

No.

IN THE

Supreme Court of the United States

Freddie Fountain

Petitioner

v.

JOHN RUPERT, ET AL.

Respondent(s)

On Petition For Writ Of Certiorari
To The ***United States Court of Appeals***
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Mr. Freddie Fountain
#1640115
CID Coffield Prison
2661 FM 2054
Tennessee Colony, TX 75884-0000

QUESTION(S) PRESENTED

Are the lower Courts authorized to severly abuse and otherwise deprive access of the judicial processes to an entire lesser class of persons, without justification

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:

John Rupert, ex-senior Warden of Coffield unit

Larry Doyle, ex-assistant Warden of Coffield unit

Edwin Atchison, ex-Major of Security, ad-seg, Coffield unit

Bennie Coleman, investigator of Coffield unit

Michael Beil, ex-Captin of Food Service, Coffield unit

Pamela Pace, medical practice manager of Coffield unit

Paul Shrode, medical doctor of Coffield unit

Respondents

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	<i>District Court Decisions</i>
APPENDIX B	<i>Appellate Court Decisions</i>
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. Reck v. Pate, 367 U.S. 433, 81 S. Ct. 1541 (1961)	Id
2. Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285 (1976)	291
3. Farmer v. Brennan, 114 S. Ct. 1970 (1994)	1977
4. Fountain v. Director, No. 6:11-cv-152, U.S.D.C., E.D. Tex., -Tyler (March 29, 2011)	Id
5. Gates v. Cook, 376 F.3d 323 (5th Cir. 2004)	Id
6. Smith v. Leonard, 244 Fed. App'x 583 (5th Cir. 2007)	584
7. Burrell v. Newsome, 883 F.2d 416 (5th Cir. 1989)	418
8. PYCA v. Harrison County, 81 F.3d 1412 (5th Cir. 1996)	1421
9. Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (1974)	595
10. Horton v. Cockrell, 70 F.3d 397 (5th Cir. 1995)	401
11. Jones v. Block, 127 S. Ct. 910 (2007)	914-22

STATUTES AND RULES

12. 28 U.S.C. § 1915 (9)
13. 28 U.S.C. § 453
14. Wilson v. Seiter, 501 U.S. 294, 304-05 (1991); Palmer v. Johnson, 193 F.3d 346, 353 (5th Cir. 1999).

OTHER

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 B to the petition and is

☒ reported at unknown; 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 A to the petition and is

☒ reported at unknown; 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 January 16, 2018.

☒ 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

1. VIII Amendment, U.S. const. Cruel and Unusual Punishment
2. fourteenth Amendment, U.S. const., Due Process and Equal Protection

3. 28 U.S.C. § 1915(g)

STATEMENT OF THE CASE

This action presents an intricate and disturbing picture of events involving complex questions of fact and law, claim preclusive interwoven and contradicting statute of limitations periods and, most importantly, the unauthorized judicial interference of justice in relation to an entire class of individuals.

The petitioner, Freddie Fountain ("Fountain"), an inmate serving time in the Texas prison system for a simple non-accident DWI filed suit against prison officials in 2013 over unlawfull conditions of confinement with resultant injuries. Proceeding in forma pauperis and pro-se, a series of three seperate suits were commenced within the United States District Court, For the Eastern District of Texas, Tyler Division over the course of just over a year. In order to avoid duplication and the claim preclusive effects of res judicata the suits were raised against different officials, therein having arisen partially similar conditions challenges in part, though a wide array of fact-specific injuries which were unique and wholly unduplicative majorilly between the seperate suits.

Uncommon to the typical case, due to a combination of the sheer breadth of the conditions and injuries involved and the resultant pro-se page limit filing restrictions, the numerocity of the actors involved, the applicable statute of limitations periods and, the continuous sustainment of additional injuries verses the district courts unwillingness to allow for the supplementation of claims in any one suit, the seperate actions, although undesirable, had been Petitioners only means of obtaining redress towards all claims throughout the proceedings.

As the first action in sequence to the three, the defendants liability had extended back into 2011' in relations to both conditions challenges and resultant injuries (e.g. bodily burns, extreme weight loss, organ failure, etc.), due to the applicable two year statute of limitations period which ran from the original 2013' filing date of this case. The third action in sequence which is the only other case comparable to the present, No. 6:15cv100, had not been filed until February 2015' and thus could not possibly have encompassed any claims prior to February 2013.

On September 2, 2015 almost two years after the present action had been filed, the district court erroneously dismissed virtually all of the unlawfull conditions and injuries claims (doc. no. 236) 'with prejudice' from this lawsuit, which at that point precluded all present and future redressibility towards the same in this or the other cases. The district court at that point had allowed merely a few de minimis fact-specific injuries claims forward in the case, though had terminated any and all actual conditions practices challenges themselves along with numerous serious physical injuries claims. All of which had amounted to a total destruction of the case itself, for the most part.

At around that same time Fountain had recieved a third strike under 28 U.S.C. § 1915 (9). One of those he had endured in Washington D.C. as a result of him having requested the rightfull D.O.J. intervention into the matters. see *Fountain v. United States*, 622 Fed. Appx 3 (D.C. Cir. 2015).

By law Fountain was not allowed to appeal the district courts partial³ dismissal (doc. no. 236) until the case was fully adjudicated and Final Judgment was issued. While under normal circumstances a plaintiff would not be prejudiced

by a partial dismissal to such degree that a voluntary dismissal of the remaining claims would be justified in order to obtain appellate access, the same had not been true in Fountains case.

The partial dismissal in this case had detrimental effects of such severity that ultimately a voluntary dismissal of the remaining claims had been warranted. The conditions themselves of which all redress had been precluded over the long course of time, were in fact grave and severe. Such serious injuries as extreme weight loss from continued starvation, bodily burns and numerous other injuries were continuously being suffered by Fountain as a direct and only result of the very conditions of which he had no available redress to through the partial dismissal and long belaying of the case.

In 2017' Fountain justifiably requested a voluntary dismissal of the de minimus few remaining claims for the sole purpose of obtaining vital appellate access in order that those previously dismissed claims could be reviewed, reversed and given redress and adjudication. The district court granted the request and entered Final Judgment in the case. Both the district court and the Fifth Circuit Court of Appeals each erroneously denied Fountains motions for leave to appeal in forma pauperis under the imminent danger exception of § 1915(g) despite the fact that sufficient imminent dangers had been demonstrated.

Fountain case is but one of many within the region in which has recieved wholly unjust treatment by the federal judiciary. An entire body of judges whom are actively destroying inmate cases in strokes without justification. Judges who are allowing concentration camp level conditions within secure American borders and are moving against inmates in mass in an "us against them", biased attitude.

REASONS FOR GRANTING THE PETITION

The lower courts decision to deny in forma pauperis status had not been one based upon the actual merits of the request, or even the applicability of law, as our system of justice requires. But rather, had been an unauthorized act of extreme prejudice with a basis of intent to cause injustice and harm unto an entire lesser class of persons (inmates).

It has been said that with great knowledge, comes great responsibility. And if this is true, then we are left with but one question: "Can the leaders of our today be unhesitantly entrusted with the measures of our tomorrow? What is to be expected of those we emplace into power over us, our valued principles and national way of life. If there were ever one thing to which we may all unanously agree upon it would be that, by theory, our leaders are emplaced to act as a mirrorable reflection of the basic principles and moral values to which we all generally share as a greater society of one today, tomorrow and beyond.

If one were to imagine the everyday horrors ensued into the victims of Germany's infamous concentration camps during World War II, the image would foredoom all but the strongest of heart. As some of the most engredgenous human rights violations ever known to man, the injustices suffered unto thousands, as was witnessed by all the world, were enough to move entire nations to end it. Ultimately swearing under oath with hands to God that such similar instances would no longer be allowed anywhere on this earth again,

Yet despite such admirable pledge of the American people, the facts and evidence of the present case demonstrate an unfortunate betrayal of the sureness and confidence instilled into the current leadership of our country, whilst hast shuddered the very foundation of trust itself.

In Brief

The Petitioner, Freddie Fountain ("Fountain"), was wrongfully convicted of a simple non-accident DWI by a state court of Texas in 2010 and was sentenced to 12 years imprisonment, for no other reason than but for him having alcohol on his breath on the night of October 14, 2009. see *Fountain v. Director, TDCJ-CID*, No. 6:11cv152, U.S.D.C., E.D. Tex. - Tyler Division (March 29, 2011); see also *In re: Freddie Fountain*, No. 17-40885, U.S.C.A., Fifth Circuit (October 23, 2017). In early 2011 Texas prison officials, TDCJ-CID, placed Fountain in administrative segregation, an extreme form of isolation in which he has no contact or interaction with other human beings. Since that time he has been held in a tiny five foot by nine foot isolation cell 23 1/2 to 24 hours a day with merely a two foot wide space to stand or walk. see *Wilkerson v. Goodwin*, 774 F.3d 845 (5th Cir. 2014).

As every federal Judge within the Circuit is aware the overall conditions of confinement and extranormal abuse imposed upon inmates within the Texas prison system is phenomenal. The conditions are routinely substandard and barbaric on every level, falling far below the requirements of federal law. The severely abusive conditions to which Fountain and many other inmates have faced at their prison, the TDCJ's Coffield unit, for many years, are no less appalling. see e.g. *Tijerina v. Stanley, et al.*, No. 5:16cv102, U.S.D.C., E.D. Tex. - Texarkana (January 1, 2017); *Redeaux v. Rupert*, No. 6:15cv717 (2015); *Carroll v. Rupert, et al.*, No. 6:15cv569; *Fountain v. Thaler, et al.*, No. 6:13cv958, U.S.D.C., E.D. Tex. - Tyler (Dec. 11, 2013); *Fountain v. Livingston*, No. 6:14cv268, U.S.D.C., E.D. Tex. - Tyler; *Fountain v. Rupert, et al.*, No. 6:15cv100, U.S.D.C., E.D. Tex. - Tyler; *Fountain v. United States*, 622 Fed. App'x 3 (D.C. Cir. 2015).

The conditions within ad-seg at the Coffield unit which go back for decades, grossly violate Texas law, federal law and even international law many ways over. These are conditions of which Fountain himself has faced continually for closely seven years to date and include, but be not limited to, the following:

The inmates remain in the tiny filthy isolation cells 23½ to 24 hours a day year round. Every surface of their cells and showers are dirty and loaded with harmful germs and disease. Deadly spider and cockroach infestations are rampant. Roaches are allowed to crawl even on the inmates bodies. The cells are illegitimately stripped of all normal furnishings. There is no running hot water, no desk or basic writing surface and no stool to sit on. Prison staff create subfreezing air temperatures inside of the cells to torture the inmates every winter. In the summers, the inmates are dangerously and cruelly exposed to extreme opposite ranges of air temperatures inside the cells, often breaching 150°F or more, thereby injuring and killing the inmates. The inmates are literally starved and severely malnourished all year as a secret form of punishment, resulting in total atrophy and extreme weight loss in many. The minimal food and drink given them are badly contaminated every day. The inmates are illegitimately denied clean clothing, showers, direct sunlight, eating utensils, television, library books, access to a viable complaint process and basic bodily cleanliness. The inmates minds are broken through not only the abuses, but through extreme sleep deprivation as well. A well known technique of torture. The burning of books and blankets is common, then subjecting other prisoners unto near fatal toxic smoke inhalation, asphyxiation and respiratory problems. The inmates are not allowed access to medical² or mental health care on any meaningful level. On the rare instance that they are afforded a brief opportunity to shower and clean themselves, they are then subjected unto ice cold or near boiling hot shower water. Of which Fountain alone has suffered 2nd degree burns unto his body with large golfball sized blisters several times from. Tens of thousands of official agency and government records on the conditions are maliciously falsified by hundreds of staff each year to indicate an absence of all of the above. Government records falsifications practices which constitute serious felony offenses under both state

and federal law. Serious human rights offenses are occurring at the prison every day with impunity. Prison staff knowingly cause the wrongful death of inmates in a variety of ways at the prison. Either through medical care deprivations or by way of influenced suicide. Acts of staff for which carry a penalty of death or life imprisonment under 18 U.S.C. § 241. The victims bodies are carried out the prison regularly and the incident quietly covered up. The most recent occurred merely a couple of weeks prior unto this complaint. The body which was ice cold and had been dead for many hours (despite falsified records indicating a well being check by staff every 30 minutes) was found hanging in a pool of its own blood but 30 feet from Fountain's cell.

Fountain alone has suffered a wide range of serious physical and psychological injuries on a continual basis as a result of his exposure unto the conditions. This includes two severe injuries unto both ears. A serious infection of large open wounds. Several serious burns unto his body. Extreme weight loss and total atrophy from starvation and malnourishment. Multiple heat related injuries. Multiple life threatening razor laceration wounds from a suicide attempt. Viral contraction. Serious and life threatening injuries unto his internal organs, which include his liver, central nervous system, pancreas, lungs, kidneys, bladder, thyroid gland and the heart. All of which goes untreated by medical as well. And more.

Fountain is a layman with a poor prior education. Notwithstanding his own intense suffering, in 2011 almost immediately after his placement under the conditions at the unit, he decided that he could no longer stand by and watch helplessly as the other inmates suffered around him in vein. Accordingly, with no outside or inside aid and almost no access to the contents of a law library, Fountain began teaching himself civil rights law. For the next seven strait years he

studied law night and day, often rereading a particular case decision as many as three dozen times over in attempts to inject and decipher what it meant. To say that his struggles to learn were intense would be an understatement at best. In December, 2013 he filed his first civil rights lawsuit against prison officials in the federal courts.³ Unfortunately, he had been unaware at the time of the futility of such efforts due unto the unspoken prejudice, bias, hatred and malice of the federal judiciary held towards inmates. Especially within the Fifth Circuit. Fountain soon discovered, however, of just how deep-seated the prejudice truly was and, how well efficient the cooperative efforts of conspiring federal judges of every level was in the collective efforts to dismember and destroy inmate cases and lawsuits wherein any unlawfull confinement or prison condition was being challenged.

For the next four years Fountain watched in horror as the system failed him and his fellow inmates. In anguish he watched as some fifteenth different federal judges within the Circuit and a dozen more in Washington D.C. moved to protect the Texas prison officials by and through the judges "discretionary" decisions in and throughout the inmates cases in Court. But some of those judges in the Fifth Circuit alone whom were each directly involved and whom presided over the inmates cases include Magistrate Judges John D. Love and Nicole Mitchell, and District Judges Michael Schneider, Leonard Davis and Chief Judge Ron Clark. All five of the United States District Court, For the Eastern District of Texas, Tyler Division. The list further includes Judges Clement, Owen, Costa, Jones, Dennis, Southwick, Davis, Elrod, Edward Prado and James Graves. All ten Circuit Judges of the United States Court of Appeals, For the Fifth Circuit.

Under the false guise of mere "discretion" those entrusted federal judges have been unjustly moving for Texas prison officials and against inmates for years. Which in reality is the product of their own unspoken collective prejudice towards inmates, camouflaged as discretionary acts, omissions and decisions of the judiciary, carried out through the processes of inmate criminal and civil cases.

In an "us against them" attitude these judges move against inmates in a variety of ways through their cases. Despite the obvious merit of alot of the inmate cases, such as the Petitioners own lawsuits over the barbaric conditions⁵ within Coffield high security, the named federal judges actively hinder or preclude redress entirely unto the cases and appeals, unjustly decide against the pro se inmates on virtually every issue automatically, often without discussion of the facts or arguments presented by the inmate within his pleadings as is normally provided other non-inmate litigants and, create unjust procedural barriers to stop the cases. The entire body of judges routinely refuse to reconize or acknowledge clear fact. They refuse to appoint counsel to the pro se inmates who they know are unable to proceed adequately in court, specifically so as to ensure the failure of the case. They sit on motions and cases for excessively long periods of time atypical to the normal case, before rendering decisions. And when confronted by the inmates, the judges deny all wrongdoing no matter the issue or how clearly in err.

Over the last four years alone, the same all encompassing pattern of abuse has been seen not only in Fountains actions, but all other similarly situated pro-se inmate cases as well. Without justification those fifteen judges have repeatedly decided against the inmates, to include Fountain, at every turn on virtually every issue, while long

belaying decisions. They have unfairly destroyed nearly every case presented by an inmate in recent years.

As Fountains own cases are a rendition of the very same treatment for which other inmate cases have and are receiving within this District and Circuit, they will be discussed below as examples of the malicious tactics being utilized by the entire federal judiciary against the inmates of this region. The following cases will be of reference during discussion. To include :

All in the United States District Court, For the Eastern District of Texas, Tyler Division :

Freddie Fountain v. Rick Thaler, et al., No. 6:13cv958 (Dec. 11, 2013)
(conditions of confinement)

Freddie Fountain v. Rick Thaler, No. 6:14cv145 (Feb. 27, 2014)
(conditions of confinement)

Freddie Fountain v. Brad Livingston, No. 6:14cv268 (Apr. 4, 2014)
(conditions of confinement)

Freddie Fountain v. LaWanda Tucker, et al., No. 6:15cv539
(June 1, 2015)(child custody)

Freddie Fountain v. John Rupert, et al., No. 6:15cv100 (Feb. 2, 2015)
(conditions of confinement)

Howard Carroll v. John Rupert, et al., No. 6:15cv569 (May, 2015)
(conditions of confinement)

Freddie Fountain v. Director, TDCJ-CID, No. 6:11cv152 (Mar. 29, 2011)
(petition for writ of habeas corpus)

All in the United States Court of Appeals, For the Fifth Circuit :

Freddie Fountain v. Judge Michael Schneider, No. 05-14-90073 (Apr. 9, 2014)(complaint of Judicial misconduct)

Freddie Fountain v. Judge Nicole Mitchell, No. 05-14-90074 (Apr. 9, 2014)(complaint of Judicial misconduct)

Freddie Fountain v. Judge Nicole Mitchell, No. 05-14-90106 (July 2, 2014)(complaint of Judicial misconduct)

Freddie Fountain v. John Rupert, et al., No. 15-40802 (2015) (interlocutory appeal on denial of counsel)

Freddie Fountain v. Rick Thaler, et al., No. 15-41261 (2015) (interlocutory appeal on denial of counsel)

Howard Carroll v. Rupert, et al., No. 15-41457 (Feb. 24, 2017) (conditions of confinement)

Freddie Fountain v. Brad Livingston, No. 15-41290 (Apr. 17, 2016) (interlocutory appeal on denial of counsel)

In re: Freddie Fountain, No. 16-41247 (Feb. 23, 2017) (petition for writ of mandamus)

Freddie Fountain v. Rick Thaler, et al., No. 17-40135 (May, 2015) (conditions of confinement)

In re: Freddie Fountain, No. 17-40434 (May 2017) (petition for writ of mandamus)

Freddie Fountain v. Lorie Davis, No. 17-40473 (May 9, 2017) (conditions of confinement)

In re: Freddie Fountain, No. 17-40885 (Oct. 23, 2017)
(request for successive writ - criminal conviction appeal)

In Washington D.C. :

Freddie Fountain v. United States, No. 1:15cv 243 (Feb. 18, 2015)
(petition for writ of mandamus)

Freddie Fountain v. United States, No. 1:15cv 814, U.S.D.C.
Columbia (June 2, 2015) (dismissed); affirmed, Fountain v.
United States, 622 Fed. App'x 3 (D.C. Cir. 2015); certiorari
denied, Fountain v. United States, 137 S.Ct. 64 (2016).

Fountain filed his first civil rights lawsuits over the conditions in the United States District Court in Tyler in late 2013 through mid 2014, case No. 6:13cv958, No. 6:14cv145 and No. 6:14cv268. Those cases were presided over by Judges Love, Mitchell, Davis and Schnieder originally. Chief Judge Ron Clark was assigned unto No. 6:13cv958 and No. 6:14cv268 in 2016.

Almost immediately Fountain began noticing the extreme prejudice of Judges Mitchell and Schneider, through their actions and decisions in the cases. This prompted Fountain to file two separate complaints of judicial misconduct against the two judges in the Fifth Circuit Court of Appeals, No. 05-14-90073, No. 05-14-90074 and, No. 05-14-90106. The Chief Judge of the Circuit, Carl Stewart, then protected the two judges claiming that Fountains complaints had no merit. Judge Stewart refused to acknowledge any wrongdoing or prejudice on the two judges part. In sum, he pointed to the "discretion" of judges in his findings of no wrong doing. Moreover, in his last decision, in an Order dated July 2, 2014, Judge Stewart admonished Fountain, stating that if he submitted another frivolous complaint, he would

bar Fountain from filing any further complaints over judicial misconduct with the Fifth Circuit. (Appendix C)

On April 24, 2014 Magistrate Judge Nicole Mitchell, of whom Judge Stewart had just dismissed Fountains complaint against, held an evidentiary hearing in case No. 6:14cv145. Mitchell had been conducting a screening of the complaint under 28 U.S.C. § 1915A. During the hearing Mitchell asked Fountain to expound upon his pleadings verbally. Fountain then began doing so but was immediately cut off and stopped by Judge Mitchell. When Fountain rebegan he was again cut off by Mitchell whom, soon thereafter ended the hearing. The hearing had been recorded and a record had been placed on the docket in the case. Days later Mitchell recommended that Judge Leonard Davis dismiss the lawsuit as frivolous. Mitchell stated in her recommendation that she had given Fountain ample opportunity to expound upon his pleadings at the hearing and Fountain had failed to provide adequate information. Davis then wrongfully dismissed the lawsuit. When on appeal to the Fifth Circuit, case No. 14-40644, Circuit Judges Elrod, Clement and Southwick, stated that no record of the hearing appeared on the docket and that Judge Mitchell's prejudice did not seem "deep-seated." When then on remand Fountain requested by motion to the district court that he be allowed to dismiss the case specifically under Rule 41(a)(2) so that the claims could more efficiently be rebrought in case No. 6:15cv100, Judge Mitchell hurriedly moved to dismiss the case under Rule 41(a)(1) with malicious intent to enslave the claim preclusional effects of the two dismissal rule under Rule 41(a)(1). Judge Michael Schneider assisted in the act and immediately dismissed the case under (a)(1) claiming Fountains objections were 'untimely.'

The federal judiciary in the region move against inmates by wrongfully denying them the appointment of counsel to assist them in there civil cases. When inmates such as Fountain demonstrate unto a judge that he is unable to adequately or effectively present his case in court through the exceptional circumstances to which he faces, while requesting the Court appoint counsel, the inmate is then entitled unto such appointment. Infact, according unto the Fifth Circuit, when exceptional circumstances are shown, the Court then lacks "descretion" to deny the appointment. see *Naranjo v. Thompson*, 809 F.3d 793, 801 (5th Cir. 2015). The judiciary is actively destroying inmate cases by knowing that the inmate is unable to effectively prosecute the case, seeing in their basic pleadings that exceptional circumstances are present, though refusing to acknowledge them as legitimate, pointing unto their own "descretion" to deny counsel and refusing to Order it. The Courts are guarenteeing the failure of inmate lawsuits, to include cases such as Fountains wherein basic human needs are at stake, severe abuse is occurring at their prisons and serious injuries are being sustained.

The dockets in all of Fountains cases are profoundly replete with countless motions pleading for the appointment of counsel. Each showing more than a dozen exceptional circumstances faced, e.g. prison officials refusing to allow Fountain to forward his vital case exhibits to the court in any case, disallowing him necessary visits with his inmate witnesses and much more, see Fountains motions for the appointment of counsel in case No. 6:13cv958, No. 6:14cv268, No. 6:15cv100, No. 15-40802, No. 15-41261, No. 15-41290, No. 17-40135, No. 17-40473.

In case no. 14-40644 the 5th Cir. itself enguaged in the same malicious practice of refusing to acknowledge exceptional circumstances. Having blatantly lied to say he had not demonstrated them, when infact he clearly had.

The Judges of both that Court and the district court in Tyler are actively denying almost all motions of any kind filed by an inmate, despite the obvious merit of those motions, while at the same time granting practically every motion filed in either court by the very same prison officials whom are responsible for the barbaric and unlawfull conditions being challenged in the inmate cases. Again, this same movement by large numbers of District and Circuit level Judges which is seen and evidenced in Fountains cases, is also seen in all other "pro se" inmate cases, both criminal and civil, within the Circuit and region.

For example. A review of the docket in case No. 6:13cv958 shows that, of the various miscellaneous issue motions filed by Fountain in the district court from between December 11, 2013 (doc. no. 3) to February 9, 2017 (doc. no. 293) which totalled around 79 altogether, only 6 were granted, and an appaulling 73, or 93%, were denied by Judges Davis, Schneider, Mitchell and or Clark.

Of the defendant prison officials motions filed during that same time period in No. 6:13cv958, only one was denied and five, or 84% were granted by the same Judges.

A similar review of the docket in case No. 6:14cv268 shows that, of the various motions filed by Fountain in the district court from between May 15, 2014 (doc. no. 11) to December 14, 2015 (doc. no. 163) which totalled around 36 motions altogether, only 2 were granted; and some 34 were denied (95%) by Judges Love, Schneider and Clark.

An identicle review of the docket in case no. 6:15cv100 shows that, of the 49 various motions filed by Fountain from between February 2, 2015 (doc. no. 4) to July 12, 2017.

(doc. no. 133) only 3 were granted and an astonishing 46 (93%) were denied by Judges Mitchell, Schneider and Clark.

In fact, as of the date of this petition Judges Mitchell and Clark have completely discontinued ruling on any further motions at all in No. 6:15-cv-100 and have completely ceased all adjudication of that case entirely with malicious intent to hinder and preclude redress and justice.

The highly visible and prejudice-based practice of the many Judges unjust, unfair and automatic denial of pro-se inmate motions of all kind is effluent even more so within the Fifth Circuit Court of Appeals. For a review of the dockets in case No. 15-40802, No. 15-41261, No. 15-41290, No. 16-41247, No. 17-40135, No. 17-40434, No. 17-40473 and, No. 17-40885, reveal an across the board denial of virtually every motion (100%) filed by Fountain in those cases.

Intermingled within the bunch lies the Petitioners in forma pauperis motion which too had been unjustly and automatically denied by the Fifth Circuit. (Appendix B).

Under 28 U.S.C. § 1915 (9) Fountain was required to demonstrate⁹ imminent danger of serious physical harm. The statute required only one to suffice the requisite. Yet although he had clearly demonstrated multiple imminent dangers such as the loss of 60 pounds body weight, exposure to dangerous and deadly spiders, extreme filth with subsequent high risks of disease contraction, dermatographic wounds, regular 1st and 2nd degree burns to the body, serious and life threatening heart problems and more, the motion was automatically denied by both the district court and the Fifth Circuit. see e.g. Williams v. Humphreys, 2005 WL 4905109 *7 (S.D.GA, Sept. 13, 2005) (loss of only 12 pounds satified imminent danger).

The records and facts therefore show that the lower courts' concurring decisions to deny the IFP motion¹² in this case had not been decisions based upon the actual merits of the motion at all. But rather, had been nothing more than an unauthorized continuance of a prejudice-based practice aimed at causing extreme injustice and harm unto inmates. To include the Petitioner himself.

We are then compelled to discuss the actual means itself. To this we look to the actual Orders themselves (Appendix B) which contain no direct discussion of facts and arguments presented by the inmate. The Orders of denial, as are mirrorable to all other similar pro se inmate cases in those Courts, are nothing more than rubber stamp decisions void of the very discussion required to truly decide the issue in question. The Judges cannot avoid administering justice for pro se inmates by issuing rubber stamp type decisions. Especially in Orders of denial. The reason for this practice with inmates is to avoid what otherwise would be a prevailing decision for the inmates. For example, if the Fifth Circuit would have directly addressed and discussed each of the imminent dangers presented by Fountain within the IFP motion, the conditions would have had to prevail as meeting the minimal requirements of § 1915 (9). So by the Judges simply saying "Fountain has not shown imminent danger" the Judges avoid the very redress and discussion which would then require a decision in the inmates favor. This additional form of judicial prejudice must not be allowed to continue in this Country.

It would be important to note, aside from all else, that although the case was ultimately dismissed without prejudice, or at least the few remaining claims, because the statute of limitations had ran⁷ at the time of the Final Judgment the dismissal should be treated as one "with prejudice."

The entire body of lower court judges within the Fifth Circuit and Tyler district Court next move against pro se inmates by unduely long-belaying their decisions in the cases. This is true even of clearly legible pleadings such as Fountains. The Judges are deliberately dragging out pro se inmate cases for purposes of hindering and or precluding ultimate relief and justice for the inmates. The typical non-inmate civil case is routinely finalized through trial in under 3 to 4 years. Yet twice that is being taken for pro se inmate cases in those courts.

Such techniques and methods extend to all pro se inmate pleadings and cases alike in those Courts and are used as a form of delay to prolong the cases for as long as possible. To demonstrate this additional form of abuse we again look to Fountains own cases in those Courts which mirror the other similarly situated inmate cases in those Courts.

For example. In case No. 6:14cv268 Fountains first amended complaint (doc. no. 13) was filed on May 15, 2014. The motion for leave to file it (doc. no. 130) was not decided until May 9, 2015. Fountains May 15, 2014 motion for class certification (doc. no. 11) was likewise not decided until March 4, 2015 (doc. no. 128).

— In the present case itself Fountains third amended complaint (doc. no. 93) was filed on July 11, 2014. Screening, however, was not completed until well over a year later on September 2, 2015 (doc. no. 236). A process which was required to be completed "as early as practicable" and should not have taken longer than 2 to 3 months maximum to complete. see 28 U.S.C. § 1915A.

A review of the district court docket in case No. 6:15cv100

shows us that Fountains complaints have been held in § 1915A screening for almost "three" full years to date. Nearly a full year on the last amended complaint (doc. no. 95). The district court is currently refusing to decide a number of Fountains motions in that case altogether. Many of which have been sitting on the docket in wait for 6-12 months time.

The Fifth Circuit itself is engaging in the same technique in inmate cases, by way of the same prejudice and with the same intent to long delay relief to the inmates.

For example. That Court recently heard and decided an appeal filed by Dallas Cowboy football player Ezekial Elliot within a matter of weeks. The Court typically decides most non-inmate cases and appeals in under four months maximum. Yet the same Judges of that Circuit routinely sit on an inmate pro se case for an entire year before deciding them. see case No. 15-40802, No. 15-41261, No. 15-41290, No. 15-41457.

Despite the Judges opinions to the contrary, human life itself is precious and invaluable. To include an inmates life. The Courts have no business disregarding such divine principle, taking only weeks or a couple of months to adjudicate non inmate cases, while taking a year for inmate pro se cases. This is even more so true when an inmate's health and life is in danger,¹⁰ he is being severely abused by guards, he is being denied vital basic human needs and, he is being physically harmed at his prison, of which the redress sought within his pleadings directly relates. see 28 U.S.C. § 453.

To suggest that the question of whether or not a football player should play a game somehow be more important than whether or not an inmate receives adequate food, shelter, medical and safety, would be ludicrous at best.

Inmate appeals should be adjudicated in an equal timeframe as all other appeals. Id. However, when it is shown or known that the inmate appellant is being denied a vital basic human need or he faces harm, that appeal should rightfully be

heard and decided as priority before all other dissimilar appeals in which no harm is faced. Though in no event should such class of inmate appeals be left unadjudicated for a year or more. For that is clear and unrefutable prejudice.

The numerous Judges of the 5th Cir. and the Tyler Court are deliberately and actively destroying inmate conditions of confinement based lawsuits without justification, with intent to both protect prison officials and, ensure the wrongfull continuance of unlawfull prison conditions. Again, Fountains cases are a mirrable reflection of virtually all other prose inmate cases which are recieving the same judicial mistreatment.

It has been shown how the Tyler Court went out of its way to have destroyed case No. 6:14cv145, by way of the Judges violating the terms of their oath under 28 U.S.C. § 453 and, the boundries of their entrusted authority.

In case No. 6:13cv958, Judges Mitchell and Schneider similarly destroyed practically all of the claims related to the unlawfull prison conditions, by use of their "descretion" amidst the screening process. (doc. no. 236). The Judges first refused to appoint counsel to assist Fountain in the preparation and filing of adequate pleadings, then dismissed most all of the conditions allegations on the alleged basis of the pleadings being inadequate. When the case came to this Court on appeal case No. 17-40135, Circuit Judge Graves assisted with final destruction of those many claims by him having illegimately denied Fountains IFP motion on December 1, 2017.

Judges Love and Clark similarly destroyed case No. 6:14cv268 in the district court on April 17, 2017 without justification. The district courts wrongfull actions are set forth and thoroughly described within Fountains Rule 60 motion

(doc. no. 187) and Fountains subsequent motion for reconsideration of the magistrates report and recommendation to deny relief from the final judgment. Fountain hereby requests that the Chief Judge of this Court access and review the content of Fountains two said pleadings.

The same Judges in Tyler are actively destroying all other unlawfull prison conditions claims within other inmates pro se lawsuits as well. For example, Judges Mitchell and Clark identically destroyed and wrongfully dismissed nearly all of fellow inmate Howard Carrolls unlawfull conditions claims in case no. 6:15 cv 569 last year, as well.

The Judges are ensuring through their "descretionary" decisions that redress nor relief shall ever be had towards the barbaric and inhumane conditions at Coffield in any case. The record is clear of this.

Concievably any judicial act, omission or decision could, under normal circumstances be construed as mere upright descretion. However, When the facts and records show this many interlaced and multiplled acts of injustice aimed specifically at the inmate pro se class, a true and clear picture is then painted to show what is really occurring there in those courts.

The purpose of the federal judiciary is not to unjustly move against inmates. Nor is it emplaced to protect state prison officials from liability under undue circumstances. The mere measure of such officials' position in society should not place them above the law or render them immune from the obligation to reconize and uphold the fundimental rights of all persons, To include inmates.

For to do so would exclude them from the requirements of civilization — to include behavioral standards, moralism and personal responsibility, with ruinous consequences unto the society at large. .

The foremost objective of the judicial process, however far noble, is to arouse the very concept of justice itself by allowancing for a full, fair and equal voice unto all. This sound principle rests uniquely upon the idea that all persons are equal under the law. To include inmates.¹³ Dignity, humanism and the encouraged compassion for others are the mortars which solidify the foundation of our great and admirable Country. Therefore, to allow such acts as displayed by both prison officials and lower court Judges in this lawsuit, would be to openly welcome a recurrence, which runs afoul to the laws and standards of our nation.

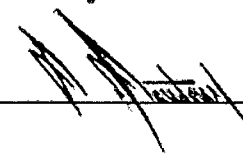
Withal, it is respectfully requested that the Court disband the lower courts on-going practice of abusing pro-se inmates by the misuse of the adjudicative processes. It is further requested that the Court, in its recognition of the lower courts stubborn resistance to justice in this case, find reason to reach the merits of the appeal and remand to the Fifth Circuit with implicit instruction for that court to grant Petitioners in forma pauperis status for appeal, appoint counsel to assist him with all further proceedings, to include in the district court and, Order the remand of all original claims and allegations to the district court for full adjudication under the totality¹⁴ of the conditions doctrine.

A large, ornate handwritten signature in cursive script, likely belonging to a justice, is written over a horizontal line.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


A handwritten signature is written over a horizontal line.

Date: February 1, 2018

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Freddie Fountain — PETITIONER
(Your Name)

VS.

John Rupert, et al. — RESPONDENT(S)

PROOF OF SERVICE

I, Freddie Fountain, do swear or declare that on this date, February 1, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Daniel Neuhoff/Heather Rhea
P.O. Box 12548
Austin, TX 78711

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

Executed on February 1, 2018


(Signature)