No. 22-5571 ORIGINAL

OCTOBER TERM 2022

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

Wamel Allah Petitioner,

Vs.

Kenneth Perlman, Et. Al.,

Respondents.

==========

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT COURT OF APPEALS

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TO: THE HONORABLE JUSTICES OF UNITED STATES SUPREME COURT

Petitioner Wamel Allah #77B-0684
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Paralegal Assistant
Wamel Allah, On The
Petition For Writ of Certiorari

QUESTIONS PRESENTED FOR REVIEW

Whether The (U.S. Court of Appeals For The Second Circuit), "Decisions and Orders" dismissing Petitioner's Appeals Without a response from the Government who failed to submitted the require Appellate Briefs In Opposition To Petitioner's Appeal Appellate Briefs and Supplemental Briefs and Appendix, confirms as a Matter of Federal Constitutional Law The Deprivation[s] Committed By The Defendant[s] in violation of the Stare Decisis of this Honorable Court, and does it Further Conflicts With The Precedential decisions of this Court?

Whether Petitioner's right[s] to Due Process of Law was violated by Government officials who reclassified him as a "sex-offender" without fair notice, and re-sentence him to "Social Death" in-violation of the Fifth and Fourteenth Amendment[s] provided by United States Constitution?

Whether The Government's on-going unlawful pattern and practice as "Policy-Makers" was violative of Title 42 U.S.C. § 1983 as Petitioner's Pro se Appellate Briefs Presented Arguments, and Supporting Appendix Before United States Court of Appeals For The Second Circuit?

PARTIES

The Petitioner is Wamel Allah, a prisoner at Adirondack Correctional Facility, 196 Raybrook Road Raybrook, New York 12977. The Respondents are L. Latona Sorc, J. Woodworth, Orc (SHU Director Prack), Kenneth Perlman, former Deputy Commissioner for Program Services, Jeffrey McKoy, Deputy Commissioner for Program Services, L. Woodward, former Senior Counselor, John Doe, former Conselor, Kerri Martin, Orc, S. Depree, Sorc, Joanne Nigro, Director of Guidance and Counseling Albany, N.Y.

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THE DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK & UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT OPINIONS BELOW RESPECTIVELY

The United States District Court granted Defendant's motion for summary-judgment and entered it's ("Decision & Orders") on November 15, 2018 dismissing the Petitioner's [Procedural Due Process and Substantive Due Process] claim[s] with prejudice.1/ (See Appendix "A"). And on May 18, 2021 granted summary-judgment to the Defendant[s]. (See Appendix "B")* On or about May 18, 2021 the Petitioner submitted a Rule (59e) motion to vacate the(U.S. District Court's Decision & Order) dated May 18, 2021, pursuant to the Federal rules of Civil Procedures. On December 2, 2021, the United States District court for the Western District of New York denied Petitioner's Rule 59e motion to vacate the (Decision & Order) dated May 18, 2021 respectively. (See Appendix "D").

The United States Court of Appeals for the Second Circuit consolidated Petitioner's Rule 59e motion appeal with the pending appeal. (See Appendix "E") respectively. In another Order dated January 10, 2022 United States Court of Appeals for the Second Circuit issued an Order to consider Petitioner's affidavit dated December 27, 2021 and an appendix containing the Parole Board Release Decision Notice, in connection with the arguments set forth in Petitioner principle briefs. (See Appendix "F"). Moreover,

* Petitioner filed a timely Notice of Appeal before United States District Court Clerk's Office. (See (2d Cir. General Docket Sheet-Item #1 #2 #3)). The (2d Circuit Orders) are un-published.

1/ The (U.S. District Court W.D.N.Y.) had original subject matter jurisdiction of the Title 42 U.S.C. § 1983 Complaint.

United States Court of Appeals for the Second Circuit issued an Order dated December 16, 2021 for the Government to filed a scheduling notification pursuant to the Court's Local Rule 31.2, setting March 21, 2022 as the brief filing date as follows: ("It is HEREBY ORDERED that Appellee's brief must be filed on or before March 14, 2022."). (See Appendix "G"). On June 16, 2022 United States Court of Appeals for the Second Circuit issued an Order dismissing the Defendant[s]-Appellees motion to dismiss the Petitioner's appeal, and further held as follows: ... ("It is further ORDERED that the remaining motions are DENIED and both appeals are DISMISSED because they lack "an arguable basis in law or fact."). (See Appendix-"H"). On August 3, 2022 United States Court of Appeals for the Second Circuit issued an Order denying Petitioner's motion practice dated June 22, 2022 for reconsideration and rehearing en banc. (See Appendix "I" & "J") respectively.

THE BASIS OF FEDERAL JURISDICTION OF THE CASE

This Honorable Court has jurisdiction of this case pursuant to 28 U.S.C. § 1254(1) respectively.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(U.S. Constitutional Amendment.V...("Nor be deprived of life, liberty, or property, without due process of law"); (U.S. Constitutional Amendment XIV. ...("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 deprived any person of life, liberty, or property, without

due process of law; nor denied to any person within its jurisdiction the equal protection of the laws.").

STATEMENT OF THE CASE

The events of this case at bar, arrives from the Defendants "disciplinary penalization" imposed upon the Petitioner-Appellant, (via) false retaliatory misbehavior report[s] which accused the Petitioner of "sexual advances" towards female staff. And which resulted in disciplinary action the Petitioner-Appellant was found guilty for those false accusations. Several years thereafter, the Defendant[s] developed as ("Policy-Makers") an on-going pattern and practice and issued sex-offender referrals for the Petitioner-Appellant for the ("SOCTP"), and had erroneously utilized mis-information attached to the Petitioner's March 31, 1977 Pre-sentence Report by New York City Department of Probation. Despite the fact the Petitioner was never convicted for any sexual offenses as mandated by New York Penal Law respectively. The Defendant[s] did not provide the Petitioner with fair notice, that the sex-offender referrals could be controverted respectively. In addition the Petitioner-Appellant was already penalized (via) disciplinary (SHU) for the "false sexual" accusation[s] made by [DOCCS] female staff. At no time were there any physical sexual contact. The Defendant[s] had engaged in as ("Policy-Makers") in their unlawful pattern and practice, for a total of (15-years) and the reclassification as a sex-offender caused parole release denials, and because the Petitioner-Appellant refused to falsely admit to being a sex-offender. The United States District Court for the (W.D.N.Y.) held the Petitioner had a First Amendment right to protected speech. The

Petitioner-Appellant had submitted before United States Court of Appeals for the Second Circuit a motion to file a ("Supplemental Amended Complaint") pursuant to Title 42 U.S.C. § 1983, and cited stare decisis of this Honorable Court; Brandon v. Holt, 469 U.S. 464 (1985). United States Court of Appeals for the Second Circuit denied Petitioner's motion to Amended* (See Appendix "H"). In Brandon v. Holt supra, which conflict[s] with United States Court of Appeals for the Second Circuit, and other circuit court[s]. Furthermore, the additional ("Policy-Makers") who participated in the Defendant[s] on-going pattern and unlawful practice[s] are Parole Commissioner[s] who perpetuated adverse parole denials and are responsible for the parole denials based on the illegal sex-offender ("reclassification") of the Petitioner-Appellant who was sentence to social-death by the Parole Commissioner[s] denials.

Unequivocally, the Petitioner-Appellant have been incarcerated since (May 14, 1976) and convicted for murder in the Second Degree at ("age 19") and sentence to (25-years) to life on March 31, 1977 by Brooklyn Supreme Court Kings County.The Parole Commissioner[s] continued to participate in "unconstitutional parole denial[s]" predicated on the erroneous unconstitutional false sex-offender designation. (See United States Court of Appeals Second Circuit Docket Sheet which reflect[s] Petitioner-Appellant filed Appellate Briefs and Appendix Item #32 & Item #33) respectively. Again, the Petitioner's Supplemental Amended § 1983 Complaint pleaded had pleaded individual acts and deprivations committed by Parole Commissioners.

* United States Court of Appeals (2d Circuit) Order denying the petitioner's motion to amended the Title 42 U.S.C. § 1983 Complaint also conflicts with the uniform practice of the Federal Circuits court[s]. See Payne for Hicks v. Churchick, 161 F.3d 1030, (7th Cir.1998)("Section 1983 creates a cause of action based on personal liability and predicated upon fault, thus liability does not attach unless the individual defendant caused or participated in a constitutional deprivation.").

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

ARGUMENT & DISCUSSION

IT WAS CONSTITUTIONAL UNLAWFULLY FOR THE DEFENDANT[S] TO RECLASSIFIED THE PETITIONER AS A SEX-OFFENDER AND SENTENCE HIM TO SOCIAL DEATH IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT[S] PURSUANT TO UNITED STATES CONSTITUTION AND TITLE 42 U.S.C. § 1983 RESPECTIVELY WITHOUT FAIR NOTICE

The Petitioner-Appellant's 42 U.S.C. § 1983 Complaint initially asserted before United States District Court Western District of New York, First Amendment retaliation claim[s] that articulated the defendant[s] referred him to the (SOCTP) in retaliation for reaching a settlement agreement (2005) before the district court. In (2009) the defendant[s] who are ("Policy-Makers") took the liberty to reclassified the Petitioner as a ("sex-offender") based on false misbehavior report[s] he was already penalized for and placed in (SHU). The Petitioner prior thereto was never recommended for sexual treatment because there was never any physical sexual contact with anyone.

When the Petitioner was incarcerated at the Elmira Correctional Facility, a Correction Counselor Kenneth Donley said to the Petitioner after the Telephonic Settlement Conference as follows:

> ... ("No matter how much money this case is settled for, we know that you did in fact committed the acts in the misbehavior report written by the female counselor. You will not get away with this and we are going to make sure you are referred to the sex-offender program. We also know during an attempted burglary when you were a juvenile delinquent you threaten to rape a woman. You got away with that. But you will not get away with this. In that case, the court gave you a youthful offender y/o. We have those court records.").

The district court below held otherwise, and dismissed the Defendant Kenneth Donley and others from the Petitioner-Appellant's lawsuit, and made factual determination[s] only a jury should have made. The District Court held as follows:

> "[C]ontrary to Plaintiff's contention that he was referred to sex offender treatment in retaliation for his prior civil action, these statements establish that his initial SOCTP referral was base on Defendants beliefs regarding Plaintiff's own conduct and were not fabricated by Defendants in retaliation for his prior action or settlement agreement." (See Appendix "I").

In retrospect, the district court had acknowledge the Petitioner-Appellant has alleged his refusal to admit that he was a sex offender during an SOCTP session, ... "the Court finds that Plaintiff's First Amendment retaliation claim as to Defendants Woodworth, Adams, Latona, and Prack may proceed to service. As the Second Circuit recently explained, an individual holds 'a First Amendment right to decide what to say and what not to say, and, accordingly, the right to reject governmental efforts to require him to make statements he believe are false, and there is "no basis to circumscribe this right in the prison context" because "[no legitimate penological objective is served by forcing an inmate to provide false information." Burns v. Martuscello, 890 F.3d 77, 89 (2d Cir. 2018)(quoting Jabkler v. Byrne, 658 F.3d 225, 241 (2d Cir.2011)). As such, "it is eminently clear ... that the First Amendment protect an inmate's right to refuse to refuse to provide false information to prison officials." Id. "Accordingly, accepting as true Plaintiff's allegation that he refused to falsely admit to being a sex offender,

he engaged in protected activity. Plaintiff has also alleged adverse actions (the filing of false misbehavior reports) and retaliatory motive (that the false misbehavior reports were filed specifically because he would not falsely admit to being a sex offender). These allegations are sufficient to permit Plaintiff's First Amendment retaliation claims to proceed to services as to Defendants Woodworth, Adams, LaTona."

In retrospect, United States Court of Appeals for the Second Circuit held in Vega v. Lantz, 596 F.3d 77, (2d Cir.2010), ... ("While it may be the case that, in certain circumstances, misclassification as a sex offender results in the stigma plus, the possibility is of no particular assistance to [plaintiff] because he has not established a threshold requirement the existence of a reputation-tarnishing statement that is false." [Emphasis applied]. Where, as here, the Petitioner-Appellant from every Correctional Facility the Defendant[s] [DOCCS] ORCS have confronted and presented Program Refusal Notification forms to the Petitioner to signed for his refusal to participate in the Sex-Offdender-Counseling and Treatment Program. (See Appendix "J") submitted before United States Court of Appeals for the Second Circuit, as (Appendix "B") respectively. In addition ORC C. Mahoney's signature noting the Petitioner-Appellant refusal to participate in the ("SOCTP"). Furthermore, the Program Refusal Notification has caused adverse denials, and were also presented to the Parole Board Commissioner[s] and have

resulted in adverse parole release denials in the "stigma-plus" which impacted the reputation-tarnishing statement that is false because the Petitioner-Appellant has never been convicted for sexual related offenses pursuant to New York State Penal Law [§130-135 or §235.25 & P.L. §255.26-27] respectively*. See also e.g., Neal v. Shimoda, 131 F.3d 818, [at 830-831] (holding that prisoners labelled as sex offenders who had not been criminally convicted of a sex offense are entitled to the same procedural protections as for a prison disciplinary proceeding). [Emphasis applied] respectively because the Defendants reclassification did not provide Petitioner-Appellant fair notice. See Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 LEd.2d 552 (1980), ... ("[T]he interest "segregating and treating mentally ill patients," "[t]he interest of the prisoner in not being arbitrarily classified as mentally ill and subjected to unwelcome treatment is also powerful," and the "risk of error ... is substantial enough to warrant appropriate procedural safeguards against error." Id. 495, 100 S.Ct. 1254 respectively. See Vega v. Lantz supra: ... ("It continues to be the case that wrongly classifying an inmate as a sex offender may have a stigmatizing effect which implicates a constitutional liberty interest," Id. at 81-82; see also Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.E.2d 174 (2005), ... ("Standard analysis under that provision proceeds in two steps: We first ask whether there exists a liberty or property interest of which a person has been deprived, and if so we ask whether the procedures followed by the State were constitutionally sufficient,"

* See Appendix ("A") ("B") ("C") submitted before United States Court of Appeals for the Second Circuit.

Swarthout v. Cooke, 562 U.S. 216, 219, 131 S.Ct. 859, 178 E.L.2d 732 (2011)(citing Ky. Dep't of Corrs. Thompson, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989)).

For the last (15-years) the Petitioner-Appellant has been deprived of his liberty interest[s] by the Defendant[s] who have denied him parole release predicated on their Sex-Offender-Agenda and reclassification of Petitioner-Appellant, as a sex-offender without fair notice. And as the district court below held the Petitioner have a protected First Amendment right to refuse to provide false information to prison officials as a sex-offender.

It has been well settled Federal Constitutional Law by this Honorable Court. Liberty interest[s] may arise directly from the Due Process Clause itself or from statutes, regulation, or policies enacted by the state. See (Wilkinson, 545 U.S. at 221-22, 125 S.Ct. 2384). ..."[I]n order to have a protectable liberty interest, a prisoner must have more than a hope or a unilateral expectation of release. He must, instead, have a legitimate claim of entitlement to it. See Green v. McCall, 822 F.2d 284 (2d Cir.1987)(quoting Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979)). [Emphasis applied].

In-prison classification as a sex offender does not, by itself, deprive prisoners of a liberty interest[s] protected by due process. However, the consequences of that classification may be serious enough to constitute a deprivation of liberty if it affects the prisoner's ability to earn good time or parole release or if it subjects the prisoner to a mandatory, intrusive therapy program. See

Kirby v. Siegelman, 195 F.3d 1285, 1288, 1291-92 (11th Cir.1999), (finding a liberty interest where sex offenders were required to participate in group therapy and admit past sexual offenses and were barred from minimum custody programs); Neal v. Shimonda, 131 F.3d 818, 828-29 (9th Cir.1997)(finding a liberty interest in avoiding sex offender classification where sex offenders were required to admit the sex offense and go through a treatment program); Cooper v. Garcia, 55 F.Supp.2d 1090, 1101-02 (S.D.Cal. 1999)(holding Neal applies only where the classification is coupled with mandatory, coercive treatment that affects a liberty interest); Schuyler v. Gwinn, "stima plus" test, holding that labelling plaintiff a sex offender and requiring him to undergo sex offender treatment required due process protections). [Emphasis applied]. These decisions say that the stigmas and the treatment requirement of sex offenders classification are similar to commitment to a mental hospital, which this Honorable Court held in Vitek v. Jones supra, (call for due process protections)). [Emphasis applied]. It was unlawfully impermissible and unconstitutional for the defendants subjected the Petitioner-Appellant to their reclassification as a sex-offender and sentence him to social-death without due process protections respectively. Thus, the defendant[s] are treating the Petitioner-Appellant as a prisoner who have been sentence to "Life-Without-Parole. Petitioner original sentence before the Kings County Brooklyn Supreme Court was (25-years) to life, which made Petitioner eligible for parole release after (25-years) respectively. The Petitioner-Appellant has been in-prison almost a half of a

century because of the defendant[s] false reclassification of the Petitioner-Appellant as a sex-offender. See Doe v. Dep't of Public Safety, 271 F.3d 38, 47-59 (2d Cir.2001)(holding that stigma of being listed on a sex offender registry contained false information combined with "extensive and onerious" registration duties imposed by Connecticut's sex offender statute, were sufficient to implicate a liberty interest), rev'd on other grounds, 538 U.S. 1, 123 S.Ct. 1160 (2003).

The United States Court of Appeals for the Second Circuit erroneously dismissed the Petitioner-Appellant's appeals; from the (Decision & Order) of United States District Court (W.D.N.Y.). The Petitioner's Title 42 U.S.C. § 1983 Complaint articulated critical deprivation[s] committed by the Defendant[s] as ("Policy-Makers") without affording Petitioner-Appellant, the required due process protection[s] before transferring him to a sex-offenders facility. Furthermore, the Defendant[s] as ("Policy-Makers") also subjected the Petitioner to cruel and unusual punishment in retaliation for the Petitioner's refusal to admit to being a sex-offender respectively. Thus, the Petitioner-Appellant's Supplemental Complaint before United States Court of Appeals for the Second Circuit also raised the claim[s] of cruel and unusual punishment provided by the Eighth and Fourteenth Amendment[s] pursuant to United States Constitution.2/

Moreover, Petitioner-Appellant as a Pro se litigant Title 42 U.S.C. § 1983 Complaint asserted before United States District

2/ The Supplemental Amended 1983 Complaint before United States Court of Appeals for the Second Circuit, seek[s] compensatory and punitive damages, and trial by jury respectively.

Court, the Defendant[s] on-going pattern and practice as ("Policy-Makers") acts/deprivation[s] were unconstitutional and substantial violations of Petitioner-Appellant's due process right[s] provided by the Fourteenth Amendment[s] respectively. See Clinton King v. Metroplus, 2021 WL 585923 (2d Cir.2021), where the Court held as follows: ... ("Kings barebones complaint, even if construed liberally as is appropriate for the complaint a pro se litigant, contains no allegation of a policy or practice that was responsible for the change in his designated healthcare provider, nor does it allege a pattern of any other such incidents from which we might infer the existence of an unlawful policy or practice")(citing: Oklahoma City v. Tuttle, 471 U.S. 808 (1985)(plurality opinion); see also City of Canton v. Harris, 489 U.S. 378, (1989)). [Emphasis added]. In contrast Petitioner-Appellant's (§ 1983 Complaint) articulated before the district court the defendant[s] on-going pattern and practice as ("Policy-Makers") respectively.

Petitioner-Appellant's Appellate Briefs submitted before United States Court of Appeals for the Second Circuit cited the Court's stare decisis and articulated the Defendant[s] acts and deprivation[s] caused ("irreparable injuries") and requested that the Court issued an injunction against the defendant[s] pursuant to: Donhauser v. Goord, 181 Fed.App. 11 (2d Cir.2006); Donhauser v. Goord, 314 F.Supp.2d 139 (N.D.N.Y.2004)).

THE IMPORTANCE OF QUESTIONS PRESENTED FOR REVIEW

A. This case presents fundamental questions of the interpretation of this Honorable Court's decision in Wilkinson v. Austin, 545 U.S. 209, 125 S.Ct. 2384 (1985). The questions presented is of great public importance because it affects the operations of the prison systems in all 50 states, the District of Columbia, and hundreds of city and county jails. In view of the large amount of litigation over prison disciplinary proceedings, guidance on the question is also of great importance to prisoners, because their liberty interest[s] have been restricted unlawfully it affects their ability to receive fair decisions in proceedings that may result in months or years of added incarceration or harsh punitive confinement, because ("Policy-Makers") participated in acts and deprivations.

B. The issue's importance is enhanced by the fact that the lower courts in this case have seriously disregarded failed to acknowledge the standard set-fourth by this Honorable Court's stare decisis, in Wilkinson v. Austin, supra the Court held: ... ("In order to have a protectable liberty interest, a prisoner must have more than a hope or a unilateral expectation of release. He must, instead, have a legitimate claim of entitlement to it.") [Emphasis applied]. And as noted: by Wilkinson a "liberty interest" may arise from the due process clause. However, the lowers courts did not address the liberty interest[s] raised by Petitioner-Appellant, or this Court's decisions on fair notice relevant to the procedural safeguards. (See Vitek v. Jones, 445 U.S. 480 100 S.Ct. 1254, (1980).

The United States Court of Appeals for the Second Circuit's decisions are directly contrary to the holdings of its own, and other federal circuits around the country as cited by this petition.

The Defendant[s] acts and deprivations as ("Policy-Makers") have caused "irreparable injuries" and harm to the Petitioner in violation of Federal Constitutional Law respectively. In this case the Petitioner has been isolated as a sex-offender by the Defendant[s] who sentence him to social death unlawfully and his liberty interest[s] restricted. Additionally, the United States Court of Appeals for the Second Circuit (Decisions & Orders) are contrary to clearly established Federal Constitutional Law as determined by this Honorable Court's stare decisis and conflicts with the precdential stare decisis of the federal circuit court[s].

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

DATED: August 18, 2022

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Respectfully submitted,

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