

No. 21-5005

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Erwin Eugene Semien

(Your Name)

PETITIONER

FILED

JUN 21 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States of America

vs.
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Fifth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Erwin Eugene Semien

(Your Name)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

QUESTION ONE: DID THE LOWER COURTS VIOLATE SEMIEN'S RIGHT TO DUE PROCESS UNDER THE 5th AMENDMENT DUE PROCESS CLAUSE BY FAILING TO FOLLOW SUPREME COURT PRECEDENT ESTABLISHED IN JONES V. BOCK, 549 U.S. 199 (2007)?

QUESTION TWO: DID THE LOWER COURTS VIOLATE SEMIEN'S 1st AMENDMENT RIGHTS "TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES" BY FAILING TO FOLLOW SUPREME COURT PRECEDENT ESTABLISHED IN JONES V. BOCK, 549 U.S. 199 (2007)?

QUESTION THREE: DID THE LOWER COURT ERROR BY REQUIRING A "SPECIFIC" EMPLOYEE FOR THE GOVERNMENT TO BE NAMED IN AN ADMINISTRATIVE CLAIM UNDER THE FEDERAL TORT CLAIMS ACT (28 U.S.C. 1346(b)) BEFORE THAT CLAIM CAN BE PROPERLY BE CONSIDERED AND PRESENTED IN FEDERAL COURT CONFLICT SUPREME COURT PRECEDENT ESTABLISHED IN JONES V. BOCK, 549 U.S. 199 (2007)?

QUESTION FOUR: DID SEMIEN, BY THE INCLUSION OF THE "BROKEN CHAIR" IN HIS ADMINISTRATIVE CLAIM MEET THE JURISDICTIONAL THRESHOLD UNDER THE FEDERAL TORT CLAIMS ACT AND THIS COURT'S DECISION IN JONES V. BOCK, 549 U.S. 199 (2007)?

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:

RELATED CASES

- 1.) UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS:
1:18-CV-512
- 2.) UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT: 19-41061
- 3.) JONES V. BOCK, 549 U.S. 199 (2007)

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

28 U.S.C. 1346 (b)

28 U.S.C. 2671

28 U.S.C. 2675(a)

28 U.S.C. 2679(b)(1)

RULE 12(b)(1)

OTHER

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 B 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 February 26, 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: March 30, 2021, and a copy of the order denying rehearing appears at Appendix A.

[] 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

U.S. CONSTITUTION: FIRST AMENDMENT (Right to petition)

U.S. CONSTITUTION: FIFTH AMENDMENT (Due Process)

FEDERAL TORT CLAIMS ACT (FTCA): 28 U.S.C. 1346(b)

28 U.S.C. 2675(a) .

Fed. R. Civ P. 12(b)(1)

STATEMENT OF THE CASE

On or about December 17, 2016, while incarcerated in the FEDERAL BUREAU OF PRISONS In Beaumont, Texas 77575. Plaintiff SEMIEN unknowingly sat in a broken chair which caused SEMIEN to fall and injure his right shoulder. SEMIEN timely filed an administrative tort claim Under the FEDERAL TORT CLAIMS ACT (FTCA) 28 U.S.C. 1346(b), which was received on February 8, 2018 (ROA 1-41), which was denied on May 29, 2018 (ROA 1-41). SEMIEN then Filed a civil suit under FTCA 28 U.S.C. 1346(b), a "Spears test" was conducted under 5th Circuit precedent SPEARS v. McCOTTER 766 F.2d 179 (5th Cir. 1985) as a test to see if a plaintiff meets all the requirements to sue in Federal Court (including exhaustion of administrative remedies). SEMIEN met all of the requirements and case proceeded. The United States filed its "FIRST MOTION TO DISMISS", SEMIEN filed opposition to government's motion. U.S. MAGISTRATE JUDGE ZACH HAWTHORN recommended the defendants (government's motion) be denied (see Appendix 3), U.S. DISTRICT JUDGE MARCIA A. CRONE adopted the Magistrate's recommendation, The Government made no "Objections" to Judges ORDER within the 14 day objection deadline. The broken chair was mentioned during the first ruling by the magistrate as well as adopted by District Judge. On September 23, 2019 the Defendant filed a "SECOND MOTION TO DISMISS" relitigating an already decided issue "the broken chair", this time adding that a "specific government employee" was not mentioned and this alone deprived the court of "JURISDICTION". The magistrate granted the defendants "second motion to dismiss" (on already decided facts), the US District Judge adopted the magistrate's Recommendation. SEMIEN timely appealed to the FIFTH CIRCUIT COURT OF APPEALS on December 26, 2019. SEMIEN argued that the lower court did have jurisdiction and under SUPREME COURT PRECEDENT in JONES v. BOCK, 549 U.S. 199 (2007), the court erred by

requiring SEMIEN to include the exact "employee for the government" that caused SEMIENS injury, Specifically what employees were negligent in maintaining the broken chair. SEMIEN believes that by including the "broken chair" in the initial administrative claim as well as the subsequent complaint that SEMIEN met the JURISDICTIONAL THRESHOLD to sue in FEDERAL COURT under the FEDERAL TORT CLAIMS ACT. SEMIEN believes that the lower courts are continuously incorrectly applying SUPREME COURT PRECEDENT and ask this honorable court to clarify its decision in JONES v. BOCK.

REASONS FOR GRANTING THE PETITION

As the highest court in the United States of America, it is the duty of the Supreme Court to bring clarity, uniformity, equality and above all justice to the citizens to which it serves. This Honorable court should not turn a blind eye to the misuse or misapplication of its precedent. The Lower Courts including the United States Court of Appeals For the Fifth Circuit, continuously misinterpret the binding precedent of this honorable court, this in my opinion denies all those who bring civil suit in federal court under the Federal Tort Claims Act which SEMIEN believes that this denies a plaintiff due process as well as a First Amendment right "to petition the government for redress of grievances". I can only hope and pray that this Honorable court addresses these issues and not continue to allow this mockery of justice to continue. In the 14 years since JONES v. BOCK, 549 U.S. 199 (2007) the lower courts continue to misinterpret this court's opinion by still requiring plaintiffs to show a "specific employee for the government" That caused a plaintiff harm to maintain a claim under 28 U.S.C. 1346(b) FTCA, or to meet the Jurisdictional threshold. This is not a case of one individual, but a case of equality for all future plaintiffs of FTCA claims. SEMIEN respectfully ask this Court to strongly consider GRANTING this petition.

By continuing to allow the Lower Courts to misinterpret this court's binding opinions undermine this Honorable court as well as compromise the integrity of the Judicial system in the United States as a whole. SEMIEN respectfully urges this Honorable Court to GRANT THE PETITION as it would be in the interest of FAIRNESS AND JUSTICE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ervin E. Semien

Date:

June 19, 2021