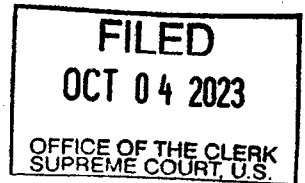


23-5771

ORIGINAL

No. 23- A3



In The  
Supreme Court of the United States

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CORNEL JACKIE DRUMMER,

Petitioner,

v.

KEN MAYNARD, ET AL,

Defendants.

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On Petition for a Writ of Certiorari  
to the Fifth Circuit of the United States

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PETITION FOR A WRIT OF CERTIORARI

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Civil Case

question presented

Did the United States District Court for the Southern District of Texas err when it dismissed Plaintiff's Civil Rights violation complaint for failure to state a claim and as frivolous where the Defendant's actions are clearly documented and scientifically clear that human error from a medical operation is responsible for the fluids found in the Plaintiff's body on January 11, 2018, which did not have any infectious abcteris to support the U.S.District Court Judges findings of any speculation.And, should the U.S.District Court Judge have givent the Defendants the opportunity to respond to the complaint?

RELATED PROCEEDINGS

Direct:

Cornel Jackie Drummer v. Ken Maynard, III, et al, in the United States District Court for the Southern District of Texas, Houston Division. Civil Action No. #3:19-387

Cornel Jackie Drummer v. Ken Maynard, III, et al, appealed to the Fifth Circuit of the United States District Court. Appeal No. #40449.

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## REASONS TO GRANT THE PETITION

### REASON TO GRANT THE PETITION

I. Summary Reversal Is Warranted Because  
The United States District Court's Decision Is Patently  
Wrong

II. Summary Reversal Is Warranted Because  
The Stakes Could Not Be Higher, The Underlying Issues  
Are Important, And The United States District Court  
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## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully request that the Court grant a writ of certiorari summarily reversing the judgment below and remanding or, alternatively, for plenary review.

## OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is unpublished but available at the United States Court of Appeals for the Fifth Circuit-District Clerk's Office. The United States District Court for the Southern District of Texas at Galveston Division, memorandum opinion and order is unpublished but is available through the District Clerk's Office.

## JURISDICTION

The United States District Court Judge for the Southern District of Texas at Galveston Division's memorandum opinion was issued on \_\_\_\_\_, recommending dismissal of Petitioner's 42 U.S.C. § 1983 civil rights violation complaint against the Defendant's with prejudice-for failure to state a claim upon which relief may be granted. On May 22, 2023, the United States Court of Appeals for the Fifth Circuit agreed with the lower Court that Petitioner's brief and the record reveals no nonfrivolous issues and dismissed the appeal as frivolous and without any arguable merits. This Court's jurisdiction is invoked under 28 U.S.C. §

## CONSTITUTIONAL PROVISIONS INVOLVED

The full texts of the Fifth and Fourteenth Amendments to the United States Constitution are reproduced at Pet. App. 190a-191a.

## INTRODUCTION

This is a case about the breakdown of the careful division of roles in our Texas Department of Criminal Justice-Institutional Division-Medical Department which is contracted with an outside agency "the University of Texas Medical Branch at Galveston, Texas", to provide medical care to all Texas Prison Offenders.

The University of Texas Medical Branch are supposed to provide unbiased medical care to all Texas Prison Inmates. Upon a complaint being filed with Texas Department of Criminal Justice-Institutional Division "Medical Staff" of serious complications of breathing due to the presence of fluid being found in the Inmate's body, the Medical Staff is supposed to provide the best medical care possible-and to conduct a thorough and independent investigation into the nature and cause of the fluid found in the body of the Inmate. The Medical Staff is supposed to decide whether the contents of fluid found to the body of the Inmate is a fluid build up from an infection or whether the fluid constitute an human error-intentionally injected.

Here, when a large amount of fluid was found in the Petitioner's body "left side ling cavity" and "chest cavity" without an infection to generate bacteria establishing the source of the fluid, a complaint "Civil Rights violation Law Suite" was filed with the Southern District of Texas at Galveston Division under the Eight Amendment "Deliberate Indifference" and Fourteenth



Amendment Right to the United States Constitution Due Process and Equal Protection-establishing that on August 7, 2017, during a lower back surgery operation, Medical Doctors intentionally, knowingly, and deliberately injected a large amount of fluids into my left "outside" lung and chest cavity with intent to cause my death by lung collapse and conjective heart failure.

After seeking a MORE DEFINITE STATEMENT, the United States District Court Judge "without seeking a response from the Defendants" concluded that the Plaintiff is speculating about the source of the fluid. Source of how the fluid got in to his body-and that it is nothing more than a fluid build up. The United States District Court Judge recommended that the complaint should be dismissed as failure to state a claim upon which relief may be granted and frivolous.

The United States Court of Appeals for the Fifth Circuit agreed with the lower Court and also recommended dismissal of the suite as without any arguable grounds upon which relief may be granted.

The contested issue in this case is whether the United States District Court Judge err when it failed to seek a response from a Medical Expert into whether the fluid discovered into the Plaintiff's body without any infections to generate such-and with the lack of any bacteria to support such-indicating human error?

Should United States District Court Judge's continue an unsound practice of dismissing with prejudice serious medical

complaint of human error by Medical Staff in violation of civil rights-be allowed without an experts opinion? It has long been a standing that Judges, lawyers, DAs, and other non-medical persons are not Doctors and cannot act in the capacity as such.

In the case before this Honorable Court, this is exactly what is being allowed where the United States District Court Judge for the Southern District of Texas, Galveston Division, is being allowed to dismiss with prejudice a civil rights violation complaint under an Eighth Amendment claim of Deliberate Indifference where University of Texas Medical Branch Personnel intentionally, knowingly, and deliberately injected a large amount of amniotic fluid into his "outside" ling cavity and chest cavity with intent to cause his death by lung collapse and congestive heart failure-without seeking a response from the Defendants.

#### STATEMENT OF THE CASE

Prior to August 7, 2017, the Plaintiff was being seen by Medical Staff at the University of Texas Medical Branch at Galveston, Texas, for what Doctors call "CORPORAL TUNNEL" to his right hand. When the Plaintiff began suffering from a lower back pain, he complained to Medical Staff at the John B. Connally Unit and was recommended to the University of Texas Medical Branch at Galveston, Texas for MRI. After an MRI was conducted-Doctors concluded that the Plaintiff was suffering from a very serious medical condition of "DEGENERATION OF THE BONE" L4/L5 and recom-

mended immediate surgery.

Prior to the surgery date, Medical Staff at the University of Texas Medical Branch recommended -hopefully-a quck fix by way of injection Hydrocortisone to the lower back-to relieve compression off the lower back bone to relieve the pain. Because the pain was still active, the Plaintiff agreed to go through with the actual surgery.

On August 7, 2023, the Plaintiff was administered for surgery by the Defendants. Immediately following the surgery, the Plaintiff was discharged from the University of Texas Medical Branch and transferred back to his assigned unit. As demonstrated by the initial complaint, the Medical Doctors (Defendants) failed to prescribed the Plaintiff any medication for pain and failed to provide the Plaintiff any walking material for balance to help relieve any further pain cause by pressure.

On September 26, 2017, the Plaintiff was transferred to the George Beto Unit for a Theraphy Class-associated with the back surgery. Shortly thereafter, I started to experience severe pain to the upper mid section of my left side-just under my arm pit.

After complaining to Medical Staff, I was told that I would be seen by a Doctor. Shortly thereafter, I was seen by Dr.Hague but was told that nothing was wrong with me and that he would not recommend me for X-Ray nor for further evaluation at the University at Texas Medical Branch.

The pain kept coming back and I continued to make complaints to Medical Staff and TDCJ-ID- Officials that I could not breath.

Shortly thereafter, my lungs colapsed~~ed~~ and I was ~~transferred~~ ed to the Medical Department for evaluation. Again, I was told that nothing was wrong with me and that I was just getting old.

Shortly thereafter, my lungs colapsed on me again and I was transferred back to the Medical Department for further evaluation. Again, I was told that nothing was wrong with me and that I was faking.

As a result of this encounter, I filed a Step 1 Grievance complaining of being denied medical assistance and denied access to an X-Ray. Shorttly thereafter, I was referred to the Medical Department and advised that I would be given an X-Ray. During the X-Ray process, it was then determined that I was suffering form a large pocket of fluid to my body-left outside lung cavity and to my chest. Immediately, I was transferred to the University at Texas Medical Branch at Galveston, Texas-for immediate medical assistance. After the fluid were removed from my body, an inquiry was made "where did you get his fluid from?" "Here at the University of Texas Medical Branch during a lower back operation on August 7, 2017", I said. Shortly thereafter, it was discovered that no bacteria was found in the fluid from an infection of cancer cells, TB, or any other infection to generate such an amount of fluid. After a short stay at the University of Texas Medical Branch I was transferred back to my assigned unit.

### PROCEDURAL HISTORY

A. On January 11, 2018, Plaintiff was informed that an X-Ray determined that he was suffering from a large pocket of fluid to his body and was being transferred out to the University at Texas Medical Branch for immediate medical assistance associated with the discovery.

Because this was seemingly a strange-on-strange life and death situation-the Plaintiff filed a 42 U.S.C. § 1983 Civil Rights violation Complaint for "DELIBERATE INDIFFERENCE" of a serious medical need and that the Defendants intentionally and knowingly injected a large amount of fluid to his body with intent to cause his death by congestive heart failure and lung collapses.

The United States District Court Judge for the Southern District of Texas at Galveston Division ORDERED the Plaintiff to apply for a Motion for More Definite Statement-clarifying his complaints with facts to be understood as to how the Defendants were liable. The Plaintiff complied with the ORDER and completed the Motion for More Definite Statement attached with supporting documents.

The Plaintiff was asked "How did they inject this fluid into your body"? "I don't know, but I know it happened at this hospital on August 7, 2017, during my back operation."

The United States District Court Judge for the Southern District of Texas at Galveston Division "relied heavily" on the story

statement above made to the Doctor by the Plaintiff "I don't know ' to make his conclusion that the Plaintiff is speculating about the source of the whereabouts of the fluid found in his body and as a result, the fluid is nothing more than a fluid build-up.

With this in mind, the United States District Court Judge recommended dismissal of the Civil Rights violation complaint on the grounds that the Plaintiff has failed to state a claim upon which relief may be granted. An ORDER was issued for dismissal with prejudice for failure to state a claim. No.3:19-cv-387

The Plaintiff sought to appeal the United States District Court Judge's decision to the United States Court of Appeals for the Fifth Circuit. No.# 22-40449, After a careful review of the appeal by the Justices for the Fifth Circuit, it found that the complaint has one ultimate legitimate issue to be resolved "whether the United States District Court Judge erred in his failure to seek a response from the Defendants "UTMB" whether the possibility exist that the fluid found to the Plaintiff's body could have been a fluid build up "without an infection" and "whether the Defendants are responsible for the injecting the fluid into the Plaintiff's body without any reason or justification? The Justices for the Fifth Circuit agreed with the lower United States District Court Judge' recommendation and it too recommended dismissal.

The Fifth Circuit considered Plaintiff's properly filed civil rights action pursuant to 42 U.S.C. § 1983 complaining that his civil rights were violated by deliberate indifference to his serious medical needs. It concluded that Plaintiff has not shown exceptional circumstances, his motion for appointment of counsel is DENIED. See *Ulmer v. Chancellor*, 691 F. 2d 209, 212-13 (5th Cir.1992). Because Plaintiff recently paid the appellate filing fee, and thereafter his motion to proceed in forma pauperis (IFP) on appeal is DENIED as moot. Plaintiff's two motions for judicial notice are also DENIED.

An appeal should be dismissed upon the hearing of any interlocutory motion where "it appears to the court that the appeal is frivolous and entirely without merit." 5th Cir. R. 42.2. Our thorough examination of Plaintiff's brief and the record reveals no nonfrivolous issue. The brief raises only one concret argument. Contrary to Plaintiff's contention, the district court did not err by dismissing his civil action sua sponte without ordering a response from the defendants. See *Green v. McKaskle*, 788 F.2d 1116, 1119 (5th Cir. 1986); 28 U.S.C. § 1915(e)(2)(B)(ii). Because Plaintiff's appeal is frivolous and without any arguable merit, it is DISMISSED, See 5th CIR. R.42.2.

The Fifth Circuit agreed with the lower court that the district court's dismissal counts as one strike under § 1915(g), and Plaintiff incurs an additional strike for this frivolous

appeal. See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir.1996), abrogated in part on other grounds by Coleman v. Tollefson, 575 U.S. 532, 537 (2015). Plaintiff is WARNED that if he accumulate three strikes, he will no longer be allowed to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious bodily injury. See 1915(g).=

#### REASON TO GRANT THE PETITION

##### I. Summary Reversal Is Warranted Because The United States District Court Judge's Decision Is Patently Wrong.

1. "So basic" to this Court's jurisprudence is the right to all Texas Prison Inmates to receive adequate medical care. This right includes serious medical need. Estell v. Gamble, 429 U.S. 97 (1976). Some courts generally describe a serious medical need as "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." Hill v. Dekalb Reg'l youth Det.Citr., 40 F. 3d 1176, 1187 (11th Cir. 1994); Youmans v. Gagnon, 626 F.3d 557 (11th Cir.2010). Courts usually agree that a prisoner can show a serious medical need if the "failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain." Estell v. Gamble, 429 U.S. 97, 104 (1976); Jett v. Penner, 439 F. 3d 1091, 1096 (9th Cir. 2006). In other words, if a doctor says you need treatment, or your need is obvious, then it is probably a "serious medical need."



Courts generally agree that the existence of a serious medical need depends on the fact surrounding each person. *Smith v. Carpenter*, 316 F. 3d 178 (8d Cir. 2003). A condition may not be a serious medical need in one situation but could be a serious medical need in another.

In a deliberate indifference claim, to satisfy the "subjective" portion of the Eighth Amendment standard, a prisoner must show that prison officials treated his/her with deliberate indifference. This means, (1) prison officials knew about the prisoners serious medical need, and (2) the prison officials failed to respond reasonable to it. *Estell*, 429 U.S. at 104; *Gutierrez v. Peters*, 111 F.3d 1364 (7th Cir. 1997)).

Courts must often find deliberate indifference when:

A prison doctor fails to respond appropriately or does not respond at all to a prisoners medical needs. *Scott v. Ambani*, 577 F.3d 642 (6th Cir. 2009); *Spruill v. Gillis*, 372 F.3d 218 (3rd Cir. 2004); *Meloy v. Bachmeier*, 302 F.3d 845 (8th Cir. 2002).

Prison doctors or officials delay or deny giving a prisoner medically necessary mental, medical, or dental care, or a medical diet. *Grieverson v. Anderson*, 538 F.3d 763, 779 (7th Cir.2008) (1.5 day delay in treating broken nose); *Smith v. Knox Cnty.Jail*, 666 F.3d 1037 (7th Cir.2012) (5 day delay providing emergency medical care); *Brown v. District of Columbia*, 514 F. 3d 1279 (D.C . Cir. 2008)(2 month delay on medical care) *Harrison v. Barkley*, 219 F.3d 132, 138 (2d Cir. 2000)(one year delay for dental care);

Byrd v. Wilson, 701 F.2d 592 (6th Cir. 2013)(medical diet).

In this particular case, the Plaintiff has shown and demonstrated that he was completely denied the medical treatment he should have been entitled to considering his medical condition that was only discovered by his actions of filing a Step 1 Grievance complaint seeking an X-Ray at the George Beto Unit Medical Department. *Ancata v. Prison Health Servs., Inc.*, 769 F. 2d 700, 704 (11th Cir.1985) which stated "medical care... so cursory as to amount to no treatment at all may violate the [Eighth] Amendment." See also *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998), which stated that a prison official or medical practitioner "may be deliberately indifferent if he or she consciously chooses 'an easier and less efficacious' treatment plan."

In the case before this Honorable Court, the Plaintiff will show and demonstrate that Medical Staff are now prong to the trend of Inmates Institutional Drug use and the constant Tone attack effected by the use of the drugs. When a Texas Prison Inmate complains of breathing problems, Medical Staff automatically assum that it comes from smoking drugs and that any complaints made by the Inmate are not to be believed.

The George Beto Medical Staff had assumed that the Plaintiff was under the infuances of drug use and that his complaints were speculation. "I think you are faking" one Nurse said. With this in mind, the Plaintiff was denied of the medical assistance he

should have been entitled to. And, as such, he was denied of his Eighth Amendment Rights to the United States Constitution to be free from Cruel and Unusal punishment and deliberate indifference just because.

The Plaintiff respectfully prays that this Honorable Court will consider the facts of his case with great consideration under an extraordinary circumstances exception. More importantly, that the Defendants be required to respond to the facts contained in the complaint that are supported by documentary facts of an human error that could not have being performed by a lay Medical Staff Expert.

The Plaintiff has provided documentary facts establishing that he is not suicidal, he has never made any attepts on his own life, he does not suffer from any heart medical conditions, he does not suffer from TB, he did not have any medical infections to generate any fluids found to his body prior to the medical surgery operation, he did not have any fluids found to his legs which are common detections of infections and fluid buildup.

The Plaintiff hopes and prays that this Honorable Court will issue an ORDER sending this case back to the Defendants so that the proper steps can be taken for an investigation to determine whether the actions of the Defendants are a pattern of Medical misconduct being committed against a certain ethnic group of people "TEXAS PRISON INMATES" or "BLACKS" without sufficient reason to justify their actions.

Summary Reversal Is Warranted Because  
The Stakes Could Not Be Higher. The  
Underlying Issues Are Important, And  
The Court's Views Deserve To Be Addressed

This is an extraordinary case in which the court below was not only wrong, but the the United States District Court Judge failed to recognize the seriousness of the complaint raised regarding Plaintiff's serious medical needs that could have caused him his death due to human error committed by the Defendants.

As shown from the record, the Plaintiff's medical history clearly disputes the conclusions of speculations by the United States District Court Judge that the Plaintiff failed to state a claim and that his claims are frivolous. The Plaintiff provided the Court with documentary facts clearly establishing that after his medical surgery of August 7, 2017, he began experiencing pains to his left side mid section and complained about it to TDCJ-ID Medical Staff continuously without success until he was forced to file a State Grievance seeking an X-Ray on January 3, 2018. On January 11, 2018, it was then discovered that the Plaintiff was suffering from a large pocket of fluids to his left side lung cavities and his chest cavities and rushed to the University of Texas Medical Branch for emergency medical assistance.

In support of Plaintiff's complaint that the Defendant's are responsible for the large amount of fluid found to his body, let the record reflect, mysteriously the Plaintiff did not have any fluid build up shown from his previous MRI nor the Ultra-sound examination conducted immediate to the surgery operation.

More importantly, he did not have any infections to generate any fluids found to his body like cancer, TB, heart problems, or any other issues that would explain fluid build up. Dr. Goodgame at the University of Texas Medical Branch found it very strange that the Plaintiff did not have any of the problem to explain the fluid build up as none were found to his leg nor ankles-which is a common way of determining whether a patient is suffering from some type of medical issues to generate fluid.

In this particular case, the fluids found to the Plaintiff's body did not have any bacteria in it to determine whether it was from an infection.

Since the operation and after the filing of the complaint, it has been discovered that an incision wound has been found to the the Plaintiff's upper mid section left side of his back. This incision wound clearly explains the way how the Defendants inserted the fluids into his body on August 7, 2017, that flowed into his chest cavity and outter left side lung cavities causing his lungs to colapse.

Because the Plaintiff is not a Doctor, this does not and should not take away from his common sense of knowing exactly where the fluids were generated from that was found in his body.

The Plaintiff nearly lost his life from the actions of the Defendants by intentionally injecting a large amount of clear fluids into his body. More importantly, this obviously could have been a "PERFECT MURDER" had the Plaintiff died from his injury.

With this in mind, obviously the Defendants have performed this procedure before on other individuals and realized that it is a perfect murder that cannot be retracted back to an operation performed at the University of Texas Medical Branch. The Defendants were sure that the Plaintiff had died from his injury and that the chances of him surviving something like this is like 1 and a million chances of survival.

The facts in this particular case are very unique and should require consideration on the merits or an inquiry for an investigation into whether other Texas Prison Inmates have died as from this very type of procedure performed by the Defendants.

Because of the uniqueness of this case, this Court should return this case back to the lower Fifth Circuit Court for an ORDER from the United States District Court for the Southern District of Texas, at Houston, with instructions for an investigation.

This Court should also find that the decision of the United States District Court Judge for the Southern District of Texas, at Houston, concluding that the Plaintiff has failed to state a claim and that his complaint is frivolous, is without merits where the Plaintiff has demonstrated a materiality and realistic medical situation that should be considered as being an extraordinary situation under exceptional circumstances.

This decision should be made in conjunction with the Plaintiff's medical history that he has never made any suicide attempt.

attempts since his long term of incarceration, is of sound mind and capable of making rational decisions.

This process shouldn't just be about a United States District Court Judge self serving himself to make a decision without having any medical experiences to conclude that a particular individual is speculating merely because of his incarceration of violating the laws of the State. This Court should demand more from our Judiciary processes where the facts are very extraordinary that raises the possibility that individual Medical Experts in the field of medicine and operations should be given a free pass to do harm and commit crimes against people just because they know that they are protected by the 11th Amendment from all liability.

With this in mind, the Plaintiff respectfully prays that this Honorable United States Supreme Court will consider the facts herein with great concerns of the possibilities that others have been subjected to the very same harm and was not able to report it because they did not survive.

More importantly, that he is not denied merely because he is not a lawyer, a Law Firm, and is only a Texas Prison Inmate without the expertise to perfect his claims that are required to meet Court standards. He truly do hope and pray that this Court will consider his determination to prove his claims that an attempt was knowingly made on his life by the Defendants whom knew that they were committing a perfect murder that could not be retracted back to the University of Texas Medical Branch.

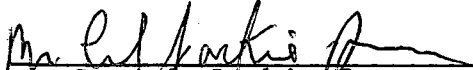
CONCLUSION

For the foregoing reasons, this Court should summarily reverse the judgment below and remand or, alternatively, grant the petition and set the case for argument.

Jeffrey Vincent Brown  
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United States District Court  
Southern District of Texas  
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