

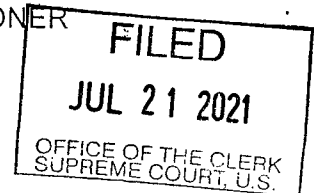
No. 21-5269

IN THE
SUPREME COURT OF THE UNITED STATES

TOY TERRELL SMITH — PETITIONER
(Your Name)

vs.

J. TORRES, et al. — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 9th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

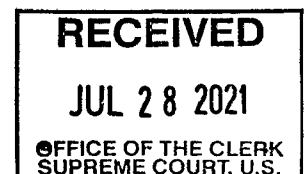
PETITION FOR WRIT OF CERTIORARI

Toy Terrell Smith / D.O.C. # D-92679
(Your Name)

Calif. Substance Abuse Facility / P.O. BOX 5246
(Address)

Corcoran, California 93212
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

A.

Whether a prison classification committee's actions of transferring an inmate back to the same prison where he was previously housed, upon completion of serving an eighteen month punitive Segregated Housing Unit (SHU) term was a Constitutional violation when and where the reason for the inmate serving the eighteen month (SHU) term resulted from him causing a full scale racial riot at said facility where many inmates were beaten, stabbed, pepper sprayed and shot with riot guns?

B.

After petitioner finished serving a punitive Segregated Housing Unit (SHU) term for causing a full scale riot where many inmates were seriously injured, was respondent's failure to act a matter of deliberate indifference where several approved prisons were available where petitioner had no enemies or prior incidents and respondents elected to instead transfer him back to the same facility where the riot occurred?

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:

- 1.) J. Torres
- 2.) M. Hoggard

RELATED CASES

- 1.) Smith v. J. Torres, et al., No. 1:16-cv-01924, U.S. District Court for the Eastern District of California (Judgment September 20, 2019)
- 2.) Smith v. J. Torres, et al., No. 19-17042, U.S. Court of Appeals for the Ninth Circuit. (Judgment April 22, 2021.)

TABLE OF CONTENTS

OPINIONS BELOW	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	4.
REASONS FOR GRANTING THE WRIT	6.
CONCLUSION.....	10.

INDEX TO APPENDICES

APPENDIX A	<i>Decision of the U.S. Court of Appeals for the 9th Circuit.</i>
APPENDIX B	<i>Decision of the U.S. District Court for the Eastern District.</i>
APPENDIX C	<i>Magistrate Judge's Findings and Recommendations.</i>
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<i>Carter v. City of Detroit</i> , 408 F.3d 305, 312-13 (6 th Cir. 2005) —	9.
<i>Farmer v. Brennan</i> , 511 U.S. 825 [114 S.Ct. 1970: 128 L.Ed.2d 811] —	7.
<i>Goka v. Bobbitt</i> , 862 F.2d 646, 651 (7 th Cir. 1988) —	6, 8
<i>Hayes v. New York City Dep't of Corr.</i> , 84 F.3d 614, 621 (2 ^d Cir. 1996) —	6.
<i>Mayoral v. Shezhad</i> , 245 F.3d 934, 940 (7 th Cir. 2000) —	6, 7
<i>Skinner v. Uphoff</i> , 234 F.Supp. 2d 1208, 1214-15 (D.Wyo. 2002) —	6.
<i>Wilson v. Seiter</i> , 501 U.S. 294, 304 —	10.
<i>Woods v. Lecureux</i> , 110 F.3d 1215, 1223-24 (6 th Cir. 1997) —	6.

STATUTES AND RULES

U.S. Const., Amend. VIII —	3.
28 U.S.C. Section 1254 (1) —	2.
42 U.S.C. Section 1983 —	3.

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**:

N/A

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at N/A _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the N/A _____ 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 April 22, 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 N/A.
A copy of that decision appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment Eight to the United States Constitution, which provides:

Excessive bail shall not be required, Nor excessive fines imposed, Nor cruel and unusual punishment inflicted.

The Amendment is enforced by Title 42, Section 1983, United States Code:

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 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.

STATEMENT OF THE CASE

The petitioner's Complaint alleged that respondents J. Torres and M. Hoggard violated his personal safety during a Classification Committee hearing. The Classification Committee hearing took place in a punitive segregation housing unit after the petitioner finished serving an eighteen month Security Housing Unit (SHU) term for causing a full scale racial riot where many inmates were beaten, stabbed, pepper sprayed and shot with riot guns. The riot began after petitioner and another inmate fought. It was discovered and reported by prison staff in the incident reports that twelve hispanic inmates came to the aid of the inmate who the petitioner fought because the twelve hispanic inmates were all apart of the same Security Threat Group (STG). The twelve (STG) inmates attacked all black inmates who were housed with the petitioner, a black inmate.

After petitioner served the eighteen month (SHU) term for the riot, it was the respondent's responsibility during a Classification Committee hearing to review all incident reports, Case factors, and the petitioner's own request then determine where to transfer the petitioner to for his programming needs. Prior to the Classification hearing, petitioner was asked by the respondents which of several available approved prisons he wanted to be transferred to. Petitioner then informed respondents that he was not interested in any of the five or six prisons to choose from because none of them

1 were mental health treatment facilities that he was due to
2 be placed in. Petitioner also informed the Classification
3 Committee in a written statement that the riot incident
4 that occurred at the previous prison was due to prison
5 staff at that prison labelling him an informant to hispanic
6 prisoners.

7 Even with the Classification Committee reviewing the written
8 statement as well as the incident reports which listed the
9 documented (STG) inmates who were involved in the riot
10 incident, and there being several different available approved
11 prisons where the petitioner could be transferred to where he
12 had no enemies nor prior incidents, still, respondents
13 elected to transfer petitioner to the exact same prison
14 yard where the riot incident occurred. The petitioner
15 exercised his administrative right to appeal the
16 Classification Committee decision. It was later ruled
17 on petitioner's administrative appeal that policy was
18 violated by respondents. However, petitioner, against his
19 will, had already been transferred back to the same
20 location where the riot occurred.

21 After petitioner was transferred back to the location
22 where the riot occurred, approximately one hour after being
23 classified, placed in the general population and told to
24 report to his housing unit, petitioner was attacked
25 from behind, severely beaten into a state of UNCONSCIOUSNESS
26 and subsequently rushed by ambulance to a medical
27 hospital where he was treated for several serious injuries.

REASONS FOR GRANTING THE PETITION

A.) The lower court's decision conflicts with decisions of other courts.

The holdings of the U.S. District Court and the U.S. Court of Appeal in this matter run contrary to the holding of the following federal circuit courts concerning petitioner raising a genuine issue of material fact:

Woods v. Lecureux, 110 F.3d 1215, 1223-24 (6th Cir. 1997)
(holding, summary judgment in favor of defendants "was reversed and remanded as to appellee deputy warden of the transferror prison because genuine issues of fact as to his "deliberate indifference" to a substantial risk of serious harm were present.")

Skinner v. Uphoff, 234 F. Supp. 2d 1208, 1214-15 (D.Wyo. 2002)
(failure to follow policy requiring investigation of violent incidents supported deliberate indifference.)

Mayoral v. Sheahan, 245 F.3d 934, 940 (7th Cir. 2000)

Hayes v. New York City Dep't of Corrections, 84 F.3d 614, 621 (2d Cir. 1996)

Goka v. Bobbitt, 862 F.2d 646, 651 (7th Cir. 1988)

B.) Importance of the Question Presented.

This case presents a fundamental question of the interpretation of this court's decision in *Farmer v. Brennan*, 511 U.S. 825 (114 S.Ct. 1970: 128 L.Ed.2d 811). The question presented is of great importance because it affects the operations of the prison systems in all 50 states and hundreds of city and county jails. In view of the large amount of litigation concerning personal safety and security of prisoners relative to cruel and unusual punishment, guidance on the question is also of great importance to prisoners and families of prisoners because it involves matters that deal with serious injuries and/or death of prisoners in some cases.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted "*Farmer v. Brennan*." This court held in the "*Farmer*" case, the constitution is violated where "defendants know of the danger or where the threat of violence is so substantial or pervasive that their knowledge could be inferred, and yet defendants fail to embrace a policy or take other reasonable steps which may have prevented the harm." One court observed, "the *Farmer* standard is not designed to give officials the motivation to take refuge in the zone between ignorance and actual knowledge." *Mayoral v. Sheahan*, 245 F.3d 934, 940 (7th Cir. 2000).

1 In this case of petitioner, not only did he file a
2 timely administrative appeal against the Classification
3 Committee's decision upon learning that he was being
4 transferred back to the same facility where the
5 riot occurred, additionally, the respondents already
6 had in their possession, (1) the full incident report from
7 the riot which clearly described the inmates at the
8 facility as members of a Security Threat Group and,
9 (2) the petitioner's own written statement given to
10 respondents prior to the Classification Committee hearing
11 in which the petitioner described retaliatory measures
12 exacted against him by certain correctional staff
13 members which resulted in the riot. The facts that
14 respondents were aware of are facts that a reasonable
15 trier of fact could reason amounted to deliberate
16 indifference.

17 The lower court's reasoning that "An incident report
18 on the Kern Valley Prison riot likewise raised no specific
19 and substantial risks that would attend to transferring
20 [Petitioner] to a part of the Kern Valley where he had no
21 documented enemies," is UNCONVINCING. It is well
22 established in policy and practice where many courts
23 "embrace a policy or take other reasonable steps which
24 may have prevented the harm" *Goka v. Bobbitt*, 862
25 F.2d 646, 651 (7th Cir. 1988). In this matter of the
26 petitioner, prison policy for Classification Committee
27 employees (respondents) clearly and thoroughly detail
28 how respondents were to review all case factors

When determining petitioner's housing placement needs, where defendants are aware of facts that show a risk to a prisoner's personal safety but for reasons unknown decide not to "draw the inference," a jury could infer actual knowledge of a risk from a defendant's knowledge and could discount the defendant's claim that he did not believe the inmate was at risk. *Carter v. City of Detroit*, 408 F.3d 305, 312-13 (6th Cir. 2005).

Thus, the court below seriously misinterpreted "*Farmer v. Brennan*" by not reasoning that the fact of failing to act, as well as acting, in this matter, supports a finding of deliberate indifference when and where respondents had several different approved prisons available to choose from at the time of putting petitioner up for transfer. Respondents instead elected to transfer petitioner back to the trouble infested facility where the riot occurred.

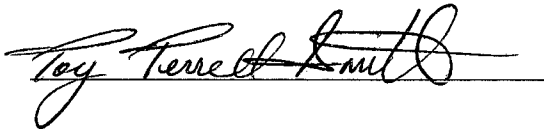
This court should correct that misinterpretation and make it clear that, A.) considering the presence of the Security Threat Group involved in the riot incident at the facility, B.) the petitioner's administrative appeal against respondents' action of transferring him back to the same facility would put him in harm's way, C.) the fact that there were several different prisons available for respondents to transfer the petitioner to where he had no enemies or previous incidents and, D.) the petitioner provided respondents with a written statement prior to the Classification Committee hearing describing how correctional staff at the prison exacted retaliatory measures

against him which led up to the riot, the lower court's actions were legally improper and violated petitioner's eighth amendment rights. This court reasoned in *Wilson v. Seiter*, 501 U.S. 294, 304 that the "combined effects of the deprivation violates the Eighth Amendment though each individual aspect of the deprivation might not do so alone."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 20, 2021