

No. 23-5268

In The

Supreme Court of the United States

Marc Amouri Bakambia,

Petitioner

v.

Paul Schnell, *Commissioner of MN correctional facilities*;
Vicki Janssen, *Warden at MCF- Rush City*; Paul
Gammel, *Lieutenant and Watch Commander*;
Kenneth Peterson, *Lieutenant in charge of segregation*;
David Schmitt, *segregation sergeant in charge*;
Scott Maki, *Segregation sergeant in charge*;
Jesse Pugh, *Associate warden of Operations*;
Deneen Clemons, *Associate Warden of Administration*;
Erick Rasmussen, *Segregation Program Director*;
Gary Peterson, *Discipline Lieutenant*; Tyler Nelson, *Officer*;
Branden Tatum, *Segregation Officer*;

in their individual and official capacities;

Respondents

On Petition for Writ of Certiorari
To the United States 8th Circuit Court of Appeals

PETITION FOR REHEARING

Marc Amouri Bakambia
Pro se (Petitioner)

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INTRODUCTION

This Petition for Rehearing is pursuant to U.S. Supreme Court Rule 44.

On August 02, 2023 Petitioner filed a Writ of Certiorari from the Eighth Circuit Court of Appeals of Missouri (*The venue of the Court of Appeals had changed from Minnesota to Missouri*), was entered on a Docket and this Court requested a response from Respondents pursuant to Rule 15.3 that due date for Respondents' Brief in Opposition is Friday, September 1, 2023. The Clerk of Court provided Petitioner with a copy of WAIVER OF RESPONSE and a NOTICE of Petition to be served upon Respondents. On August 14, 2023 Petitioner mailed the Waiver via First Class mail to Respondents' Counsel of record, Mr. Kevin Jonassen, Minnesota Assistant Attorney General; and a copy to the U.S. Solicitor General Mrs. Elizabeth B. Prelogar. **See Appendix B.**

Respondents have not filed their Brief in Opposition by the specific due date requested by the Court. On October 10, 2023 the Court denied the Petition for Writ of Certiorari. This Petition for Rehearing now follows.

REASON FOR GRANTING THE PETITION FOR REHEARING

I. THERE IS A STRONG NEED FOR THIS COURT TO INTERVENE BASED ON PREVIOUS GROUNDS, INCLUDING THOSE STATED HEREIN

The Supreme Court Rule 15.8 provides that, "Any party may file a supplemental brief at any time while a petition for a Writ of Certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing.

A. JUSTICE SHOULD BE RENDERED TO PETITIONER BASED ON

PREJUDICE BY THE DISTRICT COURT; UNCONSTITUTIONAL
CONDITIONS AND PRACTICE AT EVERY LEVEL.

There is a showing that this case is of such imperative public importance, and the decisions of the lower courts should be imperatively reversed.

1. RESPONDENTS' S COUNSEL RECEIVED NOTICE OF PETITION FOR
CERTIORARI IN MANY FORMS, YET FAILED TO RESPOND.

a) Respondents failed to file either the Brief in Opposition, nor the Waiver, when specifically requested by this Court (See Supreme Court Rule 15.1). The Notice was also filed electronically to the district court which sent a Notice of Electronic Filing (NEF) to Respondents' Counsel of record. This inaction and conduct could have moved this Court to Grant the Petition and relief sought. Respondents disregarded this Court's time spent in entering the Petition on a docket and scheduling of their response due date.

b) It is evident and could be easily inferred that it's because Petitioner had raised serious issues which Respondents could have had hard time to defend against or rebut before this Court. e.g. Respondents' Counsel Minnesota Assistant Attorney General Mr. Jonassen clearly and undisputed assisting prison officials Respondent David Schmitt specifically, and Kenneth Peterson to commit perjury and false statements as explained in the Petition for Writ of Certiorari. there Schmitt lied to the assigned magistrate judge on discovery that the second time Petitioner was again assaulted in his Unit the segregation by the same group of Native MOBs, that he worked in a different Unit (1-East Unit) (See again Petitioner's Appendix E, Vol. 3 at 11 filed on August 02, 2023). Regarding

respondent K. Peterson, Lt. in charge of segregation, who were personally involved on both assaults, yet, this counsel tried to justify his statement that he was not inside the facility on the second time. Then, the reassigned magistrate judge considered their counsel statement that, "any confusion has now been clarified." (See again Appendix G, Vol.1 at 7 filed on August 02, 2023).).

It is therefore undisputed that fact these respondents committed perjury¹ and making false statements was a showing that they had reason to lie, for purpose of covering up their unconstitutional conducts of each other, and their personal involvements, also due to the fact that they all work together, see each other every day, rely on each other in tight spot, hang out together after work, and many of them are relatives and best friends, etc.

II. PETITIONER WAS PREJUDICED ON PROCEDURAL GROUND

See: 1 Practice Before Federal Magistrate Judge § 17.10 (Appendix F):

The magistrate judge may be required by the nature of the proceedings to make express credibility determinations as part of the written embodiment of the recommendation. Thus, where conflicting factual assertions plays a material role in the issues being heard, there may be a duty upon the magistrate to indicate which testimony is being credited and why. While failure expressly to comment on the credibility of testimony which is rejected or accorded less weight on credibility grounds would not be a basis for rejecting the magistrate judge's findings, a clear statement of the factors influencing the decision will aid the district judge. Conversely, a party may not legitimately complain that credibility assessments are

¹ Bakambia is not entitled to an order compelling the production of "log" which showed which Unit Schmitt worked in on May 20, 2019, and May 21, 2019 for the simple reason that Heather Sletten, the litigation Coordinator at MCF-Rush City, declared under penalty of perjury, that no such record or log exist. See Doc. 75-1. As such, there is no production to compel. Further, Defendants informed Bakambia that Schmitt did not work on May 20, 2019, and that Schmitt worked third watch in Unit IE on May 21, 2019

included in the magistrate judge's report, no matter how unflattering they may be to a client or witness.

Again, there was no Report and Recommendations by the referred /assigned magistrate judge, despite the magistrate judge's own Order stating that he will issue it base on the paper submitted for summary judgment (Appendix I), and it is hard to conclude that credibility assessment of respondents' testimonies, perjuries, false statements were ever included on the district judge ruling on a motion for summary judgment without the report and recommendations from the assigned magistrate judge. The district court ruling was with purpose to perjure petitioner. It is possible that the district judge prevented the magistrate judge issue an R&R because he was.

In some district courts, ALL prisoner petitions are automatically referred/assigned to a magistrate judge. See also Appendix G, § 17.12 (b)(1)

DISPOSITIVE MOTIONS AND PRISONER PETITIONS:

"A magistrate judge must promptly conduct the required proceedings when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact.

A. THIS COURT SHOULD INTERVENE BECAUSE PETITIONER CASE WAS RECENTLY CITED OUT OF CONTEXT from Footnotes 3 OF 1 PRACTICE BEFORE FEDERAL MAGISTRATE JUDGE § 17.03, "SUMMARY JUDGMENT APPLICATIONS Copyright 2023 By Matthew Bender & Company, In., a member of the LexisNexis Group.

See Appendix E at 1 & 7, the foot 3 states:

See *Sutton v. United States SBA*, 92 Fed. App'x. 112 (6th Cir. 2003) (Unpublished); accord *Bakambia v. Schnell*, 2023 U.S. App. Lexis 9378 (8th Cir. 2023) ("we also

conclude the district court did not err in ruling on the summary judgment without first referring it to a magistrate judge, see 28 U.S.C. § 636 (b)(1)").

Even though there's still no case law or precedent showing similar ruling by the district court. There's probably no case law that exist where the assigned magistrate who spent about [Two years] dealing with Pretrial matters then spontaneously been prevented or discharged by the district judge when it's time for report and recommendations. This action of the district judge can only be understood as it did so to cause an injustice towards petitioner and perjured him.

As a matter of fact, in Sutton v. United States SBA, there was a report and recommendations issued by the magistrate judge and was in fact accepted/adopted by the district judge (See Sutton under Appendix D) In Sutton, the plaintiffs contend that the district court committed reversible error when, according to plaintiffs it designated a magistrate judge to determine a dispositive Summary Judgment motion in violation of 28 U.S.C. § 636 (b)(1)(A).

The Sixth Circuit court of appeals stated:

Plaintiffs did not preserve this issue for appeal as plaintiff failed to object to the district court's designation of a magistrate judge either at the time the district court did so or as an objection to the magistrate judge's Report and Recommendation; rather, plaintiffs first raised this issue only after the district court issued its judgment adopting the Report and Recommendation.

The 6th Cir. court of appeals continued:

In any event, plaintiffs' claims lack merit. Section 636 (b)(1)(A) provides that "a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for ... judgment on the pleadings...[or] for summary judgment." However, § 636 (b)(1)(B) permit a judge to designate a magistrate judge to conduct hearings and to submit the district court "proposed findings of fact and Recommendations for the disposition,...[by the district court], of

any motion excepted in subparagraph (A). Here, the district court relied on § 636 (b)(1)(B), not 636 (b)(1)(A), to refer all of the pre-trial proceedings.... including SBA's dispositive motions.

And so, in this case, the district court relied on § 636 (b)(1)(B), to refer all of the Pretrial proceedings, including dispositive motions to the magistrate judge. The district court cannot have it both ways unless he did so to fulfill its purpose to prejudice and cause injustice to petitioner. It is also probable that the district court did not approve of the magistrate judge issuing Sanction against Respondents for failure to comply with the prior Order of the Initial magistrate judge.

Also, there was a **PRETRIAL SCHEDULING ORDER** entered in this case that included dispositive motions (**See Appendix (H)**), in which no Respondents objected to the magistrate judge's jurisdiction to issue a report and recommendations based on the papers without a hearing. Respondents have enjoyed this Pretrial scheduling Order because of the lack of hearings, and now respondents are maliciously and frivolously arguing § 636 (b)(1)(A) on Appeals, and yet, the Appellate court agreed with them. Therefore, intervention of this Court is needed for determination on this important public issue and end the confusion which exist.

B. PROTECTION OF CONSTITUTIONAL RIGHTS OF PRISONERS

“Federal Courts must take cognizance of the valid Constitutional Claims of prison inmates. Prison walls do not form a barrier separating prison inmates from the protections of the Constitution. Because prisoners retain these rights, when a prison regulation or practice offends a fundamental Constitutional guarantee, federal

courts will discharge their duty to protect Constitutional rights.” *Turner v. Safely*, 107 S. Ct. 2254.

This Court should intervene to protect Constitutional rights of prisoners not to be subjected to cruel and unusual punishment or Failure-to-protect specifically with the Minnesota Correctional Facility of Rush City because it's obvious that these officials have purposeful intent to cause serious harm or injuries to inmates with a culpable state of mind.

See e.g. Appendix (C) for *Fields v. Bert's*, 2022 U.S. Dist. Lexis 237126 (Report and Recommendation adopted by *Fields v. Bert's*, 2023 U.S. Dist. Lexis 15722 (D. Minn., Jan. 31, 2023)). This was a Failure-to-protect case rising out of MCF-Rush City.

There court dismissed *Mr. Fields's* case for failure to exhaust his administrative remedies. The magistrate judge in that case based his conclusion in part, by referencing *Mr. Fields's* other civil case filings as an evidence that *Mr. Fields* had the time to exhaust either by using his "physical safety or well-being exception at any time as described at the DOC grievance policy.

Some respondents in this case were also involved in Mr. Fields's case.

In *Fields*, the magistrate judge incorporated some relevant facts:

- Respondent Warden Janssen's office responded to *Fields* kite regarding his safety as follow: “[T]here is always the potential to have difficulty with other offenders. We expect offenders to respect each other's differences. As well, keep in mind that you also have to take some responsibility for your personal safety. It is up to you to navigate the prison population diplomatically and maturely while incarcerated.

The court continued:

Mr. Fields claims that “His case manager approved the transfer of *Mr. Paige* to MCF-Rush City knowing that *Mr. Fields* and *Mr. Paige* were incompatible and should not have been housed together.” *Mr. Paige* claims that *Mr. Paige* assaulted him on September 16, 2019 (*Id.* at 12 (“As a result of this transfer. I was obviously set up and never saw it coming and [was] attacked brutally from behind by offender *Toparious Paige* on my way to after dinning pill run.”)). *Mr. Paige* previously attacked him at another prison because *Mr. Fields* was convicted of murdering *Mr. Paige's* brother. (*Id.* at 4, 12).

In this case, Petitioner *Mr. Marc Amouri Bakambia* was attacked first at the general population by a group of gang members (Native MOBs) in May 20, 2019. Respondents placed him in Segregation in the same tier as his attacker who already had his friends on that same tier, yet, without petitioner knowing of this exposure of serious risk of harm to his safety and health. Then the next day, May 20, 2019, while in Segregation, Respondents allowed petitioner same time of recreation with his attackers. As a result, Petitioner was again attacked and assaulted from behind, he sustained acute fractures on his 9th and 10th ribs, Traumatic Brain Injury, Head Injury, chronic migraines from the closed fists to his head as shown on evidentiary video of segregation attack; then kicks and stumping on his head and ribs when he went down to the floor, he also suffered chronic eye pain and PTSD.

Based on the above response of Respondent Janssen, could she also imply that Petitioner had the responsibility to navigate the segregation diplomatically? As a matter of fact, petitioner did file a “**physical safety or well-being exception**” grievance complaint to the Minnesota Correction Commissioner Paul Schnell, who directed Respondent Vicki Janssen to respond, she stated, “All matter brought to the attention of staff are thoroughly reviewed. Should it be deemed for corrective action to be taken, this is would not be disclosed to you or any other offenders.”

(See Appendix M, Vol. 2, filed on August 02, 2023). Respondent J. Pugh then responded to petitioner's kite stated, "Hope you gain insight into how you can make positive adjustment in your life, your ability to do so will greatly enhance your success upon your return to the community and may lead you to a crime-free lifestyle."

If this Court do not intervene, this case will set a negative precedent and the Constitutional rights of prisoners/Inmates to be protected for their safety of and health will be in jeopardy.

CONCLUSION

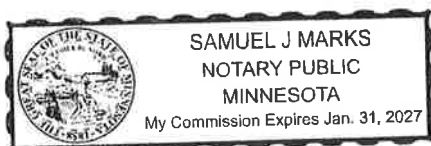
IT IS THEREFORE important for this Court to intervene, and **GRANT** the Petition for Rehearing for Writ of Certiorari.

Respectfully, submitted,

Executed on October 16, 2023.

S/ *Marc Amouri Bakambia*
Marc Amouri Bakambia

10/16/23
Samuel Marks



CERTIFICATE OF COMPLINCE

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2591 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 16, 2023

A handwritten signature in black ink, appearing to read "Marc Amouri Bakambia", written over a horizontal line.

Marc Amouri Bakambia

No. 23-5268

In The

Supreme Court of the United States

Marc Amouri Bakambia,

Petitioner

v.

Paul Schnell et al

Respondents

PETITIONER'S DECLARATION OF SERVICE

I, Marc Amouri Bakambia hereby certify that:

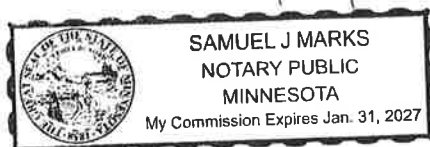
1. On October 16 2023 I deposited my **PETITION FOR REHEARING** at the MCF-Stillwater outgoing Mail Box to be filed, by first class, Postage Paid. I also serve the U.S. Solicitor General Mrs. Elizabeth B. Prelogar and Defendants' Counsel of record, Mr. Kevin Jonassen, Minnesota Assistant Attorney General by depositing a copy of the said Petition on October 18, 2023 as shown on the accompanied certificate of Service.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 16, 2023

S/ Sam Bakambia
Marc Amouri Bakambia

Samuel Marks
10/10/23



CERTIFICATION OF A PARTY UNREPRESENTED BY COUNSEL

I, Marc Amouri Bakambia certify as follow:

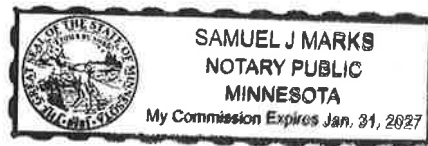
That I am the Pro se petitioner in this case. My Petition for Rehearing is presented in good faith and not for delay.

Pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct.

Executed on October ¹⁶, 2023.

S/ Sam Bakambia
Marc Amouri Bakambia

10 | 16 | 23
Samuel Marks



**Additional material
from this filing is
available in the
Clerk's Office.**