

NO.24-6392

RCS

ORIGINAL

UNITED STATES SUPREME COURT

Joseph Raymond McCoy

Plaintiff-Petitioner

v.

Angel Gonzales, et.al.

Defendants-Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR REHEARING

Joseph Raymond McCoy
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Pro se

FILED
MAR 09 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

GROUND [I]

"DELIBERATE INDIFFERENCE STANDARD"

1. Contrary to this Court's "deliberate indifference standard announced [See Farmer V. Brennan, 114 S.Ct. 1979-1980 (1994)] holding "subjective recklessness as used in the criminal law is the appropriate test for deliberate indifference (citation) Compare: Wilson V. Seiter, 501 U.S. 299, 302, 111 S.Ct. 2324 (1991).
2. As this Court explained there, our cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment, to be sure, the reasons for focussing on what a defendant's mental attitude was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. [Farmer V Brennan, 511 U.S., at 839-840]
3. "Subjective Recklessness" as used in the criminal law is a familiar and workable standard that is consistent with the "Cruel and Unusual Punishment Clauses as interpreted in our cases, and we adopt it as the test for deliberate indifference under the Eighth Amendment. [Id., at 839].
4. A Court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishment Clauses than when applying the Free Speech and Press Clauses, where we have also adopted a subjective approach to recklessness (citations).
5. Subjective approach, isolates those who inflicts punishment; it isolates those whom punishment should be inflicted. The results is the same: "to act recklessly in either setting, a person must "consciously disregar[d] a substantial risk of harm" [Wilson VS OP+HPZL hhh OS\$HSL XH npnb& \$K(NXZPA

substantial risk of harm" (citing, Wilson V. Seiter, 111 S.Ct., at 2324).

6. The district court [USDC E.D.Cal.1:12-cv-00983-AWI-SAB re (FR) Findings and Recommendations of Magistrate Judge In re Order Adopting In-Full Magistrate Judge's Findings and Recommendation and Entering Summary Judgment In Favor Of Defendants' Appendix (M) pg.2 Line 22 n2; pg.3 n2] declined to adjudicate [Appendix (L)] on the merits.

7. A timely motion in opposition to defendants' motion for summary judgment, containing evidence [Table of Exhibits] and [Memorandum of Points and Authorities] consistent with [Grounds [I] "Deliberate Indifference Standard"].

8. Finding [Appendix (M) pg.2 Line 22 n2; pg.3 n2] "as it does not change the analysis of defendants' motion for summary judgment [See Fed.R.Civ.P. 56].

9. Likewise, the Ninth Circuit [Appendix (V)] declined "adjudication" [Appendix (L)] "Deliberate Indifference Standard" contained in a memorandum of points and authorities, or otherwise, accompanying plaintiff's "timely" motion in opposition to defendants' motion for summary judgment, including a [Table of Exhibits].

10. Instead [Appendix (I)] granted summary affirmance motion on grounds construed [Appendix (M) consistent with District Court's analysis of defendants motion for summary judgment (citing, United States V. Hooton, 693 F.2d 857, 858 (9th Cir.1982); See 9th Cir.R.3-6)(stating standard).

GROUND [II]

APPLICABILITY OF STATE LAW IN CIVIL ACTIONS AND PROCEEDINGS

11. In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law (citing, Federal Civil Judicial Procedure and Rules Of Evidence Rule 302; See 28 U.S.C. §1652. State Laws As Rules Of Decision, provides, "the laws of the several states, except where the Constitution or treaties of the United States or Act of Congress otherwise require or provide shall be regarded as rules of decision in civil actions in the Courts of the United States, in cases where they apply (citation); Compare: Farmer V. Brennan, 114 S.Ct. at 1979-1980, holding, "subjective recklessness" as used in the criminal law is the appropriate test for deliberate indifference [Ibid. Farmer V. Brennan, 511 U.S., at 839-840 ("subjective recklessness" as used in the criminal law is a familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clauses as interpreted in our cases, and we adopt it as the test for "deliberate indifference" under the Eighth Amendment)]].

12. Contrary to the holdings [Ibid., Farmer V. Brennan, 511 U.S., supra. at 839] A court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishments Clauses than when applying the Free Speech and Press, where we have also adopted a subjective approach to recklessness (citations)].

13. The Lower Courts did so allude.

[II]
CERTIFICATE

I, Joseph Raymond McCoy, certify, that this application for Petition seeking Rehearing of this Court's denial of writ of certiorari case number 24-6392 date 2-24-25, is not taken to delay, cause unnecessary expenses or otherwise not taken in bad faith.

I, Joseph Raymond McCoy, declare under penalty of perjury that the foregoing is true and correct.

/s/

A handwritten signature in dark ink, appearing to read "J. R. McCoy", written over a horizontal line.

Date Executed:

3-9-25

PROOF OF SERVICE BY U.S.MAIL
28 U.S.C. §1746

I, Joseph Raymond McCoy, am a party to the enclosed cause of action, over the age of 18. My mailing address is P.O.Box 5242 Corcoran, Ca.93212-5242

On 3-9-25, I served the following:

PETITION FOR REHEARING

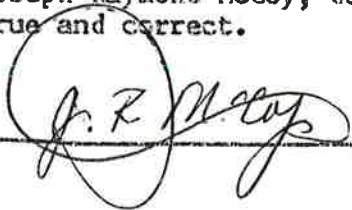
By placing said document in a sealed envelope with FIRST CLASS POSTAGE fully prepaid and affixed thereon, in the INSTITUTION'S INTERNAL LEGAL MAIL SYSTEM, at Corcoran, Ca., to be deposited in the U.S.MAIL to be delivered as addressed below:

SUPREME COURT OF THE UNITED STATES
Office of the Clerk Of Court
1 First Street, N.E.
Washington, D.C. 20543

DEPARTMENT OF JUSTICE
Office of the Attorney General
455 Golden Gate Ave. #11000
San Francisco, Ca.94102

I, Joseph Raymond McCoy, declare under penalty of perjury that the foregoing is true and correct.

/s/



Date Executed: 3-9-25