

No. 23-7574

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IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.

FILED

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**MARCUS MIDDLEBROOK — PETITIONER, IN PRO PER**

VS.

**KELLY WELLMAN, ET. AL. — RESPONDENT(S)**

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ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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RESPECTFULLY SUBMITTED BY:

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BARAGA MAX CORRECTIONAL FACILITY  
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**QUESTION(S) PRESENTED**

**DID THE US DISTRICT COURT JUDGE ABUSE ITS DISCRETION IN ADOPTING THE MAGISTRATE'S REPORT AND RECOMMENDATION, GRANTING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON THE CLAIM THAT THERE WAS NO GENUINE ISSUES OF MATERIAL FACTS IN DISPUTE REGARDING PLAINTIFF'S CLAIM THAT THE DEFENDANTS WERE DELIBERATELY INDIFFERENT TO HIS MEDICAL NEEDS AND RLUIPA AND FREE EXERCISE CLAIMS?**

**District Court answered, "NO".**

**6<sup>th</sup> Circuit Court of Appeals answered, "NO".**

**Plaintiff answered, "YES".**

## 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

*Marcus Middlebrook, #351947 v Kelly Wellman*, Dist. Ct. No. 2:21-cv-208

*Marcus Middlebrook, #351947 v Kelly Wellman*, U.S. C.O.A. No. 23-1222

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### ARGUMENT

BOTH THE DISTRICT COURT AND THE 6<sup>TH</sup> COURT OF APPEALS ABUSED THEIR DISCRETION IN ADOPTING THE MAGISTRATE'S REPORT AND RECOMMENDATION GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON THE CLAIM THAT THERE WAS NO GENUINE ISSUES OF MATERIAL FACTS IN DISPUTE REGARDING PLAINTIFF'S CLAIM THAT THE DEFENDANTS WERE DELIBERATELY INDIFFERENT TO HIS MEDICAL NEEDS AND RLUIPA AND FREE EXERCISE CLAIMS.

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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 issues 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 6<sup>th</sup> Cir., File No. 23-1222; 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 U.S. Dist. Ct., West. Distr. Of Mich., North. Div., File No. 2:21-cv-208; 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

[ ] 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 29, 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 23, 2024, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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**

United States Constitution:

Eighth Amendment – Cruel and Unusual Punishment

## **STATEMENT OF THE CASE**

This is my attempt to find out why the MDOC men's religious/vegan menu does not have a substitute food item for bean spread or soy (meat) which is the main course of the meal. I am having problems with eating soy ... which I haven't ate since September 10, 2019. I hate starving myself, when there should be a substitute food item for the MDOC men's religious/vegan menu as it is for the MDOC regular diet menu.

Since you don't want to make diet modifications accommodate for individual food intolerance or preference. Which is a violation of my rights and the MDOC Prison Policy AMF OP 05.03.150A Paragraph F page 1 of 3 which states in part "A Bureau of Healthcare Services Dietician shall modify the vegan menu as necessary to provide for medical diets as order by the designated medical authority in facilities which have been approved for the service of therapeutic diets.

I request that you intervene on this matter please. I also requested that substitute food items for the MDOC Men's Religious menu is allowed please ...

## **REASONS FOR GRANTING THE PETITION**

The lower courts decisions contradict fundamental principles established by the United States Supreme Court, by allowing prison officials to turn a blind eye to obvious risks. The lower court's decisions flout the standards set forth by the United States Supreme Court, and creates an impossibly high burden for deliberate indifference claims. This unique application of these standards not only jeopardizes a prisoner's ability to vindicate their constitutional rights to adequate medical care, but also undermines their human dignity. See, *Brown v Plata*, 131 SCT 1910, 1928 (2011).

Plaintiff states that he has fulfilled the requirement to show that he received constitutionally inadequate medical care.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marcus D. Middlebrook

Date: 4-22-2024