

No. 23-5286

Supreme Court, U.S.  
FILED

MAY 16 2023

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

Frederick Green — PETITIONER  
(Your Name)

VS.

Warden Aimee Smith et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

~~11th Circuit Court of Appeals~~ Middle District of Georgia  
Macon Division  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frederick Green  
(Your Name)

Valdosta SP, PO Box 310  
(Address)

Valdosta, GA 31603  
(City, State, Zip Code)

N/A  
(Phone Number)

ORIGINAL

## QUESTION(S) PRESENTED

- Does this Court consider widespread staff shortages that has led to me being
- 1) severely attacked by 15 plus "affiliated GDC offenders" armed with knives to qualify me for the "imminent danger" exception to the "3 strikes" rule?
  - 2) Does it make a difference that I (and assuming the attackers) were transferred to other prisons when the affiliated offenders has ready access to cell phones where they can Google my location on GDC website to alert fellow members at new prison?
  - 3) Does not the statewide staff shortages, easy access to contraband by gangs and negligence of prison officials to properly institute procedures, policy and protocol (i.e. security) place me in imminent danger of future attacks by same people and others?
  - 4) Is it unreasonable to expect protection of the Court by allowing me to proceed without prepayment of fees since I can expect no protection from the state in controlling its prisoners, the flow of knives and phones, as can be shown by a current DOJ investigation?
  - 5) Does not violence, i.e. stabbing, murders, at the prison I have been transferred to, that are not being prevented due to staff shortages & lack of security, reveal an ongoing pattern of acts by prison officials that exposes me to threats of future harm by same group of affiliated offenders?
  - 6) Is it reasonable to ascertain that staff shortages at the last 3 prisons i've been housed, the present one included, which allowed me to be attacked at the last 2 prisons by several prisoners reveal an ongoing pattern of acts by prison officials that places me in imminent danger of future attacks?
  - 7) Is it reasonable to ascertain that being that my attackers have been affiliated offenders, that my risk of imminent danger is even greater, compounded with these staff shortages and prison officials failure to adhere to policy, procedures and protocol concerning prisoner safety?
  - 8) Does not the fact that the Dept. of Justice is investigating the entire Georgia Dept. of Corrections for staff shortages in conjunction with increased amounts of inmate on inmate violence show that there is an imminent threat just being housed as a prisoner in the GDC?

## LIST OF PARTIES

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

[✓] 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: Warden Aimee Smith; Lieutenant Fudge; Regional Director Benjamin Ford; Deputy Warden Graham; Officer Adams; Warden Jacob Beasley; Unit Manager Tangle Morrison; C.E.R.T. Sgt. Joshua Walton; Deputy Warden M. Chaney; Commissioner Timothy Ward; DOE (mail room officer)

## RELATED CASES

Green v. Smith et al., No. 5:22-cv-00298-TES-CHW, U.S. District Court for the Middle District of Georgia, Macon Division. Judgment entered Dec. 21, 2022.

Green v. Dooly SP Warden et al., No. 23-10085-B, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Feb. 21, 2023.

Frederick Green v. James Blair, et al., CV 318-040, U.S. District Court for the Southern District of Georgia, Dublin Division. Case pending on appeal.

Frederick Green v. James Blair, et al., No. 23-10797-H, U.S. Court of Appeals for the 11<sup>th</sup> Circuit. Pending.

## RELATED CASES CONTINUED

Frederick D. Green v. Rockdale County, GA, et al., No. 1:21-CV-03377-ELR, U.S. District Court for the Northern District of Georgia, Atlanta Division. Judgment entered Nov. 4, 2021.

Frederick Green v. Rockdale County, Georgia, et al., 23-10127-D, U.S. Court of Appeals for the 11<sup>th</sup> Circuit. Judgment entered Feb. 16, 2023.

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## TABLE OF AUTHORITIES CITED

### CASES

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### STATUTES AND RULES

28 U.S.C. § 1915(g) — 3, 4, 8  
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### OTHER

N/A

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?D 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 February 21, 2023.

☒ 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

8th Amendment which states that "cruel and unusual punishments [shall not be] inflicted."

4th Amendment which states that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

1st Amendment which states that "abridging the freedom of speech" is prohibited and my right "to petition the Government for a redress of grievances[]" will not be interfered with by the state.

14th Amendment which states that no "State [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Other statutory provisions involved, though not directly pleaded, are torts such as Trespass, i.e. false imprisonment; Negligence, i.e. the breach of a legal duty to use due care by prison officials to protect me from being harm by other prisoners and to properly investigate the incident complained of to properly classify me as a victim instead of an aggressor; Negligent and Intentional Infliction of Emotional Distress; Conversion, i.e. prison officials lost nearly all of my personal property which included but not limited to, legal documents and intellectual properties. And the remainder of my property was placed in storage where it remains today nearly a year later.

Negligent and Intentional Infliction of Emotional Distress is characterized as, 1) intentional or reckless conduct; 2) extreme and outrageous conduct; 3) there must be a causal connection between the wrongful conduct and emotional distress; 4) and emotional distress must be severe. See Georgia Tort Claims Act §§ 50-21-20 to 50-21-37

28 U.S.C. § 1915(g) bars a prisoner from bringing a civil action in federal court in forma pauperis

if [he] 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 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

## STATEMENT OF THE CASE

The basis of this case is that I'm being denied pauper status in the District Court due to the "3 strikes" rule. However, not only do I challenge one of the strikes I also argue that I qualify for the "imminent danger" exception based on the following facts:

As part of this case, I was ordered to recast my original complaint by the District Court. The Court cited two cases to guide me in establishing my qualification for the "imminent danger" exception. Barber v. Krepp, 680 F. App'x 819, 821 (11th Cir. 2017) and Sutton v. Dist. Attorney's Office, 334 F. App'x 278, 279 (11th Cir. 2009)

In sum, these two cases reveal that under §1915(g) "imminent danger of physical injury" can be established not just by recounting past injuries but also by recounting recent injuries that reveal an "ongoing pattern of acts" as well as threats of future harm. It's stated that "a prisoner can allege 'a pattern of misconduct' that evidences the likelihood of imminent serious physical injury."

It is also stated that the imminent danger exception to §1915(g) is to be applied only in "genuine emergencies," when 1) "time is pressing," 2) the "threat or physical injury," Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002)

So, to demonstrate recent injuries that reveal an ongoing pattern of acts/misconduct by prison officials that evidences the likelihood of imminent serious physical injury, I began by recounting injuries I suffered at the hands of affiliated prisoners due to staff shortages, i.e. one officer assigned to monitor and secure 8 to 12 dorms, in 2 to 3 different buildings when there should have been at least two officers assigned per building @ Rogers SP, and prison officials disregard for policy, procedure and protocol concerning prisoner safety. This was a past injury.

To demonstrate that the pattern of misconduct by prison officials was/is ongoing, I recount injuries, once again, suffered at the hands of affiliated prisoners once I was transferred to the next prison, ~~Doddy~~ SP, the prison that is the center of my complaint. I recount how I was attacked, the injuries I suffered and the results thereof. And I recount the staff shortages, i.e. one officer assigned to monitor and secure 4 units (each unit housing 120 prisoners) in two separate buildings, this in conjunction with prison officials disregard for policy, procedure and protocol concerning prisoner safety, i.e. faulty locks on the front doors and cell doors that are easily jimmied open by prisoners with metal shanks or ID cards; easy access to metal shanks with no shakedown being conducted to find these objects after stabbings occur; improper classifications where prisoners are being housed in units with rival gangs to their demise or near death, just as were the happenings at previous pri-

Statement of the case continued.

son.

Then to further demonstrate "a pattern of misconduct that evidences the likelihood of imminent serious physical injury," I, even though I was transferred from Dooly SP to Valdosta SP and placed on long-term administrative segregation, where I was forced to share a cell, as a result of the incident complained of in my complaint, upon speaking with other prisoners and officers about the nature of Valdosta SP, came to the realization that the security concern from the last two prisons are likewise prevalent here. I heard complaints from officers that certain aspects of their jobs could not be done because they had to work four or more buildings. I heard from prisoners how the doors to the units were easily broken into. I heard and witnessed how prisoners had access to metal shanks, even in this supposedly secure segregation unit. I heard of murders, stabbings and gang-related brawls that could have been prevented if there were proper staff and prison officials followed policy, procedure and protocol. These are ongoing patterns of acts that reveal threats of future harm because as I explained in my objections to the Magistrates' recommendation, I am subject to retaliation from these affiliated offenders due to the fact that, as prison officials told me, "affiliated GDC offenders[] need[ed] outside medical treatment." I have also learned, after my pauper status became ~~denied~~ as order of the court, that the affiliated offenders who attacked me have made contact with their fellow members here at Valdosta SP and there is more than a likelihood that they await my release from segregation, which I am fearful of doing knowing that I have already been attacked twice by affiliated offenders with no staff anywhere in sight to assist me, each attack worse than the one before.

Another main component of this case, which places me in imminent danger of receiving further physical injury and one of the reasons I continue to stress prison officials' failure to follow policy, procedure and protocol, is that after my attack at Dooly SP, once staff finally did arrive to the unit, I (and a few others) ran to the front door of the unit, I showed staff my hand which was swollen twice its size from blocking a blow to my head from a broomstick, and told the two lieutenants and C.E.R.T. officer I had just been attacked, requesting protective custody. The staff's initial response was to "Get back in there," upon refusing to do so,

those staff members simply fled the scene at which time the incident escalated into what prison officials are calling a "major disturbance." So, instead of being given protective custody as requested, I was tagged as a troublemaker and placed in long-term administrative segregation, a disciplinary sanction, without any process. Once at Valdosta SP, I have continually requested to be placed in a one-man protective custody cell, to no avail. My escalating anxiety and PTSD that is a result of these attacks has caused my fears to be amplified. Prison officials are enforcing an unwritten unspoken policy of not heeding protective custody request until there is bloodshed or worse. So, what this equates to is me being "sanctioned", without process, for doing what I am legally entitled to do which is 1) protect myself (because the state is incapable of doing so after it created these conditions complained of) and 2) request protective custody from prison officials.

And as for the Court of Appeals for the 11th Circuit, that Court did not even hear my case based on my inability to pay the docketing fee. Now, not only is this a "genuine emergency" because my life is at stake. Time is pressing" because I could be forced back into general population any day now to, once again, face the affiliated offenders (fellow members) who has viciously attacked me and the prison conditions have not changed. Also, I have already recounted how I've been denied protective custody status at the current and previous prison; The "threat [and] prison condition is real and proximate" because I've been attacked already by these prisoners for no apparent reason at all, they now have a certified belief that I was the cause (or part of the cause) of their fellow members needing "outside medical treatment" which opens me to a threat of retaliation. The condition is likewise real and proximate in that as I prepare this document, I was advised by a staff member that the DOJ will be here tomorrow, 5/4/23, as part of their investigation into the prison conditions throughout the GA Dept. of Corr; Lewis, 279 F.3d at 531, likewise the "potential consequence is serious physical injury" as I have already recounted two incidents at two different prisons where

I have suffered injury from violence at the hands of affiliated offenders, each attack worse than the last. Being that the prison conditions remain the same as the last two prisons leaves me open to receive even more serious physical injury than I have already received due to the fact that the current prison is a level 5 close security prison, the other two were not. Lewis, 279 F.3d at 531

The other imminent danger I face, though not necessarily a part of the original ~~complaint~~ incident complained of, but was mentioned as a concern by me and addressed by the lower court deals with the extreme heat in these long-term administrative segregation, known as Tier 2, cells. I recounted to the lower court of an incident where I had blacked out due to the heat in combination with the mental health medication I've been prescribed to take to help deal with the anxiety and PTSD that resulted from the incidents complained of in my complaint. This danger is still imminent in that the summer heat is returning and I still need my medications to help cope with my issues. So, I'm now forced to choose between taking my meds and suffering from blackouts (the first blackout I nearly fell and hit my head on a steel sink but was caught in midfall by my then cellmate), or not taking my meds and suffer from PTSD-related flashbacks and nightmares and anxiety which are all elevated when I'm forced to share a room with a random prisoner. The warning on the medication info sheet states to avoid extreme temperatures but prison officials, once again, follow a pattern of total disregard for my health and safety. This, likewise, places me in danger of becoming a PREA victim should these same careless prison officials place a PREA offender in the cell with me and I suffer from a blackout.

### REASONS FOR GRANTING THE PETITION

This petition should be granted because the decision entered by the District Court and followed by the Court of Appeals for the 11th Circuit is in conflict with decisions in the 11th Circuit that express that I qualify for the imminent danger exception based on my alleged specific facts that describe an "ongoing serious physical injury," OR "a pattern of misconduct [by prison officials] evidencing the likelihood of imminent serious physical injury." See Sutton, 334 F. App'x at 279

The courts ruling that "conditions at Dooly State Prison - have no bearing on whether Plaintiff is in imminent danger at Valdosta State Prison" is in conflict with Sutton, 334 F. App'x at 279 because conditions at Dooly SP and Rogers SP lay the groundwork in the establishment of "a pattern of misconduct [by prison officials]" So, for the Court to conclude that my "confinement at Dooly State Prison [and my allegations concerning prison conditions] are non-starters for the 'imminent danger' inquiry for § 1915(g) determinations" is to conflict with Sutton, 334 F. App'x at 279.

Under Sutton a prisoner can establish an imminent danger of physical injury under § 1915(g) by showing "an 'ongoing pattern of acts' as well as threats of future harm" not simply by recounting past injuries.

It would be important nationally and for those similarly situated for this Court to grant my petition because it would be recognition from the highest Court in the land that the prison conditions described are unacceptable and do, in fact, place me and others who may be experiencing the same conditions in imminent danger of future harm. For this Court to allow the ruling of the lower court to stand would suggest that prisoners' lives do not matter and that these

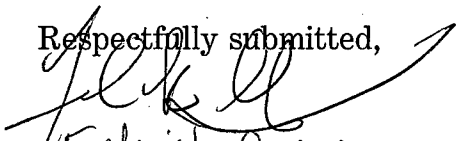
prisons can function how ever they please. To allow that to happen creates a national security crisis because it is supposed that people are placed in prison to protect society but if the Courts allow prisons to lack in security functions, the problem becomes one where there will be no one to keep the prisoners actually confined in the prisons. There are already many reported incidents within in the GDC of prisoners tearing the facilities only to return with contraband. At Dooly State Prison, officials found a drone in a unit and many other prisons across the state have reported drone landings. This is a threat to all, including staff, prisoners and society, especially if prisoners decide to stage a mass demonstration/escape by flying in and stock-piling firearms. This is all possible because these prisons do not have the proper staff and cannot/will not adhere to policy, procedure and protocol concerning prisoner and prison safety.

Therefore, a ruling in my favor would begin to expose some of these deficiencies and hopefully improve prison security not only for myself but for the nation as a whole. By me being in prison 16 years, I know that when I return to society, I would not want to be caught in an area where a major prison break occurred with prisoners armed to kill. If I can do anything to prevent a situation like that from happening, I will. My filing of this petition is only a point percentage of the solution to the problem. This Courts' granting of this petition would greatly increase my chances at succeeding in making a positive change.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Frederick Green

Date: May 15, 2023