

20-6847

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

DEC 17 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Torres, a.k.a.
Christopher Muhammad — PETITIONER
(Your Name)

Brad Livingston, vs.
et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Torres, a.k.a. Christopher Muhammad
(Your Name)

Wynne Prison Unit, 810 FM 2821
(Address)

Huntsville, TX 77349
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

QUESTION #1: Do 13th Amendment slaves, or those under involuntary servitude, have legal rights when filing pro se § 1983 complaints for serious injuries received from prison jobs?

QUESTION #2: Can a RULE 59(e) motion be filed to prevent manifest injustice?

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:

CHRISTOPHER TORRES, a.k.a. Christopher Muhammad,

Petitioner

v.

BRAD LIVINGSTON, Executive Director of Texas Department of Criminal Justice;

WILLIAM STEPHENS, Director of TDCJ-Correctional Institutions Division;

RELATED CASES

KELVIN SCOTT, Region II Director Of TDCJ-CID;

EDGAR BAKER JR, TDCJ-CID MICHAEL Unit Senior Warden;

TODD FUNAI, MICHAEL Unit's Administrative Segregation Building Major;

FRANCES SIMS, Ad. Seg. Shift Lieutenant; and

JONATHAN ENDSLEY, Ad. Seg. Correctional Officer,

Respondents.

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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 _____; 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 is unpublished.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 E to the petition and is

reported at _____; 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 is unpublished.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 _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; 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 August 24, 2020.

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: September 18, 2020, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 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 _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, 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 _____ (date) on _____ (date) in Application No. A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

8th Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

13th Amendment

Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Texas statute

TEXAS GOVERNMENT CODE § 497.096

"An employee of TDCJ, ...is not liable for damages arising from an act or failure to act in connection with an inmate or offender programmatic or nonprogrammatic activity, including work,...if the act or failure to act was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others."

STATEMENT OF THE CASE

Texas prisoner Petitioner pro se Christopher Torres, a.k.a.

Christopher Muhammad ("Torres"), worked as an inmate janitor in the administrative segregation ("ad. seg.") building of a maximum security prison. A rookie ad. seg. guard, Jonathan Endsley ("Endsley"),^{*1} ordered Torres to help him feed ad. seg. inmates housed in the pod^{*2} where Endsley was the lone floor officer.^{*3} While Torres helped Endsley feed, Torres was seriously stabbed in the neck through the food slot of the cell door of fellow inmate Angel Sanchez, whom Torres just fed, resulting in Torres' current life-long and irreparable medical problems. Torres seeks a declaratory judgment and damages against Endsley and six prison supervisors for failing to protect him from this attack in violation of his 8th Amendment protection against cruel and unusual punishment, and in violation of TEXAS GOVERNMENT CODE § 497.096.

With these allegations, and other favorable ones either partially or completely ignored by the Magistrate, the district court held Torres did not show neither Respondent must have known he faced a substantial risk of serious bodily harm while he helped Endsley feed ad. seg. inmates, and therefore, dismissed Torres' complaint for failure to state a claim. Relying on HALL v. BENN-

*1 Whom Torres alleged begun working in ad. seg. "a few weeks before" this incident (Appendix G, Torres' complaint, p. 8 ¶142).

*2 The pod has eighty-four single-person cells (Appendix G, Torres' complaint, p. 3 ¶14).

*3 There was one officer on the pod's floor, and one officer in the pod's control picket (Appendix G, Torres' complaint, p. 3 ¶15).

ETT,^{*4} Torres filed a RULE 59(e) motion arguing, among other things, that a system-wide prison rule—acknowledged by the Respondents—directing ad. seg. guards to "take safety precautions when serving meals" was evidence Respondents knew Torres faced a substantial risk of serious bodily harm when helping to feed, and therefore, the case should be reconsidered to "prevent manifest injustice. The district court ignored this issue and denied the motion.

On appeal, Torres argued that the district court erred for dismissing Torres' § 1983 claims when it overlooked Torres' allegations inferring each Respondent knew Torres faced a substantial risk of serious bodily harm [by helping to feed], but they each failed to take reasonable measures to abate it, and, the district court abused its discretion when it denied the RULE 59(e) motion after ignoring the said need to "prevent manifest injustice" issue. The 5th Circuit affirmed the dismissal of Torres' complaint, and affirmed the denial of the RULE 59(e) motion.

On petition for panel rehearing, Torres argued that the 5th Circuit's opinion overlooked Torres' allegation inferring all Respondents knew Torres faced the above said substantial risk but failed to take reasonable measures to abate it, and he argued that the Court's opinion ignored the need to "prevent manifest injustice" issue in the district court's denial of the RULE 59(e) Motion. The petition for panel rehearing was denied. This appeal then was brought to this Court.

*4 Id., 379 F.3d 462, 465 (7th Cir. 2004)(Prison rule was evidence of actual knowledge of a serious risk of harm to prisoner).

QUESTION #1

REASONS FOR GRANTING THE PETITION

This is a case where all parties and the lower courts agree pro se Petitioner Christopher Torres, a.k.a. Christopher Muhammad ("Torres") was seriously stabbed in the neck through the food slot of a fellow inmate⁵ while Torres did his prison job duties, in this case, while helping a rookie prison guard, Respondent Jonathan Endsley ("Endsley"), feed inmates housed in the administrative segregation ("ad. seg.") building of a maximum security Texas prison (Appendix G, Torres' complaint, p. 3 ¶18 to p. 6 ¶28; Appendix C, U.S. Magistrate's Report, pp. 1-3; Appendix E, pp. 1-2, U.S. District Judge's Memorandum; Appendix F, Respondents' brief on appeal, pp. 1-2; and, Appendix A, 5th Circuit's opinion, p. 2).

As a result of this stabbing—resulting in Torres' current life-long and irreparable medical complications⁶—Torres filed a pro se § 1983 complaint using words inferring a failure-to-protect claim against Endsley and the Respondent supervisors. The lower courts, Torres argues, changed his words to seem as though he failed to state a claim against the Respondents, and thereby erroneously dismissed his complaint.

Torres factually alleged that the manner in which Endsley fed the ad. seg. inmates infers Endsley was "subjectively aware" Ends-

*5 The fellow inmate, Angel Sanchez, stabbed Torres in the neck with a prison-made spear that went between the carotid artery and internal jugular vein and struck the neck bone (Appendix G, Torres' complaint, p. 6 ¶29; Appendix C, U.S. Magistrate's Report, p. 3).

*6 i.e. having to constantly clear his throat, has a persistent cough, and gets headaches from the coughs (see Appendix G, Torres' complaint, p. 7 ¶¶34-36; Appendix C, U.S. Magistrate's Report, p. 3; Appendix E, U.S. District Judge's Memorandum, p. 3; and, Appendix A, 5th Circuit's opinion, p. 2).

ley could be seriously attacked through a food slot and that, therefore, Endsley was **also** "subjectively aware" that Torres faced that same serious risk being that Endsley had Torres hand the ad. seg. inmates their meals through the food slots [well within range of being seriously attacked] and pass things for them. The words Torres used were:

- (a) "...Endsley would simply just open the food slot doors of every cell one right after another..." (Appendix G, Torres' complaint, p. 4 ¶19; Appendix C, U.S. Magistrate's Report, p. 2);
- (b) "...then he would wait at the end of that row while I would have to hand each ad. seg. inmate" [their meals] "through their opened food slot" [and pass along through the food slots whatever the inmates requested] (Appendix G, Torres' complaint, p. 4 ¶20; Appendix C, U.S. Magistrate's Report, p. 2); and,
- (c) thereafter Endsley "would quickly come by and quickly close every food slot one right after another," and then go to the next row and feed the same way (Appendix G, Torres' complaint, p. 4 ¶21).

Torres has always argued that his words on factual allegations in (c) above are misstated by the lower courts and that this has led to his claim against Endsley^{*7} [and the Respondent supervi-

*7 The U.S. District Judge's Memorandum acknowledges the discrepancy between Torres' allegations and the summary in the U.S. Magistrate's Report in regards to Torres' words used in (c) above: "...while the Magistrate Judge had stated that 'the floor officer would walk by and close all the food slots,' Torres had alleged that the floor officer would 'quickly come by and quickly close every food slot one right after another,'; but then err-

sors] being erroneously dismissed for failing to state a claim.

The 5th Circuit's opinion omitted Torres' words in (b) above, and misstated his words in (c) above (see Appendix A, 5th Circuit's opinion, p. 2), and this led to its erroneous ruling that "Torres does not offer any facts suggesting that Endsley knew of and disregarded a substantial risk to his health and safety" (see Appendix A, 5th Circuit's opinion, p. 3), and thereby further erroneously holding that "his claims of failure to train or supervise against the other defendants, also necessarily fail" (see Appendix A, 5th Circuit's opinion, p. 4 n. 2).

Being that the lower courts have consistently misstated the words of Torres' factual allegations against Endsley, as shown above, one can only reasonably conclude that it was not a result of inadvertence, but purposeful deception^{*8} to keep Torres from getting the requested relief from the Respondents for their failure to protect Torres from Sanchez's attack, see FARMER v. BREN-NAN, 511 U.S. 825, 847 (1994) (Prison officials are liable under 8th Amendment only if they "knew of inmate(s) facing a substantial risk of serious harm and disregarded that risk by failing to take

oneously stated that this discrepancy was "insignificant" (see Appendix E, U.S. District Judge's Memorandum, p. 6).

This issue was raised on appellate review also, but the 5th Circuit also erroneously misstated Torres' words by stating, "After the food trays are distributed, the officer closes the slot" (see Appendix A, 5th Circuit's opinion, p. 2). Torres pointed out this misstatement on petition for panel rehearing, but it was ignored as the petition was denied (Appendix D, 5th Circuit's ruling on rehearing).

*8 "misstatement" is defined as:

"An erroneous assertion, whether as a result of inadvertence or **purposeful deception**" (BLACK's LAW DICTIONARY 1199 (11th Ed. 2019) (emphasis added)).

reasonable measures to abate it").

Torres' complaint alleged Endsley fed inmates in ad. seg. in the manner explained above because most other officers do it that way—system-wide (see Appendix G, Torres' complaint, p. 4 ¶19; Appendix C, U.S. Magistrate's Report, p. 2), and because the Respondent supervisors "train" and/or "tacitly authorize"^{*9} them to do so (Appendix G, Torres' complaint, p. 8 ¶43; Appendix C, U.S. Magistrate's Report, p. 4; Appendix E, U.S. District Judge's Memorandum, p. 3).

Had Torres' words—in his claim against Endsley—not been changed by the lower courts, Torres' complaint would not have been dismissed for failure to state a failure-to-protect claim against the Respondents.

This Court's failure to grant this petition will amount to 13th Amendment slaves or those under involuntary servitude (i.e. convicts all over this country) having no rights when filing pro se § 1983 complaints seeking relief from getting serious prison job injuries; all a lower court has to do is consistently misstate the words in the convicts' complaint(s) to make it seem he/she has failed to state a claim and thereby effectively keeping him/her from getting relief. This Court should grant this petition to issue a holding that outlaws lower courts from misstating pro se

*9 It can be reasonably inferred Endsley was tacitly authorized to feed that way because, as Torres alleged, "there was no supervisor present" on the pod when Torres helped Endsley, and no supervisor would be present during said feeding times "until after the ad. seg. inmates were all fed; only then would supervisors make their rounds" (Appendix G, Torres' complaint, p. 5 ¶¶22-23). Torres also alleged no supervisors were present during ad. seg. feeding times in "2010" (Appendix G, Torres' complaint, p. 7 ¶39).

inmates' word(s) in § 1983 complaints.

QUESTION #2

After the district court dismissed Torres' § 1983 complaint for supposedly failing to state a claim, Torres timely filed a RULE 59(e) motion to prevent manifest injustice. Relying on ALKEK & WILLIAMS LTD. v. TUCKERBROOK ALTERNATIVE INVESTMENTS, LP,^{*10} and E.E.O.C. v. HI LINE ELEC. CO.,^{*11} Torres argued, among other things, that a Texas prison system-wide rule for ad. seg. guards [directing them to take "safety precautions when serving meals" to inmates housed in ad. seg.], and acknowledged by all parties in this case, is evidence each Respondent knew of a serious risk to Torres' safety [while he helped feed ad. seg. inmates] yet they disregarded that risk when they each failed to take reasonable measures to ensure he could not be attacked by any ad. seg. inmate, under any circumstances, while he was assigned to work in ad. seg. Torres requested for his case to be re-opened and that the court change its ruling on the merits. The district court remained silent on this issue (see Appendix H, U.S. District Court's denial on RULE 59(e) motion).

Torres raised this same issue on appeal arguing that the court can reasonably infer each Respondent knew Torres faced a substantial risk of serious harm when helping to feed ad. seg. inmates because each Respondent admits the above said system-wide prison rule for ad. seg. guards exists (see also Appendix F, Respondents'

*10 Id., 695 F.Supp.2d 508 (S.D. Tex. 2010), reconsideration denied, affirmed 419 Fed.Appx. 492 (5th Cir. 2010)(RULE 59(e) motion may be filed to prevent manifest injustice)

*11 Id., 805 F.Supp.2d 298 (N.D. Tex. 2011)(same).

brief on appeal, p. 13, Respondents' acknowledgement of said prison rule). Under HALL v. BENNETT, 379 F.3d at 465 ("Prison rule was evidence of actual knowledge of serious risk to safety"), Torres argued said prison system-wide rule was evidence of each Respondents' actual knowledge of serious risk to ad. seg. guards' safety when serving meals; by them knowing this risk to ad. seg. guards, they also knew such risk existed towards ad. seg. janitors [like Torres] who would be helping ad. seg. guards feed. However, nowhere in its opinion does the 5th Circuit even make as much as a whisper on this issue. And it never addresses whether or not such motions may be filed to prevent manifest injustice.

On petition for panel rehearing, Torres raised this same issue but the court did not address it (Appendix D, 5th Circuit's denial on petition for panel rehearing).

The Court should grant this petition to make it clear on whether or not RULE 59(e) motions may be filed to "prevent manifest injustice".

C O N C L U S I O N

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher Muhammad

Christopher Torres, a.k.a. Christopher Muhammad

December 17th, 2020

Date