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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SELING, SUPERINTENDENT, SPECIAL COMMITMENT CENTER *v.* YOUNG

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 99–1185. Argued October 31, 2000– Decided January 17, 2001

Washington State's Community Protection Act of 1990 (Act) authorizes the civil commitment of "sexually violent predators," persons who suffer from a mental abnormality or personality disorder that makes them likely to engage in predatory acts of sexual violence. Respondent Young is confined under the Act at the Special Commitment Center (Center), for which petitioner is the superintendent. Young's challenges to his commitment in state court proved largely unsuccessful. Young then instituted a habeas action under 28 U. S. C. §2254, seeking release from confinement. The District Court initially granted the writ, concluding that the Act was unconstitutional. While the superintendent's appeal was pending, this Court decided *Kansas* v. *Hendricks,* 521 U. S. 346, holding that a similar commitment scheme, Kansas' Sexually Violent Predator Act, on its face, met substantive due process requirements, was nonpunitive, and thus did not violate the Double Jeopardy and *Ex Post Facto* Clauses. The Ninth Circuit remanded for reconsideration in light of *Hendricks.* The District Court then denied Young's petition. In particular, the District Court determined that, because the Washington Act is civil, Young's double jeopardy and *ex post facto* claims must fail. The Ninth Circuit reversed that ruling. The "linchpin" of Young's claims, the court reasoned, was whether the Act was punitive "as applied" to Young. The court did not read *Hendricks* to preclude the possibility that the Act could be punitive as applied. Reasoning that actual confinement conditions could divest a facially valid statute of its civil label upon a showing by the clearest proof that the statutory scheme is punitive in effect, the court remanded the case for the District Court to determine whether the conditions at the Center rendered the Act punitive

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as applied to Young.

Held: An Act, found to be civil, cannot be deemed punitive "as applied" to a single individual in violation of the Double Jeopardy and *Ex Post Facto* Clauses and provide cause for release. Pp. 9–16.

(a) Respondent cannot obtain release through an "as-applied" challenge to the Act on double jeopardy and *ex post facto* grounds. The Act is strikingly similar to, and, in fact, was the pattern for, the Kansas Act upheld in *Hendricks*. Among other things, the Court there applied the principle that determining the civil or punitive nature of an Act must begin with reference to its text and legislative history. See 521 U. S., at 360–369. Subsequently, the Court expressly disapproved of evaluating an Act's civil nature by reference to its effect on a single individual, holding, instead, that courts must focus on a variety of factors considered in relation to the statute on its face, and that the clearest proof is required to override legislative intent and conclude that an Act denominated civil is punitive in purpose or effect. *Hudson* v. *United States,* 522 U. S. 93, 100. With this in mind, the Ninth Circuit's "as-applied" analysis for double jeopardy and *ex post facto* claims must be rejected as fundamentally flawed. This Court does not deny the seriousness of some of respondent's allegations. Nor does the Court express any view as to how his allegations would bear on a court determining in the first instance whether Washington's confinement scheme is civil. Here, however, the Court evaluates respondent's allegations under the assumption that the Act is civil, as the Washington Supreme Court held and the Ninth Circuit acknowledged. The Court agrees with petitioner that an "as-applied" analysis would prove unworkable. Such an analysis would never conclusively resolve whether a particular scheme is punitive and would thereby prevent a final determination of the scheme's validity under the Double Jeopardy and *Ex Post Facto* Clauses. Confinement is not a fixed event, but extends over time under conditions that are subject to change. The particular features of confinement may affect how a confinement scheme is evaluated to determine whether it is civil or punitive, but it remains no less true that the query must be answered definitively. A confinement scheme's civil nature cannot be altered based merely on vagaries in the authorizing statute's implementation. The Ninth Circuit's "as-applied" analysis does not comport with precedents in which this Court evaluated the validity of confinement schemes. See, *e.g., Allen* v. *Illinois*, 478 U. S. 364, 373–374. Such cases presented the question whether the Act at issue was punitive, whereas permitting respondent's as-applied challenge would invite an end run around the Washington Supreme Court's decision that the Act is civil when that decision is not before this Court. Pp. 9–13.

(b) Today's decision does not mean that respondent and others

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committed as sexually violent predators have no remedy for the alleged conditions and treatment regime at the Center. The Act gives them the right to adequate care and individualized treatment. It is for the Washington courts to determine whether the Center is operating in accordance with state law and provide a remedy. Those courts also remain competent to adjudicate and remedy challenges to civil confinement schemes arising under the Federal Constitution. Because the Washington Supreme Court has held that the Act is civil in nature, designed to incapacitate and to treat, due process requires that the conditions and duration of confinement under the Act bear some reasonable relation to the purpose for which persons are committed. *E.g., Foucha* v. *Louisiana,* 504 U. S. 71, 79. Finally, the Court notes that an action under 42 U. S. C. §1983 is pending against the Center and that the Center operates under an injunction requiring it to take steps to improve confinement conditions. Pp. 13–15.

(c) This case gives the Court no occasion to consider how a confinement scheme's civil nature relates to other constitutional challenges, such as due process, or to consider the extent to which a court may look to actual conditions of confinement and implementation of the statute to determine in the first instance whether a confinement scheme is civil in nature. Whether such a scheme is punitive has been the threshold question for some constitutional challenges. See, *e.g., Allen, supra.* However, the Court has not squarely addressed the relevance of confinement conditions to a first instance determination, and that question need not be resolved here. Pp. 15–16.

192 F. 3d 870, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion, in which SOUTER, J., joined. THOMAS, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion.