

ORIGINAL

No. 18-7018

FILED

OCT 31 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Luis Santos LaGarte Jr. — PETITIONER
(Your Name)

vs.

KEVIN FOLEY ET-AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Luis Santos LaGarte Jr.
(Your Name)

9601 SPUR 591
(Address)

AMARILLO, TEXAS 79107
(City, State, Zip Code)

(806)-381-7080
(Phone Number)

QUESTION(S) PRESENTED

1. IS THE 3 STRIKES PROVISIONS OF 28 USC SECTION § 1915(G) IS IN VIOLATION OF THE MAGNA CARTA 39 DUE PROCESS RULING OF DANGER OF IMMINENT SERIOUS BODILY INJURY OR LIFE, AND THE FUNDAMENTAL MISFEASANCE OF JUSTICE EXCEPTION DOCTRINE?
2. DOES THE 3 STRIKES PROVISION OF 28 USC SECTION § 1915(G) VIOLATES THE 1ST 5TH, 8TH, 9TH, AND THE 14TH AMENDMENT OF THE U.S. CONSTITUTION?
3. DOES THE 3 STRIKES PROVISION OF 28 USC SECTION § 1915(G) VIOLATES THE FUNDAMENTAL FAIRNESS DOCTRINE OF THE 14TH AMENDMENT AND 42 USCA § 1983 AND 28 USC § 1915(M) AND ARTICLE III OF THE U.S. CONSTITUTION?

LIST OF PARTIES

²⁰²
[✓] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at N/A; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the N/A court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was AUGUST 30TH 2018.

~~[]~~ ²⁸ No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 9-12-2018, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTIONAL AMENDMENTS 1: CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF OR ABRIDGING THE FREEDOM OF SPEECH OR OF THE PRESS OR THE RIGHT OF THE PEOPLE TO PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES. THE 3 STRIKES PROVISION OF 28 USC SECTION § 1915 IS IN VIOLATION OF THIS CONSTITUTION AMENDMENT AND THE MAGNA CARTA CLAUSE 39 DUE PROCESS RULING OF AND DANGER OF IMMINENT SERIOUS INJURY OR LIFE AND THE FUNDAMENTAL MISFEASANCE OF JUSTICE EXCEPTION DOCTRINE, AND 28 USC 1915(M) AND ARTICLE III OF THE U.S. CONSTITUTION.

U.S. CONSTITUTIONAL AMENDMENTS 5TH: NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION. THE 3 STRIKES PROVISION (AND) 28 USC SECTION § 1915 AND THE PLRA IS IN VIOLATION OF THIS CONSTITUTION AMENDMENT AND THE MAGNA CARTA CLAUSE 39 DUE PROCESS RULING OF AND DANGER OF IMMINENT SERIOUS INJURY OR LIFE AND THE FUNDAMENTAL MISFEASANCE OF JUSTICE EXCEPTION, DOCTRINE AND 28 USC § 1915 (M) AND ARTICLE III OF THE U.S. CONSTITUTION.

U.S. CONSTITUTIONAL AMENDMENTS 14TH: THE ENUMERATION IN THE CONSTITUTION OF CERTAIN RIGHTS SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE. THE 3 STRIKES PROVISION 28 USC SECTION § 1915 (G) AND THE P.L.R.A. IS IN VIOLATION OF THIS CONSTITUTION AMENDMENT AND THE MAGNA CARTA CLAUSE 39 DUE PROCESS OF LIFE ENDANGERMENT AND IMMINENT SERIOUS INJURY OR LIFE AND THE FUNDAMENTAL MISFEASANCE OF JUSTICE EXCEPTION, DOCTRINE AND 28 USC § 1915 (M) AND ARTICLE III OF THE U.S. CONSTITUTION.

U.S. CONSTITUTIONAL AMENDMENT 14TH: ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF THE CITIZENS OF THE UNITED STATES, NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. THE 3 STRIKE PROVISION 28 USC SECTION § 1915 (G) AND THE P.L.R.A. IS IN VIOLATION OF THIS CONSTITUTION AMENDMENT AND THE MAGNA CARTA CLAUSE 39 DUE PROCESS OF LIFE ENDANGERMENT AND IMMINENT SERIOUS BODILY INJURY OR LIFE AND THE FUNDAMENTAL MISFEASANCE OF JUSTICE EXCEPTION, DOCTRINE AND 28 USC § 1915 (M) AND ARTICLE III OF THE U.S. CONSTITUTION, AND UNDER 18 USC § 3626, AND 18 USC 28. 1983.

U.S. CONSTITUTIONAL AMENDMENT 8TH NO CRUEL AND UNUSUAL PUNISHMENT INFLICTED THE 3 STRIKE PROVISION 28 USC SECTION 1915 (G) AND THE P.L.R.A. IS IN VIOLATION OF THIS CONSTITUTION AMENDMENT AND THE MAGNA CARTA CLAUSE 39 DUE PROCESS OF LIFE ENDANGERMENT AND IMMINENT SERIOUS BODILY INJURY OR LIFE AND THE FUNDAMENTAL MISFEASANCE OF JUSTICE EXCEPTION, DOCTRINE AND 28 USC § 1915 AND ARTICLE III OF THE U.S. CONSTITUTION AND UNDER USC 3626 AND 18 USC 28 § 1983,

THE UNITED STATES CONSTITUTION SUPERCEDES THE 3 STRIKES PROVISION 28 USC § 1915 (G) AND P.L.R.A. THE CONSTITUTION EXCEPT THE BIBLE IS THE SUPREME LAW. THE WRITERS AND SIGNERS OF THE U.S. CONSTITUTION INCLUDED IN IT THE DEFINITION OF ITSELF AS THE SUPREME LAW OF THE LAND. THE SUPREME POWER AS COMPARED TO THE SUPREME LAW ALWAYS RESTS WITH THE PEOPLE AS DESCRIBED IN THE DECLARATION OF INDEPENDENCE.

STATEMENT OF THE CASE

ON 4-9-18 PETTIONER BROUGHT THIS CIVIL RIGHTS CLAIM SEEKING REDDRESS AND MONETARY DAMAGES FOR THE VIOLATION OF HIS CLEARLY ALREADY ESTABLISHED PROTECTED CONSTITUTIONAL RIGHTS. ALONG WITH REAL SUSTAINED INJURY UNDER THE TORT CLAIM OF FEDERAL STATUTE 42 USC, § 1983. WHEREAS RESPONDENTS ACTED UNDER COLOR OF STATE LAW WHICH INVOLVES SEVERAL FEDERAL QUESTIONS OF LAW UNDER THE 1ST 5TH, 8TH 9TH AND THE 14 AMENDMENT OF THE U.S. CONSTITUTION. WHERE PETTIONER'S CLAIMS THAT ON 3-6-18 WHEN PETTIONER WAS TAKEN INTO CUSTODY ALL OF HIS PERSONAL AND LEGAL PROPERTY WAS CONFISCATED AND WITHHELD FROM HIM INDEFINITELY UP TO 300 DAYS WITHOUT A HEARING ON HIS PROPERTY OR ANY CONFISCATION PAPERS EVER GIVEN FOR ANY OF HIS NOW CONTRABAND PROPERTY. WITHOUT ANY PENALOGICAL INTEREST TO THE SECURITY OF THE INSTITUTION. FURTHERMORE PETTIONER SUFFERED REAL HARM AND INJURY, WHEN HE BEGAN TO BLEED FROM THE GUMS ON 3-23-18 WHERE HE HAD TO BE GIVEN MEDICATION FOR 10 DAYS STARTING ON 3-30-18, AND PETTIONER HAS INCURRED INDUCED DAMAGES TO HIS RIGHT EYE THAT ALREADY HAS PREMATURE CATARACT. IN FACT PETTIONER IS SCHEDULED FOR ORAL SURGERY FOR THE INJURY SUSTAINED FOR NOT HAVING HIS HYGIENE PROPERTY SEE: EXHIBITS C AND D FILED ON RECORD. PETTIONER HAS ALSO SUSTAINED WEIGHT LOSS OF 30 LBS DUE TO SEVERE EMOTIONAL STRESS AND ANXIETY AND MENTAL ANGUISH OF PAIN AS TO WHETHER THE RESPONDENTS ARE GOING TO KILL HIM. PETTIONER HAS EXHAUSTED ALL ADMINISTRATIVE AVENUE AS FOR MEDICAL TREATMENT WHICH HE HAS NOT BEEN SEEN OR RENDERED IN 156 DAYS. PETTIONER HAS SENT OUT I-60's INTER COMMUNICATION TO RESPONDENTS FROM 3-10-18 THROUGH PRESENT REQUESTING HIS BASIC HYGIENE AND PERSONAL PROPERTY WHICH HE IS ENTITLED TO HAVE, HIS PRESCRIPTION GLASSES, BOWL SPOON, LIP, TOOTH PASTE TOOTH BRUSH, LEGAL BOOKS, RADIO, HEADPHONES, NOT, POT, DEDDERONTS ECT, ECT, ECT. ON 3-14-18 PETTIONER HAS FILED STEP 1 GRIEVANCE NO# 201810295 MARKED AS EXHIBIT 'E' STEP 2 GRIEVANCE. NONE OF THE ABOVE PROPERTY WAS EVER RETURNED TO PETTIONER. WHEN PETTIONER WAS INTERVIEWED BY THE RESPONDENTS THEY ADVISED ME THAT THEY HAVE ALL MY PROPERTY, AND WHEN THEY STATED THAT, PETTIONER KNEW HE WAS NEVER GOING TO SEE OR RECEIVE ANY OF HIS PROPERTY. THE RESPONDENTS HAVE LIED AND CONSPIRATORILY WITHHELD AND DESTROYED PETTIONER'S PERSONAL AND LEGAL PROPERTY, WHICH IS A VIOLATION OF DUE PROCESS, AN UNLAWFULLY WITHHOLDING ALL HIS PERSONAL AND LEGAL PROPERTY, AND DENYING MEDICAL TREATMENT FOR 156 DAYS FOR A SERIOUS MEDICAL NEED OF HIS ENLARGED PROSTATE, AND THE ADEQUATE MEDICAL TREATMENT AND DEPRIVATION OF MEDICATION. AUGUST 30TH 2018 WAS THE FIRST TIME HE HAS BEEN SEEN BY A PROVIDER SINCE HE WAS LOOSED UP IN AD-SEG 6 ON 3-6-18 SEE: ALL EXHIBITS A-THROUGH-H-FILED ON RECORD, U.S.D.C. FOR THE NORTHERN DISTRICT OF TEXAS IN AMARILLO, TEXAS

REASONS FOR GRANTING THE PETITION

Pursuant to Rule 19 of this Honorable Court must show the Propensity to Grant a writ of Certiorari in this case at bar where the U.S. District Court has ruled contrary to the decisions of the Supreme Court and other Courts set out in the following: In Smith-v-Wade 461 U.S. 303 34.103 S.Ct. 1625 75 LEd 2d 632 (1983) held that Section 1983 intended to create a species of tort liability in favor of persons deprived of federally secured rights. The U.S. District Courts took a very bias and indolent approach when it failed to carefully examine the records that when an injury to a prisoner can be objectively serious to constitute an 8th Amendment violation only if there is more than the minimum injury. See Farmers v-Brennan cite as 114 S.Ct. 1970 (1994) the U.S. District Court did not conform its discretion under Article III of the U.S. Constitution which was in conflict with decisions of another appellate court at Hudson-v-Palmer 104 S.Ct. 3194 3217 and Boodie 105 F.3d at 861 and Wolf Lillie-v-Sonquist 699 F.2d 864 (1983). The U.S. District Court has disregarded the guiding rules of principles and laws set out in Winkley 475 U.S. at 320-321 106 S.Ct. at 1085 and Weems-v-United States 217 U.S. 379 361 (3d S.Ct. 544-549) which is a national importance regarding the 3 strikes provision of 28 U.S. 1915(G) which strongly iterates that a court cannot dismiss any challenged condition as long as other conditions remains in dispute for each condition must be considered all part of the overall conditions challenged that is also set out in Hughes-v-Pune 449 U.S. 59 (1980) Erickson-v-Pardus 127 S.Ct. 2197 (2007) which has decided an important question of Federal law that should be settled by the Supreme Court. As to 1. Is the 3 strikes provisions of 28 USC Section 1915(G) is in violation of the Magna Carta Clause 39 Due Process Ruling of and danger of imminent bodily serious injury or life and the fundamental miscarriage of justice exception doctrine? 2. Does the 3 strikes provision of 28 U.S. 1915(G) violates the 1st 5th 9th 8th and 14th Amendment of the U.S. Constitution? 3. Is the 3 strikes provision of 28 USC Section 1915(G) violates the fundamental fairness doctrine of the 14th Amendment and 42 USC a 1983 and 28 USC 1915(M) and Article III of the U.S. Constitution? Upon the 28 USC 1915(G) 3 strikes provision petitioner is allowed to re-open the case only if he pays \$400.00 within 30 days of the final judgment which is a departure of the guiding rules and principles and laws that are set out in Hudson-v-McMillion Supra 503 U.S. at 5-112 S.Ct. at 998 and United States-v-Munoz 374 U.S. 150-83 S.Ct. 1850 10 LEd 2d 808 (1963) holding Supra 509 U.S. at 33 113 S.Ct. 2481 which supports USC 1983 and Article III of the U.S. Constitution the U.S. District Court ignored the merits and prima facie evidence that is on record to illude on one basic principles of 28 USC 1915(G) when he could of accepted the pleadings and evidence as the true favorable to the plaintiff by granting him relief under 28 USC 1915(M) it is a Federal Judicial Comity of the Court under Article III of the U.S. Constitution clearly in black and white that if plaintiff suffered injury barred by a Federal Constitution which is 28 USC 1915(G) he is entitled to remedy for damages under Civil Rights Statute 42 USC 1983 Parrat-v-Aylder cite as 1011 S.Ct. 1708 (1981) Hudson-v-McMillion Supra 503 U.S. at 5 112 S.Ct. at 998 and see 338 U.S. 917 918 (1950) the U.S. District Court as abdicated and departed from the rule of law. The Supreme law under Article VI of the U.S. Constitution which states "Under the authority of the United States shall be the Supreme Law of the Land and the Judges in every State shall be bound thereby anything in the Constitution or laws of any State to the contrary notwithstanding and all executive and judicial orders both of the United States shall be bound by oath or affirmation to support the U.S. Constitution."

THE SUPREME COURT HELD THAT DUE PROCESS REQUIRED A PRIOR HEARING BEFORE THE STATE AUTHORIZED ITS AGENTS TO SEIZE PROPERTY IN A DEBTOR'S POSSESSION, SEE: *BODIE-V-CONNECTICUT* 401 U.S. 371, 91 S.Ct. 780, 28 LED 2D 113 (1971), *GUIDBERG-V-ILLINOIS* 397 U.S. 251, 90 S.Ct. 1011, 25 LED 2D 287, (1970). INTENTIONAL DEPRIVATION OF PROPERTY WITHOUT CAUSE DUE PROCESS CLAIMS ALSO MUST SATISFY THE REQUIREMENTS THAT THE ACT BE SUFFICIENTLY LINKED TO AN OFFICIAL'S STATED OFFICIAL WHOSE CREATED DUES ON POWERS TO CONSTRUCTION STATE ACTION, SEE: *UNITED STATES-V-CHASSIE* 313 229, 326 61 S.Ct. 1031, 1013 85 LED 1368

2. CLAIMS UNDER THE SUBSTANTIVE COMPONENT OF THE DUE PROCESS CLAUSE THAT BARS CERTAIN ARBITRARY (3 STRIKES PROVISION 28 USC § 1915 (G) AND THE P.L.R.A.) UNLAWFUL GOVERNMENT ACTIONS, REGARDLESS OF THE FAIRNESS THE PROCEDURES USED TO IMPLEMENT THEM, AND FINALLY 3. CLAIMS UNDER THE PROCEDURAL COMPONENT OF THE DUE PROCESS CLAUSE THAT PROHIBITS THE DEPRIVATION OF LIFE, LIBERTY OR PROPERTY WITHOUT FAIR PROCEDURE. THERE IS NO FEDERAL STATUTE OF LIMITATIONS FOR A 1983 CLAIMS UNDER THE U.S. CONSTITUTION,

CONCLUSION

IN ADDITION 28 USC § 1983 (1971) CIVIL RIGHTS STATUTE, PROVIDES THE EXCLUSIVE AVAILABLE FEDERAL REMEDY FOR VIOLATIONS OF FEDERAL CONSTITUTIONAL RIGHTS UNDER COLOR OF STATE LAW. THUS PETITIONER CANNOT AVOID THE LIMITATIONS OF A 1983 CLAIM FOR RELIEF BY ASSERTING A CLAIM DIRECTLY UNDER THE CONSTITUTION,

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: _____