No. 23-5441

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Mika'ya Ali Shakur — PETITIONER
(Your Name)

vs.

Sgt. Thompson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mika'ya Ali Shakur
(Your Name)

VADOC Centralized Mail Distribution Center
(Address) 3521 Woods Way

State Farm, Va 23160
(City, State, Zip Code)

(Phone Number)

Questions Presented

1. On February 1, 2021, PLAINTIFF an inmate in the custody of VADOC, was denied his eigth amendment right to a "serious medical need" in terms of recieving the "Moderna VACCINE" to combat Covid-19. The District Court, dismissed the petition on the grounds, that,PLAINTIFF failed to establish that DEFENDANT was deliberate indifferent. And the Court of Appeals, Affirmed the lower court's decision. How does this allegation fails to satisfy FED. R. Civ. P. Rule 8(a)(2) ?

2. In 1932, the U.S. Public Health Services begins the "Tuskegee" study of untreated syphilis, in the Negro male with 600 subjects approximately two thirds of whom had syphilis. The subjects are told only thatthey are being treated for "bad blood". 100 die from the disease, it was later revealed that for research purposes the men were denied drugs that could have saved them. Would this state a claim of "deliberate indifference"?

3. PLAINTIFF contends in the midst of a "GLOBAL PANDEMIC", given the fact that on (ACC), at the time of this "Dehumanizing Deprevation", there were over six-hundred inmate's who tested positive, six deaths, and multiple hospitilizations.

How does denying PLAINTIFF a "serious medical need", due to his name allegedly not being "highlighted", constitutes a LEGITIMATE PENOLOGICAL justification ?

LIST OF PARTIES

[X] 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:

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OTHER

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

[X] 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,
[X] is unpublished.

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

[X] reported at Shakur v. Thompson (W.D. Va Feb 1, 2023); 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 May 23, 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

PRISONER RIGHTS, MEDICAL TREATMENR

The government has an obligation to provide medical care for those whom it punishes by incarceration, and cannot be deliberate indifferent, to the medical needs of its prisoners. The appropriate inquiry, when a prisoner alleges that prison officials failed to attend to their serious medical needs, is whether the officials exhibited deliberate indifference. The unnecessary and waton infliction of pain upon incarcerated individuals under the color of law constitutes a violation of the "UNITED STATE CONSTITUTION,EIGHTH AMENDMENT" and is actionable under 42 U.S.C. 1983.....

STATEMENT OF THE CASE

PLAINTIFF avers that on or around November 2020, after a major shake-down, there was a "COVID-19" outbreak at Augusta Corrections. Wherein the administrator's noticed a significant level of infections on (ACC). Thus the administrator's began modifying the operations at the facility. January 19, 2021, the Director of VADOC, issued a "memorandum" to the inmate population, Subject: INMATE VACCINE CAMPAIGN.....in order to encourage the inmate population to participate in getting the vaccine. Soon after the Director's memorandum, the medical department issued sign up sheets to be posted in each of the perspective housing units. Medical Department, informed the inmates with the Moderna Vaccine, you must sign up. Each pod houses (64) inmates with the exception of the single cells pods, (32) and the hole.....This was due in part to each housing unit "pods" were catergorized as: RED,YELLOW, and/or GREEN zones. Based on the infection rate, is why we were scheduled as "pods" not individuals at this time. February 1, 2021, Plaintiff, pod was summoned to the gymnasium to be vaccinated. At this time (ACC) had over six-hundred inmates who tested positive multiple hospitilizations, and six deaths. Upon entry of the gym, Defendant (THOMPSON) instructed PLAINTIFF to return back to his housing unit, when asked why? Defendant responded: "your name was not highlighted". PLAINTIFF, submitted grievances, request forms to various departments trying to ascertain how he could be denied this "LIFE SAVING vaccine" which he was in need of ? February 2, 2021, the Director of VADOC, electronically submitted a memorandum to all Facility Heads, aswell as the inmate population via kios jpay. Subject: COVID-19 AWARENESS COMMUNICATION.....This was produced with the assistance of medical staff and experts, in dispelling the myths and hoping to calm any fears you may have regarding the vaccine. The Moderna Vaccine is being offered to its employees and the inmates.

To end this pandemic, a large share of the population needs to be immune to this virus. The safest way to do this is with a vaccine . VADOC, strongly encourages everyone to get the vaccine, to protect yourself, those you work with and your family from getting the disease. PLAINTIFF attempts to utilize the grievance procedure was to no avail. As the record will reflect that the Warden(P.White), Lt. Stokes, and the Regional Administrator stated that the grievance was unfounded, although Lt. Stokes stated in his response to the grievance"this is what we were told if your name is not highlighted, you dont get vaccinated". PLAINTIFF, contends that these individuals were complicit in the constitutionally offensive conduct of their subordinate. PLAINTIFF states after exhausting his administrative remedies he sought redress in the Courts.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

Defendant Thompson by, counsel submits the following memorandum in support of his motion to dismiss.....

PLAINTIFF, Mika'ya Ali Shakur #1072827, is an inmate within the VIRGINIA Department of Corrections. Currently incarcerated at Augusta Corrections.

Defendant Thompson violated his eighth amendment rights by being deliberate indifferent to PLAINTIFF's "serious medical needs" for a Covid-19 vaccination. Specifically, alleges that Thompson interfered with his medical treatmen t by denying him his first Covid-19 shot on February 1, 2021.Id. however, Shakur's complaint fails to state a cognizable constitutional claim against Thompson. Accordingly, as detailed in depth below, Defendant Thompson respectfully request that the Court dismiss Shakur's complaint aginst him.

Arguments and Authorities

PLAINTIFF's allegations fails to state a plausible claim of medical indifference. Defendant Thompson told Shakur that his name was not "highlighted" on the master-pass list, "indicating to Thompson that Shakur was not amongst the inmates to be vaccinated at that time".....PLAINTIFF avers that, Thompson's denial on FEBRUARY 1, 2021, could have potentially subjected him to irreparable harm and/or death. Shakur further alleges that due to the institution having over six-hundred inmates who tested positive for Covid-19 and Thompson himself tested positive was aware of the risk associated with this novel virus. Given. the difficult and impossibility for inmates to social distance from one another, when he denied Shakur his first vaccination shot on FEBRUARY 1, 2021.Id. at 4. Because of Thompson's interference Shakur did not recieve his first Covid -19 shot until MARCH 2, 2021. Second shot on MARCH 25, 2021.

Defendant says the claim fails because they do plausibly allege an act that would constitute medical indifference within the meaning of the eighth amendment.

PLAINTIFF contends that DEFENDANT decision was indicative of deliberate indifference, given the fact that COVID-19 is a highly communicable disease between people through close proximity or contact. COVID-19,is also particularly transmissible because of its long incubation period, of up to two weeks as well as its asymptomatic or presymptomatic presentation in many individuals.PLAINTIFF alleges that such prolong turnaround times for test results impede effective containment of the spread of COVID-19, at this time (ACC) was not using "Rapid" testing. PLAINTIFF stillhad to cohabit with inmates who were positive pending results. Thereby increasing the possibility of transmission. The DEFENDANT understood the threat posed by COVID-19, given the pervasive media coverage of the pandemic, the seriousness of the threat posed by COVID-19. It would be implausible to suggest that DEFENDANT was unaware of the risk.....

The Supreme Court has recognized that government officials may be deemed "deliberate indifferent" to an inmate's current health problems, where the official ignore a condition of confinement that is sure or very likel to cause serious illness and suffering, the next week, month or year including exposure a serious communicable disease, even the complaining inmate show no serious current symptoms.
The spread of COVID-19, is measured in a matter of a "single day" not weeks months, or years, and DEFENDANT apparently chose to ignore PLAINTIFF'S condition of confinement that could have caused immenent life threatening illness. This case does not present a situation in which DEFENDANT might be liable for the actions or inactions of medical personnel.
DEFENDANT face liability because of his on decision.

A prison official exercises discrection whenever the effectiveness limits on his power, leave him free to choose among several corses of actions, including the choice to take no action. He determines facts, apllies policy and act according to his personal dictates, after they are known. This act may cause injustice this injustice results from failure to obtain true facts erroneous application of law or policy, or an act in which personal bias, prejudice and disregard of law and policy play the predominate motive. See; Cox v. Quinn, 828 F.3d 277, under the law of this circuit an objectively reasonable "correctional officer" certified or uncertified, would have known that these actions were unreasonable, and ran afoul of clearly established law, and violated rights "manifestly included within more general applications of the core constitutional principle articulated in Farmer. see; Odom,349 F.3d at 773.

REASON FOR GRANTING THE PETITION

Pursuant to the rules of the Supreme Court of the United States (Rule 10) PLAINTIFF avers that the United States Court of Appeals for the Fourth Circuit, has so far departed from the accepted and usual corse of judicial proceedings, and sanctioned such a departure by the United States District Court, for the Western District of Virginia(Roanoke Division).

PLAINTIFF contends that there is a conflict among the lower courts on the questions presented by PLAINTIFF.....therefore he urges this Court, to grant reveiw on the basis of the apparent judicial enigma, as it relates to the Federal Rules of Civil Procedures, rule 8(a)(2).....

After Bell Atlantic was decided, lower courts repeatedly cited it and struggled to determine how it should be applied. Consider also some other recent pleading decisions by the court:

In Leatherman v. Tarrant County Narcotics/Coordination Unit,507 U.S. 163, 113, S.Ct. 1160, 122 L.Ed 2d 517 (1993), PLAINTIFF sued under U.S. C.A. 1983, claiming that local law enforcement officers had violated their constitutional rights. Because they were suing a county and two municipal corporations that employed the officers who took the actions leading to the suit, prevailing law required that they prove that the incidents resulted from official policy, custom, or practice. But PLAINTIFFS did not allege that there had been multiple incidents of the sort of which they complained, undermining their claim that there was such a policy or practice. The Fifth Circuit upheld dismissal under it's "heightened pleading standard"

for such claims. The Supreme Court held dismissal was wrong because the rules provided no ground for heightened pleading requirements. The court acknowledge defendants arguments that the degree of factual specificity of a complaint by the Fed. R. Civ. P., varies according the complexity of the underlying "substantive law". But it found that the lower court's requirements that PLAINTIFFs state with factual detail and particularity the basis for the claim, could not be squared with the "liberal system of notice pleading set up by the Federal Rules.....It noted that rule (9) requires for greater particularity in pleading of certain claims, but that rule did not apply to this case. It concluded perhaps if rules (8) and (9) were rewritten today, claims against municipalities under 1983 might be subjected to the added specificity requirement of rule (9) (b). But that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation. In the absence of such amendments,Federal Courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner than later.

In Dura Pharmaceuticals, Inc. v Broudo, 554 U.S. 336, 125 S.Ct. 1627, 161 L.Ed 2d. 577 (2005), the seemed to seemed to embrace a more demanding attitude toward pleading requirements, albeit for purposes of notice. PLAINTIFFs in securities fraud action claimed that when they bought defendant's stock in 1997-98 its value was inflated due to misrepresentations about the company's financial condition and prospects. As Plaintiffs "detailed amended (181 paragraph) complaint" alleged the company later announced that its earnings would be lower than expected,and the following day its shares lost almost $39 per share to $21 per share.

Defendants moved to dismiss on the ground that PLAINTIFFS had not adequately alleged "loss causation". That decline in their price was due to defendants misrepresentations as opposed for example, to the earnings forecast.

The court upheld dismissal, providing that the price was inflated on date of purchase does not necessarily show that a securities buyer suffered a loss as a result of misrepresentation. Instead, the court explained a "tangible of factor's" such as changes in the overall securities market or in the industry affecting price at any given time. Securities law claims are not designed to provide investors with broad insurance against losses. At least, the court suggested PLAINTIFFS must prove that they suffered a loss because the price fell after the truth became known. Against that background of what PLAINTIFFS must prove, the court assumed that no special pleading requiremnet applied but held that even under Rule 8(a)(2) PLAINTIFFS claim failed to provide "fair notice of what the PLAINTIFFS claim is and the grounds on which it rest. Id. at 1634, quoting Conley v.Gibson, 335 U.S. 41,47(1957)." The complaint's failure to claim that Dura's share price fell significantly after the truth became known, suggest that PLAINTIFFS considered the allegation of purchase price inflation alone sufficient. And the complaint nowhere else provides the defendants with notice of what the relevant economic loss might be or what the casual connection might be between that loss and the misrepresentation. "We conclude that ordinary pleading rules are not meant to impose a great burden upon a PLAINTIFF who has suffered an economic loss to provide a defendant with some indication of the loss and casual connection that the PLAINTIFF had in mind.

In Erickson v. Pardus, 551 U.S. 89, 127 S.CT. 2197, 167 L.Ed 2d, 1081 (2007), decided less than two weeks after Bell Atlantic, the court summarily reversed

dismissal of a prisoner's pro se complaint claiming that prison officials had exhibited "deliberate indifference" to his Hepatitis C. PLAINTIFF alleged that he had been diagnosed with Hepatitis C, and that he required a treatment program involving weekly self injections. He asserted that he was taken off this program after a syringe he and others used was found to have been employed for injection of illegal drugs. PLAINTIFF denied having used such drugs, but was not believed, and under prison policies he could not resume the hepatitis treatment program for more than a year. He alleged that his liver was suffering "irreparable harm" due to the interruption of his treatment. The District Court dismissed on the ground that PLAINTIFF had not alleged that DEFENDANT's actions as opposed to the disease itself, had cause him "substantial harm" and the Court of Appeals for the Tenth Circuit, AFFIRMED.....

The Supreme Court criticized the court of appeals "departure from the liberal pleading standards , set forth in Rule 8(a)(2) "explaining: that those allegations alone satified Fed. R. Civ. P. 8(a)(2). That it was error to dismiss the case on the ground that the allegations were too conclusory to put the matters at in issues.

Justis Souter, who authored Twombly, dissented in an opinion for four minority. He contended that the majority had "misundrstood" Twombly's command. Twombly does not require a court at the motion to dismiss stage to consider whether the factual allegations are probably true. We made it clear, on the contrary, that a court must take the allegations as true no matter how skeptical the court may be.....

MOTION TO DISMISS, FAILURE TO STATE A CLAIM.....

Because the pro se litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel. The Supreme Court, has instructed the Federal Courts to liberally construe the "inartful pleading" of pro se litigants. Eldridge v. Block,832 F.2d 1132, 1137 (9th cir 1987) (quoting Boag v. MacDougall,454 U.S. 364, 365, 70 LEd 2d 551,102 S.Ct 700(1982). The law is clear that before a District Court may dismiss a pro se complaint, for failure to state a claim, the court must provide the pro se litigant with notice of the deficiencies of his or her complaint and an opportunity to amend the complaint prior to dismissal. see;Also Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9thcir 1992). We often have reversed the dismissal of a pro se litigant's complaint when the district court did not sufficiently explain the complaint's deficiencies to the pro se PLAINTIFF prior to dismissal.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA -(Motion to dismiss)

Mika'ya Ali Shakur, a Virginia inmate proceeding pro se, filed this civil action under 42 U.S.C. 1983, against defendant Sgt. Thompson. Shakur alleges that Sgt. Thompson violated his rights by denying him the Covid-19 vaccine on February 1,2021, while Shakur was housed at Augusta Correctional Center. Shakur alleges that he was scheduled to recieve the Covid-19 vaccine on February 1,2021, but when he arrived at the gymnasium to be vaccinated, Sgt. Thompson told him that he could not be vaccinated, because his name was not highlighted on the master-pass list(compl at3-4(ECF NO.1).PLAINTIFF contends that the medical department was inoculating inmates by their pods, which each pod houses (64) inmates.....Shakur filed grievances concernig the incident on February 1, 2021, stating that Sgt. Thompson was"deliberate indifferent"towards Shakur's "serious medical need". Shakur states that Sgt. Thompson was cognizant or should have known that his decision to deprive (Shakur) an opportunity to be inoculated with the Moderna vaccine could potentially subject (Shakur) to irreparable harm amd/or death. In light of the fact, that over six-hundred inmates and staff at Augusta Correctional Center, including Sgt.Thompson tested positive foe Covid-19 multiple hospitilizations and six inmates died from it.
He also claims that Sgt. Thompson, was aware of the risk associated with the outbreak at Augusta, and that the risks were undeniably high because social distancing was difficult and in many situations impossible.

Shakur states that ultimately he reiecved his fisrt dose on March 2,2021, and his second dose on March 25, 2021. Shakur also does not allege that he contracted Covid-19 during the "Four weeks" before he recieved the vaccine. In a regular grievance, signed eight days after he was deied the vaccine, Shakur assert, that not getting the vaccine for those eight days had "affected" him in ways unimaginable, and caused him to have acute symptoms of "PTSD" because he was scared that if he did not recieve the vaccine, he would be the next fatality".....(ECF NO.1-1 at 6). Shakur's allegations do not establish that Sgt.Thompson knew of or disregarded an excessive risk of harm to Shakur by denying him the vaccine on that date at that time pursuant to medical Department protocol.There is no allegation that Sgt. Thompson continued to deny Shakur the vaccine on any occasion before he recieved the vaccine the following month. Sgt. Thompson was following orders from the medical department, does not establish that Sgt. Thompson was "deliberate indiffent" to Shakur's medical needs in violation of the eighth amendment.

Finding that Shakur's allegations fails to state a viable 1983 claim against Sgt.Thompson, the court will grant his Motion to Dismiss.
Civil Action no. 7:21cvoo397
Memorandum opinion
By:Hon.Thomas T. Cullen
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Appeal from the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, at Roanoke. T.Cullen, Dist.Judge(7:21397 TTC_RSB) no:23-6154

Submitted: May 18,2023 Decided:May 23,2023

Before: Niemeyer, Richardson, and Rushing, Circuit Judges
Affirmed by unpublished per curiam opinion
Mika'ya Ali Shakur, Appellant Pro se

Unpublished opinions are not binding precednt in this court per curiam

Mika'ya Ali Shakur appeals the District court's order granting defendant's Motion to Dismiss Shakur's 42 U.S.C. 1983 action. We have reveiwed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the District Court. see Shakur v. Thompson, no 7:21cv397-TTc_RSB(w.va Feb 1, 2023). We dispense withoral argument because the facts and legal contentions are adequately presented in the material before this court and argument would not aid the decisional process.

Affirmed.

PRISONER RIGHTS, MEDICAL TREATMENT

The government has an obligation to provide medical for those whom it punishes by incarceration. and cannot be deliberate indifferent to the medical needs of its prisoners. The appropriate inquiry when an inmate alleges that prison officials failed to attend to serious medical needs is whether the officials exhibited deliberate indifference. The unecessary and waton infliction of pain upon incarcerated individuals under the color of law constitutes a violation of U.S. constitutional amendment eight, and is actionable under 42 U.S.C. 1983.

Such indifference may be manifested in two ways, it may appear when prison officials deny, delay, or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care. In sum, the more serious the medical needs of the prisoner, and the more unwarranted the defendant's actions in light of those needs, the more likely it is that a plaintiff has established "deliberate indifference".

PLAINTIFF contends that this is not a medical indifference case, as Defendant alleges. The only medical decision at issue had already been made by CDC, and Dr. Fauci. The covid-19 virus is a serious medical condition that give rise to "serious medical issuses". Which include, but are not limited to fever, cough, fatigue, shortness of breadth, and loss of smell and taste. "Respiratory Distress Syndrome" (ARDS) multi-organ failures, septi shock, blood clots, and other serious illness, and death.

PLAINTIFF states, it is beyond pale for Defendant to have taken this kind of risk with PLAINTIFF'S health and safety in the midst of a "Global Pandemic".....Under current CDC guidance for correction or detention facilities, jurisdictions are encouraged to vaccinate staff and incarcerated persons "at the same time", because of their shared risk of disease. Defendant's failure to follow these guidelines, which Defendant claimed that he was compliant with CDC, VDH, and VADOC. Support a finding of deliberate indifference to a serious risk of harm.see;Ahlman (an institution that is aware of the CDC guidelines and are able to implement them but fails to do so demonstrates that it is unwilling to do what it can to abate the risk of the spread of the infection.

Defendant, in his motion to dismiss, acknowledged that the potential spread of covid-19 has been held to satisfy the objective prong.

In Maney v. Brown, 516 F. Supp 3d 1161, the parties dispute whether plaintiff's are likely to establish the subjective prong.

The court must determine if plaintiff's will be able to establish that defenants

are aware of, but are disregarding an excessive risk to (AIC'S) health or safety by denying them a Covid-19 vaccine. It is clear that defendants are aware of the serious risk that Covid-19 poses to (AIC'S), and the critical role that vaccines play in controlling the spread of the virus (see defs resp at 3) see, also Awsana v Adduci 453 F.supp 3d 1045,1054 (E.D. Mich 2020) ("there is no doubt that defendants are aware of the grave risk posed by the pandemic and the exacerbated risk caused by the close quaters at the detenton facilities"). see also,Valentine v.Collier, 445 F. Supp 3d 308 2020 wl 191683 at 10 (S.D. Texas 2020). (The risk of covid-19 is obvious) Farmer, 511 U.S. at 842 (" a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious").

The parties disagree, however, whether defendants have acted with deliberate indifference to the risk posed by covid-19, Plaintiff's argue that by taking no action to have (AIC'S) placed in a timely vaccination window means defenandts have been deliberate indifferent.

PLAINTIFF (Shakur) contends that he too was not placed in a timely vaccnation window, it took him "Four-Weeks", after all of the other inmates in his pod were fully vaccinated.....PLAINTIFF avers that VADOC Operational Procedure 135.2 states :Abuse of discretion- the improper use or treatment of an individual, a corrupt practice or application of policy or procedure that directly or indirectly affects an individual negatively, or any intentional act that causes , physical, mental, or emotional harm.

The Supreme Court has written, plaintiff must show that the risk in which he complains, is not one that today's society chooses to tolerate, Helling, at 36.

Society has undoubtedly deemed the risk posed by covid-19 intolerable, as evidenced by the unprecedented changes to American Life. Incarceration it-

self renders prisoners dependant upon their keepers and strips them of virtually every means of self-protection. Id (quoting Farmer, 511 U.S. at 833. "While conditions of confinement may be, and often are, restrictive and harsh, they must not involve the waton and unnecessary infliction of pain".Id (quoting Rhodes, 425 at 347.)

In other words, they must not be devoid of legitimate penological purpose contrary to evolving standards of decency that mark the progress of a maturing society. Id

The state has a constitutional duty to protect the people it incarcerates from a "substantial risk of serious harm" and to take reasonable measures to guarantee their safety. Farmer v Brennan, 511 U.S. 825,828,832,114, S.CT 1970,128 L.Ed 2d 811 (1984) (quotation omitted). This includes the responsibility to provide basic human needs such as " adequate medical care" Id at 832. At the same time, an individual seeking relief from conditions under the eight amendment must demonstrate prison officials " deliberate-indifference", to a substantial risk of serious harm.Id. at 828. deliberate indifference exist where a prison official "knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reaonable measures to abate it" Id at 847. This is an " extremely high standard to meet" Cadena v El Paso CTy, 946 F.3d 717,728(5thcir2020).

A prisoner's right to adequate medical care and freedom from deliberate indifference to medical needs has been clearly established by the Supreme Court and this circuit since at least 1976 and thus was clearly established at the time of the events in question. see, Scinto v. Stansberry 841 F.3d219 see.e.g. Estelle,429 U.S. at 104-05 (" we therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and waton infliction of pain proscribed by the eight amendment.

IKO V. SHREVE, 535 F.3d 225, this court has identified two slightly different aspects of an official's state of mind that must be shown in order to satisfy the subjective component in this context. First, actual knowledge of the risk of harm to the inmate is required. Young v. CTY of Mt. Rainer, 238 F.3d 567,575-76(4th cir2001), see also Parrish Ex REl, Lee v. Clevand 372 F.3d294, 303 (4th cir 2004). ("it is not enough that the officer should have recognized it"). Beyond such knowledge, however, the officer must also have "recognized that his actions were insufficient" to mitigate the risk of harm to the inmate arising from his medical needs. Parrish, 373 F.3d at 303 (emphasis added). Under the high "deliberate indifference standard", even subjective knowledge of IKO'S medical needs is not enough, the officers must have actually known that their response was inadequate to adress those needs(the second subjective component) Parrish 372 F.3d at 303. It is this element that the officials challenge on appeal. Contending that they were entitled to defer to the actions and medical decisions of the nurse. In essence , the officers argue that they believe they could delegate IKO'S medical care to the nurse and be relieved of any further duty to monitor IKO'S health. "This case does not,however present a situation inwhich prison officials might be held liable for the actions or inactions of medical professional. The officers face liablity for their own decisions, made while IKO was in their charge.....
PLAINTIFF contends that the VACCINATION PLAN was not premised on randomly selecting inmates from different pods and or housing units to be inoculated on a particular day. As mentioned previously, because the administrator's had began modifying the facility, due to the infection rate- the pods were categorized as "RED, YELLOW. and GREEN" zones.This is why they kept all the pods separated.....PLAINTIFF entire pod was summoned on February 1,2021 and PLAINTIFF was the only inmate in his pod denied the vaccine.

Medical department, in their response never mentioned that PLAINTIFF was not "scheduled to be inoculated on February 1,2021". Their response to PLAINTIFF'S inquiry as to why the Defendant denied him his constitutional right to be inoculated, "you're on the list".

see, PORTER V CLARKE, 923 F.3d 348 - both the Supreme Court and this Court have recognized that penological justification supporting a challenged condition is relevant in a condition of confinement case. See Rhodes, 452at346 ("among unnecessary and waton inflictions of pain are those that are "totally without penological justification")

see also LOPEZ v.ROBINSON 914 F.2d 486,490 (4th cir1990)("prison conditions are unconstitutional if they constitute an unnecessary and waton infliction of pain and are "totally without penological justification"). To be sure, the exact role of "PENOLOGICAL JUSTIFICATION" in analyzing an eighth amendment conditions of confinement case is unsettled.....

see Grenning v. Miller-Stout 739 F.3d1235,1240(9thcir2014) (stating that "the precise role of legitmate penological interest is not entirely clear in the context of an eighth amendment challenge to conditions of confinement "but noting that the existence of a legitimate penological justification has however been used in considering whether adverse treatment is sufficiently gratuitous to constitute punishment for Eighth Amendment purposes.....

PLAINTIFF disputes Defendant rationale that his decision to deny him the "LIFE SAVING" vaccine allegedly due to his name not being highlighted in the midst of a GLOBAL PANDEMIC, and given the rate of infections, hospitilizations, and deaths on Agusta Correctiona Center at the time of this complaint, he was justified.....

PLAINTIFF states it is imperative in terms of the "NATIONAL " importance of having the SUPREME COURT, decide the questions involed.....

In the United States District court, for the District of Oregon, a U.S.magistrate judge (Maney v. Brown,516 F.supp 3d 1161, stated: Our constitutional rights are not suspended during a crisis. On the contrary during difficult times we must remain vigilant to protect the constitutional rights of the powerless. Even when faced with limited resources, the state must fulfill its duty of protecting those in its custody..... Articles in Medical and Public Health Journals have demonstrated that infection rates among incarcerated people in prisons and jails are 5.5 times the rate in the general population. Also infection rates among gaurds are three times the rate of general public. PLAINTIFF contends that a major reason for the often and appalling conditions in U.S. prisons and jails is the lack of independent oversight. Most other democracies have an independent body whose function is to monitor and report on prison conditions. These bodies have "golden-key acess" they can show up any time unannounced at any time, go anywhere in the prison and talk to anybody. There's no such oversight inthe prisons because they are closed environments that houses the disempowered, politically unpopular people.

When you combine that with a lack of oversight, its a recipe for neglect mistreatment and abuse. PLAINTIFF states since COVID-19 increased assertions and recognition of the rights of prisoners, has been an insistent force for change, and accountability in correctional systems and practice. Traditional methods of doing things have been reexamined, the public has become increasingly aware of both prisons and prisoners. Although the process by which the court's are applying constitutional standards to

corrections, is far f4om complete. However, the magnitude and pace of within corrections as the result of "JUDICIAL DECREE" is remarkable. The correctional system is being subjected not only to law, but also to public scrunity. The courts have thus provided not only redress for prisoners, but also an opportunity for meaningful correctional reform. For far too long, in theory the "CORRECTIONS PROFESSIONALS" has accepted the premise that "Persons are sent to prison as punishment, not for punishment"..... The American Prison Association, in its famous "declaration in (1870) recognized that correctional programs should reflect that prisoners were human beings, with the need for dignity aswell as reformation. One of the essential principles, protected by the eighth amendment is that the state must respect the human attributes, even those who have committed serious crimes.....

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mukaya Ali Shuka

Date July 18, 2023