

22-5631

Cause No.

ORIGINAL

In The  
Supreme Court of the United States

Supreme Court, U.S.  
FILED

AUG 30 2022

OFFICE OF THE CLERK

Lonnie Kade Welsh,

Petitioner

versus

Marsha McLane Director of Texas Civil Commitment Office, Chris Greenwalt  
Texas Civil Commitment Office Case, Kevin Stitt Governor State of Oklahoma is

Respondents

On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
For the Fifth Circuit  
From Cause No. 21-50284

PETITION FOR A WRIT OF CERTIORARI

**Petitioner:** Lonnie Kade Welsh  
2600 South Sunset Ave.  
Littlefield, Tx 79339

**Respondents:**

Marsha McLane 4616  
West Howard Lane Bld.2 Suite 350  
Austin, Tx. 78728,  
Tx 79339

Chris Greenwalt  
2600 S. Sunset Ave.  
Littlefield, Tx 79339

Kevin Stitt  
2300 North Lincoln Blvd.  
Oklahoma City, Oklahoma 73105

## Questions Presented

Petitioner Lonnie Kade Welsh is Civilly Committed as a Sexually Violent Predator in the State of Texas. Twenty states follow the SVP Act model to civilly commit an individual and 30 do not. Lonnie Kade Welsh sought to be transferred to the State of Oklahoma to have that state evaluate his mental health and the need to continually civilly commit him. Welsh sought to flee from Texas and petition for sanctuary to become a citizen of the State of Oklahoma. The United States Court of Appeals for the Fifth Circuit declined Welsh the right to travel. Therefore the questions presented are:

1. Does an individual who is not under the disability of a criminal sentence have the right to personal security in the context to move from a state who civilly committed him for treatment to another state to receive treatment and have his mental health reevaluated under the laws of that state?
2. Can a state hold an individual forever within its borders under a civil regulation?
3. Are State sponsored instruments of oppression that keeps individuals confined in a prison type setting by a State made-up mental criteria, without any medical justification acceptable in America or can a citizen of the United States seeks amnesty in another State, to chose a new sovereign that would allow him to be a freeman in their society with only registration requirements?

## **List Of Parties**

1. Marsha McLane Director of Texas Civil Commitment Office 4616 West Howard Lane Bld.2 Suite 350 Austin, Tx. 78728
2. Chris Greenwalt Texas Civil Commitment Office Case Manager 2600 South Sunset Avenue Littlefield, Tx 79339
3. Kevin Stitt Governor State of Oklahoma is 2300 North Lincoln Blvd. Oklahoma City, Oklahoma 73105
4. Lonnie Kade Welsh 2600 South Sunset Avenue Littlefield, Tx 79339

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# IN THE SUPREME COURT OF THE UNITED STATES

## PETITION FOR WRIT OF CERTIORARI

### I. Opinion Below

1. United States District Court for the Western District of Texas Austin Division Lonnie Kade Welsh v. Marsha McLane Cause No. 1:20-CV-906 Decided 1-15-21.

2. United States Court of Appeals for the Fifth Circuit Lonnie Kade Welsh v. Marsha McLane Cause No. 21-50284 Decided 5-31-22 .

3. . United States Court of Appeals for the Fifth Circuit En Banc Rehearing denied Lonnie Kade Welsh v. Marsha McLane Cause No. 21-50284 Decided 7-5-2022.

### II. Jurisdiction

The opinion for the Fifth Circuit decided cause number 21-50284 on 31<sup>st</sup> day of May, 2022. Petitioner did file for en banc reconsideration which no member of the panel or judge in regular active service voted to hear the causes on 5<sup>th</sup> day of July 2022.

The petition for writ of certiorari is timely filed within 90 days under United States Supreme Court Rule 13(1). This Court's jurisdiction is extended under statutory authority 28 U.S.C. § 1254, which allows discretionary jurisdiction from a decision of the United States Court of Appeals.

### **III. Constitution And Statutory Provisions Involved**

Federal Constitution's Article IV, § 2, cl 1,

Federal Constitution Fourteenth Amendment § 1

### **IV. Reasons For Granting The Writ Of Certiorari**

Petitioner respectfully prays the Court grants this Writ of Certiorari to review the judgment of the United States Fifth Circuit Court of Appeals, to bring conformity within the Constitutional law as this case deals with issues that are contrary to this courts prior opinion, contrary to the Fifth Circuit's own precedents, and a novel question of Constitutional law that should be answered in the first instance by this court.

### **V. Statement Of The Case**

Lonnie Kade Welsh was civilly committed under the Texas Sexually Violent Predator Act under Texas Health and Safety Code 841 since his release from prison on November 3, 2015. He sought the ability to leave the State of Texas and become a citizen of the State of Oklahoma. Therefore, he petitioned the United States District Court Austin Division to move from Texas civil commitment and be reevaluated under the Oklahoma mental health laws to determine his freedom.

The petition encompassed the right to personal security and to live closure to his family members. The petition did not ask for release, but asked to be transferred to Oklahoma and be evaluated under that state's mental health laws.

The United States District Court Austin Division dismissed the case. The United State Court of Appeals for the Fifth Circuit agreed with the district. In so doing the Fifth Circuit declared that as a prisoner of the State of Texas Lonnie Kade Welsh does not enjoy the right to egress from the State of Texas and become a citizen of Oklahoma.

The History of our nation is built upon freedom from oppression. In this country there are 30 states were Lonnie Kade Welsh can live free, without placing him in a maximum security institution. Though the states has the power to define a mental disease in areas of a medical obscurity does the Constitution restrain its power from subjecting individuals who no-longer wish to have the State of Texas as their sovereign, to flee its oppressive civil commitment laws that force incarceration and venture to a new state and have that state's laws apply to him.



## **VI. Issues Presented**

**Issue One:** Is The Fifth Circuit denial of the Right To Travel Contrary To United States Supreme Court Precedents And Historical Rights That Should be Answered By This Court Under The Constitution.

In this country by our traditions and our constitution “[e]very person has a fundamental right to liberty in the sense that the Government may not punish him unless and until it proves his guilt beyond a reasonable doubt at a criminal trial conducted in accordance with the relevant constitutional guarantees.” *Chapman v. United States*, 500 U.S. 453,465 (1991).

The United States Court of Appeals for the Fifth Circuit would determine that Welsh is a prisoner without a criminal conviction because he is civilly committed. Therefore, he does not have the right to seek an alternative medical opinion or amnesty and asylum in another state. In so doing the Fifth Circuit cited *Jones v. Helms*, 452 U.S. 412 (1983).

The problem is *Jones v. Helms*, 452 U.S. 412 is inapposite in the present case. The Jones court concluded that restricting the right to travel was proper for the defendant's criminal conduct within the state necessarily qualifying his right thereafter freely to travel interstate. Therefore, *Saenz v. Roe*, 526 U.S. 489, (1999) Should control this case. “The states have not now, if they ever had, any power to restrict their citizenship to any classes or persons. A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to

claim citizenship therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the rights and privileges enjoyed by other citizens.” Id at 498, (quoting Slaughter-House Cases, 16 Wall 36, 112-113 (1873) (Bradely J. dissenting ).

It is recognized in the Fifth Circuit and other circuit courts that to be civilly committed as a Sexually Violent Predator does not make you a prisoner. See *Bohannon v. Doe* 527 Fed. App’x 283,287 (5<sup>th</sup> Cir. 2013); *Micha v. Charleston County* 434 F.3d 725, 727 (4<sup>th</sup> Cir. 2006); *Troville v. Venz* 303 F.3d 1256, 1260 (11<sup>th</sup> Cir. 2002); *Page v. Torrey* 201 F.3d 1136, 1139-1140 (6<sup>th</sup> Cir. 2000).

The right to travel for non-prisoners “is a virtually unconditional personal right, guaranteed by the Constitution to us all.” *Shapiro v. Thompson*, 394 U.S. 618, 643 (Stewart J. concurring)(1968). And “strict scrutiny is required here because the challenged classification infringes on the right of interstate travel” *Memorial Hospital v. Maricopa County* 415 U.S. 250, 259 (1973).

The Constitution limits Texas power to keep Petitioner within the State. “The state’s, however, do not have any right to select their citizen.” id at 511. The State has addressed its interest to civilly commit Welsh for treatment and supervision. However, the portion of personal security under, “the common law doctrine of informed consent is viewed as generally encompassing the right of a

competent individual to refuse medical treatment.” *Cruzan v. Director, Missouri Department Of Health* 497 U.S. 261, 277 (1990). Where “[s]uch forced treatment may burden that individual’s interest as much as any state concerns.” *id* at 288 ( O’Connor, J. concurring).

Personal security is “an interest “consist[s] in a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.” 1 W. Blackstone, *Commentaries on the Laws of England* 125 (1769). In this context “[i]n the past, this Court has noted that the right to personal security constitutes a ‘historic liberty interest’ protected substantively by the Due Process Clause. And that right is not extinguished by lawful confinement, even for penal purposes.” *Youngberg v. Romeo*, 457 U.S. 307, 315(1982) ( citing *Ingraham v Wright*, 430 US 651, 673, (1977)).

Next, *Welsh* “claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, ‘[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action.’ This interest survives criminal conviction and incarceration.” *id* at 316 (quoting *Greenholtz v Nebraska Penal Inmates*, 442 US 1, 18, (1979) (Powell, J., concurring in part and dissenting in part)).

The Opinion of the Fifth Circuit would create an exception to only one class of individuals who are not under a criminal disability which would “introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as [mentally ill], indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the rights of national citizenship, a serious impairment of the principles of equality.” *Edwards v. California* 314 U.S. 160, 181( 1941)(slight alteration from original text).

It is Welsh’s desire to take advantage of the State of Oklahoma’s superior mental health classification system. This is a right the United States Supreme Court has recognized in *Memorial Hospital v. Maricopa County* 415 U.S. at 259 stating that “it is at least clear that medical care is as much ‘a basic necessity of life’ to an indigent as welfare assistance. And, governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements.”

Likewise, the United States Supreme Court has considered freedom from civil commitment to also be a fundamental right. “The loss of liberty produced by

an involuntary commitment is more than a loss of freedom from confinement. It is indisputable that commitment to a mental hospital "can engender adverse social consequences to the individual" and that "[w]hether we label this phenomena 'stigma' or choose to call it something else ... we recognize that it can occur and that it can have a very significant impact on the individual." Vitek v. Jones, 445 U.S. 480, 488 (1980), (quoting Addington v Texas, 441 US 418, 425- 426 (1979)); See also Parham v J. R., 442 US 584, 600,(1978)( stating an individual "has a substantial liberty interest in not being confined unnecessarily for medical treatment and that the state's involvement in the commitment decision constitutes state action under the Fourteenth Amendment.").

It is also recognized that "[f]reedom from imprisonment from government custody, detention or other forms of physical restraints lies at the heart of liberty that the Due Process Clause, 'protects.'" Zadwdas v. Davis 533 U.S. 678, 690 (2001) (citing Foucha v. Louisianan 504 U.S. 71, 80 (1992)).

Petitioner is not confined for the purpose of punishment. The Fifth Circuits decision to restrict the fundamental rights must be considered to imposes punishment. The United States Supreme Court's opinion in Cummings v. Missouri 4 Wall 277, 320 (1867) is instructive. "The deprivation of any rights, civil or political, previously enjoyed, may be punishment; the circumstances attending and the causes of the deprivation determining this fact." See also United States v.

Lovett, Waston, Dodd 328 U.S. 303, 320-321(1946)( Frankfurter J., concurring)( stating that punishment by a bill of attainder was the “deprivation by which a man was pronounced guilty or attainted of some crime, and punished by deprivation of his vested rights, without trial or judgment per legem terrae.”) (quoting Farrar, Manual of the Constitution (1867) 419); (citing 2 Story, Commentaries on the Constitution (5th ed, 1891) 216; 1 Cooley, Constitutional Limitations, 8th ed, 1927, 536.).

Calling the depravation a civil regulation for the purpose of commitment for treatment and the Texas public safety also does not control. Again the nature of punishment can be found within the attainder laws. Which Cummings supra states clearly when dealing with an invasion of rights based upon depriving them for the purpose of punishment where, “the legal result must be the same, for what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding.”

In Cummings the court was clear about the taking of civil rights like what is at issue here, is how punishment is instituted against an identifiable group. The

Court said, "This deprivation is punishment; nor it is any less so because a way is opened for escape from it by the expurgatory oath. The framers of the Constitution of Missouri knew at the time that whole classes of individuals would be unable to take the oath prescribed. To them there is no escape provided; to them the deprivation was intended to be and is, absolute and perpetual. To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is nothing less than punishment imposed for that act. It is a misapplication of terms to call it anything else." 4 Wall 277, 327.

Though the issue is different in degree as the law in Cummings was determined base on attainder, it is yet, the same in kind, for punishment must be reached for the Bill to be an attainder, therefore, punishment is the controlling question. "The theory upon which our political institutions rest is, that all men have certain inalienable rights-that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of all these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined. Punishment not being, therefore, restricted, as contended by counsel, to the deprivation of life, liberty or property, but also embracing deprivation or

suspension of political or civil rights, and the disabilities prescribed by the provisions of the Missouri Constitution being, in effect, punishment, we proceed to consider whether there is any inhibition in the Constitution of the United States against their enforcement.” Cummings supra 4 wall at 321-322.

It is for these reasons that the Fifth Circuit opinion is contrary to the United States Supreme Court’s presidents and against this nations history of preserving freedom. “When a long train of abuses and usurpations evinces a design to reduce them under absolute despotism, it is their right,” to flee from the oppressor in the very least, and this is the question to the court. Therefore, this court should grant the writ.

## **VII. Prayer**

Wherefore, premise is considered, Petitioner humbly prays this court grants the petition for writ of certiorari and all other entitled relief.

Respectfully Submitted, /s/ Lonnie Kade Welsh  
2600 South Sunset Ave.  
Littlefield, Tx 79339



### **VIII. Certificate Of Compliance**

I Lonnie Kade Welsh do hereby certify under the penalty of perjury in accordance with 28 U. S. C. § 1746 that the foregoing complies with the word limit requirements under the Petition For document prepared under Rule 33.1 the document is less than 9,000 words because, excluding the parts of the document exempted by United States Supreme Court Rule 33.1. This document complies with the typeface requirements of and the type-style requirements of Fed. R. App. and using Word 2010 word counter the document is 2,981.

Respectfully Submitted /s/ Lonnie Kade Welsh  
2600 South Sunset Ave.  
Littlefield, Tx 79339

### **IX. Certificate Of Service**

I Lonnie Kade Welsh do hereby certify that a true and correct copy of the foregoing has been served upon respondents by placing the same postage prepaid with the United States Postal Service to:

1. Marsha McLane Director of Texas Civil Commitment Office 4616 West Howard Lane Bld.2 Suite 350 Austin, Tx. 78728
2. Chris Greenwalt Texas Civil Commitment Office Case Manager 2600 South Sunset Avenue Littlefield, Tx 79339
3. Kevin Stitt Governor State of Oklahoma is 2300 North Lincoln Blvd. Oklahoma City, Oklahoma 73105