NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

FRANK JAMES,

***Petitioner*,**

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

***Respondent*.**

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a state prisoner's claim of delay in the commencement of a civil commitment proceedings implicates the constitutional right to due process, such that a petition for writ of habeas corpus under 28 U.S.C. § 2241 provides a remedy, or it involves only the enforcement of a state-created right.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

Frank James v. Shevaun Harris, et al., No. 19-CIV-21836-Williams (S.D. Fla. May 26, 2022)

United States Court of Appeals (11th Cir.):

Frank James v. Sec'y, Dep't of Children & Families, No. 22-12093 (11th Cir. Mar. 20, 2023)

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Frank James respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 22-12093 in that court.

OPINIONS BELOW

The Eleventh Circuit's order denying Petitioner a certificate of appealability, as well as its order denying reconsideration are unpublished and reproduced in Appendices A-2 and A-1, respectively. The district court's order denying a certificate of appealability is unpublished and reproduced in Appendix A-3. The district court's order adopting the magistrate judge's report and denying Petitioner's

28 U.S.C. § 2241 petition is unpublished and reproduced at Appendix A-4. The magistrate judge's order is unpublished and reproduced in Appendix A-5.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The jurisdiction of the district court was invoked under 28 U.S.C. § 2241. The court of appeals had jurisdiction under 28 U.S.C. §§ 1291 and 2253. On March 20, 2023, the court of appeals denied Petitioner's motion for reconsideration of the one-judge order denying a certificate of appealability. This petition is timely filed under Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely on the following constitutional and statutory provisions:

U.S. Constitution, 14th Amend.

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

28 U.S.C. § 2253(c)

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; . . .

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

1. In 2019, Petitioner filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in which he challenged the legality of his involuntary civil commitment as a sexually violent predator by the State of Florida pursuant to the Jimmy Ryce Act. The Jimmy Ryce Act became effective January 1, 1999. *See* Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, ch. 98-64, § 24, 1998 Fla. Laws 445, 455 (codified at Fla. Stat. §§ 916.31-916.49 (Supp. 1998) (eff. Jan 1, 1999)).

2. Petitioner's federal petition alleged that he plead guilty in 1989 in Florida state court to the kidnapping and sexual battery of two female victims and was convicted and sentenced to a term of imprisonment of 30 years. On July 18, 2014, more than 24 years later and prior to Petitioner's release from incarceration, the State filed a petition seeking to involuntarily commit Petitioner pursuant to the Act. On January 1, 2015, upon expiration of his term of imprisonment, Petitioner was transported to the Florida Civil Commitment Center, where he was held pending his civil commitment trial.

3. Petitioner's federal petition alleged that the civil commitment

proceeding initiated against him was filed in an untimely manner after the expiration of the applicable 20-year statute of limitations found in Florida Statutes § 95.11(1), and barred by the equitable doctrine of laches. Petitioner further alleged that his detention violated the United States Constitution, and cited to *Stogner v. California*, 539 U.S. 607 (2003). *Stogner* held that application of California law permitting prosecution for sex-related child abuse to offenses whose prosecution was time-barred at the time of the law's enactment was unconstitutional under the Ex Post Facto Clause of the United States Constitution. *Stogner*, 539 U.S. at 610.

4. On May 26, 2022, the district court dismissed Petitioner's petition without prejudice after it determined that abstention pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), was appropriate. App. A-4. In addition, the district court considered Petitioner's civil commitment proceeding under the speedy trial factors articulated in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), "with regards to whether Petitioner has been afforded constitutional due process." *Id.* at 12. Although the district court found "[t]he delay of seven (7) years in holding Petitioner' civil commitment trial [] troubling," it nonetheless found that "Petitioner contributed to the delay in trial and no due process concern is implicated[, b]ut a different record or record demonstrating a pattern of state delay might warrant a different outcome." *Id.*

5. Petitioner timely appealed. Upon receipt of Petitioner's notice of

appeal, the Eleventh Circuit's Clerk of Court sent a letter to Petitioner which stated, in pertinent part:

> Pursuant to Rule 11(a) of the Rules Governing Section 2254 and 2255 cases for the United States District Courts, the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. The order on appeal did not contain such language. We, therefore, await such a ruling from the district court.

6. Petitioner responded in the district court to this Clerk's letter, contending that no certificate of appealability (COA) was required because the district court's order of dismissal was not a "final order" under 28 U.S.C. § 2253(c). The State responded, arguing that a COA *was* required, and should not issue. Petitioner replied, maintaining that no COA was required, but argued, in the alternative, that a COA should issue as to whether the district court was correct to abstain pursuant to *Younger*.

7. On October 13, 2022, the district court entered an Order agreeing with Petitioner that no COA is required, because its order dismissing the petition

> was not a final judgment on the merits of Petitioner's case, but rather an Order of Abstention pursuant to *Younger v. Harris*. A certificate of appealability pursuant to 28 U.S.C. § 2253(c)(1)(A) is not required to appeal the Order adopting the Report and dismissing the Petition without prejudice because § 2253(c)(1)(A) governs only final orders that dispose of a habeas proceeding on the merits.

App. A-3 at 2. The district court nonetheless determined, in the alternative, that no COA should issue:

> For the reasons previously stated by the Court in its Order [App. A-4] and by Judge Reid in the Report [App. A-5], and upon consideration of the record, the Court concludes that "jurists of reason" would neither

> find that Petitioner stated a valid claim for the denial of a constitutional right, nor that the Court erred in abstaining from adjudicating the merits pursuant to *Younger*.

Id. at 3.

8. On October 20, 2022, Petitioner moved for a COA in the Eleventh Circuit. Petitioner first asserted that no COA was required for this Court to review the district court's order dismissing his § 2241 petition without prejudice pursuant to the *Younger* abstention doctrine, because it was not a "final order" for purposes of § 2253(c). Alternatively, Petitioner argued that if a COA were required, one should issue as to whether the district court was correct to abstain from exercising its jurisdiction pursuant to *Younger*.

9. The State responded with three arguments. First, it asserted that because dismissal of a petition pursuant to *Younger* abstention is a denial on procedural grounds, a COA is required under *Slack v. McDaniel*, 529 U.S. 473 (2000). Second, the State argued that no COA was warranted because reasonable jurists could not debate the district court's abstention ruling. *Id*. at 9-10. Finally, in a footnote, the State also argued that Petitioner's claim provided no basis for federal habeas corpus relief because the time for commencing a civil commitment action was a matter of state law binding on federal habeas courts. *Id*. at 6 n.1.

10. In reply, Petitioner asserted that a dismissal on *Younger* grounds was actually akin to a dismissal for lack of jurisdiction and therefore not a "final order" for purposes of § 2253(c). Alternatively, Petitioner argued that if a COA is required,

one should issue on whether *Younger* abstention was appropriate.

As to the State's statute of limitations argument, Petitioner noted that the district court did not make any findings as to whether the civil commitment proceedings were filed within any applicable statute of limitations. Therefore, he argued, the Eleventh Circuit was not tasked with whether, in fact, a statute of limitations violation occurred, but only whether reasonable jurists could debate the constitutional questions raised by Petitioner's statute of limitations claim. In support of this argument, Petitioner cited *Miller-El v. Cockrell*, 537 U.S. 322, 336-37 (2003), for the proposition that § 2253(c) "forbids" an appellate court from "full consideration of the factual and legal basis adduced in support of the [underlying constitutional] claims."

11. On February 13, 2023, a single Eleventh Circuit judge denied Petitioner a COA. App. A-2. The single-judge did not mention *Younger* abstention or whether a COA was required to appeal the dismissal of a § 2241 petition based on *Younger* abstention. Nor did it mention *Stogner v. California*, the Ex Post Facto Clause, *Barker v. Wingo*, or due process. Rather, it concluded that "reasonable jurists would not debate the district court's determination that James did not state a valid basis for the denial of a constitutional right" because his "claim that he is being unlawfully detained[] because the civil commitment petition relies on convictions that are barred by the state statute of limitations, is predicated upon a state-created right, and '[t]he writ of habeas corpus was not enacted to enforce State-created

rights.'" *Id*. at 2 (quoting *Cabberiza v. Moore*, 217 F.3d 1329, 1333 (11th Cir. 2000)).

The single-judge order further stated, "[e]ven assuming, *arguendo*, that James could enforce a state-created right through his habeas corpus petition, a federal court 'must follow the state court's interpretation of state law,' and Florida's Second District Court of Appeals determined that the statute of limitations that he relies upon does not apply to the Jimmy Ryce Act." *Id*. at 2 (citing *Hunt v. Tucker*, 93 F.3d 735, 737 (11th Cir. 1996)).

12. Petitioner's motion for reconsideration of the single-judge order was summarily denied by a two-judge panel. App. A-1.

REASONS FOR GRANTING THE WRIT

I. The decision below concluding that Petitioner's claim of delay in the commencement of his civil commitment proceedings "is predicated upon a state-created right" conflicts with other lower courts decisions holding that such claims implicate due process.

There is a split in the circuits as to whether a petitioner's claim of delay in the commencement of his civil commitment proceedings is constitutional in nature, or whether, as the Eleventh Circuit held below, it "is predicated upon a state-created right." This disagreement warrants this Court's consideration.

"The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005); U.S. Const., 14th Amend. It "provides that certain substantive rights – life, liberty, and property – cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). The minimum requirements of procedural due process "are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Vitek v. Jones*, 445 U.S. 480, 491 (1980).

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks omitted). In *Mathews*, this Court articulated a three-factor balancing test for resolving what process is constitutionally due. *See id.* The analytical framework set forth in *Mathews* has

been applied in many contexts, including in the area of involuntary civil commitment and treatment. *See, e.g., Heller v. Doe by Doe* (1993) 509 U.S. 312, 331 (1993) (involuntary commitment of mentally retarded persons); *Addington v. Texas*, 441 U.S. 418, 419–420, 425 (1979) (involuntary civil commitment proceeding).

This Court has also utilized a different balancing test, one modeled on constitutional speedy trial principles, to address claims of post-deprivation pretrial delay in the context of civil forfeiture proceedings. In *U.S. v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in U.S. Currency*, 461 U.S. 555, 556 (1983), the issue was "whether the Government's 18–month delay in filing a civil proceeding for forfeiture of the currency violate[d] the claimant's right to due process of law." Federal customs officials had seized $8,850 in currency from the claimant as she passed through customs at Los Angeles International Airport, and the claimant argued the delay between the seizure and the initiation of the forfeiture trial violated her due process right to a hearing at a meaningful time. *Id*. at 562. The Court concluded that the claim "mirrors the concern of undue delay encompassed in the right to a speedy trial" and determined that the "balancing inquiry" adopted in *Barker v. Wingo*, 407 U.S. 514 (1972), to evaluate constitutional speedy trial claims in criminal cases "provides an appropriate framework for determining whether the delay here violated the due process right to be heard at a meaningful time." *Id*. at 564. The Court recognized, however, that "[t]he deprivation in *Barker* – loss of liberty – may well be more grievous than the deprivation of one's use of property at

issue" in a civil forfeiture and, consequently, "the balance of the interests, which depends so heavily on the context of the particular situation, may differ." *Id*. at 565, n.14.

It is not entirely clear which analytical framework – *Mathews, Barker* or some amalgam – this Court might employ in evaluating a procedural due process claim of excessive pre-trial delay in the context of involuntary civil commitments. However, it is beyond peradventure that civil commitment proceedings like those under the Jimmy Ryce Act raise due process concerns. *See Addington*, 441 U.S. at 425 ("[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."); *State v. Goode*, 830 So.2d 817, 823 (Fla. 2002) ("[T]here are significant and substantial liberty interests involved with the involuntary and indefinite detentions provided for under the Ryce Act."). In light of these concerns, it is not surprising that the Ninth Circuit, like the district court below, has analyzed claims of delay in the commencement of civil commitment proceedings under the four-part test governing speedy trial rights articulated in *Barker v. Wingo*, 407 U.S. 514 (1972). *See Page v. Lockyer*, 200 F. App'x 727, 728 (9th Cir. 2006). Moreover, a California appellate court has found that the delay in bringing a commitment petition violated due process under both *Barker* and *Mathews v. Eldridge*, 424 U.S. 219 (1976). *See People v. Litman*, 162 Cal. App. 4th 383, 395-406 (2008).

The Eleventh Circuit, however, determined that no certificate of appealability

should issue to consider the due process implications of Petitioner's civil commitment because whether there was any delay in his commitment proceedings was a matter of state law, and habeas corpus was not enacted to enforce state-created rights. App. A-2 at 2. Petitioner will therefore briefly explain the statute of limitations issue involving civil commitment proceedings in Florida.

Florida's civil commitment statute, the Jimmy Ryce Act, does not contain a statute of limitations, but there is no doubt that proceedings under the Act are civil in nature. *Boatman v. State*, 77 So.3d 1242, 1247 (Fla. 2011) (citing *Mitchell v. State*, 911 So.2d 1211, 1215 (Fla. 2005)). The Florida Supreme Court has adopted rules specific to the Act, entitled the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, and abbreviated as Fla. R. Civ. P.-S.V.P. *In re Fla. Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators*, 13 So. 3d 1025 (Fla. 2009); see generally Fla. Const. Art. V, section 2(a) (providing Florida Supreme Court with exclusive authority to adopt rules for practice and procedure in Florida courts).[1] These Rules make clear that a proceeding under the Act is a "civil action" brought by the State of Florida. *In re Fla. Rules*, 13 So. 3d 1025 (appendix) (citing Fla. R. Civ. P.-S.V.P 4.010 & 4.040); *see also* Fla. Stat. § 394.9125-.914.

Where a civil proceeding lacks a statute of limitations, Florida law also

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[1] Unless the Act or Act-specific Rules state otherwise, the Florida Civil Rules of Procedure apply. Fla. Stat. § 394.9155(1).

provides that its catch-all civil statute of limitations provision applies. *See* Fla. Stat. § 95.011 ("A civil action or proceeding, called 'action' in this chapter, including one brought by the state . . . shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere."). The statute of limitations for Florida civil actions "on a judgment or decree of a court of record in this state," provides that such actions must be commenced within 20 years. Fla. Stat. § 95.11(l). A four-year limitations period applies to civil actions that are not specifically provided elsewhere in the statute. Fla. Stat. § 95.11(p).[2] After expiration, "any actions" concerning "the same subject matter" are barred by the doctrine of laches. Fla. Stat. § 95.11(6). Accordingly, even if the 20-year statute of limitations specified by Florida law applied to the State's commencement of civil commitment proceedings against Petitioner predicated on his 1989 judgments of conviction, that limitations period expired in 2009.

But no matter which statute of limitations applies, reasonable jurists could nonetheless debate whether a claim asserting delays in the commencement of civil commitment proceedings involves a deprivation of liberty implicating the constitutional right to due process, warranting a certificate of appealability.

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[2] At least one Florida judge has suggested that the statute of limitations for initiating Jimmy Ryce Act proceedings may be as short as four years. *See Anderson v. State*, 93 So. 3d 1201, 1222 n. 15 (Fla. Dist. Ct. App. 2012) (Wetherell, J., concurring) ("Because the Jimmy Ryce Act provides no express limitation on the state's ability to file a commitment proceeding, a four-year limitations period applies pursuant to section 95.11(p), Florida Statutes.").

To obtain a certificate of appealability, the applicant must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). Such is the case here. In light of the Ninth Circuit's decision in *Page v. Lockyer*, and the California appellate court's decision in *People v. Litman*, reasonable jurists have already concluded that delays in civil commitment proceedings implicate due process concerns. *See Page*, 200 F. App'x at 728; *Litman*, 162 Cal. App. 4th at 395-406. Petitioner has therefore demonstrated that reasonable jurists could debate the Eleventh Circuit's conclusion that Petitioner's claim involved only a matter of state law. This Court's review of its decision denying Petitioner a certificate of appealability is therefore warranted.

Finally, this question is important. As of April 2022, the most recent data available, Florida has screened more than 82,200 offenders for assessment under the Jimmy Ryce Act, referred 2,005 for commitment, and of the 537 prisoners held at Florida's civil commitment center, 110 were detained awaiting commitment proceedings. *See Dep't of Law Enforcement: Sexual Offenders*, Florida Office of Program Policy Analysis and Governmental Accountability (OPPAGA), available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1079 (last accessed June 20, 2023). Whether a delay in the commencement of these proceedings implicates due process will therefore have implications in a substantial

number of cases, and this Court's intervention is warranted.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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