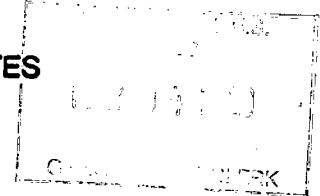


19-8462

No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



Juan Perez — PETITIONER  
(Your Name)

vs.

Mark S. Inch (ETAL) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

Juan F. Perez DC#D43224  
(Your Name)

5168 Ezell Road  
(Address)

Graceville, FL 32440  
(City, State, Zip Code)

N/A  
(Phone Number)

### QUESTION(S) PRESENTED

- (1) Can the Fact that the Defendants Violated two State Statutes, that resulted in a deprivation of Petitioner/Plaintiff's Federal Constitutional guarantees against Cruel and Unusual Punishment be considered Frivolous, due to Petitioner/Plaintiff's lack of skill and knowledge in the science of jurisprudence?
- (2) IF a statute requires the placement of "Blind Spot" safety Measures, and Fails to do so, are not the Defendants liable for injuries that occur in those "Blind Spots?"
- (3) Does the way the injury occurs relevant to the lack of Blind Spot safety measures, and does the type of permanent injury affect the consideration for relief?
- (4) IF based upon the undisputed Facts, the Petitioner/Plaintiff has demonstrated Factual reasons for suit, but is not skilled or knowledgable in the Law, are not his Due Process and Equal Protection guarantees denied, based upon his inability to perfect legal Filings?
- (5) Were the Petitioner/Plaintiff Due Process Rights Further denied when he moved for an Amended Complaint to correct his error in seeking suit against Defendants in their "Official Capacity" and was Denied by the Eleventh Circuit?

## LIST OF PARTIES

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

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

Mack S. Inch, Secretary of Fla. Dept. of Corr.  
Julie L Jones, Secretary of Fla. Dept. of Corr.  
Walt Summers, Warden of Holmes C. I.  
Greg Mallory, Colonel of Holmes C. I.  
Michael Baker, (C.O.) of Holmes C. I.  
Christopher Brown, (C.O) of Holmes C. I.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from federal courts:

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

☒ reported at 2-4-20; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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

☒ reported at 6-17-19; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from state courts:

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

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 11-8-19

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 2-4-20, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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

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

☐ For cases from state courts:

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

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

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eighth Amendment "Cruel and Unusual Punishment"

Fourteenth Amendment "Fair and impartial Hearing  
or Trial"

## STATEMENT OF THE CASE

The Petitioner/Plaintiff, now simply identified as Petitioner, states the undisputed facts of the instant cause are as follows:

- (1) On December 24, 2016, while on the recreation yard at Holmes Correctional Institution, the Petitioner went to the rec. yard pavilion to get a drink of water;
- (2) While bending over to get a drink from the water fountain, he felt what he initially believed several hard punches to his upper-back. Reaching back, he felt his upper back covered with a hot, sticky liquid. When he brought his hand to the front, he discovered it was covered with blood;
- (3) Immediately the Petitioner felt extreme pain, and realized he needed medical assistance. The pain in his back was worsening, and Petitioner started crying out that he had been stabbed, and needed help;
- (4) Petitioner not seeing a correction officer under the pavilion started in search of assistance. As he rounded the corner of the pavilion he noticed two (2) correction officers talking, joking and laughing at the entrance gates to the rec. yard, (See Appendix F) (Petitioner recently secured these statements);
- (5) The pain was becoming unbearable, and Petitioner was becoming dizzy and light-headed from blood loss as he continued to cry out that he needed help because he had been stabbed;
- (6) These two (2) correction officers continued to laugh, joke, and talk, and apparently ignored the Petitioner. Petitioner was approximately 100 Feet from the rec. yard gates and started walking toward these officers;
- (7) The two correction officers did not react to Petitioner's cries for assistance until he was nearly at the gate, and was in their direct line of sight. Shortly after arriving at the gate, the Petitioner was over-come by pain and blood loss and passed out;

- (8) Due to the severity of his injuries, the Petitioner nearly lost his life that day. The Petitioner was initially paralyzed from the waist down, but after numerous operations, and months of intense rehabilitation, Petitioner was able to walk assisted by a Walker, which he will have utilize for the rest of his life;
- (9) The Petitioner's quality and standard of life has been irreparably impacted due to the Defendants' Failure to have in-place "Blind Spot" safety measures on and in the recreation yard pavilion on December 24, 2016;
- (10) The Petitioner has unsuccessfully attempted to secure his medical records by requests, grievances, and Motions to the Courts, to no avail. He had been informed that it was premature, but states his belief it would substantiate his claims of the severity of his injuries;
- (11) The attached Appendix contains the relevant documents request and required to file this Petition.

### REASONS FOR GRANTING THE PETITION

The Petitioner states that a 42 U.S.C.S. 1983 cause of action for violations of rights afforded by the Eighth and Fourteenth Amendments must allege facts sufficient to establish that prison officials were deliberately indifferent to those rights. The Petitioner respectfully contends that Prison officials are legally liable for damages in civil suits brought by prisoners under 42 U.S.C.S. 1983, only if their conduct clearly violates established rights. The un-disputed facts in the instant cause clearly establish the deprivation of Petitioner's Constitutional guarantee to be free from cruel and unusual punishment while in the Defendants custody, violating the Eighth Amendment of the U.S. Constitution. Quoting from Farmer v. Brennan, 511 U.S. 825, 833 (1994), "Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses." The failure to protect

this Petitioner while in the custody of the Defendants is governed by the "deliberate indifference standard." Delam v. South Carolina Department of Corrections, 349 F.3d 765, 772 (4<sup>TH</sup> Cir. 2003)

The Petitioner respectfully contends that he was a convicted felon at the time of the incident, his claims therefore, are governed by the Eighth Amendment of the United States Constitution, which legally governs prison officials. See for similar Proposition: McMillian v. Riggins, 2019 U.S. Dist. LEXIS 113616, Case No. 19-20684-SCOLA (S.D. Fla. 2019). Not one of Petitioner's arguments, claims, or facts, has disproved by either the Defendants or Lower Courts in this cause. Petitioner states the Lower Courts Denials in the instant cause, were not only in error they were prejudicially negligent in failing to consider the Petitioner is a pro-se litigant ignorant of the rules of law and the science of jurisprudence, he has had to rely upon "jail house attorneys," which is often like the "blind leading the blind." Without refutation from either the Defendants or the Lower Courts, Petitioner's claims must be accepted as true. See Wright v. Miranda, 740 F. App'x 692, 694 (11<sup>TH</sup> Cir. 2018) (citing Waldman v. Conway, 871 F.3d 1283, 1289 (11<sup>TH</sup> Cir. 2017) (per curiam)).

The Petitioner respectfully states that this Honorable Court, based upon the undisputed facts he has presented in this Petition, will be able to draw the reasonable inference that the Defendants are liable for his debilitating, life threatening injuries. See for similar proposition Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S.Ct. 1937, 173 L.Ed 2d 868 (2009). The Petitioner contends that his complaint "has arguable merit... in terms of the arguable substance of the claim presented, both in law and fact." See Watson v. Ault, 525 F.2d 896, 893 at 892 (5<sup>TH</sup> Cir. 1976). In Bienvenu v. Beauregard Parish Police Jury, 705 F.2d 1457, 1459 (5<sup>TH</sup> Cir. 1983), it was held in pertinent part that "unless the court is satisfied beyond doubt" that the plaintiff can prove no set

of facts in support of his claim would entitle him to no relief."

This Honorable Court has ruled that in order to state a 1983 cause of action for violation of rights afforded by the Fourteenth and Eighth Amendments, a prisoner must allege facts sufficient to establish that prison officials were deliberately indifferent to those rights. See e.g. *Daniels v. Williams*, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed. 662 (1986); *Davidson v. Cannon*, 474 U.S. 344, 106 S.Ct. 667, 88 L.Ed. 662 (1986); *Whitley v. Albers*, 476 U.S. 312, 106 S.Ct. 1078, 89 L.Ed. 2d 251 (1986). As herein presented, the Petitioner has demonstrated a prima facie showing, based on the facts, that his claims of the deprivation of Constitutional guaranteed protections have been established. This clearly tied the Defendants to their failure to abide by the required and mandated sections of Florida Statutes 944.15(2)(3)(4), and 20.315(1)(d). In section 20.315(1)(d), it states in pertinent part:

"(1) Purpose = The purpose of the Department of Corrections is to protect the public through the incarceration and Supervision of offenders and to rehabilitate offenders through the application of work programs, and services. The goals of the department shall be ... (d) To provide a safe and humane environment for offenders and staff in which rehabilitation is possible. This should include protection of offender from victimization within the institution and development of a system of due process, where applicable." (emphasis added by Petitioner)

As is readily apparent from the facts as presented, pursuant to Florida Statute Section 20.315(1)(d), the Defendants failed to provide and maintain a safe and protected environment as mandated by this Statute. Florida Statute Section 944.15, specifies "Safe operation and security of correctional

institutions and facilities." Pursuant to this Florida Statute, the Defendants again, failed to ensure this Petitioner's safety and health. There are several measures to be implemented by the Defendants designed to not only protect staff but inmates also. This is stated in § 944.15(2) (b) paragraph (2):

"Direct appropriate department staff to establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution and facility to determine safety and security deficiencies. In scheduling the inspections, priority shall be given to older institutions and facilities; institutions and facilities that house a large proportion of violent offenders; institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse; and institutions and facilities that have experienced a significant number of escape attempts in the past.

(3) Direct appropriate department staff to conduct or cause to be conducted announced and unannounced comprehensive security audits of all state and private correctional institutions and facilities. . . . The evaluation of the physical plant policies must include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring technologies in such spots or areas. Each correctional institution and facility shall be audited at least annually. The secretary shall annually report the audit findings to the Governor and the Legislature.

(4) Direct appropriate department staff to investigate and evaluate the usefulness and dependability of existing safety security technology at state and private correctional institutions and facilities, investigate and evaluate

new available safety and security technology, and make periodic written recommendations to the secretary on the discontinuation or purchase of various safety and security devices. (See Appendix G) (Emphasis added by the Petitioner)

As can be clearly demonstrated, the Defendants violated both Florida Statute Sections 20.315(1)(d) and 944.151(2)(3), and (4), Specifically, Petitioner states that due to the Defendants violation of Substantive Florida Law, the Eighth Amendment guaranteed right to be Free from "Cruel and Unusual Punishment. As the decision in *Farmer v. Brennan*, supra, held "being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses." The failure to protect the Petitioner is governed by the "deliberate indifference standard." See *Odom v. South Carolina Department of Corrections*, 349 F.3d 765, 772 (4<sup>TH</sup> Cir. 2003) The United States Court of Appeals denial on the grounds that Petitioner's claims were frivolous, is not only legally and factually incorrect, it is insulting. If the Lower Courts consider the Petitioner's life threatening injuries, and the destruction of his present and future quality of life frivolous, the Eighth Amendment no longer has meaning in this country. Due to Petitioner's reliance upon "Jail House Attorneys" his claims may have been inadequate in comparison to that of a skilled lawyer. However, this Honorable Court should be able to sift through his filings, and perceive that the Petitioner has arguable merits to his claims, both in law and fact. *Watson v. Ault*, supra. It should be apparent that these facts are proveable in support of his claims. See *Bienvenu v. Beauregard Parish Police Jury*, supra. To consider the Petitioner's injuries and permanent disability frivolous, and his suffering of no value, is

an affront to decency. Especially when "Blind Spot Safety Measures" were available but were not in-place at the time of this event.

The Petitioner respectfully asks this Honorable Court, if nearly dying from these injuries sustained that day, numerous operations, months of rehabilitation, and a lifetime of suffering pain and disability, and having to rely upon the use of a "Walker" for the rest of his life, due the Defendants deliberate indifference to his safety, Frivolous? Would any member of this Honorable Court, having suffered these very same events, believe them to be Frivolous? Would their destruction of the quality of their present lives seem frivolous? Unless the frivolousness of a claim is facially apparent the Petitioner contends, it is incumbent upon this Honorable Court to develop the case, and to sift the claims and Known Facts, until complete satisfied either of its merit or lack of same. See Green v. Mc Kaskle, 788 F.2d 1116 (5<sup>TH</sup> Cir. 1986); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 301 Ed. 2d. 652 (1972).

In reviewing his 1983 complaint, the Lower Courts failed to consider, that without refutation, they were to take Petitioner's allegations as true, and to take them in the favorable light to the Petitioner. See Hughes v. Lott, 250 F. 3d 1157-60 (11<sup>TH</sup> Cir. 2003); Maps v. Miami-Dade State Attorney, 693 F. App'x 784, 785 (11<sup>TH</sup> Cir. 2013). The Petitioner avows that his complaint contains Factual allegations, that when taken as true allow this Honorable Court to draw reasonable inference that the Defendants are liable for the alleged misconduct. See for similar proposition Wright v. Miranda, supra. These undisputed Facts support Petitioner's claims for relief under a 1983 Filing, and Petitioner states that without doubt or Frivolousness, he has demonstrated the Defendants deprived him of a federal

right to be free from Cruel and Unusual Punishment. This is so, when a person or persons acting Under the Color of State law failed to prevent the Petitioner's injuries because they failed to implement Statutorially Mandated Blind Spot Safety Measures. See for like propositions Griffin v. City of Opa-Locka, 261 F.3d 1295, 1303 (11<sup>TH</sup> Cir. 2001); Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

The Lower Courts in the instant cause, disregarded long standing principles as cited in Graham v. Henderson, 89 F.3d 76, 79 (2<sup>ND</sup> Cir. 1996) (quoting Burgos v. Hopkins, 14 F.3d 787, 790 (2<sup>ND</sup> Cir. 1994)) which held that "When read liberally, however, a pro se pleadings should be interpreted to raise the strongest arguments that [it] suggests." As Petitioner has, by the foregoing decisional language, demonstrated that the Florida Department of Corrections, and its agents (the Defendants) were statutorily required to have "Blind Spot Safety Measures" in place. Their Failure to do so, deprived the Petitioner his Substantive Protections under Florida law, which triggered the deprivation of Petitioner's Eighth and Fourteenth Amendment Protections. The Defendants failure to implement "Blind Spot" Safety Measures is the cause of the life threatening and permanently disabling injuries to have occurred. The Florida Department of Corrections and its agents (The Defendants) were responsible on the basis of Facts that were either knew or should have known "Blind Spot" Safety Measures are required by Florida statute. See for similar proposition. Stallworth v. Tyson, 578 F.App'x 953 (citing Campbell v. Silkes, 169 F.3d at 1375)

The Petitioner attests, that for a prison official to be Constitutionally liable for failure to protect the safety of an inmate, two requirements must be met. First, the depriv-

vation must be objectively, and sufficiently serious. See Wilson v. Seiter, 501 U.S. 294, 298, 111 S.Ct. 2321, 115 L.Ed 2d 271 (1991); Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed 2d 271 (1991). Second, the alleged failure to prevent harm, the plaintiff must show that he is or was incarcerated under conditions that posed a substantial risk of serious harm. It is clearly apparent that "Blind Spot" safety is a serious concern, as demonstrated by Florida Statute Section 944.151(2)(3)(4). See Farmer v. Brennan, supra. The facts show there were NO Blind Spot Safety Measure in place on December 24, 2016 under the pavilion of the recreation yard of Holmes Correctional Institution. Any later implementation of safety measures does not excuse the deprivations complained of herein.

The very Fact that there were NO Blind Spot Safety measures in place, as is required by Florida law, is sufficient to demonstrate the culpable minds of the Defendants, and shows a complete disregard for the Petitioner's Constitutional guarantees to be free from Cruel and Unusual Punishment. See for similar proposition Rhodes v. Chapman, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed 2d 59 (1981); Estelle v. Chapman, 429 at 106; Byrd v. Clark, 783 F.2d 1002, 1006 (11<sup>TH</sup> Cir. 1986). This Petitioner states his firm belief that he has demonstrated a prima facie showing of an affirmative connection between the officials acts or omissions and the alleged Constitutional deprivations. See Zettler v. Wainwright, 802 F.2d at 401. The Petitioner has also demonstrated that supervisors conduct can be causally related to the Constitutional violations committed by his/her subordinates. See Greeson v. Kemp, 891 F.2d 829, 836 (11<sup>TH</sup> Cir. 1990).

The undisputed Facts of this cause as presented, which

resulted in the disabling injuries, and the deprivations of Petitioner's Substantive Due Process guarantees, are a direct result of the Defendants deliberate indifference. The Defendants failure to comply with the mandated Safety measures codified in Florida Statute Section 944.151(2)(3)(4), and his safety and well-being, found in Florida Statute Section 20.315, resulted in Petitioner's grievous injuries. Petitioner does contend his claims are not Frivolous or Fantastic. See Clark v. State of Georgia Pardons and Parole Board, 915 F.2d 636 (11<sup>TH</sup> Cir. 1990). The Defendants failed to prevent harm to the Petitioner, who states he has met the Standard set forth in Farmer v. Brennan, supra.

### CONCLUSION

Wherefore, the Petitioner/Plaintiff in this cause, Juan F. Perez, prose, prayerfully, and respectfully moves this Honorable Court to Reverse the Lower Court's Denials, and Order proceedings be held to see that the Ends of Justice are met. This Honorable Court has the authority to correct the deprivations herein demonstrated, and restore the Substantive Due Process Guarantees the Petitioner/Plaintiff has been deprived of.