Case: 19-8123

IN THE

UNITED STATES SUPREME COURT

Menes Ankh El,

Plaintiff

v.

Marion County Superior Court,

Ms. Strobel,

Major Davis,

Ms. Gibson,

Ms. Smith,

Ms. Pierce,

All Defendants in their official and

private capacities

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Seventh Circuit

Menes Ankh El

233632

New Castle Correctional Facility

P.O. Box A

New Castle, IN 47362

QUESTIONS PRESENTED FOR REVIEW

I. Does Ankh-El's common-law name change, which was executed 2 years prior to his arrest and almost 3 years prior to his imprisonment, have to be recognized by the courts and IDOC?

A. Ankh-El has a common-law right to change his name from "Wendell Brown" to "Menes Ankh-El".

B. The trial-court violated Ankh-El's rights to procedural due process by changing the abstract of judgment to imprison him as "Wendell Brown".

C. The Defendants violated the 1st Amendment and Title 42 U.S.C. §§ 2000bb-1 and § 2000cc-1 by denying Ankh-El's legal and personal mail, because his name change reflects his religious beliefs and was done prior to his imprisonment.

II. Can IDOC force Ankh-El to sign a signature that is not his?

A. Ankh-El has the right to make his signature whatever he wants it to be?

B. The Defendants' refusal to accept Ankh-El's signature is a violation of the 1st Amendment's protection of freedom of speech and Title 42 USCS §§ 2000bb et seq and 2000cc et seq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CITATIONS OF OPINIONS AND ORDERS

The following decisions and opinions in this case directly relating to the questions presented have not bee reported and are included in the designated appendices:

- Menes Ankh-El v. Marion County Superior Court, et al, 19-2799 (7th Cir. 2019) (Denial of panel rehearing) (App. A)
- Menes Ankh-El v. Marion County Superior Court, et al, 1:18-cv-3453-JMS-MPB (S.D. Ind. 2019) (Denial of Rule 59 motion) (App. B)
- Menes Ankh-El v. Marion County Superior Court, et al, 1:18-cv-3453-JMS-MPB (S.D. Ind. 2019) (Dismissal of amended complaint) (App. C)

JURISDICTIONAL STATEMENT

Menes Ankh-El seeks review of an order of the 7th Circuit court of appeals issued

- This Court has jurisdiction pursuant to Title 28 U.S.C. § 1254 and Rule 12 of the Rules for the Supreme Court of the United States
- The 7th Circuit Court of Appeals had jurisdiction under Title 28 U.S.C. § 1291 and Rule 3 of the Federal Rules of Appellate Procedure.
- The District Court for the Southern District of Indiana had jurisdiction under Title 28 U.S.C. §§ 1331, 1343.

CONSTITUTIONAL PROVISIONS and REGULATIONS

- **1st Amendment** – "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 peaceably to assemble, and to petition the Government for a redress of grievances."

- **Title 42 U.S.C. § 2000bb-1. Free exercise of religion protected**

  (a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

  (b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

  (1) is in furtherance of a compelling governmental interest; and

  (2) is the least restrictive means of furthering that compelling governmental interest.

  (c) Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

- **Title 42 U.S.C. § 2000cc. Protection of land use as religious exercise**

  (a) Substantial burdens.

  (1) General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

  (A) is in furtherance of a compelling governmental interest; and

  (B) is the least restrictive means of furthering that compelling governmental interest.

  (2) Scope of application. This subsection applies in any case in which--

  (A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

- **35-34-1-15. Wrong name of defendant.**

  (b) If at any time during the proceedings the true name of the defendant becomes known, the court shall order the indictment or information amended to show both the name by which the defendant was first charged and the name later alleged to be true.

STATEMENT OF THE CASE

This case is unlike any that has been presented to this Court. It involves a common-law name change that occurred years prior to Ankh-El's arrest and imprisonment. The Defendants are rejecting his legal mail and signature.

In October 2010, Ankh-El changed his name from "Wendell Brown" to "Menes Ankh-El" to closer reflect his culture and Divine Creed. On May 5, 2011, by public notices with the Marion County Recorder's Office (App. D), Ankh-El published his name change. On the same day he published another document filed under A201100047791 which specifically states that he is "returning, relinquishing and disclaiming" the name "Wendell Brown". Ankh-El also begun carrying identification (App. E) and using the name "Menes Ankh-El" in various business transactions and signing it on various state documentation (App. F).

In 2012, when Ankh-El was arrested, his identification stated that he is "Menes Ankh-El" (App. E). He was bonded out of jail as "Menes Ankh El" (App. G). However, upon Ankh-El's conviction, he was imprisoned under the name "Wendell Brown". Since Ankh-El's imprisonment, his signature has been "Menes Ankh-El", and he has sent and received his legal and personal mail addressed from and to Menes Ankh-El (App. L) without incident.

The Defendants have rejected Ankh-El's legal and personal mail addressed from and to "Menes Ankh-El" (App. J). When Ankh-El began pursuing the mail issue, the Defendants began rejecting his signature (App. K), and refused to release his commissary and mail unless he signed specifically as "Wendell Brown".

ARGUMENT

I. Does Ankh-El's common-law name change, which was executed 2 years prior to his arrest, have to be recognized by the courts and IDOC?

A. Ankh-El has a right to change his name from "Wendell Brown" to "Menes Ankh-El" under common-law.

The courts of the several united states, including Indiana, have held that a person may lawfully change his or her name under common-law. The following is shown in support:

> "In general, in the absence of statutory prohibition, a person, without abandoning his real name, may adopt or assume any name, wholly or partly different from his name, by which he may become known, and by which he may transact business, execute contracts, and carry on his affairs, unless he does so in order to defraud others, or he is inhibited by judicial adjudication, since it is the identity of the individual that is regarded, and not the name which he may bear or assume. . . ."The assumed or fictitious name adopted may be either a purely artificial name, or a name that is or may be applied to natural persons; . . ." 65 C.J.S., Names, § 9, pp. 9, 10.

In the case of Schofield v. Jennings, 68 Ind. 232 (1879), the Indiana Supreme court held the following:

> "The purpose of a name is to identify the person ... No person is bound to accept his patronymic as a surname, nor his christian name as a given name, though the custom to do so is almost universal amongst English-speaking people, who have inherited the common law. A person may be known by any name in which he may contract, and in such name he may sue and be sued, and by such name may be criminally punished; and when a person is known by several names--by one as well as another--he may contract in either, and sue and be sued by the one in which he contracts, and may be punished criminally by either. And names which sound alike are held, in law, to be the same, though they may be spelled by different letters."

The Indiana Supreme court, in In re the Petition of Hauptly, 262 Ind. 150 (1974), held that a person can effect a common-law name change with resort to court proceedings. The court held the following:

> "There is no legal requirement that any person go through the courts to establish a legal change of name ... In the absence of a statute, a person may ordinarily change his name at will without any legal proceedings. The person need only adopt another name. This may be done so long as the change of name is not done for a fraudulent purpose."
>
> "The only duty of the trial court upon the filing of a petition for name change is to determine that there is no fraudulent intent involved."

In the recent case of Leone v. Commissioner, 933 N.E.2d 1244 (2010), the Indiana Supreme court reiterated its decision in Hauptly and added:

> "Under common law, a person may lawfully change his or her name without resort to any legal proceedings where it does not interfere with the rights of others and is not done for a fraudulent purpose. **A person effects a common-law change of name by usage or habit**."

Even though the presumption is that no one intends to relinquish their original name, that presumption is just a presumption, and is rebuttable. In his public notice filed under A201100047791, Ankh-El specifically states that he is "returning, relinquishing and disclaiming" the name Wendell Brown so there could be no presumption that he did not intend to relinquish the name "Wendell Brown".

After Ankh-El's name change, he began to using the name "Menes Ankh-El" in several public and private matters. The affidavit used to publish his name change is notarized (App.D), thus indicating that he had proper identification (App. F). His business dealings with the Indiana Secretary of State, were also handled under the his new name (App. E).

Therefore, in light of the fact that the court proceedings are not a necessary element for a common-law name change, Ankh-El's name change must be recognized by the courts. Otherwise, the court violates his common-law right to change his name.

B. The trial-court violated Ankh-El's rights to procedural due process by changing the abstract of judgment to imprison him as "Wendell Brown".

Prior to his arrest, there had been no valid identification or documentation by which he identified himself as "Wendell Brown" for almost 3 years. After his arrest, he was only identified as "Menes Ankh-El" (App. F).

The initial hearing continuance form from the trial-court also shows that the court initially identified him as Menes Ankh-El (App. H). Ankh-El was also bonded out under the name "Menes Ankh El" (App. G) The chronological case summary, dated 2 years after his conviction, is also titled "State of Indiana v. Menes Ankh-El" (App. I). Yet, the documentation used to effect his imprisonment names him as "Wendell Brown".

The Indiana Court of Appeals, in its opinion in Ankh-El's direct appeal, Ankh-El v. State, 64 N.E.3d 1219 (2016), noted in the facts and procedural history and footnotes, that Ankh-El had provided officers with identification showing that he is Menes Ankh-El. In the facts and procedural history, the court stated the following:

> "Ankh-El provided the officers with an identification card with his name and photograph ... and listed his birthplace as Marion County, Indiana. (State's Exh. 13)."

Also, in the footnotes of the same case the court noted the following:

> "Ankh-El's briefs and other filings indicate that his surname is "Ankh El"; however, we will use the hyphenated spelling as it is written on Ankh-El's identification card, which is depicted in State's Exhibit 13."

Pursuant to I.C.35-34-1-15, if Ankh-El was found to be "Wendell Brown", or to have another name, the court was under a duty to issue an order to change the records to reflect the other name or both. There is no such order in the records The statute is as follows:

> 35-34-1-15. Wrong name of defendant.
> (b) If at any time during the proceedings the true name of the defendant becomes known, the court shall order the indictment or information amended to show both the name by which the defendant was first charged and the name later alleged to be true.

In the case of Kentucky Dep't. of Corrections v. Thompson, 490 U.S. 454 (1989), the U.S. Supreme Court held that:

> "A state creates a liberty interest protected under the due process clause of the Federal Constitution's Fourteenth Amendment by placing substantive limitations on official discretion; thus, state regulations establishing "specific substantive predicates" to govern official decision making, and using explicitly mandatory language in connection with the establishment of these specific substantive predicates to limit discretion, create a liberty interest protected under the Fourteenth Amendment."

Following Kentucky Dep't. of Corrections, the 7th Circuit Court of Appeals in Kraushaar v. Flanigan, 45 F.3d 1040, 1048 (7th Cir. 1995) rendered a similar judgment, stating that:

> "Courts will find a liberty interest only if the state's statute or regulation uses language of an unmistakably mandatory character, requiring that certain procedures "shall," "will" or "must" be employed, and contains substantive standards or criteria for decision making as opposed to vague standards that leave the decision maker with unfettered discretion."

Therefore, even though Marion County Court is not a suable entity under Indiana law, that does not negate the fact that Ankh-El's rights to procedural due process under I.C.35-34-1-15 were violated when he was imprisoned as "Wendell Brown" without providing an order to amend the charging information naming him as "Wendell Brown".

C. The Defendants violated the 1st Amendment and Title 42 U.S.C. §§ 2000bb-1 and § 2000cc-1 by denying Ankh-El's legal and personal mail, because his name change reflects his religious beliefs and was done prior to his imprisonment.

Prior to being in the custody of the Defendants, Ankh-El had been imprisoned at 3 different facilities. While at those 3 different facilities, Ankh-El had sent and received his legal and personal mail, addressed to only "Menes Ankh-El" (App. L) without incident. Since Ankh-El has been in the custody of the Defendants, they have rejected his legal and personal mail addressed to "Menes Ankh-El" (App. J).

Prisoner common law name change cases have been decided in the federal courts for decades. However, the distinction between the instant case and previous cases is that Ankh-El's name was changed years prior to his imprisonment. There is virtually no case law on this issue of a common-law name change prior to imprisonment. However, one case from the 7th Circuit does give some insight into how this situation should be handled.

In the case of Mutawakkil v. Huibregtse, 735 F.3d 524 (2013), the court implied that, had Mutawakkil changed his name prior to being imprisoned, his name change would have been accepted. The court stated the following:

> "He could have changed his name in common-law fashion before committing murder."

It has been established that Ankh-El changed his name prior to his arrest and imprisonment; the purpose being to closer reflect his Culture and Divine Creed. In the case of Salaam v. Lockhart, 905 F.2d 1168 (1990), the court elaborated on some of the reasons for a name change. The court stated the following:

"A personal name is special. It may honor the memory of a loved one, reflect a deep personal commitment, show respect or admiration for someone famous and worthy, or, as in this case, reflect a reverence for God and God's teachings. Like a baptism, bar mitzvah, or confirmation, the adoption of a new name may signify a conversion and the acceptance of responsibilities of membership in a community."

After Salaam, on November 16, 1993 congress enacted the Religious Freedom Restoration Act of 1993, which appears generally as Title 42 USCS §§ 2000bb et seq. § 2000bb-1 states:

(a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).
(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--
(1) is in furtherance of a compelling governmental interest; and
(2) is the least restrictive means of furthering that compelling governmental interest.
(c) Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Shortly thereafter, on September 22, 2000, congress enacted the Religious Land Use and Institutionalized Persons Act of 2000. It appears generally as Title 42 USCS § 2000cc et seq. § 2000cc states the following:

(a) General rule. No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--
(1) is in furtherance of a compelling governmental interest; and
(2) is the least restrictive means of furthering that compelling governmental interest.
(b) Scope of application. This section applies in any case in which--
(1) the substantial burden is imposed in a program or activity that receives

Federal financial assistance; or
(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

After the enactment of Title 42 USCS § 2000cc et seq., in Cutter v. Wilkinson, 544 U.S. 709 (2005), the U.S. Supreme Court held the following:

> "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title ... unless the government demonstrates that imposition of the burden on that person-(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."

As Ankh-El has previously received his personal and legal mail, address to "Menes Ankh-El", at three previous facilities, there is no legitimate compelling penological interest in the Defendants refusing to accept mail addressed to "Menes Ankh-El". The Defendants' refusal to accept and deliver Ankh-El's mail has caused substantial burdens on Ankh-El, as well as unnecessary substantial delays and confusion in several court actions that Ankh-El is involved in, including this case.

The cases under 1:18-cv-3476-JRS-MPB and 1:19-cv-114-JMS-MJD were actually dismissed with prejudice due to Ankh-El's failure to respond to the court's orders because his mail had been rejected. In some cases, the rejection of Ankh-El's legal mail has caused the courts to alter the records to say "Wendell Brown a/k/a Menes Ankh El" (App. A) or "Menes Ankh El a/k/a Wendell Brown". In other cases the courts have totally disregarded "Menes Ankh El" and changed his name in the title to just "Wendell Brown". This is a substantial burden on Ankh-El's religious exercise because the public records will forever list him as "also known as Wendell Brown".

The erroneous records give the impression that Ankh-El may also be referred to as "Wendell Brown" even though, as stated in Ankh-El's public notice, that he is "returning, relinquishing and disclaiming" the name Wendell Brown. The change of the title of the court actions violates the 1st Amendment and Title 42 USCS §§ 2000bb-1 and 2000cc-1.

Since the initiation of this suit, Defendant, Ms. Gibson has left the mail room supervisor position for another position. Since then, Ankh-El's mail addressed only to "Menes Ankh El" has been accepted by the mailroom (App. M).

II. Can IDOC force Ankh-El to sign a signature that is not his?

A. Ankh-El has the right to make his signature whatever he wants it to be?

Ankh-El's signature plays no part in his identification for the delivery of his legal mail or commissary other than to verify that he has received it. In general, most signatures are illegible, and a person cannot be identified by his or her signature alone.

Ankh-El is identified by the facility issued photo identification card which has his picture and "committed name" (Wendell Brown). He must present it every time he receives his legal mail or commissary.

The definition of the word "signature" has been discussed several times by the Indiana Supreme Court. In Schoffstall v. Kaperak, 457 N.E.2d 550 (1984), citing Brown v. Grzeskowiak, 101 N.E.2d 639 (1951), stated:

> "The Court then went on to discuss the definition of "signature" and determined that a person's signature may be his initials or even a mark with an "X" if that is what that person uses as his official signature."

In the case of Brewer v. State, 605 N.E.2d 181 (1993), the court stayed within the bounds of the decision in Schoffstall and Brown. The court stated the following:

> "A signing may be accomplished in a number of ways. When a person intends for the mark or name to represent his signature on a document, it meets the requirements of the law. Moreover, in certain instances, initials may constitute a legal signature."

Even the rules and laws of commerce hold that a signature consists of whatever mark or symbol the signer uses to represent himself. This fact was stated in the case of Carna v. Bessemer Cement Co., 558 F. Supp. 706 (1983). The court stated the following:

> "Under the Uniform Commercial Code, § 1-201(39), the term "signed" is defined as including "any symbol executed or adopted by a party with present intention to authenticate a writing." The Official Comment to § 1-209(39) provides that this definition of signed is designed to make it "clear that as the term is used in this Act a complete signature is not necessary.""

The Carna holding on the definition of signature was preceded by U.S. v. Tasher, 453 F.2d 244 (1972), in which the court held the following:

> "A signature may consist of initials only, when the initials are contemplated to be representative of the person making the initials."

In the case of Koutnik v. Berge, 2004 U.S. Dist. LEXIS 13926, the federal court held that a prisoner has the right to identify himself however he wants in his correspondence. The court held the following:

> "The First Amendment is implicated by denying an inmate the ability to identify himself in the manner of his own choosing. It is difficult to imagine many acts of speech more integral to self expression than choosing one's own name."

B. The Defendants' refusal to accept Ankh-El's signature is a violation of the 1st Amendment's protection of freedom of speech and Title 42 USCS §§ 2000bb et seq and 2000cc et seq.

The Defendants have refused to give Ankh El his commissary and approximately 15 to 20 pieces of legal mail because he refused to sign "Wendell Brown" (App. K). The

have refused to tell Ankh El who the mail was from. There is no policy that states that Ankh-El must sign a specific signature, only that he sign.

The Defendants have violated the 1st Amendment and Title 42 USCS §§ 2000bb-1 and 2000cc-1 by refusing to accept Ankh-El's signature and forcing him to specifically sign "Wendell Brown" to receive his commissary and legal mail. His contention is supported by the case of Azeez v. Fairman, 604 F. Supp. 357 (1985), in which the court stated the following:

> "The state may not compel a citizen to choose between engaging in conduct or expression which is religiously offensive or being punished. Absent an important objective and a policy reasonably tailored to the achievement of that objective, a state may not punish an inmate for failing to acknowledge a particular name or for failing to perform a task where to do so would involve the acknowledgment of a religiously offensive name."

A reasoning behind the above holding is stated in the case of Salaam v. Lockhart, 905 F.2d 1168 (1990), in which the court stated the following:

> "A personal name is special. It may honor the memory of a loved one, reflect a deep personal commitment, show respect or admiration for someone famous and worthy, or, as in this case, reflect a reverence for God and God's teachings. Like a baptism, bar mitzvah, or confirmation, the adoption of a new name may signify a conversion and the acceptance of responsibilities of membership in a community."

To demonstrate the purely arbitrary nature of the Defendants' actions, the Defendants have accepted an insignificant wavy line as Ankh-El's signature instead of the "committed name" of "Wendell Brown". Since the initiation of this suit, Defendant, Ms. Gibson has left the mail room supervisor position for another position. Since then, Ankh-El's signature has been accepted by the mail room. He has even received mailroom call out passes to "Ankh-El" (App. N).

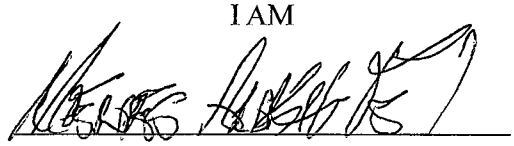
CONCLUSION

In light of the foregoing, the Defendants have violated Menes Ankh-El's rights protected by the 1st Amendment of the U.S. Constitution and Title 42 USCS §§ § 2000bb-1 and 2000cc-1 by rejecting his legal and personal mail and his signature.

APPENDIX

Respectfully submitted

I AM



CERTIFICATE OF SERVICE

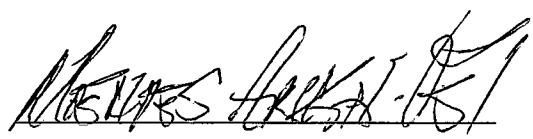
I certify under penalty for perjury that the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and Appendix has been sent to the following addressee by first-class mail through New Castle Correctional Facility staff on this 13 day of MARCH, 2020.

Justice Elena Kagen,

United States Supreme Court

1 1st St NE

Washington, District of Columbia 20543



Menes Ankh El