

No. 23-1374

IN THE
Supreme Court of the United States

KEYVON SELLERS,

Petitioner,

v.

JERRY NELSON, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF EDDIE LEE NELSON, JR.,
DECEASED, AND MICHELE DUSHANE, AS
SURVIVING SPOUSE,

Respondents.

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

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

The Petition misstates the holding of the Court of Appeals. The decision does not impose a duty upon jailers to segregate inmates by race if they are charged with racially motivated crimes. It merely recognizes the long-established duty of jailers to protect inmates from a known risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825 (1994). The material facts to which clearly established law applies are that the jailer in this case had actual knowledge of two facts which were communicated directly to him by both the arrestee and the transporting officer:

- 1) That the arrestee had walked into a business and stabbed an employee simply because he was white; and
- 2) That the arrestee had seen news stories about police officers killing black people and he wanted to do something about it by killing a white person.

The material issue is not about separating inmates based on race, but based on whether a jailer has actual knowledge about a serious threat requiring a reasonable response on his or her part. This case is about security and the protection of life, and it is no more about race than *Farmer* was about sexual identity. Despite having been the clearly established law for thirty years, *Farmer* is not even mentioned in the Petition, which cites cases from no circuit other than the Eleventh and fails to show any split in authority warranting Supreme Court intervention. There is nothing “novel” about the Court of Appeals decision, despite Petitioner’s undue focus on dicta about

proof of racial animus in discrimination cases which was raised in a concurrence but had no impact on the holding.

Because this case does not involve a claim of racial discrimination, it is not necessary to show that the murder of Respondents' decedent was racially motivated. It is only necessary as a matter of "but for" causation to show that these two inmates should have never been put in a cell together. Had an inmate who confessed his desire to kill a white person not been housed with a white person, reasonable jurors could find by a preponderance of the evidence that he would not have killed one.

Respondents respectfully request that the Petition be denied.

Respectfully submitted,

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