

No. 23-5953

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 23 2023

OFFICE OF THE CLERK

MICHAEL MUTHEE MUNYWE — PETITIONER
(Your Name)

vs.

JULIE DIER et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL MUTHEE MUNYWE
(Your Name)

1313 N 13TH AVE
(Address)

WALLA WALLA, WA 99362
(City, State, Zip Code)

509 524 7716
(Phone Number)

QUESTION(S) PRESENTED

QUESTION ONE

WHETHER THE APPEALS COURT'S DECISION WAS ERRONEOUS WHEN THE COURT DECIDED THAT THE TWO POLICE OFFICERS AND THE TWO DETECTIVES HAD A LEGITIMATE PENOLOGICAL INTEREST AND AN OBJECTIVELY REASONABLE BASIS TO PLACE OVERLY TIGHT HANDCUFFS BEHIND MR. MUNYWE'S BACK AND RESTRAINING HIM ON A CHEMICAL-SOAKED FLOOR TORTURING AND MISTREATING HIM FOR 8 HRS, DENYING HIM DRINKING WATER AND USE OF BATHROOM AND MOCKING HIM OF HIS ACCENT AND ORIGIN WHENEVER HE BEGGED FOR HELP.

QUESTION TWO

WHETHER APPEALS COURT'S DECISION WAS ERRONEOUS WHEN THE COURT DECIDED THAT THERE WAS NO VIOLATIONS OF EQUAL PROTECTION CLAUSE AND 42 U.S.C § 1981, AND ALSO DECIDED THAT THE OFFICERS HAD A "LEGITIMATE LAW ENFORCEMENT PURPOSE", WHEN THE OFFICERS MOCKED MR. MUNYWE THAT HE "HAS A CRAZY THICK ACCENT" AND "IT MAKES IT EVEN WORSE" THAT HE'S FROM AFRICA, WHEN MR. MUNYWE REPEATEDLY REQUESTED TO BE UNCUFFED, UNRESTRAINED, BE REMOVED FROM THE CHEMICAL-SOAKED FLOOR, BE GIVEN WATER AND BE ALLOWED TO USE A BATHROOM.

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:

JULIE DIER, Detective, TACOMA POLICE DEPARTMENT

WILLIAM MUSE, Detective, TACOMA POLICE DEPARTMENT

BRIAN SHE, Police Officer, TACOMA POLICE DEPARTMENT

JEFFREY THIRY, Police officer, TACOMA POLICE DEPARTMENT

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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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix C 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 A 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 JUNE 9 2023 (FILED)

☐ 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: JULY 24 2023, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

FOURTH AMENDMENT TO THE U.S. CONSTITUTION

FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

EQUAL PROTECTION OF LAW

42 U.S.C. § 1981

STATEMENT OF THE CASE

THIS CIVIL ACTION IS ABOUT TACOMA POLICE OFFICERS' BRUTALITY AGAINST MR. MUNYWE, EXTRAJUDICIAL PUNISHMENT IN TORTURE, TORMENT AND DISCRIMINATIONAL MISTREATMENT.

MR. MUNYWE WAS ADMITTED TO THIS BEAUTIFUL COUNTRY BY THE U.S DEPARTMENT OF STATE ON MERITS AND DUE TO HIS GREAT CHARACTER AND CLEAN HISTORY. MUNYWE IS A SWAHILI SPEAKING KENYAN CITIZEN AND HAD NEVER BEEN ARRESTED BEFORE AND HAD NO PRIOR EXPERIENCE WITH THE AMERICAN JUSTICE SYSTEM.

MR. MUNYWE WAS ARRESTED AT 5:30 PM NOVEMBER 21, 2018 BY TACOMA POLICE DEPARTMENT OFFICERS FOR WHAT THEY CALLED 'UNKNOWN TROUBLE'. FOR 8 HRS, THE OFFICERS TORTURED AND MISTREATED MUNYWE BY TIGHTLY HANDCUFFING HIM BEHIND HIS BACK AND RESTRAINING HIM ON A CHEMICAL-SOAKED FLOOR WITH TOXIC AND CHOKING FUMES. THEY DENIED HIM DRINKING WATER AND USE OF A BATHROOM THE ENTIRE TIME MR. MUNYWE STRUGGLED IN PAIN ON THE CHEMICAL-SOAKED FLOOR. HE WAS HELD INCOMMUNICADO, DENIED CONSULATE ACCESS, DENIED AN ATTORNEY AND OPPORTUNITY FOR AN INTERPRETER. AFTERWARDS, MR. MUNYWE WAS SUBJECTED TO CROSS GENDER GENITAL SEARCH BY BEING STRIPPED NUDE BY FEMALES WITH GENITAL PHOTOGRAPHING, FILMING AND SWABBING IN THE MIDDLE OF AN ONGOING INTERROGATION.

CASE NO: 23-35187 CONCERNING CROSSGENDER SEARCH IS PENDING IN THE COURT OF APPEALS FOR THE NINTH CIRCUIT.

MR. MUNYWE REPEATEDLY COMPLAINED TO THE OFFICERS THAT THE TOXIC CHOKING FUMES FROM THE CHEMICALS WERE HURTING HIM BUT THE OFFICERS REFUSED TO UNTIE HIM. HE REPEATEDLY BEGGED FOR DRINKING WATER AND TO USE BATHROOM BUT HE WAS DENIED, THE OFFICERS CLAIMING THAT 'HE HAS A CRAZY THICK ACCENT' AND THAT "IT MAKES IT EVEN WORSE" AFTER EQUURING HIS ORIGIN.

MUNYWE SUFFERED INJURIES AS CUTS, BRUISING, SCARRINGS AND SWELLING ON HIS WRISTS AND KNEES. HE SUFFERED PAIN AND NUMBNESS IN SHOULDERS, ARMS, KNEES AND WRISTS. HE WAS EXHAUSTED, DISORIENTED AND HAS CONTINUED CHEST PAINS AND RESPIRATORY COMPLICATIONS.

MUNYWE FILED THIS CIVIL ACTION, PRO SE, IN THE U.S DISTRICT COURT OF THE WESTERN DISTRICT OF WASHINGTON WHICH ISSUED SUMMARY JUDGEMENT TO THE OFFICERS AND DISMISSED MR. MUNYWE'S CASE WITH PREJUDICE.

MR. MUNYWE FILED A TIMELY APPEAL TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT WHICH AFFIRMED. MUNYWE'S APPEAL WAS AFFIR DENIED, WHERE THE APPELLATE PANEL ARGUED THAT "DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGEMENT ON MUNYWE'S FOURTEENTH AMENDMENT CLAIMS, THAT HE WAS HANDCUFFED TOO TIGHTLY" "HELD IN A ROOM WITH TOXIC FUMES" "DENIED WATER AND AN OPPORTUNITY TO USE BATHROOM"

THE APPELLATE PANEL CLAIMED THAT "MUNYWE FAILED TO PRODUCE ANY OBJECTIVE MEDICAL EVIDENCE IN SUPPORT

OF HIS INJURY CLAIMS" AND THAT "MUNYWE ALSO FAILED TO RAISE A TRIABLE ISSUE ABOUT WHETHER THE DEFENDANTS HAD AN OBJECTIVELY REASONABLE BASIS FOR CONFINING MUNYWE AS HE CLAIMS" APPX. C

HERE, THE APPELLATE PANEL OPINED THAT THE DEFENDANTS' ACTIONS WERE A GOVERNMENTAL ACTION RATIONALLY RELATED TO A LEGITIMATE GOVERNMENTAL OBJECTIVE. APPX: C at 2

APPELLATE PANEL ALSO CLAIMED THAT MUNYWE'S EQUAL PROTECTION CLAIMS AND 42 U.S.C § 1981 CLAIMS FAILED "BECAUSE MUNYWE DID NOT ALLEGE ANY IMPAIRMENT PROTECTED BY STATUE"

LASTLY, APPELLATE PANEL CLAIMED THAT "THE DISTRICT COURT DID NOT ABUSE IT'S DISCRETION IN DENYING MUNYWE'S DISCOVERY MOTION". HERE, THE TRUE FACT IS THAT DISTRICT COURT ALLOWED THE DEFENDANTS NOT TO SERVE MR. MUNYWE WITH THE EVIDENCE FILED IN COURT FOR SUMMARY JUDGEMENT PURPOSES AN CONTRARY TO Fed. R. Civ. P. 56 ON SUMMARY JUDGEMENT.

THE DISTRICT COURT HAD HEAVILY RELIED ON VIDEO EVIDENCE FILED IN COURT BY DEFENDANTS BUT DENIED TO MUNYWE THEREBY DENYING DUE PROCESS TO MUNYWE FOR SUMMARY JUDGEMENT.

REASONS FOR GRANTING THE PETITION

POINT ONE

TACOMA POLICE OFFICERS HAD NO LEGITIMATE PENOLOGICAL INTEREST OR AN OBJECTIVELY REASONABLE BASIS TO POISON MUNYWE BY TIGHTLY HANDCUFFING HIM BEHIND HIS BACK AND RESTRAINING HIM ON A CHEMICAL-SOAKED CELL FLOOR, TORTURING AND MISTREATING HIM FOR OVER 8 HRS WHILE MOCKING HIM OF HIS ACCENT AND ORIGINS AND DENYING HIM DRINKING WATER AND USE OF BATHROOM.

PERSONS WHO TRAVEL ABROAD EITHER FOR WORK, STUDIES OR BUSINESS, SHOULD NOT BE POISONED IN CITY POLICE CELLS, TORTURED AND MISTREATED DUE TO THEIR ACCENT, ETHNICITY, RACE OR NATIONAL ORIGIN. THEY SHOULD NOT BE RESTRAINED ON A CHEMICAL-SOAKED CELL FLOOR, TORTURED AND MISTREATED FOR OVER 8 HRS WITH OVERLY TIGHTENED HANDCUFFS BEHIND THEIR BACKS.

MR. MUNYWE HAD BEEN ARRESTED FOR WHAT TACOMA POLICE OFFICERS CALLED 'UNKNOWN TROUBLE' AND LATER WAS FALSELY ACCUSED OF CRIMES. HE WAS HELD INCOMMUNICADO OVERNIGHT, DENIED CONSULAR CONTACT, DENIED AN ATTORNEY AND AN INTERPRETER. HE WAS DENIED WATER TO DRINK AND USE OF A BATHROOM AS HE SUFFERED IN PAIN ON THE CELL FLOOR FROM TOXIC CHOKING CHEMICAL FUMES.

THE OFFICERS DENIED EACH OF MUNYWE'S PLEA TO BE REMOVED FROM THE CHEMICALS, TO BE LOOSEN FROM THE OVERLY TIGHT HANDCUFFS.

INSTEAD, THE OFFICERS MOCKED MUNYWE THAT HE "HAS A THICK CRAZY ACCENT" SAYING "IT MAKES IT EVEN WORSE" THAT HE'S FROM AFRICA.

MUNYWE IS A SWAHILI SPEAKING KENYAN CITIZEN WHO HAD BEEN ADMITTED INTO THE UNITED STATES BY THE U.S DEPARTMENT OF STATE ON MERITS WITH A CLEAN RECORD AND NO CRIMINAL HISTORY ANYWHERE. THE OFFICERS, LATER, STRIPPED MR. MUNYWE IN THE MIDDLE OF AN ONGOING INTERROGATION AND CONDUCTED CROSSGENDER GENITAL SEARCH BY FEMALES, PHOTOGRAPHING AND VIDEO RECORDING

FIRST, THIS COURT HAS STATED THAT "INJURY AND FORCE - - - ARE ONLY IMPERFECTLY CORRELATED, AND IT IS THE LATER THAT ULTIMATELY COUNTS. AN INMATE WHO IS GRATUITOUSLY BEATEN BY GUARDS DOES NOT LOSE HIS ABILITY TO PURSUE AN EXCESSIVE FORCE CLAIM MERELY BECAUSE HE HAS THE GOOD FORTUNE TO ESCAPE WITHOUT SERIOUS INJURY" *Wilkins v. Gaddy*, — U.S. —, 130 S. Ct. 1175, 1179 (2010)

THE RIGHT OF PRETRIAL DETAINEES TO BE FREE FROM EXCESSIVE FORCE IS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND IS GOVERNED BY FOURTH AMENDMENT STANDARDS. *Kingsley v. Hendrickson*, 576 U.S. 389, 397-398, 399, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015)

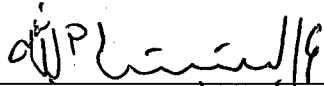
IN BOTH THE DISTRICT COURT AND THE COURT OF APPEALS, MR. MUNYWE ESTABLISHED THAT EXCESSIVE FORCE

CONCLUSION

TACOMA POLICE OFFICERS' DISCRIMINATORY CONDUCT VIOLATED MUNYWE'S
FOURTH AMENDMENT, FOURTEENTH AMENDMENT, EQUAL PROTECTION AND
42 U.S.C. § 1981

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/21/2023

APPX. A