

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Townsel v. Davis

Townsel · No. 1:19-cv-01394-JLT-CDB (HC) · Decided June 27, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 ANTHONY LETRICE TOWNSEL Case No. 1:19-cv-01394-JLT-CDB (HC)
12 Petitioner, ORDER CERTIFYING A CONSTITUTIONAL CHALLENGE TO 13 v. THE
UNITED STATES ATTORNEY GENERAL 14 RON DAVIS 15 Respondent. (Doc. 77) 16 17
Anthony Letrice Townsel is a state prisoner proceeding through counsel with his petition 18 for
writ of habeas corpus pursuant to 28 U.S.C. § 2254.

(Doc. 1). The matter was referred to the 19 undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and
Local Rule 302. On February 27, 2025, 20 the undersigned issued Findings and Recommendations
recommending that the petition for writ 21 of habeas corpus be denied as without merit, and that
the court decline to issue a certificate of 22 appealability. (Doc. 73).

Specifically, the undersigned concluded Petitioner failed to show that 23 the state court’s denial of
each of his claims was either contrary to, or an unreasonable application 24 of, clearly established
federal law or based on an unreasonable determination of the facts as 25 required to satisfy the
deferential standard set forth in 28 U.S.C. § 2254(d). (See *id.* at 9-27).

26 On June 11, 2025, Petitioner filed objections to the Findings and Recommendations and a 27
notice of constitutional question pursuant to Federal Rule of Civil Procedure 5.1. (Docs. 76, 77).
Of relevance here, Petitioner asserts that “this case involves a question of whether it is 1
constitutional for Article III judges to defer to state court decisions under 28 U.S.C. § 2254(d)” in
2 light of the United States Supreme Court’s decision in *Loper Bright Enterprises, et al. v. 3*
Raimondo, 603 U.S. 369 (2024).

(Doc. 77 at 1). 4 Under Federal Rule of Civil Procedure 5.1(a), a party challenging the
constitutionality of a 5 federal statute in an action where the United States is not a party must
promptly file a notice of 6 constitutional question and serve the notice on the United States
Attorney General.

In such 7 circumstances, “[t]he court must, under 28 U.S.C. § 2403, certify to the appropriate
attorney 8 general that a statute has been questioned.” Fed. R. Civ. P. 5.1(b). The Attorney General
may 9 elect to intervene within 60 days after the notice is filed or the court certifies the challenge,

10 whichever is earlier. Fed. R. Civ. P. 5.1(c). 11 Here, Petitioner has called into question the constitutionality of 28 U.S.C. § 2254(d).

(See 12 Doc. 77 at 1). Accordingly, the Court is required to certify the constitutional challenge to the 13 Attorney General. The certificate of service accompanying the notice of constitutional challenge 14 indicates a copy was served on United States Attorney General Pamela Bondi through certified 15 mail on June 11, 2025. (Doc. 77-1).

In accordance with Rule 5.1(c), the Attorney General has 50 16 days, or until August 11, 2025, to intervene in this action. 17 Accordingly, it is ORDERED: 18 1. The Court hereby CERTIFIES to the United States Attorney General that a 19 constitutional challenge to a federal statute has been made; 20 2.

The Clerk of Court is DIRECTED to send a copy of this Order, accompanied by the 21 Notice of Constitutional Challenge (Doc. 77) and the Findings and Recommendations 22 (Doc. 73), to the Office of the United States Attorney General and to the Office of the 23 United States Attorney for the Eastern District of California; 24 /// 25 /// 26 /// 27 1 3. No later than August 11, 2025, the Attorney General may elect to intervene to address 2 the constitutional issue; and 3 4.

If the Attorney General fails to timely intervene or otherwise involve herself in this 4 action, the pending Findings and Recommendations will be deemed submitted before 5 the presiding district judge. 6 | IT IS SO ORDERED. Dated: _ June 27, 2025 | hr g UNITED STATES MAGISTRATE JUDGE 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28