CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM WOMACK,
Petitioner,

- vs -

LANDON ADAMS, RICHARD ZARAGOZA,
JOHN OR JANE DOES 1-5, JOHN OR
JANE DOES 6-10,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

William Womack #354117 RB-205
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Walla Walla, WA 99362

QUESTION(S) PRESENTED

A. WHETHER THE NINTH CIRCUIT COURT OF APPEALS HAS JURISDICTION TO REVIEW THE DISTRICT COURT'S ERRONEOUS DECISION IN GRANTING SUMMARY JUDGMENT PURSUANT TO 28 U.S. CONST. §1291?

B. WHETHER THE DISTRICT COURT ERRONEOUSLY GRANTED DEFENDANTS' MOTION FOR SUMMARY JUDGMENT?

C. WHETHER THE COURT OF APPEALS HAS JURISDICTION TO REVIEW THE OTHER SEVEN ISSUES RAISED IN APPELLANT'S NOTICE OF APPEAL LEADING TO THE ERRONEOUS GRANTING OF SUMMARY JUDGMENT?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

John or Jane Does 1-10 have not been identified because Defendants refused to identify them in the discovery process.

Defendant Israel "Roy" Gonzalez was added in the third and fourth amended complaint pursuant to contributing to Defendant Zaragoza's retaliative actions in rejecting Plaintiff's third "new" book and being responsible for the final decision in rejecting the third new book.

The district court did not rule on granting either the third or fourth amended complaint, however, addressed the claims in the third and fourth amended complaint in the erroneous decision in granting defendants' summary judgment motion. The only difference in the third amended complaint and the fourth amended complaint was addressing the change in the Secretary of DOC which changed three times in the course of litigation whom was sued in his official capacity for injunction relief. See ECF Nos. 94 and 102.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. 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.

U.S. CONST. AMEND. VIII

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

U.S. CONST. AMEND. 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 deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from **all final decisions** of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292 (c) and (d) and 1295 of this title.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B-C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] Unknown

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] Unknown

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 30, 2018. (ECF No. 129).

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 30, 2018, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

INTRODUCTION

This cause comes before this Court after the Ninth Circuit **Court of Appeals held the court did not have jurisdiction to review the district court's erroneous decision granting Defendants' dispositive motion for summary judgment** pursuant to three claims pertaining: (1) Eighth Amendment "failure to protect;" (2) First Amendment "right to receive 'new' and 'used' publications;" and (3) First Amendment "right to be free from retaliative actions."

Facts Relevant to Issue A

¶1 Upon the United States District Court, Eastern District of Washington's decision in granting Defendants' motion for summary judgment, on January 18, 2018, Plaintiff, William Womack [hereinafter "Mr. Womack"], timely sent a notice of appeal to the Ninth Circuit Court of Appeals. [hereinafter "COA"]. See Attachment B, [hereinafter "Att."], Att. 1, pp. 1-2.

¶2 On January 18, 2018, Mr. Womack also sent the district court a "letter" which was electronically sent, as this was mandatory, asking for a docket list and what oral hearings were available for appeal. Electronically Filed Document [hereinafter "ECF"] No. 122.

¶3 The district court clerk erroneously designated this letter as a "Notice of Appeal." See Cover page of ECF No. 122.

¶4 The Notice of Appeal was supposed to be sent to the district court. Fed. R. App. Proc. 3-4.

¶5 Fed R. App. Proc. 4(d) states:

> If a notice of appeal in either a civil or criminal case is mistakenly filed in the Court of Appeals, the clerk of that court **MUST** note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted."

¶6 The COA issued a Time Schedule Order on January 23, 2018, stating Appellant's opening brief was due on April 30, 2018. ECF No. 125.

¶7 On March 2, 2018, the COA filed an order dismissing this cause alleging the Court did not have jurisdiction because "the order challenged in the appeal [wa]s not final or appealable." ECF No. 128.

¶8 As this decision was clearly erroneous, Mr. Womack timely filed a Petition for Panel Rehearing addressing the erroneous decision of dismissing the appeal due to lack of jurisdiction and attached a copy of the Notice of Appeal and the erroneous order. See Att. B.

¶9 On April 10 and June 4, 2018, Mr. Womack sent the COA letters attempting to put them on notice that a clear miscarriage of justice was transpiring.

¶10 On May 30, 2018, the COA erroneously denied Appellant's Motion for Panel Rehearing holding:

> The motion for reconsideration (Docket Entry No. 8) is denied. See 9th Cir. R. 27-10. This denial is **WITHOUT PREJUDICE** to the filing of a timely notice of appeal from a **FINAL ORDER** or judgment disposing of

remaining defendants named in appellant's Third Amended Complaint. **NO FURTHER FILINGS WILL BE ENTERTAINED IN THIS CLOSED CASE.**

ECF No. 129; Att. C (emphasis added).

¶11 The district court did not rule upon either the proposed third or fourth amended complaint. See ECF Nos. 94, 102.

¶12 The COA issued a Mandate on June 7, 2018.

¶13 Pursuant to Rule 13.1 and .3, this petition has been filed within ninety (90) days of the last decision held on May 30, 2018, and therefore is timely filed.

Relevant Facts Pertaining Issue B

(i) Eighth Amendment "Failure to Protect"

¶14 In 2012, Mr. Womack was sentenced to a prison term and placed in the Washington State Penitentiary [hereinafter "WSP"] in the general population. ECF No. 58 at ¶1; ECF No. 81 at ¶1.

¶15 The WSP has an extensive history of prison residents getting assault and violently battered once it became known by other prison residents that the former prison resident had prior convictions defined by RCW §9A.44.128(10). ECF No. 81 at ¶4, and ¶¶6-9; ECF No. 75 at ¶¶33-35; ECF No. 80 at ¶8; ECF No. 79 at ¶6; ECF No. 76 at ¶¶5-7; ECF No. 78 at ¶¶3-5; and ECF No. 77 at ¶¶2-7.

¶16 Prior to January of 2013, Mr. Womack's former cellmate requested to move

out of Mr. Womack's cell because he felt he was in danger because Mr. Womack had previous convictions defined by RCW 9A.44.128(10). ECF No. 81 at ¶8.

¶17 In January of 2013, Mr. Womack's former cellmate wrote Mr. Womack a note alleging that Mr. Womack was in danger because several other prisoners were finding out that Mr. Womack was formerly charged with crimes defined by RCW 9A.44.128(10). ECF No. 81 at ¶9; ECF No. 75 at ¶63, Ex. A, p. 52.

¶18 This note led to a short meeting with Defendant Landon Adams to address Mr. Womack's safety concerns. ECF No. 81, ¶¶9-11; ECF No. 75 at ¶¶12-16.

¶19 Even though Defendant Adams was put on notice of a threat of Mr. Womack's safety, he did absolutely nothing in response to this threat. ECF No. 81 at ¶¶10-11.

¶20 Instead, Defendant Adams elected to house a known violent offender whom had previously assault and battered other prison residents just a few doors down from where Mr. Womack was housed. ECF No. 75 at ¶72; ECF No. 48, Ex. A, pp. 23-24 (Interrogatory No. 2 [improperly answered]).

¶21 Approximately one week later in February of 2013, Mr. Womack fell victim to a violent assault and battery by the known violent offender. ECF No. 81 at ¶12, Ex. A, pp. 54-55, 60, and 62.

¶22 The district court failed to view the facts in the light most favorable to the nonmoving party, the Plaintiff, which resulted in an erroneous decision granting summary judgment. ECF No. 121, pp. 3-4, 7-10 (It should be noted that the district court cited to Defendant Adams' Declaration in

ninety percent of the Court's opinion relating the failure to protect claim.); ECF Nos. 57, 74, 81, 101, 118-119, and 121.

(ii) First Amendment "Right to Receive "New" and "Used" Publications

¶123 On February 27, 2014, Defendants rejected two books named "Moral Courage" and "Situation Ethics" which were addressed to Mr. Womack from "Bound Together Books: Attn: Prison Literature Project, 1369 haight St., San Francisco, CA 94117." ECF No. 81 at ¶27

¶124 At the relevant time, the WSP had a "**blanket ban**" on all used books and this was the reason given for rejecting the books listed above. ECF No. 81 at ¶¶28-31.

¶125 Mr. Womack exhausted his administrative remedies and filed suit. Id.

¶126 In 2016, **one week after Defendant Zaragoza waived service of this suit,** out of retaliation for filing suit against him, he rejected a "new" book called "Great Book of Tattoo Designs," by Lori Irish. ECF No. 81 at ¶35; ECF No. 38 (Process Receipt and Return showing returned signed waiver of Mr. Zaragoza on April 22, 2016); ECF No. 81, Ex. A, p. 20 (Book rejected on April 28, 2016, just six days later.).

¶127 Through the appeal process, a new proposed defendant, Israel "Roy" Gonzalez claimed that the book was on a state-wide banned book list and further alleged that the book had "how-to" instructions on tattooing and that the book "promoted" tattooing. ECF No. 81 at ¶¶38-44.

¶128 Defendants absolutely refused to allow Mr. Womack to inspect this book

because Mr. Womack alleged that Mr. Gonzalez presented perjured testimony to the court by claiming that the book had "how-to" instructions on tattooing and promoted tattooing. Other than the title, the book **only** had patterns resembling a large children's coloring book. These patterns could be used for drawing, painting or other approved art activities which Mr. Gonzalez was absolutely aware of. ECF No. 81 at ¶¶36-44.

¶29 Discovery led to show that the rejection made absolutely no sense because: (1) the prison library offered tattoo magazines with "how-to" instructions; and (2) several other "tattoo" books were allowed in the prison which had "how-to pictorial instructions" and even nudity. ECF No. 81 at ¶¶38-40.

¶30 Mr. Womack clearly addressed each of the four Turner factors showing that the "blanket ban" on used books was arbitrary and further showed that the rejection of the new book was an exaggerated response to security concerns which further supported Mr. Womack's retaliative theory. ECF No. 74 at pp. 11-14.

¶31 The WSP Operational Memorandum (OM) allowed for used books from "non profit" approved vendors, however, the Superintendent simply did not approve **any** non profit vendors to supply prisoners with used books. ECF No. 81, at ¶30.

¶32 Pertaining the First Turner factor, Defendants could provide no evidence linking the asserted boilerplate rational of "safety and security" to the regulation of the blanket ban on "used" books, however, Plaintiff provided

evidence in contrary to show that the rejection of used books and the one new book was an exaggerated response to penological interests by providing evidence of: (a) answered Interrogatories showing that Defendants could not identify **any** penological interest pursuant to rejecting "used" books nor could they identify **any** type of criminal activity where "used" books have been used; (b) a response from a Public Disclosure Request requesting "any document that proves Roy Gonzalez's statement that offender property that is purchased outside of the department's control is subject to being a main point of access to contraband" which the department responded by sending Mr. Womack nine pages consisting of DOC Policy 440.000 and nothing else; and (c) evidence showing that several other prison residents received books that contained the same content as the new rejected book and and even more objectionable material. ECF No. 48, Ex. A, p. 33 (Answer to Interogatory Nos. 28-29; ECF No. 75 at ¶163; ECF No. 81, Ex. A, pp. 1-12; ECF No. 92, pp. 15-19 (identifying ten other similar books).

¶133 Pertaining to the Second Turner Factor, at the relevant time, the prison took anywhere from sixty-five to ninety-five percent of any money Mr. Womack received so buying a "new" book was not a readily alternative. ECF No. 81 at ¶48.

¶134 The Department of Corrections [hereinafter "DOC"] had a contract with JPAY which offered to sell electronic books in their contract in 2014, however, DOC has failed to pursue this avenue for unknown reasons closing the door on this readily alternative avenue. ECF No. 75 at ¶170.

¶135 Defendants **could not** identify any impact on the guards concerning "safety and security" which weighed in Plaintiff's favor on the Third Turner factor related to the bearing on the guards, other inmates, and the allocation of prison resources. 9CF No. 48, Ex. A, p. 33 (Answer to Interrogatory No. 30).

¶136 Pertaining the Fourth Turner factor, the facts, although disputed, clearly show that Defendants' rule not allowing "used" books coming from an approved vendor and the rejection of the one new book was an exaggerated response to penological interests. ECF No. 101 at ¶53; ECF No.. 74 at pp. 10-19; ECF No. 100 at pp. 4-6.

(iii) First Amendment Right to be Free from Retaliation

¶137 Prior to the rejection of the third "new" book, Mr. Womack provided evidence showing: (a) Defendant Zaragoza was a Defendant in a state cause of action where Mr. Womack was the Plaintiff; (ECF No. 81 at ¶33); (b) in this State cause, Mr. Zaragoza went as far as commiting a federal crime violating Title 18, ch. 18 §§1001, 1018, and 1703; (ECF No. 81 at ¶45).

¶138 There was a casual nexus between the rejection of the new book and the filing of two lawsuits against Defendant Zaragoza. ECF No. 81 at ¶¶35, and 45.

¶139 The Secretary of DOC turned a "blind eye" to the retaliative actions when he failed to respond to a letter that put him on notice of the illegal conduct on May 16, 2016, by stating:

I would like to bring this matter to your attention that I feel that this

book was rejected for retaliative motives [because]: (a) [t]here is no difference (besides the title) of this book and any other art book (or coloring book) which has patterns in it; (b) [j]ust because the book has the words "Tattoo designs" does not mean that is MY intentions for it [as] I bought it for drawing designs to be used with my art curio; (c) [because] there is no difference from this book to any other art book (this book could pass as a children's coloring book), there would be no penological interest in rejecting it and would further substantiate retaliative motives [as] [t]here is no instructions in this book on how to use the designs as tattoos, just outlined drawings; (d) I have no access to a "banned book list" so I am forced to purchase books blindly just so mine or my families money can be wasted by the book later being rejected; and (e) I have no prior history of tattooing people in or out of prison.

ECF No. 81, Ex. A, p. 24.

¶140 Taking the facts that have been established by the record as true, Plaintiff established that there were disputed facts for a jury to properly adjudicate.

Facts Relevant to Issue C

¶141 Mr. Womack raised the following eight issues on appeal from the district court pertaining to:

(1) the district court failed to address Appellant's second motion to compel prior to granting summary judgment;

(2) Defendants' second discovery response was improper;

(3) the erroneous granting of Defendants' summary judgment motion;

(4) Defendants' first discovery response was improper and whether costs were warranted for Plaintiff's Motion to compel being granted in part;

(5) erroneous denial of appointing special master and/or attorney;

(6) district court failing to address fourth amended complaint;

(7) district court failing to disclose findings pursuant to in camera review of video of the related assault and battery prior to granting summary judgment; and

(8) Defendants' improperly not allowing Plaintiff to have access to review the third rejected book to prove that Israel Gonzalez provided the Court with perjured testimony **PRIOR TO** the district court granting Defendants' summary judgment motion.

See Att. B, Att. 1, pp. 1-2.

¶42 Other than Claim 3, each claim directly affected the final decision in granting Defendants' summary judgment motion.

REASONS FOR GRANTING THE PETITION

¶43 Each claim was brought forth pursuant to this Court's precedent, therefore, pursuant to the doctrine of stare decisis, this Court should grant this petition for a writ of certiorari.

REASON TO GRANT ISSUE A

¶44 28 U.S.C. §1291 states: "The courts of appeals (other than the United states Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from **all final decisions** of the district courts of the United States ..." It was not objectively reasonable for the Court of Appeals to hold that they **did not have jurisdiction** to review the district court's decision in granting the Defendants' dispositive motion for summary judgment. See Appx. B.

¶45 Even though Mr. Womack mistakenly filed his Notice of Appeal in the Court of Appeals, Fed. R. App. Proc 4(d) provides a safeguard in ensuring an appeal still gets heard. Therefore, this Court should grant this petition for a writ of certiorari.

REASON TO GRANT ISSUE B

¶46 This Court held in City & Cnty. of San Francisco v. Sheehan, 191 L. Ed. 2d 856, 135 S. Ct. 1765, 2015 U.S. LEXIS 3200, that cases arising in a summary judgment posture, [a reviewing court] views the facts in the light most favorable to the non moving party and summary judgment will not lie if ... the evidence is such that a reasonable jury could return a verdict for the non moving party.

¶47 This Court held in Farmer v. Brennan, 511 U.S. 825, 114 S. Ct. 1970 (1984), that "[b]eing violently assaulted in prison is simply not the 'part of the penalty that criminal [prison residents] pay for their offenses against society.' " ECF No. 74, p. 3. To prove a violation of a prison official's constitutional duty to protect prison residents from violence at the hands of other prison residents, a plaintiff must establish: (1) he is incarcerated under conditions posing a substantial risk of serious harm; and (2) the defendants were deliberately indifferent to his need for protection. Id. The evidence, held in the light most favorable to the Plaintiff, the non moving party, clearly shows that both of these elements were satisfied.

¶48 The COA correctly found that the first element was satisfied as the Court held that "the Court cannot say that no reasonable juror could conclude [Mr.] Womack's housing posed a serious threat of harm." Appx. A, pp. 8-9.

¶49 The Court, relying **only** on Defendants' Facts, concluded that the Plaintiff failed to establish that Defendant Adams acted with deliberate indifference. Id., p. 9. This conclusion fails for several reasons including: (1) The very facts that the Court relied on to determine there was a substantial risk consisting of several declarations of other prison residents established that it was "commonly known" that this risk was present. (ECF No. 81, ¶4); (2) It was readily admitted that Mr. Womack placed Defendant on "notice" that he was in danger just a week prior to being assault and batterred. (ECF No. 81, at ¶9); and (3) the Plaintiff's cellmate came forward prior to the assault and battery and ask to be moved

out of Mr. Womack's cell because he feared for his safety because of Mr. Womack's criminal history. (ECF No. 81, ¶8). The established evidence is clear that a reasonable jurist could rule in favor of Mr. Womack's Eighth Amendment Claim.

¶50 The district court's complete reliance on Defendants' facts and the court's claim that there was "undisputed evidence" is completely without merit. The defendants actually refused to file a "Statement of Uncontroverted Facts" because there were so many disputed facts. See ECF No. 81 and 101 (Showing each disputed fact and objections to Defendants Facts which the district court failed to address); ECF No. 119 (Plaintiff's "proposed" Statement of Uncontroverted Facts).

¶51 The district court further found that Plaintiff's Fourteenth Amendment "State Created Danger" claim was moot claiming that Plaintiff's third amended complaint (that was not ruled upon) omitted the claim. This was not the case as there was no difference in the allegations pertaining to the claims resulting from the assault and battery from the first through the fourth amended complaints. See ECF No. 34, at p. 5; ECF No. 94, at p. 6; ECF No. 102, p. 6. This claim also satisfied four elements required consisting of: (1) Whether the harm ultimately caused was foreseeable?; (2) Whether the State acted in willful disregard for the safety of the Plaintiff?; (3) Whether some relationship existed between the State and the Plaintiff?; and (4) Whether the State actors used their authority to create an opportunity for harm that would not of otherwise existed? ECF No. 74, at pp. 7-9. Furthermore, there were several adding factors that

contributed to the overall claim of "Cruel and Unusual Punishment. ECF No. 74, pp. 9-10.

¶52 Taking the facts in favor of the Plaintiff as to be true, a reasonable jury could conclude that Defendant Adams acted with deliberate indifference and, therefore, this Court should grant Plaintiff Motion for Certiorari and remand with instructions to proceed to trial after discovery is settled.

¶53 In Thornbburgh v. Abbott, 490 U.S. 401, 416-417, 109 S. Ct. 1874 (1989), this Court held that:

> [T]here **must** be an **'individualized' determination** that a particular publication violates the rules at the time it is censored. The prison **cannot simply establish an 'excluded list' of publications or ban broad categories of material without regard of their actual contents.**

¶54 To determine if a regulation that is impinging on prison residents' constitutional right is reasonably related to a penological interest, this Court established four factors for courts to help make this determination. Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 2261-62 (1987). These four factors are:

(1) Whether there is a "valid connection" between the regulation and a legitimate and neutral governmental interest put forward to justify it, which connection cannot be so remote as to render the regulation arbitrary or irrational;

(2) Whether there are alternative means of exercising the asserted constitutional right that remain open to prison residents, which alternatives, if they exist, will require a measure of judicial deference to the corrections officials' expertise;

(3) Whether and the extent to which accommodation of the asserted right will have the impact on prison staff or prison residents' liberty, and on the allocation of limited prison resources, which impact, if substantial, will require particular deference to correctional officials; and

(4) Whether the regulation represents an "exaggerated response" to prison concerns, the existence of a ready alternative that fully accommodates the prison residents' right at de minimus costs to a valid penological interest being evidence of unreasonableness.

¶53 The record clearly shows that Defendants have a "blanket ban" on **ALL** used books from **ANYBODY.** ECF No. 81, at ¶30.

¶54 Taking the facts in the most favorable light of the Plaintiff, each Turner factor weighed in Plaintiff's favor and therefore the district court's decision in granting defendant's summary judgment motion was not reasonable. ECF Nos. 74 and 100; Appx. A.

¶55 The district court held that "limiting incoming books to those shipped directly from the publisher substantially reduces the risk the books could have been tampered with or altered." Appx. A, p.12 at 15-17. This holding is irrational because this was not a "publisher only" suit; the issue at bar was pertaining to **no used books being allowed by anybody.** Similarly, basing it determination on **only** the Defendant's evidence, the trial court concluded that the rejection of the new book was properly rejected because it had "information about tattoos in a "how-to" manner." Appx. A, p. 13 at 9-11. Plaintiff's Facts established that this very statement was perjured testimony by proposed Defendant Israel Gonzalez. ECF No. 81 at ¶¶36-44; ECF No. 101 at ¶¶51-52. Plaintiff's evidence showed that there was no

legitimate penological interest furthered by rejecting the third new book. ECF No. 101 at ¶¶52-54.

¶156 Basing it's determination on Defendants' evidence, the district court determined that Plaintiff had a ready alternative of buying the books new. Appx. A, p. 12 at 15-19. Plaintiff's facts showed that buying new books was not a ready alternative because the prison took anywhere from sixty-five to ninety five percent of any money Plaintiff received and therefore the second Turner factor weighed in Plaintiff's favor. ECF No. 81 at 48.

¶157 Relying **only** on Defendants' evidence, the district court concluded that there was no ready alternative available in lieu of banning **all** used books. Appx. A, p. 12-13 at 19-6. Plaintiff's evidence showed that **there was a ready alternative** consisting of electronic books which was offered through a company called JPAY whom had already signed a contract to provide electronic books upon DOC's approval. ECF No. 81 at 70. Plaintiff's evidence further established that Defendants could not identify **any** penological interests that would be furthered nor could they identify **any** type of criminal activity where used books have been used in the prisons and evidence rebutting Mr. Gonzolez's testimony by providing a Public Disclosure Request asking for "any document that proves Roy Gonzalez's statement that offender property that is purchased outside the department's control is the main point of access to contraband" where the department only could provide a copy of DOC policy. See ¶132 herein.

¶158 Relying on Defendants' evidence, the Court found that the new book was reasonably rejected because the same books could be checked out in the

prison's library and by allowing prison residents "unfettered access to publications instructing the reader on the mechanics of tattooing, it [would be] possible for prison-tattoing to increase." ECF No. 121, p. 13 at 16-18. The problem with this finding is first, the Court must assume that the Plaintiff is false in alleging that Israel Gonzalez provided perjured testimony regarding the book containing "how-to" instructions on tattooing. ECF No. 101 at ¶¶51-52. Second, Mr. Womack specifically ask the Court to inspect the book in an in camera review to establish that Mr. Gonzalez did provide perjured testimony on this very subject. ECF No. 92 (Second Motion to Compel **THAT WAS NOT HEARD**), Statement of Issue No. C, pp. 3, and 15-19. Taking the Plaintiff's facts in the most favorable light clearly shows that the Third and Fourth Turner factors weighed in favor of Plaintiff and that these rejections were an eggagerated response to penological interests.

¶159 Due to **an absolute complete misscariage of justice,** this Court should grant this petition for a writ of certiorari and remand this cause back to the district court to proceed to trial after discovery is properly settled.

¶160 The Ninth Circuit has clearly established that to prevail on a First Amendment retaliation claim, a plaintiff mush show that "(1) a state actor took some adverse action against [him]; (2) because of (3) [his] protected conduct, and that such action (4) chilled [his] exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." Entler v. Gregoire, 872 F.3d 1031, 1040,

2017 U.S. App. LEXIS 19657 (citing Rhodes v. Robinson, 408 F.3d 559, 567-68, 2005 U.S. App. LEXIS 7052.

¶61 Taking the Facts in the most favorable light of Plaintiff, the facts show:

(1) Defendants Zaragoza and Gonzalez rejected or took part in rejecting Mr. Womack's "new" book titled "Great Book of Tattoo Designs" (ECF No. 81 at ¶¶35-39);

(2-3) in retaliation for filing a State and federal law-suit and prison grievances against them (ECF No. 81 at ¶¶32-38, 43, and 45; ECF No. 101 at ¶¶49-55);

(4) As a direct result of Defendants' retaliative actions, Mr. Womack has not ask his family or any other non profit organizations to send him any books which he had a First Amendment right thereof; (ECF No. 75 at ¶67); and

(5) the action did not reasonably advance a legitimate correctional goal. (ECF No. 81 at ¶38; see also argument above).

¶62 The Court further found that even if Defendants did violate Mr. Womack's constitutional rights, they were entitled to qualified immunity. Appx. A, pp. 14-17.

¶63 This decision was flawed because each claim was brought under well established precedent from this Court or, in the case of retaliation, the Ninth Circuit Court of Appeals. Therefore, this petition for a writ of certiorari should be granted in the interest of justice and this cause should be remanded with instructions to allow Mr. Womack's to proceed with his Fourth amended complaint. ECF No. 102.

REASON TO GRANT ISSUE C

¶164 This Court held in Cuozzo Speed Technology v. Lee, 195 L. Ed. 2d 423, 2016 U.S. LEXIS 3927: "[T]he general rule that an appeal from final judgment ... permits review of all rulings that led up to the judgment[.]"

¶165 Reviewing both Defendants' answers to discovery requests, any reasonable jurist could **only** conclude that discovery was answered with boilerplate evasive answers to cover up Defendants' unconstitutional actions which provided undue prejudice on this cause which directly affected the final summary judgment motion. See ECF No. 48 and ECF No. 92 (First and Second Motion to Compel with attached discovery responses.).

¶166 On August 4, 2016, Plaintiff filed a Motion for Special Masster and/or Attorney asking for limited attorney services to review the video of the assault and battery and to conduct interviews on WSP personnel to establish the assertion that it was common that prison residents that had prior conviction defined by RCW §9A.44.128(10) would eventually become victims of assault and battery if placed in the main population of the WSP. ECF No. 47. The Court ordered Defendants to provide the video to conduct an in camera review which Defendants complied. ECF No. 83, pp. 5-8; ECF No. 86. The district Court then failed to provide Plaintiff with any information about the in camera review prior to granting summary judgment.

¶167 As the inspection of the video of the assault is directly relevant, it was not reasonable to conduct an in camera review of the assault and battery

and then not provide any information pursuant to that review nor was it reasonable for the court to not either conduct an in camera review of the third book or order Defendants to allow Plaintiff to inspect the book to be able to respond to Defendants' summary judgment motion. As such, this Court should grant this petition for writ of certiorari pertaining to issue three and remand with instructions to address each and every issue to ensure a proper appellate process in accordance with due process of the law.

CONLUSION

Hundreds of prison residents have needlessly fell victim to violent assault and battery every year at the WSP. Not only was Appellant one of those victims, he was then further **punished for being one of those victims** by being placed in a punishment setting in the same place as **the** person whom conducted the assault and battery for forty-two days. Furthermore, prison residents at the WSP are not able to purchase "used" books or eBooks at the present time. By granting this petition, this Court will ensure that this unconstitutional practice will stop.

Whereas Appellant respectively prays that this Court will grant this motion for a writ of certiorari.

Dated this **Twelve** day of **July**, Two Thousand and Eighteen years after the death of our Lord and personal savior.

s/ William Womack

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