No. 26-251

In the Supreme Court of the United States

NEIL PAUL NOBLE,

Petitioner,

v.

TEXAS BOARD OF PARDONS AND PAROLES,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Neil Paul Noble

TDCJ # 02473212
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Pro Se Petitioner

JULY MMXXVI

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QUESTIONS PRESENTED

1. What due process rights are Texas inmates entitled to during review for release to mandatory supervision under the Fourteenth Amendment?

2. Did the Texas Board of pardons and Paroles violate Noble's Amendment due process rights when they determined that Noble's 2021 stalking conviction constituted a crime of violence and/or had a vulnerable victim?

3. Did the Texas Board of Pardons and Paroles violate Noble's Fourteenth Amendment due process rights by considering Noble's 2023 probation revocation when determining whether to release Noble to Mandatory Supervision?

PARTIES TO THE PROCEEDINGS

Petitioner, and plaintiff-appellant below is Neil Paul Noble.

Respondent, and defendant-appellee below is the Texas Board of Pardons and Paroles.

Additional defendant below is the Texas Department of Criminal Justice, and is not a respondent to the instant petition.

RELATED PROCEEDINGS

United States District Court (WD Tex.):

Neil Paul Noble v. *Texas Board of Pardons and Paroles; Texas Department of Criminal Justice*, No. 1:25–cv–01303–ADA (Sep. 17, 2025) (dismissal)

United States Court of Appeals (CA5):

Neil Paul Noble v. *Texas Board of Pardons and Paroles; Texas Department of Criminal Justice*, No. 25–50809 (May 5, 2026) (district court affirmed)

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JURISICTION

The Fifth Circuit's decision was entered on May 5, 2026. This Court has jurisdiction under 28 U. S. C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth amendment to the United States Constitution, in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property without due process." U. S. Const., Amdt. XIV, § 1.

Tex. Govt. Code § 508.145, in relevant part:

> "(f) Except as provided by Section 508.146, any other inmate is eligible for release on parole when the inmate's actual calendar time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less." Tex. Gov. Code § 508.145(f).

Tex. Govt. Code § 508.147:

> "(a) Except as provided by Subsection (a–1) and Section 508.149, a parole panel shall order the release of an inmate who is not on parole to mandatory supervision when the actual calendar time the inmate has served plus any accrued good

conduct time equals the term to which the inmate was sentenced.

(a–1) An inmate serving a sentence for an offense punishable under Section 49.09(b–2)(2), Penal Code, may not be released to mandatory supervision unless:

(1) the inmate's actual calendar time served, without consideration of good conduct time, equals at least 10 years; and

(2) the inmate is otherwise eligible for release under Subsection (a).

(b) An inmate released to mandatory supervision is considered to be released on parole.

(c) To the extent practicable, arrangements for the inmate's proper employment, maintenance, and care must be made before the inmate's release to mandatory supervision." Tex. Gov. Code §508.147.

Tex. Govt. Code §508.149:

"(a) An inmate may not be released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of:

(1) an offense for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure;

(2) a first degree felony or a second degree felony under Section 19.02, Penal Code;

(3) a capital felony under Section 19.03, Penal Code;

(4) a first degree felony or a second degree felony under Section 20.04, Penal Code;

(5) an offense under Section 21.11, Penal Code;

(6) a felony under Section 22.011, Penal Code;

(7) a first degree felony or a second degree felony under Section 22.02, Penal Code;

(8) a first degree felony under Section 22.021, Penal Code;

(9) a first degree felony under Section 22.04, Penal Code;

(10) a first degree felony under Section 28.02, Penal Code;

(11) a second degree felony under Section 29.02, Penal Code;

(12) a first degree felony under Section 29.03, Penal Code;

(13) a first degree felony under Section 30.02, Penal Code;

(14) a felony for which the punishment is increased under Section 481.134 or 481.140, Health and Safety Code;

(15) an offense under Section 43.25, Penal Code;

(16) an offense under Section 21.02, Penal Code;

(17) a first degree felony under Section 15.03, Penal Code;

(18) an offense under Section 43.05, Penal Code;

(19) an offense under Section 20A.02, Penal Code;

(20) an offense under Section 20A.03, Penal Code;

(21) a first degree felony under Section 71.02 or 71.023, Penal Code;

(22) an offense under Section 481.1123, Health and Safety Code, punished under Subsection (d), (e), or (f) of that section;

(23) a second degree felony under Section 22.01, Penal Code;

(24) an offense under Section 22.01, Penal Code, punished under Subsection (b)(2), (7), or (8) of that section; or

(25) an offense under Section 21.03, Penal Code

(b) An inmate may not be released to mandatory supervision if a parole panel determines that:

(1) the inmate's accrued good conduct time is not an accurate reflection of the inmate's potential for rehabilitation; and

(2) the inmate's release would endanger the public.

(c) A parole panel that makes a determination under Subsection (b) shall specify in writing the reasons for the determination.

(d) A determination under Subsection (b) is not subject to administrative or judicial review, except that the parole panel making the determination shall reconsider the inmate for release to mandatory supervision at least twice during the two years after the date of the determination." Tex. Gov. Code §508.149.

Tex. Penal Code §42.07, in relevant part:

"(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

(1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

[. . .]

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another[.]" Tex. Pen. Code §§ 42.07(a)(1) and (a)(7).

Tex. Penal Code §42.072:

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed at a specific other person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening:

(A) bodily injury or death for the other person; or

(B) that an offense will be committed against:

(i) a member of the other person's family or household;

(ii) an individual with whom the other person has a dating relationship; or

(iii) the other person's property;

(2) causes the other person, a member of the other person's family or household, or an

individual with whom the other person has a dating relationship:

(A) to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship, or the other person's property; or

(B) to feel harassed, terrified, intimidated, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

(3) would cause a reasonable person under circumstances similar to the circumstances of the other person to:

(A) fear bodily injury or death for the person;

(B) fear that an offense will be committed against a member of the person's family or household or an individual with whom the person has a dating relationship;

(C) fear that an offense will be committed against the person's property; or

(D) feel harassed, terrified, intimidated, annoyed, alarmed, abused, tormented, embarrassed, or offended.

STATEMENT

I. Stalking Conviction

Noble was convicted of stalking by a jury on May 3, 2021. See Tex. Penal Code 42.072. Noble agreed to a sentence of four years to probation which turned out to be a sentence of ten years probated over four years.

The victim was a 40 year old female criminal defense lawyer who worked previously as a prosecutor for 14 years for the Dallas County District Attorney's office and still had contacts there. She was the lead named partner at a criminal defense law firm with a office in the part of town where Noble lived. She was married.

On direct appeal, the appellate court said that the jury had to find Noble guilty harassment under Penal Code 42.07 to find Noble guilty of stalking under 42.072. The Court of Appeals of Texas did not identify any acts of assault or threats. *Noble* v. *State*, No. 05–21–00326–CR, (Tex. App.—Dallas, Dec. 1, 2022).

Harassment is a Class B Misdemeanor with a sentencing range of 0 to 6 months. Stalking is a Third Degree Felony with a sentencing range of 2 to 10 years.

The Texas stalking statute prohibits two categories of conduct: (1) conduct constituting an offense under the harassment statute; and (2) conduct that the actor knows or reasonably should know the other person will regard as threatening bodily injury, death, or a property offense. *Bevers* v. *Mabry*, No. 05–22–00713–CV, slip op., at 7 (Tex. App.—Dallas Feb. 7, 2024).

II. Probation

Probation was revoked on September 29, 2023. Noble cut off an ankle monitor on August 25, 2023. Noble was forced to wear the ankle monitor for over 2 years while on probation (about twenty-five and a half months).

Noble's physical health had deteriorated significantly while Noble was on probation. Noble gained 25 pounds. Noble's blood pressure was above 150 over 90 when Noble was arrested on August 25, 2023 (155 over 93 I recollect). Noble's cholesterol and diabetes readings were above the normal ranges. Noble had a preexisting heart condition, a thickened/enlarged heart thought to be caused by high blood pressure and being overweight.

Noble was not able to exercise adequately due to the GPS ankle monitor. Noble needs regular cardiovascular exercise. CDC guidelines currently recommend 150 minutes per week, or 75 minutes of rigorous exercise per week.

Noble has complained for many years about toxic gas containing butane being pumped into Noble's residence. Prolonged exposure to butane can elevate blood pressure. The gas also caused severe hunger cravings similar to anti-psychotic medication which contributed to the weight gain.

"[G]ot butane in my veins" is a lyric from the song Loser by musician Beck

The ankle monitor was not part of the initial conditions of probation that Noble signed in the morning on May 4, 2023. Noble was called back down to the court in the afternoon on May 4, 2023. Condition #20 was added without an intervening violation. The condition required a house arrest, a GPS ankle monitor, and intensive outpatient substance abuse treatment for the full 4 years of probation. The Clerk's Record from the trial court is on file with the Court of Appeals of Texas.

Noble cut the ankle monitor off before a new law took effect on September 1, 2023 making it a new crime to tamper with an ankle monitor. The new charge is a State Jail Felony (6 months to 2 years). It is a Third Degree

Felony is the person is under intensive supervision. See Tex. Penal Code 38.112.

III. Denial of Release to Mandatory Supervision

Noble was denied release to Mandatory Supervision by the Parole Board in June, 2025. Noble's release date would have been July 25, 2025. Noble's projected release date is now February 16, 2031. Noble could have to serve 5 1/2 more years in jail due to the denial of release. The Parole Board denied Noble release to Mandatory Supervision for a second time in April, 2026.

The written denial of release provided 5 reasons. The following two reasons are at issue in this Petition:

1. The record indicates that the instant offense has elements of brutality, violence, assaultive behavior, or conscious selection of a victim's vulnerability such that offender poses a continuing threat to public safety;
2. The record indicates unsuccessful periods of supervision on probation, parole, or mandatory supervision that resulted in incarceration.

This was Noble's only revocation.

REASONS FOR GRANTING THE PETITION

I. Parole Not Still in Experimental Stage

Greenholtz limited an inmate's due process rights under Nebraska's mandatory release statute to notice of review and opportunity to be heard and a written statement of reasons for denial. *Greenholtz* v. *Nebraska Penal Inmates*, 442 U. S. 1 (1979).

However, *Greenholtz* gave great deference to the judgment of the Parole Board because parole was in an experimental stage and involves a predictive judgment about what is in the best interests of the inmate and the community. *Greenholtz*, 442 U. S., at 8.

It is not clear what *Greenholtz* meant by parole being in an experimental stage. Parole has been used since the early 1900's at both the federal and state level. The state mandatory release statutes were new in the 1970's. There was a revision to federal parole law in 1976 that wanted less court review, but parole was discontinued for new crimes in the federal system in 1987 due to sentencing disparities.

Release of prisoners on parole has become an integral part of the penological system. *Morrissey* v. *Brewer*, 408 U. S. 471, 477 (1972).

Noble urges this Court to reevaluate what due process rights inmates should be entitled to under mandatory release statutes as well as regular/discretionary parole. Courts do have the capability to review denials of release on parole for due process violations. The Texas Release to Mandatory Supervision statute was enacted 49 years ago in 1977. Courts have experience in determining whether person's release will pose a danger to the community in bail review and mental health cases.

Noble draws an analogy to antitrust law on court review. In antitrust law, this Court has said that it is only after considerable experience with certain business practices that courts could classify them as per se violations rather than conducting a more thorough review under rule of reason standard. *United States*

v. *Microsoft*, 253 F. 3d 34, 90 (CADC 2001) (citing *Broadcast Music* v. *CBS*, 441 U. S. 1, 9 (1979), also citing *United States* v. *Topco*, 405 U. S. 596, 607–608 (1972).

II. *Allen* Leaves Opening for Greater Due Process Protections

Allen was a due process challenge to Montana's mandatory release statute. This Court affirmed the Ninth Circuit's remand of the case to the District Court to determine the Due Process rights that should apply. *Board of Pardons* v. *Allen*, 482 U. S. 369 (1987).

This implies that the *Greenholtz* rights were not necessarily sufficient. Noble could not find any further federal rulings in *Allen*.

III. *Eldrige* Leaves Oepning for Due Process Right of Fairness

Government action depriving a person of a liberty interest must be implemented in a fair manner. *Mathews* v. *Eldrige*, 424 U. S. 319, 335 (1976).

A democratic government must practice fairness and fairness can rarely be obtained by a secret, one-sided determination of facts decisive of rights. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 170 (1951) (FRANKFURTER, J., concurring).

IV. *Muñoz* Leaves Opening for Substantive Due Process

The Court said it has not yet had to decide whether there is any liberty interest to which only procedural due process applies, but not substantive due process. *Department of State* v. *Muñoz*, 602 U.S. 899, 910–911 (2024).

The Court has been reluctant to expand the concept of substantive due process, but that applies more to social issues such as abortion. See *Albright* v. *Oliver*, 510 U. S. 266, 271–272 (1994) and *Dobbs* v. *Jackson Women's Health Organization*, 597 U. S. 215 (2022).

V. *Zadvydas* Leaves an Opening for Court Review of Denials

The Constitution may preclude granting an administrative body unreviewable authority to make a determination regarding fundamental rights. *Zadvydas* v. *Davis*, 533 U. S. 678, 690 (2001).

Executive determinations are generally subject to judicial review. *Guerrero* v. *Barr*, 589 U. S. 221, 229 (2020).

Due process challenge to one-year ban from City Hall survived motion to dismiss because the city did not have an appeals process. Procedural due process ruling. *Sheets* v. *Davoult*, No. 2:25–cv–130–KCD–DNF (MD Fla., Apr. 9, 2026)

Substantive Due Process rights to court review are available in immigration cases, *Zadvydas*, and bail determinations. *United States* v. *Salerno*, 481 U. S. 739, 746 (1987).

VI. Texas has Jury Instruction on Parole Eligibility

Texas requires a jury instruction on parole eligibility during the penalty phase of a felony case. See Tex. Code of Crim. Proc. § 37.07(4)(c).

The dissent in *Greeholtz* said 88% of judges surveyed consider the availability of parole when imposing the sentence and 47% acknowledge they expect defendants to be released after serving one-third of their sentence. 442 U. S., at 30 (MARSHALL, J., dissenting).

VII. Texas Parole Release Data

In 2024, the release rate was 39% for regular parole and 45% for mandatory release. For non-violent crimes, the rate was 44% for regular parole and 48% for mandatory release. The Parole Board reviewed 66,204 inmates for regular parole and 16,365 inmates for mandatory release. See The Echo Texas Prison Newspaper, November/December 2025 Edition.

Noble argues that the release rate for release to mandatory supervision should be higher.

The post 1996 Texas mandatory supervision scheme is mandatory in large part, discretionary in small part. *Teague* v. *Quarterman*, 482 F. 3d 769, 775 (CA5 2007).

VIII. Due Process Rights Evolve Over Time

Due process rights evolve over time as societal norms change. Populations tend to become more civilized over time so due process protections increase.

Monroe v. *Pape*, 365 U. S. 167 (1961), broadened liability under section 1983 and the Court has continued to broaden application of the Due Process Clause and the Cruel and Unusual Punishment Clause. *Medina* v. *Planned Parenthood South Atlantic*, 388 U. S. 357, 388–93 (2026) (THOMAS J., concurring).

It is for the Courts to draw the line on application of due process by the gradual application of inclusion and exclusion. *Wolf* v. *Colorado*, 338 U. S. 25, 27 (1949).

In the 1960's, the Court began making rights in the 1791 Bill of Rights (the First Ten Amendments to the United States Constitution) applicable to criminal prosecutions in state courts under the Due Process Clause of the Fourteenth Amendment. See, *e. g.*, *Gideon* v. *Wainwright*, 372 U. S. 335 (1963) (Sixth Amendment right to counsel for indigent defendants); *Malloy* v. *Hogan*, 378 U. S. 1 (1964) (Fifth Amendment right to freedom from self-incrimination); *Klopfer* v. *North Carolina*, 386 U. S. 213 (1967) (Sixth Amendment right to a speedy trial).

IX. Evolution of Due Process Rights for Parole

A. Chronology of this Court's Rulings

Due process applies to parole revocation. Opinion mentions living a relatively normal life while on parole. *Morrissey*, 408 U. S., at 482.

Due process applies to probation revocation. *Gagnon* v. *Scarpelli*, 411 U. S. 778 (1973).

Due process applies to revocation of prison good time credits. *Wolff* v. *McDonnell*, 418 U. S. 539 (1974).

Prediction of future criminal behavior is an essential element in many decisions in the criminal justice system such as bail, sentencing, and parole. *Jurek* v. *Texas*, 428 U. S. 262, 274–275 (1976).

Due Process applies to parole release determinations if there is a liberty interest in release. There is a liberty interest in mandatory release but not release on discretionary parole. A statute is mandatory release if the inmate must be released when certain criteria are met such as serving a specified portion of the sentence. Under procedural due process, inmates are entitled to notice and an opportunity to be heard and a written statement of reasons for denial. *Greenholtz*, 442 U. S., at 14–16, n. 6.

The "some evidence" requirement applies to revocation of good time credits. *Massachusetts Correctional Institute* v. *Hill*, 472 U. S. 445 (1985).

This Court affirmed the Ninth Circuit's remand to the District Court for a determination of due process under the Montana Mandatory release statute. *Allen*, 482 U. S., at 372. Noble could not find any subsequent rulings in the case.

Prisoner claims to render invalid state procedures used to determine parole eligibility and suitability were cognizable under 42 U. S. C. §1983. The Ohio Parole Statute does not create a liberty interest. *Wilkinson* v. *Dotson*, 544 U. S. 74 (2005).

The "some evidence" standard is not a component of federal due process for state parole decisions even if a liberty interest is involved. *Swarthout* v. *Cooke*, 562 U. S. 216, 220–221 (2011).

B. Parole Discontinued in Federal System for New Crimes

The Sentencing Reform Act of 1987 eliminated parole in the Federal system for crimes committed after the Act's effective date and directed the U. S. Sentencing Commission to promulgate guidelines for sentencing. The changes were intended to reduce sentencing disparities. The guidelines were mandatory at first, but were made discretionary in *United States* v. *Booker*, 543 U. S. 220, 245–246 (2005). The sentencing court must justify any deviation from the Guidelines range. The sentencing judge determines both the term of imprisonment and the period of supervised relief. The Guidelines sentencing range provides a baseline for an appeal. On appeal, sentences are reviewed under an abuse of discretion standard. See *Peugh* v. *United States*, 569 U. S. 530, 535–537 (2013).

18 U. S. C. §924(c) unconstitutionally vague. Threatened long prison sentences. The case involves the residual clause of the Armed Career Criminal Act and the definition of a "crime of violence". *Johnson* v. *United States*, 576 U. S. 591, 606 (2015); see also *United States* v. *Davis*, 588 U. S. 445, 449, 470 (2019) (invalidating §924(c)(3)(B)'s residual-clause definition of "crime of violence" as unconstitutionally vague).

Courts rarely sentence defendants to the maximum sentence. Only about 1% of the cases in federal court. *United States* v. *Haymond*, 588 U. S. 634, 655 (2024).

X. Nature of the Offense is the Most Important Factor in Release Determination

The gravity of the offense of incarceration, the inmate's prison disciplinary record, and the inmate's prior criminal history are the most important factor in the parole release determination. *Greenholtz*, 442 U. S., at 15.

XI. Noble's 2021 Stalking Conviction

A. Classification is Arbitrary and Unfair

It is clearly erroneous, arbitrary, and fundamentally unfair for the Parole Board to consider Noble's 2021 stalking conviction to be a crime of violence and/or as having a vulnerable victim when making the determination whether to release Noble to mandatory supervision.

The Parole Board clearly did not consider the appropriate factors and legal standards.

B. Not a Crime of Violence

In 2013, the Texas stalking statute was amended to make a misdemeanor harassment offense under Tex. Penal Code 42.07 sufficient to support a stalking conviction under Tex. Penal Code 42.072.

The statute now prohibits a course of conduct that constitutes an offense under 42.07 *OR* that the actor knows or reasonably should know that the victim will regard as threatening bodily injury, death, or property damage. See §42.072(a)(1).

There is nothing in the Court of Appeals of Texas' ruling on direct appeal that supports a crime of violence determination. No acts of assault. No true threats of bodily injury or death. See *Noble*, *supra*.

A federal felony qualifies as a "crime of violence" under 18 U. S. C. §924(c)(3)(A) if it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." *United States* v. *Taylor*, 596 U. S. 845, 848 (2022). "Physical force" means "violent force—that is, force capable of causing physical pain or injury to another person." *Johnson* v. *United States*, 559 U. S. 133, 140 (2010).

The Fifth Circuit held that a conviction under the Texas stalking statute, as narrowed by the indictment, was not a crime of violence under the applicable Sentencing Guideline. *United States* v. *Rodriguez-Rodriguez*, 775 F. 3d 706, 712–713 (CA5 2015).

Under former Tex. Penal Code §46.05, whether a burglary involved an act of violence depended on the facts and circumstances of the particular case. *Gardner* v. *State*, 699 S. W. 2d 831, 836 (Tex. Crim. App.

1985); *Boyd* v. *State*, 899 S. W. 2d 371, 374 and n. 3, 5 (Tex. App.—Houston [14th Dist.] 1995).

The victim is clearly not a vulnerable victim. She was 40 years old. She worked as a prosecutor for the Dallas County District Attorney's Office for 14 years and still has contacts there. She is married.

Under the Federal Sentencing Guidelines, a vulnerable victim means a person who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to criminal conduct. The enhancement applies to offenses in which the defendant knew or should have known of the victim's unusual vulnerability. USSG §3A1.1(b)(1), comment. (n. 2).

A vulnerable victim means a person who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to criminal conduct. A vulnerable victim has an impaired capacity to detect or prevent a crime or is less able to resist than the typical victim. *United States* v. *Smith*, 115 F. 4th 370, 376–377 (CA5 2024).

The vulnerable-victim enhancement is reserved for exceptional cases in which the victim is unusually vulnerable or particularly susceptible to the crime and unable to protect himself or herself. *United States* v. *Proffit*, 304 F. 3d 1001, 1007 (CA10 2002).

Tex. Penal Code §22.04 prohibits injury to a child, elderly individual, or disabled individual. It defines a child as a person 14 years of age or younger and an elderly individual as a person 65 years of age or older.

Stalking statutes in many other States contain a sentencing enhancement if the victim is under 18. Noble included a list in the April 2025 parole package submitted to the Parole Board and the District Court.

Defendant was held without bail pending trial on a charge of aggravated stalking while possessing a deadly weapon. The Supreme Court of Vermont reversed. *State* v. *Sterling*, No. 26-AP-222, slip op., at 1, 9 (Vt. July 10, 2026). The court held that aggravated stalking is not a felony containing an element involving an act of violence. The offense may be established by a course of conduct that solely interferes with property, and its *mens rea* may be satisfied by proof that the defendant "should have known" the conduct would cause harm. *Id.*, at 4–6. To hold a defendant without bail, the State must establish by clear and convincing evidence both that the defendant's release poses a substantial threat of physical violence to any person and that no condition or combination of conditions of release will reasonably prevent the violence. *Id.*, at 4, 6–7.

XII. Ankle Monitor and House Arrest Condition of Probation Unconstitutional

Probation Condition No. 20 required house arrest and a GPS ankle monitor for up to the full four years of probation. Noble had worn the ankle monitor for over two years on probation when Noble cut it off.

The use of ankle monitors can be challenged under both the Fourth Amendment as an unreasonable search and the Eighth Amendment as cruel and unusual punishment.

Stalking is not a sex offense in Texas. A stalking conviction, standing alone, does not require registration. See Tex. Code Crim. Proc., Art. 62.001(5), (6). Stalking is not included among the offenses listed in those provisions.

Courts have invalidated sex-offender conditions imposed on persons released on mandatory supervision who had not been convicted of a sex offense. *Coleman* v. *Dretke*, 395 F. 3d 216, 223–225 (CA5 2004); *Ex parte Evans*, 338 S. W. 3d 545, 557 (Tex. Crim. App. 2011).

Use of ankle monitors as a condition of community supervision in Texas stalking cases is not common. Noble found only two cases, both of which involved revocation for violations of monitoring conditions. See *Lundy* v. *State*, Nos. 05–09–01192–CR and 05–09–01193–CR (Tex. App.—Dallas May 27, 2010) (mem. op., not designated for publication); *Woodson* v. *State*, 191 S. W. 3d 280, 283–284 (Tex. App.—Waco 2006, no pet.).

The Court of Appeals found the evidence sufficient only for a misdemeanor-harassment violation. *Noble*, *supra*.

Attaching a GPS monitoring device to a person's body without consent for the purpose of tracking that person's movements constitutes a search under the Fourth Amendment. *Grady* v. *North Carolina*, 575 U. S. 306, 309–310 (2015). The Court did not approve lifetime GPS monitoring; it remanded for the state courts to determine whether the monitoring was reasonable under the totality of the circumstances. *Id.*, at 310–311.

Federal sentences are reviewed for reasonableness under an abuse-of-discretion standard. *Gall* v. *United States*, 552 U. S. 38, 46, 51 (2007).

The Fourth Amendment requires a judicial determination of probable cause as a prerequisite to an extended restraint of liberty following a warrantless arrest. *Gerstein* v. *Pugh*, 420 U. S. 103, 114 (1975).

Noble previously challenged the ankle monitor before this Court in *Noble* v. *Texas*, No. 22–980 (cert. denied May 22, 2023).

A parole official testified that, in most cases, six months would be a sufficient monitoring period. *United States* v. *Lambus*, 897 F. 3d 368, 379–380 (CA2 2018).

A condition of supervised release cannot impose a greater deprivation of liberty than is reasonably necessary. *United States* v. *Hathorn*, 920 F. 3d 982, 984 (CA5 2019). See 18 U. S. C. §3583(d)(2).

Two conditions of supervised release were vacated. *United States* v. *Dodson*, No. 22–3998, slip op., at 22–28 (CA6 Feb. 21, 2024).

Pretrial detention may be justified where there is an "unacceptably high risk" that the defendant will not comply in good faith with proposed release conditions. *United States* v. *Hir*, 517 F. 3d 1081, 1092–1093 (CA9 2008).

Even assuming that Noble could reasonably have been required to wear an ankle monitor for a limited period, there was no justification for requiring him to wear one for the full four-year term of probation. Noble had already worn the monitor for over two years.

The district court reasoned that GPS surveillance grows more problematic the longer it continues. *United States* v. *Lambus*, 251 F. Supp. 3d 470, 495 (EDNY 2017), rev'd, 897 F. 3d 368 (CA2 2018).

Three counts of menacing arising from stalking conduct. Multiple victims. Five years' probation. Ankle monitor for the first year. *State* v. *Keever*, 2012–Ohio–4643, ¶¶ 1–6 (Ohio App. 2012).

Stalking in violation of a protective order. Four-year prison sentence, with execution suspended during four years' probation. Ankle monitor for the first six months. A prior robbery conviction was alleged for enhancement purposes, but that allegation was dismissed. *People* v. *Tovilla*, No. B318970, slip op., at 2–3 (Cal. App. Feb. 14, 2023) (unpublished).

Harassment treated as a felony because of prior qualifying domestic-violence-related convictions. Sentenced to 23 months' imprisonment, with execution stayed during three years' probation. Thirty days in jail or electronic home monitoring. *State* v. *Christensen*, No. A23–1223, slip op., at 4 (Minn. App. Aug. 5, 2024) (nonprecedential) (reversing the conviction for insufficient evidence).

SCRAM alcohol-detection ankle monitor used for the first two years of ten years' probation. Sexual-assault case. *Mathis* v. *State*, 424 S. W. 3d 89, 91–92 (Tex. Crim. App. 2014).

In less serious cases, ankle monitors are often imposed after violations.

A parole official testified that electronic monitoring was used for recalcitrant parolees, short of returning them to prison, as a graduated sanction. *Lambus*, 897 F. 3d, at 376.

Ankle monitor added for 60 to 180 days after community supervision was extended. Charges were possession of methamphetamine and marihuana in a drug-free zone. *Allee* v. *State*, Nos. 07–15–00246–CR and 07–15–00286–CR, slip op., at 1–2 (Tex. App. Apr. 13, 2016) (mem. op.).

Electronic monitor added during community supervision for felony DWI. *Martinez* v. *State*, 130 S. W. 3d 95, 96–97 (Tex. App. 2003).

Ankle monitor added after a failed marijuana test while Fortson was serving state supervision for sexual-battery and drug-trafficking convictions. *United States* v. *Fortson*, 642 F. Supp. 3d 639, 641–642 (ND Ohio 2022).

The American Civil Liberties Union (ACLU) published a report on ankle monitors in September 2022. The report concluded that electronic monitoring has not demonstrably improved public safety and increases the risk of technical violations that may return monitored persons to jail or prison. The report also explained that electronic monitoring can impose particular difficulties on persons with disabilities and chronic health conditions. American Civil Liberties Union, *Rethinking Electronic Monitoring: A Harm Reduction Guide* 6–8 (Sept. 2022).

Here are two rulings involving bail:

Bail of $500,000 was imposed in a stalking case. The Court of Appeals initially held that amount excessive and remanded for the trial court to set reasonable bail. The court later withdrew that opinion and dismissed the appeal as moot after learning that the trial court had already reduced bail to $150,000, which Irsan posted. *Ex parte Irsan*, No. 01–16–00315–CR, slip op., at 1–3 (Tex. App.—Houston[1st Dist.] Feb. 28, 2017) (mem. op.).

The case involved a GPS-monitor condition of bail for a defendant charged with indecency with a child. The Court of Appeals of Texas upheld the condition and cited other cases involving alleged sexual offenses against children. *Ex parte Good*, No. 05–22–01229–CR, slip op., at 1–2, 8–10 (Tex. App.—Dallas June 20, 2023) (mem. op.).

XIII. History of Parole

A. Texas

The first Texas case that Noble located that mentioned parole is *Ex parte Nelson*, 209 S. W. 148, 149 (Tex. Crim. App. 1919). Under the statute quoted there, parole required approval of the Governor.

The Texas Board of Pardons and Paroles was created in 1929 (the year of the Great Depression). The original act dated to 1905. *Andrews* v. *Smith*, 93 S. W. 2d 493, 494 (Tex. Civ. App. 1936).

The current parole system in Texas incentivizes good behavior in prison by allowing good-conduct time to affect eligibility for parole or mandatory supervision. See Tex. Govt. Code §498.003(a).

The mandatory-supervision provision was enacted in 1977. For eligible inmates, release was automatic. *Ex parte Retzlaff*, 135 S. W. 3d 45, 48 (Tex. Crim. App. 2004); see Tex. Govt. Code §508.147. In 1987, inmates convicted of certain serious offenses and inmates with deadly-weapon findings became ineligible for mandatory supervision. *Retzlaff*, 135 S. W. 3d, at 48; see Tex. Govt. Code §508.149(a). In 1995, another limitation was added for otherwise eligible inmates whose accrued good-conduct time did not accurately reflect their potential for rehabilitation and whose release would endanger the public. *Retzlaff*, 135 S. W. 3d, at 48–49; Tex. Govt. Code §508.149(b).

In Texas, good-conduct time applies only to eligibility for parole or mandatory supervision. It does not otherwise reduce the length of the sentence. Tex. Govt. Code §498.003(a). For inmates convicted of certain offenses, good-conduct time does not advance parole eligibility. *Luquis* v. *State*, 72 S. W. 3d 355, 362 (Tex. Crim. App. 2002).

B. Federal

Federal parole for federal prisoners was established by the Act of June 25, 1910, entitled "An Act to Parole United States Prisoners, and for Other Purposes." Act of June 25, 1910, ch. 387, 36 Stat. 819; *Halligan* v. *Marcil*, 208 F. 403, 404 (CA9 1913).

The Parole Commission and Reorganization Act of 1976 was a major revision of federal parole law. Pub. L. 94–233, 90 Stat. 219; see former 18 U. S. C. §§4201–4218. Substantive decisions to grant or deny parole were committed to the Commission's discretion and were not reviewable for abuse of discretion. *Garcia* v. *Neagle*, 660 F. 2d 983, 988–989 (CA4 1981); see former 18 U. S. C. §4218(d).

Parole guidelines were established on a pilot basis in October 1972 and extended to all federal parole-selection decisions by the end of 1973. Peter B. Hoffman, *Federal Parole Guidelines: Three Years of Experience* 10 (U. S. Board of Parole Research Unit Rep. No. 10, Nov. 1975). Their purpose was to establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decisionmaking. 28 C. F. R. §2.20(a).

Confederate prisoners of war were released on parole during the Civil War on condition that they not return to combat until formally exchanged.

C. Older Cases Involving Other States—13 Examples

Ohio's parole law appeared in § 2102 of the Revised Statutes of Ohio of 1892. *In re Naples*, 142 F. 781, 782 (ND Ohio 1905).

The Illinois Indeterminate Sentence Act, approved April 21, 1899, provided for a system of parole. *Dreyer* v. *Illinois*, 187 U. S. 71, 75–76 (1902).

An Indiana prisoner was released on parole after serving slightly more than four years of an indeterminate sentence. *Hughes* v. *Pflanz*, 138 F. 980, 981, 983–984 (CA6 1905).

Michigan enacted a new indeterminate-sentence law on June 7, 1905, repealing its 1903 law. *Ughbanks* v. *Armstrong*, 208 U. S. 481, 486 (1908). The 1903 law had provided for applications for parole after expiration of the minimum sentence. *Id.*, at 487–488.

Counsel's argument in *Finley* referred to California's parole law as providing a possible avenue of release for prisoners serving life sentences. *Finley* v. *California*, 222 U. S. 28, 29 (1911).

The sentence concerning an Arizona prisoner allegedly placed on parole in 1911 should be deleted. *Couch* v. *State*, 245 S. W. 692 (Tex. Crim. App. 1922), was a Texas manslaughter case and does not mention Arizona or parole.

The Governor of West Virginia granted the prisoner parole in October 1906, conditioned on his remaining law abiding. *Graham* v. *West Virginia*, 224 U. S. 616, 620–621 (1912).

A Massachusetts parolee violated the conditions of his parole, and the parole board revoked his permission to remain at liberty. *Ex parte Carroll*, 217 S. W. 382, 383 (Tex. Crim. App. 1919).

The Governor of South Carolina released the prisoner under the State's parole law, then codified at §969 of the 1922 South Carolina Criminal Code. *Harrison* v. *Snook*, 22 F. 2d 169, 169–170 (ND Ga. 1927).

The New York State Board of Parole released Humphries on parole on September 30, 1918. *United States ex rel. Humphries* v. *Hunt*, 15 F. Supp. 608, 609 (WDNY 1936).

The relator alleged that the proceeding was intended to return him to Missouri for an alleged parole violation. *Ex parte Randell*, 257 S. W. 1101, 1102 (Tex. Crim. App. 1924).

Release was granted by the Rhode Island Parole Board on May 28, 1931. *Clark* v. *Orabona*, 59 F. 2d 187, 188 (CA1 1932).

The Act of July 15, 1932, established the Board of Indeterminate Sentence and Parole for the District of Columbia. *Lee* v. *Aderhold*, 5 F. Supp. 950, 951 (ND Ga. 1933).

A challenge to an Allegheny County, Pennsylvania, ordinance restricting the residency of registered sex offenders. *Fross* v. *County of Allegheny*, 612 F. Supp. 2d 651, 658 (WD Pa. 2009).

Counsel's alleged misinformation concerning parole eligibility did not warrant relief because the defendant failed to establish prejudice. *Stevens* v. *Commonwealth*, No. 2014–CA–001114–MR, slip op., at 13–16 (Ky. App. Feb. 19, 2016) (not to be published).

D. Mandatory Release Statute

Reported decisions beginning in the 1970s addressed statutes and regulations containing mandatory-release language. Here are examples from nine jurisdictions. Nevada currently retains a mandatory-release statute. See Nev. Rev. Stat. §213.1215. Some States later amended or eliminated comparable provisions.

Missouri. Enacted in 1969. The statute provided that the Board "shall release" a prisoner when the specified criteria were satisfied. *Williams* v. *Missouri Board of Probation and Parole*, 661 F. 2d 697, 698–699 (CA8 1981).

North Carolina. 1974. The statute guaranteed review and consideration for parole but expressly did not make release mandatory. *Bradford* v. *Weinstein*, 519 F. 2d 728, 731 & n. 2 (CA4 1974), judgment vacated as moot, 423 U. S. 147 (1975).

Federal. 1976. Former 18 U. S. C. §4206(d) provided that a qualifying prisoner "shall be released on parole" unless the Parole Commission made one of two specified findings. *Dufur* v. *United States Parole Commission*, 34 F. 4th 1090, 1092–1093 (CADC 2022).

Nebraska. 1976. Neb. Rev. Stat. §83–1,114(1) required release unless the Board found one of four specified grounds for deferral. *Greenholtz*, 442 U. S., at 11–12 (1979).

Virginia. The statutory scheme created a protected interest in fair parole consideration, rather than an entitlement to mandatory release. *Franklin* v. *Shields*, 569 F. 2d 784, 789–790 (CA4 1977).

Montana. The mandatory-release statute was enacted in 1955, not 1977. *Allen*, 482 U. S., at 376–381 (1987).

Texas. 1977. Eligible inmates were automatically released on mandatory supervision when their calendar time and accrued good-conduct time equaled their sentences. *Ex parte Retzlaff*, 135 S. W. 3d 45, 48 (Tex. Crim. App. 2004).

Tennessee. The parole statute itself did not create a liberty interest, but the Tennessee Board of Parole's rule created a protected entitlement to release. *Mayes* v. *Trammell*, 751 F. 2d 175, 178–179 (CA6 1984).

California. The statute provided that the Board "shall set a release date unless" public-safety considerations required a longer period of incarceration. *Swarthout* v. *Cooke*, 562 U. S. 216, 217, 220 (2011).

The prisoner's concern is avoiding the arbitrary denial of parole. *Franklin*, 569 F. 2d, at 790.

E. Cases Finding Denial of Parole Arbitrary

A magistrate judge recommended granting relief under 28 U. S. C. §2254 after concluding that the Pennsylvania Board of Probation and Parole's denial of reparole rose to the level of a substantive due process violation. The Board relied on decades-old parole violations, a recent technical violation, and a prosecutor's letter urging continued punishment for conduct of which a jury had acquitted the petitioner. The magistrate judge concluded that the Board lacked a reasonable justification for its decision. *Barnes* v. *Wenerowicz*, 280 F. R. D. 206, 220, 222–223 (ED Pa. 2012) (report and recommendation); see *County of Sacramento* v. *Lewis*, 523 U. S. 833, 846–847 (1998).

The New York Parole Board acted arbitrarily by repeatedly denying parole based essentially on the static circumstances of the petitioner's original offense. *Robles* v. *Dennison*, 745 F. Supp. 2d 244, 287, 297–298 (WDNY 2010). The court nevertheless denied habeas relief because the state-court adjudication was not contrary to, or an unreasonable application of, clearly established Supreme Court law. *Id.*, at 302.

XIV. Due Process Case Law

"The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff* v. *McDonnell*, 418 U. S. 539, 558 (1974).

One function of legal process is to minimize the risk of erroneous deprivation. In determining what process is due, courts consider the risk of erroneous deprivation and the probable value of additional or substitute procedural safeguards. *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976).

Due process has both procedural and substantive components. Under procedural due process, government action depriving a person of life, liberty, or property must be implemented in a fair manner. Substantive due process prevents the government from engaging in conduct that "shocks the conscience" or interferes with rights "implicit in the concept of ordered liberty." *United States* v. *Salerno*, 481 U. S. 739, 746 (1987).

Substantive due process requires infringements on fundamental liberty interests to be narrowly tailored to serve a compelling state interest. *Reno* v. *Flores*, 507 U. S. 292, 301–302 (1993).

Federal review of state-court findings is limited to whether they are so unprincipled or arbitrary as to violate the Constitution. *Barclay* v. *Florida*, 463 U. S. 939, 946–947 (1983) (plurality opinion).

Under the arbitrary-and-capricious standard, a reviewing court must consider whether the decision was based on the relevant factors and whether there was a clear error of judgment. *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U. S. 281, 285–286 (1974).

The Parole Commission's discretion is not unfettered. This Court in *Allen* explained that the Board retains discretion to apply the standards set for it. *Kindred* v. *Spears*, 894 F. 2d 1477, 1481 (CA5 1990) (citing *Board of Pardons* v. *Allen*, 482 U. S. 369, 376 (1987)).

The Due Process Clause has its origin in Magna Carta. *Kerry* v. *Din*, 576 U. S. 86, 91 (2015) (plurality opinion).

The Due Process Clause, like its forebear in Magna Carta, was intended to secure the individual from the arbitrary exercise of the powers of government. *Daniels* v. *Williams*, 474 U. S. 327, 331 (1986) (quoting *Hurtado* v. *California*, 110 U. S. 516, 527 (1884), in turn quoting *Bank of Columbia* v. *Okely*, 4 Wheat. 235, 244 (1819)).

Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement. *Olim* v. *Wakinekona*, 461 U. S. 238, 250 (1983).

The Due Process Clause has been understood to contain a substantive component since *Mugler* v. *Kansas*, 123 U. S. 623, 660–661 (1887). *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 846–847 (1992), overruled on other grounds by *Dobbs* v. *Jackson Women's Health Organization*, 597 U. S. 215 (2022).

Conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level. *County of Sacramento* v. *Lewis*, 523 U. S. 833, 849 (1998).

Convictions cannot be brought about by methods that offend "a sense of justice." *Rochin* v. *California*, 342 U. S. 165, 173 (1952) (citing *Brown* v. *Mississippi*, 297 U. S. 278, 285–286 (1936)).

State action can violate substantive due process when the conduct is arbitrary or conscience shocking in a constitutional sense. Persons civilly committed under Texas' sexually violent predator statute have substantive due process rights independent of their procedural due process rights. *Hitt* v. *McLane*, 854 Fed. Appx. 591, 596 (CA5 2021) (per curiam).

To support a substantive due process claim, a plaintiff must establish either that the defendant's actions were sufficient to "shock the conscience" or that they violated an identified liberty or property interest protected by the Due Process Clause. *Harrington* v. *Almy*, 977 F. 2d 37, 43 (CA1 1992) (citing *Rochin* v. *California*, 342 U. S. 165, 172 (1952)).

XV. Danger to the Public Case Law

The Bail Reform Act of 1984 authorizes pretrial detention of persons charged with certain serious offenses when, after an adversary hearing, the Government proves by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person and the community. 18 U. S. C. § 3142(e), (f). Congress specified the factors to be considered and provided for expedited appellate review. §§ 3142(g), 3145(c); *United States* v. *Salerno*, 481 U. S. 739, 742–743 (1987).

Federal law authorizes the civil commitment of a federal prisoner who is nearing the end of his sentence and is found to be sexually dangerous. 18 U. S. C. §4248. The statutory definition requires proof that the person suffers from a serious mental illness, abnormality, or disorder and would have serious difficulty refraining from sexually violent conduct or child molestation. §4247(a)(6); *United States* v. *Comstock*, 560 U. S. 126, 130–131 (2010). *Comstock* upheld Congress' authority to enact §4248 but did not decide whether the statute satisfies procedural or substantive due process. *Id.*, at 149–150.

Commitment under a sexually violent predator statute requires proof of serious difficulty in controlling behavior. *Kansas* v. *Crane*, 534 U. S. 407, 413 (2002) (citing *Kansas* v. *Hendricks*, 521 U. S. 346, 358, 360 (1997)).

Due process requires proof by clear and convincing evidence in an involuntary civil-commitment proceeding. *Addington* v. *Texas*, 441 U. S. 418, 431–433 (1979).

An insanity acquittee may not be confined solely on a finding of dangerousness after he is no longer mentally ill. *Foucha* v. *Louisiana*, 504 U. S. 71, 77–79 (1992).

The definition of "behavioral abnormality" in the Texas Sexually Violent Predator Act satisfies substantive due process because it is virtually identical to the definition of "mental abnormality" upheld in *Hendricks*. *In re Commitment of Fisher*, 164 S. W. 3d 637, 655–656 (Tex. 2005). The Texas Legislature found that a small but extremely dangerous group of sexually violent predators requires long-term supervision and treatment. Tex. Health & Safety Code Ann. §841.001.

The Supreme Court of Texas clarified the factual-sufficiency standard governing sexually violent predator commitments and remanded for review under that standard; it did not hold the evidence insufficient. *In re Commitment of Stoddard*, 619 S. W. 3d 665, 674–678 (Tex. 2020).

Bail pending appeal was granted by a Justice of the Supreme Court in the following cases:

1. The appeal was nonfrivolous, and there was no substantial evidence that the applicant posed a flight risk. *Harris* v. *United States*, 404 U. S. 1232, 1232–1233 (1971) (DOUGLAS, J., in chambers).
2. The Eighth Amendment requires bail to be denied only for the strongest reasons. *Sellers* v. *United States*, 89 S. Ct. 36, 38 (1968) (BLACK, J., in chambers).

In 2025, Texas amended its Constitution to require denial of bail under specified circumstances for persons accused of certain offenses when the State satisfies the prescribed burden concerning flight or public safety. Stalking is not among the listed offenses. Tex. Const., Art. I, § 11d.

Pretrial detention for the purpose of preventing danger to the community is regulatory rather than punitive. *Salerno*, 481 U. S., at 747 (citing *Schall* v. *Martin*, 467 U. S. 253, 269 (1984)).

There are seven factors relevant to determining whether a statutory sanction is punitive or civil. *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 168–169 (1963).

Revocation of parole is part of the penalty for the original offense. *Baca* v. *Owens*, 293 Fed. Appx. 247, 250 (CA5 2008) (per curiam) (citing *Johnson* v. *United States*, 529 U. S. 694, 700 (2000)).

Parole is an established variation on imprisonment of convicted criminals. *Rummel* v. *Estelle*, 445 U. S. 263, 280 (1980) (quoting *Morrissey* v. *Brewer*, 408 U. S. 471, 477 (1972)).

XVI. Rulings from Other United States Courts of Appeals

Block explained that *Greenholtz* did not disturb cases holding that courts may review whether a parole board exercised its authority arbitrarily. The use of arbitrary or constitutionally impermissible criteria in denying parole may violate substantive due process. *Block* v. *Potter*, 631 F. 2d 233, 236, 240 (CA3 1980).

Parole authorities deprive an offender of due process only if their decision is totally lacking in evidentiary support or so irrational as to be fundamentally unfair. The nature and seriousness of the offense may be relevant to the probability that a parole candidate will commit another offense. *Dufur* v. *United States Parole Commission*, 34 F. 4th 1090, 1100–1101 (CADC 2022).

A court may consider whether the Parole Commission acted outside its statutory limits and whether the grant or denial of parole was so arbitrary as to violate due process. *Wallace* v. *Christensen*, 802 F. 2d 1539, 1551–1552 (CA9 1986) (en banc) (citing *Luther* v. *Molina*, 627 F. 2d 71, 76 (CA7 1980)).

Courts may review whether the Parole Commission considered impermissible factors, but review is limited to whether the Commission exceeded its authority, violated the Constitution, or reached a decision so arbitrary and capricious as to violate due process. *Green* v. *Castillo*, 807 F. 3d 905, 908–909 (CA8 2015).

The guidelines of the United States Parole Commission focus in part on the severity of the offense. *Priore* v. *Nelson*, 626 F. 2d 211, 216 (CA2 1980).

The parole guidelines were intended to promote a more consistent exercise of discretion and fairer, more equitable decisionmaking. *Id.*, at 216. Indeterminate sentencing also was intended to reduce disparities among sentences imposed by different judges. *Garafola* v. *Benson*, 505 F. 2d 1212, 1217–1218 (CA7 1974).

The court assumed that relief might be available in an appropriate proceeding against arbitrary action by the Parole Board, but held that habeas corpus was not an available remedy. *Goldsmith* v. *Aderholt*, 44 F. 2d 166, 167 (CA5 1930).

Three recent decisions from the Middle District of Pennsylvania applied the substantive-due-process framework when reviewing denials of state parole and cited *Block*. All three decisions rejected the petitioners' claims:

1. *Hatfield* v. *Pennsylvania Board of Parole*, No. 3:24-CV-1531, slip op., at 2–4 (MD Pa. Sept. 17, 2025).
2. *Ball* v. *Bohenski*, No. 1:25-CV-01293, slip op., at 5–8 (MD Pa. Sept. 12, 2025).
3. *Glover* v. *Wahl*, No. 4:24-CV-02073, slip op., at 3–6 (MD Pa. Aug. 11, 2025).

XVII. Use of Artificial Intelligence in Making Parole Release Determinations

Artificial intelligence (AI) could be used to assist in making parole-release decisions. AI models could help apply established criteria more consistently.

The Parole Board could start by using AI software to summarize inmates' parole files for Board members to review before voting on release. The AI functionality could be enhanced over time to include decision-support functions, such as making recommendations whether to grant parole and what conditions of supervision should be required. The Board, rather than the AI model, would remain responsible for the ultimate decision.

Prior parole files could be used to train AI models to assist in evaluating inmates currently under review. The models could be refined using updated recidivism data. Any system would require validation, human review, and safeguards against inaccurate or biased information. The Board could establish evaluation metrics, but prescribing a predetermined percentage of inmates who should be granted release would be inconsistent with individualized parole determinations.

IBM has released a series of small language models, known as Granite, that are tailored to business applications and require less computing power. "How IBM Became an AI Darling," *The Economist*, Jan. 31, 2026, p. 60.

Tennessee uses a computer assessment known as STRONG-R to evaluate inmates' risk and fitness for parole. *Thomas* v. *Montgomery*, 140 F. 4th 335, 337–338 (CA6 2025). The Sixth Circuit noted "serious issues" with the technology, including alleged inaccuracies and the lack of an opportunity to challenge them, but held that Tennessee's parole statutes did not create a protected liberty interest in parole. *Id.*, at 345–346.

XVIII. Other Shock the Conscience Factors

A. Analogy to the 1823 Monroe Doctrine

Greenholtz observed that "the very institution of parole is still in an experimental stage," even though parole had appeared in reported decisions since the early twentieth century. *Greenholtz* v. *Inmates of Nebraska Penal and Correctional Complex,* 442 U. S. 1, 8 (1979).

B. Arbitrary and Unjust Standard

Due-process review of parole denials could evolve toward an "arbitrary and unjust" standard.

Gille quoted the proposition that a judgment addressing a matter outside the issues presented "must, of necessity, be altogether arbitrary and unjust, as it concludes a point upon which the parties have not been heard." *Gille* v. *Emmons,* 58 Kan. 118, 123 (1897).

CONCLUSION

This Court should grant certiorari.

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