

21-7849  
No. \_\_\_\_\_

21-3365

IN THE

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

MARK STINSON, Reg #29908-076 -- PETITIONER

VS.

JOHN P. YATES, ET AL., -- RESONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MARK STINSON, Reg #29908-076

1629 WINCHESTER ROAD

MEMPHS, TN 38116

901-542-1943

## **QUESTION(S) PRESENTED**

1. What limits the Due Process Clause of the Fifth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reason?
2. Whether the mere possibility of petitioner's rational argument of the law or facts in support of his claim is warranted, and whether the district court violated the Seventh amendment when the court dismissed this matter without having a jury trial as was demanded?
3. Whether there was a violation of the First and Eighth Amendment Rights violated?

## **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 th 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 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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 December 15 2022

☐ 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: February 8, 2022, 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**

**First, Fifth, Sixth, Seventh and Eighth Amendment Rights Violation**

**Fundamentally Unfairness**

**Loss of Liberty**

**Cruel and Unusual Punishment**

**Punishment Disproportional to the Offense**



## **STATEMENT OF THE CASE**

COMES NOW, the Petitioner, Mark Stinson, the undersigned in this action, MOVES This HONORABLE Court to issue a Petition for Writ of Certiorari.

### **BACKGROUND AND PROCEDURAL HISTORY**

On 4/27/2021, the petitioner was sent to the SHU (special housing unit) for not reporting to an involuntary work assignment, that they weren't sure if they needed me. I refused to go because I had been fired twice, by this department. I was fired from the food service kitchen Aug. 2019, on my off day. I was again fire from the food service warehouse Dec. 2020, and both times I didn't know why I was fired. Not only was I fired but I was cursed out and called out of my name and told not to come back ever. SEE email sent on 3/28/2021. I was sent to the SHU on 3/19/2021, for 8 days for not wanting to go to work where I had already been fired twice. I didn't need any more abuse. After getting out of the SHU, I filed a complaint on 3/28/2021, SEE email. On 4/27/2021, counselor Rendon put name on the involuntary list, knowing about the civil suit filed on 4/9/2021 (Case No.2:21CV33-BSM), which he is a party of. Counselor Vance informed me that Rendon put name on the list (retaliation). After B. Crawford was told by me what was going on, he still insisted that I go to the job. I then went up to the front and spoke to Unit Manager Blair and explained to her that I had sent her an email trying to solve the problem on 3/28/2021, before things got out of hand. Blair still told me if I don't go to the job she will send me to the SHU. I said I am looking out for my safety. Blair told B. Crawford to take me to the SHU. I was in the SHU for 44 days for something that I tried to get worked out. While housed in the SHU, I couldn't eat for the first three days, due to mental

stress and suicidal thoughts. I tried to speak with the warden Yates, about me being moved without going to DHO. Yates told me that "I can move you to a USP without going to DHO."

### **REASONS FOR GRANTING THE PETITION**

The text for frivolity is whether the plaintiff can make a rational argument on the law or facts in support of his claim. Anders v. California, 366 U.S. 738 S.Ct. 1396 Ed.2d 493 (1967); Watson v. Ault, 525 F.2d 886 (5<sup>th</sup> Cir. 1976).

The Petitioner's liberty freedoms were denied while housed in the SHU and then transferred to the LOW, without going to a review board. The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Ferrara v. United States, 384 F. Supp. 2d 384(D.Mass. 2005), Barone v. United States, 610 F. Supp. 2d (D.Mass. 2009).

After the 44 days were up in the SHU, I was then transferred to the LOW with a Greater Security Transfer. I haven't been to a review panel or spoke to DHO. This is clearly retaliation and cruel and unusual punishment and not procedure. SEE Hawk v. Ecoffey, and Baxter v. Palmigiano.

Court must also weigh all factual allegations in favor of the plaintiff unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32 (1992). In reviewing a pro se complaint under §1915(e)(2)(B), the Court must give the complaintive the benefit of a liberal construction. Haines v. Kerner, 404, U.S. 519, 520 (1972).

Clearly the petitioner's First, Fifth and Eighth Amendments Rights has been violated and was denied Due-Process during a prison disciplinary proceeding. Wolff v. McDonnell, Supreme Court (1974). Also Baxter v. Palmigiano.

Additionally, to survive a court's 28 U.S.C. §1915 (e)(2) and 42 U.S.C. §1997 e (c)(1) screening, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Twombly, 550 U.S. at 556-7. This action is retaliation for a prior civil suit (Case No.2:21CV33-BSM).

"A Bivens claim is a cause of action brought directly under the U.S. constitution against a federal officer acting in his individual capacity for violation of constitutional protected rights." Buford v. Runyon, 160 F.3d 1199, 1203, n. 6 (8<sup>th</sup> Cir. 1998). In Ziglar v. Abbasi, the United States Supreme Court held that a federal implied damages remedy applies in three circumstances: "a claim against FBI agents for handcuffing a man in his own home without a warrant; a claim against a Congressman for firing his female secretary; and a claim against prison officials for failure to treat an inmate's asthma." 137 S.Ct. 183, 1860 (2017) (citing Bivens, 403 U.S. 388 (1971); Davis v. Passman, 442 U.S. 228 (1979); and Carlson v. Green, 446 U.S. 14 (1980)).

The petitioner is suffering excessive administrative segregation, as discipline without due process and cruel and unusual punishment and have not seen or talked with a psychologist specialist. And loss of liberty freedoms and very mentally dis-stressed from PTSD, which the petitioner suffered during his tour of duty in the United States Army where he was awarded a Service Ribbon with Three Bronze Stars.

In Hawk v. Ecoffey, an inmate alleged that federal officers violated his const. rights when they failed to submit the necessary doc. Related to his fed. Indictment and conviction. No. CIV.19-5012-JLV,2020 WL 999010 \*2 (D.S.D. 2020).

What limits the Due Process Clause of the Fifth Amend. Places on the authority of prison admin. to remove inmates from the general population and confine them to less desirable regimen for admin. reasons. Hewitt v. Helms. The convictions of isolation confinement can be disproportionate to the offense involved or used for an improper means and thus run afoul of the 8<sup>th</sup> Amend. Furthermore, the procedure by which isolation is enforced can be fundamentally unfair, in violation of due process of law. Wolff v. McDonnell, Baxter v. Palmigiano.

Punishment proportional to the offense, a further basis for granting relief is when the punishment is disproportional to the infraction committed by the prisoner. The petitioner was sent to the SHU and then transferred to the LOW for a 300 series shot, placed behind bars and the "imprisonment form" hasn't been signed by the U.S. Marshal Dept. (SEE Exhibit D). Therefore, the petitioner is not in custody of the U.S. Marshal's dept. Retaliation and disproportionate action is an unlawful infraction, cruel and unusual punishment and increased imminent dangerous environment which increases the chances of physical injury. The petitioner's First, Fifth and Eighth amendment rights has been violated. Phillips v. Norris, 320 F.3d 844, 846 (8<sup>th</sup> Cir. 2003). Sandin v. Conner, 515 U.S. 472, 484 (1995).

The transfer from the Camp to the SHU then the LOW was a very difficult hardship and put the petitioner in a very dangerous environment. Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). "In order to determine whether inmate possesses a liberty interest we compare

Condition which the inmate exposed in segregation with those he could expect experience an ordinary incident of prison life.” Phillips, 320 F.3d at 847 (quoting Beverati v. Smith, 120 F.3d 500, 503 (4<sup>th</sup> Cir. 1997)).

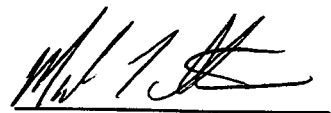
The District Court dismissed this case without a jury trial and a jury trial was requested by the plaintiff. This was clearly a violation of the Seventh Amendment Rule 38, Right to a jury Trial; Demand.

The Court notes the well-recognized principle that complaints drawn by pro se litigants are held to a less stringent standard than those drawn by legal counsel. Haines v. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); United States V. Rains, 615 F.3d 589 (5<sup>th</sup> Cir. 2010).

#### CONCLUSION

Therefore, for the foregoing reasons, the Court “*shall*” Grant the Petition for Writ of Certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Stinson', written over a horizontal line.

Mark Stinson

Reg #29908-076

April 27, 2022