No. 24A3

ORIGINAL

24-5407

IN THE

SUPREME COURT OF THE UNITED STATES

DARNELL ANDERSON — PETITIONER
(Your Name)

vs.

LEROY CHANEY — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Sixth Circuit Court OF Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darnell Anderson
(Your Name)

USP Tucson / P.O. Box 24550
(Address)

Tucson, AZ 85734
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Court of Appeals erred when it determined that petitioner's Eighth Amendment claim of deliberate indifference against a federal corrections officer, presents a new context for Bivens purposes.

2. Whether the Court of Appeals erred when it affirmed the district court's grant of summary judgement to the federal corrections officer, and dismissed the petitioner's complaint.

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

- Anderson v. Chaney, No. 6:20-cv-00118-DCR, U.S. District Court for the Eastern District of Kentucky. Judgement entered Feb. 22, 2023.

- Anderson v. Fuson, 2022 U.S. Dist. LEXIS 24380, U.S. District Court for the Eastern District of Kentucky entered Sept. 1, 2022.

- Anderson v. Fuson, 2022 U.S. Dist. LEXIS 243364, U.S. District Court for the Eastern District of Kentucky. Judgement entered July 14, 2022.

- Anderson v. Chaney, 2021 U.S. Dist. LEXIS 72064. U.S. District Court for the Eastern District of Kentucky. Judgement entered April 14, 2021.

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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 Anderson v. Fuson, 2024 U.S. App LEXIS 2299; 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[ ] is unpublished.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 Anderson v. Fuson, 2023 U.S. Dist. LEXIS 70930; 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[ ] is unpublished.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 February 1, 2024.

[ ] 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: April 09, 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 August 22, 2024 (date) on June 28, 2024 (date) in Application No. 24 A 3.

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

This case involves Amendment VIII to the United States Constitution which provides that: excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

The Amendment is enforced pursuant to Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 91 (1971), which provides that: "in some circumstances, the victims of a violation of the Federal Constitution by a federal officer have a right to recover damages against the official in federal court despite the absence of any statute conferring such a right."

STATEMENT OF THE CASE

Darnell Anderson's allegations surround an incident that occurred on August 11, 2019, while he was incarcerated at USP McCreary located in Pine Knott, Kentucky. R9. [Amended Complaint at 97-98]. Anderson alleges that during a cell rotation that occurred in the Special Housing Unit (SHU) at approximately 12:00 pm, federal corrections officers "fabricated an incident report to allege that [Anderson] assaulted "Officer Gabburd, and as a result, officers moved him to a different cell and placed him in ambulatory restraints" [R9 at 2-3]. Anderson further alleges that during application of the waist-chain, the unidentified officer's excessive use of force caused him to endure a significant amount of pain and physical discomfort. [RE: 35: Attachment C: handheld Camera];[R158-1: Deposition Testimony of Darnell Anderson]. Thus, Anderson states that he informed Respondent Leroy Chaney, the SHU Lieutenant, who was supervising this procedure, that the tightness of the waist-chain, was affecting his ability to adequately breathe. [Id; see also R9 at 2-3]. Anderson, however, claimed that Respondent Chaney failed to assess his medical needs. Id Instead, Anderson states that Chaney instructed the subordinate officers to escort him to cell 145 for housing. Id.

During this time, Anderson claims that he suffered a severe panic attack and shortness of breath due to the tightness of the waist-chain. [R1 Verified Complaint at 13-15]. Anderson further claims that he had also been prescribed a psychotropic medication (May of 2011) to treat symptoms related to an anxiety disorder.

Footnote 1: During the time Anderson was housed in the SHU at USP Tucson on November 02, 2022, negligent conduct by prison officials resulted in the loss of his personal property, including his legal material [R. 186: Notice to Defendants]. Consequently, Anderson, cannot precisely cite the pages of his deposition testimony or the video footage included in Record Entry 35: Handheld Camera.]

[R1 at 8-11]. Thus, Anderson contends that he obtained the assistance of several inmates who kicked their cell doors to alert federal officers that an "inmate in restraints" was "feeling light-headed and could barely breathe." [R1 at 13-14; R158-1 Dep. Testimony of Anderson].

At approximately 2:15 PM, Qualified Health Personnel - along with Officer Chaney- arrived, where a medical examination and restraints check was conducted. Id. Anderson claims that during examination of the waist-chain, health personnel informed Officer Chaney that she could "barely get a finger under the restraint." [R1 at 13-15; R158-1: Deposition Testimony of Anderson]. Nevertheless, Anderson states that Chaney failed to take corrective action and loosen the restraint. Id. Instead, Anderson claims Officer Chaney simply "looked at" him, and then exited the cell. Id. Anderson then states he was forced to remain confined under circumstances that caused him physical pain, and shortness of breath for 7.5 hours. Id.

Following the events that occurred at USP McCreary, Anderson states that he filed a sensitive administrative remedy request to the Mid-Atlantic Regional Offices, complaining about the "staff misconduct" committed by Officer Fuson, Officer Gabbard, and Lieutenant Chaney. [R1 at 3-4; Ex. B; Affidavit in Support of Facts]. Anderson claims that the sensitive request was given to the officer who collected the legal mail on Sunday, August 18, 2019. Id. Anderson further claims that during a cell search that occurred in "October 2019," his legal material, along with an additional copy of his sensitive request was confiscated by

federal officers. [R1 at n.2]. Shortly thereafter, Anderson was transferred from USP McCreary on December 5, 2019. [R.32-3 at 53 Memorandum from Anderson's Case Manager].

After spending several in transit, Anderson states that he arrived at the USP Atwater on January 20, 2020. Id. Anderson then claims that upon receiving his personal property one week later, he filed a BP-11 appeal to the central office. [R1 at Ex. E: [Administrative Remedy Appeal]. Upon review, Anderson was informed that there was "no record" of the sensitive request being filed with the Mid-Atlantic Regional Office. [R1 at Ex. F: Rejection Notice]. Nevertheless, Anderson was instructed to start the "staff misconduct appeal" at USP Atwater. Id.

Anderson states that he filed a BP-9 administrative remedy request at USP Atwater. [R1 at 3-7; Ex. G: Request For Adminstrative Remedy]. Anderson, however, claims that the administrative remedy coordinator failed to process the BP-9 request pursuant to BOP policy. Id. Instead, Anderson states that the remedy coordinator returned the BP-9 Request to the Unit Counselor, and incorrectly instructed him to file the BP-9 request to the Western Regional Office. Id.; [see also R1 at Ex. H; Rejection Notice; R47: Ex. A-3: Warden Email].

Anderson eventually filed this lawsuit against Officer Fuson, Officer Gabbard, and Officer Whitaker on claims that the defendant's executed excessive force against him in violation of the Eighth Amendment. [R1; No. 9]. Anderson further argued that Defendants Chaney and Posey had been deliberately indifferent to his serious medical needs during his time in restraints. Id.

Anderson claims that each of the defendants acted "maliciously and sadistically" and demanded $900,000 in total damages. Id.

The District Court previously granted, in part, defendant's motion to dismiss Anderson's claims against defendants Whitaker and Posey because Anderson failed to fully exhaust his administrative remedies with respect to these defendants. [R52: Memorandum Opinion Order; Page Id# 958-59]. The district court, however, denied the motion with respect to the claims against defendants Fuson, Gabbard, and Chaney, finding there was "a genuine factual dispute regarding whether Anderson properly and fully exhausted his administrative remedies" with respect to these defendants. Id. The district court further explained that it could not "determine whether this case presents a new context that "is different in a meaningful way from previous Bivens cases," and to make that determination, "needed to consider whether the BOP's Administrative Remedy Program (ARP) was "functionally available" to Anderson." Id. The matter was then referred to the United States Magistrate Judge for further proceedings, including the oversight of discovery proceedings, and the preparation of proposed finding of fact and recommendation with respect to any dispositive motions. Id.

After lengthy discovery, the three defendants filed a motion for judgment on the pleadings, or in the alternative, motion for summary judgment. [R158: Motion at 1729]. The magistrate judge also denied Anderson's discovery-related motion s that were filed prior to the close of discovery [R157: Order].

Afterwards, Anderson filed several motions informing the

district court that he was without sufficient resources to conduct the research of the Supreme Court's recent decision in Egbert v. Boule.[R160: R166]. Anderson also filed a Motion for Continuance informing the district court that he had not been able to obtain discovery-material needed to refute defendants dispositive motion. [R173]. Lastly, during the time period of November 17, 2022 - January 3, 2023, Anderson filed several notices informing the district court that during a recent placement in SHU on November 2, 2022, negligent conduct by USP Tucson employees resulted in the loss of his personal property, which included, discovery material needed to refute defendants dispositive motion. [R177: Motion to Object; R180: Motion for Extension; R183: Notice to Clerk's Office; R184: Notice to Chief Judge; R185: Notice to Court; R186: Notice to Defendants].

On January 26, 2023, the magistrate judge issued his report and recommendations that the district court grant summary judgment to the defendants. [R192: Report and Recommendation at 2023]. Therein, the magistrate recommended Anderson's claims be dismissed as they presented a new context for a Bivens action, and special factors counseled hesitation in extending a Bivens remedy to Anderson's claims. [Id. at 2027-33]. In the alternative, the magistrate judge's reported adopted the same and granted the summary judgment motion. [R193: Opinion and Order at 2039; R194]. On February 13, 2023, Anderson timely filed objections to the magistrate judge's report and recommendation. [R195: Objections at 2048]. First, Anderson argued that this magistrate judge erred when it recommended dismissal of his case

without affording him a reasonable opportunity to file a response to the motion for summary judgment. [Id. at 2049-50]. Morever, Anderson argued that the magistrate judge failed to demonstrate that his claims against respondent Chaney were "different in a meaningful way" that the deliberate indifferent context in Carlson v. Green. [Id. at 2050-58].

Anderson further argued that the magistrate judge failed to identify any special factors counseling against a limited expansion of Bivens, with respect to the excessive force claims against defendants Gabbard and Fuson. Id. Lastly, Anderson argued that the magistrate judge erred when it determined that the BOP's ARP was an avenue of relief available to Anderson. Id.

On February 22, 2023, the district court overruled Anderson's objections to the Report and Recommendation, indicating that it had considered his objections, and they did "not change the undersigned's previous analysis and conclusions." [R196: Order at 2062]. The district court explained that "Anderson's claims are not among those to which the Supreme Court has extended Biven liability." [Id.]. Lastly, the district court determined that it was "unpersuaded" by Anderson's claims that "improper actions rendered the Administrative Remedy Program unavailable to him." [Id.]. Thereafter, on March 10, 2023, under Rule 59(e), Anderson filed a motion to reconsider the district court's February 14, 2023, order adopting the magistrate judge report and recommendation. [R197: Motion at 2065]. In support, Anderson argued that the district court considered the Magistrate Judge Report and Recommendation (R&R) prematurely, without

allowing him time to file objections. [Id.]. The motion was denied via order dated March 13, 2023. [R198: Order at 2083]. Anderson then filed another motion for reconsideration on March 27, 2023, contending that the district court failed to determine whether his liberally construed complaint contained sufficient factual content respecting a viable Eighth Amendment claim of deliberate indifference. [R199]. Anderson further argued that the district court failed to demonstrate that the deliberate indifference claim against defendant Chaney was "different in a meaningful way" that Carlson. Id. Anderson also argued that given that defendant's dispositive motion was converted to a motion to grant summary judgment, he was not afforded a reasonable opportunity to present all relevant material in support of his claims against defendant Chaney. [Id.].

On March, 28, 2023, the district court denied Anderson's motion for reconsideration [R200]. Thus, Anderson timely noticed an appeal of the district court's grant of summary judgment in favor of defendants. [R201]. On appeal, Anderson argued that the district court erred in denying his motion for reconsideration [R199], granting summary judgment in favor of the defendants, and denying his motions for a discovery extension, appointment of counsel, and a fee waiver. See [Anderson's Opening Brief]. Anderson further conceded that given the Supreme Court's recent decision in Egbert v. Boule, the excessive force claims against defendant's Fuson and Gabbard presented a new context, but that there were no special factors counseling against a limited expansion of Bivens. Id. Moreover, on February 1, 2024, the Court

of Appeals affirmed the district court's order granting summary judgment to the defendants. See[Appendix A]. First, the Court of Appeals explained that the excessive force claims against defendants Fuson and Gabbard presented a new context, and there were special factors counseling against a Bivens expansion. [Id.]. The Court of Appeals also concluded that Anderson's deliberate indifference claim against Chaney "differ markedly" that the allegations in Carlson. [Id. at 5-6]. Lastly, the Court of Appeals determined that the presence of the BOP's Administrative Remedy Program was reason to "limit the power of the judiciary to infer a new Bivens cause of action." [Id. at 5].

On March 5, 2024, Anderson filed a Petition for Rehearing with a suggestion for En Banc Determination with respect to the Court of Appeals order. First, Anderson argued that the Court of Appeals "overlooked or misapprehended specific facts and evidence" concerning his claims that 1) Chaney had been deliberately indifferent to his serious medical needs during his time in restraints; and 2) improper actions by federal prison officials rendered the BOP's ARP unavailable. [Id. at 2]. Second, Anderson argued that the Court of Appeals failed to consider his Rule 59(e) motion for reconsideration, under an de novo review, as required by Sixth Circuit precedent. [Id.]. Third, Anderson argued that the Court of Appeals failed to demonstrate that Anderson's deliberate indifferent claim against Chaney, presents a new context, within the meaning set forth in Egbert, and Ziglar. [Id. at 8-12]. On April 9, 2024, the Court of Appeals denied Anderson's petitions. [See Appendix C].

REASONS FOR GRANTING PETITION

A. The Court of Appeals Review of Anderson's Bivens Claim Conflicts with Controlling Authority of the Supreme Court

In this case, the central issue before this court focuses on whether Anderson's deliberate indifference claim against federal corrections officer Chaney, presents a new context that is "different in a meaningful way than previous Bivens cases." Egbert v. Boule, 596 U.S. at 492 (2022)(quoting Ziglar, 582 U.S. at 139-40). Consequently, this case presents a fundamental question of the interpretation of this Court's decision in Egbert. Notably, Egbert narrowed the scope of review in which an implied damages remedy can be filed against federal officers, pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 288 (1971). However, this Court's decision in Egbert continues to allow Bivens claims to be filed, under the Constitution, against officers of the Federal Bureau of Prisons, who display, "deliberate indifference" towards an inmate's "serious medical needs." Egbert (citing Carlson v. Green, 446 U.S. 97 (1976)). Thus, the questions presented are of great public importance because it affects prisoners housed in Federal penal and correctional institutions, "who must rely on prison authorities to treat their medical needs." See Estelle v. Gamble, 429 U.S. 97 (1976).

As mentioned above, for example, during Anderson's placement in ambulatory restraints. he informed respondent Chaney that the tightness of the waist-chain, secured around his abdomen area, -was affecting his ability to adequately breathe. [RE: 158-1:

Disposition of Anderson; RE: 35: Attachment C: Handheld Camera]. Indeed, Respondent Chaney, who was operating under the same legal mandate and the employees in Carlson, had an affirmative duty under the Eighth Amendment of the Constitution, to provide for the care of Anderson. See 18 U.S.C. 4042. Consequently, Chaney was required to assess Anderson's serious medical needs, which were clear and obvious, at this point. Id. However, officer Chaney failed to do so. [Id.]. Instead, he simply ignored Anderson's pleas, and instructed subordinate officers to place Anderson inside of cell 145. [RE: 158-1: Deposition of Anderson; RE: 9 at 2-3; RE: 35: Attachment C: Handheld Camera].

During this time, Anderson suffered a severe panic attack and shortness of breath. [R.1 at 13-15; RE: 9 at 2-3]. Consequently, Anderson obtained the assistance of several inmates who repeatedly kicked their cell doors to alert officers that an "inmate in restraints" was "feeling light-headed and could barely breath." Id.

In response, qualified health personnel, along with respondent Chaney, arrived where a medical examination was conducted. Id. During this time, health personnel specifically informed respondent Chaney that she could "barely get a finger under the restraint." Id. However, Chaney failed to take corrective action and loosen the restraint. Id. Instead, he simply "looked at" Anderson as he remained in distress, then exited the cell. Id. Consequently, Anderson was forced to remain confined under circumstances that caused physical pain and shortness of breath for 7.5 hours. Id; see also Carlson.

Moreover, the issues importance is further enhanced by the fact that the lower courts have seriously misinterpreted this Court's decision in Egbert. In Egbert, for example, the Supreme Court has explained that when considering whether a claim presents a new context - a factor in determining whether Congress is better equipped to create a damages remedy and previously the first step of the inquiry - the lower courts must consider whether the case is "different in a meaningful way from previous Bivens cases decided by this Court." Egbert (quoting (Ziglar, 137 S. Ct. at 1859). A case, for example, might differ in a "meaningful way" if it involves a "new category of defendants; a different constitutional right; or the presence of potential special factors that previous Bivens cases did not consider."

In this case, however, the district court failed to consider whether Anderson's claims against Chaney, presented a new context, that was "different in a meaningful way", than Carlson. Instead, the lower court relied upon a Sixth Circuit holding in Elhady v. Unidentified CBP Agents, 18 F.4th 880, 883 (6th Cir. 2021), which determined that: "When considering whether a claim arises in a new Bivens context,' "the context is new if it differs in virtually any way form the Bivens trilogy." [See Appendix B: R-196 at 1-3; Memorandum Order filed (Feb. 22, 2023)]. Ultimately, the district court misconstrued Anderson's claims against, Chaney, and determined that "Anderson's claims are not among those to which the Supreme Court has extended Bivens liability." Id.

On appeal, Anderson argued that the district court erred

when it denied his Rule 59(e), motion for reconsideration. [R.199]. [See Opening Brief at 9; see also Reply Brief at 5-6]. First, Anderson argued that the lower court erred when it failed to consider, whether his claims against Chaney, were "different in a meaningful way" than Carlson. Id. Second, Anderson argued that the district court erred when it failed to determine, whether his liberally construed complaint contained sufficient factual content, respecting a viable Eighth Amendment claim for deliberate indifference. Id. Nevertheless, during de novo review of Anderson's claim, the Court of Appeals determined that "Anderson's allegations" are "meaningfully different" from Carlson. [See Appendix A: Order at 4-5]. However, the lower court failed to cite any meaningful differences between Anderson's claim against Chaney, and the deliberate indifference context in Carlson. See Ziglar, 582 U.S. at 139.

In short, the Court of Appeals review of Anderson's case not only conflicts with this court's decision in Egbert, but also, every other circuit court that has properly applied the test in Ziglar. Thus, if undisturbed, the Sixth Circuit decision in Elhady - which has been overruled by Egbert - will stand as binding precedent within this circuit.

Lastly, in light of the Court of Appeals reasoning that Anderson's claims presents a new context, the lower court concluded there special factors counseling against a Bivens expansion. [See Appendix A: Order at 6]. However, given that the lower court has failed to demonstrate that Anderson's claims presents a new context, this special factors analysis has no

bearing in the present case. Even assuming arguendo that it is proper to file a response, Anderson reiterates that the courts below have failed to identify any special factors indicating the "judiciary is at least arguably less equipped than Congress to weigh the cost and benefits" of allowing Anderson's claims to proceed. [See Anderson's Opening Brief at 16-18].

In sum, the courts below have seriously misinterpreted both Egbert, and Ziglar, by failing to consider whether Anderson's claims presents a new context, that is "different in a meaningful way", than Carlson. Thus, this court should exercise its supervisory power and remand this case to the Court of Appeals so that appropriate consideration can be made with respect to Anderson's claim. See Supreme Court Rule 10(c).

B. The Court of Appeals Affirmance of Summary Judgment to Corrections Officer Chaney Constitutes A Significant Departure from the Federal Rules of Civil Procedure.

In essence, certiorari review by the Supreme Court "is not a matter of right, but of judicial discretion." See Supreme Court Rule 10(a). Thus, as relevant here, review is appropriate when "a United States court of appeals...has so far departed from the accepted and usual course of judicial proceedings...as to call for an exercise of this court's supervisory power." Id.

Summary Judgment is appropriate if no genuine disputes of material fact exists and if the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). "The moving party has the

initial burden of showing the absence of a genuine issue of material fact as to an essential element of the non-moving party's case." Bass v. Robinson, 167 F.3d 1041, 1044 (6th Cir. 1999). Once the initial burden is met, the non-movant must come forward with "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. 242, 256-57 (1986). In considering a motion for summary judgment, the court views all inferences drawn from the underlying facts in the light most favorable to the non-movant. Matsuhita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

On appeal, Anderson argued that the district court erred when it granted summary to defendants - which included Chaney - and dismissed his complaint.[2]. [See Anderson's Opening Brief at 5-6; 12-13]. In support of his argument, Anderson relied upon specific facts in his complaint; along with sworn deposition testimony, plus, video footage of the incident, to assert that during his time in restraints, respondent Chaney was deliberately indifferent towards his serious medical needs. Id. Consequently, Anderson was forced to remain confined under circumstances causing physical pain, and shortness of breath for 7.5 hours. Id.

Nevertheless, during de novo review of Anderson's claim, the Court of Appeals failed to view the facts and evidence - and all inferences drawn therefrom - in the light most favorably to Anderson. Consequently, the court's below misconstrued Anderson's deliberate indifference claim as a failure "to conduct a medical examination when his restraints were removed." [See Appendix A: Order at 5-6]. But contrary to the court's suggestion, Anderson

FOOTNOTE 2: On appeal, Respondent Chaney argued that the "district court properly granted summary judgment and dismissed Anderson's claims." [See Doc. 14: Page# 14: Brief of Defendants]. However, Chaney failed to satisfy his burden of citing parts of the records demonstrating "the absence of a material fact" with respect to Anderson's deliberate indifference claim. [Id.; see R.158 Dispositive Motion]. Likewise, defendants also failed to demonstrate that Anderson's deliberate indifference claims was "different in a meaningful way" than Carlson. ID.

has consistently maintained that Chaney was deliberately indifferent towards his medical needs during his time in restraints. [See Anderson's Opening Brief at 5-6; see also R.1 at 13-14; R.9 at 2-3; R.177: Motion to Object; R.190: Motion for Appointment of Counsel.].

Moreover, the statutory language of the PLRA provides that "no action shall be brought with respect to prison conditions under...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." See 42 U.S.C. § 1997e(a). An administrative remedy is considered "available" if it is "capable of use to obtain relief from the action complained of." Ross v. Blake, 578 U.S. 632, 136 S. Ct. 1850, 1853-54 (2016). However, as relevant here, an administrative procedure is unavailable where prison administrators "thwart inmates from taking advantage of it through machination, misrepresentation, or intimidation" Id. at 1853-54.

On appeal, Anderson argued that the district court erred when it determined that he failed to exhaust his "administrative remedies prior to filing a civil suit." [See Anderson's Opening Brief at 13-14]. Anderson then argued that the district court erred when it held that the BOP's Administrative Remedy Program was "avenue of relief available" to Anderson.[3] Id.; [see also Appendix B: R.196 at 2-3]. In support of his claims, Anderson heavily relied upon a prior order of the district court which found there were "genuine factual questions

FOOTNOTE 3: With respect to Anderson's claim, the district court acknowledged that it is "proper to conduct a case specific analysis of the circumstances. [See Appendix B: Order filed (Feb. 22, 2023) at RE: 196]. However, the district court failed to do so. Id. Instead, the lower court conducted a credibility determination by holding that it was "unpersuaded by Anderson's argument that...improper actions rendered the "Administrative Remedy unavailable to him." Id. However, it is well-settled at the summary judgment stage that "the facts must be viewed in light most favorable to the non-moving party...if there is a genuine dispute to the facts." See Scott v.

as to whether Anderson fully exhausted his administrative remedies." [R.52, Page Id# 959-60]. Plus, Anderson relied upon significant probative evidence demonstrating that improper actions federal prison employees at USP McCreary, and USP Atwater, Respectively, rendered the BOP's ARP "unavailable." [See Anderson's Opening Brief at 6-7; 13-16].

Nevertheless, during de novo review of Anderson's claims, the Court of Appeals failed to view the facts and evidence - and all inferences drawn therefrom - in the light most favorable to Anderson, i.e. to the non-moving party...if there is a genuine dispute to the facts." See Scott v. Harris, 550 U.S. 372, 380, 127 S. Ct. 1769 (2007); [See Appendix A: Order at 5-6]. Consequently, the lower court determined that the mere existence and availability of the BOP's ARP was reason enough to "limit the power of the judiciary" from inferring a cause of action with respect to Anderson's claims. Id. However, as mentioned above, improper actions by prison officials rendered the ARP "unavailable." [See Supra at].

In sum, the courts below have failed to demonstrate that Anderson's claims presents a new context that is "different in a meaningful way" then Carlson. Consequently, the Courts have also failed to identify any "special factors indicating that the judiciary is at least arguably less equipped" the Congress to "weigh the cost and benefits of allowing "Anderson's claims to proceed. Thus, given that judicial precedent has long made clear the standard for claims alleging 1) "deliberate indifference" towards and inmate's serious medical needs" and 2) circumstances

CONT. FOOTNOTE 3: Harris, 327, 380, 127 S. Ct. 1769 (2007).

rendering a grievance process "unavailable", the answer to the ultimate question set forth in Egbert, i.e., who should decide whether to provide a damages remedy, Congress or the courts, lies within the federal jurisdiction of the judiciary. Id.

Accordingly, this court should exercise its supervisory power, and remand this case to the Court of Appeals, so that appropriate consideration can be made with respects to Anderson's claims. [See Supreme Court Rule 10(a)].

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darnell A

Date: 8-12-2024