

No. - 2024 -

23-7335

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED

APR 22 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Walter Himmelreich — PETITIONER
(Your Name)

VS.

Janel Fitzgerald — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Walter Himmelreich
(Your Name)

2355 Jefferson Street
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(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

- 1) As an issue of First Impression for this Court, does the "or Territory" clause of 42 USC § 1983 and the related Civil Rights Statutes apply to the Federal Bureau of Prisons properties; utilizing the Federal Courts Territorial Jurisdiction, as the Sixth Circuit Court of Appeals decision in Blunt previously determined that Federal Courts have Territorial Jurisdiction over Federal Bureau of Prisons properties; thus allowing a First Amendment Retaliation Claim filed under both Bivens and invoking 42 USC § 1983 as well to go forward to trial and not violating the Petitioner's Fourteenth Amendment and Fifth Amendment Due Process and Fourteenth Amendment Equal Protection of the Laws Constitutional Rights ?
- 2) Should the above question be answered in the negative, does the Boule decision of this Court denying First Amendment claims of Retaliation in Bivens Actions violate the Petitioner's Fourteenth Amendment Right to Equal Protection of the Laws when a State prisoner is able to sue against a jailer for First Amendment Retaliation regarding Redress of Grievances but Federal Prisoners do not have the same civil rights.?
- 3) Did the lower courts err by not recognizing the "or Territory" Clause portion of 42 USC § 1983, which was specifically pointed out to them by the Pro Se Petitioner and their insistence that vertical stare decisis was the proper decision in the case below ?

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:

RELATED CASES

Not Applicable

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Egbert vs Boule, 142 S Ct 1807	4
Simmons vs Himmelreich, 136 S.Ct _____, 195 L Ed2d _____	4
US vs Blunt, 558 F.2d 1245 (6th Cir., 6/13/1977)	4

STATUTES AND RULES

42 USC § 1983	Various
Federal Tort Claims Act, 28 USC §§ 2670, et seq.	4
United States Constitution Article III and Amendments 1, 5, 14	Various

OTHER

Bivens Action	
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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 to the petition and is

☒ reported at 2022 U.S. Dist. LEXIS 184606; 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 November 2, 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: January 25, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

CONSTITUTIONAL

First Amendment Right to Redress Grievances and Retaliation

Fifth Amendment Due Process

Fourteenth Amendment Rights to Due Process and Equal Protection
of the Laws

STATUTORY

42 USC § 1983- Deprivation of Rights Under Color of Law in a United
States Territorial Jurisdiction by a Federal Corrections Officer

NON-STATUTORY

Bivens Action

STATEMENT OF THE CASE

That on June 6, 2016, this Honorable Court determined, sub nom. Simmons vs Himmelreich, that the Petitioner Walter Himmelreich, Pro Se, was permitted to move forward with the Bivens Action against staff of the Federal Correctional Institution at Elkton, Ohio, because of the specifying clause in the Federal Tort Claims Act which nullified the Government's position that the Tort Claims Act created a Judgment Bar against Himmelreich's Bivens Action proceeding against the Defendant(s).

Post that decision, this case has been to the Sixth Circuit Court of Appeals twice more. The first of those two times, the Sixth Circuit ruled in Himmelreich's favor on two issues. One of those was an issue of first impression, that defendants in Bivens Actions who appeal a lower court decision must pay the filing fees personally for an appeal, the same as a plaintiff must. The second was that your Petitioner objected to the fact that the case was not ripe for appeal at that time, and was found to be correct in his legal research.

Again at the District Court level, the Government moved to have the case and controversy dismissed due to this Court's statement in Egbert vs Boule, 142 S.Ct. at 1807 that "there is no Bivens action for First Amendment retaliation". The District Court's opinion attached ruled via vertical stare decisis that this quote from Egbert was the only reason that she had to rule as she did.

The Plaintiff appealed and the Sixth Circuit also ruled that vertical stare decisis was controlling, even after the Appellant pointed out in his briefing and his request for a Rehearing En Banc that the wording of 42 USC § 1983 (for which a Bivens Action is the Federal equivalent) specifically says "of any State or Territory" and that in United States of America vs Blunt, 558 F.2d 1245, 1977 U.S. App. LEXIS 12322 (6th Cir., 6/13/1977), the Sixth Circuit specifically ruled that Federal prisons of the Federal Bureau of Prisons fall within the Territorial Jurisdiction of Federal courts.

The Petitioner now seeks the Article III Appellate Jurisdiction of this Court to determine if the lower courts erred in using vertical stare decisis instead of the plain wording of 42 USC § 1983 to deny the Petitioner his day in court to face the Defendant for placing him in Special Housing for "The F**king Tort Claim" he filed.

REASONS FOR GRANTING THE PETITION

- 1) To uphold the laws through the fairness and integrity of the Court.
- 2) To decide this issue of First Impression for the Court of the question "do Federal Bureau of Prisons facilities fall within the Territorial Jurisdiction of the United States District Courts such that Federal inmates fall under the Territory provision of 42 USC § 1983 and not under Bivens when they face the same First Amendment retaliation issues that State inmates face regarding their attempts to Redress their Grievances, thus applying the caselaw of 42 USC § 1983 and not Bivens caselaw to their court filings".
- 3) To use this case to show that the wording of the law does apply directly as the law was written in the 1870's to today, without the need for a new Bivens context.
- 4) That the original Complaint filed by the Plaintiff/Petitioner did invoke both Bivens and 42 USC § 1983, and as such, this is not a new issue being brought before a court for the first time since the initial filing of the Complaint on October 20, 2010.
- 5) That denial of Certiorari in this case and controversy before the Court violates the Petitioner's Fourteenth Amendment Right to the Equal Protection of the Laws as State inmates have the privilege of access to the Federal Courts under 42 USC § 1983, but a Federal prisoner does not have the same access and civil rights accorded to State inmates regarding First Amendment Retaliation for the Redress of Grievances.
- 6) That since the Egbert decision of this Court, several valid First Amendment Retaliation claims by Federal inmates have been dismissed without consideration given for the fact that a Federal Bureau of Prisons facility is technically Federal Territory and falls under 42 USC § 1983, allowing Federal inmates to secure the same Rights and privileges to access Federal courts as State inmates have.

CONCLUSION

The petition for a writ of certiorari should be granted. An immediate Briefing Schedule should be established, and placed for oral argument on the Court's Trial Calendar.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Walter Himmelreich pro se", written over a horizontal line.

Walter Himmelreich, Pro Se

Date: April 21, 2024