

No. 22-7297

ORIGINAL

Supreme Court, U.S.
FILED

JAN 20 2023

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IN THE
SUPREME COURT OF THE UNITED STATES

Lawrence Edward Thompson — PETITIONER
(Your Name)

vs.

Alfred Unit — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Lawrence Edward Thompson
(Your Name)

Alfred Unit, 2101 E. M. 3169N
(Address)

IOWA PARK, TEXAS 76367
(City, State, Zip Code)

(Phone Number)

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether The Fifth Circuit Erred In Failing To Apply The Liberal Meaning Standard To Petitioner's Factual Allegations Of Imminent Danger Of Serious Physical Injury.

Whether The Fifth Circuit Departed From It's Own Decision In Holding That Petitioner Has Not Shown He Is In Imminent Danger Of Serious Physical Injury By Being Denied Adequate Medical Care.

Whether The Fifth Circuit Erred In Deciding The Petitioner's Appeal Without Allowing Petitioner To File An Appellate Brief In Support Of Petitioner's Appeal.

LIST OF PARTIES

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

[x] 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:

Jimmy D. Smith, Senior Warden, Alford Unit

Dr. Marcia Chai, MD, Correctional Physician, Alford Unit

Tina S. Vitolo, Classification, Alford Unit

Kenyon Page, Medical Administrator, Alford Unit

RELATED CASES

Thompson v. Alford Unit, No. 7:22-cv-018-D, U.S. District Court For The Northern District of Texas, Judgment Entered May 31, 2022.

Thompson v. Alford Unit, No. 22-12641, U.S. Court of Appeals For The Fifth Circuit, Judgment Entered October 25, 2022.

List of Parties

JOSEPH M. EATRIDGE, NURSE PRACTITIONER, Alford Unit

GREGORY D. HICKS, LAW LIBRARY SUPERVISOR, Alford Unit

GLENNIS J. ADAMS, FORMER LAW LIBRARY SUPERVISOR, Alford Unit

BRYAN D. REITOMA, ASSISTANT WARDEN, Alford Unit

TRACI R. COOKE, GRIEVANCE OFFICE SUPERVISOR, Alford Unit

DAVID L. IVEY, GRIEVANCE INVESTIGATOR, Alford Unit

RUTH E. SHROYER, GRIEVANCE INVESTIGATOR, Alford Unit

VANCE L. DRUM, DIRECTOR, CHAPLAIN'S DEPARTMENT

GARY L. REDWINE, CHAPLAIN, Alford Unit

ADENIYANJU A. FATEHUN, ISLAMIC CHAPLAIN, Alford Unit

DEBBIE KELLEY, MAILROOM SUPERVISOR, Alford Unit

GOTT P. SZCZEPINSKI, SERGEANT, SAFE PRISONS, Alford Unit

CHRISTIE THOMPSON, LAW LIBRARY SUPERVISOR, ROACH UNIT

List of Parties

Vivian Garcia, LVN, Allied Unit EOB

Milred G. Ortiz, OFFICER, Allied Unit EOB

SHERRA Worley, RN, Allied Unit EOB

UNKNOWN CAUCASIAN Sergeant, Allied Unit EOB

UNKNOWN CAUCASIAN Lieutenant, Allied Unit EOB

UNKNOWN Male Hispanic INMATE, Allied Unit, 18 Building

UNKNOWN Male CAUCASIAN INMATE, Allied Unit EOB

Kyle Kluer, Captain, Allied Unit

Roberto Vialpando, LVN, Allied Unit

Maria E. Muirhead, OFFICER, Allied Unit

Jeania Pineda, PROGRAM Administrator, TDCJ ACCESS to

Courts, Counsel, and Public Officials, Houstonville, Texas

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was OCTOBER 25, 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).

Constitutional And Statutory Provisions Involved

AMENDMENT VIII

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

AMENDMENT XIV

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATES WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES AND IMMUNITIES OF THE CITIZENS OF THE UNITED STATES, 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 LAWS.

28 U.S.C. § 1915. Proceedings in Forma Pauperis

(g) IN NO EVENT SHALL A PRISONER BRING A CIVIL ACTION OR APPEAL A JUDGMENT IN A CIVIL ACTION OR PROCEEDING UNDER THIS SECTION IF THE PRISONER HAS, ON 3 OR MORE PRIOR OCCASIONS, WHILE INCARCERATED OR DETAINED IN ANY FACILITY, BROUGHT AN ACTION OR APPEAL IN A COURT OF THE UNITED STATES THAT WAS DISMISSED ON THE GROUNDS THAT IT IS TRIVIOUS, MALICIOUS, OR FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, UNLESS THE PRISONER IS IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY.

Constitutional and Statutory Provisions Involved

Rule 8. General Rules of Pleading, Federal Rules of Civil Procedure

(a) CLAIM FOR RELIEF. A Pleading that states a claim for relief must contain:

(2) A short and plain statement of the claim showing that the pleader is entitled to relief; and

Rule 9. Pleading Special Matters

(b) Fraud or Mistake: Conditions of the Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

STATEMENT OF THE CASE

On March 11, 2022, Petitioner Filed A Motion For Leave To Proceed In Forma Pauperis By A Three-Strikes Prisoner. On March 30, 2022, Petitioner wrote the Clerk concerning Petitioner's loss of this Motion and Requested a copy to be able to file an Amended Complaint. On April 4, 2022, Petitioner Filed A Motion For A Physical Exam and Motion For Required Joinder of Parties. On April 21, 2022, Appellant Filed A Motion For Leave to Proceed In Forma Pauperis with a certificate of Trust Fund Account Statement. On May 9, 2022, Petitioner Filed A Motion Requesting copies. On May 31, 2022, the district court dismissed this civil action, and entered a Final Judgment. On June 13, 2022, the Petitioner Filed A Motion Requesting the Court Rule on Movants In Forma Pauperis Status. On June 15, 2022, the district court entered an order concerning Petitioner's Motion Requesting the Court Rule Movants In Forma Pauperis Status as a Motion to Alter or Amend Judgment Pursuant to Rule 59(e) Federal Rules of Civil Procedure reopening the case for further proceedings, then entered an Order denying the Motion. On June 30, 2022, Petitioner Filed the Notice of Appeal. On July 15, 2022, Petitioner wrote the Clerk to caution her about sending Petitioner mail that was not properly sealed. On July 19, 2022, the Petitioner Filed A Motion For Leave to Proceed In Forma Pauperis on Appeal. On July 22, 2022, the district court entered an Order denying Petitioner's Motion for Leave to Appeal In Forma Pauperis. On July 25, 2022, the Petitioner Filed A Motion For Leave to Proceed In Forma

STATEMENT OF THE CASE

Petitioner in the United States Court of Appeals for the Fifth Circuit in Appeal No. 10641. On August 15, 2022, the Record on Appeal was sent from the district court to the Court of Appeals. On August 31, 2022, the Petitioner requested the Record on Appeal from the district court. On September 13, 2022, the Petitioner filed a Motion to Reconsider Order and Motion for Temporary Restraining Order and Preliminary Injunction. On October 25, 2022, the Court of Appeals for the Fifth Circuit issued its opinion in Appeal No. 10641 denying Petitioner IFP status and holding that Appeal was frivolous. On November 7, 2022, the district court denied Petitioner's Motion to Reconsider Order and Motion for Temporary Restraining Order and Preliminary Injunction.

Petitioner first became infected with a bacterial infection in 2018, while living at the Southeast Texas Transitional Facility by being stung or bitten by insects that had been exposed to hazardous chemical from the industries surrounding the facility during the flooding of Hurricane Harvey.

Petitioner sought and received treatment at the Michael E. DeBakey Veterans Administration Medical Center in Houston, Texas, where the physicians there gave Petitioner antibiotics twice a day for sixty (60) days to cure this problem.

STATEMENT OF THE CASE

HOWEVER, THE BACTERIAL INFECTION RECURRED IN EARLY MAY 2021, WHILE PETITIONER WAS IN THE HARRIS COUNTY JAIL. PETITIONER SOUGHT TREATMENT BUT WAS TRANSFERRED TO THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, HUNTSVILLE, TEXAS AT THE HOLLIDAY UNIT ON MAY 27, 2021.

BETWEEN MAY 27, 2021, AND AUGUST 27, 2021, PETITIONER WAS SEEN BY A NURSE PRACTITIONER THREE TIMES AND A PHYSICIAN ONCE. PETITIONER INFORMED BOTH HOW PETITIONER BECAME INFECTED WITH THE BACTERIAL INFECTION, WHERE PETITIONER WAS TREATED, THE DIAGNOSIS, AND THE TREATMENT PRESCRIBED. BOTH INDIVIDUALS DID NOT BELIEVE PETITIONER AND GAVE PETITIONER A MEDICAL PASS FOR THE RASH ON PETITIONER'S FACE. BOTH GAVE THE PETITIONER A CREAM FOR JOCK RASH THEY THOUGHT PETITIONER HAD.

ON AUGUST 27, 2021, PETITIONER WAS TRANSFERRED TO THE ALLRED UNIT IN LOUK PARK, TEXAS.

ON SEPTEMBER 30, 2021, PETITIONER SUBMITTED A SICK CALL REQUEST STATING: "I HAVE A BACTERIAL INFECTION THAT AFFECTS MY EYES, EARS, STOMACH, AND CAUSED A RASH IN MY FACE AND HEAD. I'VE HAD THIS PROBLEM BEFORE."

ON OCTOBER 7, 2021, PETITIONER WENT TO A NURSE'S SICK CALL APPOINTMENT AND WAS SEEN BY NURSE DAVID VAUGHN, L.N. PETITIONER TOLD THIS NURSE OF THE SYMPTOMS PETITIONER WAS EXPERIENCING, THAT HE HAD HAD THIS PROBLEM BEFORE, WHERE PETITIONER GOT TREATMENT, WHAT THE TREATMENT

CONTINUITY OF THE CASE

was. But this Nurse disregarded EVERYTHING Petitioner had said. This Nurse then told Petitioner that the Rash in Petitioner's Beard and Mustache was from shaving. Despite Petitioner having a two inch of hair on his face. This Nurse then told Petitioner that Petitioner had to try Hydrocortisone cream before the Nurse could refer Petitioner to see a Provider. Petitioner walked out of this appointment because this Nurse was not paying attention to what Petitioner had told him.

On October 8, 2021, Petitioner wrote Keyvon Pace, Medical Administrator and informed him of the symptoms Petitioner was experiencing, that Petitioner had had these problems before, how Petitioner became infected and where, where Petitioner received treatment, and what that treatment consisted of. Petitioner then requested to see a Provider.

On October 13, 2021, Petitioner went to a Nurse Sick Call appointment and was seen by Roberto VinPardo. This Nurse looked at Petitioner's face standing at least three feet away from Petitioner, then told Petitioner he did not see a Rash in Petitioner's face. This Nurse then told Petitioner he would give Petitioner Hydrocortisone cream. Petitioner then asked this Nurse was Petitioner supposed to eat this cream because the problem was internal. This Nurse was not listening to Petitioner, so Petitioner got up to leave and this Nurse stated: "If you walk out. I'll say you refused treatment and won't lay you in when you submit a request for medical treatment for something else." Petitioner left the clinic.

4 STATEMENT OF THE CASE

On October 14, 2021, Petitioner Filed Grievance #2022017749 About The incident on October 13, 2021.

On October 16, 2021, Petitioner was Moved out of General Population to a Building called "Expansion Cell Block".

On October 18, 2021, Petitioner wrote Dr. LAKSETTE LINTHICUM, MD, Director, IDJ Health Services Division informing her of the incident that occurred on October 13, 2021. Petitioner Also informed Dr. LINTHICUM of where and how Petitioner Got infected with the Bacterial infection, and where Petitioner Received Treatment.

On November 15, 2021, Petitioner wrote Warden JIMMY G. SMITH and informed him that Petitioner suffered with Asthma, Anemia, Acute Porosis, and sinusitis. Petitioner further Explained that the cold air conditioning temperature aggravated these serious Medical and requested to be Moved.

On November 16, 2021, Petitioner went to a Medical Appointment with JOSEPH M. ENDRIDGE, NP. Petitioner informed JOSEPH M. ENDRIDGE where he was and how Petitioner became infected with the Bacterial infection. Petitioner Also informed JOSEPH M. ENDRIDGE where Petitioner Received Treatment and what that treatment consisted of. The Petitioner finally informed JOSEPH M. ENDRIDGE of these Medical Problems: discoloration of the skin in Petitioner's Face and head; Acute indigestion where Petitioner can't eat certain Foods;

STATEMENT OF THE CASE

without Belching, Farting, Vomiting, and diarrhea unexpectedly; A RASH ALL OVER PETITIONER'S BODY WHERE PETITIONER GROWS HAIR; A CRAWLING, itching, and BURNING SENSATION ALL OVER PETITIONER'S BODY; and it is AFFECTING MY EYESIGHT AND BREATHING. PETITIONER ALSO INFORMED JOSEPH M. EATRIDGE THAT PETITIONER HAD THESE PROBLEMS BEFORE AND WHAT THE PHYSICIAN AT THE HOUSTON VETERANS ADMINISTRATION HOSPITAL PRESCRIBED TO ALLEVIATE THIS PROBLEM. JOSEPH M. EATRIDGE THE PRESCRIBED PETITIONER THE ANTI Biotic Amoxicillin 500 milligrams TWICE A DAY FOR TEN (10) DAYS.

ON NOVEMBER 22, 2021, PETITIONER AGAIN WROTE WARDEN JIMMY G. SMITH A REQUEST STATING: "I SUFFER WITH ANEMIA, AND OSTEOPOROSIS. IT IS COLD BACK HERE (ECB) AND IT IS CAUSING ME PAIN. I DID NOT COMPLAIN ABOUT THE HEAT AND I'M NOT HEAT SENSITIVE. PLEASE MOVE ME BACK TO POPULATION OR TRANSFER ME OFF THE UNIT." PETITIONER RECEIVED A RESPONSE TO THIS REQUEST ABOUT A WEEK LATER STATING: "YOU DO HAVE A HEAT SENSITIVITY SCORE - THEREFORE REQUIRE HOUSING IN A COOL BED. YOU ARE APPROPRIATELY ASSIGNED IN ECB." THE SIGNATURE WAS UNREADABLE.

ON NOVEMBER 22, 2021, PETITIONER WROTE KENNEDY PAGE, Medical Administrator STATING: "I AM WRITING YOU AGAIN TO INFORM YOU THAT I DID NOT REQUEST A HEAT RESTRICTION. PLEASE REMOVE THIS RESTRICTION FROM MY MEDICAL CLASSIFICATION. I WILL WRITE DR. LINTHICUM ABOUT THIS PROBLEM BECAUSE IT IS COLD BACK HERE. THIS AFFECTS MY ANEMIA AND OSTEOPOROSIS

Statement of The Case

Which causes me pain. I need to be moved back into population.

On November 28, 2021, Petitioner submitted a sick call request stating: "This is a request you renew the prescription for Amoxicillin 500 mg for ten (10) more days."

On December 8, 2021, Petitioner wrote Dr. Lashette Lanthorn, MD, Director, TMS Health Services Division to complain about Kenyon Page's refusal to schedule Petitioner for an appointment to remove the heat score from Petitioner's Health Summary.

On December 8, 2021, Petitioner went to a Provider's Sick Call Appointment in the Allied Unit ECP clinic at 8:00 AM. Nurse Vivian Garcia, LVN asked Petitioner for his Pass, when the Petitioner produced his Pass, Nurse Garcia allowed a TMS Officer named Mildred A. Ortiz to take the Petitioner's Pass then direct Petitioner to sit in the clinic waiting room. About 30 minutes, the Petitioner was called out the waiting room and Nurse Garcia took Petitioner's vital signs, then told Petitioner to return to the waiting room. About 9:50 AM inmates with 10:00 AM lay-jobs started coming in the waiting room. At least two (2) of these inmates were called out for vital signs check then sent down the hall to await their Provider's Sick Call Appointment. At 10:30 AM Petitioner went out of the waiting room and informed Nurse Garcia that Petitioner was still waiting for his Appointment and

STATEMENT OF THE CASE

HAD BEEN IN THE WAITING ROOM SINCE 8:00 AM. PETITIONER ALSO INFORMED NURSE GARCIA THAT PETITIONER HAD A 10:15 A.M. LAY-IN FOR THE LAW LIBRARY. BUT SHE HAD PUT TWO (2) INMATES IN FRONT OF PETITIONER. NURSE GARCIA THEN ASKED PETITIONER WHERE WAS HIS PASS? PETITIONER INFORMED NURSE GARCIA THAT SHE INFORMED PETITIONER TO GIVE HIS PASS TO OFFICER DETZ, WHEN PETITIONER CAME IN AT 8:00 AM. OFFICER DETZ CHECKED HER POCKETS AND STATED SHE COULD NOT FIND THE PETITIONER'S PASS. NURSE GARCIA INFORMED THE PETITIONER THAT SHE WOULD FIX THE PETITIONER ANOTHER PASS BUT THE PETITIONER WOULD HAVE TO WAIT. PETITIONER THEN LEFT THE CLINIC AND WENT TO THE LAW LIBRARY.

ON DECEMBER 9, 2021, PETITIONER FILED A STEP 1 GRIEVANCE ABOUT THE DECEMBER 8, 2021, INCIDENT WITH NURSE VIVIAN GARCIA ALLEGING A VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS BY FORCING THE PETITIONER TO CHOOSE BETWEEN MEDICAL AND LAW LIBRARY.

ON DECEMBER 18, 2021, CAME OUT OF HIS CELL AT ABOUT 2:00 PM TO ATTEND A 13:00-1500 LAY-IN FOR NURSE'S SICK CALL. PETITIONER WAS LET IN THE GALLERY ON 2-ROW OF G-POD GOING TO THE ECB CLINIC, WHEN THE OFFICER IN THE CENTRAL CONTROL ROW, ASKED OVER THE LOUDSPEAKER "WHERE ARE YOU GOING?" PETITIONER INFORMED THIS OFFICER THAT PETITIONER HAD A LAY-IN FOR NURSE'S SICK CALL FROM 1300-1500. THIS OFFICER OR SOMEONE IN THE ECB CLINIC CALLED THE OFFICER WORKING G-POD AND TOLD HER THAT ALL MEDICAL APPOINTMENTS HAD BEEN CANCELLED. THE OFFICER ON G-POD TOLD PETITIONER TO SIT IN THE DAY ROOM. ABOUT 15 MINUTES LATER AN OFFICER EMERGING AN INMATE

STATEMENT OF THE CASE

From the Kitchen came in. The officer called the control room to open the inmate's cell so the inmate could get his lay-in pass, then they both went in the ECB clinic for an appointment. Appellant told was cancelled.

On December 23, 2021, Petitioner wrote Dr. LANNETTE Linthicum, MD, Director, TDCJ Health Services Division to inform her of the events of December 8 and 9, 2021.

On December 30, 2021, Petitioner went to a Nurse's Sick Call Appointment about 12:00 PM that was scheduled for 13:00 PM. Nurse Vivian Garcia was checking Petitioner into the clinic when Officer Mildred G. Ortiz complained about Petitioner being in the Law Library earlier that day.

On January 4, 2022, Petitioner was scheduled for a Provider's Sick Call Appointment between 1:00 PM - 12:00 PM with Joseph M. Estridge, M.D. Petitioner went to this appointment and Joseph M. Estridge told the officer working the ECB clinic that Petitioner would be re-scheduled. Petitioner went back to his cell.

On January 26, 2022, Petitioner wrote Dr. LANNETTE Linthicum, MD, Director, TDCJ Health Services Division to inform her that Petitioner had submitted 16 requests for an appointment with a medical professional since November 28, 2021, and had not been scheduled for an appointment yet.

STATEMENT OF THE CASE

On JANUARY 28, 2022, PETITIONER WROTE JOSEPH M. EASTRIDGE, NP, stating: "I HAVE BEEN TRYING TO GET AN APPOINTMENT WITH YOU SINCE 11/28/21 TO GET A REEVAL OF THE PRESCRIPTION FOR AMOXICILLIN FOR THE BACTERIAL INFECTION I STILL HAVE, TO REMOVE THE HEAT SMOKE FROM MY HEALTH SUMMARY, AND TO OBTAIN A PRESCRIPTION FOR MUSCLE RUB FOR MY BACK AND RT. KNEE. PETITIONER THEN DESCRIBED THE MEDICAL PROBLEMS THE BACTERIAL INFECTION WAS CAUSING PETITIONER.

On JANUARY 31, 2022, PETITIONER WROTE DR. LAKETTE LINTHICUM, MD, DIRECTOR, TDS HEALTH SERVICES DIVISION AND SENT HER BRIEFING #2022055106.

On FEBRUARY 11, 2022, PETITIONER REVIEWED HIS TDS MEDICAL RECORDS. IT WAS THEN THAT PETITIONER SAW THAT KENYON PAGE, MEDICAL ADMINISTRATOR HAD FAILED TO DOCUMENT PETITIONER'S SICK CALL REQUESTS #8 THROUGH #19 IN PETITIONER'S MEDICAL RECORDS. PETITIONER ALSO DISCOVERED JOSEPH M. EASTRIDGE, NP, HAD FALSIFIED PETITIONER'S MEDICAL RECORDS ON JANUARY 4, 2022, BY DOCUMENTING PETITIONER AS A "NO SHOW" FOR THAT DAY AND THEN PLACING A "DO NOT RE-SCHEDULE" ORDER IN PETITIONER'S MEDICAL RECORDS.

On FEBRUARY 14, 2022, PETITIONER WROTE KENYON PAGE, MEDICAL ADMINISTRATOR AND JOSEPH M. EASTRIDGE, NURSE PRACTITIONER, A REQUEST STATING: "THESE ARE THE MEDICAL PROBLEMS I'M HAVING FROM THE BACTERIAL INFECTION: dis-

STATEMENT OF THE NATURE

coloration of the skin in Petitioner's Face and Neck; Acute indigestion where Petitioner can't eat certain foods; Belching, flatulence, vomiting, and diarrhea unexpectedly; A Rash all over Petitioner's Body where Petitioner grows hair; A crawling, itching, and burning sensation all over Petitioner's Body; and it is affecting Petitioner's eyesight and breathing. The heat issue is causing Petitioner to be housed in ECB where they never turn on the heat, which causes Petitioner to be always cold. I'm always in pain, barely able to get out of bed because of not having muscle rub. Please see that I'm scheduled for an appointment. Neither person answered.

On February 25, 2022, Petitioner submitted a Request to Senior Warden Jimmy J. Smith, Tina Vitolo, Chief, Unit Classification, and Kevon Pae, Medical Administrator stating: "Housing me around and with these inmates that smoke and traffic in drugs constitutes a failure to protect. My informing you of this and you doing nothing constitutes deliberate indifference. Housing me in violation of my serious medical needs constitutes deliberate indifference. I'm always cold because I suffer with anemia, and they never turn on the heat. My osteoporosis, sinusitis, and asthma are affected by the constant cold temperature. I'm always cold and keep a head cold. I do not have a heat sensitivity to where I need a cool bed. I can deal with the heat. I'm requesting you move me from ECB as soon as possible. Neither of these officials responded.

STATEMENT OF THE FACT

ON FEBRUARY 28, 2022, PETITIONER WAS SCHEDULED FOR A PROVIDER'S SICK CALL APPOINTMENT FOR 10:00-11:15 AM. PETITIONER ALSO HAD A LAW LIBRARY LAY-IN FROM 8:00-10:00 AM BECAUSE COURT DID NOT CLEAR UNTIL 10:30 AM, PETITIONER DID NOT RETURN TO HIS CELL UNTIL 10:45 AM. WHEN PETITIONER GOT TO HIS CELL - BLOCK AND INFORMED OFFICER LUCIA WHO WAS WORKING G-POD THAT PETITIONER HAD A 10:00 AM PROVIDER'S SICK CALL APPOINTMENT FOR 10:00 AM. OFFICER LUCIA INFORMED THE PETITIONER THAT THE ECB CLINIC HAD CALLED FOR THE PETITIONER AT 9:00 A.M..

ON MARCH 3, 2022, PETITIONER SUBMITTED A REQUEST FOR LAW LIBRARY TIME ON MARCH 4, 2022, FROM 8:00 AM-10:00 AM. THAT EVENING PETITIONER DID NOT RECEIVE A LAW LIBRARY LAY-IN FOR MARCH 4, 2022. PETITIONER DID GET A PROVIDER'S SICK CALL REQUEST FOR AN APPOINTMENT FROM 7:30 AM-12:00 PM.

ON MARCH 4, 2022, PETITIONER WAS CALLED OUT OF HIS CELL AT 11:00 AM FOR A PROVIDER'S SICK CALL APPOINTMENT THAT WAS SCHEDULED FROM 7:30 AM-12:00 PM. PETITIONER WAS SEEN BY DR. MARCIA CDAI WHO WOULD NOT GIVE PETITIONER HER NAME. THAT PRETENDED TO LISTEN TO HOW PETITIONER BECAME INFECTED WITH THE BACTERIAL INFECTION, WHERE PETITIONER WAS, WHEN PETITIONER BECAME INFECTED, AND WHAT THE PETITIONER DID ABOUT THE BACTERIAL INFECTION. THAT PETITIONER SOUGHT TREATMENT AT THE HOUSTON VETERANS ADMINISTRATION HOSPITAL AND WHAT THE PHYSICIANS THERE DID. PETITIONER THEN INFORMED DR. CDAI THAT PETITIONER HAD SEEN JOSEPH M. ENDRIDGE, MD ON

Statement of The Case

11/16/21, and he had prescribed the Antibiotic Amoxicillin 500 mg. Dr. Odal said she could not prescribe that Antibiotic without knowing what Petitioner was infected with. Dr. Odal then scrolled back on the computer to September 2021 to review Petitioner's Lab Results and said they were good. Petitioner then informed Dr. Odal that Joseph M. Estridge had ordered Blood tests in late November or early December 2021 to determine whether Petitioner was still infected with the Bacterial infection. Dr. Odal acted as if the Petitioner had not said anything and repeated again that the Lab Results in September 2021 did not show anything abnormal. Dr. Odal then asked Petitioner to show her the Rash Petitioner was complaining about. She tried to show her Petitioner's Face and head then informed her she could not see it. Dr. Odal then stated she was going to order some urine samples to see if she could determine what was wrong with Petitioner. Dr. Odal also told Petitioner there was nothing she could do about Petitioner's housing being a violation of Petitioner's serious Medical Needs.

On March 25, 2022, Petitioner received a Response to Step 2 Grievance #2022030563 about the housing of Petitioner in ECB violating Petitioner's serious Medical Needs. Petitioner wrote Kenyon Page, Medical Administrator a Request to be Reevaluated and was moved out of ECB on March 28, 2022.

On April 28, 2022, Petitioner went to a Provider's Sick Call with Joseph M. Estridge. Petitioner informed Joseph M.

4. STATEMENT OF THE CASE

Eastridge that Petitioner still had a Bacterial infection and requested Joseph M. Eastridge to order Blood tests. Joseph M. Eastridge looked through Petitioner's Medical Records for two to three (2-3) minutes then told Petitioner "No, you don't need any Blood tests, then told me to get out of his treatment room that nothing was wrong with Petitioner."

On May 31, 2022, Petitioner went to a Provider's Sick Call with Joseph M. Eastridge. When Petitioner entered the room Joseph M. Eastridge was on the computer typing, when he finished he asked Petitioner to see the toenail fungus. Petitioner took off his shoes and socks, and Joseph M. Eastridge looked at Petitioner's feet for a minute and informed Petitioner there was nothing he could do about that. Then told Petitioner he could leave.

On June 2, 2022, Petitioner wrote Kevin Page, Medical Administrator to informally resolve why he was scheduled to see Joseph M. Eastridge after having filed several grievances against Joseph M. Eastridge for failing to address Petitioner's serious medical needs.

On June 3, 2022, Petitioner was moved back to the Alfred Unit Expansion Cell Block because Joseph M. Eastridge placed or requested a heat stroke be placed on Petitioner's Health Summary in retaliation for Petitioner complaining about Joseph M. Eastridge's failure to address Petitioner's serious medical needs.

Statement of The Case

On June 15, 2022, Petitioner was Moved From EOB Back to General Population.

On July 15, 2022, Petitioner was again scheduled to see Dr. Joseph M. Eastridge. Joseph M. Eastridge asked the Petitioner what he was there for and Petitioner informed him Petitioner was there to obtain the lab results. Joseph M. Eastridge viewed the computer and then started crying like a 14 year old girl. Petitioner then left the clinic.

On October 20, 2022, Petitioner wrote KENNETH PAGE, Medical Administrator to Request that Petitioner not be scheduled for an appointment with Joseph M. Eastridge. That same day Petitioner was Moved Back to the Alfred Unit EOB in violation of Petitioner's serious Medical needs because Joseph M. Eastridge placed or requested there be placed a heat source on Petitioner's Health Summary.

On December 7, and 19, 2022, Petitioner wrote Dr. Maria Del, Correctional Physician to inform her again about the Medical Problems Petitioner was experiencing from the Bacterial infection, and that the cold air conditioning temperatures in the Alfred Unit EOB was aggravating Petitioner's vertigo, asthma, anemia, osteoporosis, and sinusitis.

On January 4, 2023, Petitioner went to a Provider's Sick Call appointment with Dr. Maria Del, MD, Correctional Physician. Before Petitioner said anything Dr. Del told the

STATEMENT OF THE CASE

PETITIONER, THERE WAS NOTHING SHE COULD DO ABOUT THE HEAT ~~ANDRE~~ IN PETITIONER'S HEALTH SUMMARY. PETITIONER THEN GOT UP AND STATED: "THEN THERE IS NO REASON FOR EITHER OF US TO WASTE OUR TIME," AND THEN LEFT THE CLINIC.

ON JANUARY 5, 2023, PETITIONER FILED A STEP 1 GRIEVANCE CONCERNING THE EVENTS OF JANUARY 4, 2023. THIS GRIEVANCE WAS NEVER FILED OR PROCESSED BY TRACI R. COOKE THE SUPERVISOR OF THE ALFRED UNIT GRIEVANCE OFFICE.

FROM JANUARY 11 TO 24, 2023, PETITIONER WROTE DR. MARIA CHAI, MD, CORRECTIONAL PHYSICIAN FOUR (4) REQUESTS ASKING TO HAVE TESTS DONE ON THE BLACK SUBSTANCE COMING OFF PETITIONER'S FACE WHEN PETITIONER SCRATCHED IT, COUGHING UP FROM PETITIONER'S LUNGS, AND THE STICKY SUBSTANCE CLOSING PETITIONER'S EARS DAILY.

ON JANUARY 25, 2023, PETITIONER REFUSED A PROVIDER'S SICK CALL APPOINTMENT WITH JOSEPH M. EASTRIDGE, NPC BECAUSE PETITIONER IS AFRAID JOSEPH M. EASTRIDGE WILL FALSELY ACCUSE THE PETITIONER WITH A DISCIPLINARY INFRACTION TO CAUSE THE PETITIONER TO BE ASSAULTED BY OTHER TDCJ OFFICERS.

ON FEBRUARY 14, 2023, PETITIONER WROTE DR. MARIA CHAI, MD, CORRECTIONAL PHYSICIAN STATING: "EVERY DAY SINCE AUGUST 27, 2021, I HAVE SUFFERED THE FOLLOWING SYMPTOMS FROM THE BACTERIAL INFECTION: DISCOLORATION OF THE SKIN IN PETITIONER'S FACE, HEAD, AND ON HIS ARMS; ACUTE INDIGESTION, WHERE PETITIONER CAN'T EAT MEAT, PEANUT BUTTER, EGGS, OR APPLES, WITHOUT BELCHING

STATEMENT OF THE CASE

(Repeatedly), Fasting, Vomiting, and diarrhea (unexpectedly); A Rash all over Petitioner's Body that Petitioner can shake off, only to have it come back when the hair grows back; A crawling, itching, and burning sensation all over Petitioner's Body; constant, itching, and burning in both legs, and an old infection in my left leg reinfected; A closing of the Petitioner's ears and sinuses, from which comes a sticky substance out of my ears; coughing up sputum from my lungs as if Petitioner has a chest cold; A burning sensation in Petitioner's tongue; A Black substance coming off Petitioner's face when Petitioner scratches it; sore places in the Petitioner's eyebrows and head; a constant growling in the Petitioner's stomach when Petitioner eats meat, eggs, Peanut Butter, and Applesauce; sores, itching, and painful patches of skin right above and on the seat of the Petitioner's buttocks; itching, and burning, and crawling in the eyes, and weight loss. Dr. Ocal Refuses to schedule Petitioner for an appointment.

On March 20, 2023, Petitioner wrote Dr. Maria Ocal, MD, Correctional Physicians Station: "This is to inform you that the itching, burning, and crawling sensation is getting worse along with the closing of my ears with a sticky substance. Why can't you schedule me for lab test this substance coming out of my ears everyday? Dr. Ocal still won't schedule Petitioner for an appointment."

REASONS FOR GRANTING THE PETITION

This Court should grant the Petition because a United States Court of Appeals has entered a decision in conflict with the decisions of another Court of Appeals on the same important matter as to call for an exercise of this Court's supervisory power. And, a United States Court of Appeals has decided an important question of Federal law that has not been, but should be settled by this Court.

First, Petitioner would show the Court that Petitioner became infected with a Bacterial Infection in 2018, while living at a Texas Department of Criminal Justice-sponsored halfway house in Houston, Texas. This halfway house was flooded during Hurricane Harvey, along with a business that transported hazardous chemicals next to the halfway house. These hazardous chemicals

Reasons For Granting The Petition

WERE EXPOSED TO THE INSECTS AROUND AND SURROUNDING THE
THE HALLWAY HOUSE. THESE INSECTS BIT, STUNG, OR INFECTED
THE PETITIONER. THE PETITIONER, A VIETNAM-ERA VETERAN,
SOUGHT AND RECEIVED TREATMENT AT THE MICHAEL E. DEBAKEY
VETERANS ADMINISTRATION MEDICAL CENTER. PETITIONER'S INFECTION
WITH THE BACTERIAL INFECTION AND ITS ATTENDANT MEDICAL
CONDITIONS WERE DIAGNOSED, AND TREATED BY THE PHYSICIANS AT
MICHAEL E. DEBAKEY VETERANS ADMINISTRATION MEDICAL CENTER.
AS WERE PETITIONER'S MEDICAL CONDITIONS FOR ANEMIA, ASTHMA,
OSTEOPOROSIS, SINUSITIS, VERTIGO, BACK AND KNEE PAIN. THE
PETITIONER SPECIFICALLY STATED THE IN THE COMPLAINT. SEE,
STATEMENT OF FACTS IN APPENDIX B. THESE ARE SERIOUS
MEDICAL NEEDS. SEE, BROWN V. JONES, 387 F.3d 1344 (11th
Cir. 2004); FASTER V. POWELL, 467 F.3d 459 (5th Cir. 2006);

REASONS FOR GRANTING THE PETITION

Axt. Hunt v. Iphoff, 199 F.3d 1220 (11th Cir. 1999). There ARE ARE NOT "conclusory and speculative assertions" about Petitioner's Medical conditions, But issues of Fact that can Be supported By the Petitioner's Veterans Administration Medical Records.

Without allowing Petitioner to file an Appellate Brief raising argument in support, the Fifth Circuit decided this important issue of Federal law. The Fifth Circuit has only published one opinion on the imminent danger of serious physical injury exception of 28 U.S.C. § 1915(g). In Banks v. O'Guin, 144 F.3d 883 (5th Cir. 1998), the Court wrote, "... The plain language of the statute leads us to conclude that a prisoner with three strikes is entitled to proceed with his action or appeal only if he is in imminent danger at the time he seeks to proceed with

Reasons For Granting The Petition
his APPEAL OR FILE A MOTION TO PROCEED IFP." The district
court stated: "... In the instant case, Plaintiff has not
set forth any specific factual allegations that could show
he is under imminent danger of serious physical injury."
His disagreement with the nature of the medical care pro-
vided at the Alred Unit is insufficient to invoke the im-
minent danger exception to § 1915(g). ..." The Fifth Circuit
has never decided a case where the petitioner alleged
imminent danger of serious physical injury based on a den-
ial of adequate medical care. Nor, has this Court. Nor, has
this Court had the opportunity to describe in legal terms
what constituted imminent danger of serious physical
injury is. However, other Courts of Appeals have decid-
ed cases concerning the exception to 28 U.S.C. § 1915(g).

Reasons For Granting The Petition

See, Almont v. Wisconsin, 2008 WL 2903574*1 (E.D. Wis. July 24, 2008) (Allegation of untreated infection satisfied requirement); Teahim v. District of Columbia, 463 F.3d 3 (D.C. Cir. 2006) (holding that deterioration from lack of treatment for Hepatitis C sufficiently pleaded imminent danger of serious physical injury); Brown v. Johnson, 387 F.3d 1344 (11th Cir. 2004) (holding that a prisoner who alleged that lack of treatment was worsening his illness sufficiently pleaded imminent danger of serious physical injury); Carpiastini v. Jain, 352 F.3d 328 (7th Cir. 2003) (holding that panic attacks leading to heart palpitations, chest pains, labored breathing, choking sensations, and paralysis meet the imminent danger standard); McAlpin v. Toney, 281 F.3d

REASONS FOR GRANTING THE PETITION

709 (8th Cir. 2002) (imminent danger found where officials withheld dental care needed to treat inmate's mouth infection); Charles v. Mappins, 618 F.3d 162 (2nd Cir. 2010); Gibbs v. Cross, 160 F.3d 962 (3rd Cir. 1998) (imminent danger found where officials allegedly withheld medical treatment to inmate who became ill breathing particulates emitted from vent in cell); Fletcher v. Meunier, Corr. Nr., 623 F.3d 1171 (7th Cir. 2010) (imminent danger found despite beating occurring prior to suit because wound could pose danger of serious physical injury); Aubrey v. Cervantes, 493 F.3d 1047 (9th Cir. 2007) (imminent danger found where alleged lack of medical screening process for new inmates infected with contagious disease); Hunt v. Uphoff, 199 F.3d 1220 (10th Cir. 1999) (imminent danger exception satisfied by alleged failure to provide adequate medical care). In each of

Reasons For Granting The Petition

These cases, there is a recurring theme "A denial of adequate medical treatment." Each of the Courts of Appeals has found the prisoner in each case facts "that we must accept as true," which is where the Fifth Circuit's decision conflicts with the decisions of the other Courts of Appeals. The Court in Hunt v. Uphoff, 199 F.3d 1220 (10th Cir. 1999) stated, "... We cannot agree with the district court that the facts alleged by Mr. Mapp, which we must at this stage of the proceedings accept as true, reflect a "mere disagreement with his medical treatment," not giving rise to a constitutional claim. ..." In this case, the Fifth Circuit held, "His allegations regarding the bacterial infection are merely disagreements with his treatment and do not allege an imminent danger of serious physical

Remarks For Granting The Petition
INSTURU." What treatment? Petitioner specifically stated in
the complaint that he has had these Medical Problems since
his arrival at the Alred Unit on August 27, 2021. The
Medical Personnel at the Alred Unit started treatment on
November 16, 2021, For ten (10) days, But stopped treatment
For no specific Reason, and has Refused to Address the
Petitioner's complaints since the ten (10) days ended. In dis-
cussing deliberate indifference in Dominick v. Texas Dept of
Criminal Justice, 239 F.3d 752 (5th Cir. 2000), the Fifth Circuit
wrote, "... Rather, the Plaintiff must show that the officials
Refused to treat him, ignored his complaints, intentionally
treated him incorrectly or engaged in any similar conduct
that would evince a wanton disregard for any serious
Medical need." The Petitioner herein has stated that

Reasons For Granting The Petition
The Medical Personnel on the Alford Unit has Refused to treat him, ignored Petitioner's complaints for the serious and retaliated against Petitioner for exercising his constitutional rights in seeking treatment for the bacterial infection. Petitioner requests this Court to review the Statement of Facts in Appendix B to determine if Petitioner has stated an imminent danger of serious physical injury by a denial of adequate medical care.

Petitioner is being housed in the Alford Unit Expansion Cellblock because of a heat score that has been deleted twice from Petitioner's Health Summary and reinstated by a medical professional because Petitioner refused to be treated by him. Petitioner states again that he suffers with anemia, asthma, osteoporosis, sinusitis, vertigo, back,

Reasons For Granting The Petition

and KNEE Pain. The Medical conditions were diagnosed by Physicians at the Michael E. DeBakey Veterans Administration Medical Center, and other TDCJ units. Being housed in the cold air conditioning temperatures of the Alford Unit ECP without t-shirts or thermal underwear, year-round, aggravated Petitioner's serious medical needs. In 1987 the Fifth Circuit in Foulkes v. Coryell, 833 F.2d 52 (5th Cir 1987) found an air conditioning cell in a Texas County Jail "extremely cold" in solitary confinement. With the Petitioner's serious medical needs, the cell in the Alford Unit Expansion Cellblock is extremely cold.

This Court did recently address the liberal pleading stage in Erickson v. Pardus, 551 U.S. 89 (2007), which was a PRISONER CASE ON MEDICAL CARE. The Court of Appeals in that case held that the Factual Allegations

Reasons For Granting The Petition
WERE NOT SPECIFIC ENOUGH. IN THAT CASE, THIS COURT WROTE,
"... FEDERAL RULES OF CIVIL PROCEDURE 8(a)(2) REQUIRES "A SHORT
PLAIN STATEMENT OF CLAIM SHOWING THAT THE PLAINTIFF IS EN-
TITLED TO RELIEF." SPECIFIC FACTS ARE NOT NECESSARY; THE
STATEMENT NEED ONLY GIVE THE DEFENDANT FAIR NOTICE OF
WHAT THE ... CLAIM IS AND THE GROUNDS UPON WHICH IT RESTS."
IN ADDITION, WHEN RULING ON A DEFENDANT'S MOTION TO DISMISS,
A JUDGE SHOULD ACCEPT AS TRUE ALL OF THE FACTUAL ALLEGA-
TIONS CONTAINED IN THE COMPLAINT. THE PETITIONER IS AT
A LOSS FOR WORDS, AS TO WHAT OR WHY THE DISTRICT
COURT AND THE COURT OF APPEALS DEPARTED FROM THIS
IMPORTANT JUDICIAL PRINCIPLE, THEN HOLD THAT THE
PETITIONER'S APPEAL WAS FRIVOLOUS WITHOUT EVEN REACH-
ING WHETHER THE PETITIONER WAS IN IMMINENT

Reasons For Granting The Petition
DANGER OF SERIOUS PHYSICAL INJURY; IN THIS CASE STILL
BEING DENIED ADEQUATE MEDICAL CARE AT THE TIME
PETITIONER FILED THE APPEAL. THE SUPREME COURT WROTE
FURTHER IN FRICKSON v. PARTWIS, SUPRA, "... THE COURT
OF APPEALS DEPARTURE FROM THE LIBERAL PLEADING STANDARD
SET FORTH BY RULE 8(a)(2) IS EVEN MORE PRONOUNCED
IN THIS PARTICULAR CASE BECAUSE THE PETITIONER HAD BEEN
PROCEEDING, FROM THE LITIGATION'S OUTSET, WITHOUT COUNSEL.
A DOCUMENT FILED PRO SE IS "TO BE LIBERALLY CONSTRUED,
..., AND A PRO SE COMPLAINT, HOWEVER, IMPERFECTLY PLEAD-
ED, MUST BE HELD TO LESS STRINGENT STANDARDS THAN
FORMAL PLEADINGS DRAFTED BY LAWYERS," EACH
PAGE CITED BY THE PETITIONER, FROM OTHER COURTS
OF APPEALS, ACKNOWLEDGED THIS LIBERAL PLEADING

Reasons For Granting The Petition

Standard: Irakim v. District of Columbia, 463 F.3d 3 (D.C. Cir. 2001) ("In determining whether he qualified, we look to the complaint, which we 'construe liberally and the allegations of which we must accept as true.'"); Miller v. Donald, 541 F.3d 1091 (11th Cir. 2008) ("At the same time, we are mindful that Pro Se Pleadings are held to a less stringent standard than Formal Pleadings drafted by attorneys and will therefore, be liberally construed."); McAlphin v. Town, 281 F.3d 701 (8th Cir. 2002) ("We are mindful of the rule that the well-pleaded allegations of a complaint must be taken as true before the complaint can be dismissed as insufficient on its face."); Andrew v. Cervantes, 493 F. 1047 (9th Cir. 2007) ("Andrew filed his complaint Pro Se,

Reasons For Granting The Petition

So in making this determination, we must liberally construe his allegations."); GIBBS v. PERRY, 116 F.3d 962 (3rd Cir. 1998) (Thus, in GIBBS v. PERRY, 116 F.3d 83 (3rd Cir. 1997). We instructed district courts to evaluate the allegations in a complaint filed by a pre-prisoner facing a § 1915(g) bar under our liberal pleading rules, construing all allegations in favor of the complainant and crediting those allegations of "imminent danger" that have gone unchallenged."); HUNT v. LIPHOFF, 199 F.3d 1220 (10th Cir. 1999) ("We cannot agree with the district court that the facts alleged by Mr. Mapp, which we must, at this stage of the proceedings accept as true, reflect a "mere disagreement with his medical treatment," not giving rise to a constitutional claim...");

Reasons For Granting The Petition

CiarPardini v. Gini, 352 F.3d 328 (7th Cir 2003) ("It is well-established that PRO SE complaints must be liberally construed, ... CiarPardini is alleging we must accept these claims as true NOW; they may in fact be bogus) continuing harm as a direct result of being denied his medication"). The district court ERRED in holding that "Plaintiff has not shown forth specific factual allegations that could show he is under imminent danger of serious physical injury," See, Almond v. Wisconsin, 2008 WL 2903574, *1 (E.D. Wis. July 24, 2008), and the Court of Appeals compounded the error by not applying its decision in Banks v. O'Brien, 144 F.3d 883 (5th Cir 1998), in that Petitioner showed he was still being denied adequate medical care when the appeal was denied.

Reasons For Granting The Petition
ed, and is still being denied adequate medical care when this petition was filed. Thus, Petitioner is in imminent danger of serious physical injury. As the Ninth Circuit wrote in Andrew v. Conant, 493 F.3d 1047 (9th Cir. 2007), "... The three-strikes rule is a screening device that does not judge the merits of prisoner's lawsuits." The Supreme Court has recently said that the Federal Rules do not require "heightened pleading" except where the Rules spell out such a requirement, and that courts are not free to impose such requirements on their own. See, Grier Kiewitz v. Jorena, N.A., 534 U.S. 506 (2002). The Petitioner could find no Supreme Court case law detailing the procedures to be used by the lower courts in addressing the issue of "imminent danger of serious

Reasons For Granting The Petition
Physical Injury to a Prisoner. Despite, the Fifth Circuit's decision in Banks v. D'Gwin, 104 F.3d 883 (5th Cir. 1998) receiving national prominence on the issue of when a prisoner is in imminent danger of serious physical injury, the Fifth Circuit is one of the only courts of appeals to have not allowed a prisoner to proceed under this exception of 28 U.S.C. § 1915(g) because of a denial of adequate medical care. It seems that the Fifth Circuit is again seeking national prominence in changing the pleading requirements for pro se prisoners, by not accepting the "facts as true" at the initial stage of the proceeding. It is important that this court set a national precedent that all lower courts use as guidance in determining whether a prisoner

REASONS FOR GRANTING THE PETITION

has pleaded imminent danger of serious physical injury by a denial of adequate medical care. At this writing, the Petitioner is still being denied adequate medical care for the bacterial infection and still being housed in violation of Petitioner's serious medical needs on January 18, 2023. This Court should grant the Petition, and appoint counsel to adequately brief the issues; or in the alternative, grant the Petition, and remand back to the Fifth Circuit with instructions that they employ the liberal pleading standard recognized in

Epickard v. Peltus, 551 U.S. 89 (2007) by this Court.

✓ Petitioner just became aware of Camp v. Pittman, 807 Fed. Appx. 303 (5th Cir. 2020) because TDCJ Alameda Unit Law Library does not carry this case citation in its LexisNexis computerized legal research format.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

L. E. Thompson

Date: JANUARY 20, 2023