

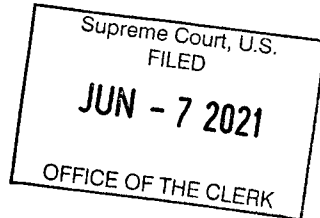
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IN THE

SUPREME COURT OF THE UNITED STATES



JOEL BARCELONA — PETITIONER
(Your Name)

vs.

M. RODRIGUEZ, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

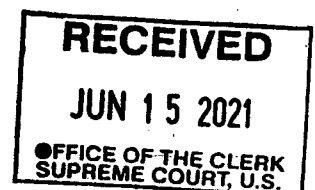
PETITION FOR WRIT OF CERTIORARI

JOEL BARCELONA
(Your Name)

Madison Correctional Inst.
(Address)

382 S.W. MCI WY. Madison, FL. 32340
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. WHETHER THE RESPONDENTS, M. RODRIGUEZ, et al., EXCESSIVE USE OF DEADLY FORCE BY USING A DEADLY GAS SPRAY AFTER PETITIONER COMPLIED HIS ORDER TO GO INSIDE THE CELL.
2. WHETHER THE RESPONDENTS, M. RODRIGUEZ, et al., MALICIOUSLY AND SADISTICALLY USE A DEADLY GAS SPRAY CAUSING HARM TO PETITIONER RATHER THAN IN A GOOD FAITH EFFORT TO MAINTAIN OR RESTORE DISCIPLINE.
3. WHETHER THE RESPONDENTS, M. RODRIGUEZ, et al., ACTED WITH A CULPABLE STATE OF MIND BY USING DEADLY GAS SPRAY TOWARDS PETITIONER IN A SMALL POORLY VENTILATED CELL WITHOUT DECONTAMINATING FOR MORE THAN ONE(1) HOUR CAUSING PETITIONER TO SUFFER A SHORTNESS OF BREATH, RED EYE PAIN AND NEARLY PASS-OUT.
4. WHETHER THE RESPONDENTS, M. RODRIGUEZ, et al., WERE DELIBERATELY INDIFFERENT TO SERIOUS MEDICAL NEEDS BECAUSE THEY DON'T BELIEVE THAT PETITIONER WAS EXPOSED WITH A DEADLY GAS SPRAY AND IGNORED THAT PETITIONER WAS YELLING INSIDE THE CELL FOR MEDICAL EMERGENCY.

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:

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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 2 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 A 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 MARCH 4, 2021.

☒ 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: _____, 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. § 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

THE RESPONDENTS EXCESSIVE USE OF DEADLY FORCE BY USING DEADLY GAS SPRAY MALICIOUSLY AND SADISTICALLY CAUSING HARM TO BE A VIOLATION OF THE U.S. CONST. amend. VIII.

THE RESPONDENTS IGNORED OR REFUSED TO CALL MEDICAL EMERGENCY BECAUSE THEY DID NOT BELIEVE THAT PETITIONER WAS EXPOSED WITH A DEADLY GAS SPRAY AND DID NOT DECONTAMINATE AND WAS NEVER ALLOWED TO DECONTAMINATE HIMSELF RISE TO THE LEVEL OF DELIBERATE INDIFFERENCE TO MY SERIOUS MEDICAL NEEDS IN VIOLATION OF THE U.S. CONST. amend. VIII.

STATEMENT OF THE CASE

Conflicting Statement of Facts

On September 16, 2019, Monday at 9:00 P.M. while all inmates are waiting for Dinner, Capt. Martin in his direct order, Ofc. M. Rodriguez came in at E-Dorm and announced, it's count time. All inmates replied, we are not going in unless we eat. He came in front of our cell at Rm. 3102. I was already inside our cell, my cell-mate (J.H.) was sitting in front of our cell. My cell-mate refused to get inside our cell because "we have not yet eat our Dinner". Ofc. M. Rodriguez ordered that I will count one, my cell-mate stood up and step inside our cell. Ofc. M. Rodriguez "sprayed a deadly gas" to my cell-mate on the face inside our cell after my cell-mate complied his order. Ofc. M. Rodriguez acted with a culpable state of mind by using a deadly gas spray after my cell-mate complied his order constitutes excessive use of deadly force maliciously and sadistically causing harm is clearly established to be a violation of the Eight Amendments' proscription against cruel and unusual punishment. amend. VIII.

In the instant petition, Capt. Martin personally participated when Ofc. M. Rodriguez called Security 9, lead by Capt. Martin along with an unidentified Officers responded to the call by Ofc. M. Rodriguez after he use a deadly gas spray to my cell-mate inside our cell. My cell-mate was hand-cuffed by Ofc. M. Rodriguez outside our cell. I was yelling for medical emergency. I was ignored by Ofc. Jean-Pierre who is standing in front of our cell and Capt. Martin who was outside our cell failed to check my condition inside our cell rise to the level of deliberate

INDIFFERENCE TO MY SERIOUS MEDICAL NEEDS IN VIOLATION OF THE U.S. Const. amend. VIII.

IN THE INSTANT CASE, PETITIONER REMAINED IN A SMALL POORLY-VENTILATED CELL WITHOUT DECONTAMINATION FOR MORE THAN ONE (1) HOUR AND WAS NEVER PERMITTED TO DECONTAMINATE BECAUSE THE COMPOUND ARE IN LOCK-DOWN DUE TO GANG-VIOLENCE CAUSING ME TO SUFFER A SHORTNESS OF BREATH, RED EYES IN PAIN, RUNNY NOSE FOR ALMOST A WEEK BECAUSE I'VE BEEN SUFFERING A SEVERE ABDOMINAL AND STOMACH PAIN, FATIGUE, VERY WEAK, SPELL OF DIZZINESS, LOSS OF BALANCE THAT I NEARLY PASS-OUT BECAUSE I CANNOT BREATHE IN A SMALL POORLY-VENTILATED CELL.

AFTER MY CELL-MATE WAS IN A HAND-CUFFED AND TAKEN TO THE CONFINEMENT, PETITIONER REMAINED BEHIND IN A SMALL POORLY-VENTILATED CELL WITHOUT DECONTAMINATION FOR MORE THAN ONE (1) HOUR THAT NEARLY CAUSING TO PASS-OUT AND IT WAS EXCESSIVE TO CONFINED HIM IN A CONTAMINATED CELL OVER-NIGHT THAT THE CELL-WALLS WERE COVERED IN A PEPPER SPRAY RESIDUE THAT HE WAS FORCED TO SLEEP ON A BARE MATTRESS THAT ALSO HAD PEPPER SPRAY RESIDUE THAT CAUSED HIM TO SUFFER DIFFICULTY BREATHING, RED EYES IN PAIN, RUNNY NOSE BECAUSE I'VE BEEN SUFFERING A SEVERE ABDOMINAL AND STOMACH PAIN. THE NAMED RESPONDENTS, M. RODRIGUEZ, ET AL., IGNORED THAT I'M YELLING FOR MEDICAL EMERGENCY BECAUSE I WAS EXPOSED WITH A DEADLY GAS SPRAY. THE REFUSAL, DENIAL, AND DELAY OF A READILY AVAILABLE TREATMENT RISE TO THE LEVEL OF DELIBERATE INDIFFERENCE TO MY SERIOUS MEDICAL NEEDS IN VIOLATION OF THE U.S. Const. amend. VIII.

THE EIGHT Amendment strictly prohibits cruel and unusual punishment which includes deliberate indifference to prisoners' serious medical needs. Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976).

To prevail on a claim of deliberate indifference to serious medical need in violation of the Fourteenth Amendment, a Petitioner must show: (1) a serious medical need; (2) the Respondents' deliberate indifference to that need; and (3) causation between that indifference and the Petitioner's injury." Youmans v. Gagnon, 626 F.3d 557, 563 (11th Cir. 2010) (quoting Mann v. Taser Int'l. Inc., 588 F.3d 1291, 1306-07 (11th Cir. 2009)). This analysis contains both an objective and a subjective component. See Thomas v. Bryant, 614 F.3d 1288, 1304 (11th Cir. 2010). A Petitioner must first show an objectively serious medical need that, if unattended, posed a substantial risk of serious harm, and that the Respondents' response to that need was objectively insufficient. See Bingham v. Thomas, 654 F.3d 1171, 1175-76 (11th Cir. 2011). Second, the Petitioner must establish that the Respondents acted with deliberate indifference, i.e., the Respondents subjectively knew of and disregarded the risk of serious harm, and acted with more than mere negligence. See id.; Taylor v. Adams, 221 F.3d 1254, 1258 (11th Cir. 2000). First, "[a] serious medical need is 'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention'". Youmans, 626 F.3d at 654 (quoting Mann, 588 F.3d at 1307). In general, serious medical needs are those requiring immediate medical attention."

Id. (quoting Hill v. Dekalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1190 (11TH Cir. 1994)).

Second, to prove deliberate indifference to a serious medical need, a Petitioner must show " (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than [gross] negligence." Townsend v. Jefferson Cnty., 601 F.3d 1152, 1158 (11TH Cir. 2010) (alteration in original) (quoting Bozeman v. Orum, 422 F.3d 1265, 1272 (11TH Cir. 2005)). "Under section 1983, knowledge of the need for medical care has consistently been held to surpass negligence and constitute deliberate indifference." Carswell v. Bay County, 854 F.2d 454, 457 (11TH Cir. 1998) (quoting Alcata v. Prison Health Servs. Inc., 769 F.2d 700, 704 (11TH Cir. 1985)); see also Bingham, 654 F.3d at 1176. ("A complete denial of readily available treatment for a serious medical condition constitutes deliberate indifference." Nasser v. City of Athens, 373 F. App'x 15 (5/11TH Cir. 2010) (Goeberst v. Lee Cnty., 510 F.3d 1312, 1326 (11TH Cir. 2007)).

On December 11, 2019, Petitioner filed an Amended Complaint. DE # 7-1.

On February 12, 2020, Magistrate Judge ordered a Report and Recommendation to Dismiss the case. DE # 10.

On March 13, 2020, Petitioner filed a objection.

On April 10, 2020, Magistrate Judge issued a Report and Recommendation (R/R) to Dismiss and close case. DE # 14. Appendix A.

On May 1, 2020, Petitioner timely filed a Notice of Appeal. Appendix A.

On October 7, 2020, Appeals Court issued an order to Petitioner to file an Initial Brief. Appendix A.

On October 28, 2020, Circuit Judge Martin issued an Order that:

Petitioner has an issue of arguable merit as to whether he alleged sufficient facts to plausibly state an excessive force claim. The District Court dismissed the excessive force claim based on its conclusion that Petitioner failed to allege any facts demonstrating that Ofc. M. Rodriguez acted with a sufficiently culpable state of mind. However, Petitioner alleged that (1) Ofc. M. Rodriguez administered the spray after Mr. Holmes already had complied with the order to return to his cell; and (2) the officers left Petitioner in his cell after spraying him without decontaminating him for over an hour, ignoring his pleas for a "medical emergency." Although Petitioner's allegations can be interpreted to suggest that Ofc. M. Rodriguez acted maliciously toward Mr. Holmes rather than Petitioner, courts must, at the pleading stage, construe allegations in the light most favorable to the Petitioner. See Twombly, 550 U.S. at 570, 127 S. Ct. at 1964-65. Construing the allegations in the light most favorable to Petitioner, it is at least plausible that Ofc. M. Rodriguez acted maliciously toward both Petitioner and Mr. Holmes by spraying into their shared cell. And while Petitioner said in his objection to the R/R that Ofc. M. Rodriguez did not believe he was suffering a medical emergency, this does not defeat his excessive force claim because ^{he} also alleged that Ofc. M. Rodriguez failed to decontaminate his cell for one hour. The cell was never decontaminated.

See Danley v. Allen, 540 F.3d 1298, 1308 (11TH Cir. 2008) (HOLDING THAT "SUBJECTING A PRISONER TO SPECIAL CONFINEMENT THAT CAUSES HIM TO SUFFER INCREASED EFFECTS OF ENVIRONMENTAL CONDITIONS - [T]HERE . . . PROPER SPRAY LINGERING IN THE AIR AND ON HIM - CAN CONSTITUTE EXCESSIVE FORCE"), OVERRULED IN PART ON OTHER GROUNDS AS RECOGNIZED BY Randall v. Scott, 610 F.3d 701 (11TH Cir. 2010).

THEREFORE, PETITIONER HAS AN ISSUE OF ARGUABLE MERIT AS TO WHETHER THE FACTS IN HIS COMPLAINT, WHEN LIBERALLY CONSTRUED AND VIEWED IN THE LIGHT MOST FAVORABLE TO HIM, ALLEGED A PLAUSIBLE EXCESSIVE FORCE CLAIM. See NAPIER, 314 F.3d AT 531; TANNENBAUM, 148 F.3d AT 1263. IN LIGHT OF THE ABOVE, PETITIONER'S MOTION FOR LEAVE TO PROCEED IS GRANTED. Appendix B.

THE ELEVENTH CIRCUIT HAS DETERMINED, THOUGH THAT THE LAW PROHIBITING MALICIOUS AND SADISTIC USES OF FORCE IS CLEARLY ESTABLISHED. SKRTICH v. THORNTON, 280 F.3d 1295, 1301 (11TH Cir. 2002). VANN v. ESTES, 2017 U.S. Dist. LEXIS 200337 (11TH Cir. 2017). IN THIS CIRCUIT, A DEFENSE OF QUALIFIED IMMUNITY IS NOT AVAILABLE IN CASES ALLEGING EXCESSIVE FORCE IN VIOLATION OF THE EIGHT AMENDMENT, BECAUSE THE USE OF FORCE MALICIOUSLY AND SADISTICALLY TO CAUSE HARM IS CLEARLY ESTABLISHED TO BE A VIOLATION OF THE 2017 U.S. Dist. LEXIS 12) CONSTITUTION BY THE SUPREME COURT DECISIONS IN HUDSON AND WHITLEY. See JOHNSON v. BREEDEN, 280 F.3d 1308 (11TH Cir. 2002). THERE IS SIMPLY NO ROOM FOR QUALIFIED IMMUNITY DEFENSE WHEN PLAINTIFF ALLEGES SUCH A VIOLATION.

REASONS FOR GRANTING THE PETITION

PETITIONER WAS DEPRIVED OF A RIGHT SECURED UNDER THE U.S. CONST. OR FEDERAL LAW; and SUCH DEPRIVATION OCCURRED UNDER COLOR OF STATE LAW OR LOCAL LAW WHERE THE NAMED RESPONDENTS EXCESSIVE USE OF DEADLY FORCE BY USING DEADLY GAS SPRAY WAS AIDED WITH A CULPABLE STATE OF MIND MALICIOUSLY AND SADISTICALLY CAUSE HARM TO BE A VIOLATION OF THE U.S. CONST. AMEND. VIII.

THE RESPONDENTS IGNORED OR REFUSED TO CALL MEDICAL EMERGENCY BECAUSE THEY DID NOT BELIEVE THAT PETITIONER WAS EXPOSED WITH A DEADLY GAS SPRAY AND DID NOT DECONTAMINATE AND NEVER ALLOWED TO DECONTAMINATE HIMSELF RISE TO THE LEVEL OF DELIBERATE INDIFFERENCE TO MY SERIOUS MEDICAL NEEDS IN VIOLATION OF THE U.S. CONST. AMEND. VIII.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: JUNE 8, 2021.