No. 17-9517

IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY J. DENOMA, Petitioner pro se

vs.

JOHN R. KASICH, ET AL, RESPONDENTS

JSTICE ELENA KAGAN

On Rule 44. PETITION FOR REHEARING
of Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit No's. 16-3120 and 16-3839
United States District Court Southwestern Ohio No. 1:15-cv-594

PETITION FOR REHEARING
of cohesive Civil Rights Complaint Petition for Writ of Habeas Corpus
Ex Post Facto, Cruel and Unusual Punishment, Due Process of Law, Equal Protection,
and federal questions of Respondent's Qualified immunity status

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UNITED STATES CONSTITUTION

Supporting Legal Argument

DeNoma hereby solemnly declares that he is an unrepresented indigent prisoner unskilled in presenting legal arguments, whose claims are grounded on the substantive issues of his first-time offender civil rights final judgment case-law rehabilitation legal status exemption from sex offender registration requirements and statutorily entitled one-third diminution of sentence that shall not be forfeited for any reason prior to July 1, 1996, under former Ohio Revised Code Chapter 2950 Habitual Sex Offender Registration Act, and Sections 2967.19(A)(E) Good Time Reduction of Sentence and 2967.19.3 Earned Credit reduction of Sentence rendering DeNoma's sentence expired. And that DeNoma's initial Complaint sufficiently alleges Defendant's arbitrary Constitutional Separation of Powers violations with manifest disregard for the clearly established law, acting with deliberate indifference, conducting a continuing corrupt organizational conspiracy implementing instead different, unreasonable, ambiguous and punitive new statutory interpretations, and policies of new sex offender sentencing laws. Endangering and further disadvantaging DeNoma making more onerous and burdensome the punishment for his past conduct, depriving DeNoma of his fundamental civil rights of substantive and procedural Due Process of Law Equal Protection in violation of the United States Constitution Article I, § 10, Fifth, Sixth, Eighth, and Fourteenth Amendment Ex Post Facto, Cruel and Unusual Punishment, Due Process of Law Equal Protection Clauses, and in violation of United States Code 18 U.S.C. § 241, § 242, § 1962; 42 U.S.C. § 1981, § 1983 and § 1985.

Consequently also causing the lower federal courts to deny findings, conclusions and declaratory judgment on the substantive issues of the applicable law of DeNoma's case, in disregard of among other things DeNoma's Constitutional Ex Post Facto, Cruel and Unusual Punishment and Equal Protection claims, also causing DeNoma to be denied a de novo appellate review of the substantive issues of the law of his case, and Ex Post Facto claims, and Defendant's immunity status. Depriving DeNoma of his fundamental substantive and procedural Due Process of Law Equal Protection rights.

Denying DeNoma his right to a stay of his civil rights claims pending an expeditious and final disposition of his hybrid cohesive Petition for Habeas Corpus. Denying DeNoma attorney representation, the right to amend and supplement his pleading and participate in any oral hearing by telephone, video conference telecommunications technology. Denying DeNoma the process, service, discovery, witnesses and same remedies as are provided for by law in other cases under United States Code 18 U.S.C. § 1964(c); 42 U.S.C. § 1981, § 1983, § 1985, § 1997e.(f); 28 U.S.C. § 1915(a), (d), § 2201, § 2241, § 2242, § 2243, § 2253, § 2254, in violation of the Fourteenth Amendment of the United States Constitution. Consequently in this instant case the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings affirming and sanctioning such a departure by the lower district court, effectively deciding important federal questions in a way that conflicts with relevant decisions of this Court, as to call for an exercise of this Courts supervisory powers.

The statutory terms existing at the time of DeNoma's offenses and final judgments constitute the contract terms of DeNoma's negotiated Plea agreement under the Sixth Amendment of the United States Constitution.

> "New Hampshire's Constitution Part I, Article 23 establishes that "Retroactive laws are highly injurious, oppressive and unjust. No such laws … should be made, either for the decision of civil causes, or the punishment of offenses."
>
> Likewise Ohio's Constitution Part II, Section 28 establishes that the state's "general assembly shall have no power to pass retroactive laws or laws impairing the obligation of contracts."
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> "The concept of proportionality is central to the Eight Amendment. Embodied in the Constitution's ban on cruel and unusual punishments is the precept of justice that punishment for crimes should be graduated and proportioned to the offense." Graham v. Florida (2010), 130 S.Ct. 2011, 2021, 560 U.S. 48, 59.
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> " The doctrine of Separation of Powers is implemented by a number of constitutional provisions … Bills of attainder, ex post facto laws, and laws impairing the obligations of contracts." United States v. Brown (1965), 85 S.Ct. 1707, 1711-1715.

> "The Sixth Circuit Court of Appeals explained in Howard v. Grinage, 82 F.3d 1343, 1350 (U.S. 6th Cir. 1996), 'substantive due process prohibits the government's abuse of power or its use for the purpose of oppression, and procedural due process prohibits arbitrary and unfair deprivations of protected life, liberty, or property interests without procedural safeguards." Perry v. Quill, 2010 WL 3659591 *4 (U.S., S.D. Ohio 2010).

> "The Ex Post Facto clause ... provided a powerful check on the states when they have sought to punish socially disfavored persons without prior notice. As Chief Justice John Marshall explained in Fletcher v. Peck: Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. 10 U.S. 87, 137-38, 3 L.Ed. 162 (1810). The guarantee is, as James Madison put it, a constitutional bulwark in favor of personal security and private rights." Does v. Snyder, 834 F.3d 696, 699 (U.S. 6th Cir. 2016).

Since DeNoma's rehabilitation legal as a first time offender found to be non-dangerous, the lowest risk, and unlikely to re-offend, exempt from sex offender registration requirements and statutorily entitled to a substantive one-third diminution of sentence that shall not be forfeited for any reason, instituted by final judgments under the applicable prior law-of-DeNoma's-case, Defendant's arbitrary implementation of different new statutory interpretations and new sex offender sentencing policies depriving DeNoma of his statutory statutory rehabilitation, canceling DeNoma's statutory good-time and earned-credit diminution of sentence, endangering and falsely imprisoning DeNoma day for day for the maximum 25 years, invidiously endangering DeNoma and his next of kin by unlawfully posting their personal information on Ohio's public interstate electronic Sex Offender Registration Notification (eSORN) computer website registry, and arbitrarily retroactively subjecting DeNoma to post-release burdens, duties, obligations and liabilities of new sex offender registration laws as applied to DeNoma:

a.) violates the Ex Post Facto Clause of Article I, § 10, of the United States Constitution;

b.) violates the Cruel and Unusual Punishment Clause of the Eighth Amendment of the United States Constitution;

c.) violates the procedural due process requirements of the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

d.) violates the substantive due process requirements of the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

e.) violates the equal protection requirements of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. See Millard v. Rankin, 265 F.Supp.3d 1211; and Does v. Snyder, 834 F.3d 696 (U.S. 6th Cir. 2016), U.S. Supreme Court certiorari denied Snyder v. Does, 2017 U.S. LEXIS 4754.

> "An ex post facto law possesses two elements: (1) it must apply to events occurring before its enactment, and (2) it must disadvantage the offender affected by it. Lynce v. Mathis, 519 U.S. 433, 441, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997) ... (holding that a Florida statute canceling provisional release credits violated the Ex Post Facto Clause) ... The Supreme Court has held that the retroactive application of parole laws is unconstitutional where inmates can demonstrate with certainty that their punishment increased as a result of the retroactive application. ... see also Weaver v. Graham, 450 U.S. 24, 35-36, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981) (holding that Florida violated the Ex Post Facto Clause when it retroactively applied a statute eliminating gain-time release credits because the elimination 'makes more onerous the punishment for crimes committed before its enactment.' " Dyer v. Bowlen, 465 F.3d 280, 285 (U.S. 6th Cir. 2006).

> "If a state legislature is barred by the Ex Post Facto Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction ... an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question ... 'a federal right turns upon the status of state law as of a given moment in the past-- or, more exactly, the appearance to the individual of the status of state law as of that moment.' " Bouie v. City of Columbia (1964), 378 U.S. 347, 353-354, 84 S.Ct. 1697, 1702-1703.

> "An agency's statement that an amendment is nothing more than a clarification cannot be accepted as conclusive because such a result would enable the agency to make substantive changes in the guise of clarification. ... 'whether a state law is properly characterized as falling under the Ex Post Facto Clause ... is a federal question we determine for ourselves.' Carmell v. Texas, 529 U.S. 513, 146 L.Ed. 2d 577, 120 S.Ct. 1620, 1639 n.31 (2000). When a state law has been applied using different interpretations, the proper inquiry in an ex post facto challenge is whether the current interpretation was foreseeable. ... This analysis comports with the Supreme Court's pronouncement in Weaver that 'lack of fair notice' is a critical element in ex post facto relief. 450 U.S. at 30." Smith v. Scott, 223 F.3d 1195 (U.S. 10th Cir. 2000).

"Liberty and property are broad and majestic terms ... They relate to the whole domain of social and economic fact ... the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money. By the same token, the Court has required due process protection for deprivations of liberty beyond the sort of formal constraints imposed by the criminal process ... 'it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized ... as essential to the orderly pursuit of happiness by free men.' ... It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. ... Property interests ... are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." Board of Regents of State Colleges v. Roth (1972), 408 U.S. 571-572, 577, 92 S.Ct. 2706-2707, 2709.

"The Court sought, through Paul, to ... ' respect the design of § 1983, a statute that reinforces a legal tradition in which protection for persons and their rights is afforded by the common law and the laws of the States, as well as by the Constitution.' Albright v. Oliver,510 U.S. 266, 284, 127 L.Ed.2d 114, 114 S.Ct. 807 (1994) (Kennedy J., concurring in the judgment). Doe v. Department of Public Safety, 271 F.3d 38, 46, 53.

DeNoma's initial hybrid cohesive Civil Rights Complaint Petition for Writ of Habeas Corpus sufficiently presented the facts and evidence proving the actual deprivation of his rights, privileges and immunities of his Sixth Amendment negotiated contract plea agreement liberty and property rights of statutory rehabilitation business, legal status and final judgment immunities. Effectively alleging Defendant's continuing arbitrary invidious discriminatory 42 U.S.C. § 1985(3) conspiracy directly and indirectly causing the deprivation of DeNoma's rights, privileges and immunities and equal protection of the laws, endangering and falsely imprisoning DeNoma by unconstitutional state custody, preventing and hindering the constituted authorities from giving or securing to DeNoma the equal protection of the laws guaranteed and protected by the Fourteenth Amendment of the United States Constitution in violation of 42 U.S.C. § 1983 and § 1985(3).

"The Supreme Court has stated that ' § 1983 should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.' Malley v. Briggs, 475 U.S. 335, 345, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986) (quoting

Monroe v. Page, 365 U.S. 167, 187, 81 S.Ct. 437, 5 L.Ed.2d 492 (1961))." Powers v. Hamilton County, 501 F.3d, at 606-609 (U.S. 6th Cir. 2007)."Qualified immunity protects all but the incompetent or those who willingly violate the law." Jackson v. Everett, 140 F.3d 1151 (U.S. 8th Cir. Ark.) citing Malley, supra, 475 U.S. 341, 106 S.Ct. 1096 and Hunter v. Bryant, 502 U.S. 227-229, 112 S.Ct. 536-537.

"The only requirement for RICO standing is that one be a person injured in his business of property by reason of a violation of section 1962. 18 U.S.C. § 1964(c). And the Supreme Court has already told us that ' by reason of ' incorporates a proximate cause standard, see Holmes v. Sec. Investor, 503 U.S. 258, 265-68; 117 L.Ed.2d 532; 112 S.Ct. 1311(1992), which is generous enough to include the unintended, though foreseeable, consequences of RICO predicate acts. … There is no room in the statutory language for an additional, amorphous ' racketeering injury ' requirement." Diaz v. Gates, 420 F.3d 897, 901 (U.S. 9th Cir. 2005).

Without Due Process of Law, by automatic rubber stamp application, Defendant's arbitrarily subjected DeNoma retroactively to new sex offender registration law requirements solely on the fact of his past conviction, without regard to find by two courts of non-dangerousness, and denied DeNoma any meaningful appellate process, despite the fact that research (by recent empirical studies) "has consistently shown that sexual offender recidivism rates are among the lowest for any category of offenses, and that this lower risk of sexual offense recidivism steadily declines over time." Doe v. Miami-Dade County, 846 F.3d 1180 (U.S. 11th Cir. 2017), see also Does v. Snyder, 834 F.3d at 704-705 (U.S. 6th Cir. 2016).

"In Preterm Cleveland v. Voinovich (1993), 89 Ohio App. 3d 684, 691, 627 N.E.2d 570, Judge Whiteside wrote: Section 1, Article I, Ohio Constitution, together with Section 2, Article I, Ohio Constitution ... make it quite clear that, under Ohio's Bill of Rights, every person has inalienable rights under natural law which cannot be unduly restricted by government, which is formed for the purpose of securing and protecting those rights... Section 1, Article I, the very first provision of the Bill of Rights, is one of the specific limitations on the state's police power... It guarantees that all citizens have the right to freedom and to the protection of property and reads: 'All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.' ... In Housh v. Peth (1956), 165 Ohio St. 35, 133 N.E. 2d 340, The Supreme Court held that all persons have a right of privacy. It quoted the syllabus of Pavesich v. New England Life Ins. Co. (1905), 122 Ga. 190, 50 S.E. 68, for the proposition that 'A right of privacy is derived from natural law.' ... Therefore, the right of privacy is an inalienable right that is protected by Ohio's Constitution. The right of privacy means ' a right to be let alone '. Housh, at the syllabus, Furthermore, all persons have the right to ' adopt a life of seclusion with a right to remain undisturbed if he or she so desires '. Id., at 39, 133 N.E.2d 340 ... In Kintz v. Harringer (1919), 99 Ohio St. 240, 244, 124 N.E. 168, the court stated: ' Before we ever had an English Magna Charta, or an American Bill of Rights in the form of a constitution, federal or state, one of the most sacred rights of the citizen was the right to a good name and reputation and to be protected in the enjoyment of that good name and reputation '. Furthermore, the court called the right to reputation a ' primary and precious right solemnly proclaimed in Holy Writ, in the lives and literature of our own people '. Id., at 245, 124 N.E. 168. We understand these comments to mean that a person's right to the enjoyment of his reputation is as fundamental as the right of privacy recognized in Housh. It, too, is a ' natural law ' right that is protected by Section 1, Article I of the Ohio Constitution. The Housh court also held that any conduct that would cause shame or humiliation to a person of ordinary sensibilities or that would subject him to public harassment is an actionable tort, Id., at 39, 133 N.E.2d 340. In addition, Section 16, Article I of the Ohio Constitution guarantees that, for any injury done to a person's reputation, he shall have a remedy by due course of law. ... The General Assembly may not completely repeal the fundamental and inalienable rights of any particular class of persons. ... we act not only to protect the rights of those persons convicted of sex offenses, but we act to protect the right of everyone ... Those who succumbed to the political winds ... are apparently willing to tolerate ... and consequently to live in a paranoid society that approaches a police state. If we acquiesce in this, there is no telling what personal liberties are next to be sacrificed. Courts must stand as the bulwark against the constant pressures to erode our constitutional rights." State of Ohio v. Williams (Ohio App. 11th Dist.), 1999 Ohio App. LEXIS 217, 1999 WL 76633 *2-3, *5, 6, 7, 8, 11.

Registration requirements "compels affirmative post-discharge conduct mandating registration, re-registration, disclosure of public and private information, and updating of that information under threat of prosecution ... most of it for public dissemination ... by posting registrants' names, addresses, and employer address on the internet, the Act subjects registrants to community obloquy and scorn that damage them personally and professionally ... There are published reports that offenders are sometimes subjected to protests and group actions designed to force them out of their jobs and homes ... State v. Myers, 260 Kan. 669, 923 P.2d 1024, 1043-44 (1996), cert. Denied, 521 U.S. 1118, 117 S.Ct. 2508, 138 L.Ed.2d 1012 (1997) (holding that public dissemination provision of Kansas registration act, as applied to sex offenders who committed their crimes before act's effective date, violates ex post facto clause of United States Constitution)." Doe v. Alaska (2008), 189 P.3d 999, 1009-1011.

"Much like parolees, they must report in person ... since failure to comply carries with it the threat of serious punishment including imprisonment ... marks registrants as ones who cannot be fully admitted into the community ... making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities ... Indeed, the fact that sex offenders are so widely feared and disdained by the general public implicates the core counter-majoritarian principle embodied in the Ex Post Facto clause." Does v. Snyder, supra, 834 F.3d 703-706.

"Laws are enacted to regulate future conduct and are, in that respect, reasonable ... since the General Assembly may not constitutionally impose a new standard upon past conduct. Retroactive laws and retrospective application of laws have received the near universal distrust of civilizations ... The possibility of the unjustness of retroactive legislation led to the development of two rules ... The rule of statutory construction operated to set the ban against retroactivity upon laws affecting prior acts, events or cases. The second rule, that of constitutional limitation ... This principle of justice was expanded logically from the rule of statutory construction, to ' include a prohibition against laws which commenced on the date of enactment and which operated in futuro, but which, in doing so, divested rights ... which had been vested anterior to the time of enactment of the laws.' ... By its Constitution of 1851, Ohio has quite clearly adopted the above prohibition against retroactive legislation. Section 28, Article II states that: ' The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts ... Accordingly it must be concluded that Ohio has adopted both of the foregoing safeguards against retrospective legislation. The essence of this constitutional limitation and its applicability to laws affecting substantive rights were set forth by this court as follows: 'Under the constitutional prohibition, the general assembly has no power to pass retroactive laws. Art. II, sec. 28. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective or retroactive.' Cincinnati v. Seasongood (1889), 46 Ohio St. 296, 303, 21 N.E. 630, 633." Van Fossen v. Babcock (1988), 36 Ohio St.3d 100, 104-106, 522 N.E.2d 489, 494.

"The Eleventh Amendment does not erect a barrier against suits in federal courts to impose individual and personal liability on state officials under 42 U.S.C. 1983, and those state officials are not absolutely immune from personal liability solely by virtue of ' Official ' nature of their acts; the phrase ' acting in their official capacities ' is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury." Hafer v. Melo (1991), 112 S.Ct. 358, 502 U.S. 21.

"This Court has never suggested that the policy considerations which compel civil immunity for certain government officials also place them beyond the reach of the criminal law. Even judges, cloaked with absolute civil immunity for centuries, could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. § 242, the criminal analog of § 1983." Imbler v. Pachtmen, 96 S.Ct. 984, 424 U.S. 409, 429.

"Absolute immunity is determined by a functional analysis that looks to the nature of the function preformed, not the identity of the actor who performed it ... Only in the absence of subject matter jurisdiction are judicial actors devoid of the shield of immunity." Holloway v. Bush, 220 F.3d 767 (U.S.6th Cir. Ohio). See also Rouse v. Stacy, 478 Fed. Appx. 945, 951, 956 (U.S. 6th Cir. 2012).

"According to the doctrine of qualified immunity, ' government officials preforming discretionary functions generally are shielded from liability for civil damages in sofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' Harlow v. Fitzgerald, 457 U.S. 800, 818, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1982). Qualified immunity involves a two-step inquiry. First, the court must determine whether, based upon the applicable law, the facts viewed in the light most favorable to the plaintiffs show that a constitutional violation has occurred. Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151, 2156, 150 L.Ed.2d 272 (2001). ... Ultimately, qualified immunity is a question of law that is reviewed de novo. See Dickerson, 101 F.3d at 1157." Bell v. Johnson, 308 F.3d 594 (U.S. 6th Cir. 2002).

"With faithfulness to the constitutional union of the States, we cannot leave to the States the formulation of the authoritative law, rules, and remedies designed to protect people from infractions by the States of federally guaranteed rights." Chapman v. State of California (1967), 386 U.S. 18, 21, 87 S.Ct. 824, 826.

"The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate. Martin v. Hunter's Lessee, 1 Wheat. 304, 4 L.Ed. 97; Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5. ... It is now so well settled that the Court was able to speak in Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110, 121, 74 S.Ct. 403, 410, 98 L.Ed. 546, of the ' long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts or constructions upon which federal constitutional issues rest.'. " Napue v. Illinois (1959), 360 U.S. 264, 271-272.

CONCLUSION

Wherefore pursuant to Rule 44, DeNoma hereby prays this Honorable Court to exercise its supervisory powers to provide Due Process of Law Equal Protection rights to DeNoma, by issuing a Writ of Certiorari for DeNoma's hybrid cohesive "Corrupt Organizational Conspiracy Civil Rights Complaint Petition for Writ of Habeas Corpus", and to conduct an appellate review de novo, and decide for itself the involved important federal questions, reverse the district court's dismissal with prejudice of DeNoma's false imprisonment and individual capacity civil rights claims against Defendants, and provide the same process and remedies provided for by law in other cases under United States Code Title 18 Sections 241, 242, 1961, 1962, 1964(c); Title 28 Sections 1915(a)(d), 2201, 2241, 2242, 2243, 2253, 2254; and Title 42 Sections 1981, 1983, 1985, 1997d., e. See attached affidavit.

Anthony J. DeNoma October 5, 2018