No. 22-6384

IN THE

SUPREME COURT OF THE UNITED STATES

Peter Gakuba — PETITIONER
(Your Name)

vs.

Larry Henderson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Gakuba v. Henderson, 21-3205 (USCA7) (RLUIPA and Prisoner Starvation / Torture Appeal)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Peter Gakuba / pgakuba@gmail.com
(Your Name)

58 W. Biddle St., Apt. 103
(Address)

Baltimore, MD 21201
(City, State, Zip Code)

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Case No.

UNITED STATES SUPREME COURT

ISSUES PRESENTED FOR REVIEW

I. *GAKUBA V. HENDERSON*, 21-3205 (USCA7)

Gakuba exhausted all his ***available*** administrative remedies when grieving Vienna prison staffers' deliberate ignorance to Gakuba's seafood allergy, and religious kosher meal requirements—as they intentionally sought to starve him to death. See *Williams v. Wexford Health Sources,* 957 F.3d 828 (7th Cir. 2020). A *Pavey* hearing was required at a minimum.

Equitable relief was mandated as starvation constitutes torture. *Gakuba*, 21-1473.

First, Eighth, and 14th Amendments violations.

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

Gakuba v. Henderson, 20-1473 (USCA7)

Gakuba v. Henderson, 20-2509 (USCA7)

Gakuba v. Henderson, 3:19-cv-1273 (USDC-SD IL) (RLUIPA / Prisoner Starvation / Torture)

Case No.

UNITED STATES SUPREME COURT

TABLE OF CONTENTS

INDEX - APPENDICES

Case No.

UNITED STATES SUPREME COURT

TABLE OF AUTHORITIES

Statutes and Laws

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[✓] is unpublished.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[✓] is unpublished.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 6, 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: _____, 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).

Case No.

UNITED STATES SUPREME COURT

CONSTITUTIONAL AND STATUTORY PROVISIONS

1st, 5th, 8th, and 14th Amendments

Prisoner Litigation Reform Act, 42 USC §1997(e(a)) (Exhaustion of Administrative Remedies)

per...

Case No.

UNITED STATES SUPREME COURT

STATEMENT OF THE CASE

A. Introduction

This is a simple case to resolve in Gakuba's favor. The underlying issue was the Vienna, IL prison staffs' deliberate ignorance and gross negligence of Gakuba's seafood allergy and failure to adhere to Kosher meal requirements—much less the mandated 2000 calorie per day "nutritious" meal plan. See also RLUIPA, 42 U.S.C. §§ 2000cc, et seq.

In doing so, they sought to starve Gakuba to death by serving Gakuba seafood kosher trays (prepackaged and precooked meals akin to canned soup) 2-3 days per week, then, upon Gakuba filing his pro se federal lawsuit for equitable relief—and losing—retaliated thereafter by serving Gakuba seafood meals 3-5 days per week.

The end result: Gakuba's weight dramatically plummeted as Gakuba was 6'1" and weighed approximately 150lbs upon arrival at the Vienna, IL prison; to then lose 20lbs weighing 130lbs upon his release—on April 27, 2021 (arrival date September 06, 2019).

FRE 201: Gakuba's webpage profile on the Illinois Department of Corrections' (IDOC) website lists his weight at 139lbs—fully clothed (as pictured with 3-sets of thermal underwear and the rags and boots constituting prisoner uniforms). https://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx (03/06/22 for all cited sites).

Stripped of any attire, Gakuba's weight was 129lbs.

Starvation constitutes torture.

No citation to authority by USDC-SD IL Judge McGlynn is given—because none exists—of prisoner starvation being successfully resolved through *any* administrative prison remedies.

In fact, Gakuba cites to an infamous case whereby the starved prisoner settled with the federal government for just such an occurrence; though that prisoner was in pretrial detainment and deprived completely of both food and water.

See "Daniel Chong" at Wikipedia:

> "Daniel Chong, the San Diego college student who spent more than four days in a Drug Enforcement Administration holding cell without food or water, has reached a $4.1 million settlement with the U.S. government. The DEA apologized to Chong last year and instituted a review of its practices."

https://www.google.com/search?q=san+diego+college+left+holding+cell+without+food+water+settled&oq=san+diego+college+left+holding+cell+without+food+water+settled&aqs=chrome..69i57.19519j0j7&sourceid=chrome&ie=UTF-8

As Gakuba had strenuously argued in his pro se pleadings, prisons are permitted to force-feed prisoners on hunger strikes; no administrative remedies are available to the prisoner under those circumstances when it's the prisoner starving himself to death.

Thus, symmetrical logic dictates that when it's the prison starving the prisoner, no administrative remedies are available too.

Consequently, this is a case of first impression and precedential in scope.

The ruling must hold that where a prison starves a prisoner, the exhaustion of *available* prison administrative remedies as an affirmative defense rises to the level of irrational and wholly incredible.

It is a metaphysical impossibility as death from starvation occurs in weeks; exhaustion of administrative remedies occurs in months.

B. Factual Background / Procedural History

From 2019-2021, Gakuba was falsely imprisoned at the IDOC's Vienna, IL prison.

Upon arrival in September 2019, Gakuba noticed prison kitchen staffer Larry Henderson that Gakuba received kosher meals for the near 4-years he was at the IDOC's Robinson, IL prison, prior to a retaliatory prison transfer to Vienna. See *Gakuba v. Rains*, 21-1864 (USCA7).

Henderson agreed to promptly feed Gakuba kosher meals within days of Gakuba's imprisonment at Vienna.

Gakuba noticed Henderson that Gakuba also had a medically documented seafood allergy.

Henderson rejected this undisputed fact, claiming that Vienna does not respect any food allergies at all due to excess manpower and expenses. Besides, if one prisoner's food allergy were respected, they'd have to respect any prisoner's food allergy (implying a logistical quagmire).

However, kosher meals are prepackaged and precooked—like canned soup. They come in a variety of five: turkey, chicken, salisbury steak, spaghetti with meatballs, and fish.

Consequently, there is no additional labor or expense associated with kosher food preparation as the meals are ready-to-eat off the shelf.

Gakuba received kosher fish trays 2-3 days per week thereafter.

Prisoner indigent—meaning Gakuba could not afford to supplement his diet with prison store bought food (akin to gas station staples (high in salt and preservatives (e.g. beef jerky, chips))—Gakuba was 100% dependent on his survival by what he was fed by the prison.

Gakuba sued for equitable relief as a result.

Denied equitable relief, Henderson et al. proceeded to retaliate thereafter by upping the servings of kosher fish trays from 2-3 days per week to 3-5 days per week. As they are served for either lunch or dinner (or both), this meant that Gakuba abstained from eating 3-5 of 14 meals per week.

Gakuba's weight loss of approximately 20lbs left him emaciated, malnourished, and lethargic, to say the least.

In a prior interlocutory appeal, the USCA7 dismissed the appeal citing Gakuba's parolee status. Thus, it reasoned *that* appeal was moot.

It rejected Gakuba's claims that as a parolee, he may be violated and re-imprisoned.

Gakuba objects to the USCA7's conclusion in that appeal when remarking that Gakuba is expected to obey all laws.

It's cumulative evidence of an irrationally biased and prejudiced federal circuit court that has blackballed Gakuba in every appeal ever filed since his first one: *Gakuba*, 711 F.3d 751.

Its conclusion presumes that Gakuba would be at fault for violation of any parole, when, in fact, Gakuba would not be on parole—much less wrongly convicted—had he not been framed by malign and criminal malfeasors: federal and IL police and court officers.

The USCA7 denied a COA of Gakuba's federal habeas petition (§2254) deliberately ignorant of the three (3) structural errors undisputedly self-evident: the 6th Amendment right to a public trial; right to be *pro se* at trial 3-6 "weeks before trial" denied as a "delay tactic" when Gakuba never sought any continuances of any kind—but his APD did on the trial date itself (heard and denied; thus, assuming arguendo, Gakuba's pro se continuance would have been denied too … *Imani*, 826 F.3d 939, 947)); all by a bigoted IL state associate trial judge constituting 5th and 14th Amendments violations (see *United States v. El-Bey*, 873 F.3d 1015 (7th Cir. 2017)).

The blackballing of Gakuba by the USCA7 post-2013 is in retaliation and abetment for Gakuba's pro se pending federal lawsuit against cherished Rockford, IL federal and state police and court officers. *Gakuba*, 12-cv-0296 and 13-cv-50218 (USDC-ND IL).

Police and court officers who had no jurisdiction at all to maliciously prosecute Gakuba, and, thus, enjoy no absolute immunity at all from suit.

See cf *In re B.A*, 562 S.E.2d 605 (N.C. Ct. App. 2002) (juvenile delinquency petition void where element of the crime—age / birthdate—are not in the petition resulting in trial court's lack of jurisdiction) https://casetext.com/case/in-re-ba-14 ; See also *In re Griffin*, 162 N.C. App. 487 (N.C. Ct. App. 2004) (same) https://casetext.com/case/in-re-griffin-85

Consequently, dismissing Gakuba's re-imprisonment fears by ascribing such an occurrence to actions undertaken by Gakuba solely, is absurd. Objectively unreasonable. *Gakuba*, 20-1473.

Again, Gakuba's wrongful convictions rest on a void indictment which strips all jurisdiction from all courts presiding as the statutory rape convictions were premised upon the illegal obtainment of Gakuba's birthdate in flagrant and egregious violation of 18 USC §2710(b)(2)(C), §2710(d) (statutory mandated exclusionary authority explicitly excluding use in or before any "grand jury"), and §2710(e) in perpetuity (requiring the destruction of video rental records no later than one year after their last use).

Having been blackballed by both the Illinois state appellate court(s) and too the U.S. federal courts—particularly the U.S. Court of Appeals – 7th—this structural error to deny the right to be pro se 3-6 "weeks before trial" as a "delay tactic" was the manifestation of the systemic racial injustice that pervades the judiciary against black and brown people. *Gakuba v. Brannon,* Case No: 17 C 50337 (N.D. Ill. Nov. 20, 2017). (federal habeas denied; **dicta** cited in the ruling of *Imani v. Pollard,* 826 F.3d 939, 947 (7th Cir. 2016)).[1] Calculated judicial overreach by malfunctional state and federal courts.

These facts are relevant to the underlying federal statutory (RLUIPA) and constitutional

[1] *Imani v. Pollard,* 826 F.3d 939, 947 (7th Cir. 2016) ("Imani made his request four (4) weeks before trial and said he would not need any extra time to prepare. *Faretta* held that it was a constitutional error to deny a request made 'weeks before trial.' Id [at 834-35, n. 46.] The judge would have been entitled to hold Imani to that assurance if he had later asked for a delay, but he could not deny Imani his 6th Amendment right to represent himself on that basis.")

(1st Amendment (retaliation), 8th Amendment (cruel and sadistic), and 14th Amendment (equal protection)) violations.

Horrifically, having no criminal history of any kind, Gakuba was inexperienced with America's penal institutions and the malfeasance and malice which pervades them—made worse still by a justice system that condones malign and criminal conduct when it should be condemned.

UNITED STATES SUPREME COURT

REASONS FOR GRANTING THE PETITION

A. The Final Order and Judgment and Rule 59(e) DENIAL was neither thoughtful, fact based, nor well reasoned; clear errors of fact and plain errors of law

The final order and judgment contained material misrepresentations and omissions in a wanton and reckless disregard for the truth. In turn, these clear fact errors led to plain errors of law. Gakuba exhausted all ***available*** administrative remedies requiring reversal and remand.

B. Deliberate Starvation of a Prisoner is Torture – Torture is Exempt from Administrative Remedies (i.e. the (IDOC) "Grievance" Process)

July 26, 2021 federal district Judge McGlynn granted summary judgment to Henderson, et al. reasoning that Gakuba failed to exhaust the IDOC's administrative remedies. (ECF 154 Page ID 2377-2391)

The 15-page "memorandum and order" rendered an objectively unreasonable assessment of the facts in this case, resulting in an objectively unreasonable application of law.

These facts are undisputed: that Henderson, et al. were Vienna, IL kitchen prison staffers who deliberately fed Gakuba seafood knowing that Gakuba had a seafood allergy.

The feeding of seafood to a prisoner with a known (and documented) seafood allergy is the same as not feeding the prisoner at all.

Not feeding a prisoner is starvation.

And because the seafood servings were 2-3 days a week, then, 3-5 days per week upon Gakuba suing (and losing) emergency equitable relief in this case (now on appeal), it is undisputed torture.

Judge McGlynn disagrees: "The Court finds that Gakuba did not fully exhaust his

> claims as to all Defendants prior to initiating this lawsuit by filing the September 9 grievance r the October 22 grievance. Furthermore, Gakuba was not exempted from meeting the exhaustion requirement under the PLRA because he was alleging starvation." (ECF 154 ID #2382)

The problem: no citation to authority is provided because none exists.

It's **ipse dixit.**

Judge McGlynn acknowledges Gakuba's cited authority: *Murphy v. Raoul,* 380 F. Supp. 3d 731, 740, 743-44, 749-55, 759-60, 762, 765-66 (USDC-ND IL 03/31/2019) (Summary Judgment GRANTED for Pl. Murphy, DENIED Deft. Raoul).

Murphy at 740: "The defendants did not cite a single example of a grievance concerning a host-site denial being reviewed or overturned."; *Murphy* at 743: "[t]he IDOC ... denied [the grievance] ... explaining that it 'does not make sex offender laws.'"; *Murphy* at 744 "grievance ... never received a response ... [or] retorted that it was not a Parole Board issue."

See accord *Murphy* 380 F. Supp. 3d at 762: "The defendants submit that an offender

> who wishes to contest the denial of a host site may file a grievance at his or her facility[.] The plaintiffs call the defendants [sic] bluff on this point, asserting that the IDOC does not treat denials of parole sites as grievable issues[.] For what it is worth, the defendants' witness testified that he did not know whether the denial of a host site is a grievable issue[.] The record contains several illustrations of the IDOC refusing to review [these on-point fact-specific grievances]; **in fact, the defendants did not come up with one example of a[n on-point fact-specific grievance] being reviewed or overturned[.]"** (Class action suit for the IDOC / IPRB indefinitely imprisoning sex criminals because they are homeless—lacking an approved "host site" (address) that complies with sex offender laws (Sex Offender Registration Act ("SORA").) **(emphasis)**

Despite acknowledging Gakuba's on-point case law (ECF 154 ID #2379, #2385 n. 2) Judge McGlynn wrongly asserts that "*Murphy* and *Lyons* do not discuss the exhaustion

> requirement under the PLRA and are not applicable here[.] Here, Gakuba is not claiming that his remedies were unavailable prior to filing this lawsuit, but rather, he did not have to use the administrative process because 'torture by starvation to death' is not grievable. (See Doc. 147, p. 1-2, 8, 11, Doc. 151-1, p. 1-2)." (ECF 154 ID #2385 n. 2)

Judge McGlynn makes a distinction without a difference because "torture by starvation to death" would occur long before any "administrative process" were "exhausted" thereby rendering them **unavailable.**[1] Indeed, the IDOC (likely due to court rulings) does not require wrongful death lawsuits to commence only upon exhaustion of administrative remedies because, after all, the prisoner is already dead. A dead prisoner cannot exhaust his wrongful death post-mortem. It's common sense reasoning that should be applied here, but plainly Judge McGlynn does not.

When Gakuba cites an identical instance of torture starvation of a prisoner—**Daniel Chong**—Judge McGlynn deliberately ignores it.[2] (ECF 148 ID #2337 ¶¶33-34)

Gakuba can find nowhere in the Daniel Chong federal lawsuit where Chong was required to "exhaust administrative remedies" before suing the federal DEA for torture by starvation.

And because Gakuba's case is a carbon copy of the Daniel Chong case, the Chong case is on-point authority that renders Judge McGlynn's 15-page ruling objectively unreasonable on both the facts and the law.

Judge McGlynn cannot distinguish Chong's case from Gakuba's as they both were deliberately starved to death (yet surviving) by malign and criminally minded government agents.

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[1] That which is self-evident, requires no explanation. And starvation occurs in weeks, rendering any administrative remedies exhaustion **"unavailable"** because the prisoner would be long since dead.

[2] See "Daniel Chong" at Wikipedia:
"Daniel Chong, the San Diego college student who spent more than four days in a Drug Enforcement Administration holding cell without food or water, has reached a $4.1 million settlement with the U.S. government. The DEA apologized to Chong last year and instituted a review of its practices."

And because Judge McGlynn (much less the defendants' lawyers' pleadings) fail to cite to a single case law precedence of torture by starvation of a prisoner, first and foremost, requiring that prisoner "exhaust administrative remedies" first before suing, this Rule 59(e) motion must be granted as a matter of law.

See also Gakuba's response opposing summary judgment ¶¶34-35:

> ¶34. What authority exists on the topic of prisoner starvations relates to hunger strikes; and the approval of forced feeding by prison authorities. See e.g. *In re Soliman,* 2001; *Lantz v. Coleman,* 2010; ***People ex rel. Illinois Department of Corrections v. Millard,* 2003; *People ex rel. Illinois Department of Corrections v. Fort, 2004;*** *Stefanoff v. Hays County,* 1998). **(emphasis)** (https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.936.4466&rep=rep1&type=pdf)
>
> ¶35. Thus, the Wexford and IDOC defendants assert that when the prison commits torture by starvation it must be grieved to stop it. But, as the well established body of law shows, when it's the prisoner who self-starves—the Wexford and IDOC defendants can stop it, immediately, via force-feeding. Rank duplicity.

Judge McGlynn fails to acknowledge even this undisputed fact, supra: that prison staffers are allowed to force-feed a prisoner—administrative remedies be damned—to save that prisoner's life. And there is nothing a prisoner can do about it; certainly grieving the force-feeding would be moot—rendering such administrative remedies "moot" and, thus, **"unavailable"** because by the time exhaustion occurs, the force-feeding actions would have long gone been done (in the past).

Therefore, Gakuba's pro se pleading being liberally construed renders his terminology "exempt / exemption" synonymous with "unavailable"—as a dead or dying prisoner is not obligated to—nor in the case of self-starvation, can—file and exhaust any administrative remedies.

Judge McGlynn should cite to any case law precedence of the deliberate starvation to death of a prisoner having that prisoner's lawsuit dismissed for failure-to-exhaust-administrative-

remedies to render this summary judgment grant and dismissal more than an unsupported conclusory ruling that rises to the level of irrational and wholly incredible.

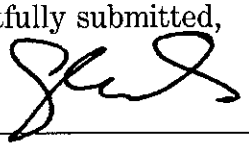
See *Mathison v. Moats,* 812 F.3d 594 (7th Cir. 2016) (prisoner – 5-hour delay treatment for heart attack was deliberate indifference. USDC-CD IL Judge Billy Joe McDade)

> *Mathison* at 599: "The district judge said that Omelson's and Wall's inaction had not 'denied plaintiff the minimal civilized measure of life's necessities.' **We think that civilization requires more in a life and death situation, and are left to wonder what the judge thinks the minimum level of care is to which a prisoner who is suffering a heart attack is entitled."**
>
> Here, Judge McGlynn's ruling has Gakuba "wonder[ing]" too.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12/17/2022