

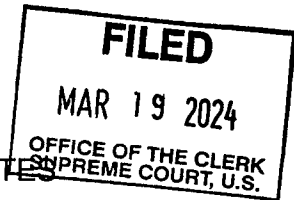
No. _____

ORIGINAL

23-7086

IN THE

SUPREME COURT OF THE UNITED STATES



VINICIO J GARCIA #1828198 PETITIONER
(Your Name)

VS.

Bobby Lumpkin Director TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES Court of Appeals Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

VINICIO J GARCIA TDCJ #1828198
(Your Name)

9601 SPUR 591
(Address)

AMARILLO TX 79107
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Abuse of Judicial Discretion
- 2) ARE Grievances and Properly Filed objections not cognizable?
- 3) Should TDCS prison officials continue to be shielded from the responsibility of placing an 87 year old inmate for no penological reason in a filthy unsanitary cell?
- 4) The opponents ignore the details - First the claim is called "delusional", then "frivolous" and finally the conditions are described as "deeply unpleasant". The issue is not frivolous and asserts it does constitute an Eighth Amendment violation.
AT what Point Does Deeply Unpleasant conditions become non-frivolous?
- 5) Does the Placing, For no Penological Reason, of an elderly man diagnosed with an infection in a mice and Roach infested cell Represent the standards of a Progressive evolving society?

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:

WARDENS Townsend and MARSHALL MARK
Michael UNIT UCC MARK Michael UNIT
SCC-TDCJ Bobby Lumpkin CID TDCJ

RELATED CASES

NONE

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A UNITED STATES COURT OF APPEALS Fifth Circuit
Case No 23-40028 Dismissed Dec 19, 2023
Document 00517007484
APPENDIX B UNITED STATES District Court EASTERN District of
TEXAS TYLER Division Case No. 6:22-cv-67 JOK-JOL
Document #37 filed 12/20/22 JUDGE KERWOOD
APPENDIX C UNITED STATES District Court EASTERN District of
TEXAS TYLER Division Case No. 6:22-cv-67 JOK-JOL
Document #35 filed 11/15/22 US Magistrate LOVE
APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Cole v Collmer et al "Civil Action NO 4:14-cv-1082"	<u>5</u>
Hutchins v McDannel 512 F3d 193, 197-198 (E. 5th CIR 2007) Per Curiam	<u>5</u>
Heaney v Roberts 846 F3d 795, 803 (E. 5th Circuit 2017)	<u>6</u>
TAYLOR v RIOJAS 141 S. Ct 52	<u>6</u>

STATUTES AND RULES Housing AREA Assignment; Per AD 04.17
 Authority to move an inmate: 28 CFR § 115.42(a-b) TEX Govt Code
 §§ 493.001, 493.006(b), 494.001, 494.002(a); 501.111-.113 BP 208 "statement
 of Internal Controls - This Lists who has the authority to
 move an inmate - WARDEN Designates UCC or a) Asst WARDEN
 b) Building MAJOR or CAPTAIN c) shift Supervisor d) security
 detention e) chief of unit classification 5

OTHER Case of First IMPRESSION - A case that Presents
 the Court with an issue of law that has not previously
 been decided by any controlling Legal authority within jurisdiction
 "In a case of first impression there is by definition only an IMPERFECT
 foresight of the results to which the decision MAY lead"
 EUGENE WAMBAUGH The study of cases § 60 at 56 (2d ed 1894) 7
 BLACK'S Dictionary

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Dec 19, 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

Amendments to the US Constitution

Amendment I

CONGRESS shall make no law respecting an establishment of Religion or Prohibiting the free exercise thereof

Amendment VIII Excessive bail shall not be Required nor excessive fines nor cruel and unusual Punishment

Amendment XIV

Section 1

no state shall deprive any Person of life, liberty or Property without due Process of law; nor deny any Person within its Jurisdiction the Equal Protection of the laws.

STATEMENT OF THE CASE

On Dec 27, 2021 I was diagnosed with an infection without risk of an increase of further infection. I was working in the kitchen and living in the dorms. A clean off air setting in Dustin U. Prince PA Rescribed ~~and~~ Anti-Biotics and made temporarily (7 days) medically unassisted so as to finish my antibiotic

The next morning Dec 28, 2021 to September 12 Building. There was vomit on the wall layers of mice feces on both bins and underneath the bed. The roaches lived in large cracks in the ceiling corners. My cell was 1A76 next to last cell of the building. The mice would chew 24/7 trying to get in after I stuffed toilet clothes and cardboard underneath the door. My cell was by the camera so this can be seen. One night when I woke up (7) mice ran out the hole they made. They ate commissary, I was there 45 days and let out for 1 hr total for Rec. I was allowed 3 showers.

I filed a Grievance against all individuals listed. Warden Marshall responded: I needed a 'cool bed'. The 'cool bed' protocol is not in effect from Oct 30 to April. It is winter

Wardens Marshall, Townsend and Ucc are the people who have the Power and Authority to move me - so no one will tell me who

authorized the move - There was no Penal Council Reason to subject me to this move, I was never given any cleaning supplies, one could smell the mice urine on my property.

REASONS FOR GRANTING THE PETITION

The foundation for filing this lawsuit is that there was no Penological reason for moving me to Segregation, into a filthy unsanitary cell. There is no 'cool Bed' heat score related Protocol in effect from OCT 15 to APR 18 'Cole v Collier et al CIVIL No 4:14-cv-1198 AIR conditioned Requirement is not effective.

The other Principal reason for filing was to determine who ordered the move. A Guard doesn't have the authority to move an inmate.

PER AD 04.17 OF TDCJ Authority: 28 CFR § 115.42 (a-b); TEX Gov't Code §§ 493.001 493.006 (b); 494.001 494.002(a); 501.111-.113; BP 2.08 "statement of Internal control s" Authority for Bt housing AREA Assignment
1) The WARDEN shall ensure that inmate housing assignments meet the safety, security needs of all inmates as well as the safety and security of the Public, Staff and the unit in accordance with this directive... Individual Responsibility for specific housing assignments shall be delegated by the warden to the UCC or to the following individuals a) Asst WARDEN b) Building MAJOR OR CAPTAIN c) Shift Supervisor d) Security detention OR e) Chief of unit classification.

Asst WARDEN MARSHALL Responded to my Grievance describing the conditions of the cell by stating I needed a 'cool Bed' The WARDEN UCC, SCC, TDCJ CID Director, were all listed in the Grievance. There is no 'cool Bed' so it showed deliberate indifference to my health and well being by keeping me 45 days without clean supplies, one hour total outside the cell and 3 showers.

"Punitive damages and nominal damages... Re Quire no such Physical Injury Hutchins v McDaniel 512 F3d 193, 197-198 (5th CIR 2007) Per Curiam,

"Although in MANY instances a factual dispute as to a constitutional violation will preclude summary judgment on punitive damages it will not when there is no material question of fact as to the Reckless nature of the defendants. *Heaney v. Roberts* 846 F3d 795, 803 (5th CIR 2017), MY cell was right by the camera it can see the mice outside the door chewing 24/7 trying to get in. It will also show the night the (7) seven mice ran out after I woke up.

The EIGHTH Amendment is not static but rather draws its meaning from the evolving standards of decency that mark the progress of a maturing society. It is pretentious for TDCJ to act as if they are concerned for MY health and well being when for NO Penological Reason a 67 Year old man diagnosed with an infection is moved from a clean open air environment to a filthy mice and roach infested cell with vomit on the wall.

"There are degrees of filth from conditions that are simply unpleasant to conditions that pose a grave health risk and the concept of 'a few days' is also imprecise. In Addition the statement does not address potentially important factors such as the necessity of placing and keeping in a particular cell and the possibility of (168) cleaning the cell before he is housed or during the course of that placement." *TAYLOR VS RIOS* 141 S Ct 52 I was not provided cleaning supplies.

With all due Respect to the court the court has inadvertently included A Request For a jury trial. NOT

FOR 45 DAYS I was denied Religious Service for NO Penological Reason.

CASE of First Impression

Plaintiff filed an 18§3626 seeking Relief before filing a §1983 attempt to be moved immediately through an injunction. It is clearly filed as an 18§3626. The Court took it upon itself to file it as an §1983 in Feb. I did not file my original §1983 until APRIL. The Court is denying due Process, Abuse of Judicial Discretion

CASE of First Impression

ARE Grievances and Properly filed OBJECTIONS not Cognizant?

Plaintiff listed the TDCJ AD.04.17 and Gov't codes showing that one or more of the defendants is directly responsible for the move. The Court never responded to the objections showing the subjective component of deliberate indifference to the cruel and unusual punishment conditions I was subjected to. The Court also ignores the fact that while he cites the heat score Protocol he does not recognize the fact that the Protocol is not in effect from Dec 28 to Feb when I was kept in SEG.

My complaint is not frivolous and I Request that I be Granted to Proceed IFP to continue to Present the Facts to a Jury of my Peers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vinicio J Garcia

Date: MARCH 17, 2024