20-277

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020
No. _____

CHRISTOPHER ADAMS, JAMES SPANN, GARY SEELEY, CHAD BELL, ROY ROGERS, JOHN SAULSBERRY, JOSEPH OVERMAN, RICHARD CALFEE, RONALD HAYES, BARRY WADDELL, and CARLOS AGUILAR,

Petitioners, *prose*

—against—

TONY PARKER and LEE DODSON, in their official capacities,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Christopher Adams
328180 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

James Spann
238562 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

Gary Seeley
148957 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

Chad Bell
467022 BCCX
1045 Horsehead Rd.
Pikeville, TN. 37367

Roy Rogers
298186 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

John Saulsberry
125286 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

Joseph Overman
440455 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

Richard Calfee
246178 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

Ronald Hayes
470005 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

Barry Waddell
275036 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

Carlos Aguilar
551630 BCCX
1045 Horsehead Rd.
Pikeville, TN 37367

QUESTIONS PRESENTED

1. Whether prisoners have a right protected by the Eighth Amendment of the United States Constitution to have their food prepared and served in a sanitary manner as established by federal and state regulatory agencies, as well as professional associations; and thus, whether Petitioners §1983 complaint stated a claim for which relief could be granted?;

2. Whether prisoners have a right protected by the Eighth Amendment of the United States Constitution to have safe working conditions as established by federal and state regulatory agencies, as well as professional associations; and thus, whether Petitioners §1983 complaint stated a claim for which relief could be granted?;

3. Whether federal and state regulations are determinitive of what society's contemporary standards of decency are?;

4. Whether the Sixth Circuit Court of Appeals' "exceptional circumstances" requirement for appointment of counsel in a civil rights action established in, *Lavado v. Keohane*, 992 F.2d 601, 605 (6th Cir. 1993), is in conflict with the statutory language in 28 United States Code (U.S.C.) §1915(e)(1) and other circuit courts?; and,

5. Whether district courts should appoint counsel and certify class actions when objectively serious and plausible allegations are made to ensure the safety of inmates through professional representation?

TABLE OF CONTENTS

PARTIES

The Petitioners (Plaintiffs) are Christopher Adams, James Spann, Gary Seeley, Chad Bell, Roy Rogers, John Saulsberry, Joseph Overman, Richard Calfee, Ronald Hayes, Barry Waddell, and Carlos Aguilar, inmates at the Bledsoe County Correctional Complex (BCCX) located in Pikeville, TN. The BCCX is a Tennessee Department of Correction (TDOC) facility. The Respondents (Defendants) are TDOC Commissioner Tony Parker, and TDOC Assistant Commissioner of Prisons Lee Dodson, sued in their official capacities.

RELATED CASES

- *Adams et al. v. Parker et al.*, No. 1:19-cv-296, U.S. District Court for the Eastern District of Tennessee. Judgment entered November 27, 2019.

- *Adams et al. v. Parker et al.*, No. 19-6426, U.S. Court of Appeals for the Sixth Circuit. Judgment entered June 29, 2020

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

REGULATIONS

RULES

SECONDARY SOURCES

DECISIONS BELOW

The order of the United States District Court for the Eastern District of Tennessee at Chattanooga is not reported. A copy is attached in the Appendix (Appx.) as pages B1 – B9. The decision of the United States Court of Appeals for the Sixth Circuit is not reported. A copy is attached in the Appx. as pages A1 – A6

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) was entered on June 29, 2020. Jurisdiction is conferred to the United States Supreme Court pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment VIII to the United States Constitution, which provides that:

> Bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

The Amendment is enforced by 42 U.S.C. § 1983, which provides that:

> 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The case also involves a statutory provision from 28 U.S.C. § 1915 (e)(1), which provides that:

"The court may request an attorney to represent any person unable to afford counsel."

STATEMENT OF THE CASE

The Plaintiffs complaintasserted that Defendants have placed multi-layered color coded wristbands on their arms that are permanently attached with metal dual grip fasteners, and that they are impossible to thoroughly clean. [Complaint (Comp.), attached hereto in Appx., pages (pg.) C1-C45 at ¶¶ 88-95, with Exhibits in relation thereto, pgs. D1-D131; see Declaration of Christopher Adams with regards to the Exhibit's (Ex.), Appx. pg. E7]. It asserted that the wristbands are contaminated by fecal matter, genetalia, blood, saliva, urine, toilet water, mucus, mold, sweat, bacteria, and dead skin. [Comp. Appx. C1-C45 at ¶¶ 98-105, 108-12, 115-20, 125-31, 147, 154-55, and 185-86 respectively]. Additionally, it asserted that as a result of some of the wristbands' contaminates that the presence of the poisonous bacterium *staphylococcus* is present on and/or within them. [*Id.* at ¶¶ 279-84, 292, and 296-97].

As a result of the wristbands' contamination, the complaint asserted that Plaintiffs are in imminent danger of contracting, *inter alia*, a foodborne illness that may cause diarrhea, vomitting, fever, nausea, weakness, and/or death, [*Id.* at ¶¶ 293-95; see also 213, 215, and 276], and that Plaintiffs have experienced an increase of some of these symptoms that are readily identifiable with a foodborne illness. [*Id.* ¶ 148]. A foodborne illness is a result of food that is contaminated by harmful bacteria, fungi (mold), viruses, or parasites. [*Id.* ¶¶ 216-23]. The complaint asserted how these pathogens that produce illness and/or death grow and are spread. [*Id.* ¶¶ 224-97]. It asserted that jewelry — wristbands — harbor dangerous bacteria, [*Id.* ¶¶ 268 and 287], and the Tennessee Department of Health (TDOH), by virtue of legislative authority delegated to it, prohibits the wearing of jewelry on the arms and hands of workers in food service establishments,

as does safe food service educators and professional associations. [*Id.* ¶¶ 252-56, 291, 268-69, 286, 288, and 361]. It asserted that the TDOH's regulations are the decent standards of society in Tennessee. [*Id.* ¶ 358].

The United States (U.S.) Department of Health and Human Services (USDHH), Centers for Disease Control and Prevention (CDC), estimates that 47.8 million people contract a foodborne illness each year, 127,839 are hospitalized from same, and 3,037 deaths result from unsafe food. [*Id.* ¶ 213]. Contaminated food causes foodborne illnesses, [*Id.* ¶ 216], but is preventable by practicing proper sanitation during food handling, [*Id.* ¶¶ 217-19], such as removing jewelry from ones hands and arms before preparing food. [*Supra*]. The covering of the wristbands with gloves, as suggested by district court, [Appx. pg. B5], is not the answer and may merely exacerbate the problem. [Appx. pg. C23 ¶ 188; see pg. D34 at "abstract"].

The complaint asserted that Plaintiffs and those that they interact with are suffering physical injuries such as rashes, scrapes, and scratches that are susceptible to infection. [Comp. Appx. pgs. C1-C45 ¶¶ 143-45 and 149-53]. As a result of the cuts and scratches the Plaintiffs have asserted that they are also in danger of contracting hepatitis C from one of the more than 4,000 other inmates in the TDOC's custody who have same while interacting with them. [*Id.* ¶¶ 159-69].

The complaint asserted that all Tennessee inmates are required to work, [*Id.* ¶ 301], and that they are subject to "be assigned to positions [/jobs] without their request or consent." [*Id.* ¶ 308]. As a result thereof, Plaintiffs may be assigned to jobs that require them to work on energized electrical circuits and/or machinery with moving parts while wearing the metal dual grip fastened wristbands thereby placing them in imminent danger. [*Id.* e.g. ¶¶ 311-47, 374, and 407; see especially (esp.) 331]. [Several Plaintiffs are currently operating machinery with moving parts.].

The complaint asserted that Defendants, as reasonable officials and in the light of their other policies, [*Id.* ¶¶ 350-51, 362-66, and 371-77], were aware of the dangers that the wristbands posed to Plaintiffs health, well-being, and general safety, and with deliberate indifference to same placed them on Plaintiffs anyway. [*Id.* e.g. ¶¶ 345-98]. It further asserted that there is a readily available alternative to Defendants security concerns, [*Id.* ¶¶ 71-85], which was recommended by the TDOC's grievance committee, [*Id.* ¶ 387], but refused by Defendants. [*Id.* ¶ 398]. [See, Comp. Ex.'s, Appx. pgs. D108 and D121, grievance committee response.].

Finally, the complaint made class allegations that support the appointment of counsel under the provision of 28 U.S.C. §1915(e)(1), and class certification pursuant to Federal Rules of Civil Procedure 23. [Comp. Appx. pgs. C1-C45, ¶¶ 17-51].

The district court *sua sponte* dismissed the case under the provisions of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, finding that the case did not state a claim upon which relief may be granted under §1983. [Appx. B6-B8]. The district court found that the risk of passing on pathogens that may cause foodborne and/or other illnesses was not so grave that it violated society's contemporary standards of decency, [*Id.* B5]; that cuts and abrasions from the wristbands did not violate the Eighth Amendment, [*Id.* B6]; and that the risk of wearing wristbands while working on electrical circuits and/or machinery was not plausible because Plaintiffs were not exposed to such, only other class members were. [*Id.*]. The court noted that it had declined to appoint counsel because Plaintiffs had not set forth "exceptional circumstances" warranting such as it appeared from the record that Plaintiffs could present their own legal arguement, [*Id.* B1-B2]; and further declined to certify the case as a class action because Plaintiffs could not assert the rights of others for lack of standing. [*Id.*].

The court of appeals affirmed the *sua sponte* dismissal for the reasons stated by the district court. [*Id.* A1—A6].

BASIS FOR FEDERAL JURISDICTION

The case raises questions as to the interpretation of the Cruel and Unusual Punishment Clause of the Eight Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. §1331.

REASONS FOR GRANTING THE WRIT

A. Conflicts With Decisions From Other Courts.

"Food is one of the basic necessities of life that is protected by the Eighth Amendment." *Knop v. Johnson*, 667 F. Supp. 512, 525 (W.D. Mich. 1987) (citation omitted) *aff'd in pertinent part* 977 F. 2d 996, 1000 (6th Cir. 1992); *accord Keenan v. Hall*, 83 F. 3d 1083, 1091 (9th Cir. 1996). "The Constitution requires that food be prepared and served in a manner that reasonably accords with sound sanitary procedures", *Grubbs v. Bradley*, 552 F. Supp. 1052, 1128 (M.D. Tenn. 1982), and "under conditions which do not present an immediate danger to the health and well being of the inmates who consume it." *Ramos v. Lamm*, 639 F. 2d 559, 570-71 (10th Cir. 1980) and cases cited; *accord Johnson-El v. Schoemehl*, 878 F. 2d 1043, 1055 (8th Cir. 1989); *Robles v. Coughlin*, 725 F. 2d 12, 16 (2d Cir. 1983).

The holding of the courts below, that the risk of contracting foodborne illnesses was not so grave to violate society's contemporary standards of decency is in conflict with other federal circuits that have looked to statutes and regulations as objective factors in relation thereto. See, *Atkison v. Taylor*, 316 F. 3d 257, 265 and n. 7 (3d Cir. 2003) (holding that an executive order banning smoking in public buildings was some evidence of what society does not tolerate, and suggesting that a federal regulation prohibiting smoking in federal buildings and workplaces might be evidence of a national consensus); *Lopez v. LeMaster*, 172 F. 3d 756, 761 (10th Cir. 1999); *Ramos*, 639 F. 2d at 571 and n. 10; *see also Hall v. Bennett*, 379 F. 3d 462, 465 (7th Cir. 2004). In addition to the findings by the federal circuit courts, an abundance of federal district courts and state courts have looked to statutes, regulations/codes,

and rules in determining the contemporary standards of decency. See, *Pack v. Artuz*, 348 F. Supp. 2d 63, 87-88 (S.D.N.Y. 2004)(holding contemporary standards of decency are reflected in state Industrial Code and federal OSHA regulations governing asbestos exposure); *Valdez v. Farmon*, 766 F. Supp. 1529, 1537-38 (E.D. Cal. 1991)(state regulations); *Dawson v. Kendrick*, 527 F. Supp. 1252, 1294 (S.D.W.Va. 1981)(state fire code); *Richardson v. Sheriff of Middlesex County*, 553 N.E. 2d 1280, 1289 (Mass. 1990)(state prison regulations); *Inmates of Riverside County Jail v. Clark*, 144 Cal. App. 3d 850 (state minimum standards for jails); *Wilson v. State*, 746 P.2d 1022, 1027-28 (Idaho 1987)(state hair-cutting sanitation regulations).

Federal and state agencies charged with the duty of protecting America's food, as well as safe food service educators and professional associations, condemn and prohibit the wearing of jewelry on the hands and arms of food service workers because it harbors dangerous bacteria that are transmissible through food. The Tennessee General Assembly has delegated its authority to the TDOH to enforce the *Tennessee Food Safety Act*, which was enacted "to ensure that foods served for public consumption in Tennessee are safe as prepared, served, and delivered." Tennessee Code Annotated (T.C.A.) §§ 68-14-702, 68-14-701, 68-14-704. Tennessee's prisons are not exempt from the *Tennessee Food Safety Act*. See *Id.* § 68-14-703(9). The TDOH and the USDHH, Food and Drug Administration (FDA), both prohibit food employees from wearing jewelry on their hands and arms. Both agencies' directives state the same thing *verbatim*: "Except for a plain ring such as a wedding band, while preparing food, food employees may not wear jewelry including medical information jewelry on their arms and hands." Tennessee Rules and Regulations, Chapter 1200-23-01-.02, pg. 32(g); https://www.fda.gov/2017 Food Code § 2-303.11, *see*, Annex 3- Public Health Reasons/Administrative Guidelines, pg. 397 § 2-303.11 ("Items of jewelry such as rings, *bracelets*, and watches may collect soil

and the construction of the jewelry may hinder routine cleaning. As a result, the jewelry may act as a reservoir of pathonogenic organisms transmissible through food.")(*emphasis added*), also available at Appx. D pg. D23, see D19-20. Plaintiffs wristbands are comprised of multiple layers that are impossible to thorougly clean, [Comp. Appx. pg. C15 ¶¶ 88-95], which is evident due to the mold growing within some of them. [*Id.* pg. C19 ¶ 147]. Even the TDOC's private food services contractor Aramark has a policy against employees wearing jewelry, [*Id.* pg. C 32 ¶¶ 288-89], but they are bound by their contract to comply with TDOC's wristband policy. [*Id.* pg. C25 ¶¶ 208-10]. See, *The Culinary Professional*, Second Edition, The Goodheart – Willcox Company, Inc., Copyright 2014 (*The Culinary Professional*) pg. 126, and *ServeSafe Coursebook*, 6th Edition, National Restaurant Association Educational Foundation, pg. 4-9, which both prohibit food employees from wearing jewelry on their hands and arms because of the dangerous pathogens that they harbor. [See, Comp. Appx. C pgs. C29 ¶¶ 268-69 and 271, C31 and 32 ¶¶ 286-87 and 291]. See e.g. *Mengual Lombar M, Gomez NM, Carcedol, Lopez MA, Alava JI* (2016), *Journal of Food: Microbiology, Safety & Hygiene*, 1:105. doi:10.4172/2476-2059.1000105, [Appx. D pgs. D25-D29]; *Bean, NH, and P.M. Griffin* 1990, Foodborne Disease Outbreaks in the United States, 1973-1987: pathogens, vehicles, and trends. *Journal of Food Protection*, 53:804-817; 21 Code of Federal Regulations (C.F.R.) §§ 110.10(b)(4), 111.10(b)(4), 117.10(b)(4), and 50 C.F.R. § 260.104(b)(3). "Hand hygiene is critical during preparation of any food, whether in the home [, inmate housing unit,] or in the food processing or food service environment...". *Journal of Food Protection*, Vol. 73, No. 9, pg. 1762, 2010 Copyright *International Association of Food Protection*, [Appx. D pg. D34]. Accordingly, it is evident that society prohibits and does not tolerate the wearing of jewelry during food preparation and service.

While Tennessee's citizens may take their jewelry off to prepare food at home,

or turn around and walk out of a restaurant where an employee is illegally wearing jewelry on their arms and/or hands, Plaintiffs may not remove the wristbands for such. The TDOH has cited the BCCX where Plaintiffs reside for inmates wearing wristbands in the kitchen, but Defendants still refuse to remove them; thus, Plaintiffs have no other remedy available besides judicial intervention. [See, TDOH Report, Appx. E pg. E3 at "38", or, https://www.tn.gov/health/health-program-areas/eh/eh-inspections.html, (search within results for BCCX Site 2, October 1, 2019 inspection)].

In relation to the work safety issue, Plaintiffs have asserted that they are required by state law to work, [Appx. C pgs. C33 ¶ 301], and that they may be assigned to any job without their consent, [*Id.* pg. C 34 ¶ 308], some of which will be dangerous to perform while wearing a wristband. [*Id* pgs. C34-C43 ¶¶ 311-47, 374, and 407].

Congress has created the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) to ensure that American's have a place to work that is free of conditions that may cause physical injury and/or death. 29 U.S.C. §§ 651(b) and 654(a)(1). Accordingly, OSHA has promulgated several workplace safety regulations that are relevant:

> Safeguarding Equipment and Protection of Workers from Amputations
>
> Workers should not wear loose-fitting clothing, jewelry [-wristbands-], or other items that could become entangled in machinery, and long hair should be worn under a cap or otherwise contained to prevent entanglement in moving parts.
>
> https://www.osha.gov/Publications/osha3170.pdf.

* * * * *

> Safety-related work practices shall be employed to prevent electric shock or other injuries resulting from either direct or indirect electrical contact, when work is performed near or on equipment or circuits which are or may be energized....
>
> Conductive apparel. Conductive articles of jewelry and clothing (such as watch bands, bracelets, [wristbands attached with metal dual grip fasteners,] rings, keychains, necklaces, metalized aprons, cloth with conductive thread, or metal headgear) may not be worn if they might contact exposed energized parts....

29 C.F.R. § 1910.333 (a) and (c)(8) respectively. See e.g., 29 C.F.R. § 1910.335. One safe food service educator instructs that "[j]ewelry does not belong in the kitchen. Rings, necklaces, earrings, and bracelets can get caught on moving equipment and cause serious injury." *The Culinary Professional* pg. 137]. [Appx. C pg. C36 ¶¶ 337-38]. The wristbands that are worn by Plaintiffs will support a person's body-weight without breaking, and thus, would allow a persons arm to be pulled into moving parts of machinery. Moreover, it is common knowledge that metal is a conductor of electricity, and therefore, a Plaintiff who could be assigned to a job requiring electrical work is in danger of electrocution because of the metal fastener on the wristband.

In sum, it makes little sense that society would create authorities to promulgate regulations and guidelines to ensure safe food and workplace practices, and then subject its prisoners — their family members —, most of whom will expire their sentences and be released, to conditions contrary to same. Plaintiffs are being *unwillingly* forced to endure conditions that may readily be likened to Russian roulette, that is, at what time will they eat a meal or be assigned to a job without their consent that will become injurious or even deadly because of their permanently attached wristbands. Will it be tomorrow, next week, next month, or maybe in a year or two? The risk is easily avoidable by removing the wristbands and placing a color code on the bottom of Plaintiffs laminated photo identification. [Appx. C pgs. C13-C14 ¶¶ 71-85].

Finally, the Sixth Circuit's decision in, *Lavado v. Keohane*, 992 F. 2d 601, 605-06 (6th Cir. 1993), requiring "exceptional circumstances" for the appointment of counsel in a civil case is contrary to the language of 28 U.S.C. §1915(e)(1) and at least one other federal circuit. See, *Tabron v. Grace*, 6 F.3d 147 (3d Cir. 1993) (holding exceptional circumstances were not required for appointment of counsel to represent indigent prisoner in civil case). The *Tabron* court found that the clear language of § 1915 nor its history sup-

ported limitations on the appointment of counsel such as exceptional circumstances. *Id.* at 155; see also *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007).

Because of an inmate's incarceration it is difficult for him to find counsel, conduct discovery, and thoroughly investigate meritorious claims. One circuit recently noted that when an objectively serious and meritorious claim is made courts would be well-advised to appoint counsel to investigate rather than leave an inmate in harm's way. *Nally v. Ghosh*, 799 F.3d 756, 758-59 (7th Cir. 2015). Courts are in a better position to find an indigent inmate an attorney from its pool of same.

B. Importance of the Questions Presented.

The case presents fundamental questions relating to this Court's decision in, *Helling v. McKinney*, 509 U.S. 25 (1993). The questions presented are of great public importance because they affect the operations in hundreds of prisons and jails throughout the United States. In view of the large amount of litigation regarding Eighth Amendment conditions of confinement cases, guidance on the questions are of great importance to prisoners because they affect their ability to maintain healthy and safe environments in relation to their food and workplaces. Left unchecked, prisoners may easily be subjected to unsanitarily prepared food and unsafe working conditions that put them in imminent danger of current and future serious injury and/or death — as in the case *sub judice*.

Also extremely relevant to the present case is the need for clear instructions and guidance from this Court on what objective factors should be considered by lower courts in determining what society considers to be contemporary standards of decency. As described above, in Plaintiffs' complaint, and in their appellate brief, statutes, regulations, professional associations, and educators, all condemn and prohibit the wearing of jewelry on the hands and arms of food service workers, and those who work on

machinery and electrical circuits. Society would not elect public officials to create laws and regulations prohibiting something if they intended to tolerate it. To the contrary, it is self-evident that when statutes and regulations are created and promulgated thereby prohibiting something that society has chosen not to tolerate the behavior. Thus, the lower courts' subjective views that the risks faced by Plaintiffs are no greater than those posed to other citizens in public when they do not personally prepare their own food is unconvincing. The general public depends on the TDOH to enforce its regulations on restaurants and may choose to not eat at a place where food workers are illegally wearing jewelry on their hands and arms. There is a danger involved in preparing food for oneself while wearing jewelry anywhere, but, persons at home may take their jewelry off before preparing food, or, to thoroughly clean and sanitize same. Plaintiffs do not have that option as evidenced by the mold that grows within the multiple layers of some of the wristbands. [Comp. Appx. C pg. C19 ¶ 147].

The issue's importance is enhanced by the fact that the case asserts serious and life-threatening conditions. The lower courts should not have based their decisions on their own subjective views. *Rummel v. Estelle*, 445 U.S. 263, 275 (1980). By virtue of the Plaintiffs' incarceration they are dependent upon Defendants to provide for their well-being and general safety in a reasonable manner. *Helling*, 509 U.S. at 32 (*quoting DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 199-200 (1989)). The lower courts have disregarded the *Tennessee Food Safety Act*, T.C.A. §§ 68-14-701 *et seq.*, and regulations and guidelines from the TDOH, FDA, CDC, OSHA, professional associations, and safe food service educators when deciding the case at bar, all of which are objective factors from those who specialize in their own respective fields.

The common sense understanding of an unreasonable risk to Plaintiffs' future health, well-being, and general safety encompasses protection from unsafe food hand-

ling practices and unsafe work environments. Serious physical injury and/or death are not part of the sentence of punishment imposed upon Plaintiffs." [A] remedy for unsafe conditions need not await a tragic event", *Helling*, 509 U.S. at 33, "[u]nsafe food [and working conditions] poses no less of a threat than unsafe water...". *Drake v. Velasco*, 207 F. Supp. 2d 809, 813 (N.D. Ill. 2002) (*citing Helling*, 509 U.S. at 33). The lower courts' decisions merely left thousands of people in harms way. This Court held in *Helling* that a claim could be based on *possible* future harm to health, as well as present harm. *Helling*, 509 U.S. 25.

Based on Plaintiffs limited research abilities the wristbands have not been challenged in other courts relating to food and workplace safety, but have been looked at with regards to the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and the Health Insurance Portability and Accountability Act (HIPAA). See e.g., *Arendas v. Lewis*, 2016 WL 6962878 (D.C. Colo.); *Larson v. Alaska, Department of Corrections*, 2015 WL 13310410, *reversed* 670 Fed. Appx. 940 (9th Cir. 2016); *Reed v. Allen*, 2009 WL 10694745 (N.D. Ala.); *Bradford v. Blake*, 2006 WL 744307 (E.D. Missouri); *See also*, *Holt v. Hobbs*, 574 U.S. 352 (2015); *Barfield v. Hetzel*, 2015 WL 758490 at * 14 (M.D. Ala.).

Additionally, it is of great importance to all indigent civil litigants in the Sixth Circuit that this Court answer the question as to whether the "exceptional circumstances" requirement for appointment of counsel in a civil case comports with the clear language of 28 U.S.C. §1915 (e)(1), as prescribed by the Sixth Circuit in *Lavado*, 992 F.2d at 605-06. The statute states that a "court may request an attorney to represent any person unable to afford counsel." 28 U.S.C. §1915(e)(1). The only qualifier for the appointment of counsel articulated by Congress is that "any person [be] unable to afford counsel." *Id.* Granted, Congress gave a court discretion by its use of the word "may". *Id.* This Court has found that "the judge's job is to construe the statute — not make it better." *Jones v. Bock*,

549 U.S. 199, 216 (2007) (citation omitted). Further finding that "[n]o mere omission ... which may seem wise to have specifically provided for, justifies any judicial addition to the language of the statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (*quoting United States v. Goldenburg*, 168 U.S. 95, 103 (1897) (internal brackets omitted)). However, the *Lavado* panel ruled contrary to this Court's precedent and added an "exceptional circumstances" requirement. As such, and noted by the court of appeals' panel in the case *sub judice*, the Sixth Circuit is bound by the precedent set forth by the *Lavado* panel. [Appx. A pg. A5]. The *Lavado* court has established an excessively high hurdle that is not articulated in Congress's language and intent in the statute; which was created to aid indigent litigant's with meritorious claims to be able to access the courts for relief. Thus, it is of significant importance for the Court to reverse the *Lavado* "exceptional circumstances" requirement and provide guidance as to what warrants appointment of counsel.

Finally, it is of great importance to prisoners across the United States for the Court to recommend that lower courts appoint counsel and certify class actions in relation to conditions of confinement for plausable prisoner actions. In 1966 subdivision (b)(2) was added to Federal Rules of Civil Procedure 23 " to facilitate the bringing of class actions in the civil-rights area." 7AA *Federal Practice and Procedure* §1775 (3d ed.), at nn. 37 and 40." [I]t should be noted that a common use of Rule 23(b)(2) is in prisoner actions brought to challenge various practices or rules in the prison on the grounds that they violate the constitution." *Id.* at §1776.1 n.16. See, *Hassine v. Jeffes*, 846 F.2d 169, 180 (3d Cir. 1988) (class certification" is an especially appropriate vehicle for actions seeking prison reform.") (*citing Coley v. Clinton*, 635 F.2d 1364 (8th Cir. 1980); *Clarkson v. Coughlin*, 783 F. Supp. 789, 797 (S.D.N.Y. 1992) (class actions "generally tend to be the norm" in prison conditions cases).

One would be hard-pressed to find someone that would represent prisoner interests through qualified appointed counsel better than another prisoner himself. Prisoners, as well as others, have a primordial instinct based in self-preservation to avoid physical pain, suffering, and/or death. Accordingly, guidance from this Court in relation hereto is important to ensure that others who are unaware that they are in danger and have a claim, and, those who are unable to pursue their own action for various reasons receive representation through a class action instead of being left in harms way. [See e.g., Appx. C pgs. C6-C10 ¶¶ 18-46].

CONCLUSION

For the foregoing reasons and in the interest of justice certiorari should be granted in this case.

Respectfully submitted this 25th day of August, 2020.

Christopher B. Adams
1045 Horsehead Rd.
Pikeville, TN 37367

James Spann
1045 Horsehead Rd.
Pikeville, TN 37367

Gary Seeley
1045 Horsehead Rd.
Pikeville, TN 37367

Chad Bell
1045 Horsehead Rd.
Pikeville, TN 37367

Roy Rogers
1045 Horsehead Rd.
Pikeville, TN 37367

John Saulsberry
1045 Horsehead Rd.
Pikeville, TN 37367

Joseph Overman
1045 Horsehead Rd.
Pikeville, TN 37367

Richard Calfee
1045 Horsehead Rd.
Pikeville, TN 37367

Ronald Hayes
1045 Horsehead Rd.
Pikeville, TN 37367

Barry Waddell
1045 Horsehead Rd.
Pikeville, TN 37367

Carlos Aguilar
1045 Horsehead Rd.
Pikeville, TN 37367

[illegible]

[illegible]