

23-7829

NO. 23A833

IN THE
SUPREME COURT OF THE UNITED STATES

BRANDON ROBERTS,
On The Behalf Of Himself,
PETITIONER

v.

WEXFORD HEALTH SOURCES, INC.
JOHN/JANE DOE, KEITH LYONS, ACTING
WARDEN OF JCI, JEFFREY NINES, FORMER
WARDEN OF NBCI, WAYNE WEBB
FORMER COMMISSIONER, MARYLAND DIVISION
OF CORRECTION, J. PHILLIP
MORGAN, WARDEN OF MCTC,
RESPONDENTS'

FILED

MAY 09 2024

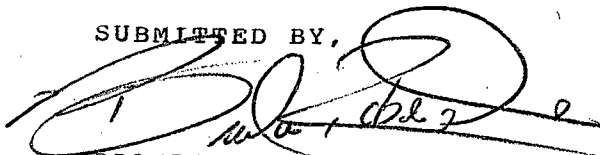
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

SUBMITTED BY,



BRANDON ROBERTS, #350242
PARALEGAL
14100 MCMULLEN HWY, S.W.
CUMBERLAND, MD 21502-5777
Cc: FILED

QUESTIONS PRESENTED

January 23, 2020, the petitioner initiated a civil action within the U.S. District Court for the Northern District of Maryland asserting a denial of the right to petition the government for redress, access to the courts, ' Due Process violations and unreasonable strip searches of the petitioner's person, by the respondents' Wexford Health Sources Inc., Jane & John Doe, Who are a medical service provider and their staff, as well as Loyns, Nines, Webb and Morgan, all members employed by the Department of Public Safety & Correctional Services, (DPSCS/DOC). The pleadings was re-filed and the case officially proceeded on February 3, 2020.

The matter stems from a hospital appointment scheduled on December 16, 2015, that collided with the time period the petitioner had in which to file his response in a pending Wrongful Death suit. The DOC defendants have a policy that prevented the petitioner from carrying any legal materials or items of that nature with him during any hospital visits. The petitioner, apparently missed the court deadline to respond when prison officials failed to bring him back, and instead, left him at another facility over the weekend without his legal documents. The civil

matter was active within the U.S. District Court for the District of South Carolina, Charleston Division.

The case at hand presents several fundamental questions of the court's interpretation concerning the types of civil actions a prisoner is prevented from litigating, that would fall within the purview of a denial of access to the courts, as stated from a history of the court's established decisions in Christopher v. Harbury, 536 U.S. 403, 414, 416 n. 13, 122 S.Ct. 2179 (2002); Lewis, 518 U.S. 343, 351-53, 116 S.Ct. 2174 (1996), & Bounds, 430 U.S. 817, 828, (1977).

The second, relates to the interpretation of this court's precedents in Bell, 441 U.S. 520, 545-46 (1979), as to the reasonableness of multiple strip searches, while remaining under constant supervision, and the ability to contest or challenge a sealed regulation filed in support.

Another concerns a unique exceptional or extraordinary circumstances in the tolling of a civil action against one of the parties associated.

The questions presented is of great importance, as it would give guidance on a number of the issues.

The importance of one of the issues is further

II.

enhanced by the lower court's inaccurate interpretation of Lewis, where the court concluded that a prisoners' Wrongful Death Suit that was impeded by prison officials, did not deny access to the courts. This matter would affect a prisoners' ability to determine whether he can bring these types of civil actions on the behalf of a deceased relative and other such cases without interference by prison officials with no form of relief.

The searches, is of public importance and affects the operation of the prison and what constitutes an excessive or unreasonable strip search while under constant supervision.

The sealed documents, is of great public importance, as it infringes on due process and compulsory process and burdens a prisoners ability to challenge certain regulations prison officials use in their defense.

The questions presented for this court to consider are:

1. Can a Prisoner state a claim for Denial of Access to the Court, if Prison Officials Impeded his ability to litigate a pending Wrongful Death Suit,
2. Can Multiple Strip Searches by Prison Officials while under constant Supervision be deemed Unreasonable or Excessive in

Violation of the Fourth Amendment?

3. Can Sealed Regulations Considered as Evidence Violate the Petitioner's Rights, if the documents cannot be viewed or contested?
4. Can Exceptional or Extraordinary circumstances allow for a Tolling of the Statute of Limitations for serving a Defendant or Agency Named in a Multi Party Suit?

TABLE OF CONTENTS

QUESTIONS PRESENTED.	1,
PETITION FOR WRIT OF CERTIORARI.	1,
OPINIONS BELOW	1.
JURISDICTION	1,
STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED	2,
STATEMENT OF THE CASE	5,
REASONS FOR GRANTING PETITION	7,
A. THERE IS A CONFLICT WITH THE FOURTH CIRCUIT AND OTHER COURTS ON THE QUESTIONS PRESENTED	7,
THE DISMISSAL OF PETITIONER'S CLAIM FOR DENIAL OF ACCESS TO THE COURT ON THE BASIS THAT IT DID NOT FALL WITHIN THE SCOPE OF HIS CRIMINAL CONVICTION OR CONDITIONS OF CONFINEMENT WHEN PRISON OFFICIALS IMPEDED HIS ABILITY TO RESPOND TO HIS WRONGFUL DEATH SUIT RUNS CONTRARY TO STANDING SUPREME COURT PRECEDENTS AND OTHER FEDERAL CIRCUITS AND COMES INTO CONFLICT WITH ITS OWN RULINGS	8,
MULTIPLE SEARCHES OF THE PETITIONER'S PERSON WHILE UNDER CONSTANT SUPERVISION WAS UNREASONABLE EXCESSIVE AND VIOLATED HIS RIGHTS UNDER THE FOURTH AMENDMENT	16,
B. SEALED SEARCH REGULATIONS	20,
EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES WARRANTED A TOLLING OF THE STATUTE OF LIMITATIONS AGAINST WEXFORD HEALTH SOURCES	22,
CONCLUSION	26,

TABLE OF CONTENTS

U.S. District Court Opinion	Appx. A1,
Fourth Circuit Unpublished Opinion. Appx. B,
Fourth Circuit Unpublished Order Opinion Appx. C,
Fourth Circuit Order denying Petition For Rehearing en Banc (December 12, 2023), Appx. D,
Wexford Motion & Exhibit 5, Filed Under Seal.	Appx. D 3,
U.S. District Court Memorandum Opinion (July 26, 2022) Appx. E,
U.S. District Court South Carolina Published Report and Recommendation Caselaw Appx. F,
U.S. District Court South Carolina, Order Adopting Report & Recommendation Caselaw	Appx. F8,
Plaintiff's Civil Complaint Appx. G,
Plaintiff's Adjunct or Adjoining Verified Civil Complaint	Appx. G 8,
DOC Respondents Declaration (Sept. 7, 2021) Appx. H,
Fourth Circuit Order recalling Mandate (Dec. 29, 2022)	Appx. 11,
Fourth Circuit Order Consolidating Appeals, Case #22-6968 & #23-6232; (June 22, 2023) Appx. 12,

TABLE OF AUTHORITIES

Cases:

<u>Bell v. Wolfish</u> , 441 U.S. 520 99 S.Ct. 1861, (1979)	II, 18, 21,
<u>Bono v. Saxbe</u> , 620 F.2d 609 (7Th Cir. 1980)	18,
<u>Bounds v. Smith</u> , 430 U.S. 817, 97 U.S. 1491 (1977).	II, 10, 11, 12,
<u>Casey v. Lewis</u> , 518 U.S. 343 116 S.Ct. 2174 (1996)	II, III, 10, 11, 12, 14,
<u>Chamber v. Baltimore & Ohio Railroad Co.</u> , 207 U.S. 142, 28 S.Ct. 34 (1907)	10,
<u>Chappell v. Rich</u> , 340 F.3d 1279 (11Th Cir. 2003)	10,
<u>Chavers v. Abrahamson</u> , 803 F.Supp. 1512 (E.D. Wis. 1992)	14,
<u>Covino v. Patrissi</u> , 967 F.2d 73 (2d Cir. 1992)	18,
<u>Cruz v. Mappa</u> , 773 F.3d 138 (4Th Cir. 2014)	23,
<u>Foster v. Lake Jackson</u> , 28 F.3d 425, (5Th Cir. 1994)	9,
<u>Green v. Johnson</u> , 515 F.3d 290 (4Th Cir. 2008)	25,
<u>Griffin v. Illinois</u> , 351 U.S. 12, 76 S.Ct. 585 (1956).	11,
<u>Harris v. Hutchinson</u> , 209 F.3d 325 (4Th Cir. 2000)	23, 24,
<u>Hodges v. Stanley</u> , 712 F.2d 34 (2d Cir. 1983)	18, 20, 21,
<u>Holland v. Florida</u> , 130 S.Ct. 2549 (2010)	25,
<u>Hurley v. Ward</u> , 584 F.2d 609 (2d Cir. 1978)	18,
<u>Jean-Laurent v. Wilkinson</u> , 540 F.Supp. 2d 501 (S.D.N.Y. 2008).	17, 18,
<u>Jennings v. City of Stillwater</u> , 383 F.3d 1199 (10Th Cir. 2004)	9,

<u>John L. v. Adams</u> , 969 F.2d 228 (6Th Cir. 1992)	12,
<u>Johnson v. Avery</u> , 393 U.S. 483, 89 S.ct. 747 (1969).	11,
<u>King v. Federal Bureau of Prisons</u> , 415 F.3d 634 (7Th Cir. 2005)	10,
<u>Les v. Gardinez</u> , 2012 U.S. Dist. Lexis 5714	11,
<u>N.G. v. Connecticut</u> , 382 F.3d 225 (2d Cir. 2004)	20,
<u>Pace v. DiGiglielmo</u> , 544 U.S. 408 125 S.Ct. 1807 (2005)	23,
<u>Raplee v. United States</u> , 842 F.3d 328 (4Th Cir. 2016)	23,
<u>Rouse v. Lee</u> , 339 F.3d 238 (4Th Cir. 2003)	23,
<u>Snyder v. Nolan</u> , 380 F.3d 279 (7Th Cir. 2004)	11, 12,
<u>Turkmen v. Hasty</u> , 789 F.3d 218 (2d Cir. 2015)	20,
<u>Vasquez v. Williams</u> , 2015 U.S. Dist. Lexis 105913.	20,
<u>Wheeler v. Beard</u> , 2005 U.S. Dist. Lexis 9778 (3d Dist.)	11,
<u>Wolff v. McDonnell</u> , 418 U.S. 539 94 S.Ct. 2963 (1974)	11,
<u>Young v. Wall</u> , 2010 U.S. Dist. Lexis 21108 (1st Cir.)	11,

VIII.

PETITION FOR WRIT CERTIORARI

The petitioner Brandon Roberts, acting pro se, do respectfully petitions this court for a Writ of Certiorari to review a Judgment entered by the United States Court of Appeals for the Fourth Circuit. In the matter of Roberts v. Wexford Health Sources, et al., No. 22-6968, No. 23-6232 (Harris, Quattlebaum and Keenan)

OPINIONS BELOW

The memorandum opinions of the United States District Court for the Northern District of Maryland granting summary judgment is reported, and cited as 2023 U.S. Dist. Lexis 23850; a copy of which is attached as (Appx. A). The United States Court of Appeals for the Fourth Circuit affirming the District Court's decision is Unreported per curiam, and cited as 2023 U.S. App. Lexis 19770; and a copy is attached hereto as (Appx. B).

JURISDICTION

The Judgment by the United States Court of Appeals for the Fourth Circuit was entered on August. 1, 2023. A copy of the order is attached as (Appx. C). The order denying the petition for rehearing was entered on December 12, 2023, a copy of the order is attached as

(Appx. D). Accordingly, the court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

42 U.S.C. § 1983

Every person who under the color of any statute ordinance, regulation, custom, or usage of any state or territory of the District of Columbia, subjects, or cause to be subjected, any citizen of the united states or other persons within the Jurisdiction thereof to the deprivation of any Rights, Privileges, or immunities secured by the Constitution or Laws, shall be liable to the party injured in an action at law, suit or equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity. Injunctive relief shall not be granted unless a Declaratory Decree was violated or Declaratory Relief was unavailable. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

PLRA 42 U.S.C. § 1997e(a)

No action shall be brought with respect to prison

conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. § 1983), or any other Federal Law, by a prisoner confined in any jail, prison or other correctional facility until such administrative remedies as are available are exhausted.

South Carolina Wrongful Death Statute

S.C. Code Ann. § 15-51-10: Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act would, if death had not ensued, have entitled the party injured to maintain an action and recover damages the person who would have been liable shall be liable to an action for damages, notwithstanding the death of the person injured.

Amendment I, United States Constitution

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right to people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV, United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable

searches and seizures, shall not be violated, and no warrants shall be issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V, United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subjected for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner, asserts that he sustained a fracture/injury, to his left risk and was scheduled by medical to be transported to Bon Secure Hospital in Baltimore City, for additional X-rays and consultation concerning the type of treatment that would be administered. The hospital visit was set on or about Dec. 16, 2015. DOC policies at the time prevented prisoners' from taking legal documents or other items with them, and housed prisoners' at other prisons' either over night or throughout the weekends during medical trips. That being said, the date the petitioner was scheduled to go to the hospital apparently clashed with the time period he had to file an opposition in a Wrongful death & Survival suit, on his late father's behalf pending in the U.S. District Court for South Carolina, (Charleston Division), where he needed to carry his legal documents with him.

However, the petitioner determined it was best to cancel the hospital visit to address the civil suit. Medical was notified that the petitioner canceled the trip due to his pending court proceedings. The following day, medical staff called a meeting, where they conversed with the warden to work a solution. Apparently, medical and the prison warden had agreed to make arrangements for Roberts, to be transferred back to NBCI after the hospital visit. The agreement began to fall apart half way into the transport when prison transport officers stop at MCTC facility in hagerstown and got into an argument with medical staff about returning him to NBCI. Apparantly, transport officers informed Roberts, that they was not bringing him back. Medical in ordered transport drive him there and back. Roberts, at this time was attempting to turn back, by having transport drive him back to the prison, when medical came out and forcefully reassured him in transport presence that they was ordered to bring him back after the hospital visit. Roberts, proceeded to the hospital, and on the way their transport officers informed him that they would drop him off and leave. The petitioner, then advised them that if he is not returned he would file a complaint

against all parties involved. Consequently, Roberts, was transferred to JCI, where he remained over the weekend, and filed an internal complaint regarding the matter. Transport returned on Dec. 21, 2015, to pick him up. Roberts, was then strip searched and placed in the transport van at JCI, they then made a stop at MCTC, for no apparent reason, but to hangout with other colleagues for about 10 minutes in admission, while Roberts, was placed in a holding cell nearby in their presence and strip searched again, on the way back out. He was driven back to his facility where he was searched a third time with transport officers present, and eventually released to head back to his housing unit. The petitioner, consequently was unable to meet the deadline, being that he was sent back on the day the pleadings was due to be filed before the federal court in a Wrongful Death suit in the state of South Carolina. The case was subsequently dismissed as a result.

REASONS FOR GRANTING PETITION

- A. There is a Conflict With the Court of Appeals For the Fourth Circuit and Other Courts on the Questions Presented

**The Dismissal of Petitioner's Claim for
Denial of Access to the Court on the Basis
That it did not fall Within the Scope of His
Criminal Conviction or Conditions of
Confinement When Prison Officials Impeded
His Ability to Respond to His Wrongful
Death Suit Runs Contrary to Standing Supreme
Court Precedents and other Federal Circuits
& comes into Conflict with its own Rulings**

On July 26, 2022, the U.S. District Court for Maryland entered an order granting summary judgment for the defendants on denial of access to court claims. In its conclusion the court determined that the [suit in question] pertains solely to the death of the petitioner's father and did not qualify as a denial of access to the court, because its neither a challenge to his... [conviction or conditions of confinement]. However, the district court's analysis in this instance, focused solely on the type of suit filed per se, as oppose to the prerequisite that constitutes an access to the court violation. The U.S. Supreme Court in Harbury, supra, at 413-14, explained this, setting forth a two prong criteria to establish a denial of access to the courts. First, are the "forward looking claims," where an official's actions frustrates a plaintiff's ability to bring a suit at the present time. Next, is a "backwards looking claim," which arises when a party asserts that a specific claim "cannot be tried, or tried with all the evidence

[being that past official action] caused the loss of inadequate settlement of a meritorious case. "Citing, Foster v. Lake Jackson, 28 F.3d 425, 429 (5Th Cir. 1994); Jennings v. City of Stillwater, 383 F.3d 1199, 1208 (10Th Cir. 2004). Apparently, the court cited Harbury, in the context that the petitioner did not prove he suffered actual injury, because he has not adequately raised a claim for denial of access to the courts. (Appx. E-35). Here, the district court toured with the respondents' in their argument that the Wrongful Death Litigation went beyond the scope of the right to access the court, stating that the petitioner never respond[ed] to those parts of their argument that relates to the nature of the litigation. Despite these assertions, the attached exhibits the respondents filed from the South Carolina case in and of itself stated the nature of the litigation. Specifically, the petitioner charged South Carolina prison officials and their Medical Service Dept., with gross negligence & reckless disregard to his father's health & medical needs, deliberate indifferences, and failing to properly treat his conditions which gave rise to his demise. A copy of the respondents' exhibit 1, is set forth in (Appx. F). Clearly, the Wrongful

Death Suit commenced on his fathers behalf goes to the core of his health and other conditions while confined in their care and custody. See Chappell v. Rich, 340 F.3d 1279 (11Th Cir. 2003)(Upholding denial of access to court claim because it did not prevent him from filing a Wrongful Death Suit), Friedl v. City of New York., 210 F.3d 79, 86 (2d Cir. 2000)("holding a work release prisoner's administrative application for public assistance which is provided for by federal statute, was constitutionally protected"); King v. Federal Bureau of Prisons, 415 F.3d 634, (7Th Cir. 2005)("Bivens Claim, that prison officials violated his due process rights by arbitrarily preventing him from promptly contacting his stock broker to sell his stocks, was not frivolous" for PLRA provisions). Ultimately, whether the court considers the Wrongful Death claims to fall within the boundary of access to the courts, nothing in Lewis, or Bounds, limits a prisoners' ability or rights to present other constitutional claims. The right to defend oneself in a civil suit have been a topic of Judicial discussion long before the articulation of the right to access the courts. In Chambers v. Baltimore & Ohio Railroad Co., 207 U.S. 142, 148, 28 S.Ct. 34 (1907), this

Supreme Court declared that "the right to sue and defend in the courts is alternative in force." The First Amendment Right to petition the government includes, the right to file other civil actions in the court that have a reasonable basis of law or fact. Snyder v. Nolen, 380 F.3d 279 (7Th Cir. 2004)(per curiam). This and a line of other pre and post Bounds, & Lewis, cases. See Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969)(invalidated a Tennessee prison regulation that prohibited [prisoners'] from advising or assisting one another...); Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974)(invalidated regulations that prevented prisoners' from assisting one another in preparing civil rights complaints); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956)(invalidated state rules that required indigent criminal defendants to pay for trial transcripts or pay other fees necessary to have their appeals or habeas petitions heard); Lee v. Gardinez, 2012 U.S. Dist. Lexis 5714 ("Inflated Prison Commissary Prices"); Wheeler v. Beard, 2005 U.S. Dist. Lexis 9778 (3d Dist.)(same); Young v. Wall, 2010 U.S. Dist. Lexis 21108 (1st Cir.)(property interest in money). More importantly, this court cautioned that "states may not erect

barriers that impede the right of access to incarcerated persons in all other types of civil actions." John L. v. Adams, 969 F.2d 228, 235 (6Th Cir. 1992), cited in Snyder, supra, at 290-91 (7Th Cir. 2004)(per curiam). Consequently, the court then doubled down on the error by the reliance on Lewis, for purposes of stating that a prisoner claiming a Bounds, violation must show actual injury derived from the doctrine of standing, as a requirement. (Appx. E-34). However, the court's analysis has no barring on claims concerning interference. Specifically, the discussion in Lewis, is centered around the "meaningful assistance" aspect in Bounds, as oppose to interference. Supra, at 355.

Apparently, the district court confused the Bounds, assistance in lieu of cases regarding interference, or probably considered both the same, when the issues are seperate.

That being said, the petitioner claimed that the defendants had a policy that prohibited prisoners' from carrying legal documents or any other items with them on hospital visits, and had initially canceled the trip because he had a pending civil case he needed

to address during that same period. (Appx. G-3) Medical then convened a meeting with the warden to arrange for the petitioner to be transferred to the hospital and back so he can address his pending case. The petitioner agreed on the condition that he would be brought straight back and not housed at another facility for the weekend. Halfway through the trip transport stopped at MCTC facility and got into an argument with medical stating that they was not going to bring him back. (Appx. G-3) Medical orderd them to return the petitioner, transport again refused. At that point the petitioner attempted cancel the trip back to the facility when medical came and assured him that he would be returned and to ignore transport officers. The petitioner, then proceeded to the hospital. (Appx. G-3) After he was dropped off at the hospital transport left. Later that evening other transport officers pick the petitioner up and took him to JCI, (another facility), where he remained throughout the weekend. He then filed a complaint with JCI officials informing them that he were to return to his facility, and needed his legal documents to address a pending civil case before the due date, but to no avail. (Appx. G-3) The petitioner, informed them

to assist him in contacting the court, again to no avail. He was sent back to his facility on the date the pleadings was due before the court. the petitioner could not recoup sufficient time to complete his opposition and make amendments to his complaint to add the executrix and others necessary to sustain the suite and ship to the court to thwart the dismissal. (Appx. G-4) The defendants actions shattered any potential grounds he had that was essential to an appeal rendering the same futile. Here, all of the defendants frustrated and/or impeded his ability to access the courts. Chavers v. Abrahamson, 803 F.Supp. 1512, 1514 (E.D. Wis. 1992)(Holding that deprivation of legal materials denies court access only if they are "crucial or essential to a pending or contemplated appeal"). The court should note, that Lewis, was not intended to give prison officials a free pass to interfere with other types of cases besides criminal and prison conditions. By contrast, their are condition of confinement cases that are similar in nature, that takes on a different form and fall slightly outside traditional norms, but are constitutionally protected. See Friedl v. City of New York, 210 F.3d 79, 86 (2d Cir. 2000)(stating that "not

every challenge to the conditions of confinement" takes on the form of a civil rights action;" holding a work release prisoner's administrative application for public assistance, which is provided for by federal statute, was constitutionally protected). In this instance, this court can carve out an area to consider the matter constitutionally protected and/or on a case by case basis, where as in this case, the suite was related to conditions of confinement, which caused the death of the petitioner father. The respondents, created a policy that prohibited prisoners from carrying legal work or any other documents with them on hospital visits. The petitioner, at the time decided to cancel the hospital trip to avoid problems litigating the case due to the respondents policies. Apparently, the respondents insisted, by setting up a meeting with the warden to accomodate him, for his return to the facility, so he could meet his court date, his hospital visit was also rescheduled. The petitioner agreed and proceeded to the hospital only for them to renege halfway through the drive. The court should consider that when the petitioner attempted to abort the trip he was reassured by medical staff that they would return him only to be

deceived again. At this point he was sent to another facility where he slept for the weekend, and was deprived of his legal papers and any other methods to notify the district court in South Carolina for a stay or extension do to his current status. Such actions deliberately frustrated and interfered with the petitioners ability to access the court. Christopher v. Harbury, 536 U.S. 403, 414, 416n.13, 122 S.Ct. 2179 (2002). The court can also look at the fact that the respondents perpetuated encouraged instigated and caused the violation to be carried out, when the petitioner took every measure to avoid it.

**Multiple Searches of The Petitioner's
Person While under Constant Supervision
was Unreasonable Excessive and Violated
His Rights under the Fourth Amendment**

In the case at bar, the petitioner asserts in his complaint that when transport came the following week he was strip search multiple time while he remained under constant supervision. First when transport pick him up from JCI, then again at MCTC, when prison transport stop over for no specific reason but to hangout for 5-10, minutes and switch drivers. The petitioner at the time was under constant supervision and no where around other prisoners. He was simply placed in a holding cell within admission in the

presence of prison officials and the transport van. Some minutes later he was placed back in the van and headed to his housing facility at NBCI. When he returned he was strip searched a third time while in the presence of the same transport officials. (Appx. G-4). The petitioner asserts that the multiple searches of his person was excessive and unreasonable, because he was under constant supervision by prison officials. Jean-Laurent v. Wilkinson, 540 F.Supp. 2d 501, 510 (S.D.N.Y. 2008), denied in part. The respondents did not refute the claims, but only attest to facts of the policy in place when prisoners are held over night at these facilities they dub as "hubs," to attend court or hospital visits. (Appx. H-2). This argument however, never address the purported searches. More importantly, the petitioner never spent the night at any facility on his way to the hospital visit. The district court acknowledge this and deferred summary judgment without prejudice on the basis that the respondents "[substantively failed] to address... the searches, but allowed for them to supplement their response if they wish to challenge the claims. (Appx. E-37). The court erred in this aspect, because the respondents initial response about

the policy to strip search prisoners' sleeping overnight was all of the facts they have attested to. The courts have held that the "Fourth Amendment requires all searches conducted within a prison, including strip searches, to be reasonable." Hodges v. Stanley, 712 F.2d 34, 35-36 (2d Cir. 1983)(citing Bell v. Wolfish, 441 U.S. 520, 558, 99 S.Ct. 1861 (1979)). "A strip search is unconstitutional if it is unrelated to any legitimate penological goal or if it is designed to intimidate, harass or punish. e.g., Covino v. Patrissi, 967 F.2d 73, 80 (2d Cir. 1992)(citing Hurley v. Ward, 584 F.2d 609 (2d Cir. 1978); & Bono v. Saxbe, 620 F.2d 609, 617 (7th Cir. 1980). The respondents, can't justify the search, because the petitioner was not there involved in any altercations or some sort of shake down etc, nor was he a resident being housed at either of the two facilities at the time that would warrant a strip search, nonetheless, multiple searches! In Jean-Laurent, the plaintiff charged prison officials with civil rights violations stemming from a series of events that took place in response to a stabbing. Here, the plaintiff was subjected to a routine strip search during a shake down of the unit. After the search he was

instructed to stand across from the cell to observe his cell searched and to hold his mattress off the floor. The plaintiff refused, claiming a spinal abnormality, but when he could not produce medical notes to that affect, he was escorted to the hallway where he was ordered to kneel. He was then verbally abused after observing officers forcefully subdue another prisoner in the hallway stairwell after hearing chatter from other officers to break his legs. The plaintiff was then forced to his feet by his collar and slammed up against the wall. He was then taken to the stairwell and instructed to strip a second time, he was then verbally abused while naked, then struck several times in the face and hemmed against the wall. The court in denying the defendants motion for summary judgment, stated that because the plaintiff asserted that he was "under constant supervision by prison officials" from the time of the first strip search and had no opportunity to acquire contraband during the supervised period, there is no legitimate penological purpose for the second strip search. Moreover, the court noted the verbal and physical abuse that allegedly accompanied the second strip search could support a reasonable findings that

the search was designed to harass and intimidate. *Id.* at 510. The second circuit also affirmed at a prior date, that "a strip search policy" is "not reasonably related to legitimate penological interest" where [individuals]" were strip searched when there is no possibility that they could have obtained contraband." Turkmen v. Hasty, 789 F.3d 218, 260 (2d Cir. 2015); Vasquez v. Williams, 2015 U.S. Dist. Lexis 105913. See also, N.G. v. Connecticut, 382 F.3d 225, 233-34 (2d Cir. 2004)(holding that subsequent strip searches at another facility are unreasonable where an earlier strip search was conducted immediately before the individual left the first facility, and the individual was transferred to the second facility while under constant supervision); (citing Hodges, 712 F.2d at 35). Consequently, the defendants didn't provide any purpose for the multiple searches, what was the objective or security concern, when in fact, the petitioner was just returning from a hospital visit.

B. Sealed Search Regulations

The respondents, went on and amended their summary judgment motion challenging the search by filing sealed regulations. Consequently, the petitioner was not privy to the regulations and could not oppose the

contents. (Appx. D 3-5) That being the case the regulations should have been stricken, as it was never available for public view, or any way to contest or defend against the contents and therefore, violates due process. cf. Hodges v. Jones, 873 F.Supp. 737, 745-46 (N.D.N.Y. 1995)(holding that prisoner disciplined under rule not posted that was announced on day he was not present supported due process violation). More importantly, the respondents reiterated the same argument concerning the policy and did not address the petitioners claims. Moreover, the regulations only puts forth required guidelines for the administration to utilize and follow, but cannot determine or cure any abuse or violation, and is left to the decision makers to decide what's abusive. The district courts findings that the search was reasonable and justified under Bell, supra, was improper unfortunate and goes contrary to several circuits and standing precedents. Especially, where a prisoner remains under constant supervision and is subjected to repeated strip searches. What would be a determinative point to be unreasonable, excessive, an abuse or design to harass or intimidate. In any event, summary judgment should not have been granted here.

**Extraordinary or Exceptional Circumstances
Warranted a Tolling of The Statute of
Limitations Against Wexford Health Sources**

In this instance, the Wexford respondents moved to have the case disposed of as untimely. The district court granted the dismissal. The court reasoned, that because there was no indication that the petitioner raised any [acts] or occurrences that took place after December 30, 2015, and he didn't appeal the district court's decision in the Wrongful Death case, the claims against the respondents accrued on the date the South Carolina case was dismissed and the petitioner's three years period in which to bring the case started on that date. The court, concluded that the petitioner had until December 30, 2018, to bring the case, but [due to the] date falling on a weekend and... the clos[ing] of the court on December 31, 2018, the suit filings deadline would have extended up until, and including January 2, 2019, when the [court] clerk's office reopened. (Appx. E-23) Applying the mailbox rule, the court rejected the petitioner's claims that suggests an exhaustion requirement date of January 27, 2017, for the respondents, being that there is no administrative exhaustion requirements applicable to Wexford which

is a medical provider under contractual agreement with the DOC. However, the petitioner does not dispute the exhaustion process as it relates to them per se, but only to the extent that a tolling of the time limits was necessary due to the allegations raised within the complaint that prevented the petitioner from filing the suit singularly, without incorporating the DOC respondents. The courts have held that equitable tolling is available only in "those rare instances where due to circumstance external to the party's own conduct it would be unconscionable to enforce the limitation period against the party and gross injustice would result. Rouse v. Lee, 339 F.3d 238 (4Th Cir. 2003)(en banc)(internal quotation marks and citations omitted); "A plaintiff is entitled to equitable tolling only if they show that they have pursued their rights diligently and extraordinary circumstances prevented them from filing on time. Raplee v. United States, 842 F.3d 328, 333 (4Th Cir. 2016); and the plaintiff bears the burden of establishing the elements of equitable tolling. Pace v. DiGuglielmo, 544 U.S. 408, 418, 125 S.Ct. 1807 (2005); Cruz v. Mappa, 773 F.3d 138, 145 (4Th Cir. 2014)(quoting Harris v. Hutchinson, 209 F.3d 325, 330

(4Th Cir. 2000). The petitioner, had to exhaust all internal administrative remedies against the prison officials, because the bulk of the violation was committed by the DOC respondents. Wexford shared and/or assisted in the violation. Here, the actual events was not sufficient against Wexford to state sufficient claim for liability singularly, being that they were not the actual providers for transport or housing the petitioner when he was taken to the hospital, but are simply medical providers.

That being said, a review of the charging factors against Wexford is that they scheduled for the petitioner to be taken to the hospital, the petitioner canceled because of a pending case he had to respond to and was prohibited from taking legal documents with him. Wexford then scheduled a hearing with the warden to address his concerns. He was informed by Wexford that the warden arranged to have the petitioner brought straight back from the hospital. The petitioner agreed and took the trip. The remaining claims alleges only that Wexford and DOC had a heated exchange of words concerning the petitioner's return from the hospital. Wexford reassured him that he would be brought back from the hospital, DOC transport

stated they wasn't going to bring him back. Here, the petitioner took the position that the respondents Wexford, mislead him, aided and provided tacit support to the DOC respondents. However, standing as is, the claims are insufficient to charge Wexford in isolation without more, as the belly of the complaint is hollow, whereas, the actual violations that was carried out lies with the DOC respondents. Therefore, it was necessary for a tolling of the time limitations against Wexford, to allow all of the respondent to travel together, as they both shared in impediment. Moreover, charging the respondents together would have allowed for the discovery of facts, as to who actually made the arraignments, names of medical staff or prison officials and what role they played concerning the pickups and drop-offs of the petitioner, and who was ultimately liable if so. In any event, do to the nature of the allegations against Wexford, he was prevented from moving forward with the suit, within the time limitations. See Holland v. Florida, 130 S.Ct. 2549, 2562 (2010)(holding extraordinary circumstances prevented a timely filing[s]); Green v. Johnson, 515 F.3d 290, 304 (4Th Cir. 2008).

It appears that the Fourth Circuit Court of Appeals decision to affirm seems to focus solely on a prior appeal filed in Case. #22-6968. The appeal was from the district court's denial of a request for discovery. That order was sent back from the Appeals Court as being issued prematurely. (Appx. I-1). Both appeals were since consolidated on June 22, 2023. (Appx. I-2 & 3) Consequently, the Fourth Circuit's decision does not give an analysis or even mentions the strip search or court access claims initially raised, so it is unclear which appeal the court's decision was based on or if they were even aware of the matter. In any event, Appeal Courts ruling in affirming the dismissal of Wexford and/or the case as a whole against all of the respondents, was improper and conflicts with the majority of precedents and rulings on the issues.

CONCLUSION

WHEREFORE, the petitioner respectfully requests that the petition be GRANTED for all reasons articulated herein.

Submitted by,

A handwritten signature in black ink, appearing to read 'Brandon Roberts', is written over a horizontal line.

Brandon Roberts: #350242

Petitioner/Paralegal

14100 McMullen Hwy, SW;

Cumberland, MD 21502-5777

DATED: May 1, 2024

Cc: