.” U.S. Const. amend. V.

The South Carolina Court of Appeals held: “We find the circuit court correctly determined Palmer’s argument has no merit. In his appellate brief, Palmer attempts to equate the prohibition against governmental takings of property without just compensation to wrongful imprisonment.” The South Carolina Court of Appeals further held: “Because Palmer fails to provide any supporting law for his claim, we affirm the circuit court’s finding on this issue.” *Palmer*, 829 S.E. 2d at 261. The South Carolina Supreme Court denied certiorari on May 28, 2021.

² South Carolina failed to enact a wrongful conviction statute. See Senate Bill 1037 referred to House Judiciary on March 21, 2012 to amend Chapter 13, Title 24 of the 1976 Code to read “Article XXII Compensation for a Wrongful Conviction.” The bill did not pass the House but defines wrongfully convicted as “means a person who was convicted of an offense, was incarcerated for the offense for at least 90 days, was incarcerated solely on the basis of the conviction of the offense and is innocent of the offense.” Proposed S.C. Code § 24-13-2310.

This Court from its earliest time has recognized the bedrock principle that deprivations of law require remedies. In *Marbury v. Madison*, *supra*, this Court endorsed the common law requirement mandating a remedy for every wrong:

[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded. . . . [F]or it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163-166 (1803) (quoting Blackstone's Commentaries).

As the Court in *Marbury* acknowledged, the right to a remedy is a core component of ordered liberty:

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. . . . The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. *See United States v. Loughrey*, 172 U.S. 206, 232 (1898); *Marbury v. Madison*, 5 U.S. (1 Cranch) at 163.

Thus, without remedies, rights are just ideals or promises or pronouncements that may or may not be

followed. As Justice Holmes expressed, “Legal obligations that exist but cannot be enforced are ghosts that are seen in the law but are elusive to the grasp.” *Ex parte United States*, 257 U.S. 419, 433 (1922). Like manners, rights simply become something that one should do, but not something that one is compelled to do. As expressed in The Federalist Papers, the definition of a claim as a legal right depends upon the availability of this enforcement:

It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advise or recommendation. (See Hamilton, Alexander, Federalist No. 15, The Federalist Papers, at 159).

In this case, the Court of Appeals in South Carolina failed to address Appellant’s right to a remedy for a wrongful conviction under the due process clause. The notion of a due process right to a meaningful remedy is supported by two strands of United States Supreme Court cases in the disparate contexts of tax remedies and punitive damages. In the tax cases of *Reich v. Collins*, 513 U.S. 106, 109 (1994) and *Harper v. Va. Dep’t of Taxation*, 509 U.S. 86, 101-102 (1993) this Court held that due process requires state courts to provide a successful plaintiff with a minimally adequate remedy that provides “meaningful” relief. (*Harper*, 509 U.S. at 100-102). In these cases, the Court

established a constitutional right to a meaningful remedy requiring the retroactive remedy of a tax refund for a tax determined to be unconstitutional. The Court in these opinions found that consistent with the federal due process clause a trial court cannot select a remedy that fails to provide some meaningful relief to the plaintiff.

The Court has also made similar decisions in the punitive damage cases in which this Court found that arbitrary and unreasonable state court remedies violate the due process clause. *See BMW of North America, Inc. v. Gore*, 517 U.S. 559, 568 (1996) and *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, 18 (1991). In those cases, this Court evaluated excessive state court remedies which were grounded in the core concern of federal due process regarding the unreasonableness of state action. This Court found, “This constitutional concern, itself harkening back to the Magna Carta, arises out of the basic unfairness of depriving citizens of life, liberty, or property, through the application not of law and legal process, but of arbitrary coercion.” *State Farm Auto. Ins. v. Campbell*, 538 U.S. 408, 419-420 (2003). While admittedly the punitive damages cases address excessive remedies, this analytical foundation highlights the right to a reasonable and non-arbitrary remedy under both substantive and procedural due process which implicates deficient remedies as well. A meaningful remedy ensures a base minimum requiring some modicum in a case beyond the simple statement of a violation of law.

The basic fairness guarantees of the due process clause therefore mandate the right to a meaningful remedy. *Reich v. Collins*, 513 U.S. 106, 108, 114 (1994). A meaningful remedy is one that is minimally adequate and effective at ensuring the protection of the attendant right. *See Smith v. Robins*, 528 U.S. 259, 276-277 (2000) (holding that an adequate remedy is one that reasonably ensures the protection of a right).

In this case, Petitioner is entitled to a meaningful remedy for his wrongful conviction. When South Carolina provides no remedy, this implicates the due process clause and the basic fairness required of it and thus the South Carolina Court of Appeals' holding that no remedy is available for a wrongful conviction is in and of itself a due process violation. In sum, Palmer invokes the well-known Latin maxim *Ubi jus ibi remedium* which is where there is a right there is a remedy. In this case it is well established that Palmer had a right not to be wrongfully convicted and thus his right to a remedy for wrongful conviction is guaranteed by the United States Constitution.³

II. THE TAKINGS CLAUSE OF THE UNITED STATES CONSTITUTION REQUIRES A REMEDY BE PROVIDED TO PALMER.

The Takings Clause of the United States Constitution provides in pertinent part:

³ In fact, the South Carolina Court of Appeals made no mention of S. C. Constitution, art. I, § 9, which provides "every person shall have a speedy remedy for wrongs sustained."

No person shall be . . . deprived of life, liberty or property without due process of law; nor shall property be taken for public use without just compensation.

See U.S. Const. amend. V.

Palmer maintains that the State of South Carolina must provide a remedy to someone who has been unlawfully convicted and who has been deprived of his “liberty.” The fact that South Carolina offers no statutory remedy for a wrongful conviction while thirty-five other states provide such a remedy denies Palmer due process of law. This Court has on multiple occasions in other areas of the law such as taxation provided that a remedy must be provided either as a pre-deprivation remedy or post-deprivation remedy. In *Ward v. Love County*, 253 U.S. 17 (1920) this Court said, “The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.”

While this case involves a “liberty interest” and not property interest, the same proposition applies here. In *Nelson v. Colorado*, 581 U.S. ___, 137 S. Ct. 1249 (2017), Justice Ginsberg, writing for the majority noted, “once those convictions were erased, the presumptions of their innocence was restored.” See, e.g., *Johnson v. Mississippi*, 486 U.S. 578, 585 (1988) (After a “conviction has been reversed, unless and until the defendant shall be retried, he must be presumed innocent of the charges.”).

The *Nelson* Court further observed “Just as the restoration of liberty on reversal of conviction is not compensation, neither is the return of money taken by the state on account of conviction.” In reaching the decision that Colorado could not keep the fines imposed which were based on the conviction, this Court applied the familiar due process test of *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, the balancing test requires the court to evaluate (a) the private interest affected, (b) the risk of erroneous deprivation of that interest through the procedures used, and (c) the governmental interest at stake. In applying that test, Palmer’s liberty interest was clearly affected because South Carolina provides no law which grants relief. Also, South Carolina’s governmental interest in making sure that wrongful convictions do not occur and that a remedy must be provided is critically important to the citizens of the state.

This Court held under the due process clause an individual(s) who has not been adjudged guilty of any crime may not be punished. *Nelson*, 581 U.S. ___, 137 S. Ct. at 1255, 1256. *Nelson* cited to *Arkadelphia Milling Company v. St. Louis Southwestern Railway Company*, 249 U.S. 134, 145 (1919) which held: “A party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of reversal, to be restored by his adversary to that which he lost thereby. This right, so well founded in equity, has been recognized in the practice of the courts of common law from an early period.”

Due process requires that a remedy be provided for someone wrongfully convicted. The Constitutional right to a civil remedy for a wrongful conviction is substantive in nature and it is no different than other substantive due process cases which this Court has decided in the past including for example the right to work in an ordinary kind of job and the right to marry and to raise one's children as a parent. In *Lockner v. New York*, 198 U.S. 45 (1905), this Court found unconstitutional a New York law regulating the working hours of bakers holding that the public benefit of the law was not enough to justify the substantive due process violation of the bakers who worked under their own terms. A similar analysis applies here. Palmer was wrongfully convicted and because of his wrongful conviction, South Carolina must offer a remedy to comply with due process. Due process provides Palmer the right to make a claim for damages for his wrongful conviction and South Carolina must provide a remedy for such wrongful conviction. Petitioner asserts a constitutional remedy for wrongful conviction must be provided; however, each state may craft individual remedies as has been done by the thirty-five states which provide a remedy for wrongful conviction.

The failure of the State to provide a remedy for a wrongful conviction is in and of itself a due process violation. This Court has hinted on occasion that the availability of some State law remedy in certain situations is constitutionally required. See *Board of Regents v. Roth*, 408 U.S. 564 (1972). Obviously, a liberty deprivation by the State's failure to offer some remedy for a

wrongful conviction is just such a situation. *Malley v. Briggs*, 475 U.S. 335 (1986) (officers who obtain warrant without probable cause can be held liable if reliance on the warrant was objectively unreasonable); *County of Sacramento v. Lewis*, 523 U.S. 833 (1998) (due process clause has long been understood to forbid deprivations of liberty accompanied by official conduct thought to “shock the conscience”); *Baker v. McCollan*, 443 U.S. 137 (1979).

Here, because South Carolina provides no remedy it violates Palmer’s “liberty interest” as defined in the Fifth and Fourteenth Amendments and as the Court correctly points out in *Nelson*, “The restoration of liberty on reversal of conviction is not compensation.” (*Nelson*, 581 U.S. ___, 137 S. Ct. at 1257). *See also Allgeyer v. Louisiana*, 165 U.S. 568 (1897). Palmer maintains that his core theory of relief in this case is that some remedy, any meaningful remedy, must be offered by South Carolina for wrongful conviction and that failure to offer a remedy of any kind violates the United States Constitution.

In sum, *Nelson* provides guidance that an invalid conviction is no conviction at all and thus Palmer has a constitutional right to a remedy for his wrongful incarceration. Thus, each state, consistent with due process must offer some form of meaningful remedy to the wrongfully convicted.

III. THE TAKING OF PETITIONER'S LABOR IS THE TAKING OF PRIVATE PROPERTY.⁴

The United States Constitution and the just compensation clause provides: "Private property (shall not) be taken for public use without just compensation." U.S. Const. amend. V. Wrongful convictions resulting in incarceration destroy numerous liberty interests including the right to move about freely, to privacy, to free speech, to security of a person and to the freedom to engage in personal achievements. A wrongful conviction destroys these liberty interests, and this destruction in turn causes devastating economic consequences for those wrongfully convicted. Petitioner asserts that the destruction of liberty interests by wrongful convictions causes a taking of "liberty-property" for which a remedy is constitutionally compelled by the United States Constitution. Thus, Petitioner asserts that the focus should be on the rights taken, not on the property asset in question. In effect, what is truly at stake in wrongful convictions settings are rights not assets. Compensation, thus, should be envisioned as the value of the rights of which those wrongfully convicted have been deprived.

Deprivations of liberty which give rise to the remedy of just compensation are fundamentally

⁴ Much of this argument has been adopted from *Wrongful Convictions as Rightful Takings: Protecting "Liberty-Property."* 59 *Hastings Law Journal* Issue 3, Art. 2 (2008), John Martinez. In essence, Martinez argues liberty/property exists at the boundary between liberty and property and enable us to conceive of liberty deprivations as takings of property.

compensatory in nature. The objective is compensation not deterrence.

This Court has stated on multiple occasions “Liberty denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful information, to acquire useful knowledge, to marry, to establish a home and to bring up children, to worship. . . .” *Meyer v. Nebraska*, 262 U.S. 390 (1923). See *Chavez v. Martinez*, 538 U.S. 760 (2003) (case remanded to federal circuit to determine whether coercive questioning of severely injured suspect gave rise to a compensable violation of due process); *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976) (Barring noncitizens from employment in the federal civil service is unconstitutional as depriving resident aliens of due process of law in violation of the Fifth Amendment.) Thus, liberty is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective.

In this case, the fact that Petitioner was unlawfully convicted and his liberty to move about freely was affected also substantially affected him economically. In effect, because he was wrongfully convicted Petitioner was unable to earn a living and deprived of the fruits of his labor. He was unable to engage in any economic activity while in prison for over four years. Palmer was deprived of a liberty-property interest which is a taking.

Here, the South Carolina Court of Appeals has used a conventional approach of treating wrongful convictions as “failures of the criminal justice system.” However, it leaves wrongfully convicted people free but uncompensated for the harm they have suffered from the State.

A central reason for this Petition for Certiorari is that this Court has not resolved the question of the relationship between the protection afforded by the due process clauses and that provided by the just compensation clause. In *United States v. Lee*, 106 U.S. 196, 218 (1882), this Court discussed the relationship between liberty protected under the due process clause and the requirement of compensation under the just compensation clause.

The last two clauses of Article V of the amendment to the Constitution of the United States . . . provide: “That no person . . . shall be deprived of life, liberty or property without due process of law nor shall private property be taken for public use without just compensation.” Conceding that the property in controversy in this case is devoted to a proper public use and that this has been done by those having authority to establish a cemetery and a fort, the verdict of the jury finds that it is and was the private property of the plaintiff and was taken without any process of law and without any compensation. Undoubtedly those provisions of the constitution are of that character which it is intended the courts shall enforce, when cases involving

their operation and effect are brought before them. The instances in which the life and liberty of the citizen have been protected by the judicial writ of *habeas corpus* are too familiar to need citation, and many of these cases, indeed almost all of them, are those in which life or liberty was invaded by persons assuming to act under the authority of the government. *Ex parte Milligan*, [71 U.S. (4 Wall.) 2 (1866)]. If this constitutional provision is a sufficient authority for the court to interfere to rescue a prisoner from the hands of those holding him under the asserted authority of the government, what reason is there that the same courts shall not give remedy to the citizen whose property has been seized without due process of law and devoted to public use without just compensation?

In *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005) this Court held that the just compensation clause protects against burdens *on the property rights of an owner* not on the logically antecedent inquiry about the validity of governmental conduct. This Court thus suggested that whether governmental action is valid is the province of the due process clause whereas the just compensation clause focuses on the nature and extent of the burden imposed on the owner. (*Lingle*, 544 U.S. at 539 (“although our regulatory takings jurisprudence cannot be characterized as unified, these three inquiries (reflected in *Loretto*, *Lucas* and *Penn Central*) share a common touchstone.”). Each aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly

appropriates private property or ousts the owner from his domain. Accordingly, each of these tests focuses directly upon the severity of the burden that government imposes upon private property rights.

In essence, liberty to acquire property rights represents the freedom to acquire authority over others in regard to assets we call our own. Property is not an object apart from those who own it, but intrinsic to the lives of the owners.

In sum, the obligation to provide compensation for deprivations of liberty is even more compelling than when mere economic rights are affected. *See* Footnote 4 of *United States v. Carolene Products Co.*, 304 U.S. 144, n. 4 (1938).



CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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