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TAYLOR V. RIOJAS: ANATOMY OF A SUPREME COURT INTERVENTION THAT SHOULD NOT HAVE BEEN NECESSARY

By Zamir Ben-Dan*

INTRODUCTION

In September 2013, an inmate in a Texas prison allegedly spent six days in two uninhabitable cells.[1] One cell was covered in "massive amounts of feces"; the other cell was freezing cold and lacked a sink, a bunk, and a toilet, containing only a clogged floor drain for him to relieve himself.[2] The very thought that a human being would be caged under such appalling conditions should shock the conscious of any person who hears about it; and few laypersons would doubt that confining a person under these circumstances is plainly illegal. Yet, it took seven years and an unlikely Supreme Court intervention for an official pronouncement that, if indeed the inmate was incarcerated under such conditions for almost a full week, those responsible for his confinement violated clearly established constitutional law.[3]

In between those seven years, two different federal courts—the United States District Court for the Northern District of Texas and the Fifth Circuit Court of Appeals—dismissed the inmate's Eighth Amendment claims and granted qualified immunity to the officials responsible for the inmate's confinement in the two disgusting cells.[4] The flagrant violation of this inmate's Eighth Amendment rights is obvious and totally outrageous; but the biggest disgrace is that the Fifth Circuit needed the Supreme Court to tell them that. Both lower courts placed heavy emphasis on one line from a 1978 Supreme Court decision, and relied on prior fifth circuit caselaw that also depended on the same line from the same Supreme Court decision.[5] This note will review these decisions, concluding that both opinions display a blatant disregard for both the humanity of the inmate and basic common sense.

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[1] Taylor v. Stevens, 946 F.3d 211, 218 (5th Cir. 2019).

[2] *Id.* at 218–19.

[3] *See* Taylor v. Riojas, 141 S. Ct. 52, 53–54 (2020).

[4] *See Taylor*, 946 F.3d at 216–17.

[5] *See id.* at 220, 222; Taylor v. Stevens, No. 5:14-CV-149-C, 2017 WL 11507190, at *8 (N.D. Tex. Jan. 5, 2017).

I. WHAT HAPPENED

On September 6, 2013, Trent Michael Taylor was placed in a cell at the John Montford Unit, a psychiatric unit in a Texas prison.[6] Virtually the entire cell—the floor, ceilings, walls, and the window—were thoroughly covered with human feces.[7] He feared to eat inside the cell for fear of contamination, and feared to consume water because the faucet was also packed with feces.[8] If this were not bad enough, Taylor was placed inside the cell completely naked.[9] He complained about the decrepit condition of the cell, but prison officials neither cleaned the cell nor moved him to a different cell.[10] Three of the officers laughed at him and said that he was "going to have a long weekend."[11] Another officer remarked: "[d]ude, this is [M]ontford, there is shit in all these cells from years of psych patients."[12] Taylor was kept inside this cell for the next four days, finally being removed from it on September 10, 2013.[13]

The following day, on September 11, 2013, Taylor was placed inside a different cell.[14] This cell was freezing cold because the air conditioner was always on;[15] other prisoners dubbed the cell "the cold room."[16] One of the prison officials allegedly said that he hoped Taylor would "fucking freeze."[17] Like in the first cell, he was confined in the second cell without any clothing.[18] This second cell had no bunk, no sink, and no toilet.[19] The only thing the cell had was a drain hole in the floor, which he was expected to use when he needed to relieve himself.[20] The drain hole smelled strongly of ammonia, making it hard to breathe.[21] Additionally, the drain hole "was clogged with raw sewage that seeped onto the floor where he was forced to sleep . . . ."[22] His repeated requests for a bathroom break were refused; and prison officials ordered him to urinate in the drain.[23] Taylor tried to hold his urine, but eventually urinated on himself involuntarily.[24] He was forced to remain in this cell for two days.[25] At

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[6] *Taylor*, 946 F.3d at 218.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at 218 n.9.
[17] *Id.*
[18] Taylor v. Stevens, No. 5:14-CV-149-C, 2017 WL 11507190, at *2 (N.D. Tex. Jan. 5, 2017).
[19] *Taylor*, 946 F.3d at 218.
[20] *See id.* at 218–19.
[21] *Id.* at 218.
[22] *Taylor*, 2017 WL 11507190, at *2.
[23] *Taylor*, 946 F.3d at 218–19.
[24] *Id.* at 219.

some point, the officers tried to place him back inside the first cell, but he refused and threatened to harm himself.[26]

Taylor asserted that as a result of being subjected to those conditions, he experienced chest pains, burning to his eyes and throat, and severe bladder pain.[27] He further had to be taken to the emergency room and catheterized; and this trip to the hospital came only after he made repeated requests for medical assistance on September 13, 2013, the day he was taken out of the second cell.[28] Taylor further averred that he suffered a lasting bladder injury, and suffered from bladder and urinary incontinence and spasms.[29]

II. THE RATIONALES OF THE TWO LOWER COURT OPINIONS

In September 2014, Taylor filed a civil rights lawsuit against Texas prison officials on a host of claims.[30] Among those claims were that the prison officials responsible for his confinement between September 6, 2013, and September 14, 2013, violated his Eighth Amendment rights by subjecting him to imprisonment under those conditions.[31] On January 22, 2016, a magistrate judge in the United States District Court for the Northern District of Texas recommended that the majority of Taylor's claims be dismissed for failure to state a claim.[32] With respect to the Eighth Amendment violation, the magistrate judge found those related claims to be sufficiently pled and recommended that the motion to dismiss be denied as to those claims.[33] On March 29, 2016, a senior district judge fully adopted the recommendations of the magistrate judge, and Taylor's Eighth Amendment claims survived the defendants' motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.[34]

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[25] *See id.*

[26] *Id.*; *Taylor*, 2017 WL 11507190, at *2. It is unclear at what point the officials tried to place Taylor back inside the cell. In the district court decision, officials tried to place him back in that cell before placing him in the second cell; in the Fifth Circuit's decision, officials tried to place him back in the first cell after he spent two days in the second cell. *See Taylor*, 946 F.3d at 218; *Taylor*, 2017 WL 11507190, at *2.

[27] *Taylor*, 2017 WL 11507190, at *2.

[28] *Id.*

[29] *Id.*

[30] Complaint at 1, 17–32, Taylor v. Stevens, No. 5:14-CV-149-C (N.D. Tex. Sept. 2, 2014).

[31] Taylor v. Williams, No. 5:14-CV-149-BG, 2016 WL 8674566, at *3–5 (N.D. Tex. Jan. 22, 2016).

[32] *Id.* at *6–7.

[33] *Id.* at *5.

[34] Taylor v. Williams, No. 5:14-CV-149-C, 2016 WL 1271054, at *2–3 (N.D. Tex. Mar. 29, 2016).

A. The United States District Court for the Northern District of Texas Finds No Eighth Amendment Violation.

On January 5, 2017, the district court granted summary judgment to the defendants on Taylor's Eighth Amendment claims.[35] The court noted that the defendants offered "little in the way of specific summary judgment evidence to support their assertion that the cells were not, in fact, covered with feces . . . ."[36] The court further pointed out how much the defendants harped on Taylor allegedly being "a compulsive cleaner,"[37] a claim which implies a recognition on their part that the cells were indeed filthy. The court also found no evidence that Taylor had been provided cleaning supplies,[38] so it seems rather clear that the evidence before the court was that Taylor spent six days in two outrageously filthy cells. Nonetheless, the court found that the prison officials involved did not violate Taylor's Eighth Amendment rights by subjecting him to those conditions.[39]

The trial court unreasonably extrapolated from one line in the Supreme Court's decision in *Hutto v. Finney*,[40] improperly calling it a "holding."[41] In *Hutto*, several plaintiffs brought action alleging the conditions of their confinement to be unconstitutional.[42] Inmates placed in punitive segregation had to share 8'x10' cells with at least three other inmates, and oftentimes more.[43] They were forced to sleep on mattresses on the floor; and, despite the fact that some of the inmates had contagious diseases, the mattresses were piled together every morning and randomly assigned every night.[44] The inmates were inadequately fed as well, receiving less than one thousand calories a day in sustenance.[45] Importantly, there were no limits as to how long an inmate spent in punitive segregation.[46] All of this led the district court to find these conditions unconstitutional and, among other things, to impose a thirty-day limit on punitive segregation sentences.[47] The federal appeals court affirmed the district court's decision, as did the United States Supreme Court.[48]

In its decision, the Supreme Court stated that "[a] filthy, overcrowded cell and a diet of 'grue' might be tolerable for a few days and intolerably cruel for

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[35] Taylor v. Stevens, No. 5:14-CV-149-C, 2017 WL 11507190, at *8, *11 (N.D. Tex. Jan. 5, 2017).
[36] *Id.* at *7.
[37] *Id.*
[38] *Id.*
[39] *Id.* at *7–*8.
[40] Hutto v. Finney, 437 U.S. 678 (1978).
[41] *Taylor*, 2017 WL 11507190, at *8.
[42] *Hutto*, 437 U.S. at 678.
[43] *Id.* at 682.
[44] *Id.* at 682–83.
[45] *Id.* at 683.
[46] *Id.* at 682.
[47] *Id.* at 684.
[48] *Id.* at 680–81.

weeks or months."[49] This line is not a holding, and could not be reasonably construed as such.[50] Further, this statement must be read within the context of the Court's discussion regarding punitive segregation and the specific facts of the case. The length of the confinement was an issue in *Hutto* because a) durations of confinement had been indeterminate;[51] and b) the district court's imposition of thirty-day limits was challenged, or rather, mischaracterized as a broader conclusion that indeterminate sentences can never be constitutional.[52] That one line in *Hutto* cannot reasonably be interpreted as allowing confinement under *any* circumstances, insofar as it only lasts for a few days.[53] If the conditions of confinement are extreme enough—like if a person were to be subject to cold temperatures at night and not provided a blanket[54]—there can be an Eighth Amendment violation, regardless of whether or not the conditions lasted days or weeks. Strangely enough, the Fifth Circuit seemed to recognize this in its decision in *Palmer v. Johnson*.[55]

Nonetheless, the trial court in Taylor's case construed this one line from *Hutto* to condition a finding of an Eighth Amendment violation on the duration of the circumstances, irrespective of how intolerable or barbaric the circumstances are for an inmate.[56] The appellate authority on which the trial court chiefly relies for its conclusion,[57] *Davis v. Scott*,[58] does the same thing.[59] In *Davis*, the appeals court found no Eighth Amendment violation where the plaintiff spent three days in a cell with "blood on the walls and excretion on the floors and bread loaf on the floor."[60] Using *Hutto*, the *Davis* court reasoned that the federal constitution permitted prison officials to detain the plaintiff in the cell since it was "for only three days."[61] The *Davis* court further explained that the plaintiff was given cleaning supplies when he complained about the conditions, thereby "mitigating any intolerable conditions."[62] The trial court applied *Davis* to the facts here even though the length of confinement was twice as long and even though Taylor, unlike the plaintiff in *Davis*, was not provided cleaning supplies.[63]

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[49] *Id.* at 686–87.
[50] *See* Taylor v. Riojas, 141 S. Ct. 52, 55–56 (2020) (Alito, J., concurring).
[51] *Hutto*, 437 U.S. at 682.
[52] *Id.* at 685.
[53] *See Taylor*, 141 S. Ct. at 56 (Alito, J., concurring).
[54] Wilson v. Seiter, 501 U.S. 294, 304 (1991).
[55] *See* Palmer v. Johnson, 193 F.3d 346, 352–54 (5th Cir. 1999).
[56] *See* Taylor v. Stevens, No. 5:14-CV-149-C, 2017 WL 11507190, at *8 (N.D. Tex. Jan. 5, 2017).
[57] *Id*.
[58] Davis v. Scott, 157 F.3d 1003 (5th Cir. 1998).
[59] *See id.* at 1006.
[60] *Id.* at 1004, 1006.
[61] *See id.* at 1006.
[62] *Id.* (citations omitted).
[63] *See* Taylor v. Stevens, No. 5:14-CV-149-C, 2017 WL 11507190, at *7–*8 (N.D. Tex. Jan. 5, 2017).

To the district court, the federal constitution permitted a human being to be imprisoned first in a feces-filled cell, and then in a second cell in frigid temperature with no bunk, no toilet, no sink, and a hole in the floor—smelling of ammonia and overflowing with raw sewage—because the total confinement "only" lasted for six days.[64]

B. The Fifth Circuit Court of Appeals Finds an Eighth Amendment Violation, but Also Finds that Prison Officials Did Not Have "Fair Warning" that Their Behavior Was Unconstitutional.

On December 20, 2019, the Fifth Circuit Court of Appeals affirmed the district court's ruling on those specific claims, albeit on slightly different grounds.[65] The appeals court still found that summary judgment was appropriate, but not because there was no constitutional violation.[66] Indeed, the appellate court found that Taylor's Eighth Amendment rights were infringed upon.[67] The court correctly noted that the length of time was a non-dispositive factor to be considered.[68] The court further found that *Davis* was inapplicable, both due to the longer length of time in Taylor's case and the fact that prison officials did not provide Taylor with cleaning supplies, unlike the plaintiff in *Davis*.[69] The court noted how "obvious" the danger of Taylor being exposed to bodily waste was, especially given that he was made to sleep on a urine-soaked floor without any clothing.[70]

Yet, as "obvious" as the risks were, the appellate court granted qualified immunity on the ground that the prison officials "weren't on 'fair warning' that their specific acts were unconstitutional."[71] This bears repeating: the court found that the prison officials might not have known that confining Taylor in a cell filled from floor to ceiling with human feces for four days, and then in an extremely cold cell with no sink, toilet, or bunk for two days—where he had to sleep completely naked on a urine-soaked floor—would violate the constitution.[72] In arriving at this preposterous decision, the Fifth Circuit Court of Appeals played on that same line from *Hutto*, finding that the dicta in the Supreme Court's decision created "ambiguity" with respect to what constituted impermissible confinement conditions.[73] The appellate court also cited to its decision in *McCord v. Maggio*,[74] which dealt with a ten-month period of

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[64] *See id.* at *2, *8.
[65] Taylor v. Stevens, 946 F.3d 211, 216–17 (5th Cir. 2019).
[66] *See id.* at 218.
[67] *Id.* at 222.
[68] *Id.* at 220 (citing Palmer v. Johnson, 193 F.3d 346, 353 (5th Cir. 1999)).
[69] *Id.* at 221.
[70] *See id.* at 222.
[71] *Id.*
[72] *See id.*
[73] *See id.*
[74] McCord v. Maggio, 927 F.2d 844 (5th Cir. 1991).

confinement.[75] So once again, the granting of qualified immunity for these defendants in Taylor's case turned not on the nature of the conditions, but on the fact that the conditions "only" lasted for six days.[76]

Even before the Supreme Court's intervention in this case, there were clear indications that the Fifth Circuit's decision did not square with the high court's jurisprudence. For example, the Court opined in *Wilson v. Seiter* that exposing an inmate to cold temperatures without providing sufficient means to stay warm would constitute an Eighth Amendment violation.[77] That clearly happened in Taylor's case, at least with respect to his confinement in the second prison cell—it was freezing cold, and Taylor did not even have clothes on.[78] Beyond that, the Supreme Court has indicated that qualified immunity is inappropriate where the unlawfulness of the conduct is apparent.[79] It is difficult to imagine a scenario where the illegality is less apparent, given how the Fifth Circuit found that prison officials engaged in misconduct and disregarded the "obvious" risks of that misconduct.

Aside from that, common sense seems to have evaded both lower courts. It goes without saying that humans should not be unnecessarily exposed to human feces. Prolonged or unnecessary exposure to human waste is not merely "uncomfortable" as the trial court posited.[80] The World Health Organization noted how human waste has been linked to the transmission of a wide array of infectious diseases.[81] Scholarly articles have been written advocating for proper waste disposal systems, because a lack of such systems can have disastrous health effects.[82] Other appellate courts have also recognized that exposure to human waste heightens Eighth Amendment concerns.[83] But even on a more basic level, it is common knowledge that human beings should not defecate anywhere and wallow in feces. People generally know to go to designated places when they need to relieve themselves; they are called bathrooms. It is further common knowledge that defecating anywhere would not only make places unsanitary, but also unhealthy. Being in a small environment that is

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[75] *Taylor*, 946 F.3d at 219, 222.

[76] *See id.* at 222.

[77] Wilson v. Seiter, 501 U.S. 294, 304 (1991).

[78] Taylor v. Riojas, 141 S. Ct. 52, 53 (2020).

[79] *E.g.*, Anderson v. Creighton, 483 U.S. 635, 640 (1987).

[80] *See* Taylor v. Stevens, No. 5:14-CV-149-C, 2017 WL 11507190, at *8 (N.D. Tex. Jan. 5, 2017).

[81] Richard Carr, *Excreta-Related Infections and the Role of Sanitation in the Control of Transmission*, WORLD HEALTH ORG. 90 (2001), https://www.who.int/water_sanitation_health/dwq/iwachap5.pdf.

[82] *See, e.g.*, C. Rose et al., *The Characterization of Feces and Urine: A Review of the Literature to Inform Advanced Treatment Technology*, 45 CRITICAL REVIEWS ENVTL. SCI. & TECH. 1827, 1828 (May 29, 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4500995/.

[83] *See, e.g.*, McBride v. Deer, 240 F.3d 1287, 1292 (10th Cir. 2001); Fruit v. Norris, 905 F.2d 1147, 1151 (8th Cir. 1990); Johnson v. Pelker, 891 F.2d 136, 139 (7th Cir. 1989); LaReau v. MacDougall, 473 F.2d 974, 978 (2d Cir. 1972)

covered with "massive amounts of feces" is beyond unusual; forcing a human being to remain in that environment, even for a day, is beyond cruel.

It is further clear that both lower courts have lost sight of not just Taylor's humanity, but the humanity of inmates generally. It is not as if the two cells Taylor was housed in were the only two cells available for placement during those six days.[84] Indeed, the Fifth Circuit provided "no evidence that the conditions of Taylor's confinement were compelled by necessity or exigency."[85] Nor did the Fifth Circuit explain why the nature of Taylor's imprisonment "could not have been mitigated, either in degree or duration."[86] In fact, the Fifth Circuit's factual record suggests that not only was the confinement unnecessary, but it was also sadistic.[87] The officials laughed at Taylor while he was in the first cell, declaring that he would have "a long weekend" in a cell they knew to be filled with feces.[88] They must have known that he was not eating during those first four days, given that Taylor declined to eat for fear of contamination.[89] One official allegedly hoped he would freeze in the second cell, dubbed "the cold room" by other inmates.[90] The officials told him to urinate in a drain hole that smelled of ammonia and overflowed with raw sewage; and they refused to escort him to the bathroom for a twenty-four hour period.[91] How either the district court could rule that this was not unconstitutional, or the appellate court could find the unconstitutionality of this conduct to not be "beyond debate," utterly boggles the mind.

It is further baffling how the Fifth Circuit arrived at its conclusion in light of its decision in *Palmer v. Johnson*.[92] In *Palmer*, the appellate court found a clear Eighth Amendment violation where an inmate was confined to a six-hundred-square-foot area with forty-nine other inmates for a period of seventeen hours.[93] The *Palmer* court specifically found barbaric a) the fact that the plaintiff was told he had to urinate or defecate within the confined space;[94] and b) that Palmer was denied sufficient means of keeping warm and was forced to endure cold temperatures.[95] While there are distinctions between *Palmer* and the instant matter, it is difficult to see how the concerns the Fifth Circuit had in *Palmer* do not apply here. Like the plaintiff in *Palmer*, Taylor was without a toilet in the second cell, and for a longer period than the plaintiff in *Palmer*.[96] Also like the plaintiff in *Palmer*, Taylor was subjected to frigid

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[84] *See* Taylor v. Riojas, 141 S. Ct. 52, 54 (2020).
[85] *Id*.
[86] *Id.*
[87] *See* Taylor v. Stevens, 946 F.3d 211, 218 (5th Cir. 2019).
[88] *Id.*
[89] *Id.*
[90] *Id.* at 218 n.9.
[91] *Id.* at 218–19.
[92] *See* Palmer v. Johnson, 193 F.3d 346, 354 (5th Cir. 1999).
[93] *Id.* at 349, 353–54.
[94] *Id.* at 352.
[95] *Id.* at 352–53.
[96] *See Taylor*, 946 F.3d at 223–25.

temperatures in the second cell; and unlike the plaintiff in *Palmer*, Taylor did not even have clothing on.[97] If the plaintiff in *Palmer* had "clearly established rights under the Eighth Amendment,"[98] then so too did Taylor. The Fifth Circuit should have followed *Palmer* in this case.

III. AN UNLIKELY INTERVENTION

It is quite disturbing to think that if the Supreme Court of the United States had not granted certiorari—and at least one justice was of the opinion that certiorari should not have been granted[99]—a flagrant violation of the Eighth Amendment would have been sanctioned and the purveyors of that violation absolved of any liability. Thankfully, however, the Supreme Court granted certiorari in this case; and on November 2, 2020, the Court reversed the decision of the Fifth Circuit Court of Appeals.[100] The high court referred to the facts of the case as "particularly egregious" and found that "no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time."[101] Seven justices joined in the majority, with one of the seven justices issuing a concurrence.[102] One justice dissented without an opinion, and the last justice took no part in the consideration of the case.[103]

This decision should not be taken lightly. Over the past few years, the Supreme Court has been roundly criticized as a racist, classist, and politically conservative court.[104] Further, the Supreme Court's qualified immunity doctrine and jurisprudence has contributed to a disturbing pattern of state actors

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[97] *See id.* at 218–20.

[98] *Palmer*, 193 F.3d at 353.

[99] *See* Taylor v. Riojas, 141 S. Ct. 52, 54–56 (2020) (Alito, J., concurring).

[100] *Id.* at 53–54.

[101] *Id.*

[102] *See id.* at 52–56.

[103] *See id.* at 54.

[104] *See, e.g.*, Sabeel Rahman, *The US Supreme Court Has Become a Threat to Democracy. Here's How We Fix It*, GUARDIAN (Sept. 24, 2020, 8:19 AM), https://www.theguardian.com/commentisfree/2020/sep/24/supreme-court-threat-to-democracy-rbg-how-we-fix-it; Neil S. Siegel, *The Supreme Court Is Avoiding Talking About Race*, ATLANTIC (Aug. 7, 2020), https://www.theatlantic.com/ideas/archive/2020/08/supreme-court-doesnt-like-talk-about-race/614944/; Dahlia Lithwick, *Former Judge Resigns from the Supreme Court Bar*, SLATE (Mar. 13, 2020, 3:22 PM), https://slate.com/news-and-politics/2020/03/judge-james-dannenberg-supreme-court-bar-roberts-letter.amp; Dahlia Lithwick, *How the Roberts Court Abandoned Bipartisan Consensus*, SLATE (Nov. 12, 2019, 11:14 AM), https://slate.com/news-and-politics/2019/11/john-roberts-court-abandoned-bipartisan-consensus-dark-money-republican-donors.html; IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM & WRECKED THE MIDDLE CLASS 84–86, 104 (2014); MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 108–09 (2010).

being absolved of liability for serious misconduct.[105] In light of this, that this Supreme Court found the circumstances in this case "particularly egregious" says a lot about how obviously inhumane the circumstances truly were for Taylor. It also speaks volumes about the two lower courts that viewed the same facts and found no actionable constitutional violation.

The concurring justice, Samuel Alito, opposed the granting of review in this case and wrote that the decision "adds virtually nothing to the law going forward."[106] Ideally, this may not necessarily be true. Aside from serving as a much-needed rebuke of the Fifth Circuit, this decision sets at least some bounds on what conduct clearly constitutes an Eighth Amendment violation within the cell confinement context. This decision also provides some clarity on the line from *Hutto* that the Fifth Circuit used to validate inexcusable conduct. This same line has been invoked by other federal circuit courts as a rule of sorts.[107] Perhaps the Supreme Court's clarity can positively influence future decisions in this area of law.

Additionally, the Court's decision may influence the Fifth Circuit to revisit its jurisprudence in this area and, most importantly, to rethink its decision in *Davis v. Scott*. There is no reason why it should be impermissible for a human being to be confined under plainly unsanitary conditions for six days, but somehow acceptable if it were only for three days. That the plaintiff in *Davis* was given cleaning supplies did not seem to make the difference; it is apparent from the decision that the federal appeals court would have found no violation regardless of whether or not the plaintiff had been given cleaning supplies.[108] The Fifth Circuit should reconsider what precedential value *Davis* should have going forward.

Finally, the Court's decision should remind everyone that convicts, detainees, and inmates are nonetheless human beings and should be treated as such. It should put officials at prisons and jails throughout America on notice that there are limits to their authority and consequences for abuse and sadism. The Court's decision should make lower courts throughout the nation remember the values they profess to stand by and consider what kind of society America would be to allow its citizens to be caged under conditions as plainly

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[105] *See, e.g.*, Martin A. Schwartz, *How the Supreme Court Enables Police Excessive Force*, N.Y. L. J. (June 5, 2020, 12:30 PM), https://www.law.com/newyorklawjournal/2020/06/05/how-the-supreme-court-enables-police-excessive-force/; Andrew Chung et al., *For Cops Who Kill, Special Supreme Court Protection*, REUTERS (May 8, 2020, 12:00 PM), https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/.

[106] *Taylor*, 141 S. Ct. at 55 (Alito, J., concurring).

[107] *See, e.g.*, Barney v. Pulsipher, 143 F.3d 1299, 1311–12 (10th Cir. 1998).

[108] *See* Davis v. Scott, 157 F.3d 1003, 1006 (5th Cir. 1998). The court relies on the one line in *Hutto* and then concludes that the plaintiff was only in the cell for three days, and then cites to an Eighth Circuit case that found no violation because of a four-day exposure to sewage. Afterwards, the court then mentions cleaning supplies, claiming that they "mitigat[ed] any intolerable conditions." *Id.*

horrific as they were here. Barbarities like what happened to Taylor cannot stand if the Eighth Amendment is to have any meaning.

CONCLUSION

Trent Michael Taylor allegedly spent six days in two prison cells under utterly abominable conditions.[109] In the first cell, the floor, ceiling, walls, and the faucet were caked with human feces.[110] The second cell was freezing cold, had no bunk, toilet, or sink, and contained only a drain hole in the floor that smelled of ammonia and overflowed with raw sewage.[111] In both cells, Taylor was deprived of clothing and was completely naked.[112] He went without food during the entire time in the first cell for fear of contamination; and he held his urine, for fear of overflowing an already clogged drain, before involuntarily urinating on himself in the second cell.[113]

Following the Supreme Court's decision, the Fifth Circuit remanded Taylor's case to the district court.[114] Whether or not Taylor will ultimately prevail at trial will depend on whether he can establish the aforementioned facts. Regardless of that, it is clear that qualified immunity should not have been granted. The Fifth Circuit should have concluded that, assuming his accusations to be true, Taylor had clearly established Eighth Amendment rights that were violated. It should not have taken seven years and a Supreme Court intervention for a judicial opinion memorializing this rather obvious conclusion.

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[109] *Taylor*, 141 S. Ct. at 53.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] Taylor v. Stevens, 982 F.3d 959, 959–60 (5th Cir. 2020).