

25-7463

No. 26-_____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

OMAR S. FOLK

Petitioner,

v.

UNITED STATES OF AMERICA, et al.,

Respondent.

DR. ELIZABETH STAHL, DR. B. BUSCHMAN AND DR. T. CULLEN

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

PETITION FOR WRIT CERTIORARI

FILED
APR 08 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

OMAR S. FOLK PRO-SE
FCI Hazelton Medium
P.O. Box. 5000
Bruceton Mills, W.V. 26525

QUESTION PRESENTED

1. Whether Lower Court Misapplied by Affirming District Court Error That was Never Addressed Down In District Court under Discovery Although Petitioner Had Filed Discovery Filing before Final Order.
2. Whether Lower Court Misapplied by Affirming District Court Error In Denying His Motion For Reconsideration Prior To Receiving A Response From The Defendant's Which No Way Petitioner Receive In Day.
3. Whether Lower Court Misapplied by Affirming District Court Error In Not Addressing His Requests For Preliminary Injunctive Relief And Petitioner Is No Longer Incarcerated in Pennsylvania And Now Lawsuit Is Moot.
4. Whether Lower Court Misapplied to Bivens in Light of This Court's Circuit Precedent In Muniz v. United States Without Addressing FTCA Claims On Merit's As Bivens Action Was Not New Context Of Law Under Carlson v. Green And (ARP) Does Not Apply To Petitioner Or Didn't To Present Special Factors.

PARTIES TO PROCEEDING

The parties to the proceeding in the Court whose judgment is sought to be reviewed are as follow:

1. Omar S. Folk
2. United States of America et al., E. Stahl, DR.
B. Buschman, MD and T. Cullen DO.

RELATED CASES

Wilson v. United States, 79 F.4th 312, 317(3d Cir. 2023)

Muniz v. United States, 2025 U.S. App. Lexis 20540; 2025
LX 399826 No. 24-1028 3rd Cir. Aug. 13, 2025)

Brooks v. Richardson, 131 F.4th 613(7th Cir. 2025)

Watanabe v. Derr, 115 F.4th 1034(9th Cir. 2024)

Rowland v. Matevousian, 121 F.4th 1237(10 Cir. 2024)

Carlson v. Green, 100 S.Ct. 1468, 64 L.Ed. 2d 15(1980)

TABLE OF CONTENTS

QUESTION PRESENTED..... i.4

PARTIES TO PROCEEDING.....ii

RELATED CASES.....ii

TABLE OF CONTENT.....iii

INDEX OF APPENDIXES.....iv

TABLE OF AUTHORITIES..... v

DECISION BELOW.....1

JURISDICTION.....1

RELEVANT STATUTORY PROVISIONS.....2

STATEMENT OF THE CASE.....3

A. Background,,,,,.....3

B. Appeal.....3

REASON FOR GRANTING THE WRIT.....4

1.WHETHER LOWER COURT MISAPPLIED BY AFFIRMING DISTRICT COURT ERROR THAT WAS NEVER ADDRESSED DOWN IN DISTRICT COURT UNDER DISCOVERY ALTHOUGH PETITIONER HAD FILED DISCOVERY FILING BEFORE FINAL ORDER.4

2.WHETHER LOWER COURT MISAPPLIED BY AFFIRMING DISTRICT COURT ERROR IN DENYING HIS MOTION FOR RECONSIDERATION PRIOR TO RECEIVING A RESPONSE FROM THE DEFENDANT'S WHICH NO WAY PETITIONER RECEIVE IN DAY.5

3.WHETHER LOWER COURT MISAPPLIED BY AFFIRMING DISTRICT COURT ERROR IN NOT ADDRESSING HIS REQUESTS FOR PRELIMINARY INJUNCTIVE RELIEF AND PETITIONER IS NO LONGER INCARCERATED IN PENNSYLVANIA AND NOW LAWSUIT IS MOOT.....6

4.WHETHER LOWER COURT MISAPPLIED TO BIVENS IN LIGHT OF THIS COURT'S CIRCUIT PRECEDENT IN *Muniz v. United States* WITHOUT ADDRESSING FTCA CLAIMS ON MERIT'S AS BIVENS ACTION WAS NOT NEW CONTEXT OF LAW UNDER *Carlson v. Green* AND (ARP) DOES NOT APPLY TO PETITIONER OR DIDN'T TO PRESENT SPECIAL FACTORS.....8

CONCLUSION.....10

INDEX OF APPENDIXES

Judgment and Opinion
United States of Appeals For the Third Circuit,
Folk v. United States of America, et al., U.S. App. No. 24-1506(1-8-26).
Appx. A..17

United States of Appeals For the Third Circuit,
Folk v. United States of America, et al.,U.S. App. No. 24-1506(2-10-26).
Appx. C..24

Exhibit A11

Exhibit B15

TABLE OF AUTHORITIES

CASES	PAGE(S)
Munix v. United States, 2025 U.S. App. Lexis 20540; 2025 LX 399826 No. 24-1028 3rd Cir. Aug. 13, 2025).....	i,ii,iii,8,10
CCarlson v. Green, 100 S.Ct. 1468, 64 L.Ed 2d 15(1980).....	i,ii,iii,8,10
Wilson v. United States, 79 F.4th 312, 317(3d Cir. 2023)....	ii,5,9
Brooks v. Richardson, 131 F.4th 613(7th Cir. 2025).....	ii,
Watanabe v. Derr, 115 F.4th 1034(9th Cir. 2024).....	ii,
Rowland v. Matevousian, 121 F.4th 1237(10 Cir. 2024).....	ii,
Folk v. United States of America, et al., U.S. App. No. 24-1506(3d Cir. Jan. 8, 2026).....	iv,5
Folk v. United States of America, et al., U.S. App. No. 24-2506(3d Cir. Feb 10, 2026).....	iv,5
Phoenix v. Amonette, 95 F.4th 852; 0224 U.S. App. Lexis 6397; No. 22-6313(4th Cir. Mar. 18, 2024).....	4,9
N. Rivers Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218(3d Cir. 1995).....	6
Houston v. Lack,108 S.Ct. 2379(1988).....	6
Brown v, Beard. 371 Fed. Appx. 257; 2010 U.S. App. Lexis 8832 No. 09-2616 3d Cir. Mar. 22. 2010).....	7
Bacote v. BOP, Case No. 22-1325. 2024 U.S. App. Lexis 5239(10th Cir. Mar. 5, 2024).....	7
Keith v. J.C. Streeval, 2024 U.S. App. Lexis 2936(4th Cir. 2024).7	7
Gordon v. Newsom, 2025 U.S. App. Lexis 28271; 2025 LX 432019 No. 25-5722(9th Cir. Oct. 28, 2025).....	7
Jones v. Hemingway, 2025 U.S. App. Lexis 27383 2025 U.S. App. Lexis 27383, 2025 LX 413150 No. 24-1972 6th Cir. Oct. 20, 2025).....	7
Tatum v. Craig, 2025 U.S. App. Lexis 29877; 2025 LX 541852 No. 24-2084(7th Cir. Nov. 14, 2025).....	7
Watkins v. Mohan, et al., 144 F.4th 926; 2025 U.S. App. Lexis 17558; 2025 LX 216392 No. 24-11451(7th Cir. July 6, 2025).....	9
Watkins v. Mahon, 2025 U.S. App. Lexis 2874(Nov. 3, 2025).....	9
Swartz v. D. Miller, PA, 153 F.4th 918; 2025 U.S. App. Lexis 22161; 2025 LX 383415 No. 23-1343(9th Cir. Aug. 28, 2025).....	9
Haines v. Kerner, 404 U.S. 519(1972).....	10
Constitutional Provisions	
U.S. Const. Amend. VIII.....	..2

Statutes and Rules

18 U.S.C. § 3231.....	1
28 U.S.C. §§ 1291.....	1
28 U.S.C. §§ 3742	1
28 U.S.C. § 1254(1).....	1

No. 26-_____

IN THE

SUPREME COURT OF THE UNITED STATES

APRIL TERM, 2026

OMAR S. FOLK

Petitioner,

v.

UNITED STATES OF AMERICA, Et AL.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Omar S. Folk respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals For The Third Circuit in this case.

DECISION BELOW

The United States Court of Appeals for the Third Circuit Affirmed Petitioner's District Court Denial MD PA Doc. 121-122 and Doc. 128 on Feb. 22, 2024 and Mar. 1, 2024. Petitioner's Appendix ("Pet. Appx. A

JURISDICTION

The United States District Court For the Middle District of Pennsylvania (M.D. Pa. No. 3-22-cv-599) exercised jurisdiction over the federal civil case pursuant to 18 U.S.C. 3231. The Third Circuit of Appeals (No. 24-1506) had jurisdiction pursuant to 28 U.S.C. § 1291 and § 3742(a). On Jan. 8, 2026 Third Circuit denied Cir. Doc. 37. The United States Court of Appeals for the Third Circuit entered judgment on Feb. 10, 2026 Pet, Appx. A Rehearing and En Banc Denied. This Court has Jurisdiction pursuant to 28 U.S.C. § 1254(1). Cir. Doc. 40.

RELEVANT STATUTORY PROVISIONS

The Eighth Amendment to the Constitution of the United States provides:

Excessive bail shall not be required, nor excessive fine imposed, nor cruel and unusual punishment inflicted.

STATEMENT OF THE CASE

A. Background

On or about Jan. 22, 2024, Folk denied petition by the Court MD PA Doc. 121-122. See (Exhibit A).

On or about Mar. 1, 2024, Folk denied Reconsideration petition by the Court MDPA Doc. 128. See (Exhibit B).

B. Appeal

On Jan. 8, 2026, panel of the United States Court of Appeals For the Third Circuit (Matey, Montgomery Reeves, and Nygaard, J.). issued a **opinion Affirming district court ruling by Circuit per Curiam.** Pet. Appx. A.

On Feb. 10, 2026, panel Rehearing and En Banc of the United States Court of Appeals For Third Circuit (P. Matey Circuit Judge, J.).

Denied Rehearing and En Banc. See (Pet. Appx. C).

REASON FOR GRANTING THE WRIT

Petitioner's follow in his reason why it should be clear to grant the Lower Court's Error's in Law upon the MD PA Doc. 121-122 and 128 decisions. See(Exhibit A-B).

QUESTION PRESENTED I.

Whether Lower Court Misapplied By Affirming District Court Error That Was Never Addressed Down In District Court Under Discovery Although Petitioner Had Filed Discovery Filing Before Final Order.

Petitioner direction today is the Third Circuit Court of Appeals has abuse their discretion. In Cir. No. 24-1506 Doc. 37 at 4, that turn to the record in District Court which was never addressed down in District Court on the Doc. 21 and 27 also 50-51 "Motion For Disclosure sure". Now Petitioner follow in turn to App. Case No. 24-1506 Doc. 37 at 2-4, That Appellant will state he also had EGD Scope in Aug. 2014 that was noted in MD PA Doc. 73 at 3-4. This was not spoke about until or even mention as to be biopsy finding that was directed in Pathologist report Kim Morris. Petitioner don't know why, and he can't make this up at all and the record in First Amended Complaint was clear to be warranted vacate and remand. See(Phoenix v. Amonette, 95 F.4th 852; 0224 U.S. App. Lexis 6397; No. 22-6313(4th Cir. Mar. 18, 2024)(The District Court erred in granting summary judgment in favor of the doctor by concluding that the inmate needed an expert witness. There was no per-se rule that expert testimony was necessary to establish an Eighth Amendment deliberate indifference claim, and the question was whether the Plaintiff had produced sufficient evidence to create a genuine dispute of material facts about each of the rquired elements; The inmate created a genuine dispute of material fact about the objective prong given the evidence

that he had Celiac Disease, and he did not need an expert witness to create a genuine dispute of material facts. Judgment Vacated and Remand). The Court did not even mention this out of their ruling that points to Brief Doc. 17 at 6-9. See (Wilson v. United States, No. 22-1940, F.4th, 2023 WL 5341494 (3d Cir. 2023) (District Court erred in granting Summary Judgment to Government prior to discovery). That also points to MDPA Doc. 103 government conceding to US v. Wilson. Furthermore there was no contention that Mr. Wilson had to already file a 56(d) discovery in order to receive discovery first instead of the government being able to file Summary Judgment under Rule 56. This was not the case and in fact at the time of this ruling this court just agree upon other circuit's ruling to apply FTCA could proceed without a COM provided in general. Therefore at this time there is no direction of why this Court Appeals Judges failed to bring forth FTCA actions that were attached to this MD PA Doc. 73.

In this Petitioner concludes his reason for why Granting The Writ is warranted to Vacate and Remand Cir. No. 24-1506 Doc. 37-38-1 and Doc. 40. Folk v. United States of America, et al., U.S. App. No. 24-1506 (3d Cir. 1-8-26) (Rehearing Folk v. US et al., U.S. App. No. 24-1506(2-10-16)

QUESTION PRESENTED II.

Whether Lower Court Misapplied By Affirming District Court Error In Denying His Motion For reconsideration Prior To Receiving A Response From The Defendant s Which No Way Petitioner Receive In Day.

Petitioner will address the lower court decision under abuse of discretion by not reviewing the District Court MD PA Doc. 128 that didn't reflect Petitioner objection in MD PA Doc. 129 that the court didn't address prior to the ruling in MD PA Doc. 128. In this the only filing that was addressed or on record by Petitioner was "Brief In Support to Doc. 124 Motion To Alter Judgment". No

way that Petitioner would have receive incoming legal mail in one day or be able to rebuttal before this order by District Court Judge Mariani on 3-1-24. Therefore it's no way that the court could address Petitioner Objection's to MD PA Doc. 126 in MD PA Doc. 128. Petitioner address the record under Fed. R. Civ. P. 59(e) to be met at (3) the need to correct clear error of law or prevent manifest injustice. "N. Rivers Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218(3d Cir. 1995). As the position today is very simple it's no way Petitioner can receive legal incoming mail within one day of this court's ruling Dates: 3-1-24 prior to receiving the government response for Brief Opposition Dated:2-29-24. Now Petitioner only have a one day window to receive each documents and respond to MD PA Doc. 126 and 128. This will be impossible Honorable Justice's unless Petitioner has ECF filing which he under Via Mail box ruling Houston v. Lack.See(Brown v. Beard, 371 Fed. Appx. 257; 2010 U.S. App. Lexis 8832 No. 09-2616 3d Cir. Mar. 22, 2010).

In this Petitioner concludes his reason for why Granting The Writ is warranted to Vacate and Remand Cir. No. 24-1506 Doc. 37-38-1 and Doc. 40.

QUESTION PRESENTED III.

Whether Lower Court Misapplied By Affirming District Court Error In Not Addressing His Requests For Preliminary Injunctive Relief And Petitioner Is No Longer Incarcerated In Pennsylvania And Now Lawsuit Is Moot.

Petitioner follow in reason for why this Injunctive Relief can stand as this formally is the only hope for Mr. Folk and other inmates who have a medical illness. That will make Petitioner argument to be simple as Injunctive Relief should always follow a incarcerated inmate as BOP house a person with the government guidance. Now the facts are

Petitioner will rely on other circuit court position in 10th Cir. that 3rd Cir. now agreed upon to strike Petitioner Injunctive Relief. See(Bacote v. BOP. Case No. 22-1325. 2024 U.S. App. Lexis 5239(10th Cir. Mar. 5, 2024));See(Bacote v. Fed Bureau of Prisons, 2024 U.S. App. 25979 No. 22-1325(Oct. 15, 2024)(10th Cir. tossed out his case, holding that while not constitutionally moot, it was "prudentially" so. Prudential mootness concerns not the power to grant relief but the court's discretion in the circumstances of a controversy become too attenuated, prudence counsels us not to reach the merits of the appeal"). Petitioner has now address this hind-sight of mis-acceptation of standard of law to strike a person as a inmate for seeking relief on a chronic condition. That should also be direct at BOP Director William K. Marshall III, as to Amended Complaint so Petitioner can receive medical treatment that is being denied under BOP Breach Duty of Care § 4042(a)(2) Denying Petitioner Suitable Living Conditions and Medical Treatment. See(Keith v. J.C. Streeval, 2024 U.S. App. Lexis 2936(4th Cir. 2024)(Injunctive Relief Amended Complaint was reverse and remand). This will further save Petitioner civil action as the direction also point to other circuit's courts that follow the same in a BOP inmate being transfer away from his original jurisdiction and state of filing. See(Gordon v. Newsom, 2025 U.S. App. Lexis 28271; 2025 LX 432019 No. 25-5722(9th Cir. Oct. 28, 2025); See(Jones v. Hemingway, 2025 U.S. App. Lexis 27383 2025 LX 413150 No. 24-1972 6th Cir. Oct. 20, 2025); See(Tatum v. Craig, 2025 U.S. App. Lexis 29877; 2025 LX 541852 No. 24-2084(7th Cir. Nov. 14, 2025).

Upon the facts as Petitioner is now house outside of Pennsylvania he also here to address his reason for being denied Injunctive Relief and also having his action moot for not requesting to be move outside of his

jurisdiction of were his filing were stem from. Now to be sent outside of his region upon just requesting for a close the home transfer. That now ended up here in FCI Hazelton Medium in West Virginia and now my injunctive relief claims fail right along with civil action. This further bring Petitioner to his understanding to oppose the facts in Third Circuit Court of Appeals following the same theory in other circuit's that now has mooted Petitioner's Injunctive Relief claims.

In this Petitioner concludes his reason for why Granting The Writ is Warranted to Vacate and Remand 3rd Cir. No. 24-1506 Doc. 37-38-1 and Doc. 40.

QUESTION PRESENTED IV.

Whether Lower Court Misapplied To Bivens In Light of This Court's Circuit Precedent In Muniz v. United States Without Addressing FTCA Claims On Merit's As Bivens Action Was Not New Context Of Law Under Carlson v. Green And (ARP) Does Not Apply To Petitioner, Or Didn't To Present Special Factors.

Petitioner will rely on the Circuit's Courts Split caselaw's to address why his bivens action should have proceeded under his medical conditions. That result from his chronic conditions of suffering a respiratory disease which is documented as Eosinophilic-Esophagitis, that is mark under Vasculitis as well stem from food allergies and Asthma. Petitioner suffer this disease and has been receiving documented biopsy from specialist GI Doctor's and Pathologist, from PA and Georgia Kim Morris. Upon this Petitioner was correct to follow in why he could have been similar to Carlson v. Green as Petitioner could have died as well from foods being stuck in throat without help from medical staff of receiving special diet as still being denied today. Then the facts of suffering One Over-Size Gallstone that was pretruding Petitioner gallbladder with a full size of 2,3cm as the

Gallbladder was 2.0cm and causing sharp and stabbing pain with Petitioner not being able to receive bowel movement. Further, Petitioner has desire each time a life or death situation that could have cause Petitioner to be no longer a BOP inmate. And for this Petitioner thank GOD to receive another day to come home to his kids and family. This journey has been a up hill one and Petitioner realize that his case can meet the reason for the Supreme Court Justices to GRANT Writ Certiorari.

See(Brooks v. Richardson, 2025 U.S. App. Lexis 6071 No. 241651(7th Cir. Mar. 14, 2025)See(Rowland v. Matevousian, 2024 U.S. App. Lexis 29406 Nos. 23-1343 and 23-1411(10th Cir. Nov. 19, 2024); See(Watkins v. Mohan, etal., 144 F.4th 926; 2025 U.S. App. Lexis 17558; 2025 LX 216392 No. 24-11451(7th Cir. July 6, 2025); See(Watkins v. Mohan. 2025 U.S. App. Lexis 2874(Nov. 3, 2025)(Re-Hearing Denied by en Banc, Rehearing Denied); See(Schwartz v. D. Miller, PA, 153 F.4th 918; 2025 U.S. App. Lexis 22161; 2025 LX 383415 No 23-1343(9th Cir. Aug. 28, 2025). This approach was clear in the record at the time as Petitioner should have prevail on FTCA actions regardless when it was clear Petitioner suffer nearly death situations after receiving his Gallbladder remove and the facts Foods being stuck his underlining conditions Eosinophilic-Esophagitis. Upon this it was clear that FTCA split in circuit's under Pa. R Civ. P. 1042.3(a)(3), See(Wilson v. United States, 149 F.4th 256(3d Cir. 2023); See(Phoenix v. Amonette, 95 F.4th 852; 2024 U.S. App. Lexis 6397; No. 22-6313 4th Cir. Mar. 18, 2024)(The District Court erred in granting summary judgement in favor of the doctor by concluding that the inmate needed an expert witness.

There was no per-se rule that expert testimony was necessary to establish an Eighth Amendment deliberate indifference claim, and the question was whether the plaintiff had produced sufficient evidence to create a genuine

dispute of material facts about each of the required elements; The inmate created a genuine dispute of material facts about the objective prong given the evidence that he had Celiac Disease, and he did not need an expert witness to create a genuine dispute of material facts. Judgment vacated and remanded). This very contentions are to be addressed in the lower court's decision that were off point as regardless if Petitioner had not oppose the material facts he was still mark to follow under 8th Amendment violation as he suffer Eosinophilic-Esophagitis. In that Petitioner will rely on the facts of Circuit's Court split cases that still proceed into longstanding law See(Carlson v. Green, 100 S.Ct. 1468, 64 L.Ed. 2d 15(1980). **Muniz v. United States**, 149 F.4th 263-65(3d Cir. 2025)).

In this Petitioner concludes his raeson for why Granting The Writ is warranted to Vacate and Remand Cir. No. 24-1506 Doc. 37-38-1 and Doc. 40.

Wherefore the Court should Grant Reverse and Remand or Grant Writ of Certiorari on Split's in Circuit's Preliminary Injunctive Relief and Bivens Action Was Not New Context of Law under Carlson v. Green or Special factors. Then proceed Discovery as this was address down below without the District Court ruling then address Reconsideration it no way Petitioner had receive Defendant's response in one day. See(Haines v. Kerner).

CONCLUSION

Based on the foregoing, Petitioner Omar S. Folk respectfully request this court to issue a writ of certiorari to the United States of Appeals For the Third Circuit.