

No. 22-6371

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Michael Jarrow — PETITIONER  
(Your Name)

vs.

Ashly Nunnery — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Fifth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Jarrow  
(Your Name)

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Amarillo, Texas 79107  
(City, State, Zip Code)

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### QUESTION(S) PRESENTED

I will like for the Supreme Court of the United States to reverse the decisions of the Court of Appeals for the Fifth Circuit and the U.S. District Court Western District of Texas which dismissed my 42 U.S.C. §1983 suit Amendment for deliberate indifference to a serious medical need against respondent Ashly Nunnery in her official capacity which was a §1915(e)(2)(B)(ii) dismissal for failure to state a claim upon which relief may be granted and reviewed de novo by the Court of Appeals for the Fifth Circuit as a dismissal under Federal Rule of Civil Procedure 12(b)(6); judgment for the dismissal of my 42 U.S.C. §1983 suit for Fifth Circuit number: 22-50153 was entered on the 7th day of October, 2022. In like manner, I will like for the Supreme Court of the United States to reverse the following decisions of the District Court of the Court of Appeals for the Fifth Circuit, namely: the Eleventh Amendment bar of Claims for monetary damages against Nunnery in her official capacity; the 42 U.S.C. §1997e(c) bar of Claims for damages against Nunnery in her individual capacity; and the 42 U.S.C. §1915(e)(2)(B)(ii) dismissal of my 42 U.S.C. §1983 suit for failure to state a claim upon which relief may be granted; relevant to Fifth Circuit No. 22-50153 and USDC No. 6:21-cv-01281. Inasmuch as I have standing to bring suit in federal court under 42 U.S.C. §1983 against Ashly Nunnery in her official capacity for the deprivations of my Eighth Amendment and Fourteenth Amendment federally protected rights visited pursuant to a governmental official policy, namely the Correctional Managed Health Care Policy Manual Number: E-34.3 Effective Date: 3/17/2016 Replaces: 3/18/15 Formulated: 6/98 Reviewed: 01/18 USE OF FORCE PROCEDURES; after a use of force had been utilized on me on December 12, 2019. I also meet the requirements necessary to establish Article III standing of the Constitution of the United States, in particular I demonstrated "injury in fact", i.e., severe burning of my eyes correlated with a use of force that had been utilized on me on December 12, 2019 whereby being sprayed with chemical agents. An injury which was both concrete and actual and not conjectural or hypothetical; and the causation was fairly traceable in connection with my injury and the respondent Ashly Nunnery's conduct, whereby Nunnery being the medical personnel (i.e., licensed medical personnel) that evaluated me on December 12, 2019 after a use of force was utilized on me and Nunnery intentionally disregarded assuring that I received emergency treatment as necessary and physical assessment for my injury after a use of force was utilized on me, on December 12, 2019. Will the Supreme Court of the United States confer on judicial discretion and judicial review relevant to the above aforementioned issues presented?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

Estelle v. Gamble 429 U.S. 97 (1976)

Gutierrez v. Peters III F.3d 1364 (7th Cir. 1997)

Hutto v. Finney 437 US 678 (1978)

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit 507 U.S. 163 (1993)

Monell v. New York City Department of Social Services 436 US 658 (1978)

Owen v. City of Independence Missouri 445 U.S. 622 (1980)

Pembaur v. Cincinnati 475 U.S. 469 (1986)

Scher v. Engelke 943 F.2d 921 (8th Cir. 1991)

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### STATUTES AND RULES

C. Debate on §1 of the Civil Rights Bill II

Civil Rights §10; Criminal Law §78 - Cruel and Unusual punishment - medical care for prisoner

Criminal Law §77, 78 - Cruel and Unusual punishment - what constitutes - applicability to States

Civil Rights §12.5 - liability for violations - local government

Civil Rights Key 13.8(3)

A serious medical need is one that has been diagnosed by physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.

Civil Rights Key 234

Civil Rights Key 206(3), 214(4)

Civil Rights §12.5 - liability - local government officials

Civil Rights §12.5; States §88 - liability of local governments - Eleventh Amend.

### OTHER

Local governments, municipal corporations, and school boards are "persons" subject to liability under 42 USC §1983 for violating another person's federally protected rights, and thus are not wholly immune from suit under §1983 - the statute covering legal as well as natural persons. (Rehnquist, J., and Burger, Ch. J., dissented from this holding.) Monell v. New York City Department of Social Services, 436 U.S. 658 (1978).

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 N/A to the petition and is

☒ reported at Pages: 2, 3, and 4 omit as if unpublished; 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 N/A to the petition and is

☐ reported at N/A; 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 N/A to the petition and is

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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 October 7, 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was N/A.  
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Our analysis of the legislative history of the Civil Rights Act of 1871 Compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom §1983 applies.<sup>54</sup> Local governing bodies,<sup>55</sup> therefore, can be sued directly under §1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy, statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the §1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other §1983 "person," by the very terms of the statute, may be sued for Constitutional [436 US 691] deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels. As Mr. Justice Harlan, writing for the Court, said in *Adickes v. S.H. Kress & Co.* 398 US 144, 167-168, 26 L Ed 2d 142, 90 S. Ct. 1598 (1970): "Congress included customs and usages practices of State officials.... Although not authorized by written law, such practices of State officials, could well be so permanent and well settled <\*pg. 636> as to constitute a 'custom or usage' with the force of law."<sup>56</sup> On the other hand, the language of §1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a Constitutional tort. In particular, we conclude that a municipality can not be held liable solely because it employs a tortfeasor - or, in other words, a municipality cannot be held liable under §1983 on a respondeat superior theory. We begin with the language of §1983 as originally passed: "[A]ny person who, under color of any law, statute, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person... to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such [436 US 692] law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress....." 17 Stat 13 (emphasis added). C. Debate on §1 of the Civil Rights Bill II *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978).



## STATEMENT OF THE CASE

On October 7, 2022 the United States Court of Appeals for the Fifth Circuit affirmed the United States District Court for the Western District of Texas dismissal of my 42 U.S.C. §1983 Suit that I filed under the Cruel and Unusual Punishment Clause of the Eighth Amendment against respondent Ashley Nunnery in her official capacity for deliberate indifference to a serious medical need. Moreover, the U.S. District Court Western District of Texas 28 U.S.C. §1915(e)(2)(B)(ii) which relief may be granted against respondent Ashley Nunnery. No. 22-50153 Summary Calendar Appeal from the United States District Court for the Western District of Texas USDC No. 6:21-cv-1281 Before STEWART, DUNCAN, and WILSON, Circuit Judges. PER CURIAM:\*

(a)(B)(ii) dismissal of his 42 U.S.C. §1983 Suit for failure to state a claim upon which relief may be granted. Jarrow alleged that Nurse Ashley Nunnery violated his Eighth Amendment rights by being deliberately indifferent to his medical needs, specifically by being providing care after Jarrow was exposed to chemicals during a USE-OF-FORCE incident. A district court shall dismiss a prisoner's civil rights complaint if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. §1915(e)(2)(B). Because the district court dismissed Jarrow's Complaint for failure to state a claim, we review the dismissal de novo as we do for a dismissal under Federal Rule of Civil Procedure 12(b)(6). See *Black v. Warren*, 134 F.3d 732, 733-34 (5th Cir. 1998). A complaint will not proceed unless it "contain[s] 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) (internal quotation marks and citation omitted). Jarrow generally argues that the district court erred in concluding that his claims for monetary damages against Nunnery in her official capacity were barred under the Eleventh Amendment. However, by stating his intention to appeal the issue in her further argument, Jarrow has not briefed it properly, and we deem the issue abandoned. See *Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Next, Jarrow attempts to counter the district court's conclusion that his claims for damages against Nunnery in her individual capacity were barred under 42 U.S.C. §1997e(c) because he had not alleged a physical injury by complaining that he suffered from burning eyes for over seven hours on the day of the incident.

## REASONS FOR GRANTING THE PETITION

The first reason why the Supreme Court of the ~~United States~~ <sup>United States</sup> should grant certiorari in relevance to this petition is because pertaining to the language and legislative history of §1983 it shows that the Court of Appeals for the Fifth Circuit flawed pertinent to the abandonment of my Claims for monetary damages against Nunnery in her official capacity under the Eleventh Amendment because Nunnery's deprivation of my Eighth Amendment protected right was visited pursuant to a Governmental Policy, namely the Correctional Managed Health Care Policy Manual Policy, E-34.3 Effective Date: 3/17/2016 Replaces: 3/18/15 Formulated: 6/98 Reviewed: 01/18 USE OF FORCE PROCEDURES. The language and legislative history of §1983 as originally passed by Congress and states that every person who, under color of any Statute, custom, or usage, of any State, shall subject, or cause to be subjected, any person to the deprivation of any rights secured by the Constitution of the United States shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress. The second reason why the Supreme Court of the United States should grant certiorari relevant to this petition is because the Court of Appeals for the Fifth Circuit applied unsound discretion affirming the District Court's 42 U.S.C. §1997e(c) bar of Claims for damages against Nunnery in her individual capacity, stating that I had not alleged a physical injury by complaining that I suffered from burning eyes for over seven hours on the day of the incident. However, at 4:18pm on December 12, 2019 I was sprayed with chemical agents during a use of force which caused my eyes to burn severely; which prolonged to the date of December 13, 2019 resulting in enduring an aftereffect. In like manner, I was sprayed with chemical agents at 4:18pm on December 12, 2019 and there were only 7 hours and 42 minutes left in the day after I was sprayed with chemical agents. Whereas when I was sprayed with chemical agents on December 12, 2019 the severe burning of my eyes lasted longer than a day; moreover, lasting to the four following days; without me receiving any medical treatment for my severe burning eyes at all. Finally the Supreme Court of the United States should grant certiorari relevant to this petition because on December 12, 2019 Ashley Nunnery intentionally disregarded assuring that I received emergency treatment as necessary and physical assessment after a use of force was utilized on me. Which constitutes cruel and unusual punishment proscribed by the Eighth Amendment of the Constitution.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael J. Jarrow

Date: 12-12-2022