No. 23-254

IN THE

Supreme Court of the United States

SEAN GUILDAY,

Petitioner,

v.

CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE COUNTY RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

Should the Supreme Court review the constitutionality of involuntary examination and involuntary commitment under the Pennsylvania Mental Health Protections Act (MHPA) 50 Pa. Stat. Ann. §7101 *et seq.* when Petitioner declined to seek such relief in his Complaint thus failing to place Respondents or the lower courts on notice of any constitutional challenge to the MHPA?

INTRODUCTION

The Statement of Questions of the Petitioner fails to concisely express issues in relation to the circumstances of the case at hand as required by Rule 14(a).

Petitioner fails to identify the precise issues which were posed, argued and decided in the proceedings below, and rather requests the Court to address issues which were not raised as a prayer for relief in the Complaint.

Plaintiff seeks this Court to overrule longstanding decisional authority beyond of the context of any claim or controversy pled in his Complaint and not raised in the proceedings below.

The Counterstatement of Questions Presented seeks to consolidate the issue, without conceding the jurisdiction of the Court to review same.

Specifically, in the courts below, Petitioner brought claims against, *inter alia*, the County Respondents

alleging civil rights violations under 42 U.S.C. §1983[1] relating to the issuance of a warrant for emergency examination pursuant to the Pennsylvania Mental Health Procedures Act (MHPA), 50 Pa. Stat. Ann. §7302(a)(1), which resulted in his involuntary examination and involuntary commitment between June 2, 2020 and June 9, 2020.

Nowhere in the four corners of the Complaint of Petitioner was a challenge made to the constitutionality of the Pennsylvania Mental Health Procedures Act, 50 Pa. Stat. Ann. §7101 *et seq.*

Rather, Petitioner alleged constitutional violations under the *Monell v. Department of Social Services* line of cases. *Id.* 436 U.S. 658, 694 (1978) (stating "when a county is merely enforcing state law, without adopting any particular policy of its own, it cannot be held liable.)

The District Court appropriately exercised its discretion and declined to address the constitutionality of the Act as the challenge was not raised in the Complaint.

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1. 42 U.S. Code § 1983 - Civil action for deprivation of rights, states in pertinent part:

> 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….

As noted by the Third Circuit Court in its opinion affirming in part and vacating in part, it was not until the County Respondents asserted in their Motion to Dismiss that Petitioner was not challenging the constitutionality of the MHPA did Petitioner file a Motion for Declaratory Relief challenging the constitutionality of the MHPA. Thereafter, the Motion for Declaratory Relief was denied. (A 62)

The Third Circuit further noted that the argument raised by Petitioner in his brief seeking to enjoin "any unconstitutional…statutes" in his Complaint was insufficient to put the Appellees or the District Court on notice that he was challenging the MHPA. Pursuant to *United States v. Anthony Dell'Aquilla. Enters. And* Subsidiaries, 150 F.3d 329, 335 (3d Cir. 1998), the court determined that there were no exceptional circumstances to review the issue. (A 62-63)

Petitioner presents no exceptional circumstances as to why this Court ought to review a matter which was not properly brought before the lower courts.

Regardless, the constitutionality of the MHPA has been previously reviewed by the Third Circuit in the matter of *Doby v. DeCrescenzo*, 171 F.3d 858 (3rd Cir. 1999) (upholding MHPA procedures under Fourth Amendment).

OBJECTIONS TO JURISDICTION

Respondent objects to jurisdiction as Petitioner does not have standing to challenge the constitutionality of the Pennsylvania Mental Health Procedures Act ("MHPA"), 50 Pa. Stat. Ann. §7101 *et seq.* where he failed to raise a

constitutionality challenge to the MHPA in his complaint in the District Court.

Absent an actual controversy, Petitioner's presented question is moot.

As the Third Circuit accurately noted, although Petitioner asserted "numerous detailed constitutional challenges to the statutory procedures involved in the involuntary process… he did not raise a constitutional challenge to the MHPA in his complaint in the District Court. Rather, [Petitioner] argued in his complaint that [County Respondent]'s policies and procedures implementing the MHPA violated his constitutional rights." (A 62)

Thereafter, in response to the County Respondent's Motion to Dismiss, Petitioner filed a Motion for Declaratory Relief in the District Court challenging the constitutionality of the MHPA. (ECF 33) Petitioner, for the first time, asserted that warrants issued pursuant to §302(a)(1) of the MHPA may cause constitutional deprivations. (ECF No. 33, at 18-24).

Without any actual controversy before the Court, Petitioner sought "to prevent the further use of this statute against him." (ECF No. 33, at 25).

The District Court properly denied the Motion for Declaratory Relief. (ECF 83)

Petitioner's issue challenging the constitutionality of the MHPA is now moot, as there is no live controversy

following his discharge and expungement of his record[2], as Petitioner concedes at page 5 of his Petition. Thus no justifiable controversy exists challenging the constitutionality of the MHPA.

Despite not having standing to do so, Petitioner now seeks Certiorari review of the facial constitutionality of the Pennsylvania MHPA.

Jurisdiction, if any, would exist pursuant to 28 U.S.C. §1254, which Respondent contends is not merited based upon the lower court determinations upon the record.

STATEMENT OF THE CASE

Petitioner failed to provide the Court with adequate underlying facts in this matter to support a request for certiorari review. Respondents offer the following facts in response.

Petitioner filed a Civil Action Complaint in the Eastern District of Pennsylvania on April 28, 2021 against Tracy Halliday; County of Delaware; The Delaware County Office of Behavioral Health; The Delaware County Office of Behavioral Health, Division of Mental Health, Adult; and Dion Gilliard ("County Respondents"); Crisis Center at Crozer-Chester Medical Center; Prospect CCMC LLC d/b/a Crisis Center at Crozer-Chester Medical Center; Prospect CCMC LLC; Prospect Medical Holdings Inc.;

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2. County Respondents do not concede that, as stated by Petitioner, that "[t]he involuntary examination and involuntary commitment… was found by the local court to be in error and vacated…" (Petitioner Brief, 5)

Darren Piechota, M.D.; Akiba Bailey; Prospect CCMC LLC d/b/a Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; Crozer Health Inpatient Psychiatry in North Campus At Crozer-Chester Medical Center; Amy Bebawi, M.D.; John/Jane Doe (The Director of Facility, Crozer Health Crisis Center at Crozer-Chester Medical Center) ("Crozer Respondents"); and Pennsylvania Department of Human Services and Meg Snead, Acting Commonwealth Secretary of the Department of Human Services ("Commonwealth Respondents"), challenging his involuntary mental health commitment pursuant to the Pennsylvania Mental Health Procedures Act, alleging civil rights violations under 42 U.S.C. §1983.[3]

As stated by the Petitioner, on May 14, 2020, the County Administrator issued a warrant[4] for emergency examination pursuant to the Mental Health Procedures

3. 42 U.S. Code § 1983 - Civil action for deprivation of rights, states in pertinent part:

> 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….

4. Absent from Petitioner's Declaration of Case, and as required to be disclosed by Supreme Court Rule 15, was that the behavior upon which was the basis for issuance of the warrant pursuant to 50 Pa. Stat. Ann. §7302(a)(1) occurred on two and three days before the warrant was issued.

Act ("MHPA"), 50 Pa. Stat. Ann. §7302(a) on application by his father, who happens to be a physician at Crozer-Chester Medical Center.

Ultimate execution of the warrant occurred on June 2, 2020 (and pursuant to the May 14, 2020 warrant), at which time Petitioner was transported to the Crisis Center at Crozer-Chester Medical Center ("Crisis Center") by the Nether Providence Township Police, being an entity not named in this matter, at the request of his mother.[5]

In his Complaint, Petitioner asserted a claim under the U.S. Const. amends. IV, V, VI, VIII and XIV rights for deprivation of substantive and procedural due process of law, in violation of the Civil Rights Act, 42 U.S.C. §1983 ("1983"). Count VIII asserted a common law claim for gross negligence against the County parties.

No facial challenge to the constitutionality of the MMPA was pled by Plaintiff in his Complaint.

On the Motions to Dismiss of all defendants, the District Court dismissed all federal claims with prejudice, and dismissed Petitioner's state law claims without prejudice. (A. 15, 55)

On appeal to the Third Circuit, the court affirmed the orders below, vacating a limited portion of the District Court decision to permit further proceedings as to whether Petitioner stated a claim under the Fourth

5. This fact likewise was not disclosed by the Petitioner; however, as required by Supreme Court Rule 15, is disclosed herein.

Amendment based on a "delay in execution of his warrant or could amend his complaint to do so if he provided additional factual information regarding the issuance and execution of his warrant." (A 61)

The limited issue remanded to the Eastern District of Pennsylvania pertains to liability under the *Monell v. Department of Social Services* line of cases. *Id.* 436 U.S. 658, 694 (1978). *See also, Doby v. DeCrescenzo*, 171 F.3d 858, 869 (noting that "when a county is merely enforcing state law, without adopting any particular policy of its own, it cannot be held liable under the *Monell [v. Dep't of Soc. Servs*., 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)] line of cases").

Under *Monell*, liability only attaches where a municipal policy or custom—separate and distinct from the state law—causes an employee to violate one's civil rights. *Williams v. Borough of West Chester*, 891 F.2d 458, 467 (3d Cir. 1989). Absent deliberate indifference on the part of a municipal employee, the municipality cannot be deemed to have committed a constitutional violation. *Simmons v. City of Philadelphia*, 947 F.2d 1042, 1062 (3d Cir. 1991) *cert. denied* 503 U.S. 985, 112 S.Ct. 1671, 118 L.Ed.2d 391 (1992).

Separate from the limited remanded issue, Petitioner now seeks certiorari review challenging the constitutionality of involuntary examinations and involuntary commitments pursuant to the MHPA.

REASONS FOR DENYING THE PETITION

A. Petitioner fails to present a compelling reason for the grant of certiorari

The Petitioner's Writ of Certiorari does not present a compelling reason for the Court to exercise its judicial discretion.

Petitioner fails to identify any applicable decision entered by another United States Court of Appeals that conflicts with that entered by the Third Circuit Court of Appeals in this matter.

Petition fails to identify an applicable decision by a state court of last resort that conflicts with the Third Circuit Court of Appeals in this matter.

Further Petitioner fails to identify any appropriate reason to call for an exercise of this Court's supervisory power. *See* U.S. Sup. Ct. R. 10(a).

While Petitioner presented a lengthy and redundant recitation of decisional case law involving procedural due process and conclusory assertions of "dehumanizing abusive forced nonconsensual government compelled psychiatric and psychological torture," (*i.e.* Petitioner's Brief 43), Petitioner failed to pose a question appropriate for this Court's review in the Petition for Writ of Certiorari.

B. Beyond the aforementioned Jurisdictional deficits, the Supreme Court routinely found that involuntary evaluations and involuntary commitments statutes are constitutional

Petitioner seeks a declaration of unconstitutionality of involuntary examinations and involuntary commitments on overbroad, conclusory statements outside the context of the actual facts of the instant matter. Petitioner misquotes and misapplies various cases in support of his claims of unconstitutional deprivations of due process rights.

Although freedom from physical restraint "has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action," that liberty interest is not absolute. *Foucha v. Louisiana*, 504 U.S. 71, 80, 118 L. Ed. 2d 437, 112 S. Ct. 1780 (1992).

The Court recognized that an individual's constitutionally protected interest in avoiding physical restraint may be overridden even in the civil context:

> "[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly free from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members."

Jacobson v. Massachusetts, 197 U.S. 11, 26, 49 L. Ed. 643, 25 S. Ct. 358 (1905).

This Court further acknowledged in the matter of *Kansas v. Hendricks*, 521 U.S. 346, 356-57, 117 S. Ct. 2072, 2079-80 (1997) that States have in certain narrow circumstances provided for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public health and safety. *See, e.g.,* 1788 N. Y. Laws, ch. 31 (Feb. 9, 1788) (permitting confinement of the "furiously mad"); *see also* A. Deutsch, THE MENTALLY ILL IN AMERICA (1949) (tracing history of civil commitment in the 18th and 19th centuries); G. Grob, MENTAL INSTITUTIONS IN AMERICA: SOCIAL POLICY TO 1875 (1973) (discussing colonial and early American civil commitment statutes).

Involuntary commitment statutes have consistently been upheld by this Court provided the confinement takes place pursuant to proper procedures and evidentiary standards. *See, Foucha*, at 80; *Addington v. Texas*, 441 U.S. 418, 425, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979) ("In considering what standard should govern in a civil commitment proceeding, we must assess both the extent of the individual's interest in not being involuntarily confined indefinitely and the state's interest in committing the emotionally disturbed under a particular standard of proof."). It thus cannot be said that the involuntary civil confinement of a limited subclass of dangerous persons is contrary to our understanding of ordered liberty. *Cf. id.*, at 426.

In procedural due process claims, the deprivation by state action of a constitutionally protected interest in "life, liberty, or property" is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law. Parratt v. Taylor,* 451 U.S. 527,

537 (1981); *Carey* v. *Piphus*, 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property").

The constitutional violation actionable under §1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process. Therefore, to determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate.

This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law. *Zinermon v. Burch,* 494 U.S. 113, 125-26, 110 S. Ct. 975, 983 (1990) (noting that substantive due process violations are actionable under § 1983).

"The Due Process Clause at most guarantees *process*. It does not… 'forbi[d] the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided.'" *Dodds v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2301 (2022) (citing *Reno* v. *Flores*, 507 U. S. 292, 302, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993); see also, *e.g.*, *Collins* v. *Harker Heights*, 503 U. S. 115, 125, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992).)

1. The MHPA provides procedural protections to ensure due process

The procedural protections afforded under the MHPA are reviewed at length in the matter of *In the Interest of*

F.C., III, 2009 PA Super 9, 966 A.2d 1131 (2009) (appeal affirmed *In the Interest of F.C. III*, 607 Pa. 45, 56, 2 A.3d 1201, 1207 (2010)).

Under 50 P.S. § 7302 ("Section 302"), a county administrator may issue a warrant requiring a person to undergo an involuntary emergency examination at a treatment facility and directing a peace officer to take such a person to the facility specified in the warrant. The warrant may issue upon reasonable grounds that the person is severely mentally disabled and in need of immediate treatment. 50 P.S. § 7302(a)(1).

The term "severely mentally disabled" is defined within the MHPA and defines same as a person who, as a result of mental illness, poses a clear and present danger to himself, herself or others. 50 P.S § 7301(a).

After being transported to the specified facility, the person is examined by a physician. 50 P.S. § 7302(b). Depending on the results of the examination (*i.e.*, whether treatment is required), the person is either discharged or treated. Id.

If treated, the person may not be held involuntarily for more than one hundred twenty hours unless, upon application, the Court of Common Pleas orders extended involuntary treatment. 50 P.S. § 7303 ("Section 303").

If such an application is filed, the court then appoints counsel for the person and, within twenty-four hours of the filing of the application, an informal hearing is held. 50 P.S. § 7303(b).

At the start of that hearing, the court informs the person of the purpose of the hearing. 50 P.S. § 7303(c). The informal hearing may result in extended treatment which, at that point, may not exceed twenty days. *Id.*

The MHPA then provides for possible judicial review of the extended treatment order and/or for additional periods of commitment for increasing amounts of time based on additional hearings. 50 P.S. §§ 7303-05.

As the number and length of involuntary commitments increase, so do the procedural safeguards afforded to the committed person in connection with each hearing. *See In re: R.D.*, 1999 PA Super 226, 739 A.2d 548, 555-57 (Pa. Super. 1999) (discussing increased procedural protections such as evidentiary formalities as length of commitment increases).

The initial infringement of liberty interests when the person is transported to a treatment facility, subjected to an involuntary examination and treatment and then placed before an informal hearing for a possible twenty-day commitment, takes place with minimal due process or other constitutional guarantees. However, it is nevertheless constitutionally sound in light of the therapeutic and non-punitive intent and short duration of the Section 302 procedures. *In Re: J.M.*, 556 Pa. 63, 726 A.2d 1041, 1046-49 (Pa. 1999).

The increasing procedural protections associated with extended treatment, later hearings, and ongoing commitments under Sections 303-305 then satisfy the increasing demands of due process. *In re: R.D.*, 739 A.2d at 555-56.

2. Petitioner fails to provide any analysis of *Doby v. DeCrescenzo*, 171 F.3d 858 (3d Cir. 1999)

Absent from the Petition for certiorari is any substantive discussion of *Doby v. DeCrescenzo*, 171 F.3d 858 (3d Cir. 1999), which reviewed issues of constitutionality of the MHPA.

Doby noted that the courts have stated repeatedly that due process is a flexible notion and that what kind of process is due depends on the individual and state interests at stake. *See, e.g., Zinermon v. Bush*, 494 U.S. 113, 127, 110 S.Ct. 975, 984 (1980).

It may be reasonable, therefore, for a state to omit a provision for notice and a hearing in a statute created to deal with emergencies, particularly where the deprivation at issue, in this case detention for a maximum of several hours to permit an examination, continues for only a short period of time. *See Memphis Light, Gas and Water Div. v. Craft*, 436 U.S. 1, 19, 98 S.Ct. 1554, 1565 (1978) (stating that "[o]n occasion, this Court has recognized that where the potential length or severity of the deprivation does not indicate a likelihood of serious loss and where the procedures underlying the decision to act are sufficiently reliable to minimize the risk of erroneous determination, government may act without providing additional `advance procedural safeguards' ").

Further, the *Doby* court affirmed that the MHPA is constitutional under the Due Process Clause and the Fourth Amendment even if non-physicians are allowed to petition for section 7302 warrants. *Id.* at 875.

Petitioner did not presented any holding in conflict with *Doby*, sufficient to review this matter.

C. Petitioner's request for the Court to "overrule the *Slaughter House Cases*" is irrelevant to the instant matter

Separate from his request to declare the MHPA unconstitutional, Petitioner seeks review of the *Slaughter-House Cases* in conjunction with his claims under the Fourteenth Amendment. Of note, Petitioner never sought application of or review of the *Slaughter House* cases in any of his filings in the lower courts. Review of same at this time is neither preserved nor appropriate.

As outlined by *McDonald v. City of Chi.*, 561 U.S. 742, 754, 130 S. Ct. 3020, 3028 (2010), the *Slaughter-House Cases*, involved challenges to a Louisiana law permitting the creation of a state-sanctioned monopoly on the butchering of animals within the city of New Orleans. Justice Samuel Miller's opinion for the Court concluded that the Privileges or Immunities Clause protects only those rights "which owe their existence to the Federal government, its National character, its Constitution, or its laws." *Id.*, at 79, 83 U.S. 36, 21 L. Ed. 394. The Court held that other fundamental rights--rights that predated the creation of the Federal Government and that "the State governments were created to establish and secure"--were not protected by the Clause. *Id.*, at 76, 83 U.S. 36, 21 L. Ed. 394.

There is no need to reconsider the interpretation of *Slaughter House* here as the question of the rights protected by the Fourteenth Amendment against state

infringement has been analyzed under the Due Process Clause of that Amendment and not under the Privileges or Immunities Clause. *McDonald*, 561 U.S. at 758, 130 S. Ct. at 3030-31 (2010).

Petitioner misstatements and misapplications of law throughout his Petition are most notably apparent in his reference to this Court's recent opinion in *Dodds v. Jackson Women's Health Organization*, 597 U.S. 6 (2022), suggesting to the Court that any commentary was made as to the *Slaughter House Cases*. Rather, the Court commentary was limited to the context of the holding of *Roe v. Wade*, 410 U.S. 113 (1973), stating "*Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences." *Dodds, at* 2243.

The Court should decline any review or analysis of the *Slaughter-House* holding as it is inapplicable to Petitioner's case.

CONCLUSION

For all the aforementioned reasons, the Petition for Writ of Certiorari ought to be denied.

Respectfully Submitted on the 16th day of October 2023.

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