

20-6717
No. 20-

ORIGINAL

SUPREME COURT OF THE UNITED STATES

JAY S. KRAVITZ,

FILED
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Petitioner *pro se*,

v.

KENNETH LEIS, GREENE COUNTY
CORRECTIONS LIEUTENANT,
JOHN AND JANE DOES, UNKNOWN
EMPLOYEES OF THE GREENE
COUNTY JAIL,

Respondents.

Petition for a Writ of Certiorari to
Review a Judgment from the 2nd Circuit
of the United States Court of Appeals

Jay S. Kravitz
Petitioner, *pro se*
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7-4026

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Questions Presented

Whether Petitioner presented an underlying First Amendment Constitutional violation in complaining of Respondents' depriving him of the use of Tefillin while incarcerated in Respondents' facility, particularly in light of the facility having failed to present any regulation or policy which would have prevented Petitioner access to the Tefillin and the facility's own grievance procedure belatedly affirming the Petitioner's right to use the tefillin?

Whether the lower court was in error for not finding that Respondent Lieutenant Leis had a personal involvement in the violation of Petitioner's First Amendment right to practice his faith by repeatedly communicating with Petitioner regarding his access to and use of his Tefillin, by repeatedly and directly refusing Petitioner access to his Tefillin after the Petitioner directly asked Respondent for the use of this prayer object including after the Grievance Coordinator at the facility decided that Petitioner should have the use of his Tefillin, and the Respondent personally investigated whether the Petitioner should have the use of the Tefillin?

The answer to both of these questions should be in the affirmative.

Parties

Petitioner, *pro se* Jay S. Kravitz

Respondent KENNETH LEIS,
GREENE COUNTY CORRECTIONS LIEUTENANT

List of Proceedings

Trial Court Judgment and Decision granting Summary Judgment to Respondent Kravitz v. Leis, 9:17-cv-0600 (TJM/TWD) (N.D.N.Y. Mar. 25, 2019)

Appellate Court Judgment and Decision affirming the Trial Court Kravitz v. Leis, 19-1077 (2d Cir. May 7, 2020) Docket #19-1077

Citations of the official and unofficial reports
of the opinions and orders entered in the case

Kravitz v. Leis, 9:17-cv-0600 (TJM/TWD) (N.D.N.Y. Mar. 25, 2019)

Kravitz v. Leis, 19-1077 (2d Cir. May 7, 2020) Docket #19-1077

Basis for Jurisdiction

The Judgment sought to be reviewed was entered on May 7, 2020.

The statutory provision which confers on this Court jurisdiction to review on a writ of certiorari the Judgment is 28 U.S. Code § 1254.

The constitutional provisions, treaties, statutes,
ordinances, and regulations involved in this case

Constitutional Provisions

Amendment I:

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.

Amendment XIV-

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes

42 U.S.C. § 1983-

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.

Rules

Fed.R.Civ.P. 56(a)

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Brief Statement of Facts

The instant Constitutional matter arises out of Respondents' deprivation of Petitioner, a practicing member of the Jewish faith, the possession and use of sacred prayer objects, specifically a Tallit, a prayer shawl, and Tefillin, phylacteries,

while he was incarcerated at the Greene County [N.Y.] Jail between February 26, 2015 and June 19, 2015.

By Respondent Lieutenant Leis's own admission, he directly participated in the denial of Petitioner's right to practice his faith at the facility. Specifically, he repeatedly communicated with the Petitioner regarding his access to and use of his Tefillin. Respondent repeatedly refused Petitioner the access to his Tefillin including even after the facility's Grievance Coordinator said that pursuant to both the State and facility's rules he should have access to it and no facility rule barring the use of Tefillin having been given to Petitioner at any time. Respondent also personally conducted an investigation as to whether Petitioner should have access to his Tefillin. At no time did the Respondent provide any penological reason for the deprivation of the Petitioner use of his prayer objects.

The basis for federal jurisdiction in the original complaint was pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a)(3), (4) as well as 28 U.S.C. § 1331. The state law claims were brought pursuant to the supplemental jurisdiction provided by 28 U.S.C. § 1337.

A Concise Argument for the Allowance of this Writ

The Freedom of Religion is a Foundational Principal of our great nation. The history of the Religion Clauses of the First Amendment has been chronicled by this Court in detail. See, e.g., *Everson v. Board of Education*, 330 U.S. 1, 8-14 (1947); *Engel v. Vitale*, 370 U.S. 421, 425-430 (1962); *McGowan v. Maryland*,

366 U.S. 420, 437-442. Indeed, the early settlers came to this country from Europe to escape religious prosecution.

The fundamental right to the free exercise of religion has been unambiguously extended to prisoners. "[C]onvicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison" *Bell v. Wolfish*, 441 U.S. 520, 545, 99 S.Ct. 1861, 1877, 60 L.Ed.2d 447 (1979); Accord, *Turner v. Safley*, ___ U.S. ___, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). Basic First Amendment rights are not among those that "[a] prisoner shed[s] at the prison gate." *Procunier v. Martinez*, 416 U.S. 396, 422, 94 S.Ct. 1800, 1815, 40 L.Ed.2d 224 (1974). (Marshall, J., concurring); *Pell v. Procunier*, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974). A prisoner has the right to participate in practices which are an integral part of his religious belief.

Tefillin are central to observant religious practice, normally worn by adult Jewish males during their weekday morning prayers. A pair of Tefillin consists of two small leather boxes containing parchment inscribed with verses from the Torah. Each box is attached to thick leather straps several feet in length. The straps are used to bind the boxes to the head and arm during prayer. *Watson v. Christo*, No. 16-cv-433-RGA, at 5 (D. Del. Mar. 25, 2019). *Ross v. Coughlin*, 669 F. Supp. 1235, 1237 (S.D.N.Y. 1987); "Tephilin" are religious articles worn by observant Jewish males above the age of thirteen on the forehead and on one arm during morning prayers.

The Petitioner informed the Respondent when he arrived at his facility of his desire to practice his religion and use his Tefillin. The Respondent undertook to investigate the propriety of this ritual object as well as religious practices that the Petitioner wanted to maintain. The Respondent was further directed by a decision of the grievance coordinator at the facility to permit the Respondent the use of the Tefillin. Nonetheless, the Respondent refused to permit the Petitioner the use of his Tefillin and thereby flagrantly violated his Constitutional rights.

Respondent had a direct role in the Constitutional deprivation and at the very minimum was deliberately indifferent to the deprivation of the Petitioner's right to practice his religion but the Second Circuit erroneously found that the Respondent was not personally involved. This decision is in conflict with other Circuits.

In *Starr v. Baca*, 633 F.3d 1191, 1194 (9th Cir. 2011) the Ninth Circuit held that the threshold is met where the "[defendant's] acquiescence in the constitutional deprivations of which the complaint is made," or "conduct that showed a reckless or callous indifference to the rights of others.", citing *Larez v. City of Los Angeles*, 946 F.2d 630, 645 (9th Cir. 1991).

The Seventh Circuit in *Sandra T.E. v. Grindle*, 599 F.3d 583, 591 (7th Cir. 2010) also differs from the decision of the Second Circuit. "When a state actor's deliberate indifference deprives someone of his or her protected liberty interest [in bodily integrity] that actor violates the Constitution, regardless of whether the

actor is a supervisor or subordinate, and the actor may be held liable for the resulting harm."

The First Circuit additionally differs from the Second Circuit. *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 49 (1st Cir. 2009). "Although 'Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior,' supervisory officials may be liable on the basis of their own acts or omissions," including supervising "with deliberate indifference toward the possibility that deficient performance of the task may contribute to a civil rights deprivation."

Conclusion

For the foregoing reasons, the Petitioner *pro se* Jay S. Kravitz respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals, Second Circuit.

DATED this 2nd day of October, 2020.

Respectfully submitted,



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