

25-6307
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

In Re
CARL SIDNEY RACE, PETITIONER

vs.

MONTANA STATE PRISON INFIRMARY;
DR. PAUL REES, et al.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

Carl Sidney Race
Montana State Prison #39211
700 Conley Lake Road
Deer Lodge, MT 59722

QUESTIONS PRESENTED

1. Does a U.S. Magistrate Judge have the authority under 28 U.S.C. § 636(c) to supersede an Order of the Article III U.S. District Court Judge that denied the Defendants Motion to Dismiss under F.R.Civ.P. 12(b)(6) because the Plaintiff did not provide specific facts to show defendant/s personal involvement, with an Order granting defendant's motion to dismiss because the Plaintiff did not provide specific facts to show defendant/s person involvement?
2. Did the Ninth Circuit Court of Appeals err in affirming the District Court's denial of Plaintiff's Motion to Compel Discovery that was past due according to the Scheduling Order that would have provided the necessary facts to show personal involvement of the defendant's before dismissing the case?
3. Did the Ninth Circuit Court of Appeals err in affirming the District Court's denial to Plaintiff's request for service on the additional defendant's after permission to proceed informapauperis was granted?
4. Did the lower courts err by holding the plaintiff to a higher standard of pleading to survive a F.R.Civ.P. Rule 12(b)(6) motion to dismiss than is required by U.S. Supreme Court and Ninth Circuit precedent case-law?

LIST OF PARTIES

Dr. Paul Rees; Dr. Neumeister; Dr. Peterson; Dr. Thomas;
Dr. Nedrud; Cynthia Wolken; Connie Winner; Cindy McGillis Hiner;
Stephanie Pasha; James Salmonsens; John and Janes Doe.

LIST OF PROCEEDINGS

U.S. District Court for the District of Montana, Helena Division
Doc. 49, Carl Sidney Race vs. Dr. Rees, ORDER 12/18/2023
(Appendix B) CV-22-85-H-JTJ Dismissal of § 1983 Civil Rights

U.S. Court of Appeals for the Ninth Circuit, Doc. 27.2, Carl
Sidney Race v. Montana State Prison Infirmary, et al.,
MEMORANDUM* 8/8/2025 (Appendix A) No. 24-38 Affirmed

U.S. Court of Appeals for the Ninth Circuit, Doc. 28.1, Carl
Sidney Race v. Montana State Prison Infirmary, et al.,
ORDER 8/27/2025 (Appendix C) No. 24-38 Rehearing Denied

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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 judgement below.

OPINIONS BELOW

The opinion for the United States court of appeals appears at Appendix A to the petition and is reported at 2025 U.S. App. LEXIS 17956/2025 LX 284583/2025 WL 2017091; 7/18/2025

The opinion of the United States district court appears at Appendix B to the petition and is reported at 2023 U.S. Dist. LEXIS 225073/2023 LX 98565/2023 WL 8716856; 12/18/2023

The opinion of the United States court of appeals appears at Appendix C to the petition and is reported at 2025 U.S. App. LEXIS 22167/2025 LX 338075. 8/27/2025

JURISDICTION

The date on which the United States Court of Appeals decided my case was 7/18/2025.

A timely petition for rehearing was denied by the United States Court of Appeals on 8/27/2025, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Article III Section 1:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

United States Constitution Amendment I:

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

United States Constitution Amendment VII:

In Suits at common law, where the value in controversy shall exceed twenty dollars, right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

United States Constitution Amendment VIII:

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

United States Constitution Amendment XIV:

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 to deprive any person within its jurisdiction the equal protection of the laws.

United States Code Title 28 Chapter 43 § 636(b)(1)(A);

Notwithstanding any provision of law to the contrary--a judge may designate a magistrate [magistrate judge] to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's [magistrate judge's] order is clearly erroneous or contrary to law.

United States Code Title 28 Chapter 43 § 636(c)(1):

Upon the consent of the parties, a full-time United States magistrate [magistrate judge] or a part-time United States magistrate [magistrate judge] who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their written request, any other part-time magistrate [magistrate judge] may exercise such jurisdiction, if such magistrate [magistrate judge] meets the bar requirements set forth in section 631(b)(1) [28 USCS § 631(b)(1)] and the chief judge of the district court certifies that a full-time magistrate [magistrate judge] is not reasonably available in accordance with the guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall

be by the concurrence of a majority of all the judges of such district court, and when no such concurrence, then by the chief judge.

United States Code Title 28 Chapter 123 § 1915(e)(1):

The court may request an attorney to represent any person unable to afford counsel.

United States Code Title 42 Chapter 21 § 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.

Rules of the Supreme Court of the United States Rule 10(a)

a United States court of appeals has entered a decision in conflict with a decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

Rules of the Supreme Court of the United States Rule 10(c)

a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an

important federal question in a way that conflicts with relevant decisions of this Court.

Federal Rules of Civil Procedure Rule 4(c)(3):

Service. By a Marshall or Someone Specially Appointed. At the Plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person especially appointed by the court. The court must so order if the plaintiff is authorized to proceed *informa pauperis* under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Federal Rules of Civil Procedure Rule 8(a)(2):

General Rules of Pleading. Claim for relief. A pleading that states a claim for relief must contain: a short plain statement of the claim showing that the pleader is entitled to relief;

Federal Rules of Civil Procedure Rule 12(b)(6):

How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion; failure to state a claim upon which relief can be granted;

Federal Rules of Civil Procedure Rule 73(a):

Trial by Consent. When authorized under 28 U.S.C. § 636(c), a magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial. A record must be made in accordance with 28 U.S.C. § 636(c)(5).

United States District Court Local Rule 73.1(c):

Notice. When a civil action has been referred to a magistrate judge under L.R. 72.2(a), the clerk will notify the parties of such referral and advise them that they may give or withhold consent to the magistrate judge's exercise of jurisdiction. In cases that are pre-screened pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(a), 42 U.S.C. § 1997e(c), or Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk

will serve the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk will serve the notice and consent election form within seven days after the last party has appeared. At the direction of the court, the clerk may conduct new consent elections at any time.

Montana Code Annotated 45-5-204 Mistreating Prisoners:

(1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, the person purposely or knowingly: (c) violates any civil right of a prisoner.

STATEMENT OF THE CASE

Carl Sidney Race (Race) has been incarcerated at the Montana State Prison (MSP) since 1996. After many years of being denied his requests for treatment to restore vision in his right eye and remove a growth from his testicle that was the size of a softball and was causing severe pain and was "hanging in the toilet", Race went through the grievance procedures at the prison. The grievances were denied by the grievance coordinator, the warden and employees of the Montana Department of Corrections (MDOC) Clinical Services Division (CSD).

On November 3, 2022, Race filed this civil rights suit under 42 U.S.C. § 1983, (Doc. 2, CV-22-85-H-JTJ-BMM) for violating his Eighth Amendment of the U.S. Constitution right to be free from cruel and unusual punishment.

On December 15, 2022, the district court requested that Dr. Rees and the other defendants waive service. Dr. Rees filed a Waiver of Service of Summons. None of the other doctors filed a response.

Since Race had money in his inmate account left over from the covi-19 stimulus payment, the district court denied his motion to proceed inform a pauperis and told him that he would have to serve the other defendants himself. (Doc. 13) Race informed the district court that he could not afford to pay for service of the complaint on the remaining defendants and filed a motion to reconsider the denial of leave to proceed inform a pauperis, which was granted on 6/23/2023. (Doc. 24) Instead of serving the complaint on the other defendants, the district court dismissed them without prejudice and told Race that he would have to serve them himself.

On 9/13/2023, Race filed a motion for leave to file an amended complaint according to the Scheduling Order to add addition defendants along with the remaining defendants from the original complaint. On 10/11/2023, magistrate judge John Johnston granted leave to file the amended complaint, but informed Race that he needed to provide with specificity how Dr. Rees was personally involved in the denial of the medical treatment that Race alleged Dr. Rees was denying. On 10/30/2023, Race filed the amended complaint with an attached addendum, (Doc. 38) where he did his best to demonstrate that each defendant was personally involved in the decision that the medical treatment was unnecessary based on the answers to his medical request forms and the grievance responses.

On 11/13/2023, Dr. Rees filed a motion to dismiss Race's First Amended Complaint (FAC) for failure to state a claim under F.R.Civ. P. Rule 12(b)(6) for failing to show factual specificity how Dr.

Rees was personally involved in the decision that surgery was unnecessary to either restore vision in Race's right eye or to remove the growth on his testicle. On 11/15/2023 Race filed a motion to compel discovery, because Dr. Rees was not answering interrogatories and/or providing documents for his eye care. At this point, Race had not received Dr. Rees's motion to dismiss. On 11/27/2023, Race filed "Objections" arguing that, among other things, that the magistrate judge was requiring more facts than the Chief District Court Judge Brian Morris required when the court denied Dr. Rees's first motion to dismiss for Race not showing specificity of how Dr. Rees was personally involved on 5/24/2023. (Doc. 14) Race also filed a motion to appoint "request" counsel, (Doc. 31) explaining that Race did not believe that he would have access to information regarding the internal operating procedures and/or proceedings that were taken in the process of determining whether approval of surgery is necessary. The motion to appoint counsel was denied on 8/01/2023. Consent was given by Race and Dr. Rees to have magistrate Johnston preside over all further proceeding on 7/03/2023 and 7/05 2023, Docs. 27, 28), but the other defendants did not consent because the clerk of court did not serve the amended complaint and the additional defendants were also not required to file an answer to the complaint because magistrate Johnston dismissed it under F.R.Civ.P. Rule 12(b)(6) for failure to state a claim on 12/18/2023. Race filed a pro se Notice of Appeal on 12/28/2023, which is the subject of this Petition for a Writ of Certiorari, (Doc. 51), to the United States Court of Appeals for the Ninth Circuit.

REASONS FOR GRANTING THE PETITION

1. Race asserts that U.S. Magistrate Judge John Johnston did not have the authority to dismiss his civil rights claim based upon F.R.Civ.P. Rule 12(b)(6) failure to state a claim upon which relief can be granted. The defendant's had already filed the same motion to dismiss before the case was referred to magistrate Johnston under 28 § 636(c), (Doc. 9)(2/13/2023). Due to the fact that the complaint was referred by Chief District Court Judge Brian Morris to magistrate Johnston under 28. U.S.C. 636(b)(1) at this point, magistrate Johnston was not authorized to rule on dispositive motions. Chief Judge Brian Morris denied the defendant's motion to dismiss (Doc. 14) (5/24/2023), stating in part:

"Generally speaking, a plaintiff must provide enough detail to advise a defendant of the complaint against them. Race has alleged that he needed cataract and scrotum surgery, among other things, and that Dr. Rees and Kohut have refused to help. (Doc. 1 at 7). These facts remain sparse and may ordinarily be insufficient. In the limited prison context under which this could occur, however, Rees has notice of Race's claim against him. Summary judgment would be the appropriate phase for Rees to demonstrate that he has not played the personal role that Race alleges. At this early point in the litigation, the Court will presume that Rees, as the doctor in charge at MSP, could have some role in providing this requested relief."

One month later on 6/23/2023, a SCHEDULING ORDER (Doc. 25) was issued along with a Service of Consent to Magistrate Judge as Presiding Judge form. (Doc. 26)(6/23/2023). The case was assigned to magistrate Johnston (Doc. 29)(7/07/2023) pursuant to L.R. 73.1

and 28 U.S.C. § 636(c). At this point, even though Race has given consent, his understanding was that magistrate Johnston was going to preside over Race's jury trial. Race had no reason to believe that a magistrate could require more specific allegations than an Article III district court judge required to survive a F.R.Civ.P. Rule 12(b)(6) motion to dismiss, especially where the defendants refused to comply with discovery that had been ORDERED. Instead, Race had to file an amended complaint without the information that he requested according to the Scheduling Order that was due. Race is not an attorney and asserts that the statutory language in 28 U.S.C § 636 is confusing, as well as contradictory based upon:

(b)(1) Notwithstanding any provision of law to the contrary--

- (A) a judge may designate a magistrate [magistrate judge] to hear and determine any pretrial matter pending before the court, except a motion...to dismiss for failure to state a claim upon which relief can be granted, and to involuntary dismiss an action.

Based on the above, Race was led to believe that a magistrate judge was authorized to oversee the jury trial proceedings, and was not authorized to rule on a motion to dismiss and/or to involuntary dismiss an action, notwithstanding L.R. 73.1 and § 636(c). Race at the time of consent, did not understand that a magistrate judge could have the same powers as an Article III judge and that even if a magistrate judge could be granted the same judicial power as the Article III judge, the magistrate judge could not supersede an Order denying a motion to dismiss a case, with an Order granting a motion to dismiss. Race asserts that this would be akin to granting an appeal of the Article III judge's Order denying the motion. The

Consent to Magistrate Judge as Presiding Judge form (Doc. 26) that Race signed and filed did not state that all previous Orders in the district court would be nullified if consent was given. Race would've never given consent if he knew that the magistrate judge could and would supersede the district Order denying defendant's motion to dismiss under Rule 12(b)(6) with the magistrate court's opinion and Order granting the defendant's Rule 12(b)(6) motion to dismiss. Based on the above, Race asserts that his "consent" was not "clear and unambiguous" nor "[e]xplicit voluntary consent" as required. Hall v. Sharpe, 812 F.2d 644,647 (11th Cir. 1987)(citations omitted). Race also asserts that review of this claim is warranted by Supreme Court Rule 10(a) and 10(c), and affects the entire United States.

2. Race asserts that the Ninth Circuit court of appeals erred by affirming the district court's denial of plaintiff/petitioner's Motion to Compel Discovery (Doc. 43)(CV-22-85-H-JTJ). The Order denying Race's appeal, (Appendix A), on page 3 states:

"The district court did not abuse its discretion in denying Race's motion to compel discovery as moot. Federal Rule of Civil Procedure 8 does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)

Race was not asking to "unlock the doors of discovery" because the doors of discovery had already been opened by the magistrate court on 6/23/2023. (Doc. 25)(CV-22-85-H-JTJ) Discovery was due by 11/22/2023. Race's motion to compel was filed 11/15/2023, one week before

the due date. In hindsight, Race concedes that his motion to compel should have been a motion to COMPLY rather than compel, because the defendant's refused to answer Race's interrogatories, which would have given the more specific facts for ALL defendants that Race needed to show the specific personal involvement of each individual that the magistrate court was requesting. The court of appeals Order denying Race's appeal states on page 4 of 4:

"The district court did not abuse its discretion in denying a motion to compel discovery based on allegations that did not survive a Rule 12(b)(6) motion."

Race did survive a Rule 12(b)(6) motion in the same magistrate court that denied the motion to compel discovery that was already "unlocked" and was withheld by the defendant past the due date. The defendant was rewarded for discovery abuse and Race was punished for being unable to provide facts "where the information is likely to be in the sole possession of the opposing party." *Patty Precision*, 742 F.2d 1260, 1264 (10th Cir. 1964); *Garrett v. San Francisco*, 818 F.2d 1515, 1519 (9th Cir. 1987); *Concha v. London*, 62 F.3d 1493, 1503, (9th Cir. 1995)("[W]e relax pleading requirements where the relevant facts here are known only to the [*928] defendant,..." *Park v. Thompson*, 851 F.3d 910, 928-29 (9th Cir. 2017))

On page 4 of 4 of the court of appeals order of denial it says:

"Finally, the district court did not abuse its discretion in declining to request attorney representation for Race pursuant to 28 U.S.C. § 1915(e)(1). On appeal, Race does not identify how his circumstances are "exceptional" and warrant the district court's request for counsel."

Race asserts that he did "on appeal" identify circumstances that are

and were "exceptional". On p.10 of Race's Opening Brief (OBR), (on appeal)(24-38) Race states:

"I, Carl Sidney Race, Plaintiff in the above cause, respectfully requests the Court "REQUEST" representation of counsel in the interest of justice as authorized by 28 U.S.C. 1915(e)(1). The Plaintiff, (Race), is uncomfortable with proposed discovery procedures wherein Race has to deal with his adversaries to access evidence in their possession. Race believes that to receive discovery fairly, an attorney is needed to work with the attorneys for the defendant/s and state employees." (Doc.31 p.1)(CV-22-85-JTJ)

Also on p.10 of Race's OBR on appeal, (24-38) it states:

"The exact reason for requesting assistance of counsel, (to receive discovery fairly) and the importance of Race's request has become very obvious as Race has been denied access to his prison medical records. In no way can it be said to be due process to dismiss a pro se § 1983 claim regarding medical treatment, while at the same time denying the pro se Plaintiff access to the medical records to support it."..."The district court clearly abused its discretion by not allowing discovery to meet the heightened pleading requirements the district court required to survive dismissal under Rule 12(b)(6)."

The way the MDOC Policy for the CSD works, in part, is that all "Hospital and Specialty Care" has to be approved by the "Special Needs Panel" at the prison, which consists of the named and unnamed defendants. Race has been informed that "minutes" are kept of the Panel meetings. The doctors at the prison enter notes into the computer from inmate appointments. These "minutes" and notes" are not included with the medical records that are provided to inmates through discovery or otherwise. The defendants have not informed Race as to why these were not provided, where the district court

Scheduling Order required these documents, "including electronically stored information, and tangible things that may be used in proving or denying any party's claims or defenses." Why would prison doctors provide a pro se inmates documents and information that would prove that they violated the inmates right to treatment of serious medical needs? Would a pro se plaintiff expect the defendants to comply? Race knew that they would not. Defendants were allowed to disobey the court's Scheduling Order and withhold information to "show personal involvement of each defendant" and then rewarded with the granting of a motion to dismiss for Race not showing "personal involvement of each defendant."

Race asserts that this claim is of national importance to all inmates that are subjected to wanton infliction of pain and suffering for delayed/denied treatment of serious medical needs, and the Ninth Circuit's decision is contrary to other circuit courts of appeal as well as this Court. Review/relief is warranted pursuant to Supreme Court Rule 10(a) and 10(c). (see OBR pp. 11-13).

3. Race asserts that the Ninth Circuit Court of Appeals erred in affirming the district courts denial to Race's request for service on the additional defendants after permission to proceed informally as a pauper was granted. (see OBR pp. 5-9)

When Race filed his original complaint, he was able to pay the filing fee because he still had some of the covid-19 stimulus payment he received in his prison account. Race intended to file an amended complaint after the parties served filed their answer and

more information was obtained. Only Dr. Rees answered the complaint, but not until nearly six months after being served. Race believed that, according to the district court order that the clerk of court had served all defendants and that if they did not respond default judgment would be entered. Since the clerk did not serve the other defendants (or so Race thought) because the district court denied Race's motion to proceed inform a pauperis, he was not sure and could not afford to pay for service of the other defendants at this time. When Race's stimulus money ran out he filed a motion to reconsider granting inform a pauperis status. The motion (Doc. 19, CV-22-85-JTJ)(mislabelled as motion to dismiss) was granted, (Doc. 24) on 6/23/2023. Instead of serving the remaining defendants as required by F.R.Civ.P. Rule 4(c)(3) and 28 U.S.C § 1915, the district court dismissed the remaining defendants. Race asserts that he was denied a jury trial and denied his right to due process, equal protection and access to the courts under Article III and the First and Fourteenth Amendments of the United States Constitution as a result of the Ninth Circuit affirming the district court's order and judgment. Race also believes that the district court orders may be in conflict as follows: 500 U.S. 136:

@ 144 "No constitutional question arises in cases like this one, in which the plaintiff has waived the right to a jury trial. And in cases in which the jury right exists and is not waived, the lower courts, guided by the principle of constitutional avoidance, have consistently held that the statute does not authorize reference to a magistrate." 111 S.Ct. 1737, 114 L.Ed. 2d 194 (1994).

Race asserts that review/relief is warranted under S.Ct. Rule 10. (see PETITION FOR PANEL REHEARING/Appendix D)

4. Race asserts that the lower courts erred by holding him to a higher standard of pleading to survive a F.R.Civ.P. Rule 12(b)(6) motion to dismiss than is required by this Court, Ninth Circuit, and other circuit court precedent case-law, as well as what was required by Chief District Judge Brian Morris in the defendant's first motion to dismiss, based on the following:

"...that he was still in need of treatment for this disease, and that prison officials were in the meantime refusing to provide treatment. This alone was enough to satisfy Rule 8(a)(2). Petitioner, in addition, bolstered his claim by making more specific allegations in documents attached to the complaint in later filings." (internal quotation marks omitted) 551 U.S. 89, 94 (2007)

Race asserts that he did as what he understood that Rule 8(a)(2) and the above case law required, that the defendant's were aware of the treatment he was requesting and denied and/or delayed the treatment. Race asserts that more specific allegations were made in documents attached to the complaint in later filings. In the ADDENDUM attached to the FAC (Doc. 38, CV-22-85-JTJ), Race tried to give more specific allegations/information based on the information he had at that point.

P.3 "Race also had to have a special lens made and attached to restore vision in his right eye. He has been requesting the special lens that was needed be made and installed to restore vision in that eye since his arrival in 1996. The lens was never and has not been provided to this day. Race now fears that delayed/denied eye care may have caused permanent blindness in his right eye."

P.4 "Dr. Rees has been on notice for years that Race wished to have the necessary surgery and special lens made so that he could see out of his right eye."...Race has been requesting this to be done (see an eye suegeon) for years. He has been denied this serious medical need for years, and as a result may have irreparable

damage and permanent loss of vision. Race feels that the above constitutes a violation of the U.S. Const. Amendment Eight, as well as MCA § 45-5-204 Mistreating prisoners."

Race asserts that enough information was given to Dr. Rees to know what the civil rights complaint was about. The defendants and both the district and appellate court determined that "Race did not allege Dr. Rees was personally aware of risks to Race's health." (Doc. 27.2 p.2, case no. 24-38) The Ninth Circuit found that Race's use of the term "been on notice" was insufficient for "personally aware." Also on p.2 the Ninth Circuit found that "Nor did Race allege Dr. Rees had consciously made any decisions regarding Race's medical treatment." Race asserts that this is incorrect. In the ADDENDUM:

P.4 "Defendant 1 Dr. Rees, in his role as Medical Director ultimately decides the course of action regarding medical treatment at MSP." Dr. Rees, according to MDOC Policy... has the final authority regarding clinical issues."

"Dr. Thomas, like Dr. Rees above has denied a referral to see an eye surgeon, in particular, Dr. Nedrud at Rocky Mountain Eye Center for years resulting in deliberate indifference to Race's serious medical needs. It has been well established law in the Ninth Circuit that failure to treat monocular blindness is deliberate indifference to medical need since at least 2014. Dr. Thomas failure to refer Race to an eye surgeon was made in conscious disregard of an excessive risk to Race's health."

It is a well known fact at MSP that for an inmate to see a specialist outside of the prison, a referral is necessary and Dr. Rees has to approve the referral before it is submitted to the prison Special Needs Panel for final approval. The exact inner workings of the Special Needs Panel are not known by inmates. Race may not have proven beyond a reasonable doubt that Dr. Rees had personal

involvement, but has "alleged" enough to state a claim that should have survived a Rule 12(b)(6) motion to dismiss despite of Race's poor choice of words. Moreover, Race's complaint also requests injunctive relief from both the named and unnamed defendants. Under Ninth Circuit law, it "is not required to allege a named official's personal involvement in the acts or omissions constituting the alleged constitutional violation." *Colwell v. Banister*, 763 F.3d. 1060, 1063 (9th Cir. 2014)(citing *Hartmann v. Cal. Dept. of Corr. & Rehab.*, 707 F.3d. 1114, 1127 (9th Cir. 2013))(see also OBR 17, 20, 21 and Petition for Panel Rehearing Appendix D, p. 8).

The Ninth Circuit rejected Race's assertion that he should be able to plead factual allegations based on information and belief "where the facts are peculiarly within the control of the defendant" and/or "where the belief is based on sufficient material that makes the inference of culpability plausible." (pp. 10,11 Appendix D). Race provided more factual detail in his Disclosure Statement. Race is unsure but doubts that either the district court or court of appeals read and/or considered the document. (Doc. 30, CV-22-85-JTJ)

Race asserts that the Ninth Circuit erred by holding him to the wrong pleading standard based on the following:

"Allegations of a [*3] pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d. 338, 342 & n.7 (9th Cir. 2010). (finding that liberal construction of pro se pleadings is required after *Twombly* and *Iqbal*)."
Samia v. LeVell, 2024 U.S. Dist. LEXIS 35391.

Both the district court and court of appeals cite to similar quotes but then reject Race's claims based on *Twombly* and *Iqbal*, which

fact and law exist that should be presented to a jury. Race did not waive his right to a jury trial "preserved" by the Seventh Amendment, although he feels like he has been treated as if he had waived it. The main reason Race wanted to file an amended complaint was to add additional defendant's that took part in denying treatment based on medical requests and by going through the prison grievance program. Race asserts that he did show personal involvement of the named defendants by attaching documents from the grievances, that had the named defendants all the way up to the director. Race is not sure how he was supposed to know what conversations and discussions took place and/or how or why they determined that the requested medical treatment was denied or delayed. Race had a growth on his testicle which had swollen to the "size of a softball" (description of the prison infirmary), complained that it was severely painful, and was "hanging in the toilet" causing unsanitary conditions and was embarrassing. Treatment was denied/delayed for 6-8 years; and a civil rights claim is unavailable because Race cannot submit a complaint comparable to one "drafted by lawyers" or provide specific facts that show how each individual was personally involved in the denied/delayed treatment? Chief U.S. District Judge Brian Morris denied the defendant's motion to dismiss and put the burden of proof on Dr. Rees to show that he was not personally involved "at the summary judgment phase" and magistrate judge John Johnston granted defendant's motion to dismiss after putting the burden of proof that Dr. Rees was personally involved back on Race. Review is warranted so that this Court can confirm and/or create Rules that

were both "drafted by lawyers". Twombly was a sophisticated class action lawsuit including "conspiracy" and "parallel conduct" that allegedly affected "a class of subscribers of local telephone and/or high speed internet services", which likely included millions of subscribers. Iqbal, as the Court is also familiar with, required "sufficient factual matter to show that petitioners adopted and implemented the detention policies at issue not for a neutral, investigative reason, but for the purpose of discriminating on account of race, religion, or national origin." 556 U.S. 662, 663 (2009). The pleading standards in these cases are far more stringent than should apply to Race. Compare the Court's holding in Erickson v. Pardus, 551 U.S. 89 (2007) "Petitioner's case cannot be dismissed on the ground that his harm allegations were too conclusory to put these matters in issue." Race asserts that he was required to prove his claims, or at least come close based on the following:

"Race has not alleged one interaction he had with Rees, one appointment, one discussion, one denial or anything to show any personal involvement in Race's care."

The above statement came right after "But medical facts or specific dates are not required." (p.6 Appendix B). Appointments require specific dates and medical facts, in fact, personal involvement of any kind would require specific dates and medical facts. Race did allege that he has been requesting treatment from ALL of the named and unnamed defendants and that ALL of the defendants have been denying those requests for years. Race asserts that his complaint was wrongly dismissed because genuine disputed material issues of

allow prisoners to protect their right to be free from cruel and unusual punishment, when unable to pay for representation of an attorney. Race asserts that review/relief is warranted pursuant to Supreme Court Rule 10(a), 10(c) and is of national importance.

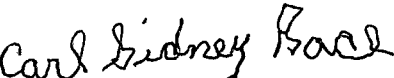
CONCLUSION

Race asserts that he was denied his day in court to have a jury decide whether or not the defendant/s are liable for violating his civil rights and prays that the Court grant this PETITION FOR A WRIT OF CERTIORARI. Submitted this _____ day of November, 2025

UNSWORN DECLARATION

I, Carl Sidney Race, declares under penalty of perjury, that the contents of this Petition are true and correct to the best of my knowledge.

November _____, 2025


Carl Sidney Race