24-6685

ORIGINAL

No. _____

FILED
AUG 13 2024
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

RODNEY DOUGLAS EAVES — PETITIONER
(Your Name)

vs.

MS. KORY, JERRY ROARK, DANNY SALAZAR, MR. CHAVEZ, THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, SUSAN WOLLERT, ANGIE TURNER, JANE DOE#1, MARSHALL GRIFFITH, JANE DOE #2 and JANE DOE #3.— RESPONDENT(S)—
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

10th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) PETITION FOR

WRIT OF CERTIORARI

Rodney Eaves
(Your Name)

Box 6000
(Address)

Sterling, Co. 80751
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Was the exposure to COVID-19 sufficiently serious enough to trigger an Eighth Amendment protection?
2. Does the permanent loss of the sense of smell constitute "unnecessary and wanton infliction of pain" prohibited by the Eighth Amendment?
3. When injunctive and monetary relief is sought from medical controlled by a state department, does transfer to a different institution still under the control of that state department moot injunctive or monetary relief?
4. Is the Mootness defense best raised by the Defendant or can it be a finding of law and fact found by the Court in an initial screening of a complaint?
5. If the District Court can narrate a perfect summary of a pro se prisoner's complaint, that contains what the allegations are, who was involved and when it happened, does that mean the Plaintiff has provided adequate notice under Rule 8?
6. If Rule 8 does not require fact specific allegations, can a pro se Plaintiff allege a group of individuals who acted in concert violated his rights and still meet the personal involvement and individual liability requirement under § 1983?
7. Does the Fourteenth Amendment provide a separate basis for a § 1983 claim?
8. Does the Fourteenth Amendment create a liberty interest in a state prisoner's grievance procedure?

LIST OF PARTIES

[X] 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:

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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

[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

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was May 30, 2024.

[X] 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:_____, 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. § 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

Eighth Amendment -- Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment -- 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.

28 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.

Federal Rule of Civil Procedure, Rule 8 – See Appendix F.

STATEMENT OF THE CASE

Mr. Eaves is a prisoner in the custody of the Colorado Department of Corrections ("CDOC"). On June 26, 2023, while he was housed at the Bent County Correctional Facility ("BCCF") in Las Animas, Colorado, Mr. Eaves filed a Prisoner Complaint. *[DOC 1].*[1] The BCCF is a private prison operated by CoreCivic under contract with the state of Colorado. On October 13, 2023, Mr. Eaves filed an amended Prisoner Complaint. *[DOC 10].*

As the District Court summarized in its recommendation *[DOC 13]*, Mr. Eaves asserts two claims in the amended Complaint. "In both claims Eaves contends he was subjected to cruel and unusual punishment in violation of the *Eighth Amendment* and denied substantive due process in violation of the *Fourteenth Amendment.* The claims relate to Mr. Eaves contracting COVID-19 in November 2020 and the medical treatment he received for his symptoms thereafter. The named Defendants are eight BCCF employees (Ms. Kory, Warden Jerry Roark, Unit Manager Danny Salazar, Unit Manager Chavez, Medical Practitioner Susan Wollert, Medical Practitioner Angie Turner, Medical Practitioner Jane Doe #2 and Medical Practitioner Jane Doe #3), two DOC employees (Director of Clinical and Correctional Services Jane Doe #1 and Grievance Officer Marshall Griffith), and the Colorado Department of Public Health and Environment ("CDPHE"). The BCCF employees are sued only in their individual capacities, The DOC employees are sued in both their

[1] Citations to the record are in reference to the U.S. District Court's CM/ECF document numbers.

individual and official capacities. Mr. Eaves seeks damages as well as declaratory and injunctive relief." *[DOC 13 at 3]*.

The District Court entered in a recommendation to dismiss the Complaint in its entirety stating the amended complaint failed to comply with *Rule 8*. It failed to comply with *Rule 8* because it did not allege who specifically did what or what they failed to do the violated Eaves' rights. *[DOC 13]*. The District Court also recommended dismissal against the CDOC and CDPHE in their official capacities on the *Eleventh Amendment* and the mootness doctrine because the State is immune from suit and Mr. Eaves was no longer at BCCF and also on the grounds that he failed to state a claim for deliberate indifference to his medical needs. *[DOC 13 at 7-10]*.

Mr. Eaves filed his objections outlining the 10th Circuit's standard for *Rule 8* compliance, and how the *Eleventh Amendment* and mootness doctrine did not apply, and was a defense better left to the Defendants. He also objected the Complaint did state sufficient facts to support claims of deliberate indifference to his medical needs based on the public understanding of the COVID-19 pandemic. *[DOC 14]*. Judge Lewis T. Babcock ultimately sided with the recommendation and dismissed Eaves' civil rights action even though Eaves'. Complaint complied with all the applicable Fed. R. Civ. P., especially considering his pro se status.

Eaves filed an appeal to the Tenth Circuit Court of Appeals ("COA"). On May 30, 2024, the COA denied Eaves' appeal based on the recommendations from the District Court. See Attached Appendix D.

REASONS FOR GRANTING THE WRIT

1. Question 1: **Was the exposure to COVID-19 sufficiently serious enough to trigger an Eighth Amendment claim?** The 10th Circuit answered this question when it denied all of Eaves' claims because he did not "demonstrate those Defendants knew he faced a substantial risk of serious harm and failed to take reasonable measures to abate the risk." *[DOC 13 at 10]*. The Court claims that Eaves failed to "identify specifically what each Defendant did or failed to do that allegedly violated his rights." *[Id. at 9]*. *This question is also entangled with question number six.*

   In Eaves' objection to this finding, he informed the Court that a "common sense" approach should be employed and cites a page and a half of facts from his Amended Complaint ("AC") in how the listed Defendants exposed him to a deadly disease and then denied him medical care. *[DOC 14 at 9-10]*. He further asserted that "[c]onsidering COVID-19 was a highly televised world pandemic, the Defendants had knowledge that by taking Mr. Eaves out of quarantine and exposing him to people who had the virus, that it would pose a substantial risk or harm to Mr. Eaves. see *Helling v. McKinney, 509 U.S. 25, 33 (1993)* (citing cases condemning the failure to separate prisoners with contagious diseases from others)." *[Id. at 9]*. Eaves also stated with facts, the Defendants (which he listed by name) in his AC "showed a deliberate indifference to my health and safety because even as late as November 2020 the Defendants did not even implement any of the protocols or procedures that all the other public and private

institutions had." *[DOC 10 at 14, ¶ 52].* He goes on to list 23 specific protocols and procedures that they failed to implement. These protocols and procedures closely resemble those that occurred in the 5th Circuit's *Valentine v. Collier, 490 F. Supp. 3d 1121, 1167 (S.D. Tex. 2020)* ("the lack of written policies, the lack of a compliance regime to ensure compliance with policies, and the predictable result of these forces—consistent non-compliance with basic public health protocols—rises above the level of mere negligence and demonstrates deliberate indifference.") In Eaves' case, the 10th Circuit found "Mr. Eaves must demonstrate that the alleged deprivation was 'sufficiently serious'..." and "[a]ssuming Mr. Eaves' exposure to COVID-19 was sufficiently serious, he has failed to adequately plead that individual officials were deliberately indifferent to this risk." *[10th Cir. COA's Order and Judgment* ("COA O/J") *at 3-4].* Therefore, "mere negligence, such as an accident or 'an inadvertent failure to provide medical care'" was not an *Eighth Amendment* claim. *[COA O/J at 5].* Contrary to the 10th Circuit's own findings in Eaves' case, "the Court assumes that the loss of taste and smell due to COVID-19 and shortness of breath are sufficiently serious medical conditions to trigger the Eighth Amendment." *Daniels v. Gore, 2024 U.S. Dist. LEXIS 107521 *14 (E.D. Vir. 2024);* with the 7th and 9th Circuits concurring in *Ducksworth v. Utter, 2024 U.S. Dist. LEXIS 95087, *33 (E.D. Wis. 2024); Munoz v. Gipson, 2024 U.S. Dist. Lexis 48653, *14-15 (N.D. Cal. 2024).* In this Court on certiorari, for the *Valentine v. Collier* case, Supreme Court Justice Sotomayor in

dissent noted that "the dangers of COVID-19... were undisputed and, indeed, '**undisputable**'" *Valentine v. Collier, 141 S. Ct. 57, 60 (2020).* Therefore, the exposure to COVID-19 and denial of medical care was sufficiently serious enough to trigger an *Eighth Amendment* claim.

2. Question 2: **Does the permanent loss of the sense of smell constitute "unnecessary and wanton infliction of pain" prohibited by the Eighth Amendment?** The 10th Circuit answered this question by first laying their standard for making an *Eighth Amendment* claim. It stated that Eaves was required to demonstrate that "prison officials act with deliberate indifference..." as noted above, failures to implement policies and procedures to protect Mr. Eaves from exposure to COVID-19 demonstrates a deliberate indifference. *[COA O/J at 4].* The 10th Circuit went on to claim, "[e]ven when Mr. Eaves mentions specific defendants, he fails to allege why their actions were unreasonable given the circumstances" and basically any actions taken by these Defendants "does not constitute the 'unnecessary and wanton infliction of pain' prohibited by the *Eight Amendment.*" *[Id. at 4-5].* In similar cases to Eaves', these sister Circuits determined that even the temporary loss of sense of smell amounted to an *Eighth Amendment* claim:

In *Hawkins v. Pollard, 2021 U.S. Dist. LEXIS 124857, *6-7 (9th Cir. 2021)* for the Southern District Court of California, the Court reasoned that the *Eighth Amendment* prohibits the infliction of "cruel and unusual

punishments." U.S. Const. Amend. VIII. In order to state a plausible *Eighth Amendment* claim for relief, a Plaintiff must allege facts sufficient to show that Defendants acted with "deliberate indifference." *Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1068 (9th Cir. 2016); Iqbal, 556 U.S. at 678.* "A prison official acts with 'deliberate indifference . . . only if the [prison official] knows of and disregards an excessive risk to inmate health and safety.'" *Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004)* (quoting *Gibson v. Cnty. of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002)*, overruled on other grounds by *Castro, 833 F.3d at 1076.* "Under this standard, the prison official must not only 'be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,' but that person 'must also draw the inference.'" *Id.* (quoting *Farmer v. Brennan, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)*). Prison officials have a duty to protect inmates from communicable diseases. See e.g., *Helling v. McKinney, 509 U.S. 25, 33, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993)* (finding prison officials may not "be deliberately indifferent to the exposure of inmates to a serious, communicable disease"); *Hutto v. Finney, 437 U.S. 678, 682-83, 98 S. Ct. 2565, 57 L. Ed. 2d 522 (1978)* (affirming a finding of an *Eighth Amendment* violation where a facility housed individuals in crowded cells with others suffering from infectious diseases, such as Hepatitis and venereal disease, and the individuals' "mattresses were removed and jumbled together each morning, then returned to the cells at random in the evening"); *Cervantes, 493 F.3d*

at 1050 (recognizing a cause of action under the Eighth Amendment and 42 U.S.C. § 1983 for an alleged policy of not screening inmates for infectious diseases—HIV, Hepatitis C, and Heliobacter pylori—and for housing contagious and healthy individuals together during a known "epidemic of hepatitis C"); *Maney v. Brown, ___ F. Supp. 2d ___, 516 F. Supp. 3d 1161, 2021 U.S. Dist. LEXIS 19665, 2021 WL 354384, at *12 (D. Or. Feb. 2, 2021)* (citing cases recognizing prison officials' duty to protect inmates from exposure to communicable diseases under the *Eighth Amendment*). Accordingly, that Court concluded that plaintiff had stated a plausible *Eighth Amendment* claim sufficient to meet the screening standard against the Defendants for failing to protect him against exposure to Covid-19. Then in, *Wells v. Wexford of Ind. LLC, 2021 U.S. Dist. Lexis 31175, *3-4 (7th Cir. 2021)*, and *Eighth Amendment* Claim was allowed to proceed for the loss of sense of smell under the same circumstances.

This Court in *Wilson v. Seiter, 501 U.S. 294, 307-308 (1991)*, reiterated the "various bases for an Eighth Amendment" claim as "punishments which, although not physically barbarous, 'involve the unnecessary and wanton infliction of pain,...'" and "among 'unnecessary and wanton' inflictions of pain are those that are 'totally without penological justification.'" In can be inferred by the Court that the facts given in Eaves' AC, that the Defendants had no penological interest in failing to implement any protections from the COVID-19 virus which ended up taking Mr. Eaves' sense of smell for the rest of his life.

Mr. Eaves was boggled by the 10th Circuit's finding considering in the AC he stated the following with fact: "Defendants Kory, Roark, Salazar, Chavez, CDPHE and Doe #1 in a show of deliberate indifference... separated me from the person I had been quarantining with and placed me in a different cell. This person had not even been tested for COVID yet. When I arrived at the new cell it was occupied by Jesse Sanchez. Mr. Sanchez immediately notified Unit Manager Salazar that he was experiencing symptoms and did not believe it would be a good idea to move me into his cell because I was still testing negative for COVID. Mr. Salazar should have notified medical right away. Instead, he assured us everything would be fine and me and Mr. Sanchez would be tested next Tuesday anyways. The following week I got really-really sick and my test returned positive for COVID." *[DOC 10 at 9, ¶¶ 16-19]*. "[A] year later, my sense of smell still had not returned." *[Id. at ¶ 50]*. "Since my loss of smell I feel lost, disoriented and detached from my environment. My interations (sic) with people is not the same. I find myself acting differently because I am not sure how my body or breath smells. I use to be social and now isolate myself for fear of odors I cannot detect. I used to love to cook and eat and these parts of my daily life have become bland and somewhat depressing because I cannot smell the aromas of food. I also cannot enjoy Native American ceremonies and miss the smells of fire and herbs. *[Id. at ¶¶ 59-62]*.

Eaves asserts that with these facts, he has provided a claim that

"involve[s] more than ordinary lack of due care for the prisoner's interests or safety" which is "wantonness" and is prohibited by the *Eighth Amendment. Wilson v. Seiter, 501 U.S. 294, 298-99 (1991)* quoting *Whitley v. Albers, 475 U.S. 312, 319 (1986).* This demonstrates the 10th Circuit's finding is contrary to this Court's prior findings and opinions.

3: Question 3: **When injunctive and monetary relief is sought from medical controlled by a state department, does transfer to a different institution still under the control of that state department moot injunctive or monetary relief?** The 10th Circuit answered this question first by stating "because Mr. Eaves no longer is confined at the BCCF, any claims for injunctive relief regarding the conditions of his confinement at that facility are moot." *[DOC 13 at 7-8].* Mr. Eaves objected to this finding by stating "[m]ootness is established only if '(1) it can be said with assurance that there is no reasonable expectation...' that the alleged violation will reoccur... and (2) interim relief or event have completely and irrevocably eradicated the effects of the alleged violation." *[DOC 14 at 6].* Taking his cite from *County of Los Angles v. Davis, 440 U.S. 625, 631 (1979).* He informed the Court he has affidavits of others who were transferred from BCCF and within a few short years were transferred back. He also informed the Court he still had not received any medical care at all. *[Id. at 9].* He also sought monetary damages against individuals in their individual capacities. *[DOC 10 at 17-18].* This should have indicated to the

Court the Defendants had not put forth any assurance that the alleged violations would not reoccur or that Mr. Eaves had received any medical care from the Defendants' deliberate indifference exposure to COVID-19 establishing events had not completely and irrevocably been eradicated in the denial of Eaves' medical care after exposure. In addition, and as a matter of law, Mr. Eaves had also sought monetary compensation for the loss of his sense of smell. The 10th Circuit Court of Appeals even determined Mr. Eaves' monetary damages were mooted and should "not endorse[d] the District Court's mootness rationale,... since the transfer did not moot the damages claim." *Boag v. MacDougall, 454 U.S. 364 (1982).*

Mr. Eaves also objected on the grounds that medical policy makers who control and enforce medical policies state-wide were responsible for enforcing medical policy to ensure Mr. Eaves would get some sort of treatment for his condition. He cites two persuasive cases, *Pugh v. Goord, 571 F. Supp. 2d 477 (S.D. N.Y. 2009)* (noting "DOCS' policies, particularly the protocol, are applicable to all prisons facilities" therefore Pugh could still maintain a legal cognizable interest and his claim was not moot. *at 489*); and *Oliver v. Scott, 276 F.3d 736 (5th Cir. 2002)* (noting "state wide policy..." makes "violations capable of repetition." *at 741*). *[DOC 14 at 6].* On appeal, he also asserted "'the underlying dispute is capable of repletion, yet evading review.'" Explaining to the Court "that Eaves had not received proper medical care or that he had received medical care at all..." *[COA*

Opening Brief ("COA OB") *at 9]*. The 10th Circuit Court of Appeals claimed Mr. Eaves' "claim that CDOC officials and CDPHE supervise care in all Colorado correctional facilities is far too general. His claim (to the extent it is not barred) is therefore moot." *[COA O/J at 5]*. They also state he cannot invoke the mootness exception "because he has not shown a reasonable expectation that he will be subjected to the same alleged constitutional violations again." *[Id.]*. The Court completely over looked the facts by claiming COVID-19 was not serious enough to invoke the *Eighth Amendment* and not only the initial denial of medical care but a continued denial of medical care did not create a live controversy for Mr. Eaves or that he sought monetary relief as well.

The question presented here falls within the category of harm and is not only "capable of repetition, yet evading review," *Sthn. Pac. Ter. Co. v. ICC, 219 U.S. 498, 515 (1911)* but as stated with fact in the AC, as of "05/07/21... it was apparent I would not be receiving **any** medical treatment..." *[DOC at 11, ¶30]*. As indicated by the filing on 10/13/23, even two years later, Mr. Eaves sought a "command" from the District Court "that proper medical care be provided to address the damage COVID did to his body;" *[Id. at 17]*. From this, the Court should have been able to infer Mr. Eaves has still not received any medical care thus indicating relief is evading review.

4. Question 4: **Is the Mootness defense best raised by the Defendant or can it be a finding of law and fact found by the Court in an initial screening of a**

complaint? Mr. Eaves believes the District Court erred in denying his claims by raising a mootness defense for the Defendants at the screening stage of the complaint before the Defendants had a chance to respond. As a matter of law, a court should not rule on mootness until the defendants have raised that defense. *Fri. of the Ear., Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189* ("A case might become moot if subsequent events made it **absolutely clear**" it would not recur. However, an argument that "the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness."). The U.S. District Court for the District Court of Colorado was not a party to this case and should not have asserted mootness when it has not been made **absolutely clear** Mr. Eaves has received medical care for his continuing COVID-19 symptoms.

5. Question 5: **If the District Court can narrate a perfect summary of a pro se prisoner's complaint, that contains what the allegations are, who was involved and when it happened, does that mean the Plaintiff has provided adequate notice under Rule 8?** The 10th Circuit claimed Mr. Eaves failed to comply with *Rule 8* indicating his AC was "vague and conclusory." *[DOC 13 at 7].* However, this Court has made it clear a fact specific pleading is not required. "[T]he District Court was required at this stage of the proceedings to construe [Eaves'] ambiguous statement in the Plaintiff's favor." *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 592 (2007).* As a matter of law, "Rule 8 (a)(2) does not contemplate a

court's passing on the merits of a litigant's claim at the pleading stage." *Id. at 585.* By dismissing Mr. Eaves' claims as a failure to comply with *Rule 8*, the 10th Circuit circumvented the other Federal Rules which rely on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. In this case the Court decided for itself to dispute Eaves' facts.

Rule 8 was complied with because the District Court gave a perfect summary of Eaves' claims indicating that a common person could understand who was involved, when and where the alleged violations occurred and what relief was sought. However, the Court of Appeals made its ruling on *Rule 8* based on Eaves' claims having no merit. *[COA O/J at 3].* In addition, Mr. Eaves also raised an objection to the *Rule 8* dismissal on a supervisor liability claim. *[DOC 14 at 4].* This Court has stated "a federal court may not apply a 'heightened pleading standard'—more stringent than the usual pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure—in civil rights cases alleging [supervisor] liability..." Leatherman v. Tarrant Cty. Narc. Intel. & Coor. Unit, 507 U.S. 163, 164 (1993).

On appeal, Mr. Eaves again asserted "because CDOC and CDPHE

Defendants were exercising official policy and or failed to train or supervise [during the COVID-19 pandemic], that in their official capacities they were still liable." *[COA OB at 8].* However, the 10th Circuit found because Mr. Eaves was transferred from BCCF he could no longer seek injunctive relief because CDOC and CDPHE was immune under the *Eleventh Amendment* ignoring his monetary relief or his argument CDOC was still liable for his medical care even after transfer. (See Question #3).

6. Question 6: **If Rule 8 does not require fact specific allegations, can a pro se Plaintiff allege a group of individuals who acted in concert violated his rights and still meet the personal involvement and individual liability requirement under § 1983?** The 10th Circuit answered this question by stating "the bulk of his complaint alleges action taken by groups of defendants without specifying each defendant's personal role in the alleged constitutional deprivation. 'Individual liability under § 1983 must be based on personal involvement...'" *[COA O/J at 4].* In *Rodwell v. Wicomico Cnty., 2024 U.S. Dist. LEXIS 47915, **6-10 (D. Mar. 2024)* the court dismissed claims only because plaintiff was unable to identify even a limited group of officers actually responsible for the alleged harms. However, like Eaves' case, "group pleading is sufficient 'where the injured party was the alleged victim of a group... which, no doubt, severely disadvantaged him and any onlookers in identifying precisely which officers committed which bad acts'"

citing *J.A., 2017 U.S. Dist. LEXIS 141643, 2017 WL 3840026, at *3.* In Eaves' circumstance, the identified Defendants he listed in his AC were responsible as a group of unit managers and medical professionals for determining where Eaves could be placed based on his COVID-19 tests and what treatment he could receive. However, Eaves "was sweating and coughing profusely [he] was forced to move from a quarantined cell..." *[DOC 10 at 9, ¶ 22]* and only those listed were responsible for recommending, verifying, certifying and approving the conditions Eaves was subjected to are listed in his complaint. Under those circumstances it would "no doubt, severely disadvantage[] him and any onlookers in identifying precisely which officers committed which bad acts" because of the pandemonium from the COVID-19 pandemic.

Taken Eaves' allegations as true and allowing his claims to proceed through the normal channels of litigation would have provided discovered documents with signatures to narrow down who was responsible for the bad acts and would have been more applicable on a motion for summary judgment and not the screening stage. If a group pleading under those circumstances can survive even a motion to dismiss, it should be enough to survive a District Court's initial screening under *Rule 8.* Even the 10th Circuit has stated a "Plaintiff cannot be 'penalize[d]... merely because he was not privy to, and, therefore, cannot plead details of, the inner workings of a group of defendants who allegedly acted in concert to'" expose him to

the COVID-19 virus. *Lochhead v. Alacano, 697 F. Supp. 406, 418 (D. Utah 1988)* quoting *Kravetz v. Brukenfeld, 591 F. Supp. 1383, 1388, n.9 (S.D. N.Y. 1984).*

The 10th Circuit still claimed Eaves' claims could be dismissed because he used a "shotgun approach" in his AC. This Court noted, however, that "[t]he number of [defendants] introduced should definitely be restricted. Research suggests that there is an upper limit to the number of [defendants a pro se] can present and still have persuasive effect." *Yarborough v. Gentry, 540 U.S. 1, 8 (2003).* In this case seeking certiorari, Mr. Eaves only listed the Defendants he knew were involved and or responsible for exposing him to COVID-19. It is not understood why the Court dismissed his claims for using a shotgun approach. When he filed his objection he stated "[i]t would have been burdensome for Eaves to lable (sic) each Defendant separately who were responsible for exposing him to a potentially deadly virus." *[DOC 14 at 9].* He further elaborated that the statement of facts "applied to each Defendant." *[Id.].* Under *Rule 8*, Eaves gave the Defendants enough details to place the Defendants on notice in order to defend the claims and the 10th Circuit Court of Appeals should not have dismissed his claims.

7. Question 7: **Does the Fourteenth Amendment provide a separate basis for a § 1983 claim?** The 10th Circuit answered this question by stating "the *Eighth Amendment* rather than *Fourteenth Amendment* because the

Eighth Amendment 'serves as the primary source of substantive protection to convicted prisoners.'" *Whitley v. Albers, 475 U.S. 312, 327 (1986).* Mr. Eaves believes the Court misapplied the law concerning the actual claims he was raising. Under *42 U.S.C. § 1983* Mr. Eaves can by Congressional decree file a "suit in equity, or other proper proceeding for redress" against "[e]very 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."

In Eaves' AC it is clear in Claims One and Two that Mr. Eaves was raising separate and distinct "*Fourteenth Amendment* Substantive Due Process violations." He never made any claims that there was a deliberate indifference to his medical needs under the *Fourteenth Amendment. [DOC 10 at 4 and 12].* For example, he states "Mr. Griffith violated my substantive due process right pursuant to the *Fourteenth Amendment* for failing to adhere to this policy..." *[DOC 10 at 11, ¶ 32]* (Referencing his **duty** to investigate complaints in ¶ 31). This should have indicated that Mr. Eaves was making a claim against Defendant Griffith's actions or conduct. Mr. Eaves also raised claims under the *Fourteenth Amendment* for Corecivic's failure to obtain licensing, *[Id. at 13, ¶ 47]* or to follow certain state statutory regulations. *[Id. at ¶ 48].*

In matters of substantive due process, this Court has divided such claims into two veins: (1) is the deprivation of a particular constitutional guarantee and (2) actions that "governmental officials may not take no matter what procedural protections accompany them," alternatively known as actions that "shock the conscience." *Hudson v. Palmer, 468 U.S. 517 (1984)* and *Rochin v. California, 342 U.S. 165 (1952).* In Eaves' objection, he asserts he is making a claim that "officials realistically have time to deliberate their conduct." *[DOC 14 at 7].* He goes on to explain that the *Eighth Amendment* requires an objective and subjective component in order to establish a claim and a *Fourteenth Amendment* substantive Due Process claim required a deliberate indifference to a liberty interest that would shock the contemporary conscience. *[Id.].*

On appeal, Mr. Eaves informed the 10th Circuit that his claims were dismissed for his "failure to comply with the *Eighth Amendment* standard because of his attempted use of the *Fourteenth Amendment* to claim deliberate indifference." *[COA OB at 9].* The Court of Appeals made no ruling on the dismissal of Eaves' *Fourteenth Amendment* claims.

Mr. Eaves is pro se and liberally construing his complaint is axiomatic in that procedural and substantive due-process claims require distinct analyses, undermining the notion that this pendent claim and the appealable claim are inextricably intertwined and it must be reviewed in order to adequately address the substantive due-process claim that is

properly before this Court. See *Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985)* ("The point is straightforward: the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology."); *United States v. Deters, 143 F.3d 577, 582 (10th Cir. 1998)* ("Unlike procedural due process, substantive due process protects a small number of 'fundamental rights' from government interference regardless of the procedures used."). Mr. Eaves would ask this Court to clearly outline to the lower courts that a separate substantive claim can be raised in a § 1983 complaint. This is because this Court "has interpreted this language [i.e., of the Due Process Clause] as guaranteeing not only certain procedures when a deprivation of an enumerated right takes place (procedural due process), but also as guaranteeing certain deprivations won't take place without a sufficient justification (substantive due process)." In this case it would be if Mr. Eaves would have a cognizable claim under the *Fourteenth Amendment* for the Defendants failures to follow the grievance procedure which ultimately led to additional injury of Mr. Eaves. The failure came in the disregard to investigate or forward his grievances to Clinical Services. *Morton v. Ruiz, 415 U.S. 199, 235 (1974).* ("[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.").

The issue here is quite distinct: Plaintiffs' pendent action challenges the district court's conclusion that there were adequate procedural protections that Plaintiff failed to invoke, whereas the non-pendent appeal challenges the court's finding that the grievance officer and medical official's actions shocked the conscience and violated clearly-established federal law.

The *Fourteenth Amendment* prohibits any state deprivation of life, liberty, or property without due process of law. Application of this prohibition requires the familiar two-stage analysis: We must first ask whether the asserted individual interests are encompassed within the Fourteenth Amendment's protection of "life, liberty or property"; if protected interests are implicated, we then must decide what procedures constitute "due process of law." *Morrissey v. Brewer, 408 U.S. 471, 481 (1972); Board of Regents v. Roth, 408 U.S. 564, 569-572 (1972).* See *Friendly, Some Kind of Hearing, 123 U. Pa. L. Rev. 1267 (1975).* The 10th Circuit in this case failed to do that in this case because it believes that Mr. Eaves cannot assert such a claim in a *§ 1983* complaint.

The range of interests protected by procedural due process is not infinite. Id. *Roth, at 570.* This Court has repeatedly rejected "the notion that any grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause." *Meachum v. Fano, 427 U.S. 215, 224 (1976).* However, Due process is required when a decision of the State implicates an interest within the protection of the *Fourteenth*

Amendment. And "to determine whether due process requirements apply in the first place, [the 10th Circuit] must look not to the 'weight' but to the nature of the interest at stake." *Roth, supra, at 570-571.* In this case, whether Mr. Eaves could assert a Substantive Due Process claim for Defendants purposeful avoidance of following the grievance procedure that led to additional injury.

In the context of the grievance, Mr. Eaves was seeking proper medical care and the grievance procedure required the Defendants to properly investigate his complaint and attempt a meaningful remedy. See the Colorado Department of Corrections Administrative Regulation, AR 850-04 (IV)(E)(1) at https://cdoc.colorado.gov/about/department-policies (giving the imperative instruction that the grievance officer and medical personnel "**will** sufficiently investigate the circumstances surrounding the problem or complaint and the meaningful remedy requested to formulate a meaningful response."). While the contours of this historic liberty interest in the context of our federal system of government have not been defined precisely, they always have been thought to encompass proper medical care. Personal liberty is more than actual physical restraint and includes the concept of "fundamental rights." The role substantive due process is to protect "fundamental rights" from arbitrary deprivation by state governments. Rights that have been recognized as fundamental include: the right to marry, to have children, to enjoy privacy and to proper health

care. *Estelle v. Gamble, 429 U.S. 97, 103 (1976).*

The constitutionally protected liberty interest in the grievance procedure in order to receive proper medical care is at stake in this case. Because the 10th Circuit declined to decide this matter, "[The] question remains what process is due," *Id. Morrissey, at 481*, and whether Mr. Eaves can raise that claim in a § 1983 complaint.

8. Question 8: **Does the Fourteenth Amendment create a liberty interest in a state prisoner's grievance procedure?** As noted above, the 10th Circuit Court of Appeals did not address the District Court's dismissal of Eaves' *Fourteenth Amendment* claim. Mr. Eaves would assert this is a issue of first impression that this Court should settle and make a rule that is absolute.

The District Court dismissed Eaves' claim because "the 'denial of a grievance, by itself without any connection to the violation of constitutional rights alleged by plaintiff, does not establish personal participation under § 1983.'" *[DOC 13 at 9].* Objecting, Eaves asserted his *Fourteenth Amendment* claim was not based on the denial of the grievance, but "claims against Griffith are for his repeated failures to follow state laws and procedures which has lead (sic) to constitutional violations."

<u>42 U.S.C. § 1983</u>

Pursuant to congressional decree, Mr. Eaves would assert that under 42

U.S.C. § 1983 that he in fact does have a statutory right to file a claim under the *Fourteenth Amendment* for the Colorado Department of Corrections' Administrative **Regulation** on grievances. See the Colorado Department of Corrections Administrative **Regulation**, AR 850-04 (IV)(E)(1) at https://cdoc.colorado.gov/about/department-policies. This is because congress made clear that Mr. Eaves could file a civil action against "[e]very person who, under color of any... **regulation**... 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..."

First Amendment

First, the Petition Clause of the First Amendment grants the "**right**... to petition the Government for a redress of grievances." *Borough of Duryea v. Guarnieri, 564 U.S. 379, 382 (2011).* In determining whether Mr. Eaves had a right to grieve his conditions of confinement under the Petition Clause, "[t]he *public concern test* was developed to protect substantial government interests." *Id. at 393.* In addition, "[p]etitions to the government assume an added dimension when they seek to advance political, social, or other ideas of interest to the community as a whole." *Id. at 395.* Correctional institutions, as-well-as the medical care for prisoners,

which are supported by citizens' tax dollars, are of interest to the community as a whole. However, "[a] petition that involves nothing more than a complaint about a [violation] in the [state] employee's own duties does not relate to a matter of public concern..." *Id. at 399.*

PLRA

Mr. Eaves would assert that his grievances do however have a public concern under the *First Amendment* and are also required by statute. In connection to the Petition Clause and the *public concern test*, is the PLRA under *42 U.S.C. §§ 1997e et seq.* The 9th Circuit put it best; the purpose in enforcing this statute to require prisoners to exhaust all remedies before filing suit is "the government's interest... to curtail frivolous prisoner's suits and to minimize the costs—which are borne by taxpayers," and therefore would make Eaves' grievances a matter of public concern under the *First Amendment. Madrid v. Gomez, 190 F.3d 990, 996 (9th Cir. 1999).*

Fourteenth Amendment

Mr. Eaves would assert the Fourteenth and First Amendments provide a constitutional right to the grievance process. As noted in *Ramirez v. Collier, 595 U.S. 411, 437 (2022)*, "[u]nder the PLRA, prison officials and incarcerated individuals share an **obligation** to act in good faith in resolving disputes: Incarcerated individuals must timely raise their claims through the prison grievance system, and prison officials **must** ensure that

the system is a functioning one." Under this imperative language, and the language of the grievance procedure Eaves is bound by, state officials "**will** sufficiently investigate the circumstances surrounding the problem or complaint..." *AR 850-04 (IV)(E)(1).* This procedure in this case also required "[c]omplaints regarding medical care and/or treatment... are to be forwarded to the Clinical Services grievance coordinator for processing." *Id. at (E)(1)(d).* It is under this context that Mr. Eaves made his substantive due process claim. In his AC he alleged with fact that Defendant Griffith did not sufficiently investigate his complaint or forward it to clinical services in violation of the procedure/policy. *[DOC 10 at 11, ¶¶ 30-34].* Mr. Eaves also stated with fact that his claim against Defendant Griffith was based on a pattern of this behavior and this was not the first time he had violated Mr. Eaves' substantive due process rights. *[Id. at ¶ 34].*

The Real Issue That Needs A Rule Absolute

The 10th Circuit ignored Eaves' due process claim over his grievance procedure because all the federal circuits believe there is no *Fourteenth Amendment* right to the grievance procedure. See the following cases:

1st Circuit—*Mckenney v. Joyce, 2019 U.S. Dist. LEXIS 112381;*

2nd Circuit—*Conquistador v. Corcella, 2023 U.S. Dist. LEXIS 68224;*

3rd Circuit—*Rosa-Diaz v. Oberlander, 2023 U.S. Dist. LEXIS 151251;*

4th Circuit—*McNair v. Nash, 2023 U.S. Dist. LEXIS 225324;*

5th Circuit—Jones v. Lumpkin, 2023 U.S. Dist. LEXIS 17563;

6th Circuit—*Moore v. Unknown Vrabel, 2024 U.S. Dist. LEXIS 33119*;

7th Circuit—*Smith v. Willis, 2023 U.S. Dist. LEXIS 84097*;

8th Circuit—*Flick v. Alba, 932 F.2d 728, 729 (8th Cir. 1991)*;

9th Circuit—*Welch v. Dzurenda, 2023 U.S. Dist. LEXIS 227471*;

10th Circuit—*Merryfield v. Jordan, 431 F. App'x 743, 749-50 (10th Cir. 2005)*; and

11th Circuit—*Walters v. Sheldon, 2023 U.S. Dist. LEXIS 155536*

Pursuant to the overlapping statutory rights under § 1983; statutory requirements under § 1997e; and the Constitution under the First and Fourteenth Amendments, Mr. Eaves as-well-as other prisoners all across the United States do have a right in their grievance procedures.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rodney Eaves

Date: 08/08/24

CERTIFICATE OF COMPLIANCE

No._____

RODNEY DOUGLAS EAVES — PETITIONER
(Your Name)

VS.

MS. KORY, JERRY ROARK, DANNY SALAZAR, MR. CHAVEZ, THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, SUSAN WOLLERT, ANGIE TURNER, JANE DOE#1, MARSHALL GRIFFITH, JANE DOE #2 and JANE DOE #3.—
RESPONDENT(S)

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains **7003** words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan. 30, 2025

Rodney Eaves
Petitioner, Rodney Eaves