

22-5559

IN THE UNITED STATES SUPREME COURT

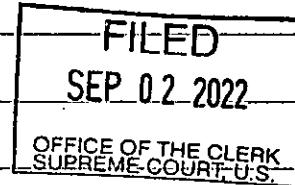
ORIGINAL

IN RE: PATRICIO ESTRADA

PETITIONER

VS.

TROY NEHLS,
Respondents



Court of First Instance
The United States District Court
Southern District of Texas - Houston Division
Cause No: 4-19-CV-3883

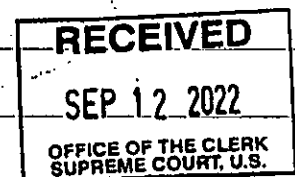
Appealed From The Fifth Circuit
Case No: 21-20160

PETITION FOR A WRIT OF CERTIORARI

From A Prisoner Complaint Civil Action 42 U.S.C. §1983

ORAL ARGUMENT REQUESTED

Patricio Estrada #208904/
"Hightower Unit"
902 FM 686
Dayton, Tx 77535
(1)



Questions For Review

- 1) Can you address the differences in Due Process rights to admin. segregation, verses disciplinary isolation; was Estrada's Equal Protection, and Due Process rights violated, by being placed in disciplinary isolation, prior to any hearing; when there was clearly other options?
- 2) Did Sheriff Nehls create an unconstitutional custom/practice, by keeping the communication machine turned "OFF", while in the disciplinary dorm; which is used for ordering writing material, hygiene; Medical request; appeal disciplinary; file grievances?
- 3) Did Pailes and Owens violate Estrada's Eighth Amendment rights of the U.S. Constitution, by ~~se~~ seizing a medically issued additional mattress, (which the prescription was still valid) without the approval of a licensed Medical Personnel?
- 4) Did Pailes and Owens violate Estrada's Eighth Amendment right of the U.S. Constitution, by refusing him medical treatment immediately after a physical altercation, despite the fact it was beyond obvious, Estrada had prior physical disabilities, and his out-cries of pain, and difficulty breathing?
- 5) Was there a violation to Estrada's Equal Protection rights, by Pailes, and Owens (two white Officer's), in their treatment towards Estrada, (a hispanic) ~~verses~~ Atkinson (a white inmate) immediately after an altercation?
- 6) Did Owens and Pailes violate the conspiracy rule of 42§1983, and §1985(3)?

- 7) Did Owens, and Pales violate Estrada's Due Process rights, by placing him on discipline isolation, after a physical altercation with another inmate, prior to any written statement or hearing?
- 8) Did Owens and Pales violate Estrada's U.S. Constitutional rights, by seizing his personal reading material (religious and legal) and donate it to the jail library?
- 9) Did Defendant Erivo violate Estrada's Eighth Amendment U.S. Constitutional right of "Failure-To-Protect", by disregarding threats made from inmate Atkinson, several days prior to Atkinson assaulting Estrada?
- 10) Did Defendants Erivo, and Lilly violate Estrada's rights of the U.S. Constitution, by not allowing a fair disciplinary hearing?
- 11) Did Defendant Rabius violate Estrada's Eighth Amendment U.S. Constitutional right, by interfering with prescribed medical treatment, discontinue a prescription, and intentionally delay access to a "licensed medical personnel (all without a license to do so)?
- 12) Although ~~both~~ both lower Courts refused to make mention of the claims against Dr. Khan, did Estrada show an Eighth Amendment claim against him?
- 13) Did Estrada state claims against Fort Bend County, Sheriff Nehl, and CCS, for municipal liability?

14) Did Rabius commit a violation of the law, by cancelling Estrada's prescriptions of meloxicam, and medical mat pass; then later present an Affidavit stating she did not have the license to do so?

15) Did Dr. Khan violate Estrada's Eighth Amendment Of The U.S. Constitution, by basing his medical judgement on rather, if ~~a~~ Estrada had started a fight, and refusing to return a second mat to Estrada, when the prescription was still valid?

16) Did defendants Pailes; Owens; Erivo; Lilly; Rabius; Khan, all participate in violate Estrada's rights Under the conspiracy of 42§1983, and §1985?

17) Did Pailes; Owens; Rabius; Khan, all participate in violating American's with Disabilities Act, ² by interfering with treatment, and refusing medical service?

18) Did it violate Estrada's right to study the law, and religious freedom rights, to confiscate his personally purchased legal books, and religious books, and other reading material, and donate it to the facility library, that only provides materials on Christianity (which Estrada is not a Christian, respectfully)?

19) Did Estrada properly state a claim of Supervisor Liability against Sheriff Nehls; Sgt. Pailes; Deputy Erivo; Deputy Lilly; Dr. Khan; CCS, LLC?

20) Did the District Court, and Fifth Cir. error in dismissing Estrada's claims, and in granting the defendants Summary Judgement?

21) Did Estrada's rights get violated under the Eighth Amendment, "totality of conditions of confinement"?

22) Did Fort Bend County, and Sheriff Nehls, violate the First, Fourteenth Amendments, and "RLUIPA", by creating a custom/practice, that allows F.B.C.J to claim all "personally purchased" reading materials, (including religious and legal material) and allow the facility Chaplain to exchange them in the local book stores for more "Christian-Base" books?

23) With Defendant Rabius' own testimony (Affidavit) admitting she is not licensed to alter or cancel prescriptions, and Estrada's own medical record stating she did just that, by cancelling Estrada's prescription, for an additional mat, (around 50 days after she deprived Estrada of having the mat); did Rabius violate the Eighth Amendment, as well Criminal law's?

24) Did Both Lower Courts cause a error in judgement, by stating the interference of Estrada's prescriptions was for only a few days, when infact, the evidence shows, his access to a additional medical mat was disrupted about (50) days?

25) Is it enough in showing an "ADA" violation, by pointing out that officials interferred with Estrada's medical treatment, removing materials from his possession, that's used to alleviate pain, purely to cause pain and suffering?

Parties To The Proceedings

Appellant:

- 1) Patricio Estrada

Appellee's

- 1) Fort Bend County;
- 2) Troy Nehls - Sheriff of Fort Bend County;
- 3) Sgt. Pales
- 4) Officer Owens
- 5) Deputy Erivo
- 6) Deputy Lilly
- 7) Correct Care Solutions
- 8) Nurse Rabius
- 9) Dr. Khan

List Of Proceedings

- 1) On Sept. 25, 2019, a prisoner complaint 42 U.S.C. §1983, was filed in the U.S. District Court, for the Southern District of Texas-Houston, Case No. 4-19-cv-3883;
- 2) On March 2, 2020, the U.S. Dist. Court, ordered for "A More Definite Statement";
- 3) On April 1, 2020, Plaintiff filed a "more Definite Statement";
- 4) On June 25, 2020, the U.S. Dist. Court, ordered the Defendants a Service Of Process, and To Answer To the complaints;

5) On July 30, 2020, the individual county defendants filed a Motion To Dismiss the complaint

6) On August 18, 2020, the individual county defendants Filed an answer to the complaint

7) On Sept. 4, 2020 Medical defendants filed An Answer to the complaint.

8) On March 9, 2021, the U.S.D.C. filed an order Granting All defendants Summary Judgement, and dismissing the plaintiff's claims.

9) On March 24, 2021 Plaintiff filed a Notice of Appeal

10) The Fifth Cir. entered a Judgement under case NO. 21-20166, dismissing the plaintiff's claims on June 13, 2022

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Citations Of The Reports & Orders Entered In The Case

- 1) On March 2, 2020, Estrada was Ordered To File A More definite Statement;
- 2) On June 26, 2020, the U.S.D.C., issued a Order For Service Of Process, requiring the defendants to file answers to the Complaint;
- 3) On March 9, 2021, the U.S.D.C., Filed a Memorandum & Order, granting the defendants Motion for Summary Judgement, and dismissing all claims,
- 4) On June 13, 2022, the Fifth Cir. Of Appeals entered an Order Affirming the District Courts final Judgement.

Jurisdiction Statement

This is a civil action authorized by 42 U.S.C. § 1983; the Southern Dist. Of Texas - Houston Division was an appropriate venue of first instance under 28 U.S.C. ~~§ 1332~~ § 1323(b)(2)

On June 13, 2022, the Fifth Circuit Of Appeals entered a final order, dismissing all of Estrada's claims;

The Supreme Court has jurisdiction to review all writs under 28 U.S.C. § 1651(a); The Supreme Court has jurisdiction to review a Circuit Courts decision under 28 U.S.C. § 1254, as well as U.S. Constitution Art. III, § 2

Accordingly, pursuant to Sup. Ct. R. 29(4)(b), 28 U.S.C. § 2403(a) may apply, and shall be served on the Solicitor General of the U.S.; D.O.J., 950 Pennsylvania Ave, N.W. Rm. 5614, Washington, D.C. 20530

Provisions Of Laws

- 1 First Amendment Of The U.S. Constitution
 - 2 Forth Amendment Of The U.S. Constitutions
 - 3 The Eighth Amendment Of The U.S. Constitution
 - 4) Forteenth Amendment Of The U.S. Constitution
 - 5) 42 U.S.C. § 1983 conspiracy Act
 - 6) Americans With Disabilities Act
 - 7) Conspiracy to interfere under 42 U.S.C. § 1985 (3)
 - 8) Religious Lands Use & Institutionalized Persons Act
- Statement Of The Case

1) This case arises from a prisoner's complaint, which the U.S.D.C., had jurisdiction to review the complaint under 42 U.S.C. § 1983; the southern district of Texas-Houston, had jurisdiction of first instance, under 28 U.S.C. § 1331 and 1343(a)(3).

2) From 2018-2019, the plaintiff Patricio Estrada, was incarcerated at the Fort Bend County Jail, in the Protective-Custody dorm, due to his physical, and mental disabilities.

3) Between Sept. - Oct. 27, 2018, Estrada and several other inmates placed complaints against (2) inmates, (Atkinson, and a unknown inmate) for racial harassment; verbal threats of bodily injury; extortion; and contaminating the drinking and eating areas.

These complaints were made to several shift officers; supervisors; on the communication machine (kiosk) as housing problems; and grievances; (see U.S.D.C. doc. 1-2, pg. 5-sec. 1, ~~doc.~~ pg. 11-sec. 1; ~~doc.~~ U.S.D.C. doc. 10, pg. 6; Doc. 19 pg. 8)

4) On Oct. 26, 2018 the unknown inmate was moved, which made Atkinson fierce; on Oct. 27, 2018, Atkinson wiped sweat off his body with a rag, threw it at Estrada where he was eating, then attacked him.

He grabbed Estrada by the legs, picked him up in the air, and slammed him down on his back, causing the back of Estrada's head and neck to hit the table and bench he was sitting at; Atkinson then began kicking and punching Estrada all over his head and body as he was down; (see Doc. 1-2 pg. 5 sec. 2; Doc. 10 pg. 5, sec. 2; doc. 19 pg. 10, of the U.S.D.C. file.)

5) When Officers began entering the dorm to break-up the altercation, Atkinson was still standing over Estrada, kicking, punching, and stomping his foot down at Estrada, all he was doing in return, was attempting to block them.

Officer Serna, walked Atkinson out the dorm (no restraints, or force); when Officer Owens showed up, Estrada was attempting to put his shoes back on, when Owens forcefully grabbed Estrada, yanked him to his feet, and literally started shoving him out the dorm, (causing Estrada to stumble) shoved him face first against a wall, and placed him in restraints, (see U.S.D.C. doc 39, pg. 6).

6) As typical after a physical altercation, a ~~was~~ medical staff was notified and arrived on the 6th floor, where the altercation occurred.

Immediately upon Med. Personnel arriving, Pailes, and Owens began telling her who will get Med. treatment, and who will not, by stating (Atkinson) will go to the infirmary for a full exam; Estrada will go to isolation, he can put a request to see medical later, his breathing is only the adrenaline; the nurses response was; Since he is not bleeding - Okay, (although it was obvious Estrada was in severe pain) (see U.S.D.C. doc. 19, pg's 3-4; and doc. 39, pg's 5-6)

7) Estrada was then escorted to the disciplinary isolation dorm, (without notice or hearing); Estrada consistently pleaded with Pailes and Owens, of his need to go to the infirmary, due to the severe pain he was in; in ~~response~~ response, the Officers would taunt Estrada, by stating: You should not have started a fight, and you wouldn't be in pain; we cannot have you starting more fights their, so you can put a medical request later, (while smiling). (see U.S.D.C. doc. 1-2, pg. 6, sec. 3; doc. 19, pg's 3-4; doc. 39, pg. 5-6, 9)

8) Once Estrada was placed in the isolation dorm, Pailes, confiscated all of Estrada's personal items, and the following items was not returned: additional mat prescribed for medical purposes; reading materials including educational, religious, and legal; (which was donated to the facility library). (see U.S.D.C. doc. 10, pg. 6, sec. 3; doc. 19, pg. 4, sec. 2; doc. 39, pg. 8, and half)

9) While housed in the isolation dorm, the facility had a practice/custom, of keeping the kiosk machine "OFF", which is used to place request for medical; commissary; grievances; appeal disciplinary hearings. (see doc. 10, pg. 6, sec. 4; doc. 19, pg. 2, 8; doc. 39, pg. 2-4, all of U.S.D.C. documents).

10) Estrada ~~he~~ remained in complete pain throughout his body, in isolation for several days, before a Shift Officer felt the need to contact medical; which Nurse Rabius arrived at the disciplinary dorm, only to state, "I was already told, you started a fight, and if you can do that, then you must not be as physically disabled as you claim; I find no reason for you to have a medical mat pass, nor moloxicam anymore." (see U.S.D.C. doc. 1-2, pg. 7; doc. 19, pg. 4, last sec., pg. 5; doc. 51, pg.'s 1-5)

11) After several days in disciplinary isolation, a hearing was held by defendants, Eribo, and Lilly, in which they found Estrada guilty, and sentenced him (15) days isolation, without the opportunity to present evidence/witness. (see U.S.D.C. doc. 10, pg. 6-7; doc. 19, pg.'s 5-6; doc. 39, pg.'s 9-10)

12) A few days after being released from isolation, Estrada was seen by Dr. Khan, in which he repeated Ms. Rabius' statement mentioned in ground (9) on this page, and added, "I will order you moloxicam for a few days, but after that, you can put as many med. request as you wish, you will get nothing from me." (see U.S.D.C. doc. 10, pg. 12; doc. 19, pg.'s 6-7; doc. 51, pg.'s 3-5)

Grounds For Arguement

Claims against Troy Nehls

1) In the 5th Cir.; findings and conclusions to the Appeal filed June 13, 2022, pg. 3, it states Estrada's claims against Sheriff Nehls, regarding the kiosk in the disciplinary dorm remaining off; seizure of personal reading material, and municipal liability, was insufficient to state a claim.

Response To Claims Regarding The Kiosk Machine

a) in regards to the kiosk purposely being in the OFF position, Nehls provided this custom/practice interfered with Estrada's access to report his medical needs to the medical dept, forcing him to rely on Officers, to use their untrained judgement to the seriousness of his needs; this custom/practice contributed to Estrada remaining in severe pain throughout his body, and migraines, for several days in isolation, until an Officer seen Estrada had a need for medical care, and reported it immediately, (all prior shift Officers disregarded the issues).

This violated the Eighth Amendment of the U.S. Constitution, see *Baswell v. Sherburne County*, 849 F.2d 1117 (8th Cir. 1988) [*1123] (failure of an official to safeguard against constitutional transgressions by subordinates, constitutes an actionable wrong under 42 U.S.C. § 1983. . . . The Court found deliberate indifference, when Supervisors directed jailers to use their untrained judgement about the seriousness of a prisoner's medical needs, rather than notify a trained medical personnel).

The practice/custom of blocking prisoners access to medical, while in isolation, is due to the fact that prisoners in solitary confinement use a medical request as a way to go to the infirmary, solely to get out of their cell's for a bit; this is no ground to assume inmates being disciplined, does not deserve access to adequate medical care.

See *Lewis v. Hyland*, 434 U.S. 931 (1977) (for Eighth Amendment purposes, there is a distinguishment between deliberate indifference to prisoner's medical needs, and accidental failure to provide adequate medical care) (citing *Estelle v. Gamble*, 429 U.S. 97, 104-106 (1976))

See *Estelle v. Gamble*, 429 U.S. 97 (1976) deliberate indifference can be manifested by prison doctors . . . or by prison guards in intentionally denying or delaying access to medical care.

b) Due to being denied access to purchase hygiene on the kiosk machine, Estrada went (16) days of not properly showering, and not brushing his teeth, which violates the Eighth Amendment of inhumane conditions.

It is a medical fact, germs and bacteria from the mouth, causes heart diseases, and other health issues; this deprivation of basic human needs, placed Estrada at risk of serious harm to his health and safety.

See *Helling v. McKinney*, 509 U.S. 25 (1993) (inmate stated a claim of action under the Eighth Amendment, by alleging the defendants exposed him to unreasonable risk of serious damage of his future health)

(had)
c) Although a claim must show an actual injury, ~~had~~ Estrada been capable of accessing a disciplinary appeal, and grievance process, it's possible he would have been able to notify the proper official about his medical conditions being ignored, while in solitary confinement, Estrada may have received immediate attention, rather wait for about (20) days to see a licensed doctor.

Not only did Nehls practice/custom violate the standards of Eighth Amendment claims, the Supreme Court laid out in *Estelle v. Gamble*, but the overall action of these multiple violations, add up to a Eighth Amendment violation on the "totality of conditions of confinement."

See *Palmer v. Johnson*, 193 F.3d 346 (5th Cir. 1999) A single condition might not state a claim on it's own, but multiple conditions add up to create an overall effect that is unconstitutional; also see *Wilson v. Seiter*, 501 U.S. 294, 305 (1991)

~~Claims of~~

Claims against the Practice/Custom of Confiscating Reading Materials.

d) The facility library only provided religious material "only" pertaining to Christianity, which Estrada is not, he is involved with, open-faith, free-thinking, which is a society more based on spiritualist, instead of a particular religion, ~~and~~ He gains his knowledge by studying from different sources, (Quran, Bible, Buddha studies, etc, etc.) which his family purchases his books for him, some he brought from Prison, on Benchwarrant.

Troy Nehls created a custom/practice, that allowed his subordinates mark all reading material as "donated to F.B.C.J.", and confiscate "All" reading material from all inmates going on disciplinary confinement; (Never to be seen again).

¶ This violates the First Amendment of the U.S. Constitution, see *Turner v. Safley*, 482 U.S. 78 (1987) (The Supreme Court considers this case as the Turner test, for First Amendment claims).

This also violates RLUIPA, see *Cutter v. Wilkinson*, 544 U.S. 709 (2005) The Court held that facilities that accept federal funding cannot deny a prisoners access to engage in practicing their own religious beliefs).

Some Of the Books Estrada had confiscated from his possession, was books to study the law, in which the facility had no legitimate interest in seizing them, other than block access to the Court, which violates the First and Fourteenth Amendments.

e) For the abovementioned complaints, Estrada believes he went beyond the threshold, of proving Supervisor Liability, and Municipal liability against Sheriff Nehls and Fort Bend County.

f) On the Fifth Cir. rulings filed June 13, 2022, pg. (3) it states Estrada has not stated a plausible claim against Nehls, for the custom/policy of allowing his subordinates to place inmates in disciplinary isolation prior to any hearing.

Estrada, due to this custom/policy, was placed in disciplinary housing in severe pain for (16) days without access to medical treatment, by Nehls subordinates committing excessive use of force, under the act of evil intentions, depriving Estrada of Liberty without due process, in violation of the Fourteenth Amendment.

See *Petta v. Rivera*, 133 F.3d 330 (5th Cir. 1998) "The Petta children asserted a valid claim under §1983 for a constitutional violation;" also see *Shillingford v. Holmes*, 634 F.2d 263 (5th Cir. 1981).

Nehls is liable for the harm done, under the Monell doctrine, he has a Municipal liability, as well as Fort Bend County for the customs/policy they allow; see *Brown v. Dist. Of Columbia*, 514 F.3d 1279 (D.C. Cir. 2008) (The Supreme Court has placed within the ambit of prohibition of punishments... anything that involves unnecessary and wanton infliction of pain.

2) Claims against Sgt. Pailes, and Officer Owens

a) Claims of Deliberate Indifference

In the Fifth Cir. rulings filed June 13, 2022, pg. (4), it states the defendants committed no deliberate indifference, because Estrada indeed received medical treatment, and there is no indication his complaints was ignored, or the Officer's refused to seek treatment.

Argument:

- i) This is so far from the truth, as Estrada consistently stated, it's typical in F.B.C. J. that a medical personnel be called to the scene of a physical altercation, to use their trained judgement on any injuries; however, Pailes and Owens did not allow her to conduct her duties, by stating Estrada is going to disciplinary housing, and if he wants, he can put a medical request later.

This violates the Eighth Amendment; see *Brown v. District Of Columbia*, 514 F.3d 1279 (D.C. Cir. 2008) (it violates the Eighth Amendment for non-medical personnel to deny or delay access to medical treatment...). The Supreme Court's has found such acts to not only to evident deliberate indifference, but also places it within the ambit of prohibition of Cruel and Unusual Punishment, when the act is done with evil intent; also see *Estelle v. Gamble*, 429 U.S. 97 (1976)

- ii) In order for a inmate to receive a medical pass for an additional mat, in F.B.C. J., a prisoner must have a serious medical need, or physical disability, that requires the need to alleviate the pain; (all officials are aware of these standards for a pass).

Not only did Officer Serra walk in the dorm to see Atkinson Kicking, stomping, and punching Estrada throughout his head and body, while he was ~~at~~ laying on the floor; when Owens entered the dorm, he disregarded the pain Estrada was in, and difficulty of movement he was having, by grabbing Estrada by the arm, yanked him to his feet, forcefully pushing him out the dorm, causing him to stumble out the dorm.

Estrada consistently stated, he was having difficulty breathing, which was causing chest pains, which the defendants only disregarded it as an adrenaline rush.

When Piles and Owens noticed Estrada had a second mat due to medical reasons, it alone would have put them on notice, Estrada had serious medical needs, prior to the altercation, and therefore really needs immediate medical care.

Instead the defendants used their untrained judgement to decide: "if he can be in an altercation, he does not really need an additional mat, and he can see medical when he gets out of disciplinary housing in (16) days."

In the disciplinary housing area, as well as the walk there (which Estrada was forced to carry his own belongings, when typically a cart is used to help those with disabilities) Estrada consistently pleaded with the defendants of extreme pains throughout his head, body, and left leg; their response was, laughter and disregard by stating, you can see medical some other time.

It is impossible to understand the U.S.D.C. and Fifth Cir. Findings, that there is no indication of ignoring Estrada's complaints or acts of a violation. See *Brown v. Dist. Of Columbia*, ~~514~~ 514 F.3d 1276 (D.C. Cir. 2008) (deliberate indifference claim, where non-medical officials intentionally deny or delay access to medical care); also see *Estelle v. Gamble*, 429 U.S. 97, 97 (1976) (The Supreme Court held, an act of failure to provide treatment for an inmates serious medical needs, may actually produce physical torture, pain and suffering, which violates the Eighth Amendment, and states a cause of action under 42 U.S.C. § 1983)

In *Lewis v. Hyland*, 434 U.S. 931 (1977) (The Supreme Court provides the distinguishment between a accidental failure to provide medical care, and a Eighth Amendment violation)

The abovementioned actions by Sgt. Pailes, and Owens consist of: "Excessive use of Force; Cruel & Unusual Punishment; Intentional infliction of Pain; deliberate indifference; "Totality Of Condition Of Confinement; Prohibition Of Conditions; and it infringed on Estrada's Liberty interest of Due Process rights.

b) In the Fifth Cir. Rulings, filed June 13, 2022, pg.(4) it claims Estrada failed to prove a Equal Protection claim, because Estrada did not show his and Atkinson's injuries ~~where~~ were similarly situated, in terms of medical need's.

Argument.

i See U.S.D.C. doc. 1-2, pg.(6), it states Atkinson had no ~~p~~ serious medical need's or disabilities prior to the altercation, he weighed 100 LBS more than Estrada; he had no bruises, scratches, or bleeding, and he simply willingly walked out the dorm.

Estrada had serious medical conditions prior to the altercation, causing physical and psychological disabilities, prior to the altercation; a Officer witnessed Estrada getting kicked; punched; and stumped throughout his head, and body, (which Estrada getting stumped in the chest, and kicked in the ribs, would be the true reason of his difficulty of breathing and pains to breath, rather adrenaline).

Although Estrada was on the ground in pain, and having difficulty moving, to get up, it took a Officer's excessive use of force, to yank Estrada up, and forcefully push him out the dorm; (the camera would have shown, Estrada was stumbling out the dorm, and under physical distress).

Estrada had marks and scratches throughout his head and body from the assault (by the next day, they turned to swollen bruises).

ii) Although Atkinson (a white male) stated he was fine, Pailes and Owens went out of their way, to ensure he goes to the infirmary, to be examined immediately by a licensed official, to ensure Atkinson is okay.

Although it would had been obvious to a lay-man, Estrada (a hispanic) had previous medical conditions, and was in severe pain; these same two Officer's Pailes, and Owens ensured Estrada was not worthy of the same treatment, by denying any access to immediate medical care.

iii) Although the usual procedure is to move the individuals to different housing dorms after an altercation, until a hearing is held to determine who was at fault; the lower courts never request for the defendants to explain what grounds and penological interest was it, in placing Estrada in disciplinary isolation, and allowing Atkinson to remain unpunished;

A Officer offered to move Estrada to the next dorm over, until a hearing is held; Pailes and Owens refused, for the sole purpose of placing him where he is "Hidden" from too many eyes seeing him in pain, and where he can not contact medical for sometime.

The ~~two~~ two inmates injuries were not similar situated, Estrada was severely injured, and denied medical; Atkinson was not injured and ensured immediate access to medical.

This violated the Equal Protection flat-out, on it's face; see Johnson, v. California, 543 U.S. 499 (2005) (a prison must show a compelling government interest in it's actions, when challenged with discrimination).

and violation of the Equal Protections, and to do so, they will have to pass the strict scrutiny test)

There was no other reason for this treatment than racial discrimination; which was far from typical prison life, and created a significant hardship that included psychological, and physical torture.

Estrada has shown, his pass for an additional mat was not expired when Piles and Owens confiscated it on Oct. 27, but was discontinued on December of that year, by an unlicensed medical personnel.

See, *Palmer v. Richards*, 364 F.3d 60 (2d Cir. 2004), and *Gillis v. Litscher*, 468 F.3d 495 (7th Cir. 2006) (it is not the length of time the harsh aggravated conditions occurred, as the only factor but the severity of conditions as well, short placement in inhumane conditions, violates the constitution).

3) ~~B~~ Claims against Erivo, and Lilly

i) In the Fifth Cir. rulings it goes on to state, there was no showing of a Failure To Protect Claim, against Erivo.

Argument.

For about (5) weeks or so prior to the physical altercation on Oct. 27, 2018, Estrada and multiple other inmates made complaints against Atkinson, for the acts of racial harassment, extortion, unsanitary conditions, and verbal threats to do bodily injury.

These complaints was made to multiple shift Officers, Supervisors, on the

kiosk machine to housing issues; classification, and eventually to grievance, when all else failed.

Etivo intentionally completely ignored the threats of bodily injuries, and sanitation issues, by responding through the kiosk." if Atkinson is arguing over the T.V., just let the supervision officer know.

Etivo contributed to Estrada being assaulted by intentionally disregarding the multiple complaints, by multiple concerned inmates, in violation of the Eighth Amendment; see *Farmer v. Brennan*, 511 U.S. 825 (1994) (To bring a failure-to-protect claim, a prisoner must prove: 1) Officials knew that there was a substantial risk you would be seriously harmed; and 2) They failed to respond reasonably to protect you.

ii) In the Fifth Cir. Rulings, it states Estrada does not detail the substance of those grievances, or submit them as evidence.

See U.S.D.C., doc. 19, pg.s (8-9); doc. 1-2, pg. 5, 11. (complete details).

iii) The Fifth Cir. rulings goes on to state, without a showing of atypical and ~~significant~~ significant hardship Estrada failed to state a claim of Due Process violation.

Argument:

a) Both defendants Etivo, and Lilly refused to allow Estrada to call witnesses in his favor, and based their ruling on the report defendants Pailes, and Owens made.

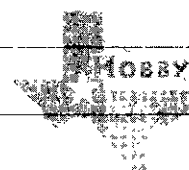
(which ~~is~~ is proven to be a racially motivated report, that is bias with evil intentions, and a report is not a witness), and one inmate these officers interviewed immediately after the altercation (Portwood) (which through the case, Estrada repeatedly stated, Portwood was just as much as a racist as Atkinson himself; claiming to have been an associate member of white extremist groups).

Therefore, there was no impartial decision maker, and had these defendants properly conducted an investigation, (interview "All" (22) witnesses, rather (1)) and not base their decision on the fact Estrada was already in solitary confinement, so he must have started the altercation "view-point", Estrada could have been released from solitary confinement (disciplinary) and had access to place a proper medical request, that day. ~~2~~

Instead, Erivo, and Lilly's actions caused Estrada to remain an additional (12) days in disciplinary isolation, knowing he was completely under physical and psychological distress, with severe pain; their actions contributed to his pain and suffering of psychological and physical torture.

Their actions violated the Eighth and Fourteenth Amendments of the U.S. Constitution; see *Gillis v. Litch Litscher*, 468 F.3d 495 (7th Cir. 2006) (A violation is not based on how long a person is placed in bad conditions alone, but how bad the conditions are... Short placement in aggravated conditions, could be atypical and significant).

~~1~~ See *Smith v. Carpenter*, 316 F.3d 178 (2d Cir. 2003) the existence of serious medical needs, depends on the facts surrounding each individual claim.



b) Not only was the facility aware of Estrada's physical disabilities (he arrived at the facility using a cane; they did not allow him to keep it, but they placed him in protective custody); he had been physically assaulted; and he had severe mental disabilities, which the facility was aware, complete isolation would cause harm to his mental health and safety.

See *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980) (State actors must provide inmates with proper shelter that does not cause deterioration, or threaten the mental or physical well being of the inmate); see *Jones EL v. Berge*, 164 F.Supp.2d 1096 (W.D. Wisc. 2001) (overview: The Court found credible evidence indicating that isolation resulting from the physical Lay-out, was not appropriate for inmates with serious mental illness... The Court concluded such housing constitutes Cruel and Unusual Punishment).

c) Estrada has shown that defendants: Erivo; Lilly; Pailes; Owens, all conspired to inflict unnecessary mental and physical pain upon him; violating conspiracy act of §1983; and §1985.

Estrada has also shown Erivo, and Lilly violated his rights of Due Process Clause, and Eighth Amendment of The U.S. Constitution.

4) Claims against the Medical Defendants: § Mrs. Rabius; Dr. Khan; Med Contractor CCS.

a) Page (5) of the Fifth Circuits Rulings, into pg. 6, it states Estrada's conclusional allegations regarding Nurse Rabius altering medical records, denial of pain medication, and cancellation of an additional mat medical prescription, without any supporting record evidence, are insufficient to raise a factual dispute.

Response:

1) In U.S.D.C., doc. 65 Estrada presents in his appendix, portions of his medical record, taken from the Medical defendants own supporting records presented in their Motion For Summary Judgement, Titled "APP-..."

In doc. 65, pg. 4 (of the court's pg. numbering in the top), last paragraph, it states a correctional Officer contacted Medical in regard to Estrada's obvious severe medical condition, "priority Level High"; see also. doc. 65, appendix pg. Titled App.-353, third paragraph.

When Mrs. Rabius arrived at the dorm, she stated: "I was told you started a fight, so you must not have the medical needs you claim; I will ensure you do not get a second mat again, and your Meloxicam will be discontinued."

In doc. 65, pg's 6-8, Estrada uses portions of the defendant's own records to show Rabius interfered with Estrada's prescription of Meloxicam around Nov. 6, 2018; when the prescription did not end until a "licensed" medical personnel discontinued it on Nov. 13; (see. doc. 65, court referenced pg. 6, last paragraph, and Doc. 65, appendix pg. APP-131)

When a non-medical personnel can obviously see a medical emergency, to the point, he request for medical to make it "high priority", only for a vocational nurse, that is not even licensed to determine who does and does not need a prescription to remove Estrada's only chance of reducing the pain, was a act of evil intent that violated Due Process, and the Eighth Amendment of the U.S. Constitution; see. *Estelle v. Gamble*, 429 U.S. 97 (1976) intentionally interfering with medical treatment violates the Eighth Amendment.

Response:

i) In the U.S.D.C. doc. 65, Estrada uses portions of the Medical defendants' own supporting record, they provided in the Appendix of their Motion For Summary Judgement, (Estrada's complete medical records) titled "APP-...

~~In doc. 65, pp. 5-8, Estrada~~

See *Wilkinson v. Austin*, 545 U.S. 209 (2005) anytime a liberty interest is present, a inmate is entitled to Due Process; also see *Farmer v. Kavanaugh*, 494 F. Supp. 2d 345 (D. Md. 2007)

ii) In regard to Estrada not presenting supporting records, proving Rabius interfered with his access to a proscribed second mattress, and cancelling the prescription herself, (without the proper license to do so); see U.S.D.C. doc. 65, court titled pg.'s 8-12).

In doc. 65, last paragraph of court titled pg. 8, 9 Estrada refers to (2) most important pieces of the defendants own supporting legal record; Defendant Rabius' own Affidavit admitting she is unlicensed to prescribe or cancel any medical treatment... Estrada goes on to point out, using the Medical defendants own ~~the~~ Appendix, to show, his medical mat pass had not expired prior to the Oct. 27 altercation, nor was it altered, but rather it was cancelled, by none-other-than Rabius herself, around Dec. 15, 2018, (Between 50-60 days after it was illegally confiscated).

Rabius, with her own admission, acted outside the boundaries of her medical license, to intentionally commit a malicious act of psychological and physical torture; without this additional mat, ~~and~~ for around (50) days, this caused sleep deprivation; muscle, nerve, and joint pains throughout his body.

See *West v. Atkins*, 487 U.S. 42 (1988) (The Supreme Court found it to amount to "Cruel and Unusual Punishment" where medical failed to provide proper care. also see *Lewis v. Hyland*, 434 U.S. 931 (1977) "There is a distinguishment between

an Eighth Amendment violation, and a accidental failure to adequate care.

b) After being released from disciplinary isolation, Estrada put a request to see medical which he was seen by Dr. Khan; without even examining Estrada, Khan immediately denied any medical care to him by stating: "I was told not to return ~~and~~ any medical treatment to you, because you started a fight... I will give you meloxicam for a few days, but nothing else."

Although Estrada's pass for an additional mat was still good, and the prescription has not yet been cancelled by Rabius, Khan refused to hand Estrada an additional mattress; this contributed to Estrada's harsh conditions of physical and psychological torture.

The defendants was well aware of Estrada's severe mental, and physical disabilities, and knew such harsh inhumane conditions would make it worse; causing an Eighth Amendment violation, and committed the acts anyway.

See *Estelle v. Gamble*, 429 U.S. 97 (1976) "deliberate indifference can be manifested by prison doctors in their response to the prisoners needs; also see *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985) (refusal to treat or ignore complaints violates the Eighth Amendment).

Khan acted under the orders of non-licensed Officials, instead of making a professional judgement; see *Estelle v. Gamble*, 429 U.S. 97 (1976) (the choice of an "easier and less effective treatment, rather than professional judgement, demonstrates deliberate indifference).

Defendants Rabijs and Khan, both acted in solidarity with defendants Pailes and Owens wishes of harsh treatment, rather than what their duties required, in violation of the conspiracy of 42 §1983, and §1985.

- c) CCS medical contractor is aware of similar situations of complaints by multiple inmates, against its ~~subordinates~~ Subordinates, and has refused to properly supervise them, to ensure these actions does not continue.

CCS has a custom/practice, of allowing its subordinates to take orders and work close with the Corrections Officers and their wishes, to inmates needs rather than make medical ~~jud~~ professional judgements; to ensure they keep their contracts.

See. Borden v. Fort Bend Cty., H-19-551 (S.D. Tex. Mar. 17, 2020) (These acts by Rabijs, are still permitted to continue)

- 5) Fort Bend Cnty; Sheriff Nehls; CCS, should all be held under munipicle liability.

Sgt. Pailes; Deputy Erivo; Deputy Lilly; and Dr. Khan, should all be held accountable as Supervisors personally involved.

- 6) Sgt. Pailes, Owens, Rabijs, Dr. Khan should be held for ADA violations.

Although Estrada has presented evidence, his medical pass for an additional mat was up-to-date, and not cancelled until around December 10, 2018 (by Rabijs) these defendants wrongfully removed the additional mat on Oct. 27, 2018, and worked together to

deny Estrada access of having it returned for approximately (50) days; Pailes, and Owens wetted even further, by placing Estrada in a disciplinary dorm, where he can not speak out about his pain (out-of-sight, out-of-mind)

Rabius then interfered with Estrada's medication to alleviate his pain, by stopping the prescription for about a week, (to add additional punishment, and pain).

These acts violate The Title II of ADA; see. *McCollum v. Livingston*, WL 2215627 (U.S. Dist. Houston, Tex. May 19, 2017) (institutions and it's officials violate these rights against an individual with disabilities, by causing more pain, suffering, or punishment, to them, than to non-disabled inmates)

Conclusion

The petition for Certiorari should be granted

Respectfully submitted



Date: 9/2/22