

22-6455  
No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
DEC 29 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

MICHAEL J DEMARCO JR.,

PETITIONER,

VS.

JEREMY J BYNUM,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MICHAEL J DEMARCO JR. 1564162

ALLRED UNIT

2191 FM 369N

IOWA PARK TX 76367

QUESTION(S) PRESENTED

1. Does the Plaintiff's First Amendment right to redress in the form of a prison grievance exposing corruption and illegal acts give the government employees of the agency authority to file false disciplinary charges, thus leading to the malicious confiscation and destruction of constitutionally protected property?
2. Whether, after Plaintiff has filed a grievance exposing corrupt and illegal acts, a TDCJ officer sent down by superiors to confiscate, specifically, constitutionally protected property is allowed to maliciously destroy that property and file false disciplinary charges against Plaintiff?
3. Whether, considering the lower court's premature order to sever and dismiss, without the benefits of all the tools of discovery including relevant material facts and compelling evidence of constitutional violations by Jeremy J Bynum and other government employees working under color of law can be ignored proffering for the defendants?
4. Whether a prisoner has equal protection under the Constitution when the defendants who are superiors and are personally and directly involved in their individual capacities do not address and manage subordinates illegal behavior and the lower court ignores relevant evidence aquired through discovery showing deliberate indifference?

(i)

QUESTION(S) PRESENTED (cont.)

5. When and how far does the brazen destruction of constitutionally protected property without due process and the blatant disregard for prisoners' rights become so outlandish that government employees choose to cover-up and conceal their unconstitutional acts with deception and dishonesty thus shall consequently be held accountable and liable?

6. If the "valid, rational connection" is not met and the "compelling interest" and "least restrictive means of furthering that compelling interest" are not proven by the lower courts, then why is Bynum's unconstitutional and malicious practice of destroying religious property condoned without holding him accountable?

7. Why such harsh treatment towards Plaintiff and such overly broad leniency as Qualified Immunity and Summary Judgment towards Defendant?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1-2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE WRIT.....	3
CONCLUSION.....	33

## INDEX TO APPENDICIES

APPENDIX A	Opinion of the United States court of appeals filed on October 4, 2022
	Opinion of the United States district court filed on September 29, 2020
	Judgment of the United States district court filed on September 29, 2020
APPENDIX E	Evidence Competent, relevant and compelling discovery evidence
APPENDIX J	Declarations

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Allen v. Thomas, 388 F. 3d 147,150(5th Cir. 2004).....	11,15
Anderson v. Creighton, 483 U.S. 635,641, 107 S.Ct. 3034(1987).....	12
Anderson v. Liberty Lobby Inc., 477 U.S. 242,248,252(1986).....	11
Bell Atlantic Corp. v. Twombly, 550 U.S. 544,555, 127 S.Ct. 1955(2007).....	30
Bounds v. Smith, 439 U.S. 817, 97 S.Ct. 1491(1977).....	18
Harlow v. Fitzgerald, 437 U.S. 800,817-18, 102 S.Ct. 2727(1982).....	12
Hart v. Hairston, 343 F. 3d 762,764(5th Cir. 2003).....	11
Hope v. Pelzer, 536 U.S. 730,742-45, 122 S.Ct. 2508(2002).....	11,22
Logan v. Zimmerman Brush Co., 455 U.S. 422,436, 102 S.Ct. 1148(1982).....	15
Lueck v. Wathen, 262 F.2d 690,694(N.D. Tex. 2003).....	16
O'Lone v. Estate of Shabazz, 482 U.S. 342,349, 107 S.Ct. 2400(1987).....	11
Ponte v. Real, 471 U.S. 491,497, 105 S.Ct. 2192(1985).....	13
Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151(2001).....	14
Thompson v. Upshur County, Texas, 245 F.3d 447,459(5th Cir. 2001).....	14
Turner v. Safley, 482 U.S. 78,89-91, 107 S.Ct. 2254(1987).....	11
Wolff v. McDonnell, 418 U.S. 539,566, 94 S.Ct. 2963(1974).....	13

TABLE OF AUTHORITIES CITED (cont.)

	PAGE NUMBER
<b>CASES</b>	
Woodfox v. Cain, 609 F.3d 774, 792 (5th Cir. 2010) .....	16
<b>STATUTES AND RULES</b>	
Title 42 U.S.C. § 1983.....	2
Title 42 U.S.C. § 2000cc, 1(a).....	11, 16
5(7)(A).....	16
3(g).....	16
Rule 26(b)(1), Fed. R. Civ. P.....	32
<b>OTHER</b>	
Advisory Council on Ethics (ACE) CODE OF ETHICAL CONDUCT.....	32-33

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

The opinion of the United States court of appeals appears at Appendix A (A-1) to the petition and is unpublished to the best of my knowledge.

The opinion of the United States district court appears at Appendix A (A-2) to the petition and is unpublished to the best of my knowledge.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on October 4, 2022. [X] No petition for rehearing was timely filed in my case. Jurisdiction is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I [1791] of the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble; and to petition the government for a redress of grievances.

Amendment XIV [1868] of the United States Constitution

... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Amendments are enforced by Title 42 U.S.C. § 1983:

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any act of congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

#### STATEMENT OF THE CASE

This is a civil rights case filed under 42 U.S.C. § 1983 by a state prisoner and asserting claims for the unconstitutional destruction of legal and religious property. All individuals listed are working in their individual capacities under color of state law. Each has personal involvement and direct participation. These include all constitutional violations occurring before, during and after the destruction of religious and legal property. All defendants are acting in their capacity as a state official delegated power to them exclusively by the government.

## BASIS FOR FEDERAL JURISDICTION

This case raises a question of free exercise of religion and to petition the government for a redress of grievances of the First Amendment and a prisoner's constitutional right to due process and equal protection of the laws of the Fourteenth Amendment. The district court had subject matter jurisdiction under 42 U.S.C. § 1331 because the complaint raises a question whether the defendants violated the plaintiff's rights under the United States Constitution.

## REASONS FOR GRANTING THE WRIT

This civil suit presents the fundamental constitutional rights of a prisoner who is incarcerated and under the "equal protection" of the laws. The defendants in this case deliberately, willfully and maliciously confiscated legal and religious property then allowed that property to be destroyed without due process. Evidence obtained by remand through the USCA5 and SCHEDULING ORDER by the district court is relevant, competent and compelling.

## QUESTION No. 1

1. Does the Plaintiff's First Amendment right to redress in the form of a prison grievance exposing corruption and illegal acts give the government employees of the agency authority to file false disciplinary charges, thus leading to the malicious confiscation and destruction of constitutionally protected property?

QUESTION No. 1 — ARGUMENTS AND EVIDENCE

I file grievances to correct and modify corrupt and illegal acts by the agency, and government employees working in their individual capacities under color of law. This grievance is the preceding incident that was then followed by an intentionally adverse action and completely unreasonable act by the defendants. For obvious and common sense reasons I hang my fan to receive better air circulation trying to cope with extreme heat, stuffyness and humidity in the dorms. I've never before this bogus quota filling case or after been warned, reprimanded or told to take my fan down: common sense — it's unbearably hot. To this very day I hang my fan with no problems whatsoever.

Exhibit E-1 shows where I was given a caserfor my fan hanging from the desk. Exhibit E-2 shows where no attempt at an informal resolution was attempted by the officer, Ofc. Goulden, as required. Exhibit E-3 shows where I am allowed to have my fan hanging from my desk. I'm also inside my cubicle (not cell) at 0830 a.m. during count. Exhibit E-4 shows where the Lieutenant on duty for the disciplinary hearing wrote in a statement in place of my intended statement without me present at the disciplinary hearing and simply circled G, Guilty, an all too frequent occurence here at the Allred Unit. I wrote the grievance explaining how this unit and their officers don't follow procedures, policies or directives, Exhibit E-1, specifically concerning no informal resolution and rank putting in a statement in place of my statement which is abuse of power and due process violations.

This abuse of power results in automatic guilty convictions and goes into my permanent record and it's extremely unfair. This abuse of power is still ongoing and I've endured more of the same with case no. 20220133340 on 04/05/22 being run without me being present then automatically being found guilty. All of the above are just a few of the many examples of how the agency, administration and TDCJ officers don't comply at all with their own directives to write up to 360,000 or more cases per year. This grievance and complaint for abuse of power is the base reason for the adverse actions and constitutional violations taken against plaintiff and it was done for retaliatory reasons and not for a legitimate correctional purpose.

A completely unreasonable and adverse action occurs after this grievance and administration asks and receives an "EXTENSION" to "INVESTIGATE" further (three months later) on AUGUST 19, 2013.

#### QUESTION No. 2

2. Whether, after Plaintiff has filed a grievance exposing corrupt and illegal acts, a TDCJ officer sent down by superiors to confiscate, specifically, constitutionally protected property is allowed to maliciously destroy that property and file false disciplinary charges against Plaintiff?

#### QUESTION No. 2 — ARGUMENTS AND EVIDENCE

PROTECTED CONDUCT — ADVERSE ACTION — CAUSAL CONNECTION

It is of utmost importance to state that Plaintiff has never before this seizure of constitutionally protected property been warned, reprimanded or given a case for obtaining, keeping, using and storing my legal and religious property. Also, Plaintiff did not receive a case during or after Ofc. Jeremy J Bynum's seizure and then destruction of my religious and legal property. In almost fourteen years of incarceration, with hundreds of cell searches and inspections, there has not been any problems with the storage of my legal and religious property and that includes up and to the present.

There were a number of other items that were not perfectly stored on August 19, 2013, however those items weren't seized. For instance, bowls underneath the locker and clean gym clothes folded neatly next to my shoes under the bunk, heaven forbid. Yet, those weren't seized then destroyed. Bynum and his supervisors seized and destroyed what they knew ahead of time would cause the worst damage, harm and injury.

This is the most significant day, August 19, 2013, not coincidentally, that's the same day the defendant, Jeremy J Bynum stated, "I went down to get the O's (offender's) property," Exhibit E-5. Plaintiff wasn't on any "security search" list for that day, AD-03.72(Rev.5); the directive in affect at this time) —

#### IX. MONITORING REQUIREMENT:

The inspection shall be documented on the Cell Search Log in accordance with SM-03.02, "Security Searches," [IX.A. (p.24)] ECF 62 at 292. This statement shows that Bynum was "sent down" by a superior officer and he should answer to this. Also Bynum

states, "On date and time listed above Offender DeMarco Retuned from chow. Upon his return he found that his improperly stored property was confiscated," see Exhibit E-6, OFFENSE REPORT. Bynum attempted no informal resolution and the only time he could seize and confiscate was while I was at lunch away from my cubicle. This was calculated and intentional. I am an eyewitness to Bynum exiting Y dorm with my property while I'm entering Y dorm returning from lunch.

Also witnessing Bynum on August 19, 2013 from their cubicles were Campos, right next door in No. 71, and Sellers, across the aisle in No. 38. My two witnesses, Campos and Sellers, are both on the "Witness List" and available to testify concerning Bynum on August 19, 2013.

Following is three different encounters that Plaintiff had with Bynum on August 19, 2013.

First, I witness Bynum carrying my property out of Y dorm while I'm entering Y dorm after returning back from lunch. Second, Bynum returns to Y dorm, however he does not have my religious and legal books and materials, nor does he have a PROP-08 TDCJ Disposition of Confiscated Offender Property Form, see Exhibit E-7 required when an officer confiscates property and the offender is required to sign. While sitting on my bunk, I tell Bynum again that the property he took was religious and legal, however he acts indifferent. After I tell him I'll just write a grievance, he gives me a direct order to exit my cubicle. Before I can even reach the edge of the cubicle, he grabs his pepper spray, then claims I threa-

tened to assault him and has me "locked up" including assigning this as a major case. Third encounter, out in the D-space (hallway to exit), Bynum tells me in a threatening and intimidating manner, "you don't f        with me" and "I can take whatever I want, whenever I want." The lower court claims that these statements by Bynum are "flippant" and that my eyewitness account, signed under penalty of perjury, is a "changing tale", ignoring Bynum's malicious intent. This unusually harsh treatment is the result of telling Bynum that I would write a grievance for seizing religious and legal material.

After Bynum seizes and confiscates legal and religious property, he doesn't follow any of the directives, policies or protocols to secure confiscated property required by AD-03.72(Rev.5) OFFENDER PROPERTY, all violations of U.S. Const. Amend. XIV; "... nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Please see Exhibit E-7. ECF 62 at 306 and 305.

1. No attempt at an informal resolution.

2. No PROP-08 TDCJ "Disposition of Confiscated Property."

Sec. 1: I.D. Info (to be completed by staff confiscating property). Sec. 2: Confiscation Info. Sec. 3: Offender Notification (staff must obtain offender signature and sign to document notification has been provided to offender).

3. No PROP-07 TDCJ Property Tag <FRONT> Date and time property taken, offender (print name and TDCJ #), housing lo-

cation, confiscating officer (Print Name), reason for con-  
fiscation. <BACK> Date/Time Received in Property Room,  
Property Log Book #, Number of Containers \_\_\_\_ of \_\_\_\_  
(i.e. boxes, bags, envelopes, etc.).

4. No delivered property to the property room after confis-  
cation. Any offender personal property taken into the  
possession of TDCJ staff shall be documented on a PROP-08  
"Disposition of Confiscated Offender Property." The prop-  
erty shall be tagged with a completed PROP-07 tag and del-  
ivered to the property room or other location designated by  
Unit Administration as a secondary secure property storage  
area. V. General Procedures for the Handling of Offender  
Personal Property. B. Staff Responsibilities, AD-03.72  
(Rev. 1) (Rev. 5) [V.B.1. (p.17)], ECF 62 at 285.

5. No delivered property to the property room then notifying  
property contains declared constitutionally protected legal  
books and materials. The Property Officer shall contact  
the Law Library Supervisor for a review of all offender pr-  
operty that contains any item which the offender claims to  
be legal. This review shall be conducted prior to destruc-  
tion of the property and shall be documented in writing,  
B. Unit Property Room, [IV.B.7.(p.15)], ECF 62 at 283.  
Furthermore, Bynum made no attempt to document confiscated  
property in accordance with Personnel Directive 22 (PD 22) and this  
was done intentionally and deliberately.

Texas Government Code 571 [PD 22 (#27): Failure to turn in

all evidence seized: Employees are required to preserve and submit all evidence in its original form through an established chain of custody. All confiscated property, contraband, or other such items must be properly accounted for and secured in accordance with the appropriate division's policy.

Also, [PD 22 (#20)]: Violation of Statutory Authority/Court Order/Rules/Regulations/Policies: It is the employee's responsibility to know, have a clear understanding of, and comply with rules, regulations, policies, court orders, and Statutory Authority governing the operation of the agency. Ignorance of the existence of any of the aforementioned is not a defense for violations of the same.

#### QUESTION No. 3

3. Whether, considering the lower court's premature order to sever and dismiss, without the benefits of all the tools of discovery including relevant material facts and compelling evidence of constitutional violations by Jeremy J Bynum and other government employees working under color of law can be ignored proffering for the defendants?

#### QUESTION No. 3 — MATERIAL FACTS — EVIDENCE

The lower court severed because claim of constitutionally protected legal and religious property were "potentially" cognizable under 28 U.S.C. § 2254. However, Plaintiff isn't challenging the fact or duration of my confinement or do I seek immediate or spee-

dier release. These constitutional and due process violations are throughout, beginning to end, protected conduct — adverse action — causal connection — material facts.

A "material" fact is one that "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby Inc., 477 U.S. 242,248. Also, "substantive evidentiary standard of proof that would apply at the trial on the merits." that "a fair-minded jury could return a verdict for the plaintiff on the evidence presented." Anderson, 477 U.S. at 242,252(1986). This includes filing false disciplinary charges and confiscation and destruction of constitutionally protected property. Hart v. Hairston, 343 F.3d 762,764(5th Cir. 2003); Allen v. Thomas, 388 F.3d 147,150(5th Cir. 2004), respectively.

Concerning Turner v. Safley, 107 S.Ct. 2254(1987) and O'Lone v. Estate of Shabazz, 107 S.Ct. 2400(1987), "curtailing" First Amendment rights, such as AD-03.72 (Rev. 5) Offender Property, doesn't mean abdicating them. It is "reasonable" and "rationally related" for government officials working under color of state law to follow all directives, policies and protocols concerning "well established constitutional rights," namely religious and legal property. Government officials working under color of state law are expected to use common sense in assessing their legal obligations. Hope v. Pelzer, 122 S.Ct. 2508(2002).

In relation to U.S. Const. I "free exercise" clause, Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. at 2000cc-1(a) (providing in part that "[n]o government

shall impose a substantial burden on the religious exercise of a person... confined to an institution...").

Furthermore, Plaintiff establishes that the destruction of my religious books burdened a sincere religious practice, namely reading religious material purchased and mailed directly to me here in prison from my family. The defendants haven't "put forward" any legitimate government interest justifying the destruction of Plaintiff's religious materials. Bynum failed to turn in evidence seized. This is official oppression and violations of the civil rights of a prisoner. Bynum violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 437 U.S. 800, 817-18, 102 S.Ct. 2727 (1982), and "that officials who exceed their discretion are not entitled to immunity." Anderson v. Creighton, 483 U.S. 635, 641, 107 S.Ct. 3034 (1987).

All of the proceeding government employees working under color of state law have personal involvement and actual knowledge concerning the destruction of constitutional property. These are relevant material facts and compelling evidence ignored by the lower courts. These constitutional violations stand alone and are not severable. The lower courts have erred: protected conduct — intentional adverse reaction — causal connection.

After telling Bynum that I would write a grievance for seizing religious and legal materials, he instigates my arrest and lock-up. An INVESTIGATION WORK SHEET (CS — 10.11B), see Exhibit E-5, was prepared by Tamila Y Metzger, Counsel Substitute Investigator

(CSI) in which CSI falsely states that I refused a statement. I emphatically stressed the return of my religious property. I included Sec. B. REQUESTED WITNESSES: 19Y-71, Campos; 19Y-38 Sellers; and Sgt. Castro who I'd talked with before he took me to 11 bldg. lock-up. I specifically told Sgt. Castro what Bynum had seized, religious and legal property, and that I in know way threatened his subordinate. I attempted this informal resolution as I'm required and then locked up anyway without any of my property.

Promoted by TDCJ to one of the highest most authoritative positions, Disciplinary Capt. Joseph C Boyle (since filing this civil suit, now a convicted felon: fraud) is the Disciplinary Hearing Officer (DHO). During the actual hearing and also on the TDCJ HEARING WORK SHEET: Sec. A: Exhibit E-8, I read my "OFFENDER'S WRITTEN STATEMENT." "I was in my cubicle. I asked the officer why he confiscated my legal and religious material. I tried to informally resolve the matter. I did not threaten the officer." I'm allowed to write a written statement to present at the hearing, however the rest of my written statement is no longer attached to the back of this worksheet with a paperclip as was done by Boyle at the hearing. Boyle destroyed this important document. Boyle is very well aware that I'm requesting the return of my religious literature. After Bynum's statement, I immediately request my two witnesses to be called to testify on my behalf. This is my constitutional right under Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963(1974), and Ponte v. Real, 471 U.S. 491, 497, 105 S.Ct. 2192(1985). Boyle denies my constitutional request telling me, "I have their statements right here," then

begins reading these falsified documents as recorded on the Disciplinary Hearing Tape. At this point, with tape recording, I plea for the return of my religious property. Boyle's reply, "If you want your property back, write an I-60." You don't write grievances on my officers." Constitutional violation: redress for government wrongs. Then I was locked up in solitary confinement without any of my religious literature, creating a "substantial burden" on reading said literature. I desperately needed my written Word to cope with severe depression and the Word sustains and directs me here in prison when all else fails. Constitutional violation: locking Plaintiff up in solitary without the two property items that I am allowed to have in solitary, my religious and legal materials. Having Plaintiff "locked up" in solitary and extra restrictive custody without any of my religious literature is personal against me and a serious violation of my protected "free exercise" rights under the First Amendment of the U.S. Constitution. This rendered the "free exercise" nonexistent, see Exhibit E-9.

Concerning Bynum and Boyle on August 19, 2013, see, Thompson v. Upshur County, Texas, 245 F.3d 447,459(5th Cir. 2001). (Prison administrators "are liable for deliberate indifference when they knowingly fail to respond to an inmate's request for help."): (Deliberate indifference by supervisory officials to inmate's constitutional rights is sufficient to establish liability under 42 U.S.C. § 1983). Saucier v. Katz, 533 U.S. 194(2001), 121 S.Ct. 2151(2001), ("clearly established statutory or constitutional rights of which a reasonable person would have known.")

QUESTION No. 4

4. Whether a prisoner has equal protection under the Constitution when the defendants who are superiors and are personally and directly involved in their individual capacities do not address and manage subordinates illegal behavior and the lower courts ignore relevant evidence aquired through discovery showing deliberate indifference?

QUESTION No. 4 — ARGUMENTS AND EVIDENCE

Defendant Boyle participated directly in the violation of my due process rights to possess legal and religious property and to safeguard this property because he was the superior in charge of the disciplinary hearing. He was, before he went to prison, completely and personally involved in administrating major disciplinary cases with major punishment. His decisions were absolute and final and he wielded that power without question showing deliberate indifference to injury. Furthermore, Boyle had "actual knowledge" of this serious risk and loss of legal and religious material and most definitely failed to act reasonably to avert it. Logan v. Zimmerman Brush Co., 455 U.S. 422, 436, 102 S.Ct. 1148(1982); accord, Allen v. Thomas, 382 F.3d 147, 149(5th Cir. 2004) (confiscation of property under authority of a prison administrative directive was not random and unauthorized).

I follow Boyle's direct order and begin writing I-60's to get my religious property. I receive no reply. At this time, my family members became involved by calling Warden Richard E Wathen asking where is the religious property they had mailed to me and why isn't

it being returned? Wathen has "personal involvement" of of constitutionally protected religious property and showed deliberate indifference by failing to act reasonably to avert the destruction of this property. See Woodfox v. Cain, 609 F.3d 774,792(5th Cir. 2010).

Plaintiff's pleadings establish that the seizure and destruction of my religious books burdened a sincere religious practice. Also, RLUIPA 42 U.S.C. § 2000cc-1(a) (providing in part that "[n]o government shall impose a substantial burden on the religious exercise of a person... confined to an institution...); et seq. 5(7)(A) "includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief."; 3(g) "This act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this act and the Constitution."

Also, Warden Wathen has been sued before for the confiscation and destruction of constitutionally protected property. He has prior history and is liable in his individual capacity, Lueck v. Wathen, 262 F. 2d 690,694 (N.D. Tex. 2003). Both Boyle and Wathen showed deliberate indifference by having had actual knowledge of a serious risk (action) and to have failed to act reasonably to avert it. Bynum and Boyle were promoted in rank under Warden Wathen's watch and he most certainly knew or should have known prior unconstitutional acts by the defendants. There is systemic failures in TDCJ from the top down and it starts with Warden Wathen's personal responsibility to supervise his subordinates.

Also with personal involvement is Boyle's right hand woman, [REDACTED]

destroyed and both Bynum and Castro were no longer working for TDCJ. Lt. Milburn didn't mention anything about "altered" "ripped out pages" of either religious or legal property and made no mention of "contraband" whatsoever. I've requested the production of this Om-budsman's document for discovery, however Bynum cannot or will not produce this extremely relevant evidence.

Only through the tools of discovery do I find out about an outrageous development and unbelievable "changing tale". Jeremy J Bynum's name isn't on any confiscation papers at all. I find out that Ofc. Anna Brown claims to be the individual who confiscated my religious and legal property on August 19, 2013. Brown does not list the religious literature nor does she explain how they were "altered" on the "Disposition of Confiscated Offender Property", PROP-08 Form, Exhibit E-13. This "Disposition of Confiscated Offender Property," PROP-08 Form allegedly generated by Brown is suspect at the very least. This is false and contrary, adverse and contradictory to material facts. Brown doesn't even list the titles or authors of the materials that are allegedly "altered!" Lt. Milburn claims credibly that in the fall of '13 that he had searched for my property but it had already been destroyed, however this "Disposition of Confiscated Offender Property," PROP-08 Form clearly shows my religious and legal property was allegedly destroyed on January 23, 2014. This is a clear discrepancy. Bynum is the individual who confiscated all of my religious property and is completely responsible for the PROP-08 "Disposition of Confiscated Offender Property." Brown also claims falsely that I "refused to sign"

for confiscated property, Exhibit E-13, however I did sign for all my other property as I would have done if just given the chance with my religious property, Exhibit E-14, received after 7:00pm on August 19, 2013. Both Bynum and Brown should answer for these discrepancies. The "refused to sign" tactic deployed by the Allred Unit is an all too frequent justification to abuse their power and it shows intent and malice. My legal and religious property was not "altered" in any way, shape or form. This is a lie to cover-up and conceal for the already destroyed property.

Property Officer Chris O'Rourke states in her affidavit, sworn to on December 30, 2019: "... since 09/10/2012. I was hired as Correctional Officer (CO) and I am currently employed as the Property Officer at the Allred Unit since 07/10/14, Exhibit E-15.

This is false and contrary, adverse and contradictory to material facts. On the Disposition of Confiscated Offender Property PROPL-08 Form, allegedly generated on August 19, 2013, O'Rourke's name is clearly marked as Property Officer Designee: (Print Name) Section I. According to her sworn affidavit O'Rourke doesn't even work in property until 07/10/2014, eleven months, almost a full year later.

Furthermore, O'Rourke states, "An offender's property must be stored in the assigned storage box. Anything not stored in the assigned storage box is considered improperly stored." This is not even close to an accurate statement. Even though O'Rourke states that an offender must store items such as legal and religious in the storage box assigned, this is inconsistently enforced. Many

offender property items, including religious property and literature are allowed to be out of the storage container. These include Bible, devotionals, such as "Words of Grace" and crucifix, among others, see Exhibit E-3, Bible on desk, "common sense"; Hope v. Pelzer, 536 U.S. 730, 742-45, 122 S.Ct. 2508(2002) (government officials working under color of state law are expected to use common sense in assessing their legal obligations). Property storage boxes are inconsistantly built with less than twenty percent having under their bunks single storage boxes such as in the dorms. Enforcement is completely arbitrary and absolutely inconsistent and in TDCJ uniformity is non-existent.

Property Officers, whether Thornton or O'Rourke didn't follow any "common sense" chain of custody directives for the property room. These include, "stored in the property room for 30 days" as stated by O'Rourke in her affidavit.

V. General Procedures for the Handling of Offender Personal Property. B. Staff Responsibilities.

1. Any offender personal property taken into the possession of TDCJ staff shall be documented on a PROP-08 "Disposition of Confiscated Offender Property." The property shall be tagged with a completed PROP-07 tag and delivered to the property room... AD-03. 72(Rev.5) [V.B.1. (p.17)], ECF 62 at 285.

2. The offender shall be allowed seven (7) days from the denial, or upon completion of the grievance process (if applicable), to make a determination of excess materials in accordance with procedures in Section VII. IV. Storage Requirements, A. Offender

Storage Containers/Areas. 5. Legal Materials, d. improperly stored items, AD-03.72(Rev.5) [IV.A.5.d. (p.14)], ECF 62 at 282.

3. All property received in the Property Room shall be accompanied by a PROP-08, and logged-in on the PROP-06, "Property Room Log" The sequential log book number must be recorded on a PROP-07, Property Tag", that is then attached to the outside of the storage container. Property must be logged out on the PROP-06 when removed from the property room, B. Unit Property Room, AD-03.72(Rev.5) [IV.B.3. (p.15)], ECF 62 at 283.

4. The Property Officer shall ensure that all property received in the Property Room has the appropriate documentation, B. Unit Property Room, AD-03.72(Rev.5) [IV.B.4.(p.15)] ECF 62 at 283.

5. The Property Officer shall contact the Law Library Supervisor for a review of all offender property that contains any item which the offender claims to be legal. This review shall be conducted prior to destruction of the property and shall be documented in writing, B. Unit Property Room, AD-03.72(Rev.5) [IV.B.7. (p.15)], ECF 62 at 283.

Property Officer Chris O'Rourke, who doesn't even work in property on the dates of 08/19/13 and 01/23/14, claims to be the Property/Officer Designee. And now the PROP-08 has been falsified to read from Improperly Stored to Altered and Destroyed, when in fact, all discovery evidence reveals religious and legal property was "disposed" of by Bynum on August 19, 2013. And Thornton stating on September 16, 2013, "Didn't Receive this in G.P.property." A close look at the date of this PROP-08 Form and the Confiscation Date

and Signature/Date are written on January of 2014, not August 19, 2013. Also, Anna Brown did not sign this fraudulent document as required on any government document especially evidence. This is tampering with government documents by government employees that abuse their power, including changing the reason for confiscating to cover-up and conceal that Bynum had already destroyed Plaintiff's religious and legal property. At no time ever did Bynum, Property or Administration, throughout the entire process of trying to get my property back, was I told it was altered, not once.

While Ofc. Jeremy J Bynum claims he can "take whatever he wants whenever he wants," that authority entails extremely important constitutionally protected responsibilities. My religious and legal property were not altered in any way nor was that property illegal contraband, nor did any of my religious and legal property jeopardize institutional safety. Bynum knew exactly what he seized, confiscated then destroyed because I told him so on the morning of August 19, 2013: religious literature and legal property. This establishes deliberate, malicious and evil intent on Bynum's part to destroy what he seized and confiscated.

Bynum's affidavit, Exhibit E-16, stating six and one half years later for the first time: "It was our practice at this time, when we discover a bible or books were altered in such a way, pages were ripped and used for K-2 smoking purposes. Whether the property was of religious nature or not, I would follow TDCJ policy AD-03.72, Offender Property, and only confiscate items that were contraband." Bynum gives this excuse six and one half years later,

however nowhere anywhere is proof of this or evidence shown then or now that his statement is even remotely valid.

Bynum also states on his affidavit "... I am authorized to confiscate contraband, which are items that are altered, out of place, or excesses of authorized property, and dispose of it in accordance with the procedures laid out in AD-03.72." Bynum only seizes then destroys then ignores all other constitutionally protected safeguards "laid out" concerning AD-03.72 Offender Property. Even more telling about his statement: Bynum has no authority whatsoever to "dispose" of anything. In this case, he would be destroying evidence in which he later then claims is for drug manufacturing and use.

In order to justify destroying constitutionally protected property, Bynum makes the absurd claim that Plaintiff is running a drug lab out of my prison dorm cubicle and using religious and legal books and materials as cover, ripping pages from those books and materials then soaking them in K-2 and smoking them: insulting — nonsense — irrational. Neither Bynum, Administration, Property, or Law Library Officers make any such accusations or have any evidence at the time or did Plaintiff receive a "case" for "altered" property. However, all religious and legal property must be destroyed without due process?

Bynum acted under color of state law in his individual capacity intentionally and purposefully to deprive Plaintiff of his rights with callous indifference and abuse of his official powers.

Deference in no way was intended or granted for government officials to abuse their powers. Bynum's actions were completely unreasonable and irrational. There is no prison regulation that allows prison authorities without due process to destroy religious property. It is not found anywhere and it is unconstitutional. Bynum specifically and intentionally seized and destroyed what he and his superiors knew ahead of time would cause me the most damage, harm and injury: religious and legal property.

#### QUESTION No. 6

6. If the "valid, rational connection" is not met and the "compelling interest" and "the least restrictive means of furthering that compelling interest" are not proven by the lower courts, then why is Bynum's unconstitutional and malicious practice of destroying religious property condoned without holding him accountable?

#### QUESTION No. 6 MATERIAL FACTS — EVIDENCE

I practice, profess and proclaim that I am a Christian and I believe that Jesus Christ is my personal Savior. My beliefs are religious and most certainly sincerely held. Reading religious material is foremost and by far the most important way that I practice and express my religious beliefs, therefore, reading religious literature is a personal religious "free exercise" constitutional right. Preventing Plaintiff from reading my own personal Christian literature by destroying it created a substantial burden in exercising this right.

There is no "valid, rational connection" for Bynum, or the government, to destroy, without due process, religious property. This serves no legitimate penological interest. It is irrational, arbitrary and unconstitutional.

When my mom was diagnosed with terminal cancer in early 2013, she purchased a religious picture book and had it mailed to the unit — "TDCJ APPROVED." It was filled with beautiful pictures from Hawaii where she lived and there were amazing spiritual verses accompanying the pictures. She wanted me to have this and keep it when she passed away. This spiritual book was sentimental, intangible, and extremely personal to Plaintiff. Bynum destroyed it intentionally and cannot produce an alternative. Furthermore, there's an absence of alternatives concerning end of chapter study questions by Lucado, study workbooks by Swindoll and Alcorn and the devotional "Words of Grace". This also includes hard cover Inspirational Picture books from my mom, sister and brother that I can keep personally for myself for comfort. See ECF No. 15; [Q&A No.1.] "... Picture Books with Inspirational Verses; One (1) Randy Alcorn Book and several others that I can't think of the names and two (2) Bibles." Those were personal and unique to Plaintiff, they are my own and I can refer back and read them especially the picture books, look at them anytime I choose. This becomes so incredibly true and reality driven during the pandemic: I can look at them anytime I choose, how comforting could that have been during this extended pandemic and lock-downs. The government has no available alternative to this "free exercise" right.

My "TDCJ APPROVED" religious materials were carefully selected for me by my family. Personally chosen for me and purchased with their own money and paying extra to mail them to the prison to help guide me on my Christian Walk is the embodiment of "least restrictive means." Destroying them without "due process" safeguards is the very definition of "most intrusive means." These include as stated on ECF No. 15 [Q&A No. 1.]; "Nine (9) Max Lucado Collector's Edition Hard Cover Books; Two (2) Charles Swindoll Books, one (1) Picture Book with Inspirational Verses and one (1) Workbook; Two (2) Joel Osteen Picture Books with Inspirational Verses; One (1) Randy Alcorn Book and several others that I can't think of the names and two (2) Bibles." A quick search of the books would have revealed I was working my way through the Workbooks, including answering the end of chapter Study Questions concerning Lucado's books. If just given the chance, I would have been able to send half the workbooks home and the Inspirational Picture Books could have been saved, including the one sent to me by my mother and other family members. See DECLARATION by Cynthia M Bizik, Exhibit J-3.

Religious literature sent to me in prison from my loved ones to comfort and assist me in my Christian Walk is the very definition, intent and heart of "de minimis" cost to accomodation and prison resources.

Seizing and then without due process destroying my own personal religious property, then after the fact, claiming I can have what the Chaplaincy department has makes absolutely no common sense. It's illogical, irrational, unreasonable and unconstitutional.

QUESTION No. 7

7. Why such harsh treatment towards Plaintiff and such overly broad leniency as Qualified Immunity and Summary Judgment towards Defendant?

QUESTION No. 7 — ARGUMENTS AND EVIDENCE

PROTECTED CONDUCT — ADVERSE ACTION — CAUSAL CONNECTION

In 2012 I witnessed a corrupt and abusive act by and concerning Defendant, Ofc. Jeremy J Bynum. This is found in:

ECF No. 15, DISTRICT COURT'S QUESTIONNAIRE TO PLAINTIFF

QUESTION No. 17:

Describe each act of retaliation against you by Jeremy J Bynum and state all facts known to you upon which you rely to establish that, but for a retaliatory motive, this Defendant would not have engaged in the conduct described. Be specific in describing all statements or acts by this Defendant that demonstrates a retaliatory motive and state why you believe you were retaliated against by him.

ANSWER:

In early 2012, I witnessed Jeremy Bynum assault an Inmate in front of number 4 chow hall. I was stuck out of the chow hall waiting for the line to move up. I told the inmate to use my name as a witness and Jeremy Bynum responded by saying he wouldn't forget me and would take care of me later. Numerous times Jeremy Bynum, whether walking down the hall or at chow hall would react by saying he didn't f--- around with anyone and wouldn't forget. Jeremy

Bynum made good with this retaliation on August 19, 2013. The retaliation was grave and maliciously spiteful by seizing and destroying my legal material and religious material, then filing a false disciplinary charge sending me to solitary and then G4 close custody. It took Jeremy Bynum one and a half years but he finally made good on his threats. Taken in totality and with the preponderance of the evidence and through all tools of discovery more specific facts will emerge. Further tools of discovery are respectfully required and requested. [End of Question No. 17 — Answer]

Being a witness to an assault on an offender by a correctional officer is protected conduct. Seizing and destroying religious property then filing false disciplinary charges on Plaintiff are facts that constitute adverse action. Causal connection is intentional and affirmed by the connection between the protected conduct and the harsh treatment and adverse action taken against Plaintiff. I will never forget this incident or the offender Bynum assaulted, yet I will never again yell out my name to be a witness for an offender that's being assaulted. Lesson learned the hard way. See, Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007) ("fair notice of what the Plaintiff's claim is and the grounds upon which it rests").

This QUESTIONNAIRE is signed November 3, 2015, over five years before Bynum and administration ever claim religious books were "altered" "ripped out" and used as drugs on his affidavit obtained through the tools of discovery.

Also, Bynum's employment records and prior acts should have

been made available under the tools of discovery as evidence. Instead, they were shielded, covered and hidden under Attorney General Ken Paxton's and the lower court's giant umbrella of protection.

ECF No. 50; PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any and all grievances, prior complaints, complaints, or other documents received by the Allred Unit or TDCJ-CID Huntsville concerning Defendant Bynum...

DEFENDANTS RESPONSE TO PLAINTIFF'S SECOND REQUEST FOR PRODUCTION

Objection(s):

Defendant objects to this request as vague, overbroad, and does not reasonably identify the documents plaintiff seeks.

Response:

Subject to and without waiving said objectives, see previously disclosed initial and supplemental disclosures attached hereto for responsive information.

These are unfair and obstructive "canned" responses from Ken Paxton's Law Enforcement Defense Division, i.e. Defendant Bynum's legal juggernaut. And, it's an excuse to hide Bynum's prior bad acts.

This is an extremely important issue of public interest including prisoners and everyone who has loved ones incarcerated. This discovery tool holds accountable correctional officers working in their individual capacities under color of state law for abuses

of power.

ECF No. 56; BRIEF IN SUPPORT OF MOTION TO COMPEL DISCOVERY  
THE DISCOVERY SOUGHT IS RELEVANT

Rule 26(b)(1), Fed.R.Civ.P., permits discovery of "any non-privileged matter that is relevant to any party's claim or defense."

Plaintiff is not asking for Bynum's phone number, address or medical records. I'm asking for relevant employment records which shows confiscating and destroying property is what he does.

I'm also asking for STEP 1&2 GRIEVANCES filed against Bynum and these grievances are extremely relevant to Plaintiff's claim. There is no logical reason to object to this reasonable request unless there is something for Bynum to hide.

This civil suit has never been about "conditions of confinement," throughout, it is about abuses of power, due process and unconstitutional acts. Herewith is the basis for this law suit: important issues and the intense public interest involved concerning the blanket granting of Qualified Immunity and Summary Judgment to government employees working in their individual capacities under color of state law. The preponderance of evidence favors Plaintiff and I succeed on the merits.

The Eleventh Amendment was never intended, granted or ratified to cover and shield abuses of power and the destruction, without due process, of constitutionally protected property by government employees.

This is clearly summed up by the Advisory Council on Ethics

(ACE):

CODE OF ETHICAL CONDUCT

This code embodies a fundamental respect for the constitutional rights of all people. Plaintiff prays the Supreme Court agrees. Exhibit E-17.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael J. DeMarco Jr.

Signed this 28th day of Michael J DeMarco Jr 1564162  
December, 2022. Allred Unit  
2101 FM 369N  
Iowa Park TX 76367