

21-6495

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

NOV 24 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

PEDRO AMARO — PETITIONER
(Your Name)

vs.

Michelle Lujan-Grisham, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

PEDRO AMARO
(Your Name)

P.O. Box 520
(Address)

SANTA ROSA, N.MEX. 88435
(City, State, Zip Code)

575-472-1001
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the court of appeals, under the "abuse of discretion" standard of review, should have reversed the district court's judgment summarily dismissing Petitioner's Pro Se, "hand-written" Amended Complaint on the premises of being 'too long' and 'failing to comply with the district court's Order granting him leave to file an amended complaint' where intermediate scrutiny of the record reveals that the district court failed this Court's guidelines on standards of review and presents a facial showing that Petitioner received neither full or fair consideration of his claims from the district court during either the initial proceedings nor on reversal and remand proceedings, nor was he afforded the 'mandatory' 'service of process' on the Defendants, by the district court, upon completion of PLRA Filing Fee payments as prescribed under 28 U.S.C.A. §1915(d) (approximately 22 months before the district court's *sua sponte* dismissal).
2. Whether provisions of 54 C.J.S. Limitation of Actions (1987) permit a "Pro Se Prisoner/Plaintiff" to bring a "continuing tort" claim for "deprivation of reasonably safe and humane conditions of confinement" based on the 'flawed' design and/or construction of a prison where the structural defects constitute a "concurrent" cause of action/injury by allowing Carbon Monoxide produced by the prison's boiler's to congregate within the facility resulting in toxic contamination of inmates' living areas and sleeping quarters during repeating incidents of "mechanical malfunction of the prison's boiler(s)/flue(s)."
3. Where the Court, under the 8th Amendment's "Cruel and Unusual Punishment" clause, has addressed issues dealing with various degrees of protection of inmates from confinement under conditions which present known risks of harm such as from exposure(s) to environmental tobacco smoke, friable asbestos, mold, excessive dust and lint particles in the air, and human waste as well as fire hazards, to what extent do the Amendment's protections apply in cases where the particular risk of harm stems from recurring incidents of exposure to Carbon Monoxide through toxic levels of contamination of the inmates' living areas and sleeping quarters?
4. Whether, as a life-threatening matter relating solely to the health and safety of State Prisoners confined at the Guadalupe County Correctional Facility and notwithstanding any real or perceived defects in Petitioner's pleadings as they relate to the question of official/personal-capacity liability (-ies) of the individual Defendants, Petitioner and the prison's inmate population, in-general, are entitled to the 8th Amendment's protections through the Court's enforcement of enumerated Civil Rights statutes, such as with injunctive relief against the Defendants commanding that the prison's structural inadequacies be addressed so as to avoid unnecessary future incidents of contamination of the inmates' living areas and sleeping quarters with toxic levels of Carbon Monoxide, especially where the incidents are preventable with the addition of a proper ceiling in each of the respective "Boiler Rooms" and installation of appropriate flue-pipe on each of the boilers.

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:

State of New Mexico:

Michelle Lujan-Grisham, Governor for the State of New Mexico;
Susana Martinez, former Governor for the State of New Mexico;
Bill Richardson, former Governor for the State of New Mexico;
Hector Balderas, Attorney General for the State of New Mexico;
Gary R. King, former Attorney General for the State of New Mexico;
Department of Health and John(s)/Jane(s) DOE 2;
New Mexico Department of Corrections and John(s)/Jane(s) DOE 1;
Alisha Tafuya-Lucero, Secretary of Corrections;
David Jablonski, former Secretary of Corrections;
Gregg Marcantel, former Secretary of Corrections;
Joe R. Williams, former Secretary of Corrections;
Tim LeMaster, Deputy Secretary of Operations;
Larry Phillips, NMCD Grievance/Disciplinary Appeals Manager;
James R. Brewster, General Counsel for NMCD;
Jerry Roark, Director of Adult Prisons;
Steve Madrid, NMCD Chief Grievance Officer;
Angela M. Martinez, NMCD Health Services Administrator;
David Selvage, P.A., NMCD Health Services Bureau Chief;
Yolanda Rivera, A.G.A. Contract Monitor/Administrator for NMCD at G.C.C.F.;
Gloria Chavez, former A.G.A. Contract Monitor/Administrator for NMCD at G.C.C.F.;
New Mexico Human Services Department and John(s)/Jane(s) DOE 3;
John(s)/Jane(s) DOE 4 (Unknown Legal Counsels and/or Counsellors serving the State of New Mexico or any of its Agents);

The GEO Group, Inc., a foreign corporation registered to do business in New Mexico;
George R. Wackenhut, founder of the GEO Group, Inc.;
Richard R. Wackenhut, founder of the GEO Group, Inc.;
George C. Zoley, Founder/CEO of the GEO Group, Inc.

GEO Group, Inc., Board Members:

Clarence E. Anthony;
Richard H. Glanton;
Christopher C. Wheeler;
Julie Myers-Wood;
Anne M. Foreman;
Norman A. Carlson;

John J. Bultin, General Counsel / Senior Vice President of GEO Group, Inc.;

Senior Vice Presidents of GEO Group, Inc.:

John Hurley;
Brian R. Evans;
Thomas M. Wierdsma;
J. David Donahue;
Ann M. Schlarb;
David J. Venturella;

Joe R. Williams, Director of Operations for U.S. Corrections for GEO Group, Inc.;

Executive Vice Presidents of GEO Group, Inc.:

Matthew J. DenAdel;
Patricia M. Persante;
Jennifer L. Houston;
Amber L. Martin;
Christopher D. Ryan;
Ernesto Alvarez;
Adam H. Hasner;
Derrick D. Schofield;

Regional Vice Presidents:

Reed E. Smith;
James H. Black;
Blake R. Davis;

Divisional Vice Presidents:

Blake L. Barras;
David O. Meehan;
Jonathan P. Swatsburg;
David S. Burch;
Jock A. Waldo;

GEO Group, Inc. employees at the Guadalupe County Correctional Facility:

Amy A. Campos, A.C.A. Compliance Administrator;

Wardens:

Vincent Horton;

J. Gray;
Gloria Chavez;
Dominica Garnand;
Gerald Morris;
Erasmo Bravo;
Johnny Johnson;
R. Ulibarri;
Timothy Hatch;
T. Foster;
"Warden Beaird";
Chiefs of Security:
Maj. Phil Aragon;
G. Morris;
"Resnick";
J. Johnson;

Maintenance Supervisors:

Val Tenorio;
"Mr. Chavez";
S. Chavez;
"Mr. Castillo";

Fire, Safety, and Sanitation Officers:

"Mr. Everhart";
"Mr. Branch";
"Ms. Garcia";
"Mr. Swaggart";
"Mr. Gerhardt";

Grievance Lieutenants:

Krystle Rivera;
Jessica Rodgers, a.k.a. Jessica Vigil;
Gloria Chavez;

Kristen Romero (formerly as "K. Esquivel"), Mental Health Director;

Ben Rael, Training Officer;

Karla Rael, Accountability Officer;

"Corizon, LLC", a foreign corporation registered to do business in New Mexico through

"Corizon Health," and John(s)/Jane(s) Doe S;

Lisa Staber, M.D., Regional Director for Corizon, LLC, over New Mexico;

Corizon, LLC employees at G.C.C.F.;

Katherine Armijo, Health Services Administrator;

Timothy Trapp, M.D.;

Katherine Allen, "Certified Nurse Practitioner" or "Physician Assistant";

"Centurion," a foreign corporation registered to do business in New Mexico under its subsidiary, "Centurion Correctional Healthcare of New Mexico" and John(s)/Jane(s) Doe(s);
"Mr. Rivers," Vice President of Operations for Centurion;

Dr. Murray Young;

Centurion Employees at G.C.C.F.;

Katherine Armijo, Health Services Administrator;

Katherine Allen, "C.N.P." or "P.A.";

The County of Guadalupe, New Mexico as "owner(s)" of the Guadalupe County Correctional Facility located at 1039 Agua Negra Road, Santa Rosa, New Mexico,
John(s)/Jane(s) Doe 7, the Unknown superintendent(s) of the Guadalupe County Correctional Facility and its property.

RELATED CASES

AMARO v. STATE OF NEW MEXICO, et al., No. 16-cv-00993-KG-WPL, U.S. District Court for the District of New Mexico. Judgment entered September 15, 2017.

AMARO v. State of New Mexico, et al., No. 17-2178, U.S. Court of Appeals for the Tenth Circuit. Judgment entered June 13, 2018.

AMARO v. Susana Martinez, Governor for the State of New Mexico, et al., No. CV-16-00993-KG/JHR, on Reversal and Remand, U.S. District Court for the District of New Mexico. Judgment entered May 28, 2020.

In re Pedro J. "Pete" Amaro, No. 20-2052, U.S. Court of Appeals for the Tenth Circuit. Judgment entered June 26, 2020.

AMARO v. State of New Mexico, et al., No. 21-2039, U.S. Court of Appeals for the Tenth Circuit. Judgment entered August 19, 2021.

AMARO v. State of New Mexico, et al., No. 21-cv-00576 KG/KK, U.S. District Court for the District of New Mexico. Judgment entered August 3, 2021.

AMARO v. Horton, No. CV-17-00898 WJ/LF, U.S. District Court for the District of New Mexico. Judgment entered December 5, 2017.

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STATUTES AND RULES

42 U.S.C. § 1983
 42 U.S.C. § 1988(b)
 42 U.S.C. § 1997 et seq.
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 Fed. R. Civ. P. 23

OTHER

54 C.J.S. Limitation of Actions, Sections 177 and 223

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 _____.

☒ 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

U.S. Constitution, 8th Amendment, "Cruel and Unusual Punishment" Clause,

New Mexico Tort Claims Act

Constitution of the State of New Mexico

STATEMENT OF THE CASE

Petitioner is seeking review in a §1983 Civil Rights action stemming from Carbon Monoxide-related events taking place at the Guadalupe County Correctional Facility at Santa Rosa, New Mexico.

In each of the incidents complained of, the inmates' living areas and sleeping quarters were contaminated with toxic levels of Carbon Monoxide emitted from the prison's boiler(s)/flue(s) in separate instances of "mechanical malfunction," leading GEO staff to either 'Vent the Pod' or complete an "Emergency Evacuation" of the Pod most affected.

Based on the "concurrent cause of action" theory, Petitioner stated two 'causes' under the U.S. Constitution's 8th Amendment: personal injury resulting from deprivation of safe and humane conditions of confinement; and a "continuing injury" based on the failure of prison officials to have the prison's apparent defect(s) in design/construction addressed so as to prevent foreseeable harm by avoiding toxic contamination of the inmates' living areas and sleeping quarters during future incidents involving "mechanical malfunction of the prison's boiler(s)/flue(s)."

Eight months into PLRA Filing Fee payments, after having been granted IFP status and denied "Appointment of Counsel" on the grounds that Amaro "appears to understand the issues in the case and to be representing himself in an intelligent and capable manner," district court Judge Kenneth Gonzales summarily dismissed the action asserting, in part, that Amaro's claims were barred by the statute of limitations and that Amaro had also failed to state both a claim for relief and claims for §1983 liability.

The district court proceeded to deny Amaro's subsequent "Motion For Reconsideration" asserting in part:

"Documentation provided by Amaro did not provide factual support for his allegations of 'numerous instances and/or multiple episodes of Carbon Monoxide exposure/poisoning of State Prisoners ... as far back as 2007.'"

Amaro appealed to the Court of Appeals for the 10th Circuit in Appeal No. 17-2178.

On Reversal and Remand "for further proceedings," the district court issued an "Order Granting Leave To Amend" containing a set of directives and pleading requirements that were heightened to the nth degree, and failed to comport with the 10th Circuit's Order.

Petitioner simultaneously contested the district court's Order through a formal "Objection," and began work on a new Complaint specifically tailored to the district court's directives restricting him to constitutional claims for only the Carbon Monoxide-related incident taking place on February 6, 2014.

Overruling Petitioner's objections, the district court indicated to Amaro that he was not barred from pursuing any claim(s) allowed by the Court of Appeals and granted him a 30-day extension of time in which to have the "Amended Complaint" submitted to the court.

Amaro met the extended deadline with an "Amended Complaint" he was certain met each of the district court's directives, and as allowed by the 10th Circuit's Order.

Petitioner submitted the new Complaint to the district court on September 23, 2018.

As it relates to the matter-at-hand, it is important to note that the district court had received Amaro's final payment towards the \$350⁰⁰ PLRA Filing Fee on August 28, 2018, thus entitling him to "Service of process" on the defendants, by the Court Clerk, upon submission of the "Amended Complaint" to the district court.

With no action being taken in the matter by the district court, Petitioner inquired of the Court Clerk as to the status of the case.

With still no action being taken in the matter by the district court, and no response from the Court Clerk, Amaro submitted a "Letter of Error" to the Court Clerk formally notifying him of the error in which Petitioner had paid his Filing Fee in full, but had not been provided with the accompanying "Service of process" upon the Defendants, in breach of the contract (in as much as the Order Granting IFP status can be construed as a "contract" between the Plaintiff and the Court granting IFP status and Ordering the commencement of payments).

With still no action in the matter or response from the Court Clerk - 20 months after submitting the "Amended Complaint" to the district court - Petitioner proceeded back to the Court of Appeals seeking enforcement of its Order and the procedures due through a "Petition For A Writ of Mandamus To The District Court" and its Clerk. This Petition was filed by the district court on April 21, 2020.

In turn, the district court responded to the Mandamus Petition with issuance of three documents on May 28, 2020; Doc. 75, Order summarily dismissing the "Amended

Complaint"; Doc. 76, Order denying Mandamus Petitioner's "Application To Proceed In Forma Pauperis And 28 U.S.C. §1915(a)(3) Certification (later granted by the Clerk); and, Doc. 77, the "Judgment" dismissing the "Amended Complaint."

In its dismissal of the "Amended Complaint," the district court lashed-out at Amaro through the use of invective language to both complain about the number of Defendants (104) and the overall length of the "Amended Complaint" (which had grown to 142 pages, up from the original Complaint's 44 pages), and to chastise Amaro for having previously participated in the judicial process with a § 2254 Habeas Corpus Petition that was wholly unrelated to this case.

Petitioner contested the ruling with a "Motion For Relief From Judgment."

Upon denial of said Motion, Amaro proceeded with his second Appeal to the 10th Circuit in Case No. 21-2039.

As documented in the 10th Circuit's denial of Amaro's Appeal, both of the courts recognize the facts that Amaro had clearly claimed to have suffered through numerous incidents of exposure to Carbon Monoxide while in his assigned living areas and/or sleeping quarters due to structural defect(s) of the prison and "mechanical malfunction of the prison's boiler(s)/flue(s)," and had initiated Federal proceedings against numerous Defendants.

Affirming the district court's dismissal of the "Amended Complaint," "for failure to comply with the Court's Order and with Federal Rules of Civil Procedure," the 10th Circuit repeated some of the district court's gross mischaracterizations of both this case and the previously filed habeas corpus petition.

It should be noted that at no time during the course of the underlying proceedings did either court act to rule on any of the State-tort claims, negligence claims, or claims against the private entities (such The GEO Group, Inc. and Corizon "health care services), under the courts' purview through ancillary jurisdiction, and these claims remain unresolved.

REASONS FOR GRANTING THE PETITION

A. For The Safety Of Prisoners Confined To The Guadalupe County Correctional Facility At Santa Rosa, New Mexico, To Prevent Any Avoidable And Unnecessary Loss Of Life.

Under terms of official confinement, State Prisoners at the Guadalupe County Correctional Facility at Santa Rosa, New Mexico, have no way to protect themselves from the danger presented by the conditions of confinement, and without this Court's (proactive) intervention, the 'status quo' will be maintained and sooner or later a "tragic event" will take place with who knows how many prisoners will lose their lives due to inhalation of Carbon Monoxide stemming from a "mechanical malfunction of the prison's boiler(s)/flue(s)," as a result of the failure of officials to have the prison's structural 'defect(s)' cured so as to prevent contamination of the inmates' living areas and sleeping quarters with the deadly fumes.

At least three more "serious" Carbon Monoxide-related events have taken place at G.C.C.F. since the February 6, 2014, incident that has been acknowledged by the courts, with the newest-most recent one having occurred on May 17, 2021 (Appx. H.)

'On the street,' a single incident of Carbon Monoxide poisoning causes businesses to be immediately shut-down and homes to be condemned, but in the New Mexico prison system, prisoners are forced to constantly face death in a veritable "Gas Chamber" by having to reside in facilities that have proven themselves to be prone to toxic contamination of the inmates' living areas and sleeping quarters over-and-over, and over again, and yet nothing is done by anyone to protect the prisoners or prevent the incidents from recurring.

B. The Toxic Contamination Of Prisons With Carbon Monoxide Is An Issue That Has Not Been Addressed, And The Court's Guidance As To The Degree Of Protection To Be Provided To Inmates Under The U.S. Constitution's 8th Amendment Is Clearly Needed And Warranted.

Utilizing LEXIS NEXUS, Petitioner research revealed numerous cases in which the Court has addressed issues pertaining to Environmental Tobacco Smoke, friable asbestos, mold, excessive dust and lint particles in the air, exposure to human waste and fire hazards.

At no time has Petitioner encountered any case involving the issues at-play in this matter: repeating events of exposure to Carbon Monoxide and (acute) Carbon Monoxide Poisoning taking place within the confines of a prison facility, in the same manner over and over.

C. To Determine Whether A Prisoner May Bring A "Continuing Tort" Claim Under The Circumstances And/Or When Continuously Deprived Of A Civil Right.

Under §1983, deprivation of any Constitutional Right by a governmental agent, agency, or body constitutes an "actionable tort." This includes the Right to "reasonably safe and humane conditions of confinement" imposed on State and prison officials under the 8th Amendment's "Cruel and Unusual Punishment" clause.

Under 54 C.J.S. Limitation of Actions, a "tort" is "continuing" as long as a cause of action continues to inflict injury and/or remains a "continuing" threat to a party.

Also:

"Under the 'continuing tort' doctrine, ..., the cause of action accrues at, and limitations begin to run from, the date of the last injury. Continuing torts do not avoid the statute of limitations; rather, such torts remain timely not because the limitation period is tolled but because the cause of action continues to accrue."

Cline v. 5 Star Cent. Gas Pipeline, Inc., 356 F.Supp.2d 1203.

In Petitioner's case, the causes of action are "concurrent" as, without the prison's structural defect(s), the repetitions instances of "mechanical malfunction of the prison's boiler(s)/flue(s)" would pose no threat of harm to the prison's inmate population, and, likewise, without the repeating "mechanical malfunction of the prison's boiler(s)/flue(s)", the prison's design/construction would also not pose a threat to the prison's inmates.

Because it takes Both issues to cause injury, the failure of prison officials to have the structural issue(s) addressed constitutes "deliberate indifference" and a "continuing deprivation of reasonably safe and humane conditions of confinement" as the prison's inmates are under a constant and unabated risk of serious harm, injury, or - literally - death, from exposure to Carbon Monoxide pending "mechanical malfunctions of the prison's boiler(s)/flue(s)".

Because each instance of exposure to Carbon Monoxide at G.C.C.F. is predicated by the object failure of prison officials to have the structural issue(s) addressed/cured, each instance of exposure is directly related each of the other incidents of exposure, thus constituting multiple 'links' in an unbroken chain-of-events.

Put into other terms, each incident of exposure to Carbon Monoxide, at G.C.C.F., can be likened to 'different bullets all fired from the same gun'.

Under the language of 54 C.J.S. Limitation of Actions, Sections 177 and 223, Petitioner is well-within his rights (in New Mexico) to sue select Defendants under the "continuing tort" doctrine, and nothing in the treatise precludes or prevents a Prisoner-Plaintiff (not even one acting "Pro Se") from seeking relief and/or recovery of damages under its terms.

Moreover, because of the continuing nature of the underlying cause(s) of action, the most recent Carbon Monoxide-related event taking place at G.C.C.F. on May 17, 2021, reset the statute of limitations for all individual incidents inflicting injury upon the Petitioner/Plaintiff, meaning that, contrary to the holding of the lower courts, Petitioner is duly entitled to relief and/or recovery of damages for each and every incident of exposure/injury dating from December 28, 2012 to the present.

D. Because The Courts Below Have Egregiously Abused Their Power And/Or Discretion, And Without This Court's Intervention Will Continue to Act Abusively Towards Pro Se Prisoner Plaintiffs In A Manifestly Unjust Manner.

1. As is apparent from reading the 10th Circuit's "Order And Judgment" (Appx.), affirming the district court's dismissal of Petitioner's "Amended Complaint", both of the lower courts acknowledge that Amaro had named numerous Defendants, with direct mention of the CEO Group, Inc., and was seeking relief "under the Federal Civil Rights Act and the Constitutions of the United States and the State of New Mexico," as well as "under New Mexico civil and/or common law," including the New Mexico Tort Claims Act, however, the district court dismissed all claims against all parties based solely on a purported §1983 insufficiency in which Amaro failed to "state any plausible section 1983 claim against any named individual defendant," which overlooks the duty of officials to actually respond in the face of knowledge of a known risk of harm.

Under 42 U.S.C. §1983, supervisory officials may not be held liable for acts of their subordinates, but they may be found personally involved upon evidence of their failure to remedy a wrong after learning of it, gross negligence in managing subordinates who committed unconstitutional acts, or deliberate indifference by failing to act on information indicating that constitutional violations were occurring.

Incidentally, the structure of the policies and procedures of the New Mexico Corrections Department ("NMCD") states a 'chain-of-command' and requires all Wardens to immediately report each of a facility's major incidents to the Cabinet Secretary of Corrections, who reports them to the sitting Governor, thus statutorily conferring liability upon each official for no less than a failure to act in the face of knowledge of a known risk of harm.

For example, the Carbon Monoxide incident taking place at G.C.F. on December 28, 2012, was of sufficient emergency, requiring acquisition of 'supplies' from the locale's hospital, that then Governor Susana Martinez was immediately notified through the statutory 'chain-of-command', by NMCD officials.

Despite her personal knowledge of that event and the cause(s) of it, and the reporting to her of the subsequent ("January 2013") events at G.C.F., Martinez did nothing to intervene on behalf of the facility's inmate population.

Under the NMTCRA, Gov. Martinez also incurred liability in her personal capacity for negligent appointment of a Cabinet Secretary (for NMCD) who also failed to act to pro-

tect G.C.F. prisoners from the unnecessary harm of the foreseeable 'future' events that have taken place since the December 28, 2012 incident.

Likewise, GEO employees who may not have been accountable under an 8th Amendment violation, were still liable for negligence claims under both §1483 and the New Mexico Tort Claims Act, which does employ the doctrine of respondeat superior.

Moreover, where the district court disdains Petitioner's attempt to sue the actual owners of the prison and its property, New Mexico common law holds property owners liable for damages/injuries incurred on their property.

The NMTCA also contains a 'building waiver' which 'waives' governmental ("fort") liability for injuries/damages incurred on property operated under a State agency's purview.

As it happens, the County of Guadalupe, New Mexico, is (or was) the actual owner of the "Guadalupe County Correctional Facility" at Santa Rosa, New Mexico.

(Now, in the midst of 'transition' from private operation by the GEO Group, Inc., the prison will soon be operated by the State through NMCD.)

Besides the failure to recognize the personal liability of State officials under §1483's applicability and/or the NMTCA, it was an obvious "abuse of discretion" for the district court to dismiss the total Complaint while completely disregarding its ancillary jurisdiction to resolve the State-law claims.

2. The 10th Circuit's "Order And Judgment" (Appx. A.) affirming the district court's dismissal of the "Amended Complaint" (Appx. B) presents a solid showing of the facts that the courts did not "liberally construe" Amaro's pleadings nor take his allegations as to be true where they were to "assume the truth of the allegations, and interpret them liberally to 'raise' the strongest arguments [they] suggest[.]" *Abbas v. Nixon*, 480 F.3d 636, 639 (2nd Cir. 2007).

Instead, the courts countered this Court's principles to 'construe pro se civil rights complaints liberally' and 'take the allegations as true' by citing the 10th

Circuit's own case of *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008), and stating:

"[Amaro] remains obligated to comply with the Federal Rules of Civil And Appellate Procedure, and we may not act as his advocate."

Moreover, in the first Appeal, the 10th Circuit's reversal and remand (Appx.E.) was biased, in part, on the failure of the district court to "liberally construe" the claims of Amaro's original Complaint.

Intermediate scrutiny of the district court's "Order Granting Leave To Amend" (Appx.D.), provides a clear showing of the 'heightened' pleading requirements the district court arbitrarily imposed on Amaro in the aftermath of the 10th Circuit's Reversal and Remand (Appx.E.), and a direct comparison of the two documents shows that the district court's Order (Appx.D) did not comport with the 10th Circuit's allowances, nor did it heed the higher court's references to 'prospective injunctive/equitable relief' ('before a tragic event takes place') and the failure to resolve claims against private entities.

3. In terms of "Federal Rules of Civil and Appellate Procedure," the actual pleading standard stated by this Court does not require detailed factual allegations, but the complaint 'must contain sufficient factual matter ... to 'state a claim for relief that is plausible on its face'." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1455, 167 L.Ed.2d 929 (2007)).

Facial plausibility is established "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *Iqbal*, 129 S.Ct. 1949.

The 10th Circuit's Order affirming dismissal of the action (Appx.A) contains enough references from each of the district court's dismissals to show that Amaro's both of Amaro's Complaints met the minimum of the above-stated pleading standards, without having to read either of the Complaints.

Amaro would also contend that, where the district court asserts that he failed to comply with Fed. R. Civ. P. 8(a)(2), the court bases its complaint against the overall length of the Amended Complaint, which was drafted to comply, not with Fed. R. Civ. P. 8(a)(2), but with the district court's directives as contained in its "Order Granting Leave to Amend" (Appx. J) and the "Order Overruling Objections," which contrived to command Amaro to, essentially, add more information - on an 'individual-defendant basis' - than was written in the original Complaint (Appx. I).

Amaro asseverates that it was an obvious "abuse of discretion" for the district court to not only place an arbitrarily heightened pleading standard on a Pro Se Prisoner-Plaintiff in response to the higher court's reversal and remand, but also to incongruently demand more information, with detailed and specifically pleaded facts supported by documentation and then penalize him for submitting submitting a "voluminous" Amended Complaint.

Furthermore, it was an "abuse of discretion" for the district court to assert a "failure to comply with Fed. R. Civ. P. 8(a)(2)" and base a dismissal on the purported violation of Fed. R. Civ. P. 8(a)(2), which requires a "short and plain statement of the claim showing the pleader is entitled to relief," while applying the Rule against the overall length of the Amended Complaint - and not the actual substance or merit(s) of the Complaint.

For the record, the statement of the causes of action (two of them) take up relatively little space in the Amended Complaint (Appx. F) - a combined total of 14 pages (pages 59-62 for "Cause A"; and, pages 77-86 for "Cause B") ("Cause A" contains 33 claims against it; and "Cause B" contains 39 individually stated claims under it).

With 104 "named Defendants" (not the "in excess of 300" as stated by the district court), it took Amaro 51 pages to identify the parties, state their positions, and describe a theory of how each defendant, individually incurred liability in the matter - at hand.

Although the length of the Amended Complaint (Appx. I) spans 142, the facts and related claims are each stated as concisely as possible, in accordance with the district court's "Order Granting Leave To Amend" (Appx. D)

Is there a 'length limit' to a Civil Rights Complaint?

4. Where the Court of Appeals references Amaro's claim for relief for "assault with bodily intrusion" - inhalation of (toxic levels of) Carbon Monoxide inflicted physical injuries upon the person of Pedro J. Amaro not directly on the outside of his body, internally, with immediate injuries and also putting him at-risk of developing medical issues related to inhalation of Carbon Monoxide (such as lung cancer, skin cancer, and heart disease).

In fact, Petitioner has since been diagnosed as having "C.O.P.D.," and now requires daily treatment for the disease.

Denigrating Amaro's claim for relief for "assault with bodily intrusion" constitutes an "abuse of discretion" in and of itself, and also for use of inventive dialogue in the absence of any understanding of the nature of the claim.

5. Prejudicial delay in issuing rulings constitutes an "abuse of discretion", yet the district court took 20 months to issue its ruling, and did so at that time only because of Amaro's Mandamus Petition.

6. Arbitrarily requiring a Pro Se Prisoner-Plaintiff to prove his claims with supporting documentation before he is eligible to engage "Discovery" Rules? Is that not an "abuse of discretion"?

7. Amaro asseverates that the district court's failure to execute "service of process" pursuant to §1915(d) eclipses an "abuse of discretion" and constitutes a clear "breach of contract" in so much that Petitioner's Motion For IEP status requests the terms of a contractual obligation between a Plaintiff and the Court.

In granting IEP status and ordering payments to be made by the Plaintiff against the PLRA Filing Fee, the court implies that it will fulfill obligations when, and only when the Plaintiff fulfills his end of the contract (i.e., when the Filing Fee is "paid in full").

Although Amaro fulfilled the terms of the agreement the district court failed to execute the services prescribed under § 1915(d), leaving Amaro with a broken agreement.

8. As the issue of Carbon Monoxide is a very real "matter of life-and-death," the courts had authority to grant Amaro's "Motion For Appointment of Counsel" (Appx.) under 42 U.S.C. § 1988(b), yet opted to deny the Motion as well as Amaro's follow-up letter to the Court Clerk requesting referral of the matter to the "Pro Se Civil Rights Selection Committee," which was inappropriately "denied" as a second "Motion For Appointment of Counsel."

and,

9. In regards to the courts' invective assertion that "Amaro has a pattern of making grossly overbroad and unsupported claims," in reference to his previous habeas corpus petition, Amaro attaches a true copy of the § 2254 Complaint filed in that case (Appx. J) to establish that the district court's declaration amounts to an abusive mischaracterization of the matter.

As the related appendices show, in the 9th Judicial District of New Mexico, a former prosecutor acted to 'blow-the-whistle' on the District's practice of an unlawful Grand Jury scheme in which the District Attorney's Office exercised absolute control over the the Grand Jury process and the grand juries themselves.

In the aftermath of the 2012 exposure, it came to light that the scheme had been practiced in the counties of Curry and Roosevelt "since 1979." (Appx.)

Amaro's criminal case had been initiated in "Curry County," with the respective "Grand Jury Indictment" obtained by the Prosecutors on April 30, 2001 - well-within the time-frame in which the illegal Grand Jury scheme was utilized in the District.

Keenly aware of the "Class Action Habeas" category of law, and having taken notes from *Amadeo v. Zant*, 108 S.Ct. 1771 (1988); *Amadeo v. Kemp*, 773 F.2d 1141 (11th Cir. 1985); *Amadeo v. Kemp*, 816 F.2d 1502 (11th Cir. 1987), rev'd sub nom. *Amadeo v. Zant*, 108 S.Ct. 1771 (1988), Amaro sought relief first, from the State courts, and then from Federal courts.

Contrary to the 10th Circuit's characterization of the Habeas Corpus Petition as having "grossly overbroad and unsupported claims," Amaro sought to vacate only the "Grand Jury Indictment-based convictions" wrongfully obtained by the State of New Mexico, in the 9th Judicial District, during the time-frame corresponding to the District's practice of its own grand jury-based 'custom' (in place of the statutorily prescribed procedures), on the grounds that an illegal "Grand Jury" has absolutely no quantum of true legal authority to convey

jurisdiction (for criminal prosecution) to any court, thereby raising a "jurisdictional issue" (which "can be raised at any time").

Despite a court's power to take notice of jurisdictional issues *sua sponte*, no court ever acted to reach, address, or resolve the jurisdictional issues of the case.

Instead, the Federal courts cited *Fyombo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000) (quoting *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975)), and held that "a pro se litigant cannot represent or act on behalf of others."

First, this holding applies to cases involving 'regular' civil law and does not take into account the history of the "Writ of Habeas Corpus" in which "Habeas Law" clearly allows the submission of petitions on behalf of others under the "Next-Friend Petition" rules.

Second - and more importantly - *Fyombo* was decided in 2000, predating Congress' 2003 Amendments to Fed. R. Civ. P. 23 with 'new' procedures plainly altering the previous version's "Adequacy" requirements by making it a mandatory act for a court to appoint qualified legal counsel to a class upon certification.

In the 10th Circuit and its district courts, this 'new' has never been accepted or applied to Pro Se Plaintiff/Petitioners.

Instead, the procedure is negated and/or circumvented as non-attorney Petitioner/Plaintiffs are strictly prohibited from even bringing "class action claims" to a court for consideration, which disembowels the Congressional intent behind the 2003 Amendments to Rule 23.

And, yet, the lower courts denigrate Amaro for their own misapprehension of current law.

E. The Court's Guidance Is Meaded to Rectify The Courts' Misuse Of The Prison Litigation Reform Act, 42 U.S.C.A. § 1997e.

1. Although § 1997e(a) states:

"No action shall be brought with respect to prison conditions under Section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as available are exhausted, "

the same does not come without qualifications.

Primarily, § 1997e applies to States whose prison Grievance procedures have been reviewed and certified by a U. S. Attorney General:

- a. "42 U.S.C. § 1997e(b)(1) instructs the Attorney General to "promulgate minimum standards for the development and implementation of a plain, speedy, and effective system" of administrative remedies; and,
- b. "§ 1997e(b)(2) specifies certain minimum standards that must be included."

Thus, a "court may require exhaustion of administrative remedies only if the Attorney General has certified or the court has determined that such administrative remedies are in substantial compliance with the minimum acceptable standards promulgated under subsection (b) '."

In 1986, the State of New Mexico was denied such certification as the State's prison Grievance procedures/practices were found by the U.S. Attorney General to not be "in substantial compliance" with § 1997e(b)(2)'s minimum standards.

At no time since then has New Mexico ever received certification of the prison Grievance procedures and, thus, § 1997e's "narrowly carved exceptions" do not apply to the State of New Mexico.

Even worse, New Mexico's prison Grievance procedures are currently under attack, in several COVID-19-based cases, for being patently "ineffective."

2. On another level, Petitioner refers the Court to the case of *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496; 102 S.Ct. 2557; 73 L.Ed.2d 172 (1982), in which this Court took note of not only the language of § 1997e et seq. but also its legislative history and intent.

In its holding, the Court stated:

"Section 1997e and its legislative history demonstrate that Congress understood that exhaustion is not generally required in §1983 actions, and that it decided to carve out only a narrow exception to this rule. A judicially imposed exhaustion requirement would be inconsistent with Congress' decision to adopt §1997e and would usurp policy judgments that Congress has reserved for itself."

The 10th Circuit's Order in this matter (Appx. A.) establishes the imposition, by the local Federal courts, of just such an exhaustion requirement upon all Pro Se Prisoner Plaintiffs seeking relief under §1983.

To avoid any confusion or contention regarding the district court's 'judicial imposition of an exhaustion requirement under §1997e', Petitioner submits a blank copy of the "Complaint For Violation Of Civil Rights" form issued to would-be Plaintiffs by the U.S. District Court for the District of New Mexico (Appx. I).

This blank document establishes the fact that not only are §1983 Plaintiffs in New Mexico subjected to the 'judicially imposed exhaustion requirement', New Mexico Federal courts regard the exhaustion requirement as a "pleading standard" and not a "defense mechanism" to be pleaded by defending parties.

It should also be noted that this 'judicially imposed exhaustion requirement' is in place in a State whose prison grievance procedures have been denied certification by a U.S. Attorney General.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 11, 2021