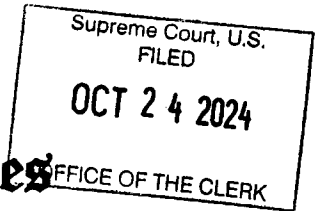


No. **24-5877** **ORIGINAL**

---

**In the**  
**Supreme Court of the United States**



---

**HOLSTON BANKS III**

**Petitioner,**

**vs.**

**JOHN H. SPENCE**

**Respondent.**

---

**On Petition for a Writ of Certiorari to the United States Court of  
Appeals for the Fifth Circuit**

**PETITION FOR A WRIT OF CERTIORARI**

---

**Holston Banks III.  
Pro Se  
Smith Unit – 02160854  
1313 County Rd. 19  
Lamesa, Tx. 79331**

## QUESTION PRESENTED FOR REVIEW

1. Did The United States District Court Northern District Judge James Wesley Hendrix Cause A Judicial Error By Acknowledging Banks Alleged Enough Facts To State An Eighth Amendment Claim Based on Factual Allegations, But Then Concluded That Because The Complaint Framed The Fourteenth Amendment Claim Instead Of The Eighth Amendment, The Complaint Was Deficient When Federal Pleading Rules Do Not Require Formally Correct Legal Framing Of Claims, When [I] Was To Only Inform [Spence] Of The Factual Basis For [My] Complaint And Nothing Else?

## LIST OF PARTIES

Banks v. Spence No. 119-CV-00217-H, the U.S. District Court for the Northern District of Texas. Judgment entered on December 12, 2022.

Banks v. Spence No. 22-11252, the U.S. Court of Appeals for the Fifth Circuit. Judgment entered on August 20, 2024.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	i
LIST OF PARTIES .....	ii
TABLE OF CONTENTS .....	iii, iv
INDEX TO APPENDICES .....	iv
TABLE OF AUTHORITIES .....	v, vi, vii
OPINIONS BELOW.....	viii
JURISDICTION .....	viii, ix
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	ix, x
STATEMENT OF THE CASE .....	1, 2
REASONS FOR GRANTING THE WRIT .....	2 - 8

1. Did The United States District Court Northern District Judge James Wesley Hendrix Cause A Judicial Error By Acknowledging Banks Alleged Enough Facts To State An Eighth Amendment Claim Based On Factual Allegations, But Then Concluded That Because The Complaint Framed The Fourteenth Amendment Claim Instead Of The Eighth Amendment, The Complaint Was Deficient When Federal Pleading Rules Do Not Require Formally Correct Legal Framing Of Claims, When [I] Was To Only Inform [Spence] Of The Factual Basis For [My] Complaint And Nothing Else?

CONCLUSION AND PRAYER.....	9
PROOF OF SERVICE.....	10
CERTIFICATE OF COMPLIANCE .....	11

## INDEX TO APPENDICES

1. APPENDIX - A - Order of the United States District Court Northern District of Texas Denying Motion to Amend and Granting Judgment on the pleadings.
2. APPENDIX - B - United States Court of Appeals for the Fifth Circuit Motion to Amend – June 26, 2024.
3. APPENDIX - C - United States Court of Appeals for the Fifth Circuit Motion to Amend – August 20, 2024.
4. APPENDIX - D - United States Court of Appeals for the Fifth Circuit Judgment on Petition for Rehearing.

## TABLE OF AUTHORITIES

Cases	Pages
1. Arnold v. Williams, 979 F.3d 262, 2020 U.S. App. LEXIS 33729 (5th Cir. La. October 23, 2020). See Banks v. Spence, 2022 U.S. Dist. LEXIS 251545 (N.D. Tex. December 12, 2022) .....	6
2. Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 2009 U.S. LEXIS 3472, 77 U.S.L.W. 4387, 2009-2 Trade Cas. (CCH) P76,785, 73 Fed. R. Serv. 3d (Callaghan) 837, 21 Fla. L. Weekly Fed. S 853 (U.S. May 18, 2009) .....	5 - 6
3. Banks v. Howard, Cty., 2020 U.S. Dist. LEXIS 154568, 2020 WL 5038613 (N.D. Tex. August 26, 2020) .....	3, 7
4. Banks v. Spence, 105 F.4th 798, 2024 U.S. App. LEXIS 15552 (5th Cir. Tex. June 26, 2024) .....	viii, 3
5. Banks v. Spence, 2022 U.S. Dist. LEXIS 251545 (N.D. Tex. December 12, 2022) .....	6
6. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, 2007 U.S. LEXIS 5901, 75 U.S.L.W. 4337, 2007-1 Trade Cas. (CCH) P75, 709, 68 Fed. R. Serv. 3d (Callaghan) 661, 20 Fla. L. Weekly Fed. S 267, 41 Comm. Reg. (P and F) 567	

(U.S. May 21, 2007) .....	4
7. Hale v. Metrex Research Corp., 963 F.3d 424, 2020 U.S. App.	
LEXIS 19748, 2020 WL 3446289 (5th Cir. Tex. June 24, 2020) .....	5
8. Johnson v. City of Shelby, 574 U.S. 10, 135 S. Ct. 346, 190 L. Ed. 2d 309,	
2014 U.S. LEXIS 7437, 83 U.S.L.W. 4007, 98 Empl. Prac. Dec. (CCH)	
P45, 186, 39 I.E.R. Cas. (BNA) 442, 90 Fed. R. Serv. 3d (Callaghan) 224, 25	
Fla. L. Weekly Fed. S 5 (U.S. November 10, 2014) .....	3 - 4
9. Skinner v. Switzer, 562 U.S. 521, 131 S. Ct. 1289, 179 L. Ed. 2d 233, 2011	
U.S. LEXIS 1905, 79 U.S.L.W. 4157, 78 Fed. R. Serv. 3d (Callaghan) 1235,	
22 Fla. L. Weekly Fed. S 866 (U.S. March 7, 2011) .....	4
10. Smith v. Barrett Daffin Frappier Turner and Engel, L.L.P., 735 Fed. Appx.	
848, 2018 U.S. App. LEXIS 15775 (5th Cir. Tex. June 12, 2018) .....	4
11. Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 122 S. Ct. 992, 152 L. Ed. 2d	
1, 2002 U.S. LEXIS 1374, 70 U.S.L.W. 4152, 88 Fair Empl. Prac. Cas.	
(BNA) 1, 82 Empl. Prac. Dec. (CCH) P40,899, 51 Fed. R. Serv. 3d	
(Callaghan) 781, 2002 Daily Journal DAR 2152, 15 Fla. L. Weekly Fed.	
S 124 (U.S. February 26, 2002) USCS Fed Rules Civ Proc R 8(a)(2) and	
(3),(1)(d),(e) USCS Fed Rules Civ Proc R 15(a)(2) "(the court should freely	

give leave [to amend a pleading] when Justice so requires.) ..... 4 - 5

12. Waller v. Hanlon, 922 F.3d 590, 2019 U.S. App. LEXIS 12202, 2019

WL 1783558 (5th Cir. Tex. April 24, 2019) ..... 5

## **Statutes**

28 U.S.C. § 1254 (1) ..... ix

42 U.S.C. § 1983 ..... ix, x, 1

## **Rules**

Fed. R. Civ. P. R. 8(a)..... 3

Fed. R. Civ. P. 12..... 5

Fed. R. Civ. P. 12 (b)(6) ..... 5 - 6

Fed. R. Civ. P. 12(c)..... 5 - 6

Fed. R. Civ. P. 15 ..... 1, 8

## **Constitutional Provisions**

U.S. Const. Amend. V..... 8

U.S. Const. Amend. VIII ..... 1 - 2

U.S. Const. Amend. XIV .....1, 2, 7, 8



**OPINIONS BELOW:**  
**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

For cases from Federal Courts:

1. The opinion of the United States Court for the Northern District of Texas appears in Appendix A to the petition and is reported at Banks v. Spence, No. 1:19-CV-00217-H has been designated for publication.
2. The opinion of the United States Court of Appeals for the Fifth Circuit is reported in Appendix D to the petition and is reported at Banks v. Spence, No. 22-11252 (5<sup>th</sup> Cir. 2024). Banks v. Spence, 105 F.4th 798 (5<sup>th</sup> Cir. 2024) has been designated for publication.

**JURISDICTION:**

For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was June 26, 2024.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date, August 20, 2024, and a copy of the order denying rehearing appears in Appendix D.

The Jurisdiction of this Court is invoked Under 28 U.S.C. § 1254(1). The United States Court of Appeals for the Fifth Circuit entered its judgment on August 20, 2024. This petition is timely filed within 90 days of that judgment.

#### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:**

1. **Eighth Amendment:** “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
2. **Fourteenth Amendment:** “No State shall make or enforce any law which shall abridge the privileges or immunities or 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 laws.”
3. **42 U.S.C. § 1983:** “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the

deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.”

## STATEMENT OF THE CASE

Holston Banks III (Plaintiff - Appellant) filed a lawsuit against John H. Spence (Defendant – Appellee) under 42 U.S.C. § 1983, alleging excessive use of force in violation of his Fourteenth Amendment rights. The incident occurred in 2017, and Banks initiated the lawsuit in October 2019. In April 2022, Spence moved to extend the deadline for filing an amended pleading. The court denied the motion but later extended the deadline to May 25, 2022. In September 2022, Spence moved for judgment on the pleadings, arguing that Banks’s Fourteenth Amendment claim was not applicable to convicted prisoners and that Banks failed to state an Eighth Amendment claim. On October 6, 2022, Banks moved to amend his claim to assert an Eighth Amendment violation. The United States District Court Northern District denied the motion and granted judgment on the pleadings. Federal Rule Civil Procedure R. 15 allows Amendment during and after trial at any time, even after Judgment when justice requires. The Fifth Circuit Court of Appeals affirmed the District Court's decision and also emphasized that the Federal pleading rules do not require formally correct legal framing of claims, they also specified that no Amendments were necessary in

Banks' case, which undermined the basis for the District Court's decision to dismiss the case. The Amendment being unnecessary raised significant questions about the procedural handling of the case. This petition seeks to address these issues and ensure that procedural due process is upheld.

## **REASON FOR GRANTING THE PETITION**

### **I.**

#### **QUESTION PRESENTED FOR REVIEW**

**1. Did The United States District Court Judge James Wesley Hendrix Cause A Judicial Error By Acknowledging Banks Alleged Enough Facts To State An Eighth Amendment Claim Based On Factual Allegations, But Then Concluded That Because The Complaint Framed The Fourteenth Amendment Claim Instead Of The Eighth Amendment, The Complaint Was Deficient When Federal Pleading Rules Do Not Require Formally Correct Legal Framing Of Claims, When [I] Was To Only Inform [Spence] Of The Factual Basis For [My] Complaint And Nothing Else?**

The United States District Court Judge James Wesley Hendrix Granted Spence's Motion for Judgment on the Pleadings (Dkt. No. 52) when

nothing needed Amending. Under U.S.C.S. Fed. Rules Civ. Proc. R 8(a) a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief. Therefore, a complaint must contain sufficient factual matter, accepted as true, to State a claim to relief that is plausible on its face. Banks has a complaint with sufficient factual matters accepted as true to state a claim to relief that is plausible on its face due to John Spence being arrested, charged, indicted, and resigned from his job. See Banks v. Howard, Cty., 2020 U.S. Dist. LEXIS 154568, 2020 WL 5038613 (N.D. Tex. August 26, 2020) Page 1 - 5. See Banks v. Howard Cty., 2020 U.S. Dist. LEXIS 154568, 2020 WL 5038613 (N.D. Tex. August 26, 2020) Footnotes

## II.

The United States Court of Appeals Circuit Judge James E. Graves, Jr. stated how he was reluctant because the Amendment of my complaint was arguably unnecessary. See Banks v. Spence, 105 F.4th 798, 2024 U.S. App. LEXIS 15552 (5th Cir. Tex. June 26, 2024). The Federal pleading rules do not require formally correct legal framing of claims. My complaint only needed to inform Spence of the factual basis for my complaint. Johnson v. City of Shelby, 574 U.S. 10, 135 S. Ct. 346, 190 L.

Ed. 2d 309, 2014 U.S. LEXIS 7437, 83 U.S.L.W. 4007, 98 Empl. Prac. Dec. (CCH) P45, 186, 39 I.E.R. Cas. (BNA) 442, 90 Fed. R. Serv. 3d (Callaghan) 224, 25 Fla. L. Weekly Fed. S 5 (U.S. November 10, 2014) (per curium); see also *Skinner v. Switzer*, 562 U.S. 521, 131 S. Ct. 1289, 179 L. Ed. 2d 233, 2011 U.S. LEXIS 1905, 79 U.S.L.W. 4157, 78 Fed. R. Serv. 3d (Callaghan) 1235, 22 Fla. L. Weekly Fed. S 866 (U.S. March 7, 2011). *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (“[A] complaint need not pin plaintiffs claim for relief to a precise legal theory.”) *Smith v. Barrett Daffin Frappier Turner and Engel, L.L.P.*, 735 Fed. Appx. 848, 2018 U.S. App. LEXIS 15775 (5th Cir. Tex. June 12, 2018). (“[F]actual allegations alone may state a claim for relief - even without referencing the precise legal theory...upon which the plaintiff seeks relief”). With me being Pro se, we fired my attorneys who were on this case who misrepresented me in many ways; I do believe I should be allowed a chance to be granted relief on this Writ of Certiorari due to nothing needing amending when my whole claim was based on facts. Justice requires so due to this judicial error. An exception should be made here. If not, this would lead to a Miscarriage of Justice. See Swierkiewicz

v. Sorema, N.A., 534 U.S. 506, 122 S. Ct. 992, 152 L. Ed. 2d 1, 2002 U.S. LEXIS 1374, 70 U.S.L.W. 4152, 88 Fair Empl. Prac. Cas.

### III.

#### **Judgment On The Pleadings:**

Judgment on the Pleadings Federal Rule of Civil Procedure 12 provides that “[a]fter pleadings are closed a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). A rule 12(c) motion for judgment on the pleadings is designed to dispose of cases where the material facts are not in dispute, and a judgment on the merits can be rendered by looking at the substance of the pleadings and any judicially noted facts. *Hale v. Metrex Research Corp.*, 963 F.3d 424, 2020 U.S. App. LEXIS 19748, 2020 WL 3446289 (5th Cir. Tex. June 24, 2020). The standard for analyzing a motion for judgment on the pleadings is identical to the standard for [a] Rule 12(b)(6) motion to dismiss for failure to state a claim. “*Waller v. Hanlon*, 922 F.3d 590, 2019 U.S. App. LEXIS 12202, 2019 WL 1783558 (5th Cir. Tex. April 24, 2019)”. To survive, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 2009 U.S. LEXIS 3472, 77 U.S.L.W. 4387,



2009 - 2 Trade Cas. (CCH) P76, 785, 73 Fed. R. Serv. 3d (Callaghan) 837, 21 Fla. L. Weekly Fed. S 853 (U.S. May 18, 2009). A complaint fails to state a claim when it “[f]ail[s] to plausibly allege an essential element” of that claim. [\*9] Arnold v. Williams, 979 F. 3d 262, 2020 U.S. App. LEXIS 33729 (5th Cir. La. October 23, 2020). See Banks v. Spence, 2022 U.S. Dist. LEXIS 251545 (N.D. Tex. December 12, 2022) Page 16 But the parties do not dispute whether Banks's complaint is flawed as currently pled (see Dkt. Nos. 52 at 1 66 at 1). Banks alleges Spence punched him repeatedly in the face, breaking his nose, all while Banks was restrained in shackles and not attempting to fight back or escape. Dkt. No. 53-1 16, 25-26, 49, 50, 59, 79. Taking these factors as true, the violent force exerted by Spence exceeded the amount needed to quell what is characterized as a mere verbal disturbance.

#### IV.

**Granting Judgment on the Pleadings should not have been granted.**

**Federal Rule of Civil Procedure Rule 12(c):**

Provides after pleadings are closed, a party may move for judgment on the pleadings. The standard for analyzing a motion for judgment on the pleadings is identical to the standard for [a] Rule 12(b)(6) motion to

dismiss for failure to state a claim. To survive, a complaint must contain sufficient factual matters accepted as true to state a claim to relief that is plausible on its face. *Banks v. Howard Cty.*, 2020 U.S. Dist. LEXIS 154568, 2020 WL 5038613 (N.D. Tex. August 26, 2020) Footnotes #2. According to the complaint, evidence from a subsequent investigation by a Texas Ranger is consistent with Banks's account. Dkt. No. 1 at 59 - 65. After watching a video of the Sally Port incident, the Ranger filed a complaint against Spence, and Spence was charged with Official Oppression. *Id.* at 64. Spence was arrested on October 31, 2017, and subsequently resigned from his position. *Id.* at 66.

## V.

### **On The Pleadings:**

Plaintiff Holston Banks III claims to have suffered a grave constitutional violation at the hands of defendant John Spence. His complaint describes an unwarranted physical attack by Spence shortly before transporting Banks to a court hearing. Irrespective of the concerning facts alleged, however, Banks fails to assert a cognizable claim for relief under the Fourteenth Amendment due to his status as a convicted prisoner at the time of the alleged offense. Further, Banks has not shown good cause to

amend his complaint at this late stage of the proceedings. The Court does not take lightly the gravity of Banks's allegations. But it will not grant him his requested relief in the light of his unjustifiably late motion to amend and the undisputed legal error contained in his complaint. Therefore, the Court denies [\*2] Banks's Motion to Amend Pleadings (Dkt. No. 53) and grants Spence's Motion for Judgment on the Pleadings (Dkt. No. 52). On Federal Rule of Civil Procedure R. 15 allow Amendment during and after trial at any time even after Judgment when justice requires. Spence's Motion for Summary Judgment (Dkt. No. 60) and the parties' Joint Motion for Continuance of Pretrial Deadlines and Trial (Dkt. No. 75) are denied as moot.

## VI.

This case involves a significant procedural due process violation. Procedural due process, guaranteed by the Fifth and Fourteenth Amendments, requires that legal proceedings be conducted fairly and accurately. Finally, the procedural handling of this case resulted in an unjust outcome for the petitioner. Highlighting the need for review.

## CONCLUSION AND PRAYER

For the foregoing reasons, Petitioner Holston Banks III respectfully requests and prays that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

Holston Banks III.

Holston Banks III.

Pro Se

Smith Unit – 02160854

1313 County Rd. 19

Lamesa, Tx. 79331

Date: October 25, 2024