No. 22-6928 ORIGINAL

FILED
FEB 16 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

Logan Dujak,

Petitioner,

vs.

Jo-An Lynn, et al.,

Respondents.

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

Petition for Writ of Certiorari

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Questions Presented

In an action in which an individual, civilly committed for mental health treatment, brought a failure-to-protect claim against state officials under 42 U.S.C. § 1983, is there a constitutional right to minimally adequate care and treatment under the Fourteenth Amendment of the United States Constitution?

In an action petitioning for a redress from unconstitutional sexual acts, is application of the Prison Litigation Reform Act to prohibit such petitioning violative of the First and Fourteenth Amendments to the United States Constitution?

List of Parties to the Proceeding
Pursuant to Rules 14.1(b) and 29.6

Pursuant to Supreme Court Rule 14.1(b), Petitioner Logan Bujak certifies that the following list names all parties to the proceeding in the court whose judgment is sought to be reviewed:

1. Logan Bujak, Plaintiff
2. Jo-An Lynn, Defendant
3. Stacey Horstman, Defendant
4. Harvey Daniels, Defendant
5. Robert Austin, Defendant
6. Diana Zucco, Defendant
7. Dana Wilkerson, Defendant
8. Lana Miller, Defendant

Pursuant to Supreme Court Rule 29.6, Petitioner Logan Bujak certifies that this Petition for Writ of Certiorari is not filed by or on behalf of a nongovernmental corporation.

Table of Contents

Table of Authorities

Constitutional Provisions

Statutes

Congressional Records

Other

Orders Entered in the Case

The following orders in this case, directly relating to the questions presented, are included in the appendix.

Statement of Jurisdiction

Petitioner seeks review of an order of the Court of Appeals for the Seventh Circuit issued November 22, 2022. A2-A5. That order, issued on appeal, directed the District Court to conduct further proceedings on a limited claim.

This Court has jurisdiction under 28 U.S.C. §1254(1) to review the Court of Appeals' decision by writ of certiorari. The Court of Appeals had jurisdiction to vacate and remand the order of the District Court under 28 U.S.C. §1291. The District Court has jurisdiction over this case under 28 U.S.C. §1331.

Constitutional Provisions and Statutes Involved

United States Constitution, Fourteenth Amendment § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, First Amendment

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Ku Klux Klan Act § 1 (42 U.S.C. § 1983)

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Prison Litigation Reform Act, 42 U.S.C. § 1997e (e)

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act.

Statement of the Case

The case underlying this petition is an action to secure relief from an individual's subjection to criminal offenses while civilly committed for mental health treatment. A15-A26. The Petitioner, a non-prisoner who was civilly committed after criminal proceedings against them resulted in an acquittal, filed a pro se Complaint in the Central District of Illinois under 42 U.S.C. §1983. A15, A17. The Petitioner complained to the District Court of an individual transmitting semen onto the Petitioner's clothes, of being violently battered, of suffering physical injury in the course of preventing sexual abuse, and of chronic nonconsensual sexual exhibitionism. A19-A23. The District Court dismissed the complaint of an individual transmitting semen onto the Petitioner's clothes under the procedural due process standard of Parratt v. Taylor, 451 U.S. 527 (1981), dismissed the complaints of violent battery and physical injury suffered in the course of preventing sexual abuse under the pre-trial detainee standard of Kingsley v. Hendrickson, 576 U.S. 389 (2015), and dismissed the complaint of chronic nonconsensual sexual exhibitionism under the Prison Litigation Reform Act ("PLRA"). A11-A12.

The Petitioner appealed the dismissal to the Court of Appeals for the Seventh Circuit, which vacated dismissal of the complaints of violent battery and of chronic nonconsensual sexual exhibitionism (insofar as it involved physical contact) under the pre-trial detainee standard of Kingsley. A2-A5. The Seventh Circuit affirmed dismissal of the complaint of an individual transmitting semen onto the Petitioner's clothes under the procedural due process standard of Parratt, dismissal of the complaint of physical injury suffered in the course of preventing sexual abuse under the pre-trial detainee standard of Kingsley, and dismissal of the complaint of chronic nonconsensual sexual exhibitionism (insofar as it did not involve physical contact) under the PLRA. A3-A5, A11-A12. The Seventh Circuit, without hearing oral argument, did not elaborate, stating only: "We have examined that part of his ruling and see no error, so we omit further detail." A2-A3. Petitioner now seeks review of the Seventh Circuit's Final Judgment limiting their claim. A6.

The Seventh Circuit has remanded for limited proceedings pursuant to its order, and absent the grant of this petition for writ of certiorari by this Court, the civilly committed Petitioner's Fourteenth Amendment claim will be limited under the procedural due process standard of Parratt, the pretrial detainee standard of Kingsley, and the PLRA. A6, A11-A12, A25.

Summary of the Argument

The Seventh Circuit, by omission, held in this case that the Fourteenth Amendment rights of the civilly committed are limited to the rights afforded pre-trial detainees. A3, A11-A12. This ruling in no way hinged on this Court's interpretations of substantive constitutional law. Rather, the Seventh Circuit's decision rests entirely upon its outright rejection of this Court's decisions interpreting the Fourteenth Amendment. To limit the claim in this case, the Seventh Circuit cast aside this Court's basic test for the determination of Fourteenth Amendment rights, rejected this Court's precedents holding that the nature of commitment must bear a reasonable relation to its purpose, and ultimately rejected this Court's precedent that there is a constitutional right to minimally adequate care and treatment encompassing professional standards.

In addition, there is conflict amongst the Circuits regarding application of the Prison Litigation Reform Act ("PLRA"). The Seventh Circuit has in this case ruled the PLRA prohibits petitioning the Government for a redress of grievances involving gross and chronic subjection to physically sexual displays of harassment and exhibitionism. A12, A22-A23. This is consistent with many Circuits but inconsistent with others, including the Seventh Circuit itself.

Many Circuits have interpreted the PLRA as barring only petitions for compensatory damages, finding that otherwise the statute would be unconstitutional, but not all. About half the Circuits interpret the PLRA as barring suits even for Constitutional violations, including the Third, Eighth, Tenth, and Eleventh. The Second, Sixth, Seventh, Ninth, and District of Columbia Circuits have found the PLRA may not bar suits for certain constitutional violations, but vary in defining what these constitutional violations are. Thus this case creates the type of conflict amongst the circuits that warrants Supreme Court review.

Reasons for Granting the Writ

I. A question presented is one of critical national importance that the courts below would not analyze.

The Constitutional right of those civilly committed for treatment to minimally adequate care and treatment is critical. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." United States v. Salerno, 481 U.S. 739, 755 (1987). Commitment for compulsory treatment resulting in merely imprisonment without the provisioning of treatment presents "substantial constitutional claims." Humphrey v. Cady, 405 U.S. 504, 514 (1972). The Seventh Circuit's precedent of applying merely the standards afforded pre-trial detainees to conditions of commitment for treatment thus sanctions substantial constitutional violations. A3, A11-A12.

Additionally, the liberty at stake in not observing the constitutional right to minimally adequate care and treatment is massive. "[T]o confine a person for compulsory psychiatric treatment [is] a massive curtailment of liberty."

Humphrey, 405 U.S at 509. "The loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement." Vitek v. Jones, 445 U.S. 480, 492 (1980). The nature of the constitutional deprivations sanctioned by the Seventh Circuit are thus comparable to few others.

Despite the massive constitutional violations risked there are even fewer constitutional protections afforded in the face of this risk. Commitment does not entail "the full panoply of rights[.]" Allen v. Illinois, 478 U.S. 364, 372 (1986). "Such 'freedom' for a mentally ill person would be purchased at a high price." Addington v. Texas, 441 U.S. 418, 430 (1979). Thus there is even greater risk the Seventh Circuit's precedent will result in massive violations of our Constitution.

It is of critical national importance that commitment not be permitted to encroach upon our present system of criminal detention. The States' interests regarding criminal acts may be "vindicated by the ordinary criminal processes" yet there is risk of "substituting" these processes with commitment -- and such exception must be "carefully limited[.]" Foucha v. Louisiana, 504 U.S. 71, 82-83 (1992). "The line between what is permissible and not subject to control and what may be made impermissible and subject to regulation is the line between ideas and overt acts[,]" thus it follows that criminalizing an individual's state of mind "is repugnant to the Fourteenth Amendment of the Constitution." Brandenburg v. Ohio, 395 U.S. 444 (1969) (Douglas, J., concurring); Robinson v. California, 370 U.S. 660 (1962). Courts that found a constitutional right, to a "curative" rather than criminal detainment environment, did so with the understanding that otherwise commitment would "be within the ambit of the Robinson proscription." Welsh v Likins, 373 F.Supp. 487, 496 (D. Minn. 1974), aff'd in relevant part 550 F.2d 1122 (8TH Cir. 1977). That is, the Seventh Circuit's precedent, rather than allow the commitment of mere criminals as prohibited by Foucha, or allow the criminalization of ideas as prohibited by Brandenburg, instead allows violation of our Constitution to encroach from the opposite direction, by turning commitment itself into criminal detention for thought (by substituting the constitutional standards with those applicable to criminal detention).

Such precedent is not even a step away from sanctioning the criminalization of thought by permitting, say, an "expert" in the District of Columbia to "commit" (criminally detain) an individual for "dangerous" conservative thinking -- for which the "high price" of procedural protection would not be afforded. There is no reason, therefore, for this Court to refrain from definitively resolving this question immediately.

II. The Seventh Circuit is in conflict with every relevant decision of this Court and the other circuits -- to the peril of our Nation.

A. The Seventh Circuit ignores this Court's precedent without even consideration.

This Court has repeatedly recognized substantive constitutional requirements on the nature of commitment. "The States have traditionally exercised broad power to commit" but there are "substantive constitutional limitations on this power[.]" Jackson v. Indiana, 406 U.S. 715, 737 (1972). "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." Id. at 738; Youngberg v. Romeo, 457 U.S. 307, 324 (1982); Jones v. United States, 463 U.S. 354, 368 (1983); Foucha, 504 U.S. at 79; Seling v. Young, 531 U.S. 250, 265 (2001). Thus the civilly committed have a substantive due process right that the nature of their commitment bear some reasonable relation to its purpose.

This Court determined the nature of commitment bears reasonable relation to its purpose when in accordance with professional standards under the constitutional right to minimally adequate care and treatment. This Court quoted the then Chief Judge of the Third Circuit as observing "a constitutional right to minimally adequate care and treatment" and then stated "we agree with his view[.]" Youngberg, 457 U.S. at 318-19. This Court further found that imposing liability where there is "substantial departure from accepted professional judgment, practice or standards" "would comport fully with the purpose of [] commitment." Id. at 323-24. The circuits, including the Seventh, subsequently adopted this Court's standard presented in Youngberg. See, e.g., Johnson v. Brelje, 701 F.2d 1201, 1209 (CA7 1983); Society for Good Will v. Cuomo, 737 F.2d 1239, 1243 (CA2 1984); Doe v. Public Health Trust, 696 F.2d 901, 905 n.1 (CA11 1983); Estate of Connors v. O'Connor, 846 F.2d 1205, 1207 (CA9 1988), cert. denied 489 U.S. 1065 (1989); see also Turay v. Seling, 108 F.Supp.2d 1148, 1151 (W.D. Wash. 2000) (noted in Seling, 531 U.S. at 265-66). Thus the civilly committed have a constitutional right to minimally adequate care and treatment encompassing professional standards.

This Court's validation of the constitutional right to minimally adequate care and treatment encompassing constitutionally minimum professional standards only affirmed the precedent established by the lower courts. The very first federal court to find a constitutional right to minimally adequate care and treatment decreed: "To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process." Wyatt v. Stickney, 325 F.Supp. 781, 785 (M.D. Ala. 1971). "The other courts which have examined the issue have all found a constitutional right[.]" Halderman v. Pennhurst, 446 F.Supp. 1295, 1317 (E.D. Pa. 1978); see, e.g., Wyatt v. Aderholt, 503 F.2d 1305 (CA5 1974); Burnham v. Dep't of Public Health, 503 F.2d 1319 (CA5 1974), cert.

denied sub nom. Dep't of Human Resources v. Burnham, 422 U.S. 1057 (1975); Welsh v. Likins, 550 F.2d 1122 (CA8 1977); Scott v. Plante, 532 F.2d 939 (CA3 1976); Nelson v. Heyne, 491 F.2d 352 (CA7 1974), cert. denied 417 U.S. 976 (1974); Woe v. Weinberger, 556 F.2d 563 (CA2 1977). The constitutionally minimum professional standards governing civil commitment for purposes of treatment are thus firmly established by federal precedent.

The Seventh Circuit ignores the constitutional right to minimally adequate care and treatment and ignores the constitutionally minimum professional standards. The Seventh Circuit made no mention of this Court's authority established in Youngberg, stating only: "We have examined that part of his ruling and see no error, so we omit further detail." A3. Hence the Seventh Circuit not only deviates from this Court's authority -- it wont even discuss it.

This Court should grant certiorari to review the Seventh Circuit's failure to even consider following this Court's Fourteenth Amendment standard for the conditions of commitment for treatment.

B. The Seventh Circuit has rejected outright this Court's standards for determining the scope of Fourteenth Amendment rights.

This Court has recognized distinction between the Cruel and Unusual Punishment Clause applicable to convicted inmates and the Due Process Clause applicable to pre-trial detainees. "The language of the two Clauses differs, and the nature of the claims often differs." Kingsley v. Hendrickson, 576 U.S. 389, 400 (2015). "[T]he appropriate standard for a pre-trial detainee's excessive force claim is solely an objective one." Id. at 397. This is the standard the Seventh Circuit has applied to the civilly committed Petitioner's failure-to-protect claim. A4.

The Seventh Circuit applies Kingsley to all Fourteenth Amendment claims. "While Kingsley was specifically about excessive-force claims, we have recognized that neither the Supreme Court's logic nor its language is limited to that context." Kemp v. Fulton Cnty., 27 F.4th 491 (CA7 2022). "[T]he Fourteenth Amendment[] is governed by an objective standard." Id. The Seventh Circuit found that under Kingsley the Petitioner "needed only to plausibly allege facts showing that the defendants responded unreasonably[.]" A4.

The Seventh Circuit's application of the "unreasonableness" standard of Kingsley to the civilly committed, rather than the professional decisionmaking standard of Youngberg, rejects outright this Court's authority to determine the scope of Fourteenth Amendment rights. Kingsley turns on whether acts or omissions are "rationally related to a legitimate nonpunitive governmental purpose" or "appear excessive in relation to that purpose." Kingsley, 576 U.S. at 398. In contrast, Youngberg turns on whether there exists "substantial departure from accepted professional judgment, practice, or standards[.]" Youngberg, 457 U.S. at 323-24. The Seventh Circuit fails to recognize the distinction between what is reasonable for the state in criminal proceedings, and what is reasonable for a competent professional adhering to constitutionally minimum professional standards. A4.

Constitutionally minimum professional standards require that individuals committed for mental health treatment must be provided an environment which affords a realistic opportunity for improving mental health. "That the conditions of confinement may significantly enhance or retard a given patient's recovery is not open to doubt." Covington v. Harris, 419 F.2d 617, 625 (D.C. Cir. 1969). Relying upon this fact the Wyatt court had found that those civilly committed "unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition." Wyatt, 325 F. Supp. at 784 (Wyatt and this Court's substantive basis for the constitutional right is discussed supra at pp. 10-11). Petitioner thus has a constitutional right that the nature of their commitment, at a minimum, not impose otherwise non-existent decline in their mental health.

Constitutionally minimum professional standards, which preclude declines in mental health from commitment itself, require that professionals protect the civilly committed from criminal acts. "[T]he right to personal security constitutes a 'historic liberty interest' protected substantively by the Due Process Clause." Youngberg, 457 U.S. at 315. "[G]ross[] negligen[ce] and reckless[] indifferen[ce] to patient safety... demonstrate[s] official indifference to the constitutional right of the victim to a safe environment" under Youngberg. Estate of Conners, 846 F.2d at 1207-08 (cert. denied). Constitutionally, the civilly committed are only provided "minimally adequate" care when they are provided "security from assault." Eckerhart v. Hensley, 475 F. Supp. 908, 918 (W.D. Mo. 1979). Constitutionally minimum professional standards require "adequate and appropriate protection for patients subject to homosexual or other assaults by other patients." Davis v. Watkins, 384 F. Supp. 1196, 1208 (N.D. Ohio 1974). Moreover, they require "precaution to prevent [] physical or psychological abuse, neglect, or mistreatment... an abusive act is any action which may cause or causes physical or emotional harm or injury[.]" Halderman, 446 F. Supp. at 1328. The constitutionally minimum professional standards established by the lower courts and validated by this Court thus require that the Petitioner, civilly committed for mental health treatment, be protected from criminal offenses which may cause physical or emotional harm.

The Seventh Circuit's decision is in direct conflict with this Court's precedent. The Kingsley standard requires the courts to determine whether a condition "amounts to punishment." Kingsley, 576 U.S. at 397. Youngberg, however, instructs that balancing the interests of the state with the substantive interests of the civilly committed "cannot be left to the unguided discretion of a judge or jury." Youngberg, 457 U.S. at 321. "In determining what is reasonable [] we emphasize that courts must show deference to the judgment exercised by a qualified professional." Id. at 322. This Court instructed the courts to limit their review to determining whether there existed "[s]ubstantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." Id. at 323. The Seventh Circuit's application of Kingsley to the civilly committed thus directly conflicts with this Court's standard mandating deference to constitutionally minimum professional standards. A4.

Allowing judges and juries to determine what is "reasonable" for the civilly committed is beyond the permissible scope of review permitted by this Court. "[T]here certainly is no reason to think judges or juries are better qualified than appropriate professionals[.]" Youngberg, 457 U.S. at 322-23. Such an "inquiry exceeds the permissible scope of judicial review according to Youngberg." Houghton v. South, 965 F.2d 1532, 1536 (CA9 1992). The Seventh Circuit, however, has determined that judges and juries should determine what is "reasonable"-- in direct conflict with this Court and the circuits. A4.

The Seventh Circuit initially recognized this Court's authority by properly applying the Youngberg standard, but then later abandoned it. Soon after Youngberg the Seventh Circuit correctly asserted: "It is not our duty [] to perform the balancing. The Constitution only requires us to make certain that... a professional judgment was exercised." Johnson, 701 F.2d at 1209. But years later, after discussing Youngberg at length, the Seventh Circuit impermissibly opted to abandon it -- in favor of subjecting those civilly committed to "the ordinary conditions of confinement[.]" Allison v. Snyder, 332 F.3d 1076, 1079 (CA7 2003). This is the "reasonable" standard the Seventh Circuit applies to the conditions of commitment. A4; see also Dujak v. Piephoff, U.S.D.C. S.D.I.L. 18-2003 (Sept. 30, 2022, Mem. and Order, p. 23) (citing Allison v. Snyder, holding person civilly committed for treatment only had the due process rights of a pre-trial detainee).

This Court should thus review the Seventh Circuit's refusal to follow this Court's binding precedents. A3-A4.

C. The Seventh Circuit's neglect of substantive due process nullifies the intent behind ratification of the Fourteenth Amendment and imperils our Nation.

The Fourteenth Amendment was ratified with the intent of preventing the states from enacting de facto slavery through implementations of law. "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." U.S. Const. Amend. XIV §1. The Fourteenth Amendment stands between our great nation and tyranny.

In 1871 the U.S. Congress passed the Ku Klux Klan Act to give individuals the ability to enforce the Fourteenth Amendment against their subjection to this tyranny. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured..." 42 U.S.C. §1983. It is through this enactment that individuals may seek redress against corrupt state officials who would steal, enslave, torture, and murder under the color of their state's authority.

Under the Fourteenth Amendment's Due Process Clause, sometimes actions taken by state officials require but meaningful means by which to assess the propriety of those officials' actions, but there also exists other actions which, if taken by state officials, are inherently corrupt.

The Due Process Clause limits state officials from regulating "fundamental" rights -- "no matter what process is provided." Reno v. Flores, 507 U.S. 292, 302 (1993). "[T]here are certain governmental actions that, even if undertaken with a full panoply of procedural protection are, in and of themselves, antithetical to fundamental notions of due process." Parratt v. Taylor, 451 U.S. 527, 545 (1981) (Blackmun, J., concurring). "[T]he Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." Foucha, 504 U.S. at 80 (quotes omitted). Hence under the Fourteenth Amendment the Petitioner retains "substantive" rights which are separate and distinct from their "procedural" rights.

This Court has determined that procedural rights under the Fourteenth Amendment are not violated if the State deprives an individual of their property so long as the state provides the individual with a means of seeking redress after the fact. "[T]he availability of some meaningful means by which to assess the propriety of the state's action at some time after the initial taking, can satisfy the requirements of procedural due process." Parratt, 451 U.S. at 539. "[A]n unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available." Hudson v. Palmer, 468 U.S. 517, 533 (1984). Thus if the Petitioner's property rights are merely procedural, their Fourteenth Amendment rights are not necessarily invoked where a corrupt state official's actions result in the theft or destruction of their property.

Constitutionally minimum professional standards, however, observe substantive rights to personal property. "[I]n a treatment context" "the opportunity to keep and use one's own personal belongings" "rises to a constitutional level." Eckerhardt, 475 F.Supp. at 919. Under constitutionally minimum professional standards, those civilly committed for treatment have a substantive right "to keep and use [their] own personal possessions[.]" Wyatt, 344 F.Supp. at 380; Davis, 384 F.Supp. at 1209 (Wyatt and this Court's substantive basis for professional standards discussed supra at pp. 10-12). "Here we are concerned with the operation of state mental institutions within the parameters of substantive due process." Wyatt, 503 F.2d at 1317 (emphasis added). Meaningful postdeprivation remedies, therefore, do not satisfy the Fourteenth Amendment substantive property rights belonging to those civilly committed for treatment.

That postdeprivation remedies cannot satisfy deprivations of substantive due process interests has been explicitly articulated by Justices of this Court. "[V]iew of the limitation imposed on the states by the Due Process Clause" [is not] "narrow [and] wholly procedural... the Court analyzes this case solely in terms of the procedural rights created by the Due Process Clause... The Due Process Clause [also] imposes substantive limitations on state action[.]" Parratt, 451 U.S. at 547, 552-53 (Powell, J., concurring in the result); see also Id. at 545 (White, J., concurring; Blackmun, J., concurring). "I do not understand the Court's holding to apply to conduct that violates a substantive constitutional right--actions government officials may not take no matter what procedural protections accompany them[.]" Hudson, 468 U.S. at 541 n.4 (Stevens, J., concurring in part and dissenting in part; Brennan, Marshall, Blackmun, J.J., joined). It was thus specifically understood by this Court that its ruling allowing merely postdeprivation remedies for procedural property interests does not extend to substantive rights.

The Seventh Circuit has extended this Court's procedural due process rulings to encompass substantive due process. Citing to cases which derive from Parratt and Hudson, the Petitioner's substantive due process claim regarding an individual transmitting semen onto the Petitioner's clothes was dismissed, under the rationale that "the loss of personal property[] does not implicate a constitutional claim." All. The Seventh Circuit, in reviewing this dismissal, stated: "We have examined that part of his ruling and see no error, so we omit further detail." A3. The Seventh Circuit has thus sanctioned the dangerous interpretation that postdeprivation remedies satisfy substantive violations of the Fourteenth Amendment.

The Seventh Circuit's neglect of substantive rights and its trivialization of the Fourteenth Amendment exceedingly imperils our Union. Under the Seventh Circuit's interpretation of the Fourteenth Amendment it would no longer stand between tyranny and "life, liberty, or property." U.S. Const. Amend XIV §1. Under such an interpretation individuals could no longer protect theirselves from corrupt officials who were, say, "under color" of the state, members of the Ku Klux Klan--bent on enslaving and torturing them. Ku Klux Klan Act §1 (42 U.S.C. §1983). Where postdeprivation remedies satisfy substantive rights members of the Ku Klux Klan (or Antifa) could become state officials and under color of state law beat you in the street with clubs--so long as they pay your medical bills after the fact; force you to become a sex worker--assuming you get your "cut"; and may murder you if you object--assuming they pay reparations to your family.

It is thus in the face of great peril that this Court must grant this Petition to address this subversive and perverse interpretation of the Fourteenth Amendment.

III. A question is presented for the sake of our Constitution to resolve dispute and subversion.

A. The Seventh Circuit's application of the Prison Litigation Reform Act to the non-prisoner Petitioner conflicts with the decisions of other circuits, this Court's Precedent, and the legislature's intent.

The Prison Litigation Reform Act ("PLRA") does not apply to everyone. Its own wording limits its application to prisoners: "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility..." 42 U.S.C. §1997e(e). More specifically, circuits have found that the PLRA does not apply to the civilly committed. See, e.g., Merryfield v. Jordan, 584 F.3d 923, 927 (CA10 2009); Kolocotronis v. Morgan, 247 F.3d 726, 728 (CA8 2001); Michau v. Charleston Cnty., 434 F.3d 725, 727 (CA4 2006). Thus to examine conflict between the circuits and the Constitution regarding the PLRA, the threshhold question must first be answered as to whether it may even be applied to the Petitioner in the first instance.

The answer is that the Petitioner is not a "prisoner" to which the PLRA is applicable. The district court ordered that they are "considered a detainee rather than a prisoner." A7. Additionally, under the law in the Petitioner's state, there is no "substantive relief greater than the freedom from guilt established by the[ir] acquittal." People v. Harrison, Ill. Sup. Ct. No. 102859 (Oct. 18, 2007, Opinion). Because the Petitioner was civilly committed subsequent their acquittal, it is only by arbitrary reasoning that they could meet the PLRA's definition of "prisoner." A7, A15.

Nevertheless, the Seventh Circuit applied the PLRA to the non-prisoner Petitioner. A3, A12. The district court found the Petitioner "may not proceed" and cited the PLRA. A12. The Seventh Circuit stated only: "We have examined that part of his ruling and see no error, so we omit further detail." A3. The Seventh Circuit has thus sanctioned application of the PLRA to the non-prisoner Petitioner. A6.

In addition to being in conflict with other circuits, application of the PLRA to non-prisoners is inconsistent with the legislature's intent and this Court's precedents. The words "acquittee" and "civilly committed" appear nowhere in the PLRA, and it must be remembered that "the spirit of an instrument... is to be respected not less than its letter; yet the spirit is to be collected chiefly from its words." Sturges v. Crowninshield, 4 Wheat. 122, 202 (Marshall, C.J.); 42 U.S.C. §1997e(e); 42 U.S.C. §3626(h)(3). Additionally, assuming that the civilly committed are prisoners is inconsistent with this Court's substantive interpretations of the Fourteenth Amendment. Supra at pp. 9-10. Thus the Seventh Circuit's application of the PLRA to the non-prisoner Petitioner is in conflict with not only other circuits but also this Court and the PLRA itself.

Because the Seventh Circuit's arbitrary application of the PLRA is in conflict with Congress, the circuits, and this Court; because its potential of arbitrarily blocking any or all citizens access to the courts is of extraordinary national concern; and because its arbitrariness should find no shelter from the Fourteenth Amendment, this Court should definitively resolve this question.

B. The circuits have lost sight of the original intent of the Fourteenth Amendment and supplanted fundamental and historic rights with their own conceptions.

Many Circuits believe the Prison Litigation Reform Act ("PLRA") bars constitutional claims. "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act." 42 U.S.C. §1997e(e). About half the circuits interpret the PLRA as barring constitutional claims that do not meet this requirement. See, e.g., Allah v. Al-Hafeez, 226 F.3d 247 (CA3 2000); Sisney v. Reisch, 674 F.3d 839 (CA8 2012); Pearson v. Welborn, 471 F.3d 732 (CA7 2006). This is the standard the Seventh Circuit has used to dismiss an aspect of the Petitioner's claim, that being chronic sexual exhibitionism. A3, A12, A22-23.

The PLRA allows claims for "sexual acts"--but strictly limits this definition. The Violence Against Women Act more or less limited the "sexual act" exempt from the PLRA to penetrative assault. 18 U.S.C. § 2246(2). Thus, for example, under the PLRA a state official could habitually sexually abuse a child--yet be exempt from the Fourteenth Amendment because this does not constitute a "sexual act." 42 U.S.C. § 1997e(e). Hence although the Violence Against Women Act altered the PLRA to allow claims for some forms of sexual assault, it does not encompass many forms of sexual abuse.

Certain circuits, however, do not interpret the PLRA as excluding constitutional violations. For instance, the Ninth Circuit found that "§1997e(e) does not apply to First Amendment claims[.]" Canell v. Lightner, 143 F.3d 1210 (CA9 1998). Another example is the Sixth Circuit's explaination that there is a difference between constitutional injuries and emotional injuries barred by the PLRA. See King v. Zamira, 788 F.3d 207, 213 (CA6 2015). To these circuits the PLRA would be unconstitutional if not for their interpretations.

The circuits which interpret the PLRA as allowing claims for unconstitutional acts and omissions also differ as to what forms of sexual behavior they find unconstitutional. It is possible that this Court has provided a standard under which "calculated harassment" is unconstitutional. Hudson, 468 U.S. at 530. The Second Circuit requires that sexual abuse be "severe or repetitive[.]" Crawford v. Cuomo, 796 F.3d 252 (CA2 2015). The District of Columbia Circuit has found "unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature" may be unconstitutional. Women Prisoners v. District of Columbia, 93 F.3d 910, 933 (CADC 1996). There thus exists even wider disparity between how the circuits interpret the PLRA.

Not all circuits require that sexual abuse involve physical contact to be considered unconstitutional. For instance, the District of Columbia Circuit upheld a prisoner's claim where she was forced to striptease for government officials. See Daskalea v. District of Columbia, 227 F.3d 433 (CADC 2000). Contrary to its holding regarding the Petitioner, the Seventh Circuit has previously upheld a claim for sexual comments and gestures. See Beal v. Foster, 803 F.3d 356, 358 (CA7 2015). Thus there certainly exists circumstances in which circuits have determined criminal sexual deviancy, and even sexual harassment, rises to the level of being unconstitutional -- even when it does not involve physical contact.

The PLRA should not be interpreted as allowing violations of the Constitution. The legislative intent of the PLRA was to prevent "frivolous" and "malicious" civil actions. 42 U.S.C. §1997e(c). "All laws," this Court has said, "should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character." United States v. Kirby, 7 Wall. 482; Lau Ow Bew v. United States, 144 U.S. 47, 58. Those who ratified the Fourteenth Amendment would hardly have accepted the absurd notion that women being forced to "striptease" for the Ku Klux Klan was more acceptable than their being forced to work in fields.

This Court has already set its own standard for determining what sexual acts should and should not give rise to a federal civil action. This Court has established that prisoners have a fundamental right to access the courts under the First, Fifth, and Fourteenth Amendments. See Ex parte Hull, 312 U.S. 546 (1941); Johnson v. Avery, 383 U.S. 483 (1969); Bounds v. Smith, 430 U.S. 817 (1977).

"Congress shall make no law [] abridging [] the right [] to petition the Government for a redress of grievances." U.S. Const. Amend. I. This Court has even established a framework for determining when this right is invoked: when the petition presents a "nonfrivolous claim." Lewis v. Casey, 518 U.S. 343 (1996). Hence Petitioner has a fundamental right to bring suit for a sexual act where the claim is "nonfrivolous," rather than where the claim is for penetrative assault as defined by the Legislature.

Interpreting the PLRA as barring constitutional claims under §1983 is not merely a statutory matter at the discretion of the legislature--it is an encroachment on the Fourteenth Amendment itself. That the framers of the Fourteenth Amendment considered Congress best suited to implement it is embodied in §5. But under the Equal Protection of the Laws Clause, should a state fail to afford equal protection "it is not only within the power, but it is the solemn duty of Congress to enforce the protection which the state withholds." Cong. Globe, 42d. Cong., 1st Sess. App. 482 (1871). Thus interpretation of the PLRA as barring the Petitioner's Fourteenth Amendment claim is unconstitutional under the original intent of the Fourteenth Amendment itself.

Those who framed the Fourteenth Amendment and §1983 understood that they were obligated by the Constitution itself to protect fundamental rights. "The Citizens of each State shall be entitled to all privileges and immunities of citizens in the several states." U.S. Const. art. IV, §2 (emphasis added). Those privileges and immunities were understood to include "protection by the Government[.]" Cong. Globe, 42d. Cong., 1st sess. app. 69 (1871); See also Id. at 73; Cong. Globe, 42d. Cong., 1st Sess. 228 (1871). Hence §1983 (at the time, known as the KuKluxKlan Act) was found __necessary__ under the Constitution by the framers of the Fourteenth Amendment.

What constitutes an unconstitutional sexual act for the purposes of §1983 has already been determined by those who framed the Fourteenth Amendment, hence what is nonfrivolous under the Fourteenth Amendment must be examined in light of the general concurrence of those who framed it: that it provides all citizens the protection of their state's laws. "No State shall...deny any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV §1. "[T]he word 'protection' must not be understood in any restricted sense, but must include every benefit to be derived from laws." 2 Cong. Rec. 412 (1874). That President Clinton signing into effect the PLRA has been interpreted as providing government officials who sexually abuse (and at the time, sexually assault) shelter from the Fourteenth Amendment cannot touch the Petitioner's constitutional right to the nonfrivolous benefit of the protection of the criminal law of their state regarding sexual deviancy.

While this Court has at times interpreted the fundamental right to personal security as but limiting action by the state, it has explicitly recognized exceptions in which it takes upon a positive aspect which requires state action. "Personal security constitutes a historic liberty interest protected substantively[.]" Youngberg, 457 U.S. at 315 (quotes omitted). "[H]aving stripped [incarcerated persons] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." Farmer v. Brennan, 511 U.S. 825, 833 (1994). Hence the Constitution requires that the committed Petitioner have means by which to seek and secure the fundamental personal security the state has by inaction dissolved.

To the extent the PLRA has been interpreted as sanctioning constitutional violations, these interpretations must be found unconstitutional. It should be common knowledge that the Fourteenth Amendment was ratified with the intent of preventing corrupt applications of law from circumventing the Thirteenth Amendment to effect slavery by classifying individuals as "prisoners." The Thirteenth Amendment's exception for "punishment for crime whereof the party shall have been duly convicted" was interpreted in bad faith as license for codes which convicted citizens to force them to labor. See 133 Harv. L. Rev. 1, 70 (2019). The Civil Rights Act of 1866 was positioned as a direct challenge to these "Black Codes." See Cong. Globe, 39TH Cong., 1ST Sess. 474 (1866). The draft of §1 of the Fourteenth Amendment that was ratified emerged as a revision intended to gain moderate and conservative Republican support found necessary after this Civil Rights Act was vetoed. See Cong. Globe, 39TH Cong., 1ST Sess. 2133 (1866). This leaves no room for argument that the Fourteenth Amendment was not intended to protect the rights of prisoners as well.

Yet circuits have interpreted the PLRA, which classifies individuals as "prisoners," as having the explicit purpose of barring them the protection of the Fourteenth Amendment. "[W]hen that which the legislature has done ... is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. Mugler v. Kansas, 123 U.S. 623, 661[]; Minnesota v. Barber, 136 U.S. 313, 320[]; Atkin v. Kansas, 191 U.S. 207, 223[.]" Jacobson v. Massachusetts, 197 U.S. 11 (1905). It was understood at the birth of our Nation that abdication of the fundamental right to protection dissolves any reciprocal obligation of allegiance on the part of the unprotected to the government, giving grounds for rebellion. See Dec. of Ind.; see also preambles of the N.C., N.J., and Pa. Consts. of 1776. It is thus dire that this Court assert its authority to correct the circuits, which have allowed congressional enactments to encroach upon our Fourteenth Amendment--to the effect of dissolving the fundamental and historic right to personal security.

Conclusion

The subversive analyses by which the Seventh Circuit has limited a claim are of pressing national importance. Its ruling, which ignores substantive rights to sanction subjection of individuals to criminal sexual deviancy, directly conflicts with the precedents of this Court and circuit courts, as well as the intent of the legislature and the Constitution. For each of these reasons set forth above, this Court should grant a writ of certiorari to the Court of Appeals for the Seventh Circuit.