

IN THE SUPREME COURT OF THE UNITED STATES

TERRY G. WATSON,
PETITIONER,

VS.

CAUSE NO.

KAREY L. WITTY, ET.AL.,
RESPONDENTS,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
FROM 21-1963

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether a veteran and his family are entitled to a policy by the Missouri Department of Corrections upholding statutory rights created under Title 38 of the Federal Code under the Supremacy Clause?
2. Whether veteran's found disabled under Title 38 of the Federal Code are entitled to health care under Veterans' Access, Choice, and Accountability Act; or Caring for Our Veteran's Act of 2018 while incarcerated?
3. Whether veteran's found disabled under Title 38 of the Federal Code are entitled to reasonable accommodations from the State pursuant to Title II of the ADA?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: Plaintiff's Gina M. Watson; Defendant's, State of Missouri, Dr. Aschok Chada, Dr. Paul Jones, Kathy Barton, Lisa Pogue, Michelle Buckner, Jeff Allen, Will Jones, Chris Sweeten, Cari Collins, Michael Parson, Anne Pre~~c~~ythe, Lori Lewis, Chantay Godert, D. Kattelman, Tamara Crouch, Ralf Sulke, Geeneen Wilhite, Renee Tradaro, Matt Sturm, Deloise Williams, George Lombardi, Micharl Bowersox, Dean Minor,

RELATED CASES

Watson v. Witty et.al., 2:16-cv-71-HEA dismissed without prejudice United states District Court, Eastern District of missouri;

Watson v. Witty, 21-1963 Appeal United States Court of Appeal for the Eighth Circuit. See also interlocutory appeals.

Terry G. and Gina M. Watson 21AC-00012, 19th Judicial Circuit of vs. Michael Parson, et.al., Cole County, Missouri, writ of madamus pending.

Terry G. and Gina M. Watson Department of Veterans' Affairs administrative procedures and United States Court of Appeals for Veterans' Claims decisions under VA File No. 489-72-4137.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 07/21/21.

[] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 09/19/21, and a copy of the order denying rehearing appears at Appendix A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case involves Amendments 5, 8, and 14 and the Supremacy Clause to the United States Constitution, which provides:

5th "No person shall...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

8th " Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

14th " Section 1. All persons born or 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 person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

Supremacy Clause, " Art. VI, Cl. 2 The Constitution, and the laws of the United States which shall be made in pursuance thereof; ...shall be the supreme law of the land; and the judges in every state shall be bound thereby, any Thing in the Constitution or laws of any State to the contrary notwithstanding."

Veterans' Benefit Act of 1957, as amended by the Veterans' Judicial Review Act, precludes States from "affecting the provisions of veterans' benefits." And 38 USC § 511, specifically states, "all questions of law and fact necessary to a decision by the Secretary under law that effects the provisions of benefits ...shall be final and conclusive and may not be reviewed by any

other official or by any court."

38 CFR § 17.38(c)(5), "hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency is specifically ~~excluded~~ from the medical benefits package if that institution has a duty to give care or services.'

Missouri Executive Order 99-07," Whereas, the Director of the Missouri Department of Corrections has a duty under the Eighth Amendment of the United States Constitution and sections 217.020, 217.025, and 217.230 of the Revised Statutes of Missouri to provide medical care for offenders committed to the Missouri Department of Corrections; and WHEREAS, this duty requires the Director of the Missouri Department of Corrections to select, routinely monitor, evaluate and retain or dismiss licensed professional health care staff; and WHEREAS, the Missouri Department of Corrections receives and investigates all inmate grievances including grievances about health care staff and services;...."

38 USC § 301(b)," The purpose of the Department is to administer the laws providing benefits and other services to veterans and the dependents and the beneficiaries of veterans."

38 USC § 1703 Veterans Community Care Program (a)(2)," The secretary shall coordinate the furnishing of hospital care, medical services, and extended care services under this section to covered veterans, including the coordination of, at a minimum , the following: (c)(1) Any health care provider that is participating in the medicare program....(5) Any health care provider not otherwise covered under any paragraphs (1) through (4)...
(d) CONDITIONS UNDER WHICH CARE IS REQUIRED TO BE FURNISHED

THROUGH NON_DEPARTMENT PROVIDERS (1) The Secretary shall...furnish hospital care, medical services, and extended care services to a covered veteran through health care providers specified in subsection (c) if (C)(i) the covered veteran was an eligible veteran under section 101(b)(2)(B) of the Veterans Access, Choice, and Accountability act of 2014(Public law 113-146;38 USC 1701 note) as of the day before the date of the enactment of the Caring for Our Veterans Act of 2018."

TITLE II OF THE ADA

Title II of the ADA provides," no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity , or be subject to discrimination by such entity." 42 USC § 12132."

28 CFR § 35.130(b)(7), generally states are required to "make reasonable modifications in policies, practices, or procedures when modifications are necessary to avoid discrimination on the basis of disability."

42 USC § 12102(2) a disability must fit one of three definitions to actionable under the ADA; there must be "(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; [or] (B) a record of such an impairment; or (C) being regarded as having such an impairment."

FEDERAL LAW IS ENFORCED BY TITLE 42, SECTION 1983, UNITED STATES CODE

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless, a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

38 USC §§ 1110,1131; 38 CFR § 3.303 Service connection may be established for a disability resulting from disease or injury incurred in or aggravated by service. (b) Evidence of continuity of symptomology from the time of service until the present is required where chronicity of a chronic condition manifested during service has not been established or might reasonably be questioned. (d) Regulations also provide that service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disability was incurred in service. Generally, in order to prove service connection, there must be competent, credible evidence of (1) a current disability, (2) in service incurrence or aggravation of an injury or disease, and (3) a nexus, or link, between the current disability and the in service disease or injury.

STATEMENT OF THE CASE

Petitioner is a Missouri State prisoner who has been incarcerated in MODOC since 2012. Ms. Gina M. Watson is his legal spouse of 33 years. Petitioner is a veteran of the United States Army, a combat veteran of the Gulf War/Operation Provide Comfort and peace time, serving Honorably from 10/12/1988 until 04/13/1993. Petitioner has been disabled by the VA since discharge from a line of duty injury. In August 2010 the VA found Petitioner to be 100% permanent and totally disabled with house bound status under 38 USC § 1114. In 10 years of incarceration MODOC has refused to recognize the Title 38 derived disabilities and provide reasonable accommodations and health care. At each MODOC facility, South Central Correctional Center, Licking Missouri, Moberly Correctional Center, Moberly Missouri, Northeast Correctional Center, Bowling Green, Missouri and Western Missouri Correctional Center, Cameron, Missouri, Petitioner has filed grievances under MODOC policy D5-3.2. The response is always the same, MODOC does not recognize federal law and provide health care or reasonable accommodations to disabled veterans. Petitioner has exhausted remedies through to the Office of Justice Programs, U.S. Department of Justice, Office for Civil Rights. See App. D.

Petitioner filed a 1983 lawsuit in the U.S. District Court Eastern District of Missouri with Judge Henry Edward Autry. The Court has refused to uphold statutory entitlements for Petitioner and family, siding with the State at every juncture. After five years of fruitless litigation the Court dismissed the suit on March 21, 2021. An appeal followed in the USCA8 without a briefing

schedule set for a determination of statutory rights under the Supremacy Clause. Petitioner and spouse hired an attorney Kevin L. Schriener to litigate in State Court the Federal question of statutory rights under Title 38 of the Federal Code in Terry G. and Gina M. Watson vs. Michael Parson, et.al., currently being amended to include litigants at WMCC, No. 21Ac-00012 19th Judicial Circuit of Cole County, Missouri, The State Court found ex rel. the Governor and State officials were violating a holding case from the Missouri Supreme Court in a standing, issued mandamus; Issuing a preliminary order in mandamus under Missouri Supreme Court Rules. (See U.S. Dep't of Veterans' Affairs vs. Boresi, 396 S.W.3d 358 (Mo. banc 2013)); To uphold Petitioners' and Spouses' rights.

In ten years of incarceration the MODOC has refused to : (a) provide petitioner with nothing more than over-the counter medications and Cymbalta for pain; (b) provide access to medically necessary specialist at the Department of Veterans' Affairs VAMC; (c) provide necessary expenses for treatment; (App. C pp1-6)

Petitioner's afflictions are degenerative in nature and due to time and abuse on the part of MODOC, the severity of the disabilities has significantly increased as determined by the VA doctor specialists' after performing a compensation and pension examination in addition to VA officials and CAVC judges in Petitioner's VA case 489-72-4137. (App. C pp 1-6).

Over the past ten (10) years, Petitioner has repeatedly exhausted his institutional remedies required under the PLRA, 42 USC 1997(e) and MODOC policy D5-3.2, without resolution. (App. D, pp 1-4). MODOC and its contract health care provider have ignored the DVA's assessments in violation of 38 USC § 511. (App.

C pp 1-6).

In 2015 after an appeal with VA, at South Central Correctional Center(SCCC), Katherine Barton, Director of Nursing for Corizon Correctional Health care Inc. DBA Corizon LLC, and Renee' Tradaro, Health Services Administrator, obtained a complete Record Before the Agency(RBA) from the DVA and placed the record in Petitioner's MODOC medical file, which contained the latest rating decisions indicating that Petitioner is 100% P&P with house bound status (s-1) pursuant to 38 USC § 1114, Subsection (s) and 38 CFR 3.350(i), with every listed disability found by DVA with its medical diagnostic code.(App. C pp 1-6).

The Respondent's, as State officials under the Director's mandatory duties spelled out Missouri Executive Order 99-07, have a duty to recognize and follow Federal law and this Court's stare decisis, arranging for necessary health care and providing reasonable accommodations for offenders confined in correctional centers.

Petitioner has been tortured mentally and physically by MODOC for ten(10) years. He withouted place to sleep that meets his chronic pain needs. The bedding in MODOC is of an old thin wornout mattress, (less than one(1) inch thick) on a solid flat piece of steel with no pressure point relief. This causes him sleep deprivation a well known form of torture by this Court.

The Federal Court's have been given affidavit's and other clear evidence in the record of Watson v. Witty, but refuse to provide any relief under the law. This writ of Certiorari follows.

The Missouri Sex Offender Treatment Program at WMCC, practices discrimination in actions as compared to the abled bodied facility at FCC.

REASONS FOR GRANTING THE PETITION

A. Conflicts with Federal statute and State Policy

The United States Court of Appeals for Veterans' Claims (CAVC) has long held incarcerated Veterans be afforded the same treatment as non-incarcerated Veterans in pursuing disability compensation claims. Wood v. Derwinski, 1 Vet.app. 190(1991); Bolton v. Brown, 8 Vet.App. 185(1995). A dependent of the Veteran is entitled to a variety of programs and compensation apportionment from the VA, based upon the Veterans' disability ratings. Petitioner requested the District Court in Watson v. Witty, to add Gina M. Watson as a Plaintiff under Rule 19,20, Fed.R.Civ.P. The Court denied the motion. On appeal, Petitioner again motioned the appellate court to correct the caption.-The motion was deemed moot. In comparison, the State Court in Terry G. and Gina M. Watson vs. Michael Parson, et.al., 21AC-00012 19th Judicial Circuit of Cole County, Missouri, found standing in a mandamus action ex rel.

The State in its response holds that Petitioner is not a 100% permanent and totally disabled veteran with house bound status. (App. E pp. 2-3). This was predicated upon a false narrative in the grievance appeal by Thomas Bredeman and Jewel Cofield at the MODOC Director's office.

Plaintiff has been married to his spouse for 33 years. She served beside me on active duty, sent me to war, and kept the home fires burning. She is this Veteran's care giver and will be by my side to death does part. Veteran's serve on active duty out of a sense of patriotism, not loyalty to any one creed, political party or politician, but for all Americans; So that they may sleep soundly in their beds knowing the watch is filled.

The best of America can be found in those of us who serve. Ordinary Americans who voluntarily answered the call. Those of us who survive our tours of duty, are often left with fighting for normal lives, battling scars seen and unseen simply because, with everything at risk, we are the rare few who said "send me."

The 99% of Americans that never serve are able to pass their whole lives without placing themselves in harms way, but those 1% of us who have answered; we deserve the respect for that service.

The Federal Congress under its war powers, created Title 38 of the Federal Code, providing both compensation and health care for veterans and their dependents. The conflict between State policy depriving both the veteran and his dependents is unconstitutional. See Art. 1 Sect.8, cl.11-18.

The Fourteenth Amendment prohibits states from making or enforcing laws, " which shall abridge the privileges or immunities of citizens of the united States."

MODOC has created a policy with the force of law, that violates the Veterans' Benefit Act of 1957, as amended by the Veterans' Judicial Review Act, precluding states from "affecting the provisions of benefits ." And 38 USC § 511, specifically stating, "...all questions of law and fact necessary to a decision by the secretary under law that effects the provisions of benefits ...shall be final and conclusive and may not be reviewed by any other official or by any court."

The Supremacy Clause strictly forbids the states from abrogating a federal right. If a conflict arises between state law or policy and Federal law, Federal law prevails.

Here, MODOC policy refusing to recognize Title 38

disabilities has the effect of denying property (Title 38 entitlements) for both Petitioner and spouse.

The Petitioner and Spouse do not have an effective remedy but seeks to have the law setout and recognized by the various States to perform their constitutional and statutory duties so that Petitioner and Spouse's clearly established rights may be protected. Petitioner has demonstrated a clear and undeniable need for this Court to intervene, and establish exactly what Respondents and their agents must do to carry out their statutory and constitutional duties.

Article VI of the Constitution makes federal law " the supreme law of the land," notwithstanding the contrary law any state might have. In the important 1958 case Cooper v. Aaron, 358 U.S. 1 (1958), in which the Court considered the efforts state authorities to block integration of Little Rock's Central High School, the Court unanimously declared, " No state legislator or executive or judicial official can war against the Constitution without violating his undertaking to support it...if the legislatures of the several states may at will, annul the judgments of the courts of the United States and destroy the rights acquired under those judgments , the Constitution itself becomes a mockery." Federal law, not state law, is " the supreme law of the land."

The actions of the MODOC and contract health care provider to nullify the rights of veterans and their families by official actions and or policies under ~~state~~constitutional law are clearly , grossly unconstitutional.

Article VI, when a state law or action, which is at least arguably consistent with federal law, in fact creates sufficient

conflict so as to justify finding it "preempted."

PREEMPTION

The preemption doctrine derives from the Supremacy Clause of the Constitution which states, " Constitution and Laws of the United States.. shall be the supreme law of the land...anything in the constitutions or laws of the State to the contrary notwithstanding." This means of course, that any federal law-- even a regulation of a federal agency--trumps any conflicting state law, policy or official actions.

Title 38 of the Federal Code has express preemption of state law, actions, or policies. Congress intended in 38 USC § 511 to preempt state law concerning entitlements under title 38.

This then turns the Court's attention to Pennsylvania v. Nelson, 350 U.S. 497(1956) in which the doctrine of " occupation of the field" states there is no room left for state regulation . The lower courts should have looked to the pervasiveness of the federal scheme of regulations, the federal interest at stake, and the danger of frustration of federal goals in making the determination as to whether a challenged state law, policy or action can stand.

Hamilton wrote that the Supremacy Clause " only declares a truth, which flows immediately and necessarily from the institution of a Federal government." The Federalist No. 33, p207(J.Cooke ed. 1961).

Clearly Article I vests Congress with broad discretion over the manner of implementing its enumerated powers, giving it authority to " make all laws which shall be necessary and proper for carrying [them] into execution." Art.I, §8.

The Supremacy Clause includes a private right of action under Section 1983, the Constitution requires Congress to permit the enforcement of its laws by private actors. It would be strange indeed to give a clause that makes federal law supreme a reading that limits Congress's power to enforce that law, by imposing mandatory duty. Once a case or controversy properly comes before a court, judges are bound by federal law. As this Court has long recognized, if an individual claims federal law immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted. Ex parte Young, 209 U.S. 123, 155, 156 (1908).

The lower courts should have issued an injunction against the MODOC and its contractor for violating the statutory rights of Petitioner and spouse. Instead, they inappropriately applied the PLRA 42 USC § 1997(e) to abrogate Petitioner and Spouse's property rights under Title 38. Not only are the lower courts creating an improper application of the PLRA, but also refuse to acknowledge and apply this Court's holding in Ross v. Blake, 136 S.Ct. 1850 (2016).

The lower courts dismissed defendants from the suit based upon an inappropriate ruling in summary judgment, Rule 56, Fed.R.Civ.P.

All of the grievances filed with MODOC under D5-3.2, stated two main issues, 1. recognition of the VA's disability determinations; And health care and reasonable accommodations for those disabilities. The Missouri Executive Branch has taken the position on federal rights they are immune from suit for denying or violating clearly established rights under Title 38. (Stating, "As a sovereign, the State generally enjoys immunity from suit. § 537.600 RSMo." (App. E pp. 5)).

The Title 38 administrative process at the VA requires that competent evidence be presented to the agency in support of a claimed disabilities or a claimed increase in severity. For instance in Petitioner's case, his line of duty injury has increased in severity over time; They disabilities are degenerative in nature.

As the disabilities become worse with time, and due to lack of health care and reasonable accommodations, MODOC's refusal to provide the aforementioned directly impacts the right to present said evidence. This fact also deprives the dependents of the veteran from access to the entitlements. This follows through to the federal courts; to this Court. for instance, Petitioner's spouse is building a new home on Watson trust land. On 01/26/21 conditional approval for a Special Adapted Housing grant under 38 CFR § 36.4405(a) was provided by the VA. Petitioner had to petition in the CAVC for a writ of mandamus because MODOC officials in an official letter to Andre Logan VA, SAH agent lied concerning petitioner's health and his parole date. The agents ~~were~~ Regina Gonia, Health Services Administrator and Dr. Joule Stevenson, Site Medical Director, ~~NEC~~.

This act is one example of the unconstitutional policy of the State of Missouri that effects a non-incarcerated claimant at the VA. The VA denied the approval of the grant based upon the MODOC agent's letter, only corrected by mandamus at the CAVC.

HEALTH CARE AND REASONABLE ACCOMMODATIONS

The respondents, as State officials, have a both statutory and constitutional duty to provide Petitioner with adequate medical care and reasonable accommodations under the Eighth and Fourteenth Amendments of the United States Constitution. (Farmer v. Brennan, 511 U.S. 825(1994); Pennsylvania Dept. of Corrections v. ~~Weskey~~,

524 U.S. 206(1998); 42 USC § 12101 et.seq. Title II of the ADA; 28 CFR Part 35; Mo.Rev.Stat. §§ 217.020,217.025,217.230.

Treatment for the Title 38 disabilities creates evidence of the condition of Petitioner's health. Under Title 38, this evidence is then used to determine a compensation amount and other entitlements by VA. See 38 USC §§ 1110,1131;38 CFR § 3.303;38 USC § 301(b).

DENIAL OF HEALTH CARE AND REASONABLE ACCOMMODATIONS IS TORTURE

Petitioner lives in chronic pain due to his disabilities. In ten(10) years of incarceration MODOC and its contractor have refused to provide access to competent specialist or provide pain mitigation by providing Petitioner a bed to sleep on. Currently, MODOC refuses to provide proper bedding, instead opting for an inferior mattress made by slave labor in MODOC. The mattress when new is 4 inches thick, but quickly breaks down to 1 inch in a couple of months. MODOC policy is that a mattresses life is three years . Petitioner lays in pain every night, obtaining only a few hours of sleep. The bed frame is a flat piece of steel with no pressure point relief. A well known torture is sleep deprivation. Sleep deprivation coupled with the infliction of unnecessary pain by MODOC is torture.

This Court in Reck v. Pate, 367 U.S. 433,81 S.Ct. 1541(1961)(recognized deprivation of food and sleep as unconstitutional) and in Ashcraft v. Tennessee, 322 U.S. 143,150 n.6,64 S.Ct.921(1944)("It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired," quoting Report of Committee on Lawless Enforcement of Law, Section of Criminal Law and Criminology of the American Bar Bar Association, 1 American Journal of Police Science 575,579-80

(1930).

This Court in Rhodes v. Chapman, 452 U.S. 337, 347, 101 S.Ct. 2392(1981) set out the standard for " the unnecessary and wanton infliction of pain" standard. Petitioner's chronic pain is tied to the deprivation of sleep for failure to provide a reasonable accommodation of a proper mattress to alleviate pain while trying to sleep. Further, Sleep deprivation falls under " unquestioned and serious deprivation of basic human needs" and or " minimal civilized measures of life's necessities" Rhodes v Chapman, 452 at 347 accord Wilson v. Seiter, 501 U.S. at 308.

The actions and policy of MODOC and the State of Missouri do " pose an unreasonable risk of serious damage to [my health], future health." Helling v. Mckinney, 509 U.S. 25, 33, 113 S.Ct. 2475 (1993)(" a remedy for unsafe conditions need not await a tragic event.") The Denial of the reasonable accommodations of the service of a place to sleep, is based upon the MODOC policy refusing to recognize the Title 38 disabilities and cost savings for MODOC.

TITLE 38 DISABILITIES

In Appendix C pages 1-6 is VA Rating decision, it spells out in no uncertain terms the type of disability and its measure of body damage. A percentage rating at the VA means, upon examination at the MEPPS physical before entering on service, your body systems were found to be 100% sound. After discharge a comprehensive examination found certain injury or ailments as a result of that service. Each disability is measured using a metric set by Congress to determine the extent of damage as a percentage and its impact on the average earning capacity of the veteran,

38 USC § 1114 Rates of Wartime Disability Compensation

(s) If the veteran has a service-connected disability rated as total; and (1) has additional service-connected disability or disabilities independently ratable at 60 percent or more, or, (2) by reason of such veteran's service-connected disability or disabilities is permanently housebound, For the purpose of this section, the requirement of permanently housebound will be considered to have been met when the veteran is substantially confined to such veteran's house or immediate premises due to service-connected disability or disabilities which is reasonably certain will remain throughout such veteran's lifetime.

The ratings of Appendix C pages 1-6 meet the criteria for a qualified person with a disability under Title II of the ADA.

Further, the policy denying medical care for the Title 38 disabilities is an " acts or omissions sufficiently harmful to evidence deliberate indifference to a serious medical need."

Hudson v. McMillian, 503 U.S. 1, 8, 112 S.Ct. 995, 1000(1992)(citing Estelle v. Gamble, 429 U.S. 97, S.Ct. 285, 290-91(1976)). "Because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are 'serious'"*id.* The definition of serious medical need is suggested as

failure to treat a prisoner's condition [that] could result in further significant injury or the unnecessary and wanton infliction of pain;...[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comments or treatment; the presence of a medical condition that significantly affect an individual's daily activities;

or the existence of chronic and substantial pain.

McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104, F.3d 1133 (9th Cir. 1997).

Clearly the unconstitutional policy of MODOC and the State of Missouri are more significant than just the aforementioned Eighth Amendment deliberate indifference standard. Gina M. Watson, Spouse of Petitioner, is also being harmed by the policies, by deprivation of property without due process of law, violating the Fourteenth Amendments prohibition. This policy acts to show actual injury to both Terry G. and Gina M. Watson in the pursuit of legal claims under Title 38. In Lewis v. Casey, 518 U.S. 343, 116 S.Ct. 2174 (1996) this Court set out the legal definition of "actual injury". Though for the non-incarcerated spouse this legal definition is not well grounded.

Title II violations create a private cause of action against the State when the acts actually violates the Fourteenth Amendment. United States v. Georgia, 126 S.Ct. 877, 882 (2006); 42 USC § 12132.

Torture and denial of reasonable accommodations targeting disabled veterans and their families is an action by the State of Missouri both abridging privileges and depriving a citizen of life and property without due process of law. In the District Court, the First Amended complaint ~~named~~ state officials in their official capacity, the same as suing the State for Title II violations. Remedies were exhausted to the Federal DOJ, which should have caused the court to adjudicate a claim for Title II. The district court refused to entertain the issues at all.

Title II of the ADA provides that " no qualified individual

with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity," 42 USC § 12132.

Public entities, which include "any department, agency, special purpose district, or other instrumentality of a State or local government." id., 118 S.Ct. at 1954-55, are required to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 CFR § 35.130(b)(7). This Court holds that the plain language of Title II of the ADA extends to prison inmates who are deprived of the benefits of participation in prison programs, services, or activities because of physical disability. see Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206, 211, 118 S.Ct.1952,1955(1998).

The district court failed to do a proper analysis of the ADA claim. In order to proceed with an ADA claim, Under Title II , Plaintiff must show (1) that he has a disability;(2) that he is otherwise qualified to participate in or receive the benefits of the public entity's services, programs, or activities;(3) that he was otherwise excluded from participation in or denied the benefits of the services, programs or activities, or was otherwise discriminated against by the public entity; and (4) that such exclusion , denial of benefits, or discrimination was by reason of plaintiff's disability. O'Guinn v. Lovelock Correctional Center, 502 F.3d 1056, 1060(9th Cir. 2007).

Further, A "disability" must fit one of the definitions under 42 USC § 12101(2) to be actionable under ADA; there must be "

(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; [or] (B) a record of such an impairment; or (C) being regarded as having an such an impairment." The cases brought under Title II of the ADA use the disability definitions found in federal regulations promulgated for Title I governing disability discrimination in the employment area. Colwell v. Suffolk County Police Department, 158 F.3d 635, 641(2d Cir. 1998). Major life activities include "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working," Cooper v. Neiman MarcusGroup, 125 F.3d 786, 790(9th Cir. 1997)(quoting 29 CFR § 1630.2(i)).

Under federal regulations, " [t]he term substantially limits means (i) Unable to perform a major life activity that the average person in the general population can perform; or (ii) Significantly restricted as to the conditions, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same life activity." 29 CFR § 1630.2(j)(1)(i-ii).

Under Title II of the ADA, plaintiff's may not sue individual defendants in their individual capacities, but must instead sue the State or state entities. See Lollar v. Baker, 196 F.3d 603, 610(5th Cir. 1999)(citing Albrook v. City of Maumelle, 184 F.3d 999, 1010-11(8th Cir. 1999)(the ADA's comprehensive remedial scheme bars the plaintiff's claims against the commissioners in their individual capacities); Baird v. Rose, 192 F.3d 462, 471 (4th Cir. 1999)(Title II of the ADA does not recognize a cause of action for discrimination by private individuals, only public

entities); compare Miranda v. Kitzhaber, 328 F.3d 1181, 1188-87(9th Cir. 2003)(holding that Title II's statutory language does not prohibit a plaintiff from requesting injunctive action against state officials in their official capacities).

Clearly, Petitioner meets the criteria for a qualified person with a disability, the Title 38 disabilities severely limit his "major life activities" in many capacities and should have caused the district court to find liability for the State of Missouri for discrimination against disabled veterans by official policy.

CONFLICT IN POLICY

The VA Secretary has a policy 38 CFR § 17.38(c)(5) that excludes incarcerated veterans from receiving a medical benefits package if the State has a duty to provide. The State of Missouri, through official MODOC policy exclude incarcerated veterans from receiving health care and reasonable accommodations while in custody for Title 38 rated disabilities. See Mo. Exec. Order 99-07 and (App. E pp 1-18). To date the Federal courts have sided with the State of Missouri, precluding relief, signaling to the State their discriminatory policy is constitutional. However, if this be true, then the VA Secretary, by mandate of Congress, must provide the health care. This position falls around the VA's policy wording of "duty to." Once its determined by this Court that the State of Missouri has no duty to provide health care and reasonable accommodations for veterans, it clears the path for suit in the Federal District Court for the District of Columbia against the VA Secretary to provide the health care. See 38 USC § 301(b); 38 USC § 1701-03. These statutes mandate the Secretary provide health care for qualified veterans.

DISCRIMINATION IN THE MISSOURI SEX OFFENDER TREATMENT PROGRAM

Petitioner has been given a parole date of 06/23/23. As a result, he was transferred to the Western Missouri Correctional Center, where disabled inmates are provided the program. The main facility for MOSOP is Farmington Correctional Center for able bodied inmates. FCC, M OSOP has a high sucess rate with a narrow treatment time frame of 6 to 9 months. It also determines the likely recidism rate in Phase I, ~~making~~ a determination if the inmate can take Phase II on parole.

In comparison, WMCC has very little resources and the character of the therapist is questionable. The program is provided by private ~~contractor~~ not the State of Missouri. The time frame for completion of the program is 18 months, three times that of the able bodied program at FCC, has a very high failure rate, and will not properly make a determination of likely recidism in Phase I, ~~sending~~ most of the elderly or seriously disabled home on parole to complete the program.

Specifically this means that there is probability of more likely than not, that Petitioner will (1) loose his parole date due to the lack of resources for disabled persons at WMCC's MOSOP. (2) There is a likely probability he will fail due to service-connected mental issues from chronic pain or the fact provincial churls provide the program at WMCC.

These are again facts of discrimination by MODOC and the State of Missouri against a qualified person with a disability. If Petitioner fails the program, he will be forced to be incarcerated and tortured for another nine (9) years. His health will be in such dire straights as it is effectively a death sentence.

B. Importance of the Questions Presented

This case presents a fundamental question of the interpretation of Congress's intent in framing Title 38 of the Federal Code, and veterans standing under Title II of the ADA for disabilities incurred as a result of active duty, line of duty injuries. The questions presented are of great public importance because it effects not only incarcerated veterans but their non-incarcerated dependents as well. There needs to be a precedent set for all 50 States and their prison systems. In view of the implications of mistreatment by States and local government of disabled veterans who often find themselves incarcerated because of service-connected disabilities, which directly effects the mental and physical care required for veterans to overcome the wounds of war and training for war.

The issue's importance is enhanced by the fact that the lower court refused to consider the denial of property rights of incarcerated veteran's dependents, and clearly failed to openly hold the correct standards on denial of health care and reasonable accommodations.

It is common sense that a veteran as disabled as Petitioner by his service to the country, should have standing in court to sue those that would discriminate against him due his service connected disabilities.

Thus the lower court seriously misinterpreted the standards of law required, sided with the State without good cause shown, denying standing to a Plaintiff under the Fourteenth Amendment.

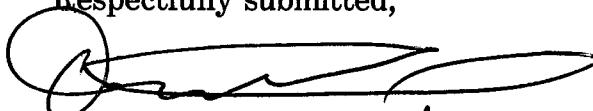
This Court should set the standard for treatment of disabled veterans and their families under Title II of the ADA and decide

if the State of Missouri or the VA Secretary must provide the care required.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Terry G. Watson

Date: 12/26/21