No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SAMMY L. PAGE,
Petitioner/Appellant,

v.

AUDREY KING,
Respondent/Appellee.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does a circuit court abuse its discretion and violate the principle of party presentation by adjudicating a habeas corpus petition under § 28 U.S.C. 2254, when the petition was brought under § 28 U.S.C. 2241 to challenge a pretrial detention?

II. Does a circuit conflict exist as to whether a due process claim is proper to seek injunctive relief from an allegedly wrongful pretrial detention in State SVP proceedings, under *Kansas v. Hendricks* and *Boumedienne v. Bush*, even though *Manuel v. City of Joliet*, 137 S. Ct. 911, 919, 197 L. Ed. 2d 312 (2017), a civil rights case, required a claim concerning pretrial detention to be raised under the Fourth Amendment? Or must *Manuel v. City of Joliet* be limited to its own procedural posture, which entailed accrual questions applicable to 42 U.S.C. § 1983 cases, and not extended to a petition for injunctive relief brought under 28 U.S.C. § 2241?

LIST OF PARTIES

All parties are listed in the caption of the case on the cover page.

RELATED CASES

There are no other cases that arise from the same proceedings on review here, but the underlying proceedings at the State level remain pending (as they have been since the challenged probable cause finding and holding order, made May 26, 2006, see App. E). The pending State-level case is: *People v. Page*, Superior Court of the State of California, County of Alameda, no. 131518.

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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The attached appendices include all opinions and orders that are essential to the determination of this petition.

The decision of the United States Court of Appeals in and for the Ninth Circuit affirming the denial of petition for writ of habeas corpus is unpublished. App. A at 1a-6a. It follows the decision of the United States District Court, Eastern District of California, also unpublished, filed September 28, 2020 (App. B at 7a-10a), and adopts the findings and recommendation of the magistrate judge filed June 9, 2020 (App. C at 11a-28a). All of those proceedings, however, were on remand from a published decision of the United States Court of Appeals vacating the lower court's dismissal of the petition for writ of habeas corpus. App. D at 29a-43a, reported at *Page v. King*, 932 F.3d 898 (9th Cir. 2019).

The challenged state court order is that finding probable cause to support a holding order for pretrial detention in civil recommitment proceedings under California's Sexually Violent Predators (SVP) Act, Welf. & Inst. Code § 6600 et seq. That finding and order were made orally in proceedings held May 26, 2006. App. E at 52a. Those proceedings remain pending, awaiting trial for 16 years.[1]

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[1] At oral argument before the circuit court, one judge asked, "Why don't you just go to trial? I think that's the way to go!"

The answer was—and is—because under constitutional due process, we don't lock people up and require them to defend their liberty, without probable cause. We just don't do that here.

Or do we?

JURISDICTION

The decision of the United States Court of Appeals in and for the Ninth Circuit affirming the denial of petition for writ of habeas corpus was filed October 7, 2021. App. A at 1a. On October 22, 2022, petitioner filed (1) a petition for rehearing or rehearing en banc and (2) a request that the court excuse his lateness and issue an order allowing late filing of the rehearing petition; absent any response, on December 16, 2021, petitioner filed a notice alerting the circuit court that the matter was outstanding and a ruling was needed. On December 17, 2021, the Court of Appeals issued an order granting the motion to accept a late petition for rehearing and/or rehearing en banc, and accepting the filing of the petition filed October 22, 2021. App. H at 55a. The Court of Appeals denied rehearing, in an order filed January 24, 2022. App. G at 54a. Upon petitioner's timely request, this Court granted an extension of time to file this petition for writ of certiorari on or before June 23, 2022. App. F at 53a.

The United States District Court had jurisdiction of the petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2241. Accordingly, the Court of Appeals had jurisdiction of the appeal pursuant to 28 U.S.C. §§ 1291, 1294, and 2253. This Court has jurisdiction over the judgment under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VI: "The right of the people to be secure in their persons . . . against unreasonable . . . seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ."

United States Constitution, Amendment XIV: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ."

28 U.S.C. § 2241(a): "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions . . . ."

28 U.S.C. § 2241(d): "Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court . . . the application may be filed in the [Federal] district court . . . ."

Pertinent portions of the California Sexually Violent Predators Act, Cal. Welf. & Inst. Code § 6600 et seq.—

California Welfare & Institutions Code § 6600(a)(1):

> "Sexually violent predator" means a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

California Welfare & Institutions Code § 6601:

> **(a)**
>
> **(1)** When the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, who is either serving a determinate prison sentence or whose parole has been revoked, and who is not in custody for the commission of a new offense committed while the individual was serving an indeterminate term in a state hospital as a sexually violent predator, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of their sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.
>
> * * * * *
>
> **(c)** The State Department of State Hospitals shall evaluate the

person in accordance with a standardized assessment protocol, developed and updated by the State Department of State Hospitals, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of State Hospitals. If both evaluators concur that the person has a diagnosed mental disorder so that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of State Hospitals shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of State Hospitals shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). . . .

California Welfare & Institutions Code § 6602(a):

> A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. . . . . If the judge determines there is not probable cause, he or she shall dismiss the petition . . . . If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections and Rehabilitation or other secure facility.

California Welfare & Institutions Code § 6603(d)(1):

> If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. . . . If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

STATEMENT OF THE CASE

A. Nature of the Case – Brought Under § 2241, Not § 2254.

In this case, brought under 28 U.SC. § 2241, Page seeks injunctive relief from the State's pretrial recommitment of him on May 26, 2006 by the California Superior Court, Alameda County no. 131518, pursuant to the California Sexually Violent Predators Act. Page filed his initial 2241 petition on July 16, 2012 in the Northern District of California, no. 12-cv-3721. 2-ER-77, 3-ER-352 (first page attached, App. 59a.) Page asserted his pretrial confinement violated due process under the Fourteenth Amendment. 2-ER-77; 2-ER-86-192; see also 3-ER-352-370.

After numerous proceedings, the case was transferred to Eastern District of California, no. 16-cv-00522. Following that transfer, the case was dismissed but the Court of Appeals reversed, finding Page in peril of irreparable harm, as an exception to the *Younger* abstention doctrine. *Page v. King*, 932 F.3d 898, 904 (9th Cir. 2019) (applying *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)). While remanding, the Court of Appeals raised a question whether the detention implicated the Fourth Amendment or the Fourteenth Amendment. *Page* at 905, discussing *Manuel v. City of Joliet,* 580 U.S. __, 137 S. Ct. 911, 919, 197 L. Ed. 2d 312 (2017). Page's petition was based solidly on the Fourteenth Amendment. The circuit court expressed its concern that, if *Manuel required* pleading under the Fourth Amendment, then Page's petition would be "doomed" unless permitted to amend. *Ibid.*

On remand in district court, Page asserted that his section 2241 petition properly claimed violation of due process under the Fourteenth Amendment, but alternatively sought to add the Fourth Amendment in case that lens was necessary. The district court denied Page's motion to amend and found the existing due process claim to be not cognizable.

On appeal below, the circuit court characterized the case as a section 2254 petition and affirmed for the stated reason that, "The Court's decision did not involve an unreasonable application of clearly established Supreme Court precedent." App. at 1a, 6a. The erroneous section 2254 characterization may have emanated from a mistake in an early procedural order directing the district court to decide whether to issue a certificate of appealability. App. at 56a. In that order, the Appellate Commissioner stated the case "appears to arise under 28 U.S.C. § 2254." App. at 56a. Page alerted the court to its mistake (App. at 58a), but the district court adopted the error in its order granting a certificate of appealability. 2-ER-25. This error was also adopted by the circuit court, and was key to the affirmance. App. at 1a, 6a.

B. Page Completed his Prison Sentence in 1997 but was Never Released From State Custody due to State Civil Commitment Proceedings Which, Since May 26, 2006, Remain at the "Pretrial" Recommitment Stage.

Page's last criminal offense was 35 years ago, in 1987. *Page v. Mayberg*, U.S. Dist. Court, N.D. Cal., no. C-05-4141, 2007 U.S. Dist. LEXIS 102634, *6 (N.D. Cal., April. 5, 2007). He completed his prison sentence on that conviction a decade later,

but before his release date, the State of California alleged him to be a sexually violent predator (SVP) and initiated civil commitment proceedings against him under its Sexually Violent Predators Act, Cal. Welf. & Inst. Code § 6600, et seq. On this first go-round, Page was found to be an SVP pursuant to a jury verdict, on which the court imposed a two-year commitment to a state mental health facility. *Page v. Mayberg, supra,* 2007 U.S. Dist. LEXIS 102634 at *1. The supporting evidence consisted of the opinions of two evaluators, Dr. Elaine Finnberg and Dr. Dana Putnam. Doctors Finnberg and Putnam each diagnosed Page as suffering from "paraphilia not otherwise specified, rape". Page's 2004 commitment was thus based on that diagnosis—exclusively—which in turn was based on Page's criminal record for which he completed his prison sentence 1997. *Id.* at *7.

The diagnosis of paraphilia NOS has since been discredited in an updated edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), and thus invalidated under California's required protocols under the SVP Act. However, the State has had difficulty bringing its evaluators in line with current science on SVP assessment protocols. 2-ER-99-100 (citing California State Auditor, California Department of State Hospitals, *It Could Increase the Consistency of Its Evaluations of Sex Offenders by Improving Its Assessment Protocol and Training*, Report 2014-125, March 2015, http://bsa.ca.gov/pdfs/reports/2014-125.pdf last accessed on June 19, 2022 (hereinafter, "State Auditor Report on DSH")) .

Toward the end of Page's initial two-year civil commitment, the State filed a recommitment petition. On May 26, 2006, the trial court found probable cause that Page was still an SVP posing current danger if released, and ordered him detained until completion of a civil recommitment trial. This finding was based on evaluations that relied on the same predicate offenses that Page committed decades earlier, as a young man, as well as upon two new mental health evaluations. 3-ER-470-472.

The 2006 evaluations were conducted by Dr. Jeremy Coles and Dr. John Hupka. 3-ER-278-335. In 2006, Dr. Coles diagnosed Page with "Paraphilia NOS [not otherwise specified]-Non consenting partners-sadistic traits" and Antisocial Personality Disorder (ASPD). Dr. Hupka also diagnosed Page with Paraphilia, (NOS) and ASPD. At the hearing held May 26, 2006, it was noted without dispute that the Axis II diagnosis—ASPD—"is not current for Mr. Page." 3-ER-470. And, that the court accepted that explanation while finding that Page still had "a" disorder—paraphilia—that warranted the holding order. 3-ER-472.

The so-called mental disease of "paraphilia" came into doubt among mental health practitioners. 2-ER-60-61; see also 2-ER-191-192 (Frances, *DSM-5 Confirms That Rape is Crime, Not Mental Disorder*, Psychiatric Times (Feb. 21, 2013).) Accordingly, in 2011, the California Department of Mental Health admonished evaluators to follow the protocol to base SVP evaluations only on valid diagnosed

medical disorders, and not paraphilia. 2-ER-69-70. With that, Page moved for a new mental health evaluations, which were ordered in 2012. See 2-ER-260.

The initial evaluators in 2012 were Dr. Jeremy Coles and Dr. Carolyn Murphy. In his 2012 report, Dr. Coles changed his 2006 opinion, concluding that Page no longer qualified for civil commitment as an SVP. 2-ER-260. Dr. Coles concluded that Page's ". . . rule abiding, non-violent behavior in the hospital for many years suggests that his antisocial comportment has waned over time, a common finding in individuals with ASPD. Second, he now falls in the age group in which exceedingly few men are even arrested for rape." 2-ER-276-277. Dr. Coles noted many examples of Page's positive behavior in the years since the 2006 evaluation. In particular:

- Since 2004, Page has regularly attended the NA and AA 12-step programs. 2-ER-268.
- While at the State Hospital, Page "was cooperative with staff and got along well with his peers." 2-ER-273.
- Although Page "has adamantly opposed treatment, he has never become violent or otherwise acted in a manner suggesting that he is still extremely impulsive and reckless." 2-ER-277.
- Page's "antisocial proclivities appear to have waned and this suggests he will not be one of the exceedingly few men

who commit sexually violent predatory offenses after the age of 60." 2-ER-277.

- While at the State Hospital, Page has not misbehaved or engaged in any inappropriate sexual behavior. 2-ER-271.

The second evaluator, Dr. Murphy, reached the opposite conclusion, and found that Page met the criteria for SVP commitment based primarily on the discredited diagnosis of Paraphilia NOS, and ASPD. 2-ER-250-251. While rendering such a grave finding, Dr. Murphy acknowledged she had little current information about Page and was relying on Dr. Hupka's 2006 evaluation. 2-ER-248.

The split opinion between Dr. Coles and Dr. Murphy triggered two additional evaluations. Dr. Michael Musacco concluded in his 2012 report that Page did not qualify for an SVP commitment because he did ". . . not believe there is sufficient evidence to indicate that [Page] is 'likely' to commit criminal sexual acts in the future without appropriate treatment and custody." 2-ER-241. Dr. Musacco stated that it was "extremely rare" for an individual in his 60s to commit a "rape-type" crime. 2-ER-241; see also 2-ER-2240 (emphasizing Page's age "as an important protective risk variable"). Thus, Page's age, in combination with his good behavior over the course of many years in the state hospital, led Dr. Musacco to conclude that Page is no longer an SVP. 2-ER-241. This second evaluation concluding Page was not dangerous should have led to Page's swift release. Cal.

Welf. & Inst. Code §§ 6601(f), 6603(d)(1). Instead, the State fished for another evaluation to match that of Dr. Murphy. 2-ER-203-225 (evaluation of Dr. Garrett Essres, finding it likely that Page was still an SVP).[2]

In summary, the history of the two sets of split evaluations in 2012 went like this:

Date of updated report	Evaluator	SVP finding	ER cite
First set of "designated" evaluations:			
May 31, 2012	Coles	negative	2-ER-260
June 29, 2012	Murphy	positive	2-ER-250-251
New round of "independent" evaluations:			
July 16, 2012	Musacco	negative	2-ER-241
July 26, 2012	Essres	positive	2-ER-216

These 2012 evaluations proved that the earlier basis found to establish probable cause was now stale, and the State was obliged to release Page. *People v. Superior Court (Ghilotti)*, 27 Cal. 4th 888, 904, 907 (2002); *see also Page v. King, supra,* 932 F.3d at 904 (remanding for merits adjudication of Page's claim "that the state is

[2] California's SVP evaluation process fell deeper into scrutiny and, in 2015, the State Auditor issued a bad report on the State Hospitals' SVP procedures. State Auditor Report on DSH, *supra*, at 22. Among other things, the State Auditor found that evaluators had been inconsistent in "the breadth of documentation they consider while performing evaluations" leading to "significant differences in the evaluators' description of the offenders being evaluated." *Id.*

violating his due process right not to be detained pretrial based on a stale and scientifically invalid probable cause determination and that his complete loss of liberty for the time of pretrial detention is 'irretrievable' regardless of the outcome at trial").

Ghilotti sheds light on the process by which the updated 2012 recommitment evaluations were generated, and why they should have led to Page's release. The difference of opinion in the first set of updated "designated" evaluations, in 2012, called for a fresh, new, "independent" round of evaluations:

> Before requesting a petition, the Director *must* designate two mental health professionals to evaluate the person. If these two evaluators agree that the person meets the criteria for commitment, the Director *must* request a petition. If, however, these first two evaluators do not agree on that issue, the Director *must* arrange a further examination by two *independent* professionals. If these independent professionals also do not concur that the person meets the criteria for commitment, the Director *may not* request the filing of a petition.

Id. at 907 (italics in original). Yet the court below denied the federal due process character of California's failure to follow its own laws. In so denying, the court relied on *Manuel v. City of Joliet.* Therefore, to clarify the due process character of a challenge to SVP proceedings as well as the limited procedural posture of *Manuel,* certiorari should be granted.

Instead of letting Page go free, the courts have denied that due process is at issue—now by taking *Manuel v. City of Joliet* beyond its intended procedural context and muddying Page's plain plea for constitutional due process.

REASONS FOR GRANTING THE WRIT

I. THE APPLICATION OF 28 U.S.C. § 2254 TO A PRETRIAL HABEAS CORPUS PETITION BROUGHT UNDER 28 U.S.C. § 2241 DECIMATED THE PRINCIPLE OF PARTY PRESENTATION; THEREFORE, A WRIT OF CERTIORARI SHOULD BE GRANTED.

The Court of Appeals' affirmance hinged on recharacterizing Page's section 2241 petition as something it was not: a challenge to a final judgment of a state court pursuant to section 2254. App. 1a.

The improper characterization under section 2254 triggered a deferential standard of review that has no place in section 2241 proceedings. App. 5a-6a. Rather, section 2241 proceedings are reviewed de novo. *Coalition of Clergy v. Bush,* 310 F.3d 1153, 1157 (9th Cir. 2002). Page expressly pointed this out at page 33 of appellant's opening brief, stating:

> Contrary to the finding of the court below, this court is *not* bound by the AEDPA's deferential standard of review. *Compare* 1-ER-14 (citing 28 U.S.C. § 2254(e)(1)) *with Wilson v. Belleque,* 554 F.3d 816, 828 (9th Cir. 2008) (a petition filed pursuant to section 2241 is not reviewed under the deferential standards imposed by AEDPA).

The circuit court's erroneous recharacterization worked a further deprivation of due process, because it deprived Page of a meaningful opportunity to be heard on the section 2241 petition he had presented. Such a drastic departure from the principle of party presentation constitutes an abuse of discretion so grave that, when encountered with comparable errors, this Court has exercised its supervisory powers to call out the mistaken premise that enabled the circuit court

to "sidestep [its] judicial obligation" and remanded with an admonition against wrapping a merits decision in inapplicable "jurisdictional garb". *Reyes Mata v. Lynch*, 576 U.S. 143, 151, 135 S. Ct. 2150, 192 L. Ed. 2d 225 (2015); *see also Castro v. United States*, 540 U.S. 375, 381-84, 124 S. Ct. 786, 1157 L. Ed. 2d 778 (2003) (vacating and remanding where circuit court improperly characterized pro se litigant's motion as a first 28 U.S.C. § 2255 motion, without first warning litigant about the rule against second or successive petitions), *United States v. Sineneng-Smith*, 590 U.S. __, 140 S. Ct. 1575, 1579-1581, 206 L. Ed. 2d 866 (2020) ("No extraordinary circumstances justified the panel's takeover of the appeal . . . the Ninth Circuit's radical transformation of this case goes well beyond the pale"). This case calls for a similar intervention.

II. A WRIT OF CERTIORARI SHOULD BE GRANTED TO RESOLVE A CIRCUIT CONFLICT IN WHICH *MANUEL V. CITY OF JOLIET*, A CIVIL RIGHTS CASE UNDER 42 U.S.C. § 1983, IS NOW BEING APPLIED INCORRECTLY TO DENY THE DUE PROCESS CHARACTER OF A WRONGFUL PRETRIAL COMMITMENT IN STATE SVP PROCEEDINGS.

The Due Process Clause of the Fourteenth Amendment guarantees that a State may not "deprive any person of life, liberty, or property, without due process of law". U.S. Const., Amend. XIV, § 1. States are free to prescribe their civil commitment laws, but they must follow the rules that they set. *Kansas v. Hendricks*, 521 U.S. 346, 360, n.3, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997).

As this Court has recognized, civil commitment proceedings risk running afoul of constitutional protections. See, e.g., *Addington v. Texas,* 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"). In *Kansas v. Hendricks*, a well-established landmark case, this Court examined Kansas's SVP Act to check whether that state's provisions comported with federal constitutional due process. *Hendricks*, 521 U.S. at 364. Now Page has requested a similar federal check on whether California's application of its SVP Act violates his federal constitutional due process rights.

The High Court of California itself recently reaffirmed its commitment to afford due process to alleged SVPs. *Walker v. Superior Court,* 12 Cal. 5th 177, 196, 201 (2021) following *Ghilotti, supra*. Yet, while reversing for Walker, California has let many alleged SVP cases stray afield from its own prescribed procedures. That is what happened to petitioner Page, who turned to the federal courts for relief.

In the published decision from which the instant proceedings were held on remand, Page had appealed from dismissal of his petition under the *Younger* abstention doctrine. *Page v. King, supra,* 932 F.3d at 904-905. The Court of Appeals applied the irreparable harm exception to *Younger* because, among other things, Page contended that California was holding him based on "stale evaluations"—which that circuit court panel identified as a cognizable due process claim. *Page v.*

King, supra, 932 F.3d at 904-905. At the same time, the panel pondered whether *Manuel v. City of Joliet* might "doom" the claim for lack of being couched in the Fourth Amendment. *Page v. King, supra,* 932 F.3d at 904-905. That, in turn, presented the following questions on remand:

When a person is locked up by the State for fifteen years under purported pretrial commitment proceedings, yet the holding order is unsupported by probable cause, is the constitutional deprivation rooted in the Fourteenth Amendment, the Fourth Amendment, or in some combination of the Fourth and Fourteenth Amendments? If that petitioner has alleged violation of his due process rights under the Fourteenth Amendment, but not alleged violation of the Fourth Amendment, is his section 2241 petition still viable? If the pro se petitioner's omission to have alleged the Fourth Amendment might necessarily "doom" his claim under *Manuel v. City of Joliet, supra,* 137 S. Ct. 911, then should he be granted leave to amend his petition to include a Fourth Amendment ground as well, as requested in the remanded proceedings below?

Or is *Manuel v. City of Joliet* inapposite procedurally, since it came from a civil rights lawsuit for damages, rather than a section 2241 habeas corpus petition for injunctive relief?

These questions remain unanswered because, on remand, the court flat out denied that the Fourteenth Amendment is implicated, and also denied that Page stated a claim under the Fourth Amendment—even though the wrongfulness of

the pretrial confinement stems from the same allegations, regardless of the source of right. By thus applying *Manuel v. City of Joliet* to pretrial civil commitment proceedings, the circuit court below disposed of Page's challenge to the sufficiency of evidence supporting the superior court's probable cause finding and holding order. And, in so applying *Manuel v. City of Joliet*, the court omitted to adjudicate the merits of Page's due process claim, except to deny its general viability, even after identification of cognizable federal due process issues in the published decision from which the instant proceedings were remanded. *Compare* App. 1a-6a *with Page v. King, supra,* 832 F.3d at 904 (noting Page's allegation "that the state is violating his due process right not to be detained pretrial based on a stale and scientifically invalid probable cause determination").

Manuel v. City of Joliet is a civil rights case for money damages. There, plaintiff Manuel alleged that an officer pulled him from a car, beat him, made racial slurs, and then, based on a vitamin bottle containing pills, arrested him for illegal drugs. *Manuel, supra,* 137 S. Ct. at 915. Both a field test and a test at the police station came back negative for controlled substances, but an evidence technician falsely stated that one of the vitamins tested positive for Ecstasy. *Id.* Based on these false statements, the court ordered Manuel to be detained. *Id.* Some weeks later, a state police lab definitively found that the vitamins contained no controlled substances, but the state prosecutor waited another month to move for dismissal. *Id.*

Two years later, Manuel filed a civil rights suit under 42 U.S.C. § 1983, alleging two Fourth Amendment violations: his false arrest and his prolonged unlawful post-arrest detention. *Manuel, supra,* 137 S. Ct. at 916. The district court dismissed, finding both claims to be barred by the statute of limitations. *Id.* In so ruling, the district court reasoned that the complaint was filed more than two years after the date of Manuel's arrest; it was filed less than two years of his release from detention, but Seventh Circuit precedent required that facet of Manuel's claim to be challenged only under the due process clause, not the Fourth Amendment. *Id.* at 916-917.

In reversing, this Court held that an unlawful "pretrial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process in a criminal case." *Manuel, supra,* 137 S. Ct. at 919. Accordingly, Manuel's claim that his detention in county jail violated the Fourth Amendment had accrued within the statute of limitations and was thus cognizable. *Id.*

The section 1983 procedural posture and concern with claims accrual is key to *Manuel*, as is its conceptual "division of labor" between the Fourth and Fourteenth Amendments. *Manuel, supra,* 137 S. Ct. at 920 n.8; see also *McDonough v. Smith,* 588 U.S. __, 139 S. Ct. 2149, 2155-2156, 204 L. Ed. 2d 506 (2019) (also a 42 U.S.C. § 1983 case for damages presenting a claims accrual issue), *id.* at 2161 (Thomas, J., dissenting (noting necessity to identify the

source of right to establish existence of a constitutional claim *before* addressing statute of limitations). That analysis should not be applied to a section 2241 petition for injunctive relief.

Yet, in an abundance of caution, and given the freshly unearthed state of this point of law, and upon the earlier warning of the Ninth Circuit that the lack of a Fourth Amendment claim might "doom" Page's petition (*Page v. King, supra,* at 905), Page moved for leave to file a second amended petition that alternatively added the Fourth Amendment as a source of right of the constitutional violation at hand. At the same time, Page maintained he had properly claimed violation of his rights to constitutional due process; that *Manuel* did not "doom" his existing petition; that the constitutional source of right implicated included the Fourteenth Amendment, if not standing alone, then as a hybrid with the Fourth Amendment; and that either way, due process was placed squarely in issue and he was entitled to a merits adjudication of his Fourteenth Amendment claim.

The district court and circuit court responded by denying that constitutional due process is implicated in any way, instead applying *Manuel v. City of Joliet* to require assertion of the Fourth Amendment to challenge any pretrial detention in civil recommitment proceedings. That construction of the Constitution and Section 2241 conflict with other decisions that recognize the due process character of a pretrial detention in state SVP proceedings. *Bean v. Matteucci*, 986 F.3d 1128, 1134 (9th Cir. 2021) (characterizing *Page v. King* as having "raised a due process challenge

to his pretrial detention in the context of a state civil sexually violent predator proceeding"); *Walker v. Deeds*, 50 F.3d 670, 672-673 (9th Cir. 1995) (holding that Due Process Clause of the Fourteenth Amendment was violated by state sentencing judge's failure to make statutorily required individualized determination of whether defendant was a habitual offender before imposing a sentence under that statute); *see also Hicks v. Oklahoma*, 447 U.S. 343, 346-347, 100 S. Ct. 2227, 65 L. Ed. 2d 175 (1980) (upholding a federally protected liberty interest in fair application of applicable state rule); *Boumediene v. Bush*, 553 U.S. 723, 777, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008) (detainee's due process claim cognizable in a section 2241 petition).

Part of the confusion below stemmed from the district court's reading of the Fifth Circuit's treatment of *Manuel* in *Cole v. Carson*, 935 F.3d 444, 451 n.25 (5th Cir. 2019) and *Jauch v. Choctaw County*, 874 F.3d 425, 429 (5th Cir. 2017). See App. 24a-25a (findings and recommendation); see also App. 10a (fully adopting the magistrate's findings and recommendations). At the district court level, Page cited *Cole v. Carson, supra* to support his argument that even under *Manuel,* his existing Fourteenth Amendment claim was cognizable. The district court rejected the authority of *Cole v. Carson* by criticizing its omission to analyze *Manuel* and (in the district court's view) its miscite to *Jauch v. Choctaw County.* App. at 25a. This rationale below never addressed Page's point that the civil rights lawsuit procedural posture of *Manuel* is inapposite to his plea for the injunctive relief of an

order allowing him to go free, rather than remain confined under an insufficiently supported finding of probable cause for a civil recommitment trial. App. 25a-26a. Yet the same rationale invoked "the wisdom of the United States Supreme Court [to] find that Petitioner's challenge to his seizure without probable cause must be brought under the Fourth Amendment rather than the due process clause." App. 26a (citing *Manuel,* 137 S. Ct. at 918).

Perhaps the confusion below is partly attributable to the mixed uses of the term "probable cause" which, in the case at bar, is not the usual term of art for what is required in Fourth Amendment search and seizure jurisprudence but, rather, comes straight from California's Welfare & Institutions Code section 6602(a). *See, e.g., N.J. v. T.L.O.,* 469 U.S. 325, 357-362, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985) (Brennan, J., dissenting (discussing usage of the term "probable cause" and arguing for its application to apply when assessing the constitutional validity of a schoolhouse search); *compare id. with Walker v. Superior Court, supra,* 12 Cal. 5th at 184-185 (explaining that Section 6602(a) of California's SVP Act "requires the superior court to hold a 'probable cause hearing' as an initial step in the judicial process for commitment"). If so, that is all the more reason why a writ of certiorari should be granted. This Court should clarify that *Manuel's* holding that the Fourth Amendment was the correct source of right in his section 1983 case must be limited to that procedural context, and not imposed as a limitation against what is supposed to be a "procedural safeguard" for an alleged SVP who is confined

under pretrial commitment without sufficient evidence under California's own procedures and protocols.

For Page, the issue of stale evaluations was identified by the previous panel, yet on remand remains unaddressed. The key there is, under California law, the State should have released Page upon receiving the split evaluations in July 2012 which yielded no concurrence in the split decision. Once Dr. Musacco issued his negative finding, the subsequent positive finding by Dr. Essres was insufficient to justify recommitment. This is so, notwithstanding the earlier positive finding by Dr. Murphy, because Murphy's was from the "designated" set of evaluations, whereas Essres was an "independent" evaluator. *Ghilotti* supports Page's position that the State has violated Page's constitutional rights by resisting his release in violation of its own rules. The earlier basis found to establish probable cause was now stale, and the State was obliged to release Page. *People v. Superior Court (Ghilotti), supra,* 27 Cal. 4th at 904, 907.

On remand from *Page v. King, supra,* 932 F.3d 898, Page maintained that his petition was properly brought under the Due Process Clause, per established precedent in challenging SVP commitments. See *Kansas v. Hendricks,* 521 U.S. at 368 (noting that the Due Process Clause mandates certain procedural protections from arbitrary confinement). The narrow holding and posture of *Manuel v. Joliet* does not change this precedent.

Nevertheless, since the circuit court remanded for Page to seek leave to further amend his petition "in the first instance", he followed that suggestion and moved to add the Fourth Amendment as a ground to support what he had already raised as a violation of due process. That leave was denied, on the rationale that no further allegations were presented in the newly raised alternative Fourth Amendment lens, and in utter denial that federal constitutional due process has any bearing at all on State SVP proceedings.

Instead of letting Page go free, the courts have denied that due process is at issue—now by invoking *Manuel v. City of Joliet* for principles that it does not support. This Court should clarify the limits of *Manuel* and uphold due process.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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