No. _____

24-6524

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT ANNABEL, II — PETITIONER
(Your Name)

vs.

HEIDI WASHINGTON, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Annabel, II, #414234
(Your Name)
Ionia Correctional Facility
1576 W. Bluewater Hwy.
(Address)

Ionia, Michigan 48846
(City, State, Zip Code)

_____
(Phone Number)

QUESTIONS PRESENTED

I. Are the courts allowed to use a heightened pleading standard and disregard factual content of a complaint to nullify the shifting burden framework of retaliation claims?

II. Does a prisoner have a free speech right to testify at another prisoner's federal civil jury trial without fear of retaliation?

III. Should the district court have given pro se Plaintiff notice of its intent to sua sponte dismiss the complaint and an opportunity to respond, or otherwise should he be allowed to amend the complaint?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

Heidi Washington; Jeremy Busch; Lawrence McKinney; Norbert Franczak

RELATED CASES

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TABLE OF AUTHORITIES CITED

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

[X] 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 _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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[ ] is unpublished.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 October 2, 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: November 14, 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 _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment 1:

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

United States Constitution, Amendment 14, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State 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.

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 proceeding 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 purposes 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.

28 U.S.C. § 1915(e)(2):

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that —

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

42 U.S.C. § 1997(c)(1):

(1) The court shall on its own motion or on the motion of a party dismiss any action 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 if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

STATEMENT OF THE CASE

A. Proceedings Below.

Petitioner Robert Annabel, II, is a prisoner of the Michigan Department of Corrections, who was granted leave to proceed *in forma pauperis* in this action brought under 42 U.S.C. § 1983. It was filed in the United States District Court for the Western District of Michigan, alleging claims of retaliation by defendants for his protected conduct.

Judge Hala Y. Jarbou *sua sponte* dismissed the complaint under the PLRA for failure to state a claim upon which relief could be granted, without notice to Petitioner or an opportunity to amend the complaint. Plaintiff then filed a motion for relief of judgment under Fed.R.Civ.P. 60(b)(6), which the district court denied. On May 8, 2024, Plaintiff filed a timely notice of appeal and good faith was found by the magistrate judge to allow him to proceed *in forma pauperis* on appeal.

On October 2, 2024, the United States Court of Appeals for the Sixth Circuit affirmed the district court's dismissal. Petitioner then filed a timely petition for rehearing en banc, which the Court of Appeals denied, on November 14, 2024.

On December 12, 2024, the district court denied his motion to file an amended supplemental complaint.

B. Statement of Facts.

Pertinent to this petition is the district court's *sua sponte* dismissal of Petitioner's retaliation claims against defendants Heidi Washington, Jeremy Busch, Lawrence McKinney, and Norbert Fronczak.

In September 2017, Plaintiff was incarcerated in administrative segregation at the notoriously corrupt Ionia Correctional Facility Level V maximum security. Often MDOC employees would challenge him to do stunts for their entertainment. High-rank and low-rank ICF employees challenged him to do a comedy stunt to loudly break through the back window of his cell, on camera, even observed him in the process and covered him in shakedowns. Employees bragged and laughed at the video. Two months later he was released from segregation, and eleven months later he transferred down to a security level IV.

Petitioner was prosecuted for prison escape, though all the evidence showed no intent to leave the

prison. However, it was a great embarassment to the prosecutor and the MDOC when its employees admitted in court of knowing about the planned stunt and doing nothing to stop it.

Initially, ICF made two special cells with metal plates welded over the windows, but with small holes for ventilation. However, Defendants Heidi Washington and Jeremy Busch thereafter ordered that solid metal plates to be welded over all windows to stop ventilation into the cells, an excessive and exaggerated response.

Defendants Washington and Busch disregarded warnings that cutting off cell window ventilation would be dangerous for mentally ill prisoners prescribed psychotropic medication and at risk of heat-related illness. Prisoner Joel Carter file a federal lawsuit under 42 U.S.C. § 1983, alleging deliberate indifference.

Meanwhile, since 2019, Petitioner has been housed in a Level IV population. In 2020, he was granted parole, but returned to Level IV custody on May 28, 2022. From August 28, 2020, to January 18, 2024, he had been found guilty of only a single misconduct incident, and dropped down to security Level II points.

He enjoyed freedom of movement and got along well with staff and most prisoners.

However, instead of transferring Petitioner to security Level II, Defendants Washington, Busch, and Lawrence McKinney transferred him back to ICF Level V administrative segregation. Per MDOC policy for a two-level upward departure, McKinney had to get approval from Washington and Busch. "Prior criminal history" was the excuse on the security classification screen to justify the departure, though similarly situated prisoners are allowed to remain in lower levels.

On January 22, 2024, just four days after that extreme retaliatory transfer, Petitioner was scheduled to testify at Prisoner Carter's federal civil jury trial. After Petitioner was two hours late to be brought to court, the Judge called Defendants Washington and Busch to demand that he be brought to the courthouse now—according to reports of transportation officers. Defendants had not intended to allow Petitioner to testify.

Although Petitioner was not a threat, and he had attended other court dates since returning to prison, without high-security restraints and a

three-corrections-officer escort, he was marched before the jury like Charles Manson. In further effort to unfairly prejudice Petitioner's testimony, the assistant attorney general asked him about an alleged parole violation, criminal charges he had not been convicted of, the 14 lawsuits he had filed, and implied that he was in Level V maximum security due to continual misconduct.

On January 3, 2024, Petitioner had filed a grievance against Defendant Norbert Fronczak for denying law library callouts. Petitioner had previously filed two lawsuits against Fronczak, alleging threats to issue false misconduct charges if he continued to file grievances. On January 26, 2024, Fronczak conspired with the same McKinney who had signed the retaliatory transfer papers, to issue a false misconduct charge alleging that Petitioner's grievance was dishonest. The charge was dismissed at a hearing since none of the law library callout dates listed in the misconduct report matched the date of incident in the grievance.

On March 13, 2024, the district court *sua sponte* dismissed the complaint under the PLRA for failure to state a claim upon which relief could be granted.

It held that Petitioner did not have a free speech right to testify at Prisoner Carter's civil Jury trial and that close temporal proximity alone could not show causation of retaliatory motive. Petitioner then asserted in a motion for relief of judgment under Fed.R.Civ.P. 60(b)(6) that he did have a free speech right to testify and that he had pleaded more facts than very close temporal proximity alone.

On appeal to the United States Court of Appeals for the Sixth Circuit, he presented the same argument combined with claims that he had not been provided notice and opportunity to respond, or to file an amended supplemental complaint in the district court, and judicial bias. The Court of Appeals' opinion merely affirmed the district court's opinion word-for-word. A petition for rehearing en banc was denied.

Petitioner then filed a motion for relief of Judgment and to file an amended supplemental complaint in the district court, which was denied. The amended complaint added more details to the original claims and supplemented with claims of ongoing retaliation since April 9, 2024, including Defendant Busch's face-to-face admission of retaliatory motive.

REASONS FOR GRANTING THE PETITION

I. Are the courts allowed to use a heightened pleading standard and disregard factual content of a complaint to nullify the shifting burden framework of retaliation claims?

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996)(PLRA), the court is required to dismiss any prisoner lawsuit brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c).

"[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement'...." Id. "And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556

(2007).

> "[W]hen considering a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the trial court must accept all of the allegations in the complaint as true, and construe the complaint liberally in favor of plaintiff."

Herron v. Harrison, 203 F.3d 410, 414 (6th Cir. 2000). "Plaintiff's allegations, liberally construed, should be viewed as a whole, not as separate and isolated paragraphs." Merrit v. Hawk, 153 F.Supp.2d 1216, 1221 (D.Colo. 2001); Ashcroft v. Iqbal, 556 U.S. at 698 (Dissent J. Souter joined by J.J. Steven, Ginsburg, Breyer).

> "Here the subjective motivation of the defendants is at issue. As discussed above, Crawford-El disallows any type of 'heightened pleading standard' to avoid this consequence... the analysis of motive in retaliation claims utilizes a shifting burden...."

Thaddeus-X v. Blatter, 175 F.3d 378, 399 (6th Cir. 1999)(en banc); Crawford-El v. Britton, 523 U.S. 574, 593-594 (1998); Thomas v. Eby, 481 F.3d 434, 441-442 (6th Cir. 2007). An issue of discriminatory intent is a question for the trier of fact. Harris v. Ostrout, 65 F.3d 912, 917 (11th Cir. 1995)(citing Pullman-Standard v. Swint, 456 U.S. 273, 288-91 (1982)). Retaliation must be a substantial or motivating factor behind a defendant's actions, but it is not required to be the only reason. Reynolds v. Green, 184 F.3d 589, 595 (6th Cir. 1999).

"Motive is often very difficult to prove with

> direct evidence in retaliation cases.... Circumstantial evidence may therefore acceptably be the only means of establishing the connection between a defendant's actions and the plaintiff's protected conduct."

King v. Zamiara, 680 F.3d 686, 695 (6th Cir. 2012) (citation omitted); Haley v. Dormire, 845 F.2d 1488, 1490 (8th Cir. 1988). "Plaintiffs need not prove an express agreement among the conspirators nor must they show that each conspirator knew 'all of the details of the illegal plan or all of the participants involved.'" Rieves v. Town of Smyrna, 67 F.4th 856, 862 (6th Cir. 2023)(citation omitted). "For example, a showing that the alleged conspirators have committed acts that 'are unlikely to have been undertaken without agreement....'" Mendocino Environment Ctr. v. Mendocino County, 192 F.3d 1288, 1301 (9th Cir. 1999).

"Circumstantial evidence, like the timing of events or disparate treatment of similarly situated individuals, is appropriate." Thaddeus-X, 175 F.3d at 394. Very close temporal proximity between a defendant's actions and the plaintiff's protected conduct should be considered. Maben v. Thelen, 887 F.3d 252, 268 (6th Cir. 2018); Taylor v. Geithner, 703 F.3d 328, 339 (6th Cir. 2013); Paige v.

Coyner, 614 F.3d 273, 283 (6th Cir. 2010)

"A false reason for the report's issuance would support the inference that the real reason was the improper one: retaliation." Gayle v. Gonyea, 313 F.3d 677, 683 (2nd Cir. 2002); Tingle v. Arbors at Hilliard, 692 F.3d 523, 530 (6th Cir. 2012). Falsely accusing a prisoner of abusing the grievance process will support a retaliation claim. King v. Zamiara, 680 F.3d at 699; Brown v. Crowley, 312 F.3d 782, 790 (6th Cir. 2002).

This case presents the question of whether the courts can place a heightened pleading standard to retaliation claims under Ashcroft v. Iqbal, supra, by disregarding circumstantial evidence to avoid the shifting burden framework of retaliation claims prior to Ashcroft v. Iqbal. Petitioner alleged more than very close temporal proximity alone, contrary to the lower courts' holdings.

First, the misconduct charge was dismissed because it was false and none of the law library callout dates listed in the misconduct report matched the date of incident listed in the grievance. Gayle v. Gonyea, supra; Tingle v. Arbors at Hilliard, supra.

Second, the grievance itself was the false reason for the misconduct report, which expressly alleged that Petitioner had filed an untruthful grievance. This claim is factually similar to the prisoner's claim in Brown v. Crowley, supra, who received the same misconduct charge for filing a legitimate grievance of funds missing from his prisoner trust account. Moreover, Petitioner had pending two prior lawsuits against Defendant Fronczak for threatening to issue false misconduct charges if he filed any more grievances.

Had Petitioner been found guilty of knowingly filing an untruthful grievance, moreover, it would have increased his security classification points by one level. Not coincidently, this same Defendant McKinney who issued the misconduct report signed the retaliatory classification screen to arbitrarily increase Petitioner to Level V maximum security, all in close temporal proximity of his testimony at prisoner Carter's jury trial. The misconduct report exposes a retaliatory motive also for the security level increase. "The man who wins the lottery once is envied; the one who wins it twice is investigated." U.S. v. York, 933 F.2d 1343, 1350

(7th Cir. 1991); Westfield Ins. Co. v. Harris, 134 F.3d 608, 615 (4th Cir. 1998); Carson v. Polley, 689 F.2d 562, 573 (5th Cir. 1982).

Indeed, the classification screen attempted to justify such a draconian departure from the usual protocol based on Petitioner's "prior criminal history." He alleged that similarly situated prisoners are allowed to remain in lower levels, and that from 2019 to January 18, 2024, he had been in security level IV population, and that his security classification points actually dropped to Level II.

> "The record is void of any evidence—let alone a preponderence—to support Well's claim that she subjectively believed King was abusing the grievance system or was otherwise disruptive or manipulative in any way that would entitle her to initiate punitive action against him."

King v. Zamiara, 680 F.3d at 699. At this point there is no record evidence of non-retaliatory motive for defendants to subjectively believe Petitioner had filed an untruthful grievance or that he was disruptive, such as would justify the (dismissed) misconduct and arbitrary security level increase.

In fact, the ticket was designed by the defendants to discredit the allegations in two prior

lawsuits against Fronczak for Petitioner being denied law library callouts, on identical claims of retaliation as in the grievance.

Finally, Petitioner alleged a scheme designed to prevent him from attending Prisoner Canter's civil jury trial, then to unfairly prejudice his testimony.

Crawford-El v. Britton, supra, disallowed a heightened pleading standard on retaliation claims at summary judgment. There is no reason to interpret Ashcroft v. Iqbal, supra, as demanding a heightened pleading standard at PLRA screening that nullifies the burden-shifting framework of retaliation claims. The complaint should not be construed in separate and isolated paragraphs. Id. 556 U.S. at 698.

II. Does a prisoner have a free speech right to testify at another prisoner's federal civil jury trial without fear of retaliation?

In Procunier v. Martinez, 416 U.S. 396, 413-417 (1974), the Supreme Court held that prisoners have a constitutional right to complain of prison conditions to members of the public. In Shaw v. Murphy, 532 U.S. 223, 232 (2001), the Supreme Court explained:

> "We thus decline to cloak the provision of legal assistance with any First Amendment protection above and beyond the protection normally accorded prisoners' speech. Instead, the proper constitutional test is the one we set forth in Turner. Irrespective of whether the correspondence contains legal advice, the constitutional analysis is the same."

"Moreover, the government objective must be a legitimate and neutral one... without regard to the content of the expression." Turner v. Safley, 482 U.S. 73, 90 (1987).

A showing of actual injury is not a constitutional requirement of a strictly retaliation claim. Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999) (en banc); Al-Amin v. Smith, 511 F.3d 1317, 1335 (11th Cir. 2008); Nei v. Dooley, 372 F.3d 1003, 1007 (8th Cir. 2004).

The district court held that Petitioner did not have a free speech right to testify at Prisoner Carter's federal civil jury trial, and it construed it as an access-to-courts claim, requiring proof of an

actual injury.

It is frightening for a court to hold that a prisoner on a writ of habeas corpus ad testificandum does not have his own right to speak to public members of a jury on matters of prison conditions without fear of retaliation. Such a precedent will impede the proper and fair function of the judicial system if prison officials are allowed to use retaliatory tactics to deter witnesses from testifying freely and truthfully.

There is no actual injury requirement to a trial witness's free speech claim. Shaw v. Murphy, supra, set forth the correct constitutional analysis under Turner v. Safley, as whether there was a legitimate and neutral penological objective to impede a prisoner from testifying. Retaliation is not a legitimate and neutral objective "without regard to the content of the expression.

Defendants not only attempted to prevent Petitioner from attending the trial, but also used a scheme to unfairly prejudice his testimony. He had previously exposed the corruption of MDOC employees on the so-called escape comedy stunt and had been released to a lower security level. Yet, he was

arbitrarily re-punished with a security level increase just four days prior to being scheduled to again expose that same corruption. Then he was prejudicially marched before the jury in high security restraints and a three-corrections-officer escort, without any justification for such a display.

To require a showing of actual injury on free speech claims, would do nothing to protect witnesses from retaliation. It would grant prison officials license to deter witnesses from testifying freely and truthfully by using the deterence of punishment if they do testify. A witness who testified regardless would not be compensated for an act of retaliation.

III. Should the district court have given pro se Plaintiff notice of its intent to sua sponte dismiss the complaint and an opportunity to respond, or otherwise should he be allowed to amend the complaint?

"We think that the PLRA's screening requirement does not--explicitly or implicitly--justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself." Jones v. Bock, 549 U.S. 199, 214 (2007). In Benson v. O'Brian, 179 F.3d 1014, 1017 (6th Cir. 1999), the Sixth Circuit observed:

> "[S]uch a holding would completely negate the policy of this and several other circuits that a plaintiff generally should be given notice and an opportunity to respond prior to the district court's sua sponte dismissal of the complaint. ... We very much doubt that the drafters of the PLRA intended to effectuate such a sweeping change in our entire civil litigation practice...."

Rule 72(b)(1) of the Federal Rules of Civil Procedure requires:

> "... A magistrate judge must promptly conduct the required proceedings when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging conditions of confinement. ... The magistrate judge must enter a recommended disposition, including, if appropriate, proposed finding of fact. ..."

Rule 72(b)(2) provides that a party may file objections to a magistrate judge's recommended disposition within 14 days.

"[W]e hold, like every other circuit ... that under Rule 15(a) a district court can allow a plaintiff to amend his complaint even when the complaint is subject to dismissal under the PLRA." LaFountain v. Harry, 716 F.3d 944, 951 (6th Cir. 2013). "Rule 15 sets a liberal policy in favor of permitting parties to amend their pleadings, and courts have interpreted the rule to allow parties to add new claims, defenses, and parties to the lawsuit." Mattox v. Edleman, 851 F.3d 583, 592 (6th Cir. 2017). "Delay to the other party, standing alone, is not enough to bar amendment if the other party is not prejudiced." Meathe v. Ret, 903 F.Supp.2d 507, 515 (E.D.Mich. 2012).

The Court of Appeals held that Petitioner was not entitled to notice of the district court's intent to sua sponte dismiss the complaint and an opportunity to respond, but failed to reach the issue whether Petitioner should be allowed to supplement and amend the complaint. The district court subsequently denied Petitioner's request to post judgment amend the complaint.

Petitioner filed his lawsuit in the United States District Court for the Western District of Michigan, in which conducts PLRA screening without a

magistrate Judge being assigned to issue a report and recommended disposition prior to sua sponte dismissal. There is no notice of the court's intent to dismiss and Petitioner was not provided an opportunity to respond or amend the complaint. The United States District Court for the Eastern District of Michigan, however, would have assigned a magistrate Judge to issue a report and recommendation prior to dismissal, pursuant to Fed.R.Civ.P. 72(b)(1); he would have had an opportunity to file objections or amend the complaint.

Sua sponte is not synonymous with "immediately, instantaneously, or without notice." The PLRA screening procedure should not be sprung like a booby trap snare for the district court to exclaim: "Gotcha!" The drafters of the PLRA sought to improve judicial efficiency and the quality of prisoner lawsuits, but not to "effectuate such a sweeping change in [the courts'] entire civil litigation practice[.]" It is not fair play when a pro se prisoner plaintiff does not receive notice of a defect in the complaint, but suffers res judicata without an opportunity to amend.

For unknown reasons, the Court of Appeals was

silent on Petitioner's request to file a post judgment amended supplemental complaint. He not only sought to add more factual detail to the original claims, but to also add new claims and parties after Defendant Jeremy Busch's post judgment admission of retaliatory motive.

The district court subsequently denied Petitioner's request to supplement the complaint, and it misconstrued the factual content of the proposed Amended Supplemental Complaint. For example, the rest from retaliation was a period of January 26, 2024, to April 9, 2024—45 days—not since January 3, 2024, as the district court held. Defendant Busch's retaliatory admission occurred April 11, 2024, followed by Sgt. Leithem's retaliatory admission, on April 13, 2024. Throughout the events between January 18, 2024, through April 29, 2024, the retaliation had a continuous pattern designed to prejudice both Carter and Petitioner's litigation activities.

Defendants have not yet received service of process of the original complaint and they would not be unfairly prejudiced by the delay to amend the complaint.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Arnold II

Date: December 26, 2024