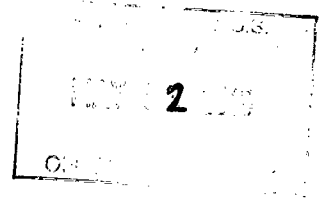


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IN THE

SUPREME COURT OF THE UNITED STATES

COREY L. MILLEDGE — PETITIONER
(Your Name)

vs.

GARY ENGLISH, ET AL. — RESPONDENT(S)

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

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

COREY MILLEDGE DC#Q12023

(Your Name)

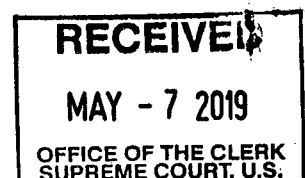
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QUESTION(S) PRESENTED

WHETHER A THREAT TO INFLICT PHYSICAL OR OTHER HARM CONSTITUTES A SUBSTANTIAL RISK OF SERIOUS HARM IN THE LIGHT OF PRINCIPLES SET FORTH IN UNITED STATES V. WHITE, 258 F.3d 374 (5TH CIR. 2001); BOWEN V. WARDEN, 826 F.3d 1312 (11TH CIR. 2016); FARMER V. BRENNAN, 511 U.S. 825 (1994).

WHETHER THE GENUINE ISSUE STANDARD PERMITS THE COURT OF APPEALS JUDGES TO WEIGH THE EVIDENCE AND DETERMINE WHETHER OR NOT A PRISON OFFICIAL ACTUALLY DREW THE INFERENCE THAT MILLEDGE FACED A RISK OF SERIOUS HARM.

LIST OF PARTIES

ALL PARTIES DO NOT APPEARS 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:

PETITIONER IS COREY MILLEDGE, PLAINTIFF-APPELLANT BELOW.

RESPONDENT IS GARY ENGLISH, PRISON OFFICIAL, SUED IN HIS INDIVIDUAL CAPACITY, DEFENDANT - APPELLEE BELOW.

RESPONDENT IS KERLINE JOSEPH, PRISON OFFICIAL, SUED IN HER INDIVIDUAL CAPACITY, DEFENDANT - APPELLEE BELOW.

RESPONDENT IS JARED JOHNSON, PRISON OFFICIAL, SUED IN HIS INDIVIDUAL CAPACITY, DEFENDANT - APPELLEE BELOW.

RESPONDENT IS SCOTT MIDDLEBROOKS, PRISON OFFICIAL, SUED IN HIS INDIVIDUAL CAPACITY, DEFENDANT - APPELLEE BELOW.

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II. THE COURT OF APPEALS ERRED IN HOLDING THAT MILLEDGE "OFFERING NO RISK FACTORS PRESENT FOR A PRISON OFFICIAL TO DRAW THE INFERENCE THAT HE FACED A SUBSTANTIAL RISK OF HARM..... 11

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PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX TO THE PETITION ("APP.(A)") AT 1-10. THE DISTRICT COURT'S OPINION IS NOT REPORTED APPEARS AT APP.(C), 14-23.

JURISDICTION

THE COURT OF APPEALS ISSUED ITS DECISION ON JANUARY 10, 2019 (APP.(A) AT 1-10), AND DENIED A PETITION FOR REHEARING AND REHEARING EN BANC ON MARCH 27, 2019 (APP.(B) AT 12-13). THIS COURT HAS JURISDICTION PURSUANT TO 28 U.S.C. § 1254(1), 28 U.S.C. § 1257(A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES:

" EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED. "

42 U.S.C. § 1983 PROVIDES:

" EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS ... "

STATEMENT OF THE CASE

THE DECISION OF THE COURT OF APPEALS AUTHORIZES PRISON OFFICIALS TO DEPRIVE PRISONERS LIKE MILLEDGE OF HIS CONSTITUTIONAL RIGHTS NOT TO BE SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT, AND ALSO GIVE PRISON OFFICIALS LICENSES TO IGNORE THE EIGHTH AMENDMENT DUTIES.

1. ON MARCH 31, 2015, PETITIONER COREY MILLEDGE WAS AN INMATE AT THE BLACKWATER RIVER CORRECTIONAL FACILITY LOCATED IN MILTON, FLORIDA. ON THAT DAY, MILLEDGE'S CELLMATE, JAMAL WAITLEY ATTACKED MILLEDGE WITH A RAZOR BLADE, CUTTING HIM ACROSS HIS CHEEK THAT REQUIRED MULTIPLE STITCHES (APP.(E)(F)(D)(G), AT 71-76, 88, 32-33, 97).

2. PRIOR TO THE ATTACK ON MILLEDGE, MILLEDGE VERBALLY TOLD RESPONDENT JOSEPH THAT INMATE WAITLEY HAD THREATENED HIM SAYING THAT HE IS GOING TO "FUCK" HIM UP. RESPONDENT JOSEPH RESPONDED BY TELLING MILLEDGE THAT SHE "DONT CARE" (APP.(E) AT 74).

3. BEFORE THE ATTACK ON MILLEDGE, MILLEDGE VERBALLY TOLD RESPONDENT ENGLISH THAT HE FEARED FOR HIS LIFE AND REQUESTING TO BE

PLACED IN PROTECTIVE CUSTODY OR BE MOVED OUT OF INMATE WAITLEY'S CELL DUE TO INMATE WAITLEY THREATENED HIM SAYING "YOU NASTY ASS ROOMMATE, I'M GOING TO FUCK YOU UP SOON CAUSE I DONT LIKE THAT". RESPONDENT ENGLISH RESPONDED BY TELLING MILLEDGE "I CANT HELP YOU" (APP.(E)(F)(D), AT 74, 89, 32).

4. BEFORE THE ATTACK ON MILLEDGE, MILLEDGE VERBALLY TOLD RESPONDENTS JOHNSON AND MIDDLEBROOKS THAT INMATE WAITLEY HAD THREATENED HIM SAYING "YOU NASTY ASS ROOMMATE, I'M GOING TO FUCK YOU SOON CAUSE I DONT LIKE THAT" (APP.(E) AT 74).

5. ON APRIL 16, 2016, PETITIONER FILED AN AMENDED COMPLAINT UNDER 42 U.S.C § 1983 AGAINST RESPONDENTS, HE SOUGHT DAMAGES BECAUSE RESPONDENTS HAD FAILED TO PROTECT HIM IN VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION. DEFENDANT ENGLISH MOVED FOR SUMMARY JUDGMENT.

6. ON FEBRUARY 13, 2018, THE MAGISTRATE JUDGE CHARLES A. STAMPELOS RECOMMENDED THAT MILLEDGE'S CLAIM AGAINST DEFENDANT ENGLISH FOR FAILING TO PROTECT HIM PROCEED TO TRIAL, BUT SHOULD BE DISMISSED AGAINST DEFENDANTS MIDDLEBROOKS, JOHNSON, AND JOSEPH (APP.(D) AT 59-61).

7. ON MARCH 26, 2018, THE UNITED STATES DISTRICT JUDGE WILLIAM STAFFORD ISSUED AN ORDER REJECTING THE MAGISTRATE JUDGE'S RECOMMENDATION, HOLDING THAT "HERE, MILLEDGE HAD PRESENTED NO EVIDENCE OF WIDESPREAD ABUSE AT BLACKWATER FACILITY AND NO EVIDENCE THAT BLACKWATER'S POLICIES AND PERSONNEL WERE INEFFECTIVE IN HANDLING ABUSE OR THREATS OF ABUSE BY INMATES. THUS, EVEN ASSUMING, AS MILLEDGE CONTENDS, THAT ENGLISH SAW MILLEDGE'S INFORMAL GRIEVANCE AND HEARD MILLEDGE SAY THAT HE HAD BEEN THREATENED BY HIS CELLMATE WAITLEY, MILLEDGE WAS ENTITLED TO RELY ON THE POLICIES AND PERSONNEL IN PLACE AT BLACKWATER TO PROTECT MILLEDGE FROM UNDEFINED THREAT HARM POSED BY WAITLEY" (APP.(C) AT 19). MILLEDGE APPEALED THIS ORDER.

8. ON JANUARY 10, 2019, THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AFFIRMED THE DISTRICT COURT'S ORDER DISMISSING PETITIONERS CLAIMS, BUT ON A DIFFERENT BASIS, HOLDING THAT "WE CANNOT SAY THAT A SINGLE THREAT, ON THE CIRCUMSTANCES OF THIS CASE, IS SUFFICIENT BY ITSELF TO CONSTITUTE A SUBSTANTIAL RISK OF SERIOUS HARM" (APP.(A) AT 9).

10. ON MARCH 27, 2019, THE COURT OF APPEALS DENIED THE PETITIONS FOR REHEARING AND REHEARING EN BANC (APP.(B) AT 11-13).

REASONS FOR GRANTING THE PETITION

PRISONERS RETAINS THE RIGHTS NOT TO BE SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT. SEE, EIGHTH AMENDMENT OF THE U.S. CONSTITUTION. SPEAKING OF THE EIGHTH AMENDMENT, THE EIGHTH AMENDMENT IMPOSES DUTIES ON PRISON OFFICIALS TO "PROVIDE HUMANE CONDITIONS OF CONFINEMENT" AND TO "TAKE REASONABLE MEASURE TO GUARANTEE THE SAFETY OF THE INMATES". SEE, FARMER V. BRENNAN, 511 U.S. 825, AT 832, 128 LEd.2d 811 (1994) IN OTHER WORDS, WHEN OFFICIALS BECOME AWARE OF A THREAT TO INMATE'S HEALTH AND SAFETY, THE EIGHTH AMENDMENT'S PROSCRIPTION AGAINST CRUEL AND UNUSUAL PUNISHMENT IMPOSES A DUTY TO PROVIDE REASONABLE PROTECTION. SEE, BROWN V. HUGHES, 894 F.2d 1533, AT 1537 (11th CIR. 1990) WHEN PRISON OFFICIALS KNOW AN INMATE'S FACES A SUBSTANTIAL RISK OF SERIOUS HARM FROM ANOTHER INMATE AND FAIL TO TAKE REASONABLE MEASURES TO LESSEN THE RISK, THE EIGHTH AMENDMENT IS VIOLATED. SEE, ERICKSON V. HOLLOWAY, 77 F.3d 1078 (8th CIR. 1996)

THE DECISION OF THE COURT OF APPEALS AUTHORIZES PRISON OFFICIALS TO DEPRIVE PRISONERS LIKE MILLEDGE OF HIS CONSTITUTIONAL RIGHTS NOT TO BE SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT, AND ALSO GIVE PRISON

OFFICIALS LICENSES TO IGNORE THE EIGHTH AMENDMENT DUTIES AS SET FORTH ABOVE. AS THIS COURT RECOGNIZED IN HOPE V. PELZER, 536 U.S. 730, AT 739, 153 LEd.2d 666 (2002) ("IT A CRIME FOR A STATE OFFICIAL TO ACT WILLFULLY AND UNDER COLOR OF LAW TO DEPRIVE A PERSON OF RIGHTS PROTECTED BY THE CONSTITUTION")

THIS COURT SHOULD INTERVENED TO PROTECT MILLEDGE'S CONSTITUTIONAL RIGHTS. SEE, RHODES V. CHAPMAN, 452 U.S. 337, AT 352, 69 LEd.2d 59 (1981) (HOLDING THAT THE "FEDERAL COURT'S WILL DISCHARGE THEIR DUTY TO PROTECT CONSTITUTIONAL RIGHTS") MONTGOMERY V. STATE, 55 FLA. 97 (FLA 1908) (HOLDING THAT "THE DUTY RESTS UPON ALL COURTS, STATE AND NATIONAL, TO GUARD, PROTECT, AND ENFORCE EVERY RIGHT GRANTED OR SECURED BY THE CONSTITUTION OF THE UNITED STATES, WHENEVER SUCH RIGHTS ARE INVOLVED, IN ANY PROCEEDING BEFORE THE COURT AND THE RIGHT IS DULY AND PROPERLY CLAIMED OR ASSERTED")

CONFLICTS

1. THE COURT OF APPEALS ERRED IN HOLDING THAT "MILLEDGE DID NOT PRESENT ANY EVIDENCE BEYOND INFORMING OFFICIALS OF ONLY A SINGLE THREAT, OFFERING NO OTHER RISK FACTORS PRESENT FOR A PRISON OFFICIAL TO DRAW THE INFERENCE THAT HE FACED A SUBSTANTIAL RISK OF HARM" (APP. (A) AT 8-9)

IN ITS ASSESSMENT AS SHOWN ABOVE, THE ELEVENTH CIRCUIT REQUIRED THAT THERE BE A THREAT AND "OTHER RISK FACTORS PRESENT FOR A PRISON OFFICIAL TO DRAW THE INFERENCE THAT MILLEDGE FACED A SUBSTANTIAL RISK OF HARM." *Id.* THIS VIEW, CONFLICTS OR AT ODDS WITH FARMER V. BRENNAN, 511 U.S. 825, AT 837, 128 LED.2D 811 (1994) (REQUIRING PRISON OFFICIALS BE "AWARE OF FACTS FROM WHICH THE INFERENCE COULD BE DRAWN THAT A SUBSTANTIAL RISK OF SERIOUS HARM EXISTS, AND HE MUST ALSO DRAW THE INFERENCE"); JONES V. BANKS, 878 F. SUPP. 107 (N.D. ILL 1995) (REQUIRING PRISON OFFICIALS BE AWARE OF A SERIOUS THREAT FROM WHICH THE INFERENCE COULD BE DRAWN THAT A SUBSTANTIAL RISK OF SERIOUS HARM EXIST); CARTER V. GALLOWAY, 352 F.3d 1346 (11th CIR. 2003) (REQUIRING PRISON OFFICIALS BE AWARE OF A PARTICULARIZE THREAT OR FEAR FELT FROM WHICH THE INFERENCE COULD BE

DRAWN THAT A SUBSTANTIAL RISK OF SERIOUS HARM EXIST); CALDWELL V. WARDEN, FCI TALLADEGA, 748 F.3d 1090 (11th CIR. 2014) (SIMILAR SAME)

IN SUM, THE ELEVENTH CIRCUIT REQUIRING THAT THERE BE A THREAT AND OTHER RISK FACTORS PRESENT DOES NOT MAKE SENSE AT ALL IN LIGHT OF THE PRINCIPLES SET FORTH IN FARMER, SUPRA; JONES, SUPRA; CARTER, SUPRA; AND CALDWELL, SUPRA.

THE QUESTION PRESENTED IS:

WHETHER A THREAT TO INFLICT PHYSICAL OR OTHER HARM CONSTITUTES A SUBSTANTIAL RISK OF SERIOUS HARM IN THE LIGHT OF PRINCIPLES SET FORTH IN UNITED STATE V. WHITE, 258 F.3d 374 (5th CIR. 2001); BOWEN V. WARDEN, 826 F.3d 1312 (11th CIR. 2016); FARMER V. BRENNAN, 511 U.S. 825 (1994)¹

IF MILLEDGE HAD BROUGHT HIS CASE IN THE EIGHTH CIRCUIT, THE COURT OF APPEALS

¹ THE QUESTION ASKED SIMPLY BECAUSE THE ELEVENTH CIRCUIT HELD THAT "WE CANNOT

WOULD HAVE ALLOWED MILLEDGE'S FAILURE TO PROTECT CLAIMS PROCEED TO TRIAL. SEE, E.G., ERICKSON V. HOLLOWAY, 77 F.3d 1078 (8th Cir. 1995) (HOLDING THE PRISON OFFICIAL LIABLE BECAUSE THE PRISON OFFICIAL WERE AWARE OF A THREAT AGAINST ERICKSON "AND THUS KNEW ERICKSON FACED A SUBSTANTIAL RISK OF SERIOUS HARM" AND RESPONDED "UNREASONABLE" TO THE RISK)

SAY THAT A SINGLE THREAT, ON THE CIRCUMSTANCES OF THIS CASE, IS SUFFICIENT BY ITSELF TO CONSTITUTE A SUBSTANTIAL RISK OF SERIOUS HARM" (APP.(A) AT 9)

11. THE COURT OF APPEALS ERRED IN HOLDING THAT MILLEDGE "OFFERING NO RISK FACTORS PRESENT FOR A PRISON OFFICIAL TO DRAW THE INFERENCE THAT HE FACED A SUBSTANTIAL RISK OF HARM" (APP.(A) AT 8-9)

IN MAKING THIS CONCLUSION, THE ELEVENTH CIRCUIT WEIGHED THE EVIDENCE AND DREW THE INFERENCE THAT MILLEDGE "OFFERING NO RISK FACTORS PRESENT FOR A PRISON OFFICIAL TO DRAW THE INFERENCE THAT HE FACED A SUBSTANTIAL RISK OF HARM" ID. THIS VIEW, CONFLICTS OR AT ODDS WITH ANDERSON V. LIBERTY, LOBBY, INC., 477 U.S. 242, AT 255, 91 LEd. 2d 202 (1986), (HOLDING THAT "CREDIBILITY DETERMINATION, THE WEIGHING OF THE EVIDENCE, AND THE DRAWING OF LEGITIMATE INFERENCES FROM THE FACTS ARE JURY FUNCTIONS, NOT THOSE OF A JUDGE, WHETHER HE IS RULING ON A MOTION FOR SUMMARY JUDGMENT OR FOR A DIRECT VERDICT")

APPLYING THE ANDERSON STANDARD, THE ELEVENTH CIRCUIT IN VALDES V. CROSBY, 450 F.3d 1231, AT 1243-1244 (11TH CIR. 2006) HELD THAT:

"WHETHER CROSBY ACTUALLY DREW THE INFERENCE OF WIDESPREAD ABUSE AND WAS THEREFORE ON NOTICE OF THE NEED TO CORRECT OR STOP ABUSE BY

OFFICIALS THEN BECOMES A FACTUAL QUESTION FOR THE JURY "ID." 2

THE DECISION OF THE ELEVENTH CIRCUIT DIRECTLY CONFLICTS WITH VALDES; AND IT ALSO CONFLICTS WITH FISCHL V. ARMITAGE, 128 F.3d 50 (2nd CIR. 1997) (HOLDING THAT THE DISTRICT COURT'S CONCLUSION THAT IT SHOULD NOT BE INFERRED THAT IT WAS MARSHAL WHO OPENED THE CELL DOOR, WAS BASED ON THE COURT'S OWN WEIGHING OF THE EVIDENCE, ITS DRAWING OF INFERENCES ADVERSE TO FISCHL, AND ITS UNFAVORABLE ASSESSMENTS OF FISCHL'S CREDIBILITY, MATTERS THAT WERE NOT WITHIN THE PROVINCE OF THE COURT ON A MOTION FOR SUMMARY JUDGMENT")

HERE, LIKE FISCHL, THE ELEVENTH CIRCUIT CONCLUSION THAT MILLEDGE "OFFERING NO RISK FACTORS PRESENT FOR A PRISON

² THE ELEVENTH CIRCUIT HAS RULED LIKE THE COURT OF APPEALS DID IN SMITH V. BRENNETTSY, 158 F.3d 908 (5th CIR. 1998) (HOLDING THAT "WHETHER A SUPERVISOR OFFICIAL ACTUALLY DREW THIS INFERENCE THEN BECOMES A FACTUAL QUESTION THAT A COURT OF APPEALS LACKS JURISDICTION TO HEAR ON ... APPEAL")

OFFICIAL TO DRAW THE INFERENCE THAT HE FACED A SUBSTANTIAL RISK OF HARM," WAS BASED ON THE COURT'S OWN WEIGHING OF THE EVIDENCE, ITS DRAWING OF INFERENCES ADVERSE TO MILLEDGE, AND ITS UNFAVORABLE ASSESSMENT OF MILLEDGE'S CREDIBILITY, MILLEDGE SAYS, AS FISCHL SAYS, "MATTERS THAT WERE NOT WITHIN THE PROVINCE OF THE COURT ON A MOTION FOR SUMMARY JUDGMENT." *Id.*

THE QUESTION PRESENTED IS:

WHETHER THE GENUINE ISSUE STANDARD PERMITS THE COURT OF APPEAL'S JUDGE'S TO WEIGH THE EVIDENCE AND DETERMINE WHETHER OR NOT A PRISON OFFICIAL ACTUALLY DREW THE INFERENCE THAT MILLEDGE FACED A RISK OF SERIOUS HARM.

III. THE COURT OF APPEALS ERRED IN HOLDING THAT "NOR IS THERE ANY EVIDENCE THAT MILLEDGE KNEW OR REPORTED THAT HIS CELLMATE HAD ANY OTHER TYPE OF WEAPON" (APP. CA) AT 9)

IN REACHING THIS CONCLUSION, THE ELEVENTH CIRCUIT REQUIRED THAT THERE BE EVIDENCE THAT "MILLEDGE KNEW OR REPORTED THAT HIS CELLMATE HAD ANY OTHER TYPE OF WEAPON". ID. THIS VIEW, CONFLICTS OR AT ODDS WITH CALDWELL V. WARDEN, FCI TALLADEGA, 748 F.3d 1090 (11th CIR. 2014) (HOLDING THAT "CALDWELL WAS NOT REQUIRED TO PRODUCE EVIDENCE OF THE PRECISE WAY THAT INMATE PENSON MIGHT HARM HIM IN THE FUTURE"); FARMER V. BRENNAN, 511 U.S. 825, AT 848, 128 LEd. 2d 811 (1994) (HOLDING THAT "THE FAILURE TO GIVE ADVANCE NOTICE IS NOT DISPOSITIVE")

BY REQUIRING THAT THERE BE EVIDENCE THAT "MILLEDGE KNEW OR REPORTED THAT HIS CELLMATE HAD ANY OTHER TYPE OF WEAPON", THE ELEVENTH CIRCUIT HAS STRAYED FROM

FROM THE CLEAR HOLDING OF THIS COURT IN FARMER. THE FARMER COURT INSTRUCTED THAT THE THRESHOLD INQUIRY IS:

WHETHER PRISON OFFICIAL "KNOWS THAT INMATES FACE A SUBSTANTIAL RISK OF SERIOUS HARM AND DISREGARDS THAT RISK BY FAILING TO TAKE REASONABLE MEASURE TO ABATE IT". *Id.* 511 U.S. 11847

THE ELEVENTH CIRCUIT DID NOT APPLY THOSE FACTORS. THIS COURT SHOULD INTERVENE AND REQUIRE THE ELEVENTH CIRCUIT TO DO SO.

IV. THE COURT OF APPEALS ERRED IN HOLDING THAT "WE CANNOT SAY THAT A SINGLE THREAT, ON THE CIRCUMSTANCES OF THIS CASE, IS SUFFICIENT BY ITSELF TO CONSTITUTE A SUBSTANTIAL RISK OF SERIOUS HARM" (APP. (A) AT 9)

IN MAKING THIS CONCLUSION, THE ELEVENTH CIRCUIT FOCUSED ON WHETHER A SINGLE THREAT "IS SUFFICIENT BY ITSELF TO CONSTITUTE A SUBSTANTIAL RISK OF SERIOUS HARM". *Id.* THIS VIEW, CONFLICTS OR AT ODDS WITH FARMER V. BRENNAN, 511 U.S. 825, AT 843, 128 LEd.2d 811 (1994), THIS COURT INSTRUCTED THAT THE FOCUSES ON WHETHER A PRISONER FACED A "RISK")

BY FOCUSING ON WHETHER A SINGLE THREAT IS SUFFICIENT BY ITSELF TO CONSTITUTE A SUBSTANTIAL RISK OF SERIOUS HARM RATHER THAN MILLEDGE FACED A RISK, THE ELEVENTH CIRCUIT HAS STRAYED FROM THE CLEAR HOLDING OF THIS COURT IN FARMER. IN OTHER WORDS, THE ELEVENTH CIRCUIT'S ANALYSIS CLOSELY RESEMBLE THE APPROACH FARMER DISAVOWED.

THE QUESTION PRESENTED IS :

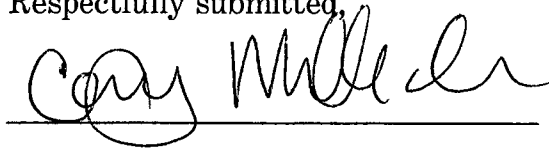
WHETHER A THREAT TO INFLICT PHYSICAL OR HARM CONSTITUTES A SUBSTANTIAL RISK OF SERIOUS HARM IN THE LIGHT OF PRINCIPLES SET FORTH IN UNITED STATES V. WHITE, 258 F.3d 374 (5th CIR. 2001); BOWEN V. WARDEN, 826 F.3d 1312 (11th CIR. 2016); FARMER V. BRENNAN, 511 U.S. 825 (1994).

IF MILLEDGE HAD BROUGHT HIS CASE IN THE EIGHTH CIRCUIT, THE COURT OF APPEALS WOULD HAVE ALLOWED MILLEDGE'S FAILURE TO PROTECT CLAIMS PROCEED TO TRIAL. SEE, E.G., ERICKSON V. HOLLOWAY, 77 F.3d 1078 (8th CIR. 1995) (HOLDING THE PRISON OFFICIAL 'LIABLE' BECAUSE THE PRISON OFFICIAL WERE AWARE OF A THREAT AGAINST ERICKSON "AND THUS KNEW ERICKSON FACED A SUBSTANTIAL RISK OF SERIOUS HARM" AND RESPONDED "UNREASONABLE" TO THE RISK)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cory Miller", is written over a horizontal line.

Date: 5-1-2019