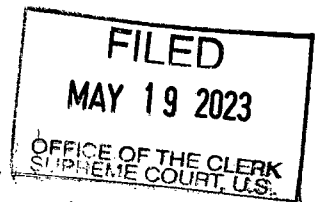


ORIGINAL

No. 22-6928

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 Rehearing

Logan Dujak
901 Southwind Road
Springfield, IL 62703
217.786.6810

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Petitioner Logan Ayjah, pursuant S. Ct. Rule 44.2, petitions for the rehearing of an order denying a petition for a writ of certiorari, on substantial grounds not previously presented:

I. Equal Protection Holds Venerable Capricious Classification by the Courts Below of the Civilly Committed as Criminally Detained

Commitment implicates liberty unrelated to criminal detainment. See *Foucha v. Louisiana*, 504 U.S. 71, 78-79 (1992); citing *Vitek v. Jones*, 445 U.S. 480, 492 (1980). "[W]here, as here, the State has created functionally distinct institutions, classification of patients for involuntary commitment to one of these institutions may not be wholly arbitrary." *Baxstrom v. Herold*, 383 U.S. 107, 114 (1966). "Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made." *Id.* at 111. "There is no conceivable basis" for distinguishing the criminally detained as classified with the civilly committed. *Foucha*, 504 U.S. at 79; quoting *Jackson v. Indiana*, 406 U.S. 715, 724 (1972); quoting *Baxstrom*, 383 U.S. at 111-112.

The courts below have enacted such a classification by applying criminal detainment standards to the civilly committed (including petitioners). A2-5, 11-12 (citations to the record are made to the Appendix for the Petition for Writ of Certiorari). See, e.g., *Miller v. Popier*, 634 F.3d 412, 415 (CA7 2011) (applying atypical and significant standard to civilly committed); *Allison v. Snyder*, 332 F.3d 1076, 1079 (CA7 2003) (applying pre-trial detainee standard to civilly committed); *Sain v. Wood*, 572 F.3d 886, 894 (CA7 2008) (applying 8th Amendment standard to civilly committed). "The capriciousness of the classification" by the courts below is "untenable." *Baxstrom*, 383 U.S. at 114-115.

II. The Courts Below Dissolve Ordered Liberty by Degrees

Under due process analysis focus must be upon whether there is an entitlement to the conditions being adversely affected by state action, rather than upon a finding of sufficient loss: "We held that the determining factor is the nature of the interest involved rather than its weight." *Meachum v. Fano*, 427 U.S. 215, 224 (1976). "We must look not to the 'weight,' but to the nature of the interest at stake." Board of Regents v. Roth, 408 U.S. 564, 571 (1972). Within those interests of a nature protected by the Fourteenth Amendment lies the right to personal security: "liberty, which is not required by the laws of society to be sacrificed to public convenience" includes "the right of personal security[.]" / Sir William Blackstone, *Commentaries on the Laws of England* 125 (1765-1769).

Both the District Court and the Appellate Court below look not to whether there is deprivation of personal security, but rather to the weight of the harm inflicted by such deprivation. A4, 12. Yet ordered liberty "can no more validly be taken away by degrees than by one fell swoop." *NLRB v. Fruit Packers*, 377 U.S. 58, 80 (Black, J., concurring).

III. The Security of the Republic is Risked by the Courts Below Permitting Potential Violation of a Fundamental Principle of Our Constitutional System

The Courts below permitted conditions of criminal detainment to encompass the civilly committed Petitioner through imposition of their criminal detainment analyses. A2-5, 11-12; *supra* at p. 2. Grounds for this criminalization of thought through civil commitment to criminal detainment (being permitted by the courts below) "might be construed to include the peaceful and orderly opposition to a government as organized and controlled by one political party by those of another political party equally high minded and patriotic, which did not agree with the one in power. It might also be construed to include peaceful and orderly opposition to government by legal means and within constitutional limitations." *Stromberg v. California*, 283 U.S. 359, 366 (1931).

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Id.* at 369.

IV. The Constitution Demands this Court Halt the Courts Below from Violating Our Privileges and Immunities

Under the Due Process Clause a notion of personal security has been termed a "liberty interest." "We have recognized that there is a constitutionally protected liberty interest in safety[.] *Youngberg v. Romeo*, 457 U.S. 307, 318 (1982). Petitioner's right to safety has thus been interpreted to arise "substantively" from the Due Process Clause. *Id.* at 315.

There does exist, however, privileges and immunities independent of substantive notions of due process. There exists "immunities; which will appear, from what has been premised, to be indeed no other, than that residuum of natural liberty, which is not required by the laws of society to be sacrificed to public convenience" and which include "the right of personal security[.] *Blackstone* at 125.

There also exists "privileges, which society hath engaged to provide, in lieu of the natural liberties so given up by individuals." Id. Petitioner thus retains, even in the absence of "substantive due process," the immunity of personal security -- and privileges securing this immunity in return for surrender through their commitment of some liberty.

This immunity and the privileges springing in its defense, even if not protected substantively, are explicitly secured by our Constitution. "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. For those requiring greater elucidation: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States[.]" U.S. Const. amend. XIV, §1. Petitioner's immunity from deprivation of personal security, and privileges to the security of this immunity required in return for any ordered liberty on such grounds deprived, are thus both Constitutional entitlements independent of "substantive due process."

Yet the courts below have interpreted their way into allowing deprivations of personal security within institutions. AZ-5, 11-12. As the courts below have instead withheld liberty through Petitioner's commitment, not for privileges protecting the right to personal security, but rather to locate its deprivation within an institution, the Constitution demands the intervention of this Court.

V. The Courts Below Imperil the Citizenry by Implicating Release of Those Committed for Dangerousness

Civil commitment to criminal detainment rejects legislative intent to dissolve the Constitutionality of our statutory schemes for commitment. The door to release from civil commitment (to criminal detainment) through double jeopardy and ex post facto grounds has been shut. *Seling v. Young*, 531 U.S. 250, 263 (2001). The second door, injunction to enforce commitment standards rather than detention standards, has been shut by the courts below applying standards of detention to commitment. Compare *Id.* at 265-266 with A2-5, 11-12; and *supra* at 2. This leaves only a third door, opened by rejection of the "manifest intent" of legislative commitment schemes. *Seling*, 531 U.S. at 261.

Whether a statutory commitment scheme complies with the demands of the Federal Constitution is a question of federal law. See *Allan v. Illinois*, 478 U.S. 364, 369 (1986); *United States v. Ward*, 448 U.S. 242, 248-249 (1980); *Hudson v. United States*, 522 U.S. 93, 100, 105 (1997). The clearest proof of negation of the intention of statutory commitment schemes demands immediate release of those committed. See *Seling*, 531 U.S. at 258, 261. The federal courts below have provided the clearest proof that civil commitment is criminal detainment through their holdings, by finding conditions of commitment may be those of criminal detainment. A2-5, 11-12; *supra* at 2.

The courts below have backed themselves into a corner, and if left there to stand by this Court, immediate release based on the failure to provide conditions commensurate with the intentions of the statutory schemes, would be Constitutionally required for any dangerous person under such scheme committed. Such release of dangerous persons would imperil the citizenry.

VI. Arbitrary Implementation of the Act of 1871 by the Courts Below is Incompatible with Our Constitutional Scheme

The courts below interpret legislation to bar civil rights originating from the Act of 1871, AZ, 12; compare 42 U.S.C. § 1997e(e) with 42 U.S.C. § 1983. Yet "It is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ." *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974). Thus that the courts below arbitrarily withhold these civil rights is incompatible with our Constitutional Scheme in which they play an essential role.

5/18/2023

Graciously submitted,


Logan Dyjak
901 Southwind Road
Springfield, IL 62703
217.786.6810