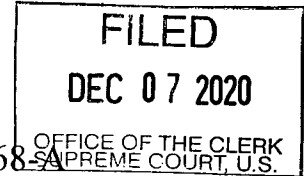


20-6750

ORIGINAL

IN THE SUPREME COURT
UNITED STATES OF AMERICA
OCTOBER TERM 2020



No. 4:20-CV-168-SA

No. 20-10690

In re: MARK MARVIN, AND

ON BEHALF OF MARJORIE MARVIN, HIS WIFE, Petitioner(s)

Against

THE COURT OF APPEALS FOR THE FIFTH UNITED STATES CIRCUIT,

AS *DE FACTO* ATTORNEY FOR, AND

THE UNITED STATES BUREAU OF PRISONS, Respondents

PETITION FOR A WRIT OF MANDAMUS
AS EXTRAORDINARY RELIEF UNDER RULE 20
AND 28 U.S.C. 1615(a), or 2254

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United States Court of Appeals
Fifth Circuit
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New Orleans, Louisiana 70130-3408

Department of Law, United States Bureau of Prisons,
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QUESTIONS PRESENTED FOR REVIEW

A, WHETHER MARK MARVIN SHOULD RECEIVE THE REMAINS AND PROPERTY OF HIS WIFE MARJORIE MARVIN FROM THE DEFENDANT BUREAU OF PRISONS?

B, WHETHER THE FIFTH CIRCUIT COURT OF APPEALS EFFECTIVELY DENIED MARK MARVIN ACCESS TO THE COURT BY ERECTING A SERIES OF PAPERWORK AND SUBMISSION OBSTACLES THAT WERE FRIVOLOUS AND INSURMOUNTABLE AND SHUT HIM OUT OF THE COURT?

C, WHETHER THIS COURT SHOULD GRANT EXTRAORDINARY RELIEF SINCE THE COURT OF APPEALS IN AN ABUSE OF DISCRETION DENIED HIM ACCESS TO COURT AND TO EQUITABLE RELIEF?

QUESTIONS PRESENTED FOR REVIEW

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B, WHETHER THE FIFTH CIRCUIT COURT OF APPEALS EFFECTIVELY DENIED MARK MARVIN ACCESS TO THE COURT BY ERECTING A SERIES OF PAPERWORK AND SUBMISSION OBSTACLES THAT WERE FRIVOLOUS AND INSURMOUNTABLE AND SHUT HIM OUT OF THE COURT?

C, WHETHER THIS COURT SHOULD GRANT EXTRAORDINARY RELIEF SINCE THE COURT OF APPEALS IN AN ABUSE OF DISCRETION DENIED HIM ACCESS TO COURT AND TO EQUITABLE RELIEF?

PRELIMINARY SUMMARY OF THE CASE

Petitioner's wife died while under the control and custody of the Bureau of prisons at the United States Prison Medical Facility at Carswell, Fort Worth, Texas. He requested her remains for burial at home and her possessions and records. The Bureau of Prisons refused to deal with him, and apparently buried her in Texas. His petition to the District Court was dismissed *sua sponte*, and on appeal, the Court of Appeals erected a series of paperwork obstacles inconsistent with the needs of justice and his *pro se* status, as those obstacles were an abuse of discretion and were apparently intended to cause him to abandon his wife and his efforts to receive her remains, etc., and deny him access to the Court. The courts below have denied him access to equitable relief after he made out a *prima facie* case which the Bureau of Prisons defaulted on.

He seeks what writ is necessary and appropriate in aid of those jurisdictions and agreeable to the usages and principles of law. The requested writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. (Note: *Bankers Life & Casualty, v. Holland*, (1953) 74 S.Ct 145, *PA Bureau of Corrections v. U.S. Marshalls Service*, 474 U.S. 43, 106 S.Ct. 355, 361)

RELIEF REQUESTED

Petitioner seeks the following relief:

1, Relief in the form of an Order of mandatory injunction requiring the Bureau of Prisons to return to him his wife's remains, property, and whatever else is required by Texas or United States law.

2, In the alternative: an order of mandatory injunction requiring the Court of Appeals to cease erecting obstacles to his appeal, and hear the appeal on the merits,

3, In the alternative: an order requiring the Court of Appeals to provide him with a specific set of its requirements for his appeal and particularly to provide a sample brief, and have its clerks answer his phone calls, and otherwise cooperate not obstruct his appeal.

4, And an order, as a mandatory injunction requiring the Court of Appeals or the Bureau of Prisons to initiate an investigation into the extent of actions by the Bureau of Prisons to deny next of kin requests for inmate remains, etc. as a practice of the Bureau of Prisons, as it appears that this practice is extensive.

5, Such other and further relief as to this Court seems proper regarding these matters.

REASONS FOR GRANTING THE WRIT

This Writ should be granted in the interests of justice and in furtherance of fundamental Constitutional rights, and to end the practice of arbitrary and abusive disposal of human remains of next of kin by the Bureau of Prisons.

OPINIONS BELOW

The opinions of the courts below are annexed. (Exhibit's A-Q)

JURISDICTION

This Court has jurisdiction under Rule 20, and 28 U.S.C.A. 1651.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

The United States Court has original jurisdiction under 28 U.S. Code 1331 of all actions arising under the Constitution, laws, or treaties of the United States. Under 28 U.S. Code 1343 "the district court shall have original jurisdiction of any civil action ...(1) to recover damages ...prevent wrongs, ...secure equitable or other relief (under 42 USC 1985) etc., as this case is a civil rights case (under *Bivens v. Six ... Agents*, 1971, 403 U.S. 388, 91 S.Ct. 1999)

STATEMENT OF THE CASE

Marjorie Marvin (a/k/a Marjorie Diehl Armstrong) wife of Mark Marvin reportedly died (April 6, 2017) under the control and custody of the defendants at the Federal Medical Center Carswell, Naval Air Station, Fort Worth, Texas while serving a sentence of life and an additional thirty (30) years after her death. He requested her remains and was ignored.

This court has jurisdiction in these events occurred in this federal district under the jurisdiction of this court and that the defendants acted individually and in conspiracy under color of law to deny him constitutional rights, and that supervising authorities

failed to supervise and train defendants to follow appropriate laws and rules regarding civil rights upon death of inmates. The remains of his wife were illegally seized under the Fourth Amendment to the United States Constitution, without Due Process under the Fifth and Fourteenth Amendments and they were denied the First Amendment right to freedom to practice the Quaker religion, and bury his wife under the care of his Quaker Meeting in Cornwall, N.Y. That these civil rights deprivations constitute a cause of action under which relief can be granted (Rule 12).

Petitioner filed an action with the District Court c. February 16, 2020, Northern District of Texas for civil rights violations in that the Bureau of Prisons unlawfully seized and disposed of the remains of his wife Marjorie Marvin (a/k/a/ Marjorie Diehl Armstrong) who was imprisoned at the Federal Medical facility, Carswell, Fort Worth, Texas. Your petitioner was informed that his wife had died and he asked that he receive her remains and property and all effects as required by law. The defendants refused and had his wife buried in Texas. His efforts to obtain her remains were rebuffed by prison personnel and he filed suit with the District Court at Fort Worth Texas. His petition was dismissed: June 15, 2020 and upon his motion dated June 19, 2020 to vacate its order of dismissal, this Court's Order dated: June 24, 2020 finally *sua sponte* dismissing his petition. After a prolonged wait, the court informed him that there was no proof of service on file (of a summons and complaint), so he proceeded to serve the defendants by certified mail. The Court then *sua sponte* dismissed his complaint, whereupon he filed his timely Notice of Appeal.

Marjorie Diehl Armstrong prepared a last Will and Testament in the Federal Prison at Carswell in which she designated Mark Marvin as her next of kin and only heir “just Mark Marvin” is to receive any of her legal papers or property. This occurred some two years before they agreed to be husband and wife, in the Quaker tradition and under Texas law. Quakers are more formally known as “Friends” . He was advised by a social worker by a phone call that Marjorie Diehl Armstrong had died and that he should advise the facility of his wishes for her remains. (To date, the facility has never even provided a death certificate nor any required documentation.)

Following his request within a few days, for his wife’s remains, the defendants refused to communicate with him; the funeral director told him that he (the funeral director) was not allowed to speak with him, and the forensic pathologist did not answer his letter request for an autopsy report. The defendants did not provide any of the required information on her passing as required by the Defendant’s regulations and rules.

SUA SPONTE DISMISSAL BY THE DISTRICT COURT

Hi filed a action with the District Court, Northern District of Texas, at Ft. Worth. The Court noted that there was no proof of service on the Bureau of Prisons (BoP), so Plaintiff served the BoP. The Court noted that the Summons did not state the default clause, so Plaintiff served the BoP again with the Default phrase included. The Court stated that, despite not authorizing the Complaint, that Plaintiff could not serve Defendant, even though the Court’s cite of lack of proof of service clearly served as an invitation for Plaintiff to serve Defendants. Shortly thereafter, the District Court dismissed is Complaint, and he appealed.

DENIAL OF ACCESS TO THE COURT OF APPEALS

Following dismissal of his petition to the District Court, he filed timely Notice of Appeal. He was assigned an index number and given a briefing date. He complied with the date and submitted his briefs with proof of service on the defendants, as Law Department for the Bureau of Prisons. (See Exhibit's A to Q, annexed.)

He received a letter from the Clerk indicating that there were unacceptable errors in his *pro se* briefs including out of order, unacceptable nomenclature ("Questions" as opposed to "Issues"...) lack of italics in case cites, improper cite of the Record (which he had never received from the District Court). The Record indicated that the complaint was "dismissed". He called the clerk a couple of times and received no call back. He submitted a corrected Brief, and received a letter from the Clerk that his brief was unacceptable because he did not properly cite the Record for "dismissed". He wrote to the District Court which did send the Record. The Clerk's instructions were not understandable so he repeatedly requested a copy of the sample brief from the Court. The Court refused to send one, but referenced its availability on the internet. The internet was totally unavailable during the Covid crisis, and is now only available on a limited basis. Petitioner had repeatedly looked for the sample brief on the internet but never found same, so he again asked for a copy of the sample brief, which the Court specifically refused to send. He searched Westlaw for "CA-5 sample brief" and the search found no sample brief. About December 2020, the libraries are re-closing.

It is clear that The Court of Appeals is constructing a rubic puzzle with no

solution, intended to lead to repeated, unacceptable submissions ultimately leading to exhaustion and abandonment, effectively a denial of access to the Court. One might speculate that the Court of Appeals is acting as attorney for the Bureau of Prisons. The Court of Appeals is abusing its discretion when it dismisses a *pro se* appeal for inadvertent non compliance with simplistic and procedural rules when the defendants have defaulted on a *prima facie* complaint grounded in facts and statute. Further, it is reasonable to believe that the BoP has a history of arbitrary burials of deceased despite next of kin requests, and that this case is obstructed as a matter of bad faith .

ARGUMENT

A, MARK MARVIN SHOULD RECEIVE THE REMAINS AND PROPERTY OF HIS WIFE MARJORIE MARVIN FROM THE DEFENDANT BUREAU OF PRISONS.

Petitioner seeks the remains of his wife for proper burial as he determines, not at the arbitrary convenience of the Bureau of Prisons.

THE FOLLOWING ARE THE RULES OF THE BUREAU OF PRISONS REGARDING DEATH OF INMATES:

a, Prison authorities are required to follow United States Regulations: “(1) Staff shall ensure that the state laws regarding the reporting of deaths are followed.” (Code of Federal Regulations, Title 28, Judicial Administration, Chapter V. Bureau of Prisons, Department of Justice Section 549.80 Authority to conduct autopsies.)

b, That under “9, DEATH NOTIFICATION PROCEDURES“, (OPI CDD/CPB, 5553.07; 2/10/2006, and related procedures, etc.) “Immediately, upon an inmate’s death, the Warden (or designee) must assemble the following information concerning the deceased inmate: Name, registry number, date of birth; offense and sentence Date, time, and location of death; Apparent cause of death; Investigative steps being taken, if necessary; Name and address of survivor or designee; Notifications made; Status of autopsy request; and Brief medical history related to death.

c,“(2) Letters of Condolence. As soon as practical, the Warden must mail a letter of condolence to the next-of-kin and advise that person of the circumstances of the death.....

d, (3) Death Certificate. When the Death Certificate is received, the Warden must send a copy to the person who received the deceased’s remains.” Your petitioner advised the prison authorities that he wished to receive the remains, whereupon, the authorities further refused to communicate with him and told by the funeral director that prison authorities told the funeral director not to communicate with him. None of the required procedures were followed.

e, He is further entitled to survivor’s claim of attorney fees under 28 U.S.C. 2412(d) (*Padgett v. Shinseki*, Fed. Cir. 2011, 643 F.3d 950, 954)

He notified the facility that under Texas law V.T.C.A. 711.002 he had survivor responsibility and did (Id. (a-1) by faxed letter to the Carswell facility on April 10, 2017, notify the facility (which had apparently no custody of the body, having moved it to a funeral home) that he was making

arrangements for Ms. Diehl-Armstrong's remains to be placed in the Quaker cemetery, at Cornwall, N.Y. where he is the administrator. and did so within the six to ten day window specified in Texas law, rebutting the "presum(ption) that he is unwilling or unable to control the disposition" (Id. (a-1))

Your Plaintiff sent letters to Thomas Kane, Ph.D. Director of the Federal Bureau of Prisons, (certified) to the Director of the Federal Medical Center -- Carswell, to Marc Krouse, M.D. Tarrant County Medical Examiner, 200 Feliks Gwoz Place, Ft. Worth, TX 76102, and to the Eternal Rest Funeral Home, on April 21, 2017, requesting the remains of his wife.

He is authorized under Vernon's Texas Statutes, Health and Safety Code Section: 711.002. Specifically is (1) the person designated in a written instrument signed by the decedent, and (2) is the decedent's living spouse, under V.T.C.A. Section 2.401, i.e. as (we) agreed to an informal marriage. (Kindly note: *Turner v. Safley*, 482 U.S. 79, 94, 107 S.Ct. 2254, 2265, and *Stuart v. Heard*, 1973, U.S.D.C. S.D. Texas, Houston, 359 Fed. Supp. 921, fn. 2, providing for prisoner marriage.)

Texas Health and Safety Code. 711.002. stated that the primary person who has authority to determine the disposition of a decedent's remains is (1) the person designated in a written instrument signed by the decedent, and (2) the decedent's living spouse.

Under 28 C.F.R. 549.80, (c) (1) "Staff shall ensure that the state laws regarding the reporting of deaths are followed." Mark Marvin was the person designated by the decedent as next of kin and under Texas law V.T.C.A. 711.002 he had responsibility and did (Id. (a-1) by faxed letter to the Carswell facility on April 10, 2017, notify the facility

(which had apparently no custody of the body, having moved it to a funeral home) that he was making arrangements for Ms. Diehl-Armstrong's remains to be placed in the Quaker cemetery, at Cornwall, N.Y. where he is the administrator. and did so within the six to ten day window specified in Texas law, rebutting the "presum(ption) that he is unwilling or unable to control the disposition" (Id. (a-1))

That given that his wife was to be imprisoned for thirty years after her death, he applied to the United States District Court in Erie (Pittsburgh) Pennsylvania for her release under habeas corpus, in that she was not guilty of the underlying charges and was wrongly in custody by being impermissibly buried by the defendants without her husband's permission. He received a decision from the District Court, and applied for a certificate of appealability to the Third Circuit Court of Appeals, Philadelphia, PA for permission to appeal. That Court denied his application, but for the first time a Court vaguely held that his wife was not in custody. (CA-3, Order dated: February 07, 2020) (sent to District Court) He as of this filing has requested extraordinary relief from the CA-3 in that his wife was placed in a box and buried, by the authority of the defendants, restricting her freedom to be buried in the cemetery her husband chose, making this a habeas question, and that she had been sentenced to thirty (30) years of imprisonment as a corpse, and the Court of Appeals cited: *Fuller v. Marx*, CA-8, 1984, 724 F.2d 717, 719 in that a corpse was property returnable to the spouse.

It is the opinion of the District Court in Pittsburgh and the Third Circuit Court of Appeals that a civil action is properly before these defendants.

That as a result of the defendants actions he has been denied civil rights protected

by the laws of the United States and the State of Texas to have his wife buried according to his and her wishes, that he has suffered emotional injury including pain and suffering and deprivation of his and her right to freedom of religion and Texas enumerated rights to the remains of his wife, as a result of the defendants' actions and prolonged litigation.

PETITIONER PROPERLY APPLIED TO THE DISTRICT COURT FOR RELIEF AND THE COURT VIOLATED DUE PROCESS PROCEDURES IN DISMISSING HIS PETITION.

Petitioner properly filed a Complaint with the District Court which did not, as procedurally required, review the complaint and issue the court ordered summons, but later claimed he did not serve the defendants. It appearing that the Court intended the plaintiff to serve the complaint, he did. The Court seemed enraged that the complaint was served then dismissed his complaint again.

The District Court failed to provide him with a (1, First, p. 2) "signed sealed, issued by the clerk document" therefore it is irrational to claim that he did not serve such a document on the defendants. It is the Court's responsibility to provide the complainant with such a document. It is fundamentally unfair to claim he did not serve the Court approved document when the court did not provide same to him. Likewise, The Court did not provide him with a proper summons to serve the defendants. It is fundamentally unfair to not provide a summons, then claim that his summons was not served. The Court should note that any defects in his summons were cured when he referred the defendants to the Federal Rules of Civil Procedure, particularly the answer time frame which is

stated in the Federal Rules of Civil Procedure, which defendant's lawyers are familiar with in detail, or within thirty days as stated, with no prejudice. The consequence of default of the defendants is stated in the Rules of Civil Procedure. (It is noteworthy, that this Court makes the same error plaintiff is accused of, namely a vague reference to the Rules without a quote of those rules.) The Court should also note that local governments have closed libraries and made his access to such law impossible. It is unfair to require him to research law when the governments have prevented this.

The Order claims that (1, Second, p. 2) that he did not serve "the United States". He did serve the United States Bureau of Prisons. This Court should note that this Court did not inform your complainant of the address of "The United States". Further each defendant is being sued in his/her individual capacity. The United States is not being sued as respondent superior. Service appears to be legal. The Court should note that each defendant is being sued for their role as a government agent, therefore each is being served individually and as an employee of the United States, particularly Kathleen Hawk Sawyer, Director, Federal Bureau of Prisons. Since each defendant is identified and served at their United States government job address, it appears that the United States was served three times, and has suffered no prejudice.

It appears that this Court is dismissing his Complaint *sua sponte* without actually saying so.

Clearly any defect in complainant's procedure is the fault of this Court for failing to follow normal procedures. It is clear that the Court demanded under threat of dismissal, the proof of service of the summons and complaint that this court failed to

provide, and such provision is the normal procedure when dealing with pro se complainants. It appears that the Hon. John McBryde is acting as attorney for the defendants.

[Under United States law: “(a) Any judge ... of the (United States) shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances (1) Where he has a personal bias ... (5) He... (ii) is acting as a lawyer in the proceeding; ...” (28 U.S.C. S. 455, see: *Cheney v. U.S.* , 541 U.S. 913; *U.S. v. Will*, 449 U.S. 200, 1980; *Laird v. Tatum*, 409 U.S. 824, 1972)*

* “Quite simply, and quite universally, recusal is required whenever impartiality might reasonably be questioned.... To be evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its appearance.” (*Litkey v. U.S.* 1994, 510 U.S. 540, 548, 114 S.Ct. 1147, 1154) Recusal is required whenever there exists a genuine question concerning a judge’s impartiality, not merely when the question arises from an extrajudicial source.” (Id. 552, 1155)]

B, THE FIFTH CIRCUIT COURT OF APPEALS EFFECTIVELY DENIED MARK MARVIN ACCESS TO THE COURT BY ERECTING A SERIES OF PAPERWORK AND SUBMISSION OBSTACLES THAT WERE FRIVOLOUS AND INSURMOUNTABLE AND SHUT HIM OUT OF THE COURT.

The gravamen is that your petitioner has made multiple submissions to this Supreme Court, and to the Circuit Appeal Courts for the First, Second, Third, and Fourth Circuits. He has never been subject to repeated denials based on secret rules. In fact, the other Circuits have been generous in accepting his *pro se* submissions so as to allow adjudication on the merits of his petitions.

The Fifth Circuit provided an instruction letter describing Brief requirements after your petitioner filed his rejected briefs with the Court. Under Rule 28 CTA5 Rule 28, 28.7, (b):

“Sample Briefs and Record Excerpts -- Upon request, the clerk may loan sample briefs and record excerpts to counsel and non-incarcerated *pro se* litigants. Because *pro se* prisoner briefs are not held to the same rigid standards as other briefs, copies of briefs are generally not sent to prisoners. Instead other informational material may be sent.”

Upon refusal to accept his uncorrected briefs, petitioner made repeated requests for the sample brief. There was a letter but the description was incomprehensible, and the exact format was needed. It might be noted that *pro se* inmates are exempted from “the same rigid standards” but a *pro se* litigant who is not, is expected to know the exact format as professional lawyers who do these briefs everyday.

In an attempt to find a copy of the sample brief petitioner searched Westlaw:

“Court of Appeals, 5 Cir. Sample brief” and there was none, no sample brief on Westlaw. He received the Order dismissing his appeal “for want of prosecution” after the Court refused to honor his requests for sample briefs as the Court noted: 10/16/20 and 10/13/20 (letter dated: October 22, 2020)

The Court noted in its letter October 15, 2020: “the only remaining deficiency in your brief is improper references to the record.” A reasonable court would waive such a frivolous requirement. There is a reference to the web site which I had searched first and found no “sample briefs” nor proper record references. The District court dismissed the suit *sua sponte* as “dismissed”. This does not require any elaborate location reference or reference to a complicated decision.

It is clear that the appeal was dismissed after the Court of Appeals erected a series of frivolous requirements that were intended to be insurmountable and were intended by exhaustion to prevent his access to the court. These requirements were waived per Rule 28.7(b) for prisoners.

This Court’s submission requirements are apparently made in bad faith and are deliberately impossible to satisfy.

“To satisfy the due process clause a penal statute must define the criminal offense with **sufficient definiteness** that the ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement (*Skilling v. U.S.* 2010, 561 U.S. 358, 130 S.Ct. 2896, 2928-9, citing *Kolender v. Lawson*, 1983, 461 U.S. 352, 357, 103 S.Ct. 1855) “subject to whether the prescription is amenable to a limiting construction” (Id. p. 2930) and “consider any

limiting construction that a state court or enforcement agency has proffered” (*Kolender*, p. 357) and “the requirement that a legislature establish minimal guidelines to govern law enforcement. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standard less sweep that allows policemen, prosecutors and juries (courts to “define” : *Kolender*, p. 373 Blackmun, Burger, White) to pursue personal predilections. (*Kolender* p. 358) a statute (or court decision) is unconstitutionally vague on its face because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute.” (*Id.* *Kolender*, p. 361)

“In an organized society (access to the courts) is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship” (*Chambers v. Baltimore & Ohio R.R.* 207 U.S. 142, 148, 28 S.Ct. 34 (1907). The right not only protects the ability to get into court, *see e.g. Ex parte Hull*, 312 U.S. 546, 61 S.Ct. 640 (1941) (striking down a prison regulation prohibiting prisoners from filing petitions for habeas corpus unless they are found “properly drawn” by a state official), but also ensures that access be “adequate, effective, and meaningful.” *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491 (1977) “Applying this standard, several of our sister circuits have found that government cover-ups can infringe the right of access to the courts.... The Fifth Circuit reached a similar result in *Ryland v. Shapiro*, 708 F.2d 967 (5th. Cir. 1983), recognizing a potential denial of the right of access when an alleged cover-up delayed release of the facts of a murder for eleven months. Noting that ‘delay haunts the administration of justice’ the court held

that the victim's parents could state a denial of access claim...." (*Harbury v. Deutch*, (2000) 233 F.3d 596, 607, 344 U.S. App. D.C. 68, 79)

It appears that the Fifth Circuit Court of Appeals is involved in a cover up of lawless behavior in the administration of the facility.

Further, it appears that the Federal Facility at Carswell has probably been denying next of kin access to deceased inmate remains in other cases and that this practice is routine. The Court should note that 73 inmates at Carswell filed a suit in the same district court for abusive conditions including rotten food, negligent medical care and malicious treatment as COVID-19 ran through the prison", mentioning multiple deaths that were probably summarily dumped in a landfill as well. (Star Telegram August 31, 2020)

C, THIS COURT SHOULD GRANT EXTRAORDINARY RELIEF SINCE THE COURT OF APPEALS IN AN ABUSE OF DISCRETION DENIED HIM ACCESS TO COURT AND TO EQUITABLE RELIEF.

Plaintiff seeks relief under the All Writs Act (28 U.S.C.A. 1651) . Injunctive relief for abuse of discretion is particularly appropriate. (*Klay v. United Healthgroup*, CA-11, (2004) 376 F.3d 1092, 1096 [1,2,3]) as the acts of the Fifth Circuit are not covered by statute. (*Klay*, Id. 1100, [6,7]) citing: *Penn. Bureau of Corr. v. U.S. Marshalls Service*, 474 U.S. 34,43, 106 S.Ct. 355, 361, and *Clinton v. Goldsmith*, (1999) 526 U.S. 529, 537, 119 S.Ct. 1538, 1543)

Respondents have been served at the level of the District Court and the Court of Appeals, in his request for the remains of his wife.

Petitioner has made out a *prima facie* case that the defendants had a legal obligation to return his wife's body upon her death. The defendants refused to deal with petitioner at the Carswell facility, and defaulted on the petition and on their obligation to answer the brief. Therefore they are in default at all levels. "In that event, the court must award judgment to the plaintiff as a matter of law under Federal Rule of Civil Procedure 50(a)(1) ... or 52(c)" (*St. Mary's Honor Center v. Hicks*, 1993, 509 U.S. 502, 509, 113 S.Ct. 2742, 2748)

"Although judgment by default is considered an extreme sanction, if defendant demonstrates 'flagrant bad faith and callous disregard of its responsibilities' the district court's choice to enter a default judgment is not an abuse of discretion." (*U.S. v. Dajj Ranch*, CA-5, 1993, 988 F.2d 1211)

(See also: *Sindhi v. Raina*, CA-5, 2018, 905 F.3d 327, *Wooten v. McDonald Transit*, 2015, CA-5, 788 F.3d 490, also *Wooten* 2015, CA-5, 775 F.3d 689, *Lacy v. Sitel Corp.* CA-5, 2000, 227 F.3d 290, *Charlton L. Davis & Co. v. Fedder Data*, CA-5, 1977, 556 F.2d 308,)

The defendants have earned a default judgment.

Since "the only remaining deficiency in (my) brief is improper references to the proper record references" and since there is no opinion other than "dismissed" the court suffers no hardship and the defendants suffer no prejudice, it would seem prudent and just to waive that deficiency. (The U.S.S.C. and the Circuit Courts in the First, Second,

Third, and Fourth never demanded such draconian compliance for my *pro se* submissions) (Note: *Bankers Life & Casualty, v. Holland*, 1953, 74 S.Ct 145)

CONCLUSION

Petitioner followed orderly procedure and the District Court's instructions. The defendants suffered no prejudice and complainant should be awarded judgment as he duly requested, for custody of his wife's remains and property as a result of the default of the defendants. The Court of Appeals erected a series of insurmountable obstacles to his access to the court. This Court should grant relief in the interests of justice.

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