

No. 21-6480

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
SEP 19 2021
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SUPREME COURT, U.S.

FRANCISCO C. MARTINEZ — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN, TDCJ-CID, DIRECTOR RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FRANCISCO C. MARTINEZ, #01185238
(Your Name)

TDCJ-CID, C.T. TERRELL UNIT, 1300 FM 655
(Address)

ROSHARON, TEXAS 77583
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE DISTRICT COURT AND THE COURT OF APPEALS FOR
THE FIFTH CIRCUIT MISAPPLIED THE SUPREME COURT'S DECISION OF
SANDIN V. CONNER, 515 U.S. 472 (1995), TO THE PETITIONER'S CASE,
TO THE EXTENT THAT IS IN CONFLICT WITH THE COURT OF APPEALS
FOR THE NINTH CIRCUIT AND THE SECOND CIRCUIT.

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

FRANCISCO C. MARTINEZ V. B. LUMPKIN, 3:19-CV-0236

S.D. TEX. 2019, STAY IN ABEYANCE, AS OF NOVEMBER 9, 2021)

F. MARTINEZ V. B. LUMPKIN, No.: 3:20-CV-0263, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, JUDGMENT ENTERED ON AUGUST 27, 2020.

F. MARTINEZ V. B. LUMPKIN, No: 20-40610, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, JUDGMENT ENTERED ON JULY 08, 2021.

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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

[x] 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,
[x] is unpublished.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,
[x] is unpublished.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 JULY 8th, 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 60 DAYS (date) on OCTOBER 20, 2021 (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT WAS ENTERED ON JULY 8th, 2021. The Judgment of the Court of Appeals is ATTACHED AS APPENDIX A TO THIS PETITION. JURISDICTION IS CONFERRED BY 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

**THIS CASE INVOLVES AMENDMENT XIV TO THE UNITED STATES CONSTITUTION,
WHICH PROVIDES:**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.

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 of 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 an 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.

THIS CASE ALSO INVOLVES STATUTORY PROVISION OF:

28 U.S.C. 2241 ET SEQ...

STATEMENT OF THE CASE

PETITIONER, FRANCISCO C. MARTINEZ, ("MARTINEZ"), IS AN INMATE IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, (:TDCJ-CID"). HE IS CURRENTLY CINFINED AT THE C.T. TERRELL UNIT.

IN 2018, MARTINEZ WAS ASSIGNED TO THE PRISON GENERAL POPULATION AT THE TERRELL UNIT. THROUGHOUT THE YEAR HE WAS RECEIVING MEDICAL TREATMENT FOR ALLERGIES. HE WAS PRESCRIBED 'DIPHENHYDRAMINE' MORE COMMONLY KNOWN AS BENADRYLS ("BENADRYLS"). HIS PRESCRIBED MEDICATION EXPIRE ON DECEMBER 4, 2018. BENADRYLS ARE PRESCRIBED AS ANTIALLERGENIC AND ARE NOT CONSIDERED A CONTROL SUBSTANCE OR NARCOTICS.

ON NOVEMBER 13, 2018, AFTER RECEIVED HIS MEDICATION AT THE PILL WINDOW, MARTINEZ WAS WALKING BACK TO HIS ASSIGNED DORM WHEN HE WAS RANDOMLY PULLED OVER BY A SERGEANT TO CONDUCT A STRIP SEARCH. THE SERGEANT FOUND TWO BENADRYLS IN MARTINEZ'S POCKET. MARTINEZ INFORMED THE SERGEANT THAT HE WAS GETTING THE PILLS TWICE A DAY AS PRESCRIBED. THE SERGEANT WROTE MARTINEZ A DISCIPLINARY CASE FOR "POSSESSION OF UNAUTHORIZED DRUG, NAMELY, TWO 'DIPHENHYDRAMINE,' UNDER CODE 12.2 OF THE TDCJ DISCIPLINARY RULES.

DURING THE HEARING PROCEEDINGS, MARTINEZ PLEAD NOT GUILTY TO THE OFFENSE AND BASED HIS DEFENSE THATHE WAS IN FACT PRESCRIBED FOR BENADRYLS PILLS, THEREFORE HIS MEDICATION WAS NOT UNAUTHORIZED.

A COPY OF HIS PILL PASS MEDICATION WAS ATTACHED TO THE OFFENSE REPORT AND THE MEDICATION FOR DIPHENHYDRAMINE WAS HIGHLIGHTED.

MARTINEZ WAS FOUND GUILTY OF THE OFFENSE AND WAS ASSESSED THE FOLLOWING PENALTIES:LOSS OF 45 DAYS PRIVILEGES FOR COMMISSARY, RECREATION,CELL AND TELEPHONE SERVICE;HE WAS DEMOTED FROM THE EARNING OF GOOD TIME CLASS S3 TO S4,AND WAS ASSIGNED FOR ONE YEAR TO PUNITIVE SEGREGATION TO THE MEDIUM CUSTODY,A CUSTODY WITH LESS AMENITITES AND MORE RESTRICTIONS. HE WAS ALSO TRANSFERRED TO A MORE HARSH CONDITIONS OF CONFINEMENT AT THE WAYNE SCOTT UNIT.

BELIEVING THAT HE HAD UNDERGONE AN UNFAIR DISCIPLINARY PROCESS MARTINEZ FILED A LAWSUIT IN THE SOUTHERN DISTRICT OF TEXAS. IN HIS §1983 AMENDED COMPLAINT FILED ON OR ABOUT AUGUST 11,2019,HE CLAIMED INTER ALIA,THAT HE WAS PUNISHED UNDER TDCJ RULE THATIS UNCONSTITUTIONALLY INFIRM~~Both~~ FACIALLY AND AS IT WAS APPLIED TO HIM,HE ALSO CLAIMED OTHER FLAWS OF THE DISCIPLINARY **HEARING** PROCEEDINGS.

AS RELIEF FOR HIS PROCEDURAL DUE PROCESS CLAIMS,HE SEEKS DECLARATORY AND INJUNCTIVE RELIEF TO ENJOIN THE DEFENDANTS TO ENFORCE CODE 12.2 OF THE TDCJ DISCIPLINARY RULES. HE ALSO SEEKS COMPENSATORY AND PUNITIVE AWARD AGAINST THE DEFENDANTS.SEE, F. MARTINEZ V. B. LUMPKIN, ET AL, 3:19-CV-0236, (S.D. TEX. 2019, STAY IN ABEYANCE). ON OR JULY 15,2020,MARTINEZ FILED A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2254,CHALLENGING THE DISCIPLINARY CONVICTION #20190072535, FOR "POSSESSION OF UNAUTHORIZED DRUG,NAMELY, TWO DIPHENHYDRAMINE." UNDER TDCJ DISCIPLINARY RULES. IN HIS HABEAS PETITION MARTINEZ PRESENTED THE FOLLOWING GROUNDS FOR RELIEF:

- (1)THE CODE of 12.2 OF THE TDCJ DISCIPLINARY RULE IS FACIALLY UNCONSTITUTIONAL,AND IS CAPABLE TO INDUCE ARBITRARY AND DISCRIMINATORY TREATMENT IN VIOLATION OF THE 14th AMENDMENT.
- (2)THE CODE 12.2 OF THE TDCJ RULE IS UNCONSTITUTIONALLY VAGUE AS IT WAS APPLIED TO THE PETITIONER IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

(3) DUE PROCESS VIOLATION WHEN: (i) THE CHARGING OFFICER FILED A DISCIPLINARY OFFENSE ON A CODE OR RULE THAT IS UNCONSTITUTIONALLY INFIRM; (ii) PRISON OFFICIALS MISAPPLIED THE CODE 12.2 OF THE TDCJ RULES TO THE FACTS OF PETITIONER'S CASE; (iii) THE CHARGING OFFICER FILED A FALSE REPORT AGAINST THE PETITIONER; (iv) HE WAS DENIED EFFECTIVE REPRESENTATION BY A COUNSEL SUBSTITUTE DURING THE HEARING PROCEEDINGS; (v) THE UNIT CLASSIFICATION COMMITTEE ALLOWED THE FORMATION OF AN IMPARTIAL REVIEW BOARD IN VIOLATION OF THE 14th AMENDMENT.

MARTINEZ BECAME AWARE THAT HIS §1983 LAWSUIT CANNOT PROCEED IN COURT PURSUANT TO HECK V. HUMPREY, 512 U.S. 477 (1994); EDWARDS V. BALISOK, 117 S. CT. 1584 (1997); CLARKE V. STALDER, 154 F.3d 186 (5th CIR. 1998). ON DECEMBER 10, 2020, MARTIENZ FILED A "MOTION TO STAY IN ABEYANCE," FOR HIS §1983. MARTINEZ STATED TO THE COURT THAT HE HAD FILED A WRIT OF HABEAS CORPUS IN FEDERAL COURT AND THAT THE OUTCOME OF THE WRIT OF HABEAS CORPUS DIRECTLY AFFECTS THE ISSUES RAISED IN HIS §1983 LAWSUIT." THE DISTRICT COURT GRANTED THE MOTION ON DECEMBER 18, 2020. (SEE APENDIX "C").

THE DISTRICT COURT DENIED HABEAS RELIEF ON AUGUST 27, 2021, AND DENIED SUA SPONTE, THE CERTIFICATE OF APPEALABILITY, (COA).

CITING SANDIN V. CONNER, 515 U.S. 472 (1995), THE DISTRICT COURT ARGUED THAT: "PRISONERS CHARGED WITH INSTITUTIONAL RULES VIOLATIONS ARE ENTITLED TO RIGHTS UNDER THE DUE PROCESS CLAUSE ONLY WHEN THE DISCIPLINARY ACTION MAY RESULT IN A SANCTION THAT WILL INFRINGE UPON A CONSTITUTIONAL PROTECTED LIBERTY INTEREST.

THE ESSENCE OF THE JUDGE'S ARGUMENT IS THAT PETITIONER MUST DEMONSTRATE THE EXISTENCE OF A LIBERTY INTEREST BEFORE HE IS ENTITLED IN PROCEDURAL DUE PROCESS. (SEE APENDIX "B").

PETITIONER TIMELY FILED HIS MOTION FOR CERTIFICATE OF APPEALABILITY ON NOVEMBER 9, 2020. THE COURT OF APPEALS DENIED THE CERTIFICATE OF APPEALABILITY TO ALL THE PETITIONER'S CLAIMS RAISED IN THE PETITION ON JULY 8th, 2021. MARTINEZ FILED AN UNTIMELY PETITION FOR REHEARING EN BANC. (SEE APENDIX "D").

IN AFFIRMING THE DISTRIC COURT'S JUDGMENT, THE COURT OF APPEALS' ARGUMENT SUFFERS FROM THE SAME FLAWS. THE COURT OF APPEALS CONCLUDED THAT MARTINEZ HAS NOT DEMONSTRATED THE DENIAL OF A CONSTITUTIONAL RIGHT. RELYING IN MARTINEZ'S LIFE SENTENCE AND HIS INELIGIBILITY FOR MANDATORY SUPERVISION, THE COURT OF APPEALS CONCLUDED THAT MARTINEZ HAS NO LIBERTY INTEREST BECAUSE HE DID NOT LOSE EARNED GOOD TIME CREDITS.

REASONS FOR GRANTING THE PETITION

A. . CONFLICTS WITH DECISIONS OF OTHER COURTS.

PETITIONER ASSERTS THAT THE DISTRICT COURT AND THE COURT OF APPEALS FOR THE FIFTH CIRCUIT CONCERNING THE DENIAL OF THE WRIT OF HABEAS CORPUS MISAPPLIED THE SUPREME COURT'S DECISION OF SANDIN V. CONNER, 515 U.S. 472 (1995), TO THE EXTENT THAT IS IN CONFLICT WITH THE DECISION OF THE COURT OF APPEALS FOR THE NINTH CIRCUIT, SEE BURNSWORTH V. GUNDERSON, 179 F. 3d 771 (9th CIR. 199); NONNETTE V. SMALL, 316 F. 3d 872 (9th CIR. 2002), AND THE COURT OF APPEALS FOR THE SECOND CIRCUIT, SEE, MILLER V. SELSKY, 111 F. 3d 7,9 (2nd CIR. 1997); SEALEY V. GILNER, 116 F. 3d 46,51 (2nd CIR. 1997); TELLER V. FIELDS, 280 F. 3d 69 (2nd CIR. 2001).

IN BURNSWORTH V. GUNDERSON, PRISON OFFICIALS CONVICTED THE INMATE OF ESCAPE AND HE RECEIVED PUNISHMENT OF 40 HOURS EXTRA DUTY, AND A HIGHER SECURITY CLASSIFICATION. THE INMATE FILED A LAW-SUIT IN FEDERAL COURT CHALLENGING THE DISCIPLINARY CONVICTION.

THE DISTRICT COURT FOUND THAT BURNSWORTH HAD NOT SUFFERED AN "ATYPICAL AND SIGNIFICANT HARSHSHIP" AS A RESULT OF THE DISCIPLINARY CONVICTION. HOWEVER, THE DISTRICT COURT ALSO FOUND THERE WAS NO EVIDENCE TO SUPPORT AN ESCAPE DISCIPLINARY CONVICTION AND ORDERED THAT THE MISCONDUCT BE EXPUNGED. ON APPEAL, PRISON OFFICIALS ARGUED THAT BURNSWORTH COULD NOT MEET THE SANDIN TEST OF ESTABLISHING A LIBERTY INTEREST, OR THAT HE WAS SUBJECTED TO AN "ATYPICAL AND SIGNIFICANT HARSHSHIP."

IN REJECTING THE PRISON OFFICIALS' ARGUMENT, THE NINTH CIRCUIT FOUND THAT AN INMATE DID NOT HAVE TO MEET THE SANDIN TEST WHEN THE DISCIPLINARY GUILTY FINDING WAS BASED UPON NO EVIDENCE:

"[I]T IS INCORRECT TO STATE THAT DUE PROCESS IS NOT VIOLATED WHEN A PRISON DISCIPLINARY HEARING BOARD CONVICTS AN INMATE OF ESCAPE AFTER THE BOARD HOLDS A HEARING AT WHICH NO SHRED OF EVIDENCE OF THE INMATE'S GUILT IS PRESENTED."

GUNSWORTH, 179 F.3d 771 (9th CIR. 1999).

THE COURT CONCLUDED THAT PLAINTIFF'S DUE PROCESS ARE VIOLATED EVEN IF PLAINTIFF HAS DEMONSTRATED NO COGNIZABLE LIBERTY INTEREST,
GUNSWORTH, 179 F.3d 771, 775.

THE NINTH CIRCUIT IN NONNETTE V. SMALL AGAIN HELD THAT A "LACK OF FAIR HEARING VIOLATES DUE PROCESS, WHOLLY APART FROM THE CONDITIONS OF CONFINEMENT AND WITHOUT TO THE SANDIN REQUIREMENTS." 316 F.3d 872, AT 879 (9th CIR. 2002).

IN MILLER V. SELSKY, MILLER, AN INMATE AT THE BARE HILL CORRECTIONAL FACILITY WAS CHARGED WITH ASSAULT, FIGHTING, AND CREATING A DISTURBANCE. MILLER BROUGHT CIVIL RIGHTS ACTION IN CONNECTION WITH HIS SEGREGATION IN DISCIPLINARY CONFINEMENT FOR 125 DAYS, ALLEGING THAT DEFENDANTS DEPRIVED HIM OF PROCEDURAL DUE PROCESS BY EXCLUDING HIM FROM THE CONFIDENTIAL TESTIMONY AND BY PREVENTING HIM FROM REVIEWING TRANSCRIPTS OF THAT TESTIMONY.

~~THE~~ MAGISTRATE JUDGE FOUND THAT MILLER HAD RECEIVED DUE PROCESS DURING THE DISCIPLINARY PROCEEDINGS AND THAT SELSKY HAD QUALIFIED IMMUNITY FROM THE POTENTIAL LIABILITY FOR FAILING TO ASCERTAIN PROMPTLY THAT THE HEARING RECORD WAS INCOMPLETE AND THEREFORE SUBJECT TO REVERSAL. ON REVIEW, THE DISTRICT COURT REACHED THE SAME RESULT, BUT APPLIED ANOTHER RATIONALE, DRAWN FROM THE UNITED STATES SUPREME COURT'S INTERVENING DECISION IN SANDIN.

THE DISTRICT COURT INTERPRETED SANDIN TO MEAN THAT THE IMPOSITION OF SEGREGATED CONFINEMENT, AS A MATTER OF LAW, DOES NOT CREATE

A "HARDSHIP" THAT IS "ATYPICAL AND SIGNIFICANT" COMPARED WITH THE "ORDINARY INCIDENTS OF PRISON LIFE," AND ACCORDINGLY DOES NOT INVOLVE AN ACTIONABLE DEPRIVATION OF LIBERTY. THE COURT OF APPEALS REVERSED, CONCLUDING THAT "WE HAVE RECOGNIZED THAT NOTHING IN THE SANDIN DECISION INDICATES THAT THE COURT INTENDED TO "CREATE A PER SE BLANKET RULE THAT DISCIPLINARY CONFINEMENT MAY NEVER IMPLIES A LIBERTY INTEREST."¹⁰ 111 F.3d 7,9 (2nd CIR. 1997).

IN TELLER V. FIELDS, THE COURT CONCLUDED "WE HAVE CONSTRUED SANDIN TO MEAN THAT A STATE "MAY UNDER CERTAIN CIRCUMSTANCES CREATE LIBERTY INTEREST WHICH ARE PROTECTED BY THE DUE PROCESS CLAUSE."¹¹ 280 F.3d 69 (2nd CIR. 2001).

IN SEALEY V. GILTNER, 116 F.3d 47,52 (2nd CIR. 1997), THE COURT CONCLUDED, "NOTING THAT EVEN AFTER SANDIN, COURTS MUST DETERMINE WHETHER THE STATE HAS CREATED A LIBERTY INTEREST BY STATUTE OR REGULATION."¹²

IN RUIZ V. ESTELLE, 503 F. Supp. 1265 (S.D. TEX. 1980), TDCJ OFFICIALS WERE HELD TO HAVE VIOLATED AN INMATES' CONSTITUTIONAL RIGHTS BY PUNISH THEM PURSUANT TO A DISCIPLINARY RULES THAT "'WERE SO VAGUE THAT NO PRISON INMATE OF REASONABLE INTELLIGENCE COULD BE EXPECTED TO UNDERSTAND THAT THE PLAINTIFFS' CONDUCT WAS PROHIBITED UNDER [THE RULES] PROVISIONS."¹³ THE TDCJ DID NOT APPEAL TO THE VAGUENESS OF ITS DISCIPLINARY RULES. SEE RUIZ V. ESTELLE, 679 F.2d 115 (5th CIR. 1982).

MARTINEZ CLAIMS THAT HE HAS A LIBERTY INTEREST IN NOT BEING PUNISHED BY A DISCIPLINARY RULES THAT ARE UNCONSTITUTIONALLY INFIRM, BOTH FACIALLY AND AS IT WAS APPLIED TO HIM, KOLENDER V. LAWSON, 461 U.S. 352, 103 S. CT. 1855(1983).

B. IMPORTANCE OF THE QUESTIONS PRESENTED.

THIS CASE PRESENTS A FUNDAMENTAL QUESTION OF THE INTERPRETATION OF THIS COURT'S DECISION IN SANDIN V. CONNER, 515 U.S. 472 (1995). THE QUESTION PRESENTED IS OF GREAT IMPORTANCE BECAUSE IT AFFECTS THE OPERATIONS OF THE PRISON SYSTEMS IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, AND HUNDREDS OF CITY AND COUNTY JAILS. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER PRISON DISCIPLINARY PROCEEDINGS, GUIDANCE ON THE QUESTION IS ALSO OF GREAT IMPORTANCE TO PRISONERS, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDINGS THAT MAY RESULT IN MONTHS OR YEARS OF ADDED INCARCERATION OR HARSH PUNITIVE CONFINEMENT.

THE ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT THE LOWER COURTS IN THIS CASE HAVE SERIOUSLY MISINTERPRETED SANDIN.

IN RUIZ V. ESTELLE, SUPRA, THE COURT SAID THAT BECAUSE UNDER TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ'S) RULES ANY DISCIPLINARY VIOLATION HAS THE POTENTIAL TO BE CUMULATIVELY PUNISHABLE BY SOLITARY CONFINEMENT, LOSS OF TIME EARNING STATUS, AND LOSS OF GOOD TIME CREDITS, THE MINIMUM DUE PROCESS RIGHTS GUARANTEED BY WOLFF ARE APPLICABLE TO ALL TDCJ DISCIPLINARY HEARINGS.

THEREFORE, THE DISTRICT COURT AND THE COURT OF APPEALS FOR THE FIFTH CIRCUIT IN GROSSLY MANNER MISAPPLIED THE SUPREME COURT'S DECISION OF SANDIN TO THE PETITIONER'S CASE TO THE EXTENT THAT IS IN CONFLICT WITH BOTH THE NINTH AND THE SECOND CIRCUITS COURT OF APPEALS.

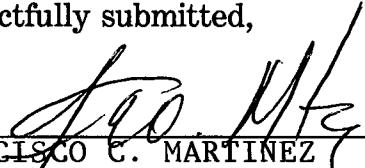
THE COURT SHOULD CORRECT THE MISINTERPRETATION AND MAKE IT
CLEAR THAT PRISONERS ARE ENTITLED TO DUE PROCESS WHOLLY APART
OF THE CONDITIONS OF CONFINEMENT, AND WITHOUT THE SANDIN REQUIREMENTS

CONCLUSION

FOR THE FOREGOING REASONS, CERTIORARI SHOULD BE GRANTED IN THIS
CASE

The petition for a writ of certiorari should be granted.

Respectfully submitted,


FRANCISCO C. MARTINEZ

Date: November 16, 2021