No. 22-6131

IN THE

SUPREME COURT OF THE UNITED STATES

ANDREW MORET — PETITIONER
(Your Name)

vs.

OREGON STATE HOSPITAL; ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Andrew Guy Moret
(Your Name)

777 Stanton Blvd.
(Address)

Ontario, OR 97914
(City, State, Zip Code)

(503) 648-8506 (Dad)
(Phone Number)

QUESTION(S) PRESENTED

I. Whether the standard for mental-health professionals to receive qualified immunity is higher, lower, or the same as other medical professionals?

II. Whether there should be a malpractice standard for government employed Doctors, nurses, & medical staff to receive qualified immunity?

III. Whether the Court should opine on mental-health standards, practices, & procedures varying so much from State to State?

ALTERNATIVE QUESTIONS PRESENTED

A. Whether the *Rooker-Feldman* doctrine applies to this case, and did the Plaintiff receive all processes he was due?

B. Did Defendants take advantage of someone they perceived to have a history of mental illness, and whether Plaintiff was prejudiced on intake to the Oregon State Hospital (OSH)?

C. Whether the Ninth Circuit maliciously applies improper standards of review to justify dismissing *pro se* lawsuits; is the Appeals court playing "Russian Roulette" with Petitioner's chances at receiving a U.S. CERTIORARI review?

D. Whether the new Nationwide mental-health hotline #9-8-8 would benefit from having a controlling authority?

LIST OF PARTIES

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

[✓] 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:

① OREGON STATE HOSPITAL (OSH);

② POORNIMA RANGANATHAN (Doctor);

③ ANDREA DAILEY (Nurse).

RELATED CASES

MORET v. RANGANATHAN, et al., 6:18-cv-01105-MK USDC-OR, 5/12/2021

MORET v. RANGANATHAN, et al., 21-35424 USCA-9th Cir., 3/25/2022

MORET v. RANGANATHAN, et al., 19-36109 USCA-9th Cir., 10/29/2020

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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

[✓] 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 _____ 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

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

The date on which the United States Court of Appeals decided my case was MAR 25 2022.

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

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JULY 7 2022, and a copy of the order denying rehearing appears at Appendix B.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including December 4, 2022 (date) on August 3, 2022 (date) in Application No. 22 A 97.

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 Constitution of the United States, Article IV Section 1. "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

... Article IV Section 2. [1] "the Citizens of each State shall be entitled to all Priviledges and Immunities of Citizens in the several States."

... AMENDMENT XIV Section 1. "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."

The Constitution of Oregon, Article I Section 10. Administration of Justice. (omit)

... Section 13. Treatment of arrested or confined persons. (omit)

... Section 20. Equality of privileges and immunities of citizens. (omit)

Oregon Revised Statutes, ORS 161.370, ORS 183.482

FED. STAT. 28 USC §1291; 42 U.S.C. §1983

American Disabilities Act [§ 12102 (3)(A)]

STATEMENT OF THE CASE

Petitioner's orig. suit alleged that Plaintiff had been prejudiced on intake to OSH by Defendants because of calls from Washington County Jail relaying false info. the complaint further alleged that Plaintiff had been assaulted, medically tortured, and forced to undergo x198 days of oral medications under the threat of physical harm even though Plaintiff was not a mentally-ill person. Plaintiff also sued alleging OSH policies on seclusion & restraint were misleading, vague-bad. In addition, Plaintiff alleged he was calm during intake and was force injected even after he showed "no incidents of aggression". Plaintiff included ample evidence of his claims in Attachment to the orig. comp. Defendants' actions were a violation of clearly established laws.

The lwr. court dismissed claims against OSH but allowed claims against the individual Defendants, see Doc. No [7]. On Summary Judgment the magistrate dismissed the suit saying "plaintiffs' claims lack merit". Doc. No. [52] pg. 5 para. 1

On 1st Appeal (19-36109) the Ninth Circuit Vacate-remanded, Appendix F.

On remand, pleadings & evidence indicated that-during the timeline detailed in the orig. comp.-Defendant Ranganathan never provided her patient a stylized reduction in Haldol/Zyprexa going contrary to medical science, nor was she truthful in her "Physician's Statement". Plaintiff also submitted VIDEO EVIDENCE (Doc. No. [72]) showing the reported calls made from the jail were clearly prejudicial; ie., Moret did not refuse to leave his cell and he did not spit on officers. Plaintiff filed a MFSJ [61], a Motion to Transfer [81], and a Motion to Reinstate [83].

The lwr. Court again ruled in Defendants' favor, without giving pleadings or video evidence any credence ([86] & [78]).

On 2nd Appeal the Ninth Circuit merely provided cookie-cutter affirmation of the lwr. court's decisions. APPENDIX A. The Ninth used a high level of generality.

Petitioner now seeks CERTIORARI review.

REASONS FOR GRANTING THE PETITION

– INTRODUCTION –

This Petition focuses largely on mental health. And mental health is a hot topic right now. With the roll-out of the new Nationwide mental health emergency hotline #9-8-8, we can presume litigation will arise from its use. It would greatly benefit the Courts to have a mental-health precedent-setting case termed within the same year as the 9-8-8 roll-out. A massive mental-health-hotline will need protection, reinforcement, and boundaries governing its staff responses. Petitioner humbly asks this Court to GRANT CERTIORARI review in favor of our Nation's good mental-health-care practitioners for the REASONS set forth below.

A. Important Question/s of Federal law that has not been, but should be, settled by this Court:

Saucier v. Katz, 553 U.S. 194 mandated a two-step sequence for resolving governments' officials' qualified immunity claims: A court must decide (1) whether the facts alleged or shown by Plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was 'clearly established' at the time of the defendants' alleged misconduct, *id.* at 201. And with the medical community in the government, the "medical malpractice" standard should be applied in addition, see: *Sandoval v. Cnty. of San Diego*, 985 F.3d 657 (9th Cir. 2021); *Mays v. Sprinkle*, 992 F.3d 295 (4th Cir. 2021); *Maher v. Colvin* (D. Idaho 2013).

However, when it comes down to 'mental-health'-care practitioners . . .

the States differ, sometimes completely. And Petitioner has been unable to locate any authorities specifically tieing mental-health-care practitioners to a commonly used medical malpractice standard caseLaw-specific to "mental health." Many cases granting qualified immunity to mental-health-care practitioners end up citing regular medical-care cases, see: *Mead v. Palmer*, 794 F.3d 932, 936-37 (8th Cir. 2015); *Slingluff v. State*, 131 Hawai'i 239, 317 P.3d 683 (Haw. App. 2013); or, they frequently cite different authorities dealing with mental health, see: *Neely v. Fienstein*, 50 F.3d 1502 (9th Cir. 1995); *Goodrich v. Hacker*, (N.D. Iowa 2017); *Spencer v. Abbott*, No 16-4009 (10th Cir. Dec. 5, 2017). And, it has been nearly 47 years since *Estelle v. Gamble*, 429 US 97, 50 LEd2d 251, 97 S.Ct. 285 (1976).

Petitioner believes that mental-health science is complicated and specific enough to need its own cut-out standard in *MORET*.

A heart transplant is a heart transplant no matter what State or Country you are in. But with the complex nature of mental-health-science practices, customs, and procedures vary quite a bit from State to State. Different States treat the same mental-illnesses with different meds, and sometimes completely different approaches. *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1121-22 (9th Cir. 2003); *Conn v. City of Reno*, 572 F.3d 1047, 1055 (9th Cir. 2009); also please see: *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1316 (10th Cir. 2002), and see: *Stanley v. Litscher*, 213 F.3d 340 (7th Cir. 2000). And while individual patients require customized care, a mental-health practitioner in [Wyoming] should be protected with the same type of qualified immunity as any other State.

The lack of a centralized judicial authority on mental-health standards for mental-health-care practitioners to receive qualified immunity may be allowing States to discriminate against the mentally-ill. It may be allowing the courts to sweep abuses under-the-rug. And it could be hindering the advancement of medical science in-general especially where our ...

Nation's mental-health security is concerned.

At present, our Nation's mental-health wellness is not secure.

In *United States v. Loughner*, 672 F.3d 731 (9th Cir. 2012) as cited in the Appeals court's opinion (APPENDIX A), Mr. Loughner was given multiple hearings to determine the need to force medicate. He was given an ample or prolonged observation period of time before force medicating, and he was asked "on a daily basis" if he was willing to voluntarily take meds, *id.* 736. It should also be noted that Loughner had slain <u>six</u> people.

The facts in *MORET* are in stark contrast to *LOUGHNER*.

Mr. Moret was given a single hearing requiring him to appear before the Admin. Law Judge (ALJ) under the influence of drugs. *MORET* was force injected within 5 minutes of his arrival at OSH on Feb. 19, 2016. And, *MORET* was not offered or asked if he was "willing" to take meds by defendants, (ORIG. COMP.) at least, not until 7 months later (APPENDIX I, Exh. 12).

LOUGHNER should've supported REVERSAL in *MORET* but it did not because the due process requirements for State's to "observe", for mental patients, is either too broad or too low.

Similarly, in *Washington v. Harper*, 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990), the very syllabus sets forth distinctions conflicting with the Ninth's ruling in *MORET*. Mr. Harper was given hearings with people "none of whom may be currently involved in the inmate's diagnosis or treatment". Yet Mr. Moret was given a hearing before the ALJ and Defendant Ranganathan—his treating psychiatrist. In the State of Washington Mr. Moret's due process would've been violated. Additionally, like *Harper*, Mr. Moret was only given a single judicial hearing; And this was one of the motivating factors for reversal in *Harper*.

The next two authorities supplied by the Ninth Circuit: *Foster v. Runnels*, 554 F.3d 807 (9th Cir. 2009), and, *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d 565, 77 USLW 4068 (2009) further cement the need for a mental health precedent because neither have much to do with mental health.

Nearly every case challenging the forced administration of anti-psychotropic medications deals with qualified immunity and adminstrative procedures. Look at how many cases the Ninth circuit cited in their opinion, none of which seem to support affirmation! Maybe they don't have the right case dealing with all the aspects needed to stylize their opinion.

When litigants raise evidence issues they cite "*Brady*."
When litigants raise counsel issues they usually cite "*Strickland*."
When litigants raise mental health issues they should cite *Moret*.

B. Conflicts with decisions of Other courts:

Other than the citations already presented in this Petition, the Ninth Circuit's decision conflicts with *Cruzan by Cruzan v. Director, Mo. Dept. of Health*, 497 US 261, 277-78, 110 S.Ct. 2841 (1990) (which relied on *Washington v. Harper*, 494 US 210, 221 (1989), and *Vitek v. Jones*, 445 U.S. 480, 494 (1980).

Because defendant's decision to not provide a stylized reduction in ~~Haldol/Zyprexa to *Moret* went against established medical science~~, the Ninth Circuit's ruling conflicts with *Smith v. Jenkins*, 919 F.2d 90, 93 (8th Cir. 1990) (care that "so deviated from professional standards that it amounted to deliberate indifference" would violate the Constitution.);...

& *Page v. Norvell*, 186 F.Supp. 2d 1134, 1138 (D.Ore. 2000)(holding allegation that a mental health professional [upgraded] the Plaintiffs' mental health diagnosis after meeting with him for only two minutes, there was no evidence to support his "clinical findings," and may have purposefully misdiagnosed him, supported a deliberate indifference claim).

However, when defendant Ranganathan force administered drugs to patient *Moret* the first time, within minutes of his arrival to OSH, she <u>did</u> have "evidence" supporting her "clinical findings". That evidence was in the form of telephone calls made from the jail saying Moret had to be "extracted" from his cell because he was "refusing" transfer to OSH. And officers said Moret had "spit on" them requiring the placement of a **spithood** (APPENDIX I, Exh. 8).

But, video evidence supplied by Plaintiff (APPENDIX E) showed that the jail had provided false information to the Doctor about Moret's demeanor. Therefore, we may reasonably conclude that it may not have been defendants' fault for force medications that first day of treatment. (Feb. 19 2016) But the next day, when Defendants force medicated Moret after he showed "no incidents of aggression", *AND* after he told them he wasn't a mentally-ill person, they must be held liable because they didn't allow him any review period of observation off of medications before continually injecting him. And, according to defendant Ranganathan's answers to Plaintiffs' INTERROGATORIES 1st/2nd she never offered any voluntary consent form, ~~contradicting her sworn" physician's statement"~~ (APPENDIX I, Exh. 7 & 10-11)

The Ninth's ruling not only went against the established precedents we have, but, it also contradicted & conflicted with the very authorities they cited. They went against usual proceedings. *Hydrick v. Hunter*, 449 F.3d 978 (9th Cir. 2006)

C. Supervisory Power

The Ninth Circuit has departed so far from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by the lower court, as to call for an exercise of this Court's SUPERVISORY POWER. Both the District Court and the Appellate Circuit discriminated against MORET because of a perceived history of mental-illnesses (ADA §12102(3)(A); APPENDIX I Exh. 1 at para. 2-3), and they held him to the legal standard of a certified attorney.

Begining with the District court, they denied Plaintiffs' MOTION to appoint counsel (Doc. No. [7]) knowing he was confined to State Hospital at the time of filing. I.E., when MORET initiated this suit he was legally "incompetent", and filed the Motion to appoint counsel, while he was confined at OSH also.

In pleadings, Defendants alleged Plaintiff had received all processes he was due by way of [1] ALJ hearing and representation by Matt Serres, Disability Rights Oregon, during that hearing. However, Moret had no right for counsel on his appeal of the ALJ's ORDER resulting in that appeal being dismissed as "untimely" (APPENDIX H). The District Magistrate stated "Regardless of these threshold issues, I find that Plaintiffs' claims lack merit.[3]" (Doc. No. [52], page 5 of 8)

The court continues, stating "Plaintiff's claims challenge the involuntary administration of medication on February 19, 2016, the date of his admission, and the continuing administration of medication after his administrative hearing." ([52] pg. 5, para. 2) The court seems to have intentionally omitted Plaintiffs' claims of being medicated on Feb. 20, 2016 & Feb. 21, 2016 which were clearly indicated in the AMENDED COMPLAINT, as having been done after the patient showed "no incidents of aggression." Thus, the complaint was deconstructed prejudicially.

After the first appeal vacated, and on remand—after the video evidence was received, the District Judge simply said "The video evidence from the Washington County Jail is not relevant ..." Yet, if we look at the first paragraph of Claim 1 of Plaintiffs' AMENDED COMPLAINT, relevance is clear and the video substantiates Plaintiffs' claims of a "prejudicial intake". And, just because the court had dismissed "Malpractice" claims doesn't make the info under CLAIM 1 obsolete, unless maybe, it was being held to the standards of a *bona fide* attorney. *Frost v. Symington*, 197 F.3d 348 (9th Cir. 1999)

'Pro se litigants' pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite ... confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with *pleading requirements*.' *Haines v. Kerner*, 404 US 519, 30 LEd2d 652, 92 S.Ct. 594 (1972)

Upholding the ruling that "Plaintiffs' claims lack merit" when video evidence lended them credence shows discrimination against someone perceived to have a history of mental illness. And then ruling that the video evidence is "not relevant" to certain claims, where it would have been relevant to those previously dismissed, shows the court was holding pro se litigant to very stringent standards; especially because the court did not allow Plaintiff to amend.

With the Ninth Circuit we don't need to look as deep. This case is extremely unique. After 7 months of nightmarish treatment under Dr. Ranganathan; Dr. Peykanu took over Moret's case. Dr. Peykanu weened Moret off all mental health medications providing a stylized reduction of meds tapering to zero. Then, Dr. Peykanu assessed Mr. Moret as "not mentally ill" before releasing him back to jail custody. (Amend. Comp. pg. 6, para. 28)

But the Ninth provided a ruling we may consider a bland testament to their dislike of MORET. Considering the facts of the case and the authorities cited by the Ninth circuit, their ruling seems similar to an affirmation *without* opinion. They sanctioned the District's discrimination against Moret piecemeal. And, gave no regard to Plaintiffs' Motion to Transfer (Doc. No. [81]). They made the unique seem ordinary.

When the Ninth cited "*Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 211 (9th Cir. 1987)" (APPENDIX A, pg. 3) this was a slight. Setting forth the rules to establish an abuse of discretion, *id.* at 211, was a way for the court to subtextually insult MORET for his "lackluster prosecution". But again, MORET is no lawyer; and, he asked both of the lwr. courts for counsel. The Ninth held MORET to a very stringent standard, prejudicially.

Taken as a whole, it appears as if the courts made intentional efforts to *rid themselves* of someone they perceived to be mentally-ill. One can only speculate the court's intentions in not publishing their opinion. But, we know that the Supreme Court has "repeatedly chastised" the Ninth Circuit over conducting the clearly established inquiry at too high a level of generality. *Hamby v. Hammond*, 821 F.3d 1090 (9th Cir. 2016); see also: *City & County of San Francisco v. Sheehan*, ___ U.S. ___, 135 S.Ct. 1765, 1775-76, 191 L.Ed.2d 856 (2015) ("We have repeatedly told courts — and the Ninth Circuit in particular — not to define clearly established law at a high level of generality." (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 131 S.Ct. 2074, 2084, 179 L.Ed.2d 1149 (2011))).

The lower courts' treatment of MORET shows that even if the Supreme Court reversed this matter the lwr. courts may still treat him poorly on his return. Prejudice towards a litigant based on pro se or his perceived history of mental-illnesses and disdain for this Court's previous instructions is so far out-of-bounds as to warrant a call for exercise of this Court's SUPERVISORY POWER.

D. The Hotline

If OSH had never received prejudicial 'telephone communications' from the jail prior to *MORET's* intake this case may have never happened. The power of telephonic communication can really hurt someone as it did in *MORET*. Imagine if the jail had called the hospital and told them the truth—that *MORET* had his arms twisted at the cuff-ports when he volunteered for transport and that he was slammed onto the ground for pulling off his spit mask though he wasn't spitting—imagine. (Video Evid. X1-X2)

Consider a set amount of time to observe a patient before force medicating; that could only benefit & strengthen reports created by civil servants who run the emergency hotline. Their minds would be put at ease because their reports wouldn't be responsible.

the way it is now, a doctor can force inject someone inside of 5 min. supported by phone calls! *in a closed security hospital environment!*

Review periods after receiving calls, 3rd party prejudice, right to counsel for patients challenging ALJ orders, malpractice standards for *mental*-healthcare practitioners to receive qualified immunity, uniform mental-health medical science, the abuse of mental-patients, and lower court prejudice can all be addressed under *MORET*.

The vast number of telephone calls to the new 9-8-8 hotline present unique mental-health security risks. *THIS COURT SHOULD*

SECURE OUR NATION'S MENTAL HEALTH *with* MORET.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 11-11-2022