

NO. 19-_____

In the
Supreme Court of the United States

CORNELIUS LORENZO WILSON,

Petitioner,

v.

DENNIS GRIMES; SID J. GAUTREAUX, III; LINDA OTTESEN;
CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE
CONSOLIDATED GOVERNMENT; DR. RAMAN SINGH;
TAMRYA YOUNG; and KAREN COMEAUX,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does systemic underfunding and understaffing of a municipal jail that knowingly causes significant delays for prisoners receiving access to outside medical care constitute an official policy or custom under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)?
2. Whether a substantive delay in medical care for a serious medical condition is an Eighth Amendment violation for a prisoner rather than simply a disagreement with his medical care?

LIST OF PARTIES

The parties named in the caption are the only parties to this proceeding. The Petitioner is Cornelius Lorenzo Wilson. The Respondents are Dennis Grimes; Sid J. Gautreaux, III, Linda Ottesen, City of Baton Rouge/Parish of East Baton Rouge Consolidated Government, Dr. Raman Singh, Tamrya Young, and Karen Comeaux.

LIST OF PROCEEDINGS

United States District Court for the
Middle District of Louisiana

No. 15-00680-JWD-RLB

Cornelius Wilson v. Dennis Grimes, et al.

Ruling Date: March 19, 2018

United States Court of Appeals for the Fifth Circuit

No. 18-30475

Cornelius Wilson v. Dennis Grimes, et al.

Opinion Date: May 15, 2019

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PETITION FOR A WRIT OF CERTIORARI

Cornelius Wilson, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in case no. 18-30475.

The Fifth Circuit erred in affirming the District Court's decision to dismiss Wilson's complaint pursuant to Fed. R. Civ. P. 12(b)(6), as he sufficiently alleged that each of the named Defendants violated his constitutionally protected rights to medical care while incarcerated. The institutional and widespread problems with the underfunded, overworked and ill-equipped staff at the East Baton Rouge Parish Prison created a medical system that unconstitutionally delayed Wilson's access to an outside ENT provider to address his serious medical needs. In addition, the actions and omissions of Defendants Ottesen, Grimes, Singh and Young as alleged by Wilson were more than just mere negligence. They amounted to a deliberate indifference of his serious medical need to be scheduled to see an ENT that cannot be protected by qualified immunity.

OPINIONS BELOW

The Court of Appeal's May 15, 2018, opinion (App.1a-5a), is unpublished and reported at *Wilson v. Grimes*, 770 Fed. Appx. 218 (5th Cir. 2019). The District Court's March 19, 2018, order on the Respondents' Motions to Dismiss (App.6a-32a) is not reported.

JURISDICTION

The Court of Appeals entered its judgment on May 15, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides, in pertinent part, that criminal defendants shall not be subject to “cruel and unusual punishments.” U.S. Const. Amend. VIII.

The statutory provision involved is 42 U.S.C. § 1983, which provides in relevant part:

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

A. Factual Background

1. Introduction

Wilson is a well-known vocal musician originally from Baton Rouge, Louisiana. *See* App.43a at ¶ 43. He was arrested on September 16, 2013, and became a pre-trial detainee under the control and custody of the Parish Prison. *Id.* At this time, Wilson’s voice was healthy and vibrant. *Id.* at ¶ 44. In fact, for the next seventeen months, his voice remained strong, not hoarse, and he did not have a productive cough. *Id.* at ¶ 45. However, beginning in February of 2015, Wilson started

experiencing and complaining to Parish Prison medical officials about symptoms consistent with throat cancer – a sore throat, hoarse voice, and persistent and productive cough. *See* App.33a at ¶ 1. His symptoms never improved. *Id.* at ¶ 2. Despite his repeated requests to be seen by a specialist and taken to the hospital, Defendants Grimes and Ottesen continued to ignore Wilson’s complaints and worsening condition. *See e.g.*, App.45a at ¶ 57. And then, when Wilson finally received a referral from a Parish Prison doctor for an ENT appointment, Defendant Grimes, Ottesen, Young and Singh chose not to send him to Our Lady of the Lake Hospital for an evaluation. *See* App.51a at ¶¶ 89-90. Instead, they opted not to transport Wilson, but rather to have him examined via a telemed monitor. *See* App.51a at ¶ 92.

On October 29, 2015, the DOC transferred Wilson from the Parish Prison to a private prison contracted by the DOC that housed inmates in its care and custody. *Id.* at ¶ 94. DOC transferred him two additional times. *See* App.51a-55a at ¶¶ 97-116. Wilson both exhausted his administrative remedies, and continued to complain to medical personnel about his persistent symptoms at every facility where DOC transferred him. App.65a at ¶ 166. Yet, he was not taken to see a throat specialist until the end of February in 2016 – thirteen months after he initially began reporting symptoms to his custodians. App.33a at ¶ 3.

By the time DOC arranged an appointment for a specialist to examine Wilson, his undiagnosed cancer had progressed to the point that he needed to have a total laryngectomy. Now, four-and-a-half years later, Wilson does not have vocal cords,

and will forever breathe through a laryngectomy stoma in his neck. App.34a at ¶ 5. Wilson's permanent injuries are a direct result of the deliberate indifference displayed by the Defendants toward him.

2. The Parish Prison

During the period of Wilson's incarceration, the Parish was responsible for providing and funding medical services and adequate medical care to all inmates housed in the custody and control of the Parish Prison. App.37a at ¶ 19. It provided medical services to inmates through Prison Medical Services ("PMS"). *Id.* at ¶ 19. Defendant Ottesen directed PMS – a now defunct Parish Department – at all times pertinent to Wilson's complaint. App.38a at ¶ 20.

While the Parish provided medical care, the East Baton Rouge Sheriff's Office ("EBRSO") – under the direction of Defendant Sheriff Gautreaux and Defendant Warden Grimes – was responsible for managing the Parish Prison's daily operations. App.35a-36a at ¶¶ 14-17.

As official policy makers, Defendants Ottesen, Gautreaux and Grimes (collectively referred to as the "Parish Defendants") were each individually aware of the serious problems with the medical system at the Parish Prison during the time of Wilson's incarceration. *See e.g.*, App.36a-39a at ¶¶ 15, 18, 24. For instance, the Parish Defendants had knowledge of the systemic medical problems at the Parish Prison because other inmates had filed several lawsuits during this time period against them concerning the unconstitutional medical care provided to them at the Parish Prison. App.59a at ¶ 138.

In addition, these Defendants had knowledge about the ongoing and persistent problems inmate medical care at the Parish Prison because of public testimony provided by medical staff to the East Baton Rouge Parish Metro Council while Wilson was incarcerated at the Parish Prison. App.59a-60a at ¶ 139. At this public meeting, Dr. Rani Whitfield – a Parish Prison doctor contracted by PMS – stated that there was a “significant decline in the quality of care delivered to the inmate population over the past six or seven years.” *Id.*

Dr. Whitfield further testified to the Council that “[i]t’s true that we have a sicker inmate population, and without proper resources, supplies and more boots on the ground in the form of nursing staff, we are unable to efficiently care for the patients’ increasing morbidity, mortality and, ultimately, liability.” *Id.* (emphasis added). The Council heard additional testimony that there was “supposed to be a minimum of five nurses on staff per shift, but there have sometimes been as few as one or two nurses on staff to manage an entire shift” at the Parish Prison. App.60a at ¶ 141.

In turn, Wilson pled in his Complaint that these multiple lawsuits and public testimony at the Parish Council evidence that the Parish Defendants’ knowingly established and maintained an unconstitutional medical system that was chronically understaffed and underfunded. *See* App.59a-60a at ¶¶ 137-42.

This unconstitutional system of providing medical care at the Parish Prison directly impacted Wilson and the medical care he (did not) received when he started developing a sore throat and hoarse voice. App.43a at ¶ 45. Wilson promptly sought treatment for those symptoms by complaining to Parish Prison personnel in early

February of 2015. *Id.* As time passed, however, his condition only worsened. *See e.g.*, App.49a at ¶ 82 (Plaintiff stating on or about Aug. 7, 2015 that “[My] voice still hasn’t gotten better. [My] larynx or throat is inflamed, I need [. . . a] hospital.”).

In the nine months that followed his initial February 2015 complaint, Wilson repeatedly asked those working under the Parish Defendants’ supervision to take him to the hospital. In summary, while incarcerated at the Parish Prison, Wilson made the following requests and complaints directly to Defendant Ottesen and her staff in an effort to obtain appropriate medical help:

- On or about February 7, 2015, Wilson first notified East Baton Rouge Parish Officials about his medical condition when he filed a “Medical Request Form” stating, “My throat not sore yet [sic], I’ve been hoarse for five days now, maybe sinus drainage clogged up vocal chords lol I don’t know? But please need attention medically!!” *See* App.43a at ¶ 45.
- After PMS staff ignored his request, on or about February 11, 2015, Wilson filed a second medical request form, in which he stated, “This is my second request. For a week and a half my voice is gone. My throat is congested with mucus! I need to be checked please! Don’t need walking pneumonia, need to be checked for it, I’ve had it before!” *Id.* at ¶ 46.
- On or about March 6, 2015, after his medical condition continued to deteriorate, Wilson filed another medical request form stating: “my medication

ran out, my throat been like this for a month, the problem is getting worse, requesting to go to the hospital, need to be seen by a doc!" App.44a at ¶ 49.

- After no response from the prison medical staff, on or about March 16, 2015, Wilson filed another "Medical Request Form" in which he complained, "I was under medicated my voice has been gone since 2-3-15, my first sick call was 2-7-15, its 3-15-15 I really need medical attention for my voice (I am prudent in law) please its so simple to see me I was scheduled for today but wasn't called. I need medical attention now please, I'm in pain!" App.44a at ¶ 50.
- In the beginning of April 2015 – two months after Wilson first experienced symptoms with his throat and voice – he filed an official complaint regarding his medical care and ongoing problems with this throat to Defendant Ottesen. 45a at ¶ 57. He asked to go to the hospital. *Id.* On April 6, 2015, Defendant Ottesen responded that Wilson's grievance was unfounded and that his condition did not require hospital treatment. *Id.*
- Wilson appealed Defendant Ottesen's decision. App.46a at ¶ 59.
- Wilson medical condition continued to deteriorate. On or about April 11, 2015, prompting him to file another medical request form that stated:

Since the 7th of Feb my voice has been gone. I've been prescribed not enough medication and the wrong dosage. I am requesting to go to the hospital for the third time I need medical attention I feel I am being denied. If a doctor prescribe treatment, then its serious . . . enough for proper treatment I don't bother ya can you please attend to my request! Y'all keep taking my money and I'm not being treated properly!

Id. at ¶ 60.

- On April 21, 2015, Defendant Grimes affirmed Defendant Ottesen’s decision and denied Wilson’s appeal, indicating that his medical requests were unfounded. *Id.* at ¶ 59.
- On or about June 11, 2015, Wilson made another sick call and was examined by Nurse Raine. Again, Wilson indicated that his medical condition was not improving: he still had a sore throat, hoarse voice, difficulty with swallowing and a productive, and bloody cough. Nurse Raine did not refer Wilson to an ENT despite his clear and obvious need for additional medical care. App.48a at ¶¶ 74-75.
- Wilson’s symptoms never changed, which prompted him to file another medical request form on August 7, 2015, that stated: “My voice still haven’t gotten better larynx or throat is inflamed, I need a steroid shot or hospital, been treated 3 times medicine didn’t work. Been like this since 2-7-15.” No medical disposition was provided to this request. App.49a at ¶ 82.
- On or about August 13, 2015, Wilson made another sick call and was examined by Nurse Raine concerning his ongoing and unresolved medical issue with his throat. *Id.* at ¶ 83. Again, despite the unchanged condition of Wilson’s voice and throat, Nurse Raine did not refer him to an ENT. *Id.*

During this time period, the chronically overworked, understaffed, and underequipped doctors and nurses examined Wilson multiple times. *See e.g.*, App.44a at ¶¶ 48, 51. At each appointment, as evidenced by his Parish Prison

medical file, Wilson complained about his worsening symptoms. *See e.g.*, App.46a at ¶ 62.

Despite Wilson's well-documented symptoms, the overworked, underfunded and ill-equipped medical staff at the Parish Prison repeatedly failed to refer him for an ENT evaluation. In fact, during one Parish Prison medical examination, Dr. Whitfield explained to Wilson that his "throat needed to get scoped," but the Parish Prison did not have the equipment to conduct such a procedure. App.48a at ¶ 76. Dr. Whitfield then told Wilson that the Parish Prison was not taking him to an outside facility for such an examination because the prison did not have the money, and that Defendant Grimes had refused to authorize arrangements to get Wilson to such an appointment. App.48a-49a at ¶ 78.

In turn, on several occasions, Wilson also directly complained to Defendant Warden Grimes about his unchanging medical condition. For instance, in March of 2015, as best he could with his hoarse voice, Wilson told Defendant Grimes while the Warden was making rounds that his throat had been sore for more than three weeks, and that he needed medical attention. App.45a at ¶ 56.

Rather than seeking medical attention for Wilson, following this interaction Defendant Grimes denied Wilson's appeal of Defendant Ottesen's decision to refuse his request for hospital care. App.46a at ¶ 59. At another time, following the inmate culinary arts program graduation ceremony in August of 2015, Wilson and his mother told Defendant Grimes about his condition and his need to see a specialist.

App.49a at ¶¶ 79-81. Again, Defendant Grimes did nothing to seek any form of medical care for Wilson.

After seven long months of complaints, on August 31, 2015, a Parish Prison doctor finally referred him to see an ENT specialist outside of the Parish Prison. App.50a at ¶ 88.

However, even after a medical professional recommended that the appropriate course of action for Wilson was an appointment with an ENT specialist, Defendant Grimes and Defendant Ottesen did not exercise their authority to send Wilson to such an evaluation. At this point of his incarceration, Wilson was no longer a pre-trial detainee. *See* App.48a at ¶ 73 (stating that Wilson was transferred to DOC's custody on May 29, 2015, but remained housed at the Parish Prison). Therefore, together Defendants Ottesen and Grimes, as well as DOC Defendants Singh and Young, reviewed the Parish Prison medical staff's September 21, 2015, request to send Wilson to Our Lady of the Lake in Baton Rouge, Louisiana for an ENT evaluation. *See* App.51a at ¶¶ 89-90. But, instead of transporting Wilson to Our Lady of the Lake, these Defendants decided to have him evaluated by an ENT via a telemed appointment. *Id.*

On October 28, 2015 (now nine months after he first complained of symptoms), Wilson finally had his telemed appointment. *Id.* at ¶ 92. However, the video link at the understaffed and underfunded facility did not work, rendering it impossible for the doctor to perform any kind of examination of Wilson. *Id.*

As a result of this mishap, the Parish Defendants' decisions ultimately resulted in a complete denial of access to a medical professional with the proper equipment to examine Wilson's throat. By the time of his transfer from the Parish Prison, Wilson not only had complained about his symptoms for nine months, but also had an actual referral from a medical professional for two months that Defendants Grimes, Ottesen, Young and Singh did not honor. *Id.* at ¶ 93.

Wilson's experiences while incarcerated at the Parish Prison exemplified its custom and practice of unconstitutionally delaying medical care to prisoners due to inadequate funding and staffing. *See App.58a-61a at ¶¶ 136-46.* This pervasive institutional problem, along with the Defendant Ottesen's and Grimes' deliberate indifference to Wilson's serious medical needs, resulted in an unconstitutional delay in treating Wilson's serious medical need. *See App.61a at ¶¶ 144-46.* Consequently, when the DOC eventually transferred Wilson from the Parish Prison, his cancer remained undiagnosed and continued to progress. However, Wilson's throat cancer could have been caught in its early stages and treated without needing to permanently remove his vocal cords had the Parish Defendants' 1) operated and maintained a constitutional medical care system for Parish Prison inmates; and 2) chose to timely send Wilson to an ENT when he had a referral.

3. The Louisiana Department of Corrections

The DOC transferred Wilson from the Parish Prison to the Jackson Parish Correctional Center ("Jackson"). App.62a at ¶ 94. There, Wilson continued to

complain to Jackson officials about his discomfort and need to have his vocal cords evaluated.

During the time period relevant to Wilson's complaint, Defendants Singh and Young were responsible for scheduling medical appointments for DOC inmates with referrals to non-DOC facilities. App.39a-40a at ¶¶ 27, 29. On November 4, 2015, Jackson officials sent an urgent "Medical Transfer Request" to Defendants Singh and Young that stated Wilson could have "possible throat cancer" and/or "possible thyroid cancer." App.52a at ¶ 97. This was now the second time that Defendants Singh and Young received notice of Wilson's need for an ENT evaluation. Another Jackson medical form sent to Defendants Singh and Young on November 6, 2015, indicated that Wilson needed to *see* an ENT because he had been experiencing hoarseness of his voice for seven months. *Id.* at ¶ 98. Despite clear knowledge of Wilson's urgent need to *see* an ENT specialist, DOC Defendants Singh and Young did not arrange for him to see an ENT while he was at Jackson. *Id.* at ¶ 99.

In fact, instead of sending Wilson to a doctor, the DOC simply transferred Wilson – this time to Elayn Hunt Correctional Center ("EHCC") on November 23, 2015. App.52a-53a at ¶ 101. Again, just like at Jackson, EHCC sent a medical transfer request form to Defendants Singh and Young indicating Wilson's need to be scheduled for an ENT evaluation. *See* App.53a at ¶ 104. And, again Defendants Singh and Young did nothing, as they did not schedule an appointment for Wilson with an ENT while he was housed at EHCC. *See id.* at ¶ 104.

In addition, EHCC nurse Defendant Comeaux was responsible for following up with Defendants Singh and Young in order to ensure that they scheduled an appointment for Wilson. *Id.* at ¶105. Yet, Defendant Comeaux did not contact Defendants Singh and Young, and did nothing for Wilson despite his well documented and obvious need to be examined by an ENT specialist. App.54a at ¶¶ 111-12.

Meanwhile, Wilson continued to complain through EHCC's appropriate avenues about the ongoing and worsening condition of his throat and voice. *See* App.53a at ¶ 107. He even showed EHCC medical personnel blood and tissue that he had coughed up as a result of his productive cough. *See id.*

On December 2, 2015, he made yet another sick call stating that his throat hurt and that he has been without a voice since February 7, 2015. *See* App.54a at ¶ 108. On December 6, 2015, Wilson filled out another health care request form stating that his throat was burning, he had left ear pain, his larynx was swollen, his voice had been gone for ten months, and that he needed to see an ENT. *See id.* at ¶ 110. Yet, despite their respective personal knowledge of Wilson's serious medical needs, Defendants Comeaux, Singh, and Young continued to do nothing for him while he was at EHCC. *See id.* at ¶ 112.

Then, instead of sending Wilson to an ENT, the DOC transferred him to Allen Correctional Center ("ACC") on December 28, 2015. *See id.* at ¶ 113. There, Wilson continued to beg for medical attention as his symptoms worsened dramatically.

App.55a at ¶ 117. For instance, on January 4, 2016, Wilson wrote in a medical request form:

I need to go to a ear nose and throught [sic] doctor my problem is emergency status. Need to have a cat scan and ultra sound on my throught [sic]. I'm in pain I need to go to a specialist, I cough up bloody muges or (mukes) from my throught [sic] . . . I need to go to a ear nose and through [sic] doctor for my through [sic] please . . . don't egnore [sic] this request . . . I need a doctor a specialist ENT – Doctor please.

App.55a-56a at ¶ 119.

On January 5, 2016, Wilson filled out yet another medical request form where he wrote:

for 11 months my throat has been abnormal. Right now feels like a dagger is in my left ear, a throbbing pain, and the left side of my throat is in pain also the ear drops not working. I need to see a doctor! I need to be treated for this its been 11 months I haven't seen a doctor to treat this correctly!

App.56a at ¶ 120. Defendants Singh and Young continued to ignore Wilson's request and took no action to schedule him for the appointment that he obviously needed with an ENT specialist. In turn, about a month later, Wilson needed to beg for help in another medical request form:

[my] throat is burning and in pain, my neck is stiff and ear, temple, behind my ear is in pain, lack of proper treatment is worsening my illnesses. I'm sufficiently pleaded imminent danger of serious physical (emergency?? "Energy") a referral to a ENT, is not the ENT, I request to be sent to a hospital because I was told, that yall have done all you can do. The illness is still here, at hospitals specialists are on call. I request to not be in pain by seeing specialist and be taken to a professional medical facility (hospital) also I request to see the doctor here, coughing blood is not regular.

Id. at ¶ 121. Again, Defendants Singh and Young still did not address Wilson's requests.

On February 22, 2016, Wilson filled out another health care request form where he again pleaded to see a doctor. He wrote that at

2-19th-2016 at 4:20 pill call, I notified the nurse I was bleeding from the throat and I could spit and show her now. I was told to ask nancy or nikki for an update on my appointment. I've been told to wait for DOC to approve the trip. My medical is bigger than wait. I'm in pain every day. Yall said yall done all you can do, I requested to be sent to a hospital, hospitals have ear nose and throat doctors on call, please I don't want to die like the guy did yesterday because of stage 4 cancer . . .

Id. at ¶122 (emphasis added). On February 26, 2016, Wilson filled out another health care request form and wrote:

my eqaulibirum [sic] is off, and I have pressure behind my eyes, and they blurry a little. Also I cough up blood from my throat. I have been very patient with medical departments for the past year, can you please send me a hospital and I need to see the doctor there.

Id. at ¶ 123 (emphasis added).

4. Diagnosis

Finally, on February 29, 2016, over a year since Wilson first tried to seek treatment for this throat conditions, Doctor Rachel Barry, an otolaryngologist at University Hospital, finally examined him. App.57a at ¶ 124. After she conducted a laryngoscopic exam, she found a large tumor on his left false vocal cord. *Id.* at ¶ 125. University doctors then performed a panendoscopy and biopsy of the tumor, and discovered that Wilson was in the advanced stages of squamacell carcinoma cancer. *Id.* at ¶ 126. Subsequently, Wilson underwent a total laryngectomy with bilateral neck dissections. Today, he no longer has vocal cords and breathes through laryngectomy stoma in his neck.

By the time of his February 29, 2016, exam, Defendants Singh and Young had known for at least six months about Wilson's medically documented need to see an ENT specialist. *See* App.48a at ¶ 73. Nurses at Jackson had also made Defendants Singh and Young aware at least four months prior to this appointment that Wilson might have throat or thyroid cancer and that he urgently needed to see an ENT. App.52a at ¶ 97. In addition, Defendants Singh and Young received communication on at least four different occasions about Wilson's need to see an ENT. However, they repeatedly ignored a medical professional's recommended treatment for Wilson for over a half of year.

Their deliberate indifferences to Wilson's serious medical needs resulted in an unconstitutional delay of the medical treatment he desperately needed. *See* App.62a at ¶ 152. Consequently, when Wilson's cancer was eventually identified, it could not be treated with just radiation, as would be done with most early stages of throat cancer. Instead, the only treatment option was to perform a total laryngectomy, which left Wilson without vocal cords and a permanent stoma in his neck. App.34a at ¶ 5.

B. Proceedings Below

Defendants Grimes, Gautreaux and Ottesen knowingly operated an underfunded medical care system at the East Baton Rouge Parish Prison ("Parish Prison") where staff were overworked and ill-equipped to do their job. Consequently, the Parish Prison was unable to provide constitutionally sound medical care to Wilson while he was incarcerated there. After seven months of complaining and

begging for help concerning a persistent and worsening sore throat, hoarse voice and productive cough, a Parish Prison doctor finally referred Wilson to be evaluated by an Ear Nose and Throat (“ENT”) specialist on August 31, 2015.

On October 14, 2015, Plaintiff filed a *pro se* Complaint in the District Court seeking treatment with an ENT specialist outside of the Parish Prison where he was still housed. *See* Record on Appeal (“ROA”) at 25. Following this initial filing, the Department of Corrections (“DOC”) transferred Wilson three times. *See* App.51a-52a, 54a. At all three facilities, Wilson’s symptoms worsened. *See* App.51a-57a. It was not until February 29, 2016, that DOC finally took Wilson to a specialist at University Hospital where he learned that he had throat cancer and then underwent extensive surgery. *See* App.57a.

DOC’s repeated transfers of Wilson’s and the treatment of his cancer and other medical problems required lengthy stays at Louisiana hospitals, and subsequently delayed his ability to pursue this matter as a *pro se* litigant and serve the complaint. *See* ROA.77-9.

Undersigned counsel enrolled on behalf of Wilson on June 10, 2016, and initiated the process to have the complaint served on all parties. ROA.75. After counsel received Wilson’s medical file from the DOC, the Court granted Wilson leave of court to amend his complaint to include allegations learned from these medical records. *See* ROA.868.

Each of the named Defendants filed motions to dismiss. *See* App.6a-7a. On March 19, 2018, in its first ruling on the sufficiency of Wilson’s claims, the District

Court granted each of the Defendants' Motions to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). *See* App.6a-32a. On May 15, 2019, the Fifth Circuit issued its opinion concerning this matter. *See* App.1a-5a.

REASONS FOR GRANTING THE WRIT

I. THE FIFTH CIRCUIT WRONGLY DETERMINED THAT WILSON FAILED TO SUFFICIENTLY ALLEGUE CONSTITUTIONAL VIOLATIONS AGAINST THE ENTITY RESPONSIBLE FOR PROVIDING HIM MEDICAL CARE WHILE INCARCERATED.

The Fifth Circuit erred when it dismissed Wilson's official capacity claims against Defendants Grimes, Gautreaux, Ottesen and the City of Baton Rouge/East Baton Rouge Parish Consolidated Government (collectively the "Parish Defendants") for establishing and maintaining an unconstitutional system of administering health care services to inmates at the Parish Prison. This system, though its policies and customs, unconstitutionally delayed Wilson's access to an outside ENT appointment that he desperately needed to prevent the progression of his throat cancer.

The United States Supreme Court has determined that a municipal entity can be held liable under 42 U.S.C. § 1983 when a plaintiff is deprived of a federal right, due to an express municipal policy, widespread custom, or deliberate act of a decision-maker, which proximately caused his injury. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91. To establish municipal liability under § 1983, "a plaintiff must show the deprivation of a federally protected right caused by action taken pursuant to an official municipal policy." *Valle v. City of Houston*, 613 F.3d 536, 541-42 (5th Cir. 2010). In turn, "[a] plaintiff must identify: (1) an official policy (or custom), of which (2) a constitutional violation whose 'moving force' is that policy or custom." *Id.*

(citation and internal quotation marks omitted). The plaintiff must also “demonstrate that the municipal action was taken with ‘deliberate indifference’ as to its known or obvious consequences.” *Bd. of County Comm’rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 407 (1997). Municipalities and other local government units “may be sued for constitutional deprivations [] pursuant to [a] governmental ‘custom’ even though such a custom has not received formal approval through the body’s official decision making channels.” *Monell*, 436 U.S. at 690-1.

“Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives inmates of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.” *Brown v. Plata*, 563 U.S. 493, 510-11 (2011). In constitutional challenges to a correctional institution’s provision of medical care, evidence of systemic deficiencies – such as a delay in medical care for a serious medical need – can establish the ‘disregard’ element of deliberate indifference. *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991). For example, this element may be met “by proving that there are ‘such systemic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to adequate medical care.’” *Id.* (quoting *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981)). As an evidentiary matter, these systemic deficiencies may be identified by a “series of incidents closely related in time” or “[r]epeated examples of delayed or denied medical care.” *Rogers v. Evans*, 792 F.2d 1052, 1058-59 (11th Cir. 1986). Further,

prison officials' efforts to correct systemic deficiencies that "simply do not go far enough" when weighed against the risk of harm also support a finding of deliberate indifference, *Laube v. Haley*, 234 F.Supp.2d 1127, 1251 (M.D. Ala. 2002), because such efforts are not "reasonable measures to abate" the identified substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Finally, a defendant institution's response to a known risk must be more blameworthy than "mere negligence." *Farmer*, 511 U.S. at 835 (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). In other words, the defendant must have disregarded the risk with "more than ordinary lack of due care for the prisoner's interests or safety." *Id.* (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). However, while an "inadvertent failure" to provide adequate medical care does not satisfy the deliberate-indifference standard, *Estelle*, 429 U.S. at 105-06, in challenges to health-care systems, repeated examples of negligent conduct support an inference of systemic disregard for the risk of harm facing prisoners with serious medical needs. *See Ramos*, 639 F.2d at 575.

Put differently, *Monell* liability can occur in a variety of ways, one of which is by "systematic maladministration" of the laws." *Bennett v. City of Slidell*, 728 F.2d 762, 768 (5th Cir.1984). This Court has also recognized that municipalities or supervisors may face liability under § 1983 when they breach duties imposed by state or local law. *O'Quinn v. Manuel*, 773 F.2d 605, 608 (5th Cir. 1985); *see also Salvagio v. Doe*, No. 13-5182, 2013 WL 6623921, at 2 (E.D. La. Dec. 16, 2013) ("state

law determines whether a particular governmental entity has an obligation or policymaking authority”).

In Louisiana, state law imposes a dual responsibility for the provision of health care for parish prison inmates on both the local governing authority and the local sheriff’s office. *See* La. R. S. §§ 15:703-704; *Oladipupo v. Austin*, 104 F. Supp.2d 626, 641 (W.D. La. 2000) (citing La. R.S. § 15:704); *Langley v. City of Monroe*, 582 So.2d 367, 368 (La. App. 2d Cir. 1991)(citations omitted); *Landry v. East Baton Rouge Parish Sheriff*, 2015-281 (La. 6/30/15), 168 So.3d 378 at 2 (noting that “confining authorities such as the Sheriff’s Office still have a legal obligation towards inmates, and that standard of care imposed upon a confining authority in providing for the medical needs of inmates is that the services be reasonable.”); *Fairley v. Stalder*, 294 Fed. Appx. 805, 812 (5th Cir. 2008) (“day-to-day operation of the parish prison is the responsibility of the local sheriff, and that financing and maintenance are the responsibility of the local governing authority”); *Hauenstein v. Rapides Parish Sheriff’s Dep’t*, 2016 U.S. LEXIS 183176, at *16 (W.D. La. Dec. 6, 2016 (finding that the Sheriff has the duty to provide “day-to-day medical care for the prisoners.”)).

Therefore, “to the extent the jail’s deficiencies are attributable solely to a lack of adequate funding, the Parish’s obligation to fund the jail could be implicated and the parish might be held responsible.” *Arce v. Louisiana*, 226 F. Supp. 3d 643, 649 (E.D. La. 2016). In addition, “a choice to provide care known to be less effective because it is easier or cheaper can constitute deliberate indifference.” *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1251 (M.D. Al. 2017).

In this matter, when viewed in a light more favorable to Wilson, his complaint has more than sufficiently pled facts that demonstrate that together as official policy makers, each Parish Defendant is liable for establishing and maintaining an unconstitutional system of medical care that resulted in the constitutional delay for those prisoners who needed outside medical care. In this case, Wilson – whose complaint unambiguously shows that he had an ongoing, persistent and serious medical need – suffered from an unconstitutional delay of two months by the Parish Defendants who utterly failed to get him to an ENT specialist despite the fact that he had a referral from his prison doctor.

Wilson sufficiently pled that there are systemic deficiencies in the Parish Prison's health care system by referencing multiple lawsuits concerning medical care at the Prison Prison filed in close proximity to Wilson's experiences. *See* App.59a at ¶ 138. These lawsuits name the same Defendants as Wilson's, and thus put them on notice of systemic deficiencies. *See id.* (summarizing three different lawsuits alleging constitutional violations that resulted in the death of a parish prison inmate, denial of essential dental treatment of a different parish prison inmate, and the failure to treat a parish prison inmate with chronic myelogenous leukemia).

Wilson's complaint also pointed to a Parish Council meeting where Dr. Whitfield of the Parish Prison publicly testified about the serious institutional problems with the health care system at the Parish Prison. *See* App.59a-60a at ¶¶ 139-41. Dr. Whitfield's testimony addressed the systemic and gross deficiencies in staffing,

facilities, equipment, and procedures that effectively denied the inmate population access to adequate and reasonable medical care. *See e.g. id.* Dr. Whitfield specifically stated that there was a “significant decline in the quality of care delivered to the inmate population over the past six or seven years.” *Id.* at ¶ 139. He further stated that the Parish Prison only staffs 25 nurses when 35-40 nurses are needed, and that often when there is supposed to be a minimum of five nurses on staff per shift, one or two nurses are left to manage an entire shift. *See App.60a* at ¶ 140. Dr. Whitfield continued to testify that the medical care system at the Parish Prison was “unable to efficiently care for the patients’ increasing morbidity, mortality and ultimately, liability.” *App.59a-60a* at ¶ 139.

By pointing to extensive public testimony and several lawsuits occurring during the same timeframe as Wilson’s experience in the Parish jail, Wilson has presented sufficient facts that (1) it was the custom and practice of the Parish Defendants to operate a constitutionally deficient system of medical care for prisoners that violated both state law and their constitutional obligations; (2) as municipal entities, the Parish Defendants had the requisite objective knowledge of their unconstitutional customs and practices; and (3) their constitutionally deficient medical care system resulted in Wilson be unconstitutionally delayed access to an ENT specialist. This delay directly resulted in the untimely treatment of his throat cancer.

However, in addition to pointing out instances of lawsuits and public hearings that support his allegations, Wilson’s complaint also specifically pled that Dr. Whitfield explained to him that his “throat needed to get scoped” and that the

Parish Prison did not have the equipment to conduct such a procedure. App.48a at ¶ 76. As outlined in his complaint, Dr. Whitfield told Wilson that the Parish Prison was not taking him to an outside facility to get scoped because the prison could not afford it, and that Defendant Grimes was refusing to authorize arrangements for such an appointment. App.48a-50a.

In turn, Wilson's complaint properly pled that but for the underfunded, ill-equipped and overworked staff providing him deficient medical care at the Parish Prison, he would have 1) received a more timely referral to an ENT; and 2) been transported to an ENT while housed at the Parish Prison instead of being examined via a malfunctioning telemed system that rendered his appointment with an ENT pointless.

However, the Fifth Circuit affirmed the District Court's determination that Wilson "failed to connect the dots" between each Defendant and his alleged unconstitutional policies, practices, and customs at the Parish Prison that harmed him. *See* App.25a. The Fifth Circuit is flatly wrong in its decision that "Wilson failed to sufficiently allege that his constitutional rights were violated while he was confined at the East Baton Rouge Parish Prison." App.5a.

When viewed in a light most favorable to Wilson, however, his complaint clearly alleges sufficient facts demonstrating that the systemically underfunded, overworked and ill-equipped staff of the Parish Prison's medical care system resulted in (1) an unconstitutional delay in him receiving a referral to go *see* an ENT; and (2) an unconstitutional denial of access to an ENT once he actually received a referral.

II. THE FIFTH CIRCUIT INCORRECTLY DETERMINED THAT PETITIONER WILSON'S DELAY IN MEDICAL TREATMENT FOR HIS SERIOUS MEDICAL NEED WAS SIMPLY A DISAGREEMENT WITH HIS MEDICAL TREATMENT PROVIDED BY THE DEFENDANTS.

In just one sentence, the Fifth Circuit determined that “his factual allegations, taken as true, complain of the delay in providing access to a medical specialist rather than the denial of medical care and, therefore, effectively constitute only a disagreement with his medical treatment. *See Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993).” App.2a. In the turn, the Fifth Circuit determined that Petitioner Wilson’s complaint failed to state “a facially plausible claim that any defendant was deliberately indifferent to a serious medical need” and affirmed the district court’s judgment to grant the Defendants’ motions to dismiss. *Id.*

Such a conclusion flies in the face of Eighth Amendment jurisprudence not just in the Fifth Circuit, but throughout the country, where it is well established that a delay in medical care can violate a prisoner’s constitutional rights. *See Estelle*, 429 U.S. at 104-05 (holding that deliberate indifference may be demonstrated by “intentionally denying or *delaying access to medical care*” (emphasis added); *also Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993) (finding that a delay in medical treatment that results in substantial harm can constitute deliberate indifference); *Sealock v. Colorado*, 218 F.3d 1205, 1210 (10th Cir. 2000)(same); *also McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010) (vacating and remanding summary dismissal of complaint alleging three-month delay in dental treatment).

A. Defendant Ottesen

The Fifth Circuit wrongfully affirmed the District Court’s dismissal of Petitioner Wilson’s claims against Defendant Ottesen on the basis of qualified immunity because he failed to adequately allege a constitutional violation. *See* App.3a. Without elaborating the Fifth Circuit relied on the District Court’s erroneous conclusion that Defendant Ottesen “used her professional judgment in order to make a determination regarding an inmate’s medical needs based on the information she possessed at the time.” App.19a. This misplaced conclusion fails to account for Wilson’s distinct allegations that as head of PMS, Defendant Ottesen was personally aware of 1) the deficient treatment Wilson received from Parish Prison medical staff; and 2) his eventual referral for an ENT evaluation. *See e.g.*, App.38a at ¶ 23 (stating Defendant Ottesen was “personally involved in the decision-making process of providing appropriate medical care to EBRPP inmates, including Wilson.”).

She therefore had requisite knowledge of Wilson’s August 31, 2015, referral to an ENT; and her staff’s September 21, 2015, request to send him to Our Lady of the Lake for an ENT appointment. *See e.g.*, App.38a at ¶ 23. Likewise, Defendant Ottesen was personally involved in the decision to schedule a telemed appointment for Wilson, rather than take him to an outside facility with the equipment needed to examine his throat. *See e.g. id.*

In addition, Defendant Ottesen’s deliberate indifference to Wilson’s extreme need to go to an ENT is further supported by the fact that she made the decision to

schedule a telemed appointment for him even though she had been personally aware of his ongoing symptoms for at least six months. *See* App.45a at ¶ 57. In April of 2015, Wilson had directly asked Defendant Ottesen to send him to the hospital because of his ongoing sore throat and hoarse voice. However, when he finally had a referral to do so, Defendant Ottesen refused to comply with those medical orders and deliberately chose a cheaper path with the telemed appointment despite Wilson's obvious need for an ENT examination with equipment unavailable at the Parish Prison.

Additionally, as alleged in his Complaint, Wilson made at least eleven complaints and/or requests for medical services to Defendant Ottesen and her staff due to his throat's ongoing and worsening symptoms. Due to the manifestations of several symptoms of his undiagnosed throat cancer, it was apparent that something was clearly wrong with Wilson during his time at the Parish Prison. Even laymen would have recognized Wilson's clearly apparent need to *see* an ENT specialist. *See Gobert v. Caldwell*, 463 F.3d 339, n. 12 (5th Cir. 2006).

Yet despite his well-documented complaints and unchanging symptoms, it took Defendant Ottesen and her staff seven months to get Wilson a referral to *see* an ENT. Moreso, Defendant Ottesen completely failed to arrange to take Wilson to an ENT specialist for the remaining two months that he was in her facility, even after he had a referral from his physician. Even a layman certainly would have sent Wilson immediately to a specialist in light of his worsening conditions once he had a

referral. However, with deliberate indifference, Defendant Ottesen chose otherwise, and decided not to transport him to Our Lady of the Lake for an examination.

The District Court wrongfully determined that Wilson did not sufficiently plead that Defendant Ottesen had awareness about Wilson's condition. As discussed in *Farmer*, when the evidence suggests that a health risk to an inmate is "longstanding, pervasive, [and] well-documented . . . and the circumstances suggest that the defendant-official being sued had been exposed to information concerning risk," then such evidence permits a trier of fact to conclude that the officials had actual knowledge of the risk. 511 at 842-43. Under *Farmer*, Defendant Ottesen had actual knowledge about Wilson's health risk from his complaints directed to her. As Wilson's complaint clearly articulates, his symptoms were longstanding, pervasive, and well-documented. Then despite a doctor's referral for an ENT evaluation, Defendant Ottesen again denied him access to recommended treatment he needed.

Defendant Ottesen's behavior, as alleged, is not negligence or gross negligence, but rises to the threshold of deliberate indifference toward Wilson's constitutional right to medical care. She is not shielded by qualified immunity because it was clearly established at the time of Wilson's incarceration that a prison official could not deliberately delay a prisoner's access to medical care for a known serious medical condition. This delay in treatment resulted in substantial harm, as Wilson now has no vocal cords and a permanent stoma in his neck. In turn, the allegations in Wilson's complaint sufficiently state a claim that with deliberate indifference Defendant

Ottesen constitutionally delayed Wilson's access to an ENT appointment outside of the prison.

As such, this Court should grant this writ and correct the Fifth Circuit's erroneous decision.

B. Defendant Grimes

The District Court erred in dismissing Wilson's claim that Defendant Grimes was deliberately indifferent to his serious medical needs. Like Defendant Ottesen, Defendant Grimes had direct knowledge of Wilson's unchanging medical situation, as Wilson directly communicated with him on multiple occasions about his throat condition. *See* App.45a, 48a-49a. In addition, Dr. Whitfield told Wilson that it was a money issue preventing Defendant Grimes from sending Wilson to *see* an ENT specialist. *See* App.48a-49a.

Wilson's complaint presents sufficient allegations that for a significant period of time he was in severe physical pain and discomfort. Defendant Grimes had first-hand knowledge of Wilson's worsening symptoms. Then, when Wilson finally had a referral, Defendant Grimes – who had the authority in approving medical visits outside of the Parish Prison – refused to make the necessary arrangements to transport Wilson to an ENT examination at Our Lady of the Lake.

Just as with Defendant Ottesen, the Fifth Circuit wrongly determined that qualified immunity protected Defendant Grimes from suit. The Constitution prohibited Defendant Grimes from delaying Wilson's access to the ENT appointment as recommended by his prison doctor. Defendant Grimes knew about Wilson's

condition and need for outside medical care. This delay in treatment resulted in substantial harm, as Wilson now has no vocal cords and a permanent stoma in his neck. Nevertheless, as clearly articulated in his Complaint, with deliberate indifference to his serious medical need for an ENT evaluation, Defendant Grimes delayed Wilson's access to such treatment.

C. Defendants Singh and Young

Defendants Singh and Young first learned about Wilson's need to be scheduled for an ENT evaluation on September 21, 2015. *See* 48a at ¶ 73. Since that first notice, they received three additional medical transfer requests from Jackson, EHCC, and ALC medical staff concerning Wilson's urgent need to *see* an ENT. *See* 52a-53a at 891. Notably, the medical transfer request in early November 2015 indicated that Jackson medical staff worried that Wilson had throat or thyroid cancer. 52a at ¶ 97.

The District Court mischaracterized Wilson's complaint and allegations against these Defendants. For instance, the District Court's opinion stated that, "Wilson admits that approximately two months after making these requests, he was examined by a specialist." 20a. This timeframe is inaccurate, as Defendants Singh and Young knew about Wilson's professionally recommended treatment plan and need to be evaluated by an ENT as early as September 21, 2015, which was five months prior to his examination by Dr. Barry. They were informed again on November 4, 2015 with a note from Jackson that medical personnel feared that Wilson had cancer and he urgently needed to be evaluated by an ENT. 52a at ¶ 97. At the end

of November 2015, EHCC medical staff put in a medical transfer request to Defendants Singh and Young to have Wilson brought to an ENT examination. *See* 53a at ¶ 109. Again, in December 2015, ALC staff informed Defendants Singh and Young about Wilson's need to *see* an ENT. *See* 55a at ¶ 115.

In light of these facts, the District Court also misapplied Eighth Amendment jurisprudence to this matter. As clearly articulated in *Gobert*, a serious medical need is one where "treatment has been recommended." 463 F.3d at n. 12. An unconstitutional delay in providing such recommended treatment for a serious medical need exists when there is deliberate indifference to such need, and that delay results in substantial harm. *Mendoza*, 989 F.2d at 195.

Notably, Wilson is not alleging that the care he received from Defendants Singh and Young amounted to deliberate indifference, as these Defendants were not his treating physicians. Rather Wilson is alleging that these Defendants personally knew about his serious medical need for at least five months, yet did nothing to timely schedule him the ENT appointment that he so desperately needed. This delay in treatment resulted in substantial harm, as Wilson now has no vocal cords and a permanent stoma in his neck.

The Fifth Circuit wrongly determined that Wilson failed to brief whether Defendants Singh and Young were shielded by qualified immunity. *See* App.3a. This conclusion mischaracterized Wilson's Original Brief to the Appellate Court. The District Court limited its analysis for these defendants to just the first prong of the

qualified immunity test.¹ Specifically, the District Court wrote that Wilson “has not alleged sufficient facts to show that these Defendants purposefully delayed his treatment, ignored his complaints, or did anything else that would evince a wanton disregard for his serious medical needs.” *See 21a*. With concern to Defendants Singh and Young, Wilson’s brief focused on refuting the District Court’s determination that he failed to state sufficient facts that Defendants Singh and Young exposed him to a substantial risk of serious harm in their delay in scheduling him an ENT appointment. Narrowing his argument to address the District Court’s ruling is not equivalent to his waiving his appeal as it relates to them.

Furthermore, Wilson’s complaint also pleads sufficient facts that Defendants Singh and Young ignored requests to timely schedule Wilson an ENT appointment, which in turn amounted to them acting with deliberate indifference to the medical risks that Wilson experienced from such a delay.

This delay in treatment resulted in substantial harm, as Wilson now has no vocal cords and a permanent stoma in his neck. Qualified immunity does not protect Defendants Singh and Young from suit. The Constitution prohibited them from delaying Wilson’s access to the ENT appointment recommended by his prison doctor. Defendants Singh and Young knew about Wilson’s condition and need for outside

¹ Qualified immunity can shield a defendant from liability if the Defendant can demonstrate that (1) the constitutional right at issue was not clearly established at the time of the alleged misconduct or (2) the plaintiff’s allegations fail to make out a violation of a constitutional right. *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

medical care. Nevertheless, as clearly articulated in his Complaint, with deliberate indifference to his serious medical need for an ENT evaluation, they delayed Wilson's access to such treatment.

D. Defendant Comeaux

As alleged in Wilson's complaint, EHCC nurse Defendant Comeaux knew from Wilson's file, specifically from the urgent medical transfer request from Jackson that he was at risk of having throat or thyroid cancer. *See* 53a at ¶¶ 102-104. Defendant Comeaux's responsibility was to follow up with Defendant Singh and Young at DOC headquarters to ensure Wilson received an appointment with an ENT. *See id.* at ¶¶ 104-105. Despite Wilson's well-documented symptoms and serious medical risk, Defendant Comeaux did nothing to assist him. *See* 54a at ¶¶ 111-12. Defendant Comeaux's inaction was not one of negligence, but rather a complete denial of the treatment he needed. Such conscious inaction evidenced a wanton disregard for Wilson's serious medical need to see an ENT doctor. *See Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001). In consideration of these facts, this Court should reverse the District Court's decision that Wilson failed to state a sufficient Eighth Amendment claim against Defendant Comeaux.

Just as with Defendants Singh and Young, the Fifth Circuit wrongly determined that Wilson failed to brief whether Comeaux was shielded by qualified immunity. *See* App.3a. As stated previously, this conclusion is a mischaracterization of Wilson's Original Brief. The District Court limited its analysis for Comeaux to just the first prong of the qualified immunity test. Specifically, the District Court wrote

that Wilson “has not alleged sufficient facts to show that these Defendants purposefully delayed his treatment, ignored his complaints, or did anything else that would evince a wanton disregard for his serious medical needs.” *See* 21a. Therefore, as it related to Comeaux, Wilson’s brief addressed the District Court’s determination that he failed to state sufficient facts that she exposed him to a substantial risk of harm by delaying to schedule him an ENT appointment. Narrowing his argument to address the District Court’s ruling is not equivalent to waiving his appeal as it relates to Comeaux.

Wilson’s complaint pleads sufficient facts that Comeaux repeatedly ignored requests to timely schedule Wilson an ENT appointment, which in turn amounted to them acting with deliberate indifference to the medical risks that Wilson experienced from such a delay.

This delay in treatment resulted in substantial harm, as Wilson now has no vocal cords and a permanent stoma in his neck. Qualified immunity does not protect Comeaux from suit. The Constitution prohibited her from delaying Wilson’s access to the ENT appointment recommended by his prison doctor. Comeux knew about Wilson’s condition and need for outside medical care. Nevertheless, as clearly articulated in his Complaint, with deliberate indifference to his serious medical need for an ENT evaluation, she delayed Wilson’s access to such treatment.

CONCLUSION

The Court should grant the petition for a writ of certiorari to correct the Fifth Circuit's error of affirming the District Court's dismissal of Wilson's Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

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