

No. 20-508

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
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SUPREME COURT, U.S.

**BRANDON S. LAVERGNE**  
PETITIONER

VS.

**MICHAEL VAUGHN, ET AL**  
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES FIFTH CIRCUIT OF APPEALS

PETITION FOR CERTIORARI

BRANDON S. LAVERGNE, DOC #424229  
DR CCR E-10  
LOUISIANA STATE PENITENTIARY  
ANGOLA, LOUISIANA 70712

## QUESTIONS PRESENTED

- 1) Can a prisoner's 1st amendment right to correspondence be totally "revoked" without a hearing or due process? This included all religious mail, educational mail, and some legal mail while the prisoner was in solitary confinement.
- 2) Should a state actor be granted qualified immunity for the mail block stated in question 1, especially when he wrote a false report to get that mail block?
- 3) If a person allegedly sends out unwanted mail, is there a "reasonable relationship" under the "Turner Test" to block all his incoming mail?
- 4) Does the "Turner Test" apply to outgoing mail?
- 5) If a prisoner in solitary confinement has no access to religious gatherings, is it a violation to block all his incoming and outgoing religious mail?
- 6) Can a federal district court ignore a rule 56(c)(2) FRCP challenge to a motion for summary judgement?
- 7) If a letter forms the basis of a prison disciplinary report, and the prisoner disputes the contents of the letter, was his due process rights violated when the prison refused to produce the letter at his disciplinary hearing, which lead to 6 months of disciplinary solitary confinement?

**LIST OF PARTIES**

MICHAEL VAUGHN

BRUCE DODD

WILLIAM RICHARDSON

MEGAN SHIPLEY

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**STATUTE**

**RULE 56 FRCP**

IN THE  
SUPREME COURT OF THE UNITED STATES

**PETITION FOR WRIT OF CERTIORARI**

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

**OPINIONS BELOW**

For cases from Federal Courts:

The opinion of the United States Court of Appeals appears at Appendix C to the petition and is **UNPUBLISHED**.

The opinion of the United States District Court appears at Appendix B to the petition and is reported at [LaVergne v. Vaughn Et Al MD of La. 16-400]. It is not known if it is published.

## **JURISDICTION**

For cases from the Federal Court:

The date on which the United States Court of Appeals decided my case was: March 12th, 2020.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 6th, 2020 and a copy of the order denying rehearing appears at Appendix D.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1st amendment right to religious assembly and speech in the courts. Right of association.

5th amendment right to due process and equal protection before my right to correspondence is taken.

6th amendment right to a fair hearing and to be able to properly represent myself at an unbiased disciplinary hearing.

14th amendment right to equal protection and due process in my mail, and state created liberties.

## **STATEMENT OF THE CASE**

When a parent hears his 15 year old daughter has been placed in a group home for troubled teens, it should be a cause for alarm. In December, 2015, that was the situation the Plaintiff found himself in. He learned that his daughter, Bethany, was in such a situation. On Bethany's 15th birthday, the Plaintiff had been told by prison officials that unless Bethany filled out a regular prison visitation background check form when she turned 15, she would be removed from his visiting list. Bethany had been on his list for 3 years prior as a minor. This background check form required a parent or legal guardian's signature. As this court knows from [LaVergne v. Cain Et Al MD of La. 15-34] now pending before this court on appeal. The Plaintiff knew Bethany's mother, Lainey, would not sign that form or even want that form sent to her home. The Plaintiff filed and exhausted an Administrative Remedy Procedure Complaint about Bethany being removed from his list and asked for her to be "grandfathered"

attempt to contact Bethany at her mother's request. The mother was a resident of Texas. The group home was in the State of Mississippi. Because Bethany's mother sent her to live in another state, she had to sign over guardianship of Bethany to the group home. Now that Bethany was not living with her mother and had new legal guardians, then and only then did the Plaintiff contact the new legal guardians and ask them for their permission to contact Bethany. All the legal guardians would have had to do was say no, and that would have been the end of it. The Plaintiff had also hoped if he was allowed by the group home to contact Bethany, they would also sign the visitation form to get Bethany back on his visiting list.

Instead it appears the Mississippi group home contacted Bethany's mother, maybe in an attempt to verify that the Plaintiff was Bethany's father, and Bethany's mother, Lainey, called the prison complaining about the letter that was sent to another adult in a separate state. The group home staff never

made a complaint to the prison about the letter themselves that was addressed to them. This was hearsay.

The prison investigator, Michael Vaughn, then wrote a false report claiming the Plaintiff had written a letter to Bethany directly, instead of admitting it was to her new legal guardians. Vaughn also falsely claimed the Plaintiff had 6 prior disciplinary convictions for mail related issues; when in fact, the Plaintiff only had one. And that one was from September, 2014, when he had Bethany's mother, Lainey, served with legal documents from this very United States Supreme Court. That issue is also before this court in [LaVergne v. Cain].

When the Plaintiff went before the disciplinary board for this false report, he asked for the letter itself to be produced to show the report was false and that he had not written a letter directly to Bethany as the report claimed. That board granted that motion and Michael Vaughn was ordered to produce the letter. Vaughn

refused to comply and a new board with new members was formed. This new board refused to produce the letter and sentenced the Plaintiff to 6 months of disciplinary lock down and 12 week loss of store for the non-threatening letter.

Two weeks before the Plaintiff was convicted by the disciplinary board, Michael Vaughn had Warden Bruce Dodd sign a mail block order blocking all of the Plaintiff's incoming and outgoing mail, which included all educational mail, religious mail, personal mail, and some legal mail. This mail block lasted 18 months. All of this done without a hearing or due process. The first year of this mail block, the Plaintiff was in solitary confinement. All of this was based on Michael Vaughn's false report that was based on the hearsay of Lainey Martinez, who had no legal standing to file a complaint about that letter in the first place. During discovery, it was revealed Michael Vaughn never even had the letter. He only had pictures of the letter, with a page missing, sent to him by Lainey, who had gotten

the pictures from the Mississippi group home staff.  
More hearsay.

Also during discovery the state produced emails between Vaughn and Lainey, where Vaughn was coaching Lainey to say she was Bethany's legal guardian, when in fact she was not, in an attempt to cover up her hearsay.

Vaughn had previously been put on notice through the lawsuit [LaVergne v. Cain MD of La. 15-34] now pending before this court on appeal that blanket mail blocks were illegal based on this court's rulings in [Thornburgh v. Abbott 109 S. Ct. 1879 (1987)] and [Procunier v. Martinez 94 S. Ct. 1800 (1974)]. Vaughn and Dodd went forward with this mail block anyway and made it far worse than the first 2014 mail block. Vaughn clearly used this situation to also retaliate on his behalf for the Plaintiff's prior suit pending before this court and on Lainey Martinez's behalf for the 2013 lawsuit against her.

The U. S. District Court found under the Turner Test

this mail block was OK. The District Court also refused to make a ruling on the Plaintiff Rule 56 FRCP challenge to the admissability of multiple pieces of hearsay evidence and a series of dismissed disciplinary reports used as the basis for a defendant's motion for summary judgement. The District Court also refused to determine if Lainey Martinez had legal standing to file the initial complaint. And the District Court granted both Michael Vaughn and Bruce Dodd qualified immunity for the mail block that was cleared based on Vaughn's false reports. The District Court also dismissed the disciplinary board's refusal to produce the letter. The U. S. 5th Circuit upheld all these rulings and now the Plaintiff comes to this court.

### **REASONS FOR GRANTING THE PETITION**

#### **The mail block was illegal—**

This mail block was based on a false report by Michael Vaughn from hearsay from Lainey Martinez. The Plaintiff could not lose privileges such as canteen,

phone, or rec. yard for even a single day without first being brought in front of a disciplinary board and given due process. None of those privileges are protected by the 1st amendment. Yet, the Plaintiff had his constitutionally protected right to correspondence “revoked” for 18 months without the same due process required to take a minor privilege. Further, this mail block included all his incoming and outgoing religious mail, educational mail, and some legal mail. The Plaintiff was in solitary confinement for the first year of this mail block without any access to religious gatherings and educational programs. His mail was his only access.

The Plaintiff provided the U. S. District Court with multiple letters going to clerks of court, DA's offices, and attorneys that was clearly legal mail and was clearly blocked.

All the Plaintiff's incoming mail was blocked without the Plaintiff being notified; so the Plaintiff will never know how much incoming mail was rejected by

the prison. Since the Plaintiff was only accused of sending out an unwanted letter, his incoming mail should have never been touched.

This court has only allowed outgoing mail to be blocked to certain addresses only for good reason. Under [Thornburgh v. Abbott 109 S. Ct. 1879 (1987)] and [Procurier v. Martinez 94 S. Ct. 1800 (1974)] this court should find the mail block the Plaintiff experienced to be illegal. Even in [Samford V. Dretke 562 F.3d at 681 (U. S. 5th Cir. 2009)] the court found mail could only be blocked to certain addresses. In this case all the Plaintiff's mail was blocked for 18 months incoming and outgoing. Again this was done without a hearing or due process of any kind.

#### Qualified Immunity—

Michael Vaughn and Bruce Dodd were granted qualified immunity for this mail block after they had already been put on notice by the lawsuit [LaVergne v. Cain Et Al MD of La. 15-34] that blanket mail blocks

are illegal under Thornburgh, Procurier, and Samford. Further, Vaughn wrote a false investigative report and disciplinary report to get Bruce Dodd to sign the mail block order. Dodd did no due diligence to verify Vaughn's claims before signing the order. If Vaughn thought he was acting in good faith, he would not have filed false reports falsely claiming I had directly contacted my daughter and had 6 prior disciplinary convictions for mail related issue; when I in fact had one and that one was for having Lainey Martinez served with court ordered legal documents from this U. S. Supreme Court. Vaughn and Dodd knowingly violated clearly established law, thereby waiving any claim to qualified immunity.

#### The Turner Test– Reasonable Relationship to Incoming Mail

In [Turner v. Safely 107 S. Ct. 2254 (1987)], this court found there must be a “reasonable relationship” between the actions of state actors and what they are

trying to accomplish. If the state actors' goal was to stop the Plaintiff from sending out mail to a single address, then how can they justify blocking all the Plaintiff's incoming mail?

### The Turner Test– Outgoing Mail

The U. S. District Court and U. S. 5th Circuit both violated this court's Stare decisis by applying Turner to outgoing mail when this court clearly stated Thornburgh is the controlling case for the control of outgoing mail. Where Turner may allow a more broad mail block, Thornburgh and later Samford confirmed an outgoing mail block must be restricted as narrowly as possible to accomplish only the stated goal. In this case, mail should only have been blocked to that single group home address in Mississippi; and only after the group home staff themselves made that request; not a 3rd part in another state with no legal standing to make that request.

### Summary Judgement-

There are two issues here. The Plaintiff, on pg. 22 of his response to the defendant's motion for summary judgement, included a "statement of disputed facts" that the defendant never responded to. Under Rule 56 FRCP, the defendant's motion should have been dismissed and this suit gone to trial. Further, under Rule 56 (c) (2), the Plaintiff challenged the admissability of the evidence the state was using to support their motion for summary judgement, including a hearsay statement from Lainey Martinez about the letter ... a hearsay photo of the alleged letter that did not come from the person that received the letter. Further, the photo didn't show the whole letter. Also, the state was using dismissed disciplinary reports to support their alleged reason for the mail block including a July 2013 report and a December 2014 report, and two other reports from February 2016 that happened after the mail block was already in place. The U. S. District Court not only didn't answer the Plaintiff's "Motion In Limine," but

cited their very inadmissible evidence in granting the motion for summary judgement, calling the In Limine moot.

Disciplinary Board Due Process Violation–

Michael Vaughn falsely accused me of sending a letter directly to my teenage daughter. I, in fact, had wrote her new legal guardian. When I went to court for the false disciplinary report, I told the court Michael Vaughn had lied about who the letter was sent to and that Lainey Martinez's lack of standing to even make a complaint about a letter sent to another adult in a different state than herself. Lainey was not my daughter's legal guardian at that time. She gave that up when she sent Bethany to live at a group home in another state.

The first disciplinary board agreed with me and ordered Michael Vaughn to produce the letter. Vaughn refused to comply, knowing he didn't have the actual letter and if he produced the incomplete photos he did

have of the letter, it would show his claim I had wrote my teenage daughter directly was false. It would also undercut the basis of the mail block.

A new disciplinary board was formed consisting of William Richardson and Megan Shipley to cover for the first board that issued the order to produce the letter. That board said they didn't need the letter and refused to let me see the letter or call Vaughn as a witness. That letter was my only defense to these false allegations. Richardson even cursed at me and taunted me to file an appeal of his ruling during the disciplinary hearing. I was sentenced to 6 months of disciplinary lock down (I served 70 days) and loss my store for 12 weeks. All because I was concerned for my teenage daughter who is not my crime victim nor is anyone in her family, NOR DID SHE WITNESS A CRIME.

The actions of Richardson and Shipley violated by 5th, 6th, and 14th amendment rights and the precedent of this court in [Wolff v. McDonnell 94 S. Ct. 2963 (1974)] and [Hewitt v. Holmes 103 S. Ct. 164 (1983)].

Under [Young v. Kann 926 F.2d 1376, 1400-02 (3rd Cir. 1991)] since the contents of the letter was in dispute, it should have been produced.

In Conclusion—

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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Brandon S. LaVergne Pro Se

Date: \_\_\_\_\_