

No.

23-442

8/22/23

**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**Anthony Prescott**

**Petitioner**

**VS.**

**K. Johnson, Kitchen Manager, Gurney Unit; Tony A. Dean, Officer,  
Coffield Unit; Stuart Calhoun, Warden, Gurney Unit; Earnest Navarrete,  
Assistant Warden, Coffield Unit; Cabrea, Sergeant, Gurney Unit; Jane  
Doe; Donald Lee; Christal Meador; Funai, formerly known as Funais;  
Michael Britt; Steven Farris; Danny Jackson; Tony Dew; Lowrey R. Davis;  
Dennis Nash; Author Thomas; Gaye Karriker, Law  
Librarian, Coffield Unit,**

**Respondents**

**ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT  
PETITION FOR WRIT OF CERTIORARI**

**ANTHONY PRESCOTT**

**1012 KINGS PARK DR.**

**TYLER, TEXAS 75703**

**PH; 903-917-1514**

## QUESTIONS PRESENTED

**Question:** Does involuntary exposure to any non-medically necessary medication, steroid, chemical cleaning compound, schedule II drugs, toxin or any unidentified substance that is intentionally concealed within a food item to cause injury, provided through a food service program of a public entity constitute a forcible administration within the meaning of the “unreasonable “ provision of the 4<sup>th</sup> Amendment and a form of, “ use of force “ prohibited by the constitution and federal statute ?

**Question:** Is a conspiracy to enforce a code of silence a cognizable claim in a 42 U.S.C 1983 action? Can Defendants in separate but related cases establish a pattern, custom or usage and serve as the basis for a civil conspiracy cause of action.

**Question:** Did the cases of U.S. v. Georgia, 546 at 155-160 and Tennessee v. Lane, 541 U.S 509,520-521, establish a means for official capacity damage claims applicable to disabled prisoner complaints ?

**Question:** Is the supervisory liability standard established in the case of Ashcroft v. Iqbal, U.S.129 S.Ct. 1937, 1950 applicable in civil conspiracy claims ?

**Question:** Can intentional infliction of emotional distress form an independent cause of action for an official capacity damages claim under the rubric of disparate treatment prohibitions pursuant to federal disability statute.

**Question:** Is the intentional triggering and or orchestration of conditions for the purpose of exacerbating the illness symptoms , with the intent of causing severe impairment of an inmate who suffers from a mental disorder, a form of psychological abuse under the 8th amendment prohibitions against cruel and unusual punishment?

**Question:** Is a defendant who is aware of an individual's mental health diagnosis and history of cognitive dysfunction brought on by high levels of emotional distress, liable once a defendant makes a conscious decision to intentionally embark upon a course of conduct purposely designed to psychologically terrorize, harass, frighten or otherwise bring about such an impairment?

**Question:** Does intentional exploitation of the petitioner's vulnerabilities and susceptibility to condition regression illustrate action taken solely by reason of the mental disability?

**Question:** Is the intentional contamination of a food item prepared and served by a prison program at the expense of the State and or the intentional tampering with prepackaged food items purchased from the prison commissary program, when utilized as the vehicle through which a prisoner is exposed to dangerous substances classify as an "hazardous activity" within the definition of strict liability jurisprudence? Is there an express or implied warranty of safety and usability attached to a prisoner's food sources?

**Question:** Does the utilization of a food preparation equipment and facilities to orchestrate intentional food contamination, qualify as a "Use of Tangible personal or real property" within the definition of the Texas Tort Claim Act Sec. 101.001-101.067, providing consent to sue effectively a waiver for intentional torts claims?

**Question:** Can insufficient correctional officer trainings, specifically in relation to, appropriate behavioral parameters, which standardize officer conduct, regarding how to safely interact with mentally ill prisoners, as not to intentionally create conditions which exacerbate illness symptoms, serve as a contributing cause to officer misconduct, i.e. (Conduct initiated to intentionally cause physical pain or psychological distress)?

**RELATED CASES**

United States Court of Appeals Fifth Circuit Prescott v. Abbott, et. al. Action NO. 19-50538.

United States Court of Appeals Fifth Circuit Prescott v. Doe, et. al., Action NO. 21-20151.

United States Court of Appeals Fifth Circuit Prescott v. UTMB, Action NO. 21-40856.

United States District Court for Est. Dist. of TEX. Prescott v. Catoe, et. al., Action NO. 4:20-169.

United States District Court for Est. Dist. of TEX. Prescott v. Denton Cnty., et. al., Action NO. 4:16-879. (original case)

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## **JURISDICTIONAL STATEMENT**

Article III, Sec. III of the United States Constitution establishes this honorable courts subject matter jurisdiction to hear this case. Additional jurisdiction is conferred by and 28 U.S.C 1254(1). The judgment of the United States Court of Appeals for the 5th Cir. Was entered on May 30th, 2023

## **STATEMENT OF THE CASE**

Humbly, this case involves the cross jurisdiction cooperation between the Denton county sheriff's department and State correctional authorities, who in agreement, set in motion a long-standing series of similar type food bourne attacks in which prepared meal items and prepackaged food items were tampered with returned to stocking shelves then sold to the plaintiff which constitutes interfere with interstate commerce. The petitioner was discriminately targeted in this manner, based on his mental illness and the specific method previously proven to result in the petitioners cognitive impairment. Once the affect on the plaintiff was observed, the methodology was adopted by the Texas dep't. Of Criminal Justice and then regularly implemented for the purpose of utilizing force to compel the petitioners submission to the defendants demand to cease and desist all litigation efforts based upon the petitioners African American ethnicity. This imposed unreasonable punishment in retaliation for, and in an effort to continually wrongly deter the petitioners exercise of the protected first amendment right to petition the government for redress. The long-standing campaign extended the entire 5 ½ year term of confinement, spanning across multiple jurisdictions, occurring at 6 different prison locations throughout the state of Texas resulting in the petitioners repeated injury. Ref. Appendix 4.

## **MEMORANDUM OF LAW & SUPPORTING ARGUMENTS**

Respectfully your honors, it is the petitioners intent to demonstrate the wide scale abuse of the inmate population through the weaponization of the meal service program by employees of a public entity. Humbly this petition is hereby premised on the board and far reaching adverse effect on the future health of the petitioner and countless numbers of unsuspecting inmates at heightened risk of being targeted by any similar diabolical campaign.



Without a clear statement from this court regarding the illegality of the conduct, public safety will further deteriorate as a result of inadequately trained public custodians who arbitrarily create conditions to intentionally exploit the vulnerability of an immutable trait.

See *Brown v. Bryan Co., Okla.*, 219 F.3d 450, 458 (5th Cir.2000). "[U]nder certain circumstances, § 1983 liability can attach for a single decision not to train an individual officer even where there has been no pattern of previous constitutional violations." *Id.* at 459. See Also *Patzner v. Burkett*, 779 F.2d 13, 1367 (CA8 1985); *Languirand v. Hayden*, 7 F.2d 220, 227-228 (CA5 1983) (municipal liability for failure to train requires "evidence at least of a pattern of similar incidents in which citizens were injured or endangered").

The Petitioner can demonstrate a custom of deliberate indifference and a similar pattern of abuses, represented by the precise same conduct impacting a completely separate inmate at the same prison, 7 years prior to the petitioners term of incarceration. *Smith v. Masenburge*, 2012 U.S. Dist. LEXIS 20694. The Plaintiff filed a response (docket entry #9) on August 31, 2011, the plaintiff asserted that he had been served contaminated food or beverages on several occasions. He specified that the person responsible for the food tampering was unknown because several people had contact with the food, including kitchen workers, officers and inmates. He stated that he submitted sick call requests and grievances and received no treatment nor attention.

This represents a pattern of the same conduct given rise to the petitioners allegations while demonstrating that both the prison and medical department officials have had actual knowledge of the risk posed to inmates. At the crux of the controversy presently before this esteemed court, is what the petitioner pleads amounts to a fundamental public policy issue critical to ensuring a prisoner's ready access to outside medical appointments, safe transportation, and safe meal provisions.

In, *Graves v. TDCJ*, 827 S.W. 2d. 47,48 (Tex. App. 1992), this court held that "... exclusion from chow hall allegation should not have been dismissed"... in making the plaintiffs regular use of...chow hall extraordinarily dangerous, partiality excluded... benefit of the nutritional program or service of the public entity. Title 42 U.S.C. §2000a. **Ref. Appendix. 5. pg. 14.** See Also, *People of Michigan v. Harris* 2019-1904643-FC. The defendant , convicted.... For intentionally covertly concealing an excessive dose of heroin within her breakfast cereal milk. Civil judgment against the defendant, Ref: case number 2017-17109847-CZ.

## USE OF FORCE

The standard for review is *Whitley*, 475 U.S. at 320-21, 106 S.Ct. At 1085. The principal focus of this inquiry "turns on whether force was applied in a good faith effort to maintain discipline or maliciously and sadistically for the purpose of causing pain").

*Helling v. McKinney*, 509 U.S. \_\_\_, \_\_\_, 113 S.Ct. 2475, 2481-82, 125 L.Ed.2d 22 (1993) (prisoner states "a cause of action under the Eighth Amendment" when alleging prison officials, "with deliberate indifference, exposed him" to toxic substance).

Despite the above rulings, the district and appellate court ruled to the contrary in the recognition of the petitioners right to recovery. petitioner humbly seeks an audience with this court to provide guidance to the lower courts that establish that the concept of, "Use of force ", encompasses the intentional adulteration of a food item and subsequent ingestion is an indirect application of force and a forcible administration, involving unauthorized utilization of a food or beverage item as the method of concealment and delivery of a any substance which would be foreseeable to cause injury to the unsuspecting victim.

Likewise, the petitioner would assert that there are two underlying interests at stake in claims about ethical contamination of food: 1) religious and ideological freedom; and 2) bodily autonomy.

Based upon this form of attack constituting a very tangible, indeed physical, interference with the body, and inalienable autonomy to decide what substances should go into it. The petitioner would also suggest that the act is jointly an unreasonable seizure within the purview of the Fourth Amendment.

Battery has frequently been understood to require the *direct* application of force. However, the concept of directness for these purposes has now been transmuted to the point of extinction in criminal and tort law. that must be addressed within the correctional management context. In *Gibbons v. Pepper*[60] an action for battery succeeded ... the lack of any need for direct physical contact, See Appendix. 5. Thomas West torts 3rd Edition section on intentional harms. Absent any legitimate penological purpose, the long standing food bourne attacks must be officially recognized as an unconstitutional.

Hudson, v. Mcmillian, 503 U.S. At 7-9 " 8<sup>th</sup> amendment claim based upon ... use of force". " ... not applied in any good faith effort to maintain or restore order discipline but instead used to maliciously and sadistically cause harm".

The lower court appears not to recognize that forcible administration of a harmful substance, undertaken by a state encroaches upon the petitioners 8th amendment rights to be free from cruel and unusual punishment.

### **FOOD TAMPERING**

Standard for review- Rhodes V. Chapman, 452 U.S. 337 (1981).

Food is the most fundamental of the basic necessities and an essential building block for sustaining life, and good health. To purposely weaponize a resource which one cannot live without through its intentional defilement for the purpose of masking malicious intent to cause pain and unnecessary suffering, qualifies as arbitrary government action which shocks the conscious, simultaneously depriving the petitioner of the full benefits of the public entities food service program.

Humbly, the petitioner must first draw the contrast between the technical definition of what is commonly referred to as "food poisoning".

By definition food poisoning is an acute gastrointestinal disorder caused by exposure to bacterial, or viral organisms or the natural byproduct of food decomposition or spoilage. To date, this is the only definition that the 5<sup>th</sup> Circuit has deemed to present any significant risk to a prisoners safety and security.

The controversy is based upon prison officials and meal service program staff and activities being held to a lower standard of safety when contrast against the same type of intentional poisoning occurring to non-prisoners. There should be no difference in the courts response to action taken regarding intentional premeditated adulteration of food and beverage items, rendering them both unsafe and unfit for normal use. Accordingly, any food additive that does not promote growth, provide energy, repair body tissue or maintain life, wholly compromises the integrity and nutritive value, disqualifying the item for its intended use or purpose.

The petitioner experienced the intentional weaponization of food items which is not a widely known concept in the public sphere but is duly recognized within the parameter of warfare.

In a Mar 28, 2022, A Distinguished Scholar pointed out how It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs,...**Ref. Appendix 6.**

Toxicant's and reported injuries the petitioner has alleged to have been subjected to in this and collective related prisoner complaints includes, non-medically necessary medication, Insulin, steroids, allergens, household cleaners, solvents and detergents which cause damage the lungs, skin, eyes, or mucous membranes, scheduled II narcotics and other unknown natural or manmade substances that posses and add no nutritional or caloric value to the food item. Repeated exposure to these substances pose a wide range of health risks . Risk often classified as minor by under-trained medical practitioners, based on lower level exposure manifesting In acute toxicity, producing symptoms perceived as minor, such as mild to severe irritation or sensitization despite the long term effects and carcinogenicity. **Ref. Appendix 6.**

It is essential to understand the prohibition on starvation when employed as a "method of warfare." It is equally applicable in situations wherein ones liberty has been restrained and ones sole source of sustenance is provided by the custodian. The material contamination of a meal item prepared and served by a prison meal service program which partially denied the petitioner from receiving the full benefit of the public entity food service program. **See, D.O.D Statement. Appendix 4-5.**

"The 8th amendment requires that prison officials provide nutritionally adequate food that is prepared and served under conditions that do not present an immediate danger to the health and well-being of the inmates who consume it".

Appendix 4-6., to reference Criminal Federal Statues concerning " Food Tampering. Toxic, Hazardous or harmful substances- are terms not used here to refer to a toxic substance produced naturally, but rather for the purpose of this summary, those produced by or a byproduct of man-made activities, including some medication's that are helpful in small doses but poisonous in large amounts. The Department of Defense agrees: **See Appendix 6. pg. A.16**

## DISABILITY DISCRIMINATION

Respectfully, the petitioner has jointly brought claims pursuant to federal disability , statues on the basis of meeting the criteria set forth in the A.D.A and Rehab. Act, Ref. C.O.A Brief pgs. 27-34.

By its very nature, a campaign designed specifically to attack the petitioner physically, for the purpose of causing an adverse psychological response based solely on the fact that the petitioner his susceptibility to impairment caused by high levels of mental anguish and profound levels of fear which have served as triggers to symptom onset and the rapid regression of the petitioners functional mental state and ability to engage in normal daily activities.

This represents a clear and flagrant violation of the eighth 8th, 14th amendment, and both ADA /Rehab act provisions against disparate treatment and intentional discrimination by reason of the disability. But for, the petitioners in custody mental health history illustrating how the specific conditions have repeatedly caused the petitioner to experience psychosis in the past, the defendants would not have persistently initiated tactics and intentionally manufactured similar events to exploit the petitioners condition, and bring about his cognitive impairment. The petitioner pleads that in the absence of voluntary compliance, there is a lack of any coherent and unifying national strategy regarding "disability abuse", involving intentional or egregious conduct, failure to remedy the abusive conduct and conditions which compromise facility security and personal safety. To date, any compliance monitoring and a cohesive, proactive enforcement efforts have been inside the context of accessibility, education, employment and accommodation. Although, essentially the destructive effects of disability abuse on mentally ill prisoners continue without sufficient challenge.

This court made it clear that the ADA is applicable to prisoners in he Supreme Court's decision in Pennsylvania Department of Corrections v. Yeskey,524 U.S. 206 (1998). The petitioner request that this court to take a leadership role in establishing public policy to protect the mentally ill population against intentional abuses defined as: The knowing and willing exacerbation of symptoms of a disorder.

Intentional infliction of emotional distress is a cause of action recognized in Texas jurisprudence. Although, simultaneously, the Texas Tort Act bars intentional torts against government agencies. Precedent law suggest that the court will not create a private cause of action if state statute provides a separate avenue for relief.

The petitioner asserts that "intentional contamination of a prisoners food or the connected coercion, intimidation or interference with the petitioners use of the meal service program causes physical and injury intentionally inflicts emotional distress and falls within the 8th amend. prohibitions against cruel and unusual punishment. Without this courts recognition and enforcement lower courts will continue to disenfranchise prisoners with disabilities from obtaining relief they are entitled to.

Public entities must also make reasonable modifications to their policies, practices, and procedures when necessary to avoid discrimination against individuals with disabilities. 28 C.F.R. § 35.130(b)(7)(i). Further, public entities may not "utilize criteria or methods of administration that ... subject qualified individuals to discrimination" or "defeat or substantially impair accomplishment" of the program's objectives. 28 C.F.R. § 35.130(b)(3).

The petitioner argues that, the intentional infliction of emotional distress, when perpetrated in connection with and more specifically, through a program or service of a public entity, the intentional exacerbation, interferes with plaintiffs' rights under Title II of the ADA to receive a reasonable modification within the meaning of intentional discrimination subject to relief remedies provided by the enactment of the ADA and all subsequent amendments.

This court recently addressed a similar the question in *Cummings v. Premier Rehab Keller PLLC* on whether damages for emotional harm are available under the anti-discrimination laws. However, it would appear that emotional distress damages remain available under other anti-discrimination statutes, the court did not clarify if a private cause of action for IIED, in a non contractual context is available under of the title II of ADA. and or applicable to an official capacity damage claim.

*Hudson v. Palmer*, 468 US. 517, 530, 104 S.ct. 3194(1984) holding, "calculated harassment unrelated to prison needs... could violate the eighth amendment".

The Supreme Court in *Griswold v. Connecticut*, 381 U.S. 479 (1965) found that the Constitution guarantees a right to privacy against governmental intrusion....

The petitioner's claims alleged that defendants abuse their discretionary authority and access to outside jurisdictional information contained in petitioner's medical records, specifically his mental health diagnosis, including both, in an outpatient treatment history.

Defendants provided an assortment of private and personal information about myself and my family members and authorized those inmates to utilize this confidential information to discriminately tailor a harassment and intimidation campaign targeting the petitioners vulnerability associated with this specific form of mental illness for the explicit purposes of artificially causing the petitioner a level of impairment based on symptom onset, which had been observed in previous detention settings to significantly impede his ability to function normally, jointly implicates privacy violations.

This significantly contributed to the petitioners anxiety, embarrassment, social isolation, depression and is a separate form of abuse, an inmate with a known mental illness should be intentionally subjected to. Supervision and treatment requirements differ for mental health inmates. Improved officer training is a reasonable accommodation typology which should be provided to reflect different needs and mental health conditions system-wide, for the purposes of eliminating the arbitrary risk.

The same standards that protect against physical torture prohibit mental torture as well-including the mental torture of excessive deprivation. Although the courts typically apply this principle to inmate isolation cases, the theory is equally apt when the environment is intentionally fostered to exacerbate the mentally ill because of the known susceptibility to mental anguish.

The scope of the eighth amendment protection is broader than the mere infliction of physical pain, evidence of beatings, mental anguish and misery can establish the requisite anchoring 8th amendment violation". Indeed, in some cases, the need for training is so obvious that deliberate indifference can be established even without an earlier violation of pattern of abuse as long as it was obvious that the municipality's failure to train or supervise its employees would result in a constitutional violation.

#### FOOTNOTE

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Extreme conduct of the custodian that causes severe emotional distress is significant". See, *Hicks v. Frey*, 992 F.2d 1450 1457 (6th Cir. 1993); *Williams v. Greeifinger*, 97F.3d 699, 704-05 (2d. Cir. 1996). See also, *Ruiz v. Johnson*, 37 F.supp. 2d 855, (5th. Cir. 1999) Ref. Final settlement provisions III Support staff Inmates.".

## INADEQUATE OFFICER MENTAL HEALTH TRAINING

Mental Health America- an advocacy group for those who suffer from mental disorders. MHA recognizes a lack of training of officers who have daily interaction with mentally ill inmates and calls for the following policy changes: All staff should be trained and demonstrate competence in non-physical intervention and de-escalation techniques to prevent the use of seclusion and restraints and in the safest and least restrictive ways to use seclusion and restraints. Only staff persons who have received this training should be involved in seclusion or restraint of consumers. How a prison officer chooses to interact with prisoners, will be dependent on a number of considerations specific to the individual and the training received. The approach individual prison officers choose to take as a prison officer depends on their understanding of the role. An appropriate understanding can only be developed by training in the context of institutional goals and cultural norms as well as the prison officer's own views, values and previous experiences.

What is clear is that the antithetical understandings of the role result from a conflict between dual obligations of care versus control.

This may be the result of conflict between the operational philosophies of imprisonment, rehabilitation and retribution (Halsey & Deegan, 2016), or it may be a personal and ideological conflict between the officer's moral and legal obligations. The mental wellbeing of prisoners is a whole prison responsibility and not just that of a small specialist mental health team. As Liebling (Reference Liebling2004) has also shown, the *manner* in which frontline staff use their authority has a profound impact on the prisoner experience including levels of order, safety, distress, and suicide—and on the overall moral quality, or legitimacy, of penal institutions.

HHS, SAMHSA, and the Centers for Mental Health Services recommends the development of curriculum for states to certify trainers to do this work.

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### FOOTNOTE

*Brown v. Budz*, 398 F.3d 904, 914-15 (7th. cir. 2005) deliberate indifference can be established by knowledge of victims' vulnerabilities.....Supporting jurisprudence on prohibition of ill-treatment enclosed this court's ruling in *Hope v. Pelzer* 536 U.S. 730, 738, 745, 122 S.ct. 2508 (2002). Citing "risk of particular discomfort and humiliation... In addition to pain and risk of injury... Stating prisoners were treated in a [manner] antithetical to human dignity". "



Interactions reflecting the typical scripts associated with bad staff-prisoner relationships, such as staff behaving unprofessionally, led to feelings of powerlessness hopelessness, mortified sense of self and self-worth leading to painful feelings of dehumanization. Texas Prisons need to address the social and psychological harms they produce in order to promote well being and foster human flourishing. Staff have a considerable role in this process: lack of support and dehumanizing treatment, have serious repercussions when added to the pre-existing emotional downward pull of imprisonment and its deleterious effects on mental health.

Training which tailors staff behaviors regarding prisoner interactions with the mentally ill is an investment in overall facility security and stability.

A mentally ill prisoner, or any prisoner can not adjust or even moderate his own behavior or likelihood of continuing criminal conduct where prisoners is constantly under the threat of harm, feel disrespected and not valued. Ref, Appendix 6. British Medical Journal, 327, 480. While there are personal factors and imported vulnerabilities present in psychiatric patients, negative prison environments have deleterious effects on previously healthy individuals also.

### **THE VICTIMIZATION OF MENTALLY ILL INMATES**

The abuse of disabled inmates, as well as the stigmatized treatment they receive, which negatively impacts the prison social climate, generating pathological relational styles and distorting the prison environment. This creates a need for an adequate number of additional officer training programs and interventions of sufficient quality to prevent and mitigate their consequences. There is a significant influence of officers lack of training on how to appropriately interact with mentally ill prisoners within the relational climate of prisons.

However, what literature there is does not respond to a current reality where inmates with mental health problems have an increased risk of victimization. Historically the topic has received modest research attention, limiting insight into the extent of the problem. This could partly be attributed to the fact that few crime statistics exist for this population, but there is considerable evidence that crimes against mentally ill inmates are systematically under reported yet growing in frequency and severity.

The ambiguity surrounding definitions of victimization and crimes involving individuals with mental illness facilitates and promotes under reporting of the problem. Acts of victimization against persons with disabilities often are labeled as “incidents” rather than crimes. In many cases, incidents are handled internally through internal organizational means if the act occurs in a correctional living context rather than through the criminal justice system. Only proper training can establish the definitive line between an officers imposition of lawfully ordained imprisonment vs. abuse and unconstitutional punishments).(Petersilia, 2001). Because national statistics regarding crimes against individuals with disabilities are problematic, this petition seeks to contribute to the issue through the petitioners personal account alleged in the case at bar and related cases.

Defining victimization in a consistent manner is no easy task. Quinney (1974) asserts that the concept of “victim” is a social construction, thus, defining what constitutes victimization is an inherently subjective process that depends on the target’s perception of the act.

For instance, one officer perceived an incident wherein the petitioner had reported his meal being contaminated with a chemical compound resulting in injury, as justifiable punishment while another officer maintaining additional training and a differing view as to their role in the institution might have perceived the same act to be a personal attack, form of unacceptable abuse, and consider it victimization. This distinction is crucial because it can trigger a victim’s or a witness’s inclination to respond to or report the instance as victimization.

The petitioner would assert that the without a clear statement from this court, the intentional physical or psychological abuse of the mentally ill prisoners, will continue to be overlooked in a public discourse despite the immutable implications on public safety policy. Once an individual is convicted of a criminal offense, and sentenced to a correctional institution, the concept of that same individual then becoming a victim, to some becomes seemingly unlikely or absurd, defining victimization may be even more difficult. In the realm of disability, terms such as abuse, neglect, and harassment are referenced interchangeably, suggesting that victimization involving persons with disabilities is not clearly defined .

The wide range of potential acts of victimization, in addition to preconceptions and prior experiences that influence the perceptions of victims and observers, compound the difficulty of accurately identifying ambiguous acts as victimization, particularly when the intent of the perpetrator is to utilize the immutable traits of the prisoners mental condition as a means to conceal and or justify offensive conduct. Although there have been wide ranging judicial attention to the need for accommodations, and discrimination prohibition.

There is a lack of detailed information on the victimization of persons with disabilities. Statistical sources conflict with one another because methods of data collection and reporting do not disaggregate between victims based on their specific disability type nor do they include details on crimes against this population. Federal Hate Crimes statistics and National Crime Victimization Survey (NCVS) data on the victimization of persons with disabilities illustrates the wide variation between data sources.

In 2009, federal statistics indicated that there were 99 hate crime incidents involving victims with a disability (US Department of Justice, 2009). However, NCVS reports indicated that there were more than 750,000 violent victimization's committed against persons with a disability in 2009 (Harrell, 2011).

The discrepancy between the two sources could indicate a number of issues, including a high degree of non-reporting to law enforcement, lack of evidence to corroborate reported victimization, or prosecutorial failure to file charges on state correctional authorities due to the widely held perspective that, harsh prison conditions of confinement are only an extension of the punishment proscribed by law as a consequence of a criminal act.

Inmates with mental illness are typically categorized in society, including many representative officials of criminal justice system as being less credible or their account of events alleged in prisoner complaints as being only mere exaggerations or delusions caused by their illness.

#### FOOTNOTE

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That individuals with mental illness may not realize they are being victimized compounds the problems associated with defining acts of victimization (Marge, 2003), or because victimization has been a part of their lives for many years.

In other instances, such as in the case at bar, prison officials exploit this unfortunate dynamic and subject mentally ill inmates to abuses with impunity to consequence based on the fact that, despite their reported misconduct, when the allegation of a mentally ill prisoner is contrast against the word of a state correctional figure, the judicial principle of “ Guilt beyond a reasonable doubt “ is an extremely high bar to achieve, historically in favor of defendants.

There are several reasons for the dearth of data including, many persons with mental disability do not report victimization based on a lack of knowledge on how to report, low self-esteem, inability to communicate, fear of personal harm if they report, and conflicts of interest between victims and perpetrators in the instance of maltreatment at the hands of prison authorities, care providers or family members (Petersilia, 2001; Muccigrosso, 1991).

There is a mutually exclusive access to justice barrier erected by the public perception leading to practice concerning alleged prisoner fictionalization and abuses of the mentally ill in correctional settings . Any actions or lack thereof concerning how any outside witnesses will perceive and react to these the reported incidents, will be primarily based upon their personal view of the mentally ill community, making it extremely difficult to obtain substantiation of events by non-defendant correctional staff or assistance from outside organizations and agency's.

Importantly, while NCVS reports break down the statistics by disability type, the federal Hate Crimes statistics do not include information on disability type. Outside of Hate Crimes statistics, official data on the victimization of persons with disabilities are nearly non-existent.

If we are to challenge the existing psychological, cultural and structural oppressive systems faced by mentally ill inmates housed within institutions in which both official and unofficial practices and customs contribute to a hostile environment. Sufficient integration of correctional and mental health training must be implemented as a counter balance to officer discretion.

Respectfully, the petitioner doesn't suggest that this court has not previously addressed the , “ Insufficient Officer Training” topic. Although the petitioner does assert that there has been little assessment of the harmful impact of officers lacking more in-depth, mental health training.

Much of the psychological harm is caused by years of systematic marginalization of the mentally ill that has led to the development of insufficient training regimes wherein correctional officers are not taught how to safely engage with inmates with mental disorders.

Technically, correctional officers are “frontline workers,” McElligott draws attention to a range of their occupational functions and practices: first, their position as gatekeepers to institutional and social resources and as mediators between “the state and its client/subject populations”. “ We spoke to a number of prison officers, including senior officers based on prison wings. **Most had not received any mental health awareness training** but they said they could identify prisoners who they thought had mental health problems ”.

The petitioner argues that the above fact is reflected in TDCJ officer training regimen summary. The training for a Correctional Officer consists of approximately 240, hours of curriculum and administrative instruction.

The training normally lasts about 6 weeks at the TDCJ Training Academy in Beeville, Gatesville, Palestine, Huntsville, Rosharon, or Plainview. Training includes defensive tactics, firearms, chemical agents, CPR, first aid, physical training, non-violent crisis intervention, and standards for use of force. **Ref. Appendix 6**

The petitioner notes, that no mention made of training officers to safely interact with the mentally ill inmates,, recommended by Texas based 3rd party correctional training platform “ LEXIPOL”.

In addition, the reported 240 required training hours provided by TDCJ is contradicted by first hand reports from TDCJ officers and the 2016 Dallas Morning news report suggesting that all that is required by law 127 hours, 72 of which provided through online channels represents total training requirements. See also, The Dallas Morning News article 2016.

In the article about the death of inmate, Andy Debusk. Texas Commission on law enforcement, executive dir, Kim Vickers stated “ Some Jailers never train the guards, they hire on temporary licenses”...” “Trying to keep business running the propensity is there to hire somebody, keep them for a year and hire someone else and keep a revolving door. Temporary guards are paid less.”

State Rep. Garnet Coleman, Chairman of the Texas House committee on County Affairs commented, “Essentially, we have minimally trained jailers supervising minimally trained jailers”. According to representative Coleman, “Poor and incomplete staff training is a factor contributing to in custody deaths of which there were 53 in Texas during the first half of 2019. In The petitioners own interviews with correction officers, officers reported that they had little understanding of mental illness or had undergone any mental health awareness training.

The Seventh Circuit has agreed with other courts in concluding that the “[t]reatment of the mental disorders of mentally disturbed inmates is a ‘serious medical need.’” *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983) (citing *Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980); *Inmates v. Pierce*, 612 F.2d 754, 763 (3d Cir. 1979); *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977).

It is well established that frustration can lead to an inability to manage their own emotional reactions which lead to aggressive behavior towards prisoners. The well-being of staff and prisoners alike, is influenced by multiple inter and interpersonal factors, yet few have sought to directly explore these interpersonal interactions and the consequences to the health of prison officers and inmates. The extracted findings suggest that most adults are cognizant of the different styles of communication that can influence their interpersonal interactions, as well as their outcomes.

Training must be implemented for officers own understanding, safety and well being, not only for the purposes of refraining from antagonistic and derogatory language, and ready use of physical force which compounds the unpredictability and volatility of prison the environment.

Although the purpose of this analysis is not to create a cases for privatization. But rather to better illustrate just how drastically staff training in the private sector differs from that of public institutions and the implications on the mentally ill prison population. Private companies instill more positive and respectful staff cultures, in part by emphasizing the importance of interpersonal skills when training their workforces. Greater emphasis placed on their training has been proven significant in creating a staff culture in which officers regarded themselves as deliverers of a service other than punishment itself. Negative staff attitudes place limits on levels of care, respect, and humanity experienced by all prisoners in this suspect class.

Notably, this resulted in part from concerns within the prison about professional standards and officials own marginalization of inmates with disabilities. Prison staff are reluctant to challenge prisoners who victimize mentally ill inmates.

Problems with levels of staff professionalism and inexperience has been identified as compounding serious prisoner disturbance. Studies identified insufficiently assertive and knowledgeable staff, plus poor training, as among the factors that offset the positive, helpful, and humane relationships. (see Appendix #6 Appraisal Of The Role: Care Vs Control Pg (Moyle1995).

### **THE IMPACT OF TRAINING ON OFFICER APPRAISAL OF AND TREATMENT OF THE PRISONER:**

Halsey and Deegan (2016) note that interpersonal interactions in prison require “appraising [sic] the other” (p. 57). Both Owen (1983) and Halsey and Deegan (2016), suggest there are multiple points of reference the prison officer can use to appraise the prisoner, including personal views, experience and institutional philosophies. There are officers who subscribe to the view that prisoners are “not like us” and treat prisoners as “scumbags” from the lower echelons of society who don’t deserve civil treatment(Halsey, & Deegan, 2016, p. 60). Interpersonal interactions between prison officers and prisoners are complex.

The development of good working relationships relies on interpersonal interactions that are respectful and trustworthy.

The communication style used by the officer will depend on the level of training the officers received in regards how to interpret and actively engage with the mentally ill. Throughout the United States, prisons have extensive histories of imposing unnecessary, excessive, and even malicious force against prisoners with mental disabilities. Incidents in which correctional staff have broken prisoners’ jaws, noses, ribs; left them with lacerations requiring stitches, second-degree burns, deep bruises, and damaged internal organs.

The plaintiff asserts that the categorical abuse extends to intentional food contamination, forcible administration of illicit substances and, psychological torture, a subset of abuses impacting a large amount of the total prison population and has contributed to the growing in-custody suicide death rates in Texas prisons.

Human Rights Watch's research, Ref. **Appendix 6**, indicates that unwarranted, excessive, and punitive force against prisoners with mental health problems is widespread and may be increasing in the more than 5,100 jails and prisons in the United States. Experts blame deficient mental health treatment, inadequate use-of-force policies, insufficient staff training, and poor leadership. Prisons are not uniformly required to report the use of force by guards, the study found.

Jamie Fellner, a senior adviser at Human Rights Watch and the report's author, said the study was the first to take a comprehensive look at use of force by guards against mentally ill prisoners, to try to understand the dynamics behind the violence. Ms. Fellner said she spent more than a year interviewing some 125 officials and mental health experts and reviewing hundreds of cases across the country. The review found that an estimated one in five prisoners in the US has a serious mental illness, including schizophrenia, bipolar disorder, and major depression, and an estimated 5 percent are actively psychotic at any given moment.

Prisoners with such conditions often find it difficult to cope with the extraordinary stresses of incarceration. The adverse impact of the environment is compounded when insufficiently trained staff intentionally create conditions and situations to exacerbate an inmates illness symptoms, which essentially implicates public safety policy within the context of a public entity that this court must weigh in on.

Prior judicial attention to this issue has dealt primarily with, the use of varying forms of force against mentally ill inmates in response to behavioral problems associated with their illness, but not abuse of a prisoner because of his mental diagnosis.

### **IMPACT OF TERRORISM ON MENTAL HEALTH**

In the petitioners filings, he utilized the phrases , "psychologically terrorize", and torture interchangeably and synonymous with any standard definition utilized to articulate the severity level of intentionally inflicted emotional distress the petitioner was subjected to giving rise to the complaint, in congruence with the underlying technical definitions. "Terrorism is defined as political violence in an asymmetrical conflict that is designed to induce terror and psychic fear (sometimes indiscriminate) through violent victimization. Although universally, generally speaking, treatment can be construed as inhuman if it causes intense physical or mental suffering in the victim and degrading if the object is to humiliate and debase the person.



Torture is defined as Inhuman treatment, "The willful infliction of severe physical pain causing psychological suffering as a punishment or a forcible means of persuasion".

Many staff members good intentions and positive attitudes were impeded by their relative inexperience, lack of knowledge about their constitutional obligations and their fear of the consequences of going against the grain of the prison administrative culture representative of the various unofficial institutional customs and practices, having a deleterious impact on security, safety, and control. Equal emphasis must be placed on mental health training for the purposes proactive prevention of hostile environmental conditions and not just responsive De-escalation methods.

The World Health Organization indicates that Psychological responses to terrorism and pain are a mixture of reactions towards the trauma and also towards a constant fear of being a victim of trauma in the future. Research has shown that any form of personal threat and fear leads to a change in personal behavior designed to minimize exposure to risk, also referred to as 'constrained behavior'. Psychological trauma not only leads to disturbance in the mental equilibrium causing maladaptive behavior but also results in diagnosable psychiatric and physical disorders.

It is important that officers and staff display sensitivity and discretion in all their interactions with prisoners with mental ill health and vulnerabilities. Additional Training must be implemented beyond the recognition of symptoms or suicidal tendencies. Mental disorder is fluid, a person's ability to understand information and make decisions may also fluctuate. For example, the difficulties exhibited by an individual during a period of mental ill health may be entirely absent when in good mental health.

*Helling v. McKinney*, 509 U. S. 25, 33 113 S. Ct. 2475 (1993), is the standard of review concerning this issue.

This court has held that unsafe conditions that pose unreasonable risk of serious damage to a prisoner's future health may violate the eighth amendment even if the damage has not yet occurred and may not affect every prisoner exposed to the condition. Plaintiff respectfully pleads that the District Court erred in placing dispositive value on the fact that plaintiff had not yet been diagnosed with a chronic illness, other than Hyperglycemia while giving no probative value to the other palpable acute injuries sustained.

To unwillingly expose anyone to the risk of diabetes by exposure to non-medically necessary medication, "Insulin," not only increases the likelihood that plaintiff might develop the chronic condition in the future, i.e., the very serious known complication associated with elevated insulin levels, unnecessary pain and suffering, both are not risk society would choose to tolerate.

### **INTENT TO DISCRIMINATE AND THE APPLICABLE STANDARD**

The presents competing perspectives from the 5th and 11th circuits as to the appropriate standard to demonstrate discriminatory intent petitioner respectfully request this courts clarification.

The Fifth Circuit found intentional discrimination, adopted respondeat superior, and also said that there was no deliberate indifference standard applicable to public entities for purposes of the ADA or the Rehabilitation Act. *Delano-Pyle v. Victoria County Texas*, 302 F.3d 567, 574-75 (5th Cir. 2002). *Liese v. Indian River County Hosp. Dist.*, 701 F. 3d 334 - Court of Appeals, 11th Circuit 2012. \*345. See also, *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998). "We agree with the parties and hold that a plaintiff may demonstrate discriminatory intent through a showing of deliberate indifference." Courts of Appeals have held that a failure to train can create liability under § 1983. See, **Appendix #6**.

### **CONCLUSION**

Respectfully, It is the petitioners firm belief that an amendment of the complaint would not be futile, and hereby request this highly esteemed court to grant Cert. And address the issues contained within this petition, as to applicable standards, with respect to custom or practices of involuntarily exposing prisoners to harmful substances and the impact of insufficient officer training methods which pose an unreasonable risk to mentally ill prisoners. Humbly, the petitioner request relief in the form a clear position statement from this court, reversal and remand the action, and appoint the petitioner counsel with an opportunity to amend the complaint. I respectfully appeal to this court to utilize its supervisory authority in this matter and find good cause to grant certiorari and allow the petitioner to brief the merits of the complaint.

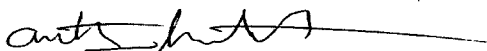
## REASONS FOR GRANTING THE PETITION

Defendants have discriminated and continue to discriminate against prisoners and their members by denying them a full and equal opportunity to participate in their food service programs. The petitioner suffers from an Axis I disorder that is frequently characterized by symptoms that lead the individual to significant functional impairment.

The intentional exploitation of the condition exceeds the boundary of human decency. Without this courts intervention, class members will continue to suffer irreparable harm; including discrimination and both physical and psychological injury in connection to access to fundamental rights to a basic life necessity. In all honesty and sincerity, the exceptional circumstances surrounding the merits of this brief involve significant issues concerning public safety policy, of a nature which supersedes any difference of opinion or interpretation of what the law requires in the lower courts. The petition will present a critical question to this judiciary of which the lower courts have repeatedly refused to address and without a clear statement from this highly esteemed court, I fear the courts under your ultimate authority will continue to ignore conduct which interferes with interstate commerce and results in prisoners being released in a worst physical and mental condition than when first detained. The complete scope and magnitude of the risk to public safety cannot go unaddressed solely based on the hazard impacting U.S. citizens, diminished by the taint of a criminal conviction. The constitutional protections that this country were founded on have seeming been nullified and are of no effect behind the prison walls outside of the public view. To date neither TDCJ nor UTMB have made any substantial modifications to training regimens to address how to actually safely interact with mentally ill inmates.

For each of the above reasons, the petitioner humbly request that this highly esteemed institution of justice grant this application for writ of certiorari.

Respectfully Submitted,  
Without Prejudice



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