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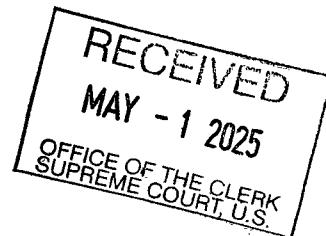
GARY DANIEL RODGERS J.R. #700016
PETITIONER

-AGAINST-

JOHN BEL EDWARDS ET. AL
RESPONDENT(S)

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

GARY DANIEL RODGERS J.R. #700016
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712



QUESTIONS PRESENTED

Whether the Circuit Court erred in their ruling alleging Rodger's brief in support of his motion to proceed informa pauperis fails to identify disputed factual issues and the issue is not appealable?

Whether the Circuit Court erred in their ruling alleging Rodger's conclusory briefing without citations to the record or reference to any relevant legal authorities, is inadequate and has effectively abandoned any argument challenging the dismissal of these claims, Rodger's briefing is likewise inadequate?

Whether the Circuit Court erred in their ruling alleging Rodgers's sole remaining claim of failure to intervene "does not itself, result in a constitutional violation, the appeal is without merit, and is thus frivolous, Rodgers's Motion to Proceed IFP, on appeal is Denied and the appeal is Dismissed?

Whether the Circuit Court erred alleging Rodgers filed a Motion for an out of time petition for rehearing, his motion was denied and in light of this, they are taking no action on this document?

Whether the Circuit Court erred in their ruling alleging Rodgers instant appeal is frivolous, counts as a strike, and is CAUTIONED, Once he accumulates three strikes, he may not appeal IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury?

LIST OF PARTIES

The petitioner is Gary Daniel Rodgers Jr. #70016 a prisoner at Louisiana State Penitentiary in Angola, Louisiana, 70712.

The Respondents are Defendant Ryan Dorier, a correctional officer in the Department of Public Safety and Corrections, John Bel Edwards, former Louisiana Governor, and Jeff Landry, former attorney general and current Louisiana Governor.

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DECISIONS BELOW

The decisions of the United States court of Appeals for the 5th Circuit is unreported. It is cited in the table at 2024 WL 3594370 (5th Cir. 2024) and a copy is attached as Appendix A to this petition A1. The order of the United States District Court for the for the Western District of Louisiana is not reported. A copy is attached as Appendix B to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the 5th Circuit was entered on July 31,2024, an order denying a petition for re-hearing was entered on September 30,2024, and a copy of that is attached as Appendix B to this petition. Jurisdiction is conferred by 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of Life, Liberty, or Property, Without due process of Law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate Legislation, the provisions of this article.

The Amendment is enforced by Title 42, Section 1983, United States Code: Every person who, under color of any statute, ordinance, regulation, custom, 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 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 be considered to be a Statute of the District of Columbia.

STATEMENT OF THE CASE

The petitioner's Gary Daniel Rodgers Jr. #700016 complaint alleged that he was violated of his Department of Public Safety and Corrections posted policy rights and Federal 8th and 14th Constitutional rights. The State of Louisiana Defendant Ryan Dorier violated the claims of Malfeasance in officer, adopted custom policy, Obstruction of Justice, Falsified Documents, Deliberate Indifference, his ranking supervisor in violation of failure to train and supervise staff, a breakdown in chain of command, Failure to Protect, Failure to Intervene, Intentional infliction of Emotional Distress, and Unsanitary practices.

Petitioner Gary Daniel Rodgers #700016 sues the State of Louisiana in its entirety official an individual capacity for compensation, punitive damages, injunction, and declaratory remedies relief.

In petitioner's §1983 Civil Lawsuit he alleged that he was improperly restrained, moved into another cell, unprotected, unsupervised, and attacked by another unknown violent inmate and defendant Ryan Dorier failed to protect and failed to intervene. Ryan also violated Obstruction of Justice, and Falsified documents in violations of the Department of Public Safety and Corrections prison policy rights and United States 8th and 14th Federal Constitutional Rights.

On May 19, 2022, Magistrate Judge Johnson issued a Report and Recommendation which screened the claims made by Petitioner and dismissed all claims with prejudice against all defendants except for the claim for monetary damages for failure to intervene against defendant Ryan Dorier.

The defendant Ryan Dorier filed a motion for summary judgment on June 15, 2023. On December 18, 2023, Magistrate Judge Johnson issued a Report and Recommendation on the Motion for Summary Judgment which recommended the defendant Dorier's Motion for Summary Judgment be granted dismissing all claims with prejudice.

United States Middle District Court Judge Degravelles adopted the Report and Recommendation on December 28, 2023 and final judgment dismissing petitioner's claim with prejudice was entered that same day.

On December 27, 2023, prior to a final judgment being entered petitioner Rodgers filed an objection to the Report and Recommendation and Motion to Alter or Amend the Judgment.

After a premature ruling from the district court judge Johnson and the State of Louisiana defendant Dorier objection and Opposition petitioner Rodgers were able to correct and file his Notice of Appeal and Motion to Alter or Amend the judgment as timely filed.

Prior to petitioner's Rodgers January 19, 2024, timely filed Notice of Appeal the defendant, Dorier filed a motion to dismiss appeal, however due to petitioner's timely filed Notice of Appeal he has an active appeal, the United States Middle District of Louisiana currently does not have jurisdiction over petitioner's civil case.

On February 26, 2024, petitioner Rodgers filed Motion to proceed in forma pauperis in the United States Court of Appeals 5th Circuit of Louisiana, and his Brief IN SUPPORT to proceed IFP was filed on March 7, 2024.

On July 31, 2024, the United States 5th Circuit Court of Appeals Denied petitioner's Rodger's Motion to proceed IFP and on August 6, 2024, Rodgers Jr. filed motion for leave to file a petition for rehearing.

On August 22, 2024, the Circuit Court granted Rodgers's Motion to leave and to file petition for Rehearing and on August 30, 2024, recalled that mandate to file petition for rehearing.

However, on September 18, 2024, petitioner Rodgers Jr. filed his petition for Rehearing due to the Circuit Courts Mandate issued on August 22, 2024 and on September 18, 2024, the Circuit Court NO ACTION TAKEN because a motion to file a petition for Rehearing and to extend time to file Rehearing was denied by court on 8-30-24.

Finally, petitioner Rodgers files his petition for Writ of Certiorari in the Supreme Court of the United States on December 17, 2024.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process Clause of the Fourth Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331.

REASONS FOR GRANTING THE PETITION

A. Conflicts with Decisions of Other Courts

The holding of the courts below that petitioner Rodgers fails to identify the disputed factual issue, and Rodgers argument is deemed abandoned because the issue is not appealable. See **Brinkmann v. Dallas Cnty Sheriff's Abner**, 813 F.2d 744, 748 (5th Cir. 1987). **Pac. Union Conf. Of Seventh-Day Adventists v. Marshall**, 434 U.S. 1305, 1306 (1977), is directly contrary to the holding of 10 Circuit court cases. See **Johnson v. Levine**, 588 F.2d 1378 (4th Cir. 1978), **Watson v. Ault**, 525 F.2d 886, 892 (5th Cir. 1976), **Taylor v. Gibson**, 579 F.2d 709, 716-17 (5th Cir. 1976); **Sinclar v. Henderson**, 435 F.2d 125, 126 (5th Cir. 1970), **Woodal v. Foti**, 648, F.2d 268, 272 (5th Cir. 1981), **Flowers v. Turbine, Support Divison**, 507 F.2d 1242 (5th Cir. 1975), **Watson v. Ault**, 525 F.2d 886, 892 (5th Cir. 1976), **Conley v. Gibson**, 355, U.S. 41, 45-46, 782 Ct.99, 101-102 22d.2d 80(1957), **Green v. City of Monetzuma**, 650 F.2d 648, 651 (5th Cir. 1981), **Haines v. Kerner**, 404 U.S. 519 92 S.Ct. 594, 30 L.ed 2d 652 (1972).

In addition, the United States Supreme Court has held that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. **Conley v. Gibson**, 355, U.S. 41, 45-46, 78 S.Ct.

99, 101-102 2.Ld. 2D 80 (1957).

The holding of the courts below that the conclusory briefing provided by Rodgers on this point, without citations to the record or reference to any relevant legal authorities, is inadequate, and Rodgers has therefore abandoned any argument challenging effectively legal authorities, and Rodgers has therefore effectively abandoned any argument challenging the dismissal of these claims. See *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). To the extent Rodgers asserts error in the dismissal of these claims for punitive damages, injunctive relief, and declaratory relief, his briefing is likewise inadequate, is again directly contrary to the holding of 3 Federal Circuit Court's see *Sewell v. Pegelon*, 291 F.2d 196 (CA.2d Cir.), *Pierce v. LaVallee*, 293F.2d 283 (CA 2nd Cir.1961). In addition, the U.S. Supreme Court has held that however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof. *Conley v. Gibson*, 355 U.S. 41-45-46, 78 S.Ct. 99, 102, 2 Led.2d 80 (1957), *Dioguardi v. Dorning*, 139 F.2d 774 (Ca 2th 1944);

The holding of the courts below Rodgers raises an argument in which he seemingly asserts that he pleaded a viable claim because he alleged that Dorier violated prison policy, and a defendants failure to follow prison policy "does not, itself result in a constitutional violation."

Samford v Dreke, 562 F.3d 674, 681 (5th Cir. 2009), and the appeal is without arguable merit and is this frivolous, see *Howard v. King*, 707 F.2d, 215, 220 (5th Cir. 1983); Accordingly Rodgers Motion to proceed IFP on appeal is Denied and the appeal is dismissed, is directly contrary to the holding of 1 federal circuit see, *Eason v. Thaier*, 14 F3d 89(5th Cir. 1994). In addition the United States Supreme Court has held that "the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claims. To the contrary, all the Rules require is a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this such

simplified "Notice Pleading", is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. Following the simple guide of Rule 8(F) that all pleadings shall be so construed as to do substantial justice, we have no doubt that petitioner's compliant adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one missstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. *Ct. Maty v. Grasselli Chemical Co.* 303 U.S. 197, 58 S.Ct. 507, 82 L.Ed. 745.

The holding of the court below that the appeal is without arguable merit and is thus frivolous, accordingly, Rodgers's motion to proceed IFP on appeal is DENIED, and the appeal is DISMISSED. See 5th Cir.R.42.2 is directly contrary to the holding of 2 Circuit Courts, *Watson v. Ault.* 525 F.2d 866, 892 (5th Cir. 1976), *Johnson v. Levine*, 588 F.2d 1378 (4th Cir. 1978). In addition the U.S. Supreme Court has held that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102 2 L.Ed.2d 80 (1957). "Good faith" is demonstrated when a party seeks appellate review of any issue not frivolous. *Coppedge v. United States*, 369 U.S. 438 82 S.Ct. 917, 8 L.Ed.2d 21 (1962). *Anders v. California*, 386 U.S. 738, 87 S.Ct. 917, 8 L.Ed.2d 493 (1967). This action involves colorable issues of constitution deprivation. The district court should have considered the plaintiff's complaint under the less stringent standards applicable to pro se litigants. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972). First, the court was required to take as true the allegations of the complaint in considering the Rule 12(B)(6) motion. *Cooper v. Pate*, 378 U.S. 546 84 S.Ct. 1733, 12 L.Ed.2d 1030 (1964). Second petitioner's *informa pauperis* was granted in the U.S. Middle District Court as a 1983 lawsuit should follow. However, not considering petitioner's motion for *informa pauperis* in the lower

district and one remaining defendant gives petitioner a good cause reason to file for Writ of Certiorari in the Supreme Court. After being denied IFP in the Circuit Court of Appeals the Court failed to consider the plaintiff's motion, memorandum in support, and affidavit, as amendment to the complaint. These documents embellished the original complaint's averments, and each should have been considered.

The holding of the courts below that Rodgers instant appeal is frivolous, counts as a strike, and is cautioned, once he accumulates three strikes, he may not appeal IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury is directly contrary to the holding of 1 Court of Appeals for the Seventh Circuit.

Heintz v. Jenkins, 514 U.S., 291, 294, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995). In addition, the Supreme Court of the United States has held that "In contrast to the Sixth Circuit, the vast majority of the other Court of Appeals have held that a prior dismissal on a statutorily enumerated ground does not count as a strike while on appeal of that dismissal remains pending. See *Henslee v. Keller*, 681 F.3d 538, 54 (C.A.4 2012); Instead, the statute refers to whether an action on appeal "was dismiss" 1915 (g). The Linguistic term "dismiss", taken alone, does not normally include subsequent appellant activity. See eg. *Heintz v. Jenkins*, 514 U.S., 291, 294, 115 S.Ct. 1489, 137 L.Ed.2d 395 (1995). The District Court dismissed [the] lawsuit for failure to state a claim. However, the Court of Appeals for the Seventh Circuit reversed the District Court's judgment. *Gray v. Netherland*, 518 U.S. 152, 158, 116 S.Ct. 2074, 135 L.Ed.2d 457 (1996). Which the U.S. 5th Circuit Court of Appeals should have done in this instant case instead of denying Rodgers Motion for In Forma Pauperis and dismissing petitioner's appeal and unnecessary strike attempt.

B. IMPORTANCE OF THE QUESTIONS PRESENTED

This case presents a fundamental question of the interpretation of this Court's decisions in *Pac. Union Conf. Of Seventh -Day Adventists v. Marshall*, 434 U.S. 1305, 1306 (1977), *Conley v. Gibson*, 355, U.S. 41, 45-46, 78 S.Ct.99, 101-102 2L.Ed.2d 80(1957), *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d.652 (1972). *Coppedge v. United States*, 369 U.S. 438 82 S.Ct. 917, 8 L.Ed.2d 21 (1962). *Anders v. California*, 386 U.S. 738, 87 S.Ct. 917, 8 L.Ed.2d 493 (1967). *Cooper v. Pate*, 378 U.S. 546 84 S.Ct. 1733, 12 L.Ed.2d 1030 (1964). *Heintz v. Jenkins*, 514 U.S., 291, 294, 115 S.Ct. 1489, 137 L.Ed.2d 395 (1995), *Gray v. Netherland*, 518 U.S. 152, 158, 116 S.Ct..2074, 135 L.Ed.2d 457 (1996). The question presented is of great public importance because it affects the operations of the prison systems in all 50 states, the District of Columbia, and hundreds of city and county jails. In view of the large amount of litigation over prison constitutional violations of deliberate indifference, obstruction of justice, falsifying documents, cruel and unusual punishment, failure to protect, and failure to intervene, guidance on the question is also of great importance to prisoners, because it affects their ability to receive fair constitution prison rights and policy protection, guidance on the question is also of great importance to prisoners because it affects their ability to receive fair supervisor protection, when being fully restrained and released and transferred into other cells.

The issues importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted *Conley*, *Coppedge*, and *Cooper*. This court held in *Conley* that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. The court reiterated this point in *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d.652 (1972), and added whatever maybe the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however in artfully pleaded and sufficient to call for the

opportunity to offer supporting evidence.

Considering the full pleadings in light of both general eight amendment jurisprudence and the above cited analogues, the inmate have pleaded a cause of action recognizable under the eight and fourteen amendments and 42 U.S.C. § 1983. No more detailed explanation is necessary to establish a cause of action. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972).

The District Court granted the respondent's Motion to Dismiss for failure to state a claim on which relief could be granted and the Court of Appeals affirmed, 324 F.2d 165 (C.A. 7th Cir.). We reverse the judgment below. Taking as true the allegations of the complaint as they must be on a motion to dismiss, the complaint stated a cause of action and it was error to dismiss it. *Cooper v. Pate*, 378 U.S. 546 84 S.Ct. 1733, 12 294 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995).

The Lower Courts reasoning that Rodgers fails to identify the disputed factual issue, his argument is deemed abandoned, Rodgers asserts error in the district court's denial of his summary judgment motion, the issue is not appealable the district court determined that claims against the other defendants were subject to dismissal because his allegations did not establish the personal involvement of the defendants. The conclusory briefing provided by Rodgers is inadequate and Rodgers has therefore effectively abandoned any argument challenging the dismissal of these claims and a defendant's failure to follow prison policy does not, itself result in a constitutional violation, the appeal is without arguable merit and is thus frivolous is unconvincing. It reviewed cases from the Fifth Circuit that does not contain that holding. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997), *Thompson v. Steele*, 709 F.2d 381, 382 (5th Cir. 1983), *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993), *Singletary v. B.R.X. Inc.*, 828 F.2d 1135, 1137 (5th Cir. 1987), *Samford v. Dretke*, 562 F.3d 674,681 (5th Cir. 2009). However *Baugh* based its conclusion on *Pac. Union Conf. Of Seventh-Day Adventists v. Marshall*, 434 U.S. 1305, 1306 (1977). A case that upheld the denial stating *Yohey* has abandoned these arguments by failing to argue them in the body of his brief. "Fed.R.App.P.28(a)(4)

requires that the appellant's argument contain the reasons he deserves the requested relief with citations to the authorities, statutes and parts of the record reviewed on. *Weaver v. Puckett*, 896 F.2d 126, 128 (5th Cir.) cert denied, 498 U.S., 966 111 S.Ct. 427, 112 L.Ed.2d 411 (1990). "Although we liberally construe the briefs of Pro Se appellants, we also require that the arguments must be briefed to be presented. *Price v. Digital Equip. Corp.*, 846 F.2d 1026, 1028 (5th Cir. 1988). The Collins Court made this distinction crystal clear describing it's holding as that we liberally construe the briefs of Pro se appellants, we also require that the arguments must be briefed to be presented. The court in Taylor had also held that a defendant failure to follow prison policy does not, itself, result in a constitutional violation, the appeal is without arguable merit and is thus frivolous. However, this holding did not address the Supreme Court ruling of the inmate have pleaded a cause of action recognizable under the eighth and fourteenth amendments and 42 U.S.C. § 1983. No more detailed explanation is necessary to establish a cause of action. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972).

The Court stated a completely different standard for them, providing for the petitioner whatever maybe the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioners, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. This standard permits under the United States 8th and 14th Constitution rights for citizens and prisoners to be safe and secure through the pre-trial detainee, trial, wrongful conviction, illegal and excessive sentencing, and prisoner, from the community arrest to the penitentiary hard labor field line farm and preserving prisoners rights for a complaint of personal pain and suffering under cruel and unusual punishment violations. Nothing in Conley, is contrary to the distinction made in Cooper between Pro se plaintiff's that have been violated of the United States and prisoner constitution rights with solid evidence on document record, and when prisoners can present evidence of federal violations inmates does have the opportunity to present record document evidence

which the district court cannot avoid, and nothing in *Cooper* alters the *Conley* holding the dismissing of civil lawsuits with real merits.

Thus the court below seriously misinterpreted, *Conley* by failing to grant petitioner's *informa pauperis* after being granted in the district court and looked past petitioner's merit. The court should correct that misinterpretation and make it clear that meritorious claims should be able to present record document evidence and the circuit and district court should have considered *informa pauperis* in support and record document evidence of federal violations and *pro se* litigations without any strikes attempts.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully submitted,

Gary Rodgers Jr.
GARY RODGERS JR. #700016
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712

Date: March 07, 2025