

No. 24-7415

ORIGINAL

Supreme Court, U.S.
FILED

MAY - 1 2025

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Rinaldi — PETITIONER
(Your Name)

vs.

United States, Et Al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For The Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Rinaldi
(Your Name)

F.C.I. Otisville
P.O. Box 1000
(Address)

Otisville N.Y. 10963
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1.) Should Rinaldis FTCA claims be re-litigated because he alleged a plausible constitutional violation?

suggested Answer... Yes!

2.) Should Bivens be extended to this case in order to prevent a miscarriage of Justice?

suggested Answer... Yes!

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: 2-3-25, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

8th Amendment

CRUEL & UNUSUAL punishment

BIVENS

FEDERAL TORT CLAIMS ACT

1st Amendment

Statement of Facts

Rinaldi was housed at USP Lewisburg from November 2011 to November 2012. During this time, he filed numerous grievances about conditions at the prison. Defendant Baysore was a counselor responsible for responding to Rinaldi's grievances. In addition, as a member of the unit team, Baysore was responsible for deciding where Rinaldi would be housed.

In January 2012, evidently fed up with Rinaldi filing grievances, Baysore threatened that "if Rinaldi continued to file Administrative Remedies, she would have him moved to a different unit and placed in a cell with an inmate who is known for assaulting his cellmates." Rinaldi informed his case manager, defendant Kissell, of the threat, hoping he might intervene. But Kissell, who was also a member of the unit team, told Mr. Rinaldi that "he wasn't going to get involved in what is going on because it is over his head and they are tired of Rinaldi filing Administrative Remedies." The following day, defendant Gee came to Rinaldi's cell to tell him that he was being moved from Z block to D block, because he didn't listen when defendant Baysore told him to stop filing Administrative Remedies.

Rinaldi was transported to D block on February 2nd 2012. Although Rinaldi does not remember who specifically transferred him from one unit to the other, he knows (and

defendants agree) that defendants Beaver and Raup were there when he was to be placed in the new cell. This new cell, D-218, already housed a prisoner named Albrozo Pink.

Pink was known to be violent. As Rinaldi later learned, he had physically assaulted each of the previous four or five cellmates who had been placed with him, because he was nearing the end of his term and felt he should have a cell to himself. He also assaulted the next inmate who followed Rinaldi, as well.

Before they could place Rinaldi in the cell, the officers needed to restrain Pink. However, when Beaver attempted to put hand restraints on Pink through the slot in the cell door, Pink refused and stated, "I am not cuffing up and if you put anybody in here with me I will kill them and hurt the officer trying to do it." Beaver and Raup heard this threat and took it seriously. They called in the calculated use of force team to remove Pink from the cell and to place him in ambulatory restraints due to his disruptive behavior. While Pink was forcibly removed from the cell, Rinaldi was locked in a shower for safety concerns.

Defendants not only felt that Pink's threat warranted immediate protective action. They concluded it warranted disciplinary charges. Defendant Beaver prepared an incident report charging Pink with a code 203 violation for "threatening another with bodily harm." A disciplinary hearing officer ultimately found Pink guilty.

Despite knowing of Pink's threat, and deeming it serious enough to warrant both protective and disciplinary action, defendants proceeded to return Pink to the cell, now with Rinaldi inside, a mere two hours after the threat was made. Predictably, Pink proceeded to assault Rinaldi several times over the following days, as a result of which Rinaldi suffered cuts and bruises and emotional distress.

Correctional staff were aware of these assaults (and of the injuries to Rinaldi), but did not intervene because they knew that this sort of rough treatment was exactly what defendant Baysore had in mind when she ordered Rinaldi transferred to D-block. As Rinaldi explained during his first deposition:

"They were aware of what was going on because... people knew that I had an issue with Miss Baysore. They knew why I was moved over there. They knew why I was placed in the cell with him... Nobody wanted to intervene because they understood what I was being placed in the cell for. They understood that this was being done as a punishment so who's going to intervene when they already understand what this is and why you're here or what this is about.

Procedural History

Rinaldi commenced this lawsuit on 2/19/13. His complaint raised a number of claims, all arising out of his incarceration at Lewisburg. As relevant here, he alleged that defendants

violated his first amendment rights by retaliating against him for filing grievances and violating his Eighth Amendment rights by showing deliberate indifference to, and failing to protect him from, the known risk of harm posed by forcing him to share a cell with a prisoner who had threatened to kill him.

Nevertheless, the district court dismissed Rinaldi's FTCA claims against the United States with prejudice. The district court found that Rinaldi's claims amounted "essentially to a negligence action against defendants, which is allowed under the FTCA, but concluded that the discretionary function exception barred Plaintiff's claim because," the challenged conduct in this case, assigning Plaintiff to a cell and determining how best to protect him, is unquestionably discretionary. In so holding the district court never addressed whether Rinaldi plausibly alleged tortious conduct that rose to the level of a constitutional violation and the impact this would have on the discretionary function doctrine.

On appeal the Third Circuit agreed that the discretionary function test barred Rinaldi's claims. Although the court affirmed the dismissal of Rinaldi's FTCA claims, it re-instated his First and Eighth Amendment claims under Bivens. Those claims returned to the district court where defendants filed another motion to dismiss.

The district court granted the motion in part and denied it in part. It dismissed the First Amendment retaliation

claim, concluding that Bivens does not extend to that context. With respect to the Eighth Amendment claim, the district court held that there is a Bivens remedy but that several defendants were entitled to qualified immunity.

Rinaldi once again appealed. The panel on this second appeal dismissed Rinaldi's Eighth Amendment claims on the ground that Bivens does not provide a cause of action.

Argument

Rinaldi now argues that this court should revive his FTCA claim and also extend Bivens to apply to this particular case as justice would require.

There is no serious doubt that Rinaldi plausibly alleged a constitutional violation. He squarely alleged that defendants deliberately placed him in a dangerous cellblock with a prisoner who was known to assault his cellmates in order to punish him for filing several grievances. Even more shockingly, he alleged that defendants locked him in a cell with this dangerous prisoner after that prisoner told defendants he would kill anyone placed in the cell with him. A threat they found credible enough to warrant disciplinary action. This is precisely the sort of allegation that the Third Circuit and the Supreme Court have found to state a claim

For deliberate indifference or failure to protect in violation of the Eighth Amendment. It is difficult to imagine what more Rinaldi should have alleged at the pleading stage, to state a plausible claim, that defendant's tortious conduct rose to the level of a constitutional violation. For this reason Rinaldi's FTCA claim should be revived and Bivens should extend to this case.

Reasons For Granting The Writ

A notable Judge from the Third Circuit, Judge Rendell, wrote a separate opinion which urged the court to provide a remedy in this matter. To steal from her words.

"In Fisher, we stated that [unless a case is undistinguishable from Bivens, Davis, or ~~Wainwright~~ Carlson, a damages remedy may be created by Congress, but not the courts]. But how can it be that Congress rather than the courts is more suitable to provide a remedy here? The injuries here were not the unfortunate and unpredictable result of prison housing policy - a matter of government operations - committed to the purview of Congress - but instead, the states calculated and intended punishment for Rinaldi's exercise of his right to file grievances. Where, as here, prison officials deliberately punish prisoners and subject them to intentional harm to suppress their exercise of fundamental rights, I submit there is no reason that the courts need defer to Congress. Prison officials

CANNOT be allowed to mete out with impunity extrajudicial, cruel, and unusual punishments to those in their custody. While *Egbert v. Boule* seems to limit remedies under *Bivens*, this type of purposeful infliction of harm in retaliation for the exercise of the right to file grievances warrants an extension of *Bivens*. I urge the Supreme Court to recognize the need for courts to remedy situations such as this.

Rinaldi could not state it any better than Judge Rendell. Nevertheless, Rinaldi would like to point out that a right without any recourse or remedy when it is violated is no right at all. It is an illusion. Therefore, in order to achieve justice, *Bivens* must extend to this case. We should also be mindful that the law is not rigid or static and that the purpose of the law is to achieve justice. Therefore, at times the law bends in order to accomplish the goal of achieving said justice. If there is no remedy available in this case, Rinaldi will have suffered a miscarriage of justice.

For these reasons, this court should GRX this case back to the Third Circuit with instructions to re-instate his FTCA claim and to extend *Bivens* to his case. Or in the alternative, this court should appoint counsel and grant certiorari.

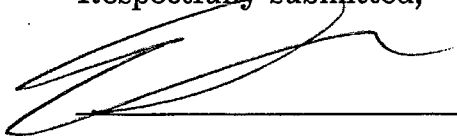


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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

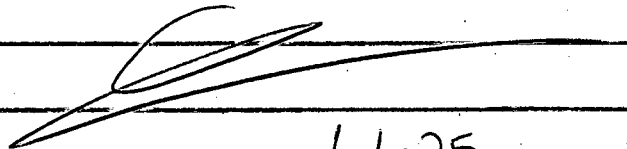


Date: 5-1-25

To: Clerk of Court

I Michael Rinaldi hereby swear under
penalty of perjury that I mailed one copy of
the following Petition for a Writ of Certiorari
to the U.S. Supreme Court by placing it in the
institution mail box on May 1st 2025, postage
pre-paid.

Respectfully
Michael Rinaldi



6-1-25