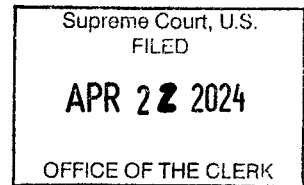


No. 23-7574

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



MARCUS MIDDLEBROOK — PETITIONER, IN PRO PER

vs.

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

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPECTFULLY SUBMITTED BY:

MARCUS MIDDLEBROOK #351947
BARAGA MAX CORRECTIONAL FACILITY
13924 WADAGA ROAD
BARAGA, MICHIGAN 49908-9204

(906) 353-7070

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".

6th 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

TABLE OF CONTENTS

QUESTION PRESENTED	i
LIST OF PARTIES	ii
RELATED CASES	iii
TABLE OF CONTENTS	iv
INDEX TO APPENDICES	v
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	vii
JURISDICTION	ix
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	x
STATEMENT OF THE CASE	xi
REASONS FOR GRANTING THE WRIT	xii
CONCLUSION	xiii
STATEMENT OF FACTS	1
ARGUMENT	6

ARGUMENT

BOTH THE DISTRICT COURT AND THE 6TH 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.

INDEX TO APPENDICES

APPENDIX - A - 6TH Circuit Court of Appeals Decision – Denying Appeal
Dated November 29, 2023

Denying Rehearing
Dated January 23, 2024

Mandate
Dated February 21, 2024

APPENDIX - B - District Court Report and Recommendation
Dated January 3, 2023

Plaintiff's **Objections** to
District Court Report and Recommendation
Dated (Not Dated)

District Court's **Order Adopting Report and Recommendation**
Dated February 1, 2023

District Court's **Judgment of Termination**
Dated February 1, 2023

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Alsaugh v McConnell</u> , 643 F3d 162 (6 th Cir. 2011)	23
<u>Boretti v Wiscomb</u> , 930 F2d 1150 (6 th Cir. 1991)	24
<u>Brown v Plata</u> , 131 SCT 1910 (2011)	12, 32
<u>Carter v Lutjens</u> , 2022 U.S. Dist. LEXIS 84382	25
<u>Colvin v Caruso</u> , 605 F3d 282 (6 th Cir. 2010)	26
<u>Cutter v Wilkinson</u> , 544 US 709 (2005)	2, 26
<u>Denton v Hernandez</u> , 504 US 25; 112 SCT 1728; 118 LED2d 340 (1992)	12
<u>Deshany v Winnebago Cnty Dept. of Soc. Servs.</u> , 489 US 189 (1989)	12
<u>Dykes v Corizon, Inc.</u> , 2022 U.S. Dist. LEXIS 130881, July 22, 2022	24
<u>Episcopal Student Fund v City of Ann Arbor</u> , 341 FSupp2d 691 (E.D. Mich. 2004)	26
<u>Erickson v Pardus</u> , 551 US 89 (2007)	14
<u>Estelle v Gamble</u> , 429 US 97 (1976)	PASSIM
<u>Ex Parte Young</u> , 209 US 123; 28 SCT 441 (1908)	31
<u>Farmer v Brennan</u> , 511 US 825 (1994)	13
<u>Haines v Kerner</u> , 404 US 519; 92 SCT 594; 30 LED2d 652 (1972)	12
<u>Harlow v Fitzgerald</u> , 457 US 800 (1982)	32
<u>Johnson v Johnson</u> , 385 F3d 520 (5 th Cir. 2009)	11
<u>Living Water Church of God v Charter Twp. Of Meridian</u> , 258 FAppx 729 (6 th Cir. 2007)	26
<u>Lovlace v Lee</u> , 472 F3d 174 (4 th Cir. 2006)	26
<u>McElligott v Foley</u> , 1999 US App LEXIS 18165 (1999)	23, 24
<u>Mitchell v Hininger</u> , 553 FAppx 602 (6 th Cir. 2013)	23
<u>Phillips v Roane Cty</u> , 534 F3d 531 (6 th Cir. 2008)	31

<u>Rains v Wellman</u> , US Dist. Ct. Case No. 2:20-cv-32	22
<u>Rains v Washington</u> , No. 2:20-cv-32; 2020 WL 1815839, at *8 (W.D. Mich Apr. 10, 202)	27
<u>Schmidt v Wingo</u> , 499 F2d 70 (6 th Cir. 1974)	24
<u>Siggers v Campbell</u> , 2011 US Dist. LEXIS 1539	11
<u>Terrance v Northville Reg'l Psychiatric Hosp.</u> , 286 F3d 834 (6 th Cir. 2001)	23
<u>Thompson v Corr. Med. Servs.</u> , 2013 US Dist. LEXIS 188477	25
<u>Vartiaelli v Aramark Corr Servs</u> , LLC, Case No. 18-cv-10964, Aff'd 796 FAppx 867 (6 th Cir. 2019)	18
<u>Westlake v Lucus</u> , 537 F2d 857 (6 th Cir. 1976)	15, 24
<u>Wilson v Seiter</u> , 501 US 294 (1991)	12
<u>Yellowbear v Lampert</u> , 741 F3d 48 (10 th Cir. 2014)	28

STATUTES:

42 USC § 2000cc-1 (a)	26
42 USC § 2000cc-5 (7)	26

RULES OF CIVIL PROCEDURE:

Fed. R. Civ. Pro. 56 (f)	11
Fed. R. Civ. Pro. 56 (c)	11

OTHER:

MISCELANEOUS MDOC POLICIES:

OP 05.03.150A	5
PD 05.03.150	1, 8
PD 04.07.101	8, 22

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 6th 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.

1.

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