

25-5193

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ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL SAN MIGUEL

Petitioner,

FILED

AUG 14 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Versus.

**GREG ABBOTT, *Texas Governor*; MARSHA MCLANE, MICHAEL
SEARCY; JESSICA MARSH; WELLPATH RECOVERY SOLUTIONS;
MANAGEMENT TRAINING CORPORATION**

Respondents.

On petition for writ of certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Samuel San Miguel
Petitioner Acting Pro-Se
2600 S. Sunset Ave,
Littlefield, TX 79339

QUESTION PRESENTED

1. If Texas declares... that the Act which they confined Petitioner under (after he completed his prison sentence) is "civil," but it is actually "criminal," and if... the Supreme Court has clearly established. **"A court will reject the legislature's manifest intent only where a party challenging the Act provides the clearest proof that the statutory scheme is so punitive in either purpose or effect as to negate the State's intention."** Did the District Court unfairly deny Petitioner an opportunity to provide the "clearest proof" by not considering any of the proof presented and dismissing his complaint as a "facial" challenge, and the Fifth Circuit affirmed?, and if not...
2. Is there a proper way (and did petitioner present it here), to bring anything other than a "facial" challenge to the Act, and actually review the objective proof of the purpose and effect of the act to determine whether it is "Civil or "Criminal"?
3. Did the Appeals Court overlook an abuse of discretion by affirming the District Court's denial of Petitioner's request for a single opportunity to amend his complaint via a Rule 59(e) motion, as argued in his Appeal Brief, and should Plaintiff be given at least one opportunity to amend his complaint prior to dismissal with prejudice, in this case?

Please, just one honest look please. Petitioner does not deserve nor seek favor from the Court -nor could he, would he, or is he- implying leniency for any sex offences committed Just please let the law prevail.

PARTIES TO THE PROCEEDINGS BELOW

The Parties:

Samuel San Miguel – Plaintiff/Appellant

Greg Abbott, Marsha McLane,

Michael Searcy, Jessica Marsh, - State Defendants/Appellees

Management & Training Corporation (MTC) – Private Defendant/Appellee

Counsel for the Parties

Plaintiff/Appellant: Pro Se, Samuel San Miguel

Defendant/Appellee: State (Briana Marie Webb. Assist. A.G.)

Defendant/Appellee: Private (Amber R. Pickett, Nichol L. Bunn, Attorney)

CITATIONS OF OPINIONS BELOW

San Miguel v. Abbott, No. 1:21-cv-00566-RP (W.D. Tex. Jan. 20, 2022)

San Miguel v. Abbott, No. 22-50413, (5th Cir. Tex., Aug. 8, 2023) (affirmed in part dismissed in part)

San Miguel v. Abbott, No. 22-50413, U.S. App. LEXIS 4819 (5th Cir. Tex., Feb. 27, 2024) (Mandate Recalled)

San Miguel v. Abbott, 2024 U.S. App. LEXIS 6664 (5th Cir. Tex., March 20, 2024)

JURISDICTION

On January 20, 2022, the U.S. District Court for the Western District of Texas, Austin-Division, Dismissed this Case in an 8-page opinion *San Miguel v. Abbott*, No. 1:21-cv-00566-RP (W.D. Tex. Jan. 20, 2022)

On August 8, 2023, the Fifth Circuit Court of Appeals affirmed in part denied in part, the Trial Court's Judgment. *San Miguel v. Abbott*, 2023 U.S. App. LEXIS 20568, 2023 WL 5032480 (5th Cir. Tex., Aug. 8, 2023)

On February 27, 2024 the Panel GRANTED Motion to reconsider the Single Judge's DENIAL of leave to file out of time petition for rehearing, and RECALLED the Mandate. *San Miguel v. Abbott* U.S. App. LEXIS 4819 (5th Cir. Tex., Feb 27, 2024)

On March 20, 2024, A timely petition for rehearing was denied. *San Miguel v. Abbott*, 2024 U.S. App. LEXIS 6664 (5th Cir. Tex., March 20, 2024)

On June 18, 2024, an extension of time to file the petition for a writ of certiorari was GRANTED HONORABLE JUSTICE ALITO: time extended until July 29, 2024. Application No. 23A1114.

On Friday July 26, 2024, Appellant mailed a Motion for an extension of 20-days to file this Petition for Writ of Certiorari. (This petition mailed prior to receiving ORDER FORM THE HONORABLE JUSTICE ALITO

This Court has jurisdiction to review judgment of the court of appeals under 28 USCS § 1254(1)

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Appendix C *San Miguel v. Abbott*, No. 22-50413, U.S. App. LEXIS 4819 (5th Cir. Tex., Feb. 27, 2024) (Mandate Recalled)

Appendix D June 18, 2024, an extension of time to file the petition for a writ of certiorari was GRANTED HONORABLE JUSTICE ALITO: time extended until July 29, 2024. Application No. 23A1114.

Appendix E July 29, 2024, Motion requesting an extension of 20-Daay to file Petition for Writ of Certiorari, Mailed to the Supreme Court prior to response. (*not received by Court lost by facility staff*)

TABLE OF AUTHORITIES

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I. QUESTIONS TO THE HONORABLE JUSTICES OF THE SUPREME
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1. If Texas declares... that the Act which they confined Petitioner under (after he completed his prison sentence) is "civil," but it is actually "criminal," and if... the Supreme Court has clearly established. **"A court will reject the legislature's manifest intent only where a party challenging the Act provides the clearest proof that the statutory scheme is so punitive in either purpose or effect as to negate the State's intention."** Did the District Court unfairly deny Petitioner an opportunity to provide the "clearest proof" by not considering any of the proof presented and dismissing his complaint as a "facial" challenge, and the Fifth Circuit affirmed? and if not...

2. Is there a proper way (and did petitioner present it here), to bring anything other than a "facial" challenge to the Act, and actually review the objective proof of the purpose and effect of the act to determine whether it is "Civil or "Criminal"?

3. Did the Appeals Court overlook an abuse of discretion by affirming the District Court's denial of Petitioner's request for a single opportunity to amend his complaint via a Rule 59(e) motion, as presented in his Appeal Brief, and should Plaintiff be given at least one opportunity to amend his complaint prior to dismissal with prejudice, in this case?

II. STATEMENT OF THE CASE

a. PETITIONER'S CRIMINAL CONVICTIONS

In June 2002, after meeting a man at a park in Amarillo, Texas and staying the night at his apartment abusing drugs and alcohol, Plaintiff was charged with 3-counts of aggravated sexual assault of a child. Though He proclaims that 2 charges involving 2 very young children did not occur, (D.A. not going to trial with charges), He received a 5-year deduction on a plea bargain in exchange for a plea of guilt for 2 charges, receiving 13-years in prison. See ROA #8. Compl. at, **IV. FACTS.** Plaintiff completed his prison sentence in Texas Prison.

Shortly before his release from prison, the state sought to continue his confinement pursuant to Ch. 841. Tex. Health & Safety Code, commonly referred to as the Sexually Violent Predator Act (SVPA), which provides for the indefinite "civil commitment " of sex offenders convicted of 2 or more sex offenses. The "proceedings" leading to Plaintiff's civil-commitment are not at issue here.

b. PROCEEDINGS IN DISTRICT COURT

San Miguel v. Abbott, No. 1:21-cv-00566-RP (W.D. Tex. Jan. 20, 2022)

On June 23, 2021, after over 6-years of being subjected to the “actual objective government actions exercised,” (the things the State has done and continues to do to plaintiff) which are the purpose and effect of the SVPA including, (what was discussed as dispositive by the Supreme Court in *Allen v. Illinois*¹), the conditions of confinement under the Act. Plaintiff filed a 42 U. S.C. § 1983, asserting 1-claim in His Complaint, That;

"Tex. Health & Safety Code Ch. 841., is so punitive in purpose and effect that it negates the state's intention to deem it civil, and must be deemed criminal for purposes of complying with the demands of the Federal Constitution." *See* ROA. #18., & Appellant's Br. 1, 13, 53.

Soon afterwards Plaintiff filed a motion for a preliminary injunction and declaratory judgment, and brief in support. Defendants filed 12(b)(6) motions to dismiss, Plaintiff failed to respond, and the Court dismissed Plaintiff's Complaint in an 8-page opinion. Plaintiff then filed a Rule 59(e) motion to amend judgment, requesting 20-days to amend his complaint, attaching proposed amendments, which the District Court denied.

c. APPEAL IN THE FIFTH CIRCUIT

San Miguel v. Abbott, 2023 U.S. App. LEXIS 20568 (5th Cir. Tex., Aug. 8, 2023)

On May 5, 2022, Petitioner's appeal of the Judgment of the District Court was Docketed in the Fifth Circuit. On August 8, 2023, Per curium in an

¹ "Had petitioner shown, for example, that the confinement of such persons imposes on them a regimen which is essentially identical to that imposed upon felons, with no need no psychiatric care, this might well be a different case. We therefore cannot say that the conditions of petitioner's confinement themselves amount to "punishment" and thus render "criminal" the proceedings which led to confinement" *Allen v Illinois*, 487 U.S. 364, 373-374 (1986) (5-4 Decision holding 5th amendment protections did not apply to proceedings under Illinois "Sexually dangerous persons Act")

unpublished opinion, the Honorable Court of Appeals affirmed in part, dismissed in part, San Miguel's complaint as a "facial" challenge to the SVPA, and issued their opinion. Appellant didn't learn of the opinion until October 10, 2023, and sought diligently to receive an opportunity to file a petition for Panel and En Banc Rehearing. A single Judge of the Panel, Honorable Cory T. Wilson, denied leave to file an out of time petition for review.

Appellant sought review of the denial by the Panel and on February 27, 2024, the Panel GRANTED Appellant's Motion for reconsideration, to file a petition for rehearing out of time, and RECALLED the mandate, allowing Appellant until March 15, 2024 to file a petition. (Appendix C) The Court received San Miguel's petition for review on March 18, 2024, which the Panel denied, on March 20, 2024.

c. SUPREME COURT PROCEEDINGS

On May 10, 2024, Petitioner filed a Motion for an extension of 40-days to file Petition for Writ of Certiorari the Honorable Justice Samuel Alito. On June 18, 2024, The Honorable Justice Alito, extended the time to file Petition for a Writ of Certiorari, (Appendix. D.). On July 26, 2024, Petitioner mailed a Motion for an extension of 20-Days to File Petition (Appendix. D.). Petitioner now files this Petition for Writ of Certiorari

II. REASON FOR GRANTING THIS PETITION

ARGUMENT

1.

THIS COURT SHOULD REVIEW THE LOWER COURT'S DETERMINATION THAT PLAINTIFF LODGED A "FACIAL" CHALLENGE TO THE SVPA STATUE AND HOLD THAT THE COURT SHOULD HAVE CONSIDERED THE OBJECTIVE PROOF OF OVER 6-YEARS (9-NOW) OF THE PURPOSE AND EFFECT OF THE ACT PRESENTED IN THIS RECORD

1. Petitioner argued extensively to the Fifth Circuit, that the District Court did no actual analysis of the SVPA considering or analyzing any of the ample amount of proof He presented, (from the legislative history of the Act² to the objective facts proving the SVPA's purpose and effect^{3, 4}), but simply quoted Supreme Court's substantive framework for determining the civil or criminal nature of an Act, while citing other court opinions that had overturned lower court's decisions that the SVPA is unconstitutional. And ultimately that Plaintiff lodged a "facial challenge." CA5 did the same. *See* Slip Op. 3-4, *below*:

"Construed Liberally, we understand San Miguel's Brief to contend, with respect to Defendants' motions to dismiss and his motion for preliminary injunction, that the district court erred by failing to consider certain arguments, case law, and legislative history."

² (1) Such as, citations from "You Tube Video Transcripts" of Texas Judge, Michael T. Seiler, appointed to the 435 Judicial District (legislatively created for sole purposes of SVP proceedings), (who personally civilly committed over 250 people under the SVPA), stating "in His Court a sex offender would get "more prison time" for his crime

³ (2) Including; TCCO/MTC simply copying the punitive disciplinary policies from the TDCJ prisons to create the conditions of confinement at the TCCC, which policies must be considered indignities suitable enough for the punishment of offenders who are serving their prison time for their crimes in TDCJ prison. App Br. 38-39.

⁴ (3) TCCO/TCCC punishing civilly committed patients in a clinical treatment facility, with up to 90-days punitive seclusion- "SMU" aka "wing restriction" (24 hours a day locked in a prison cell.) for single rule violations. App. Br. 33.

The CA5 then precluded any consideration of the proof presented in the record by foreclosing San Miguel's case as a facial challenge, seemingly due to the relief he seeks. *Below*:

"San Miguel contends that this challenge to the SVPA is not facial. However, 'to categorize a challenge as facial or as-applied we look to see whether the 'claim and the relief that would follow . . . reach beyond the particular circumstances of the [] plaintiff[].' "Because his requested relief extends beyond his own circumstances and would invalidate the SVPA in its entirety, we conclude that San Miguel lodges a facial challenge." Slip Op. 4. (citations omitted)

2. The Honorable Fifth Circuit, misapprehended Plaintiff's challenge with the assumption that San Miguel's entire circumstance -on this earth- is not reached completely by SVPA, and that a "criminal" designation of this Act can be properly determined from the Record herein.

The holding, "that Plaintiff lodged a facial challenge to the SVPA", is to say that Petitioner took on an impossible task, *cf.* "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987).

The Supreme Court has cited their framework for determining the civil or criminal nature of an act multiple times, as a 2-part analysis, in cases from *United States v. Ward*, 448 US 242, 248-249 (1980) (and collective cases) -to- *Allen v*

Illinois, 478 US 364 (1986); *Kansas v Hendricks*, 521 US 346 (1997); *Seling v. Young*, 531 U.S. 250, 261(2001). Cf. *Ward at.*, 448 U.S. 248-249 (1980) *below*:

"First, we have set out to determine whether Congress, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.

Second, where Congress has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect as to negate that intention." *Id.* (citations omitted)

Time and again throughout the Record, Plaintiff has attempted to seek review of the objective reality -the actual proof of the purpose and effect of the SVPA- that provides for the exercise of the state's power over every single aspect of his life -Power by which the state has arbitrarily limited every aspect of any freedom of his- more than they did, or would, if he was still being punished for his crime in Texas prison. Here is a fact... All of the 45,000-*plus* sex offenders doing time in TX-prison is provided a higher level of care and has less punitive restrictions, than a sex offender confined under the SVPA. That's the actual purpose and effect of the Act.

The dismissal and affirmation as a "facial challenge" is contradictory to the clearly established law set forth by This Court, for determining whether a statute is civil or criminal because as You've said;

"The civil label is not always dispositive. Where a defendant has provided "the clearest proof' that "the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention" that the proceeding be civil, it must be considered criminal" *Allen v Illinois*, 478 US 364, 369 (1986).

At no time was any consideration given -by the district court or Fifth Circuit- of the facts Plaintiff presented (nothing)... No comparisons -for or against- the facts presented here -to- any other facts of any other case. Simply dismissal as a "facial" challenge "because the reach of the invalidation of the SVPA would be beyond San Miguel' s circumstances?

A. *Brown v. Taylor*, 911 F.3d 235 (5th Cir. 2018) DOES NOT APPLY TO THIS CASE

3. In addition to dismissing San Miguel's complaint as a "facial" challenge, the district court's order of dismissal (in less than a paragraph), held that *Brown v. Taylor*, 911 F.3d 235 (5th Cir. 2018) precluded San Miguel's challenge to the SVPA, and the Panel glossed over this, with an assertion of forfeit; *Cf.*

"To the extent San Miguel challenges the SVPA as applied based on his conditions of confinement, we conclude that he has forfeited this argument by failing to address the district court's conclusion that our precedent in *Brown v. Taylor*, 911 F.3d 235, 243-44 (5th Cir. 2018) (per curiam), precludes such a challenge. See *Rollins*, 8 F.4th at 397; see also *Washington v. Scott*, 786 F. App'x 483, 485 (5th Cir. 2019) (per curiam) (collecting cases and holding that a pro se appellant "waived his ability to challenge" a district court's decision by "not address[ing] the basis of the decision")" Slip Op. 4.n2.

However, San Miguel expressed to the court multiple times in the record, including in his Appeal Brief, that the Brown Court distanced itself from the 2015-SVPA See Appellant's Br. at 7., below

"This case presents the objective reality of the purpose and effect of Tex. H. & S. Code, Ch. 841. as rewritten and passed in June 2015 until the present. A challenge in which this Honorable Court has admittedly not considered; **'We have not been asked to weigh in on the constitutionality of the new SVPA as Brown**

does not bring a facial challenge to the new statute. Instead, our inquiry is limited to Brown's specific claims regarding his confinement at two contractor-run facilities and a county jail from 2011 to 2012 under the prior SVPA." *Brown v. Taylor*, 911 F.3d 235, 240 (5th Cir. 2018)"

The *Brown* Court went to great length to emphasize that their decision did not concern the "new SVPA" as amended 2015. How does that Opinion preclude San Miguel's challenge to the 2015-Act? This Court should reconsider the incorrect determinations by the district court, and overlooked by the Fifth Circuit.

Please look at the facts... Texas says the 2015- Act (under which he has been confined 9-years now), is "Civil" please consider if this Court should "reject the legislature's manifest intent [because] a party challenging the Act provid[ed] the clearest proof that the statutory scheme is so punitive in either purpose or effect as to negate the State's intention." *Seling v. Young*, 531 U.S. 250, 261 (2001).

ARGUMENT

2.

PLAINTIFF SHOULD GET AT LEAST ONE CHANCE TO AMEND HIS COMPLAINT, BEFORE IT IS DISMISSED WITH PREJUDICE, AS HE REQUESTED RULE 59(e) MOTION DENIED BY DISTRICT COURT-(OVERLOOKED BY PANEL)

a. RULE 59(e) MOTION TO AMEND AS PRESENTED IN HIS APPEAL BRIEF.

1. Petitioner's Appeal brief presented what he asserts are multiple separate claims that he was not able to litigate due to the dismissal with prejudice.

BELOW ARE THE SEPARATE CLAIMS AS STATED IN APPEAL BRIEF:

SECTION A. UNLAWFUL [sic] GOVERNMENT ACTIONS WHICH ARE THE PURPOSE AND THE EFFECT OF THE SVPA

[1] Former Texas Department of Criminal Justice Officials operating the State Agency TCCO, and exercising unbridled discretion over the TCCC facility, implementing policies according to penological interests departing from Clinical Professional Judgement:

[2] These TDCJ employees arbitrarily creating and enforcing a "Treatment Program Policy" at the TCCC, which is a punitive confinement scheme in which Patients are subjected to different levels of punitive confinement for years, not for misbehavior but for how much of the Textbook Curriculum they have finished and their treatment tier.

[3] A State Agency (TCCO) unlawfully endowed by statute the authority to charge Patients any arbitrary amount of their money they so choose without due process. claiming "cost recovery"- defraying the cost of their Civil Commitment.

[4] Patients being charged a 33% fee on purchased goods and property sent to them in care packages from outside family and friends, or being deprived of said property,

[5] Charging a 33% fee on any monetary gifts sent to patients from outside family and friends. or be assessed punitive sanctions until fee is paid. "was applied retroactively, (2016).

[6] Patients being charged 200% higher prices for commissary (canteen) items than what a TDCJ prison inmate pays.

[7] Disfavored groups of patients being charged 21. Cents a minute for telephone calls and a tax deposit fee to purchase phone minutes due to being forced to use one phone vender ICS (inmate calling solutions),

[8] TCCC patients are punished in accordance with policies that are harsher and restrictive than the policies that punish TDCJ prions inmates. i.e. TCCC Patients are assessed punitive sanctions for facility rule violations which are 300% longer in duration, then sanctions that are imposed on a TDCJ inmate for substantially worse (real) prison violations,

[9] TCCO confine Civilly Committed Patients under the same Punitive Disciplinary rules as TDCJ Prison inmates for years, subjecting patients to punitive prison time instead of a therapeutic environment to cure the "illness" they supposedly have:

[10] TCCO/TCCC punishing civilly committed patients in a clinical treatment facility, with up to 90-days punitive seclusion -SMU" wing restriction" (24 hours a day locked in a prison cell.) for single rule violations.

[11] Though punished and confined as if patients were just TDCJ prison inmates, the facility Due Process procedure provided to Patients before they are punished for violating a facility rule (titled: Behavior Management Review (BMR), provides less procedural protections than a TDCJ prison inmate receives before being punished, and is in every way in its entirety is a violation of every patient's (whose ever been on the facility from day one until now) Due Process Rights.

[12] Groups of patients being allowed to live at a higher standard of living. and being treated better than others confined at the same facility FOR YEARS.

[13] The depriving of groups of Patient's Liberties, Privileges. and Property, to create for them a "lower" standard of living. in order to provide the other Groups their "higher" standard of living. (without due process or clinical professional judgement)

[14] Involuntarily Civilly Committed Patients receiving a Lower Standard of medical and dental care than the standard of care provided for TDCJ prison inmates and for other citizens who are civilly committed in the State.

[15] Patients being forced to wear a GPS leg monitor under the penalty of a felony offence, and pay for said service, though they are not in the community, but confined at the TCCC a maximum security prison:

[16]The (SVPA) subjects Plaintiff and all others deemed to have the mental disorder under the act, to a commitment standard and to a more stringent standard of release than those applicable to all others civilly committed in the state who are likely to cause harm due to a mental disorder, (charged with offenses or not, regardless of what the "serious harm they are likely cause is) and thus condemn him in effect to permanent institutionalization without the showing required for commitment or the opportunity for release afforded to all others, see. TEX. HEALTH & SAFETY CODE. § 574.0660). Violating The Equal Protection Clause of the United States Constitution.

See Appellant's Brief at pgs. 33-34., (citing; (b) Compl. Pg. 11-17., Par. 51-73, ROA# 19-25.)

San Miguel filed a rule 59(e) motion requesting 20-days to amend his complaint, and attached many of the above government actions as proposed amendments.

Please consider this... This Case was on the District Court's Docket for 6-months. Plaintiff was litigating another federal suit in the Northern District of Tex. Lubbock-Div. (now reversed & remanded *San Miguel v. McLane*, No. 22-10517, 2024 U.S. App. LEXIS 4446 (5th Cir. Feb. 23, 2024). That case was on the Lubbock Court's Docket for 2 years at the time. The Case Number of the Lubbock suit is - 5:20-CV-41, this case in Austin (a much larger city than Lubbock) is Number -1:21-CV-566, San Miguel had no idea the Honorable Austin Court, would Dismiss his case so quickly.

The Court should have Granted Plaintiff's Rule 59(e), motion and allowed Plaintiff an opportunity to amend his complaint in the interest of Justice. It is precedence in the Fifth Circuit to at-least allow one opportunity to amend "Generally a district court errs in dismissing a pro se complaint for failure to state a claim under Rule 12(b)(6) without giving the plaintiff an opportunity to amend." *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998). The Court should have granted Appellant leave to amend. The Panel overlooked this and should have -at a minimum- reversed and remanded allowing San Miguel an opportunity to amend his compliant.

IV. THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI

To this Honorable Court I Samuel San Miguel Pray for just an honest day in Court. I understand that You all must be very busy. I understand my low position

in society as a sex offender. I would never try or attempt to seem entitled to some type of sympathy. I understand the hatred for those who commit sex offenses, and I honestly believe that if a sex offender is given a life sentence let them sit there. But should it not be the criminal system, that gives life sentences? Petitioner humbly cites this from his Appeal Brief, which is from Paragraph 45. Of his Complaint. *below.*

"If the civil system is used simply to impose punishment after the State makes an improvident plea bargain on the criminal side, then it is not performing its proper function". *Kansas v Hendricks*, 521 U.S. 356, 373 (1997) (Justice Kennedy, concurring opinion); "If However, civil confinement was to become a mechanism for retribution or general deterrence, our precedents would not suffice to validate it." *Ibid.*

Petitioner has fully presented the correct argument on the law. He is not an attorney, he is not wealthy, he is considered a base thing in this world, a foolish thing in this world and understandably so. There is no doubt however, that this case presents an important question of federal constitutional law, and the Fifth Circuit decision conflicts with multiple decision of this Court. This Court should grant certiorari to determine if the Fifth Circuit properly applied This Court's precedence, in affirming the District Court's Dismissal of this case with prejudice.

V. CONCLUSION

This Court should grant this petition and consider whether the SVPA is a "civil" or "criminal" law, as Petitioner's complaint claims.