

No. 18A35

IN THE
SUPREME COURT OF THE UNITED STATES

Juan Diaz, Jr — PETITIONER
(Your Name)

vs.

Director of F.B.O.P et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Juan Diaz, Jr #1945328
(Your Name)
River North Correctional Center
329 Dell Brook Lane
(Address)

Independence, VA, 24348
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Should petitioner have been allowed the production of documents that he asked the District Court to place such burden upon the respondents to produce within his "Three Motions for production of documents, per Federal Rules of Civil Procedure: Rule 34?"
- 2) Should have the US Court of Appeals placed such burden upon the District Court for the respondents to produce the more than "24-hour video feed of petitioner face down in 4-point restraints and then applied to ambulatory chair restraints"; and all requested documents by petitioner? For this Court's future viewing?
- 3) Did the injuries that petitioner sustain due to the respondents applying force excessively and causing physical injury, show an actual 8th and 14th Amendment violation?
- 4) By petitioner using the 4th Amendment language per the law of the land within his filings protect his 4th Amendment right to the U.S. Constitution?
- 5) Did the rules and regulations the Supervisor Lt, Subordinates and unknown Subordinates go by violate policy, practice and custom by placing petitioner in 4-point restraints and ambulatory chair restraints for more than 24 hours, after petitioner long calmed down?
- 6) Did the Court of Appeals erred by mentioning within their brief that petitioner raised for the first time his 4th Amendment right and violation of policy, in which petitioner did enlighten the District Court within his filings of such violation at the lowest level within his filings?
- 7) Should have petitioner's motion to add more subordinates to his claim been allowed after petitioner acknowledging the names of unknowns that applied the 4-point restraints on the petitioner excessively causing physical injury and should have the Court of Appeals place such burden on the District Court to have respondents expose names of those that applied ambulatory chair restraints, so petitioner could have added them to this on-going complaint?

LIST OF PARTIES

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

[✓] 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:

- 1) General Counsel of the F.B.O.P (uns dismissed from case)
- 2) Regional Director (uns dismissed from case)
- 3) Warden "Lewisburg-U.S.P
- 4) Assistant Warden "Lewisburg-USA
- 5) Captain "Lewisburg U.S.P
- 6) Lieutenant Lewisburg U.S.P (still pending)
- 7) L. Potter EMT-P (still pending).

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552.24#(3)

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- 1) Farmer v. Brennan 511 U.S. 825
- 2) Jackson v. Gutzmer 866 F.3d 969, 8th cir 2017
- 3) Robinson v. Danberg 673 Fed. Appx 205, 3rd cir 2016
- 4) Harlow v. Fitzgerald 457 U.S. 800
- 5) Hope v. Pelzer 536 U.S. 730, 2002
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- 15) Dillon v. Coles 746 F.3d 998
- 16) Texas Department of Comm. Affairs v. Burdine 450 U.S. 248, 1981
- 17) Winter v. N.R.D.C. Inc. 555 U.S. 7, 2008
- 18) Reilly v. City of Harrisburg 858 F.3d 173, 3rd cir 2017
- 19) Brazelton v. Holt 462 Fed. Appx 143, 3rd cir 2012
- 20) Fountain v. Tolley 104 F. Supp 2d 1345
- 21) Parker v. Danberg 833 F.3d 313
- 22) Gates v. Collier 501 F.2d 1291
- 23) Fuentes v. Wagner 206 F.3d 335, 1999
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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 judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☒ reported at 2017 US App. Lexis 23296, decided Nov 20, 17; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district 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.

☐ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 11-20-2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 4-5-2018, 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. § 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1) The Eighth Amendment to the United States Constitution provides in relevant part "that Nor Cruel and Unusual Punishments inflicted".
Amendment 8: (1791)

- 2) The Fourth Amendment to the United States Constitution provides in relevant part that "the right of the people to be secure in their person".
The Fourth Amendment is protected by the "USE OF FORCE" language in all the sense of the language once it is written or spoken

"Constitutional Provisions"

United States Constitution, Amendment 8

United States Constitution, Amendment 4

Statutes

48 USC Bivens claim 1971

28 USC § 1254(1)

28 USC § 2101(c)

Federal Rules of Civil Procedure Rule: 34

Federal Rules of Civil Procedure Rule 19(A)

Federal Rules of Civil Procedure Rule 15(A)

Other: "Prison Policy"

Program Statement 5566.06 as follows:

552.24

552.24(D)

552.24(E)

552.24#(3)

In The Supreme Court of the
United States

Juan Diaz, Jr
petitioner

v.

Case No. 18A35

Director of F.B.I. Pet, et al
respondents

Petition For A Writ of Certiorari to the
United States Court of Appeals for the
Third Circuit Court

PETITION FOR WRIT OF CERTIORARI

J-DJ
Juan Diaz, Jr pro-se,

petitioner, (hereinafter petitioner) petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit, which judgment was affirmed and the denial by the District Court rendered judgment upon petitioner's 42 USC Bivens action in favor of the respondents, without actually observing the full facts within petitioner's medical

history to conclude and the District Court failed to place such burden upon the respondents to produce such requested documents by petitioner for the petitioner's defense, as petitioner submitted 3-motions for the production of documents pursuant to the Federal Rules of Civil Procedure, Rule 34; to the District Court for the District Court to place such burden upon the respondents but failed to do so. The Courts reasoning of the use of language by the petitioner referencing the 4th Amendment language of "use of force" is flawed because petitioner throughout his filings used the use of excessive force language preserving his Fourth Amendment right.

The Courts reasoning is flawed once again, as the US Court of Appeals in reply brief mentioned that petitioner, for the first time raised an issue about prison policy, when in fact petitioner presented the Courts with such issue at its earliest filings and within his administrative remedies.

The Court of Appeals, reasoning is flawed and overlapped in judgment to actually see that petitioners case involved 2 incidents that occurred, the 2 incidents that have been mentioned throughout this whole case, which are 1) 4-point restraints and 2) ambulatory chain restraints and the Courts failed to have reviewed such evidence that is missing, that was requested by petitioner for petitioner's defense.

The respondents themselves have not proven the alleged allegations they claim against petitioner, of petitioner allegedly cursing, being combative and assaultive towards staff while he was 4-pointed, the respondents also themselves have not proven that they brought petitioner bag lunches and he allegedly refused, they also have not proven much of their allegations, the respondents only have written much in their logs to cover up their wrong doings but not have proven their claims as they claim against petitioner; that's why it was imperative for the Courts to have placed such burden upon the respondents. By the respondents to admitting that they left petitioner face down for 24 hours, undermines the facts that they claimed to have followed per policy 5566.06).

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"Opinions Below"

The opinion of the US Court of Appeals (is reported at: 2017 U.S. App. Lexis 23296) the District Court was not reported.

"Jurisdiction"

The judgment of the Court of Appeals was entered on 11-20-2017, A timely petition for rehearing was denied by the US Court of Appeals on 4-5-2018; the authority of this Court gave petitioner an extension due to his transfer and lack of being in possession of his legal documents, by so the jurisdiction of this Court was invoked under 28 USC § 1252(1) the petition is timely filed pursuant to 28 USC § 2101 (c).

"Constitutional and Statutory Provisions Involved"

1) The Eighth Amendment to the United States Constitution provides in relevant part "that Nor Cruel and Unusual Punishments Inflicted".
Amendment 8 (1791)

2) The Fourth Amendment to the United States Constitution provides in relevant part that "the right of the people to be secured in their person."

"Statement of Case"

Petitioner, was being escorted in the controlled SMU Program at U.S.P. Lewisburg, in Pennsylvania, automatically every inmate is moved with handcuffs behind their backs, petitioner was already cuffed behind his back, so he really didn't pose no threat to the safety of staff or inmates or the orderly running of

the institution.

Petitioner, was in a heated conversation with the officer when petitioner, reached his door, he gave the officer a minor push with his shoulder, the push did not harm the officer and it wasn't meant to harm the officer, it was just to get the officer away from him after his continuous lies at petitioner's hearing. The officers subdued petitioner, petitioner was tackled and restrained to the floor, control was imminent by the officers and immediately petitioner was on the floor, petitioner, was then moved to a holding shower cell and spat on the officer that grabbed (unnecessary) his neck oesophagus area on the floor to keep him down, (the respondents claim that petitioner, spat on two officers but the disciplinary officer found those allegations to not be true and just charged petitioner with one officer) petitioner, was then maced with OC spray and then decontaminated an hour or so later, not 5 minutes like the respondents claim, he was then escorted in a gurney to another place in z-block and placed on 4-point restraints in cell z-024, in which it has a camera located at the corner of the cell to observe the inmate who is 4-point restrained, this is the same video footage petitioner, has requested to be presented on his behalf, for his defense, petitioner, was restrained with metal cuffs and applied to leg irons, not one leg iron but two on each leg, then was stretched up by the officers in the extract team to apply hand restraints on the metal bed (petitioner complained to the team, that the cuffs were tight but they neglected his pleas) and was left hitched in that position for more than 24 hours, the video that is on record will depict that petitioner was applied to leg irons double times so he won't be able to move (unnecessary) the restraints were in fact impairing petitioner's, circulation as he stressed this to the respondents and unknowns who approached him while 4-pointed and in ambulatory.

Petitioner, put an amended "Motion to the District Court" in which petitioner, wanted to add several responsables that were unknown at the time, till petitioner, received some Court documents exposing such responsables that applied 4-point restraints but the District Court never addressed the motion or added them to the complaint, as petitioner was entitled to pursuant to Rules 15(A) and 19(A)

of Federal Rules of Civil Procedures.

If the Courts would have placed such burden upon the respondents to produce such video request by petitioner, they would have actually seened where the use of force and cruel and unusual punishment come in to commence to then end, then to commence again, but the Courts concluded on petitioner's complaints without seeing the facts that underline the whole case and the facts that were presented to them that they didn't put an inference to petitioner's medical history and also on the facts that are missing in petitioner's defense for them to have concluded.

Petitioner, as a lay person pro-se litigant only has access to certain evidence and only could rely on the Courts to accept his style "motions" pursuant to the Federal Rules of Civil Procedures; Rule:34, 15(A) and 19(A)

Petitioner, did not have any type of nerve damage, spinal stenosis and carpal tunnel syndrome, symptoms that consist of a numbness tingling sensation with pain that radiates his hands daily and seldom feet, medical issues that he didn't have per records before the use of force on 8-22-2011; of the application of restraints 1) 4-point and 2) ambulatory chain restraints), petitioner, has to take medications currently for such symptoms, has pending surgeries but are delayed due to his transfer and has to wear waist braces; double times on both hands to alleviate the discomfortness he endures on a daily basis.

Petitioner's, long extensive medical records can prove that he was actually harmed by the language of the use of force and cruel and unusual punishment as he underwent surgery on 6-14-2017 for nerve damage to his left wrist canal and now is scarred for life with an inch and a half scar on his wrist to hand area, all due to the use of excessive force of being applied to 4-point restraints in a tight manner then applied to ambulatory chain restraints in a hog-tying manner.

The Court of Appeals mentioned that petitioner, raised a 4th Amendment and prison regulation on appeal, that is frivolous, as petitioner, all along has used the use of force language which is protected by the 4th Amendment and petitioner has always brought the prison policy violation to the District Court's attention within

his filings since the commencement of his case.

The respondents, admitted to leaving petitioner, face down for 24 hours, which in fact, it was more than 24 hours and that is only an act of deliberateness, by leaving petitioner, face down without food, water, body rotation and bathroom breaks, is only an act of deliberateness and the use of force and cruel and unusual punishment was at its max and humiliating and degrading to petitioner, being he had to urinate on himself and sleep on his own urine without the exchange of clothes, after continually being denied bathroom breaks. The District Court erred in not placing such burden on the respondents to produce such video footage for petitioner's defense, in which it will depict that he had to use the bathroom as how the human body functions and ask of us to do.

The respondents admitted to leaving petitioner, face down for 24 hours but the records show that it was in fact more than 24 hours, hitched to a metal bed face down and that is only an act of deliberateness and being vindictive to past incident that was de minimis towards the officer, petitioner was not spitting, combative, threatening and assaulting any officers while he was 4-pointed as the respondents claimed, petitioner, was in pain and suffering and was not in a position to be combative as he was defenseless and vulnerable.

The respondents, claimed that petitioner refused to sign documents, not once did they bring petitioner any documents to sign, as the respondents were not trying to loosen petitioner's cuffs to sign anything.

By such petitioner, deserves for this Higher Court to grant his writ of certiorari and review his case upon actual facts per records, law, medical analysis and specialist findings and upon actual inferences that could plausibly be drawn, in which the lower Courts overlooked judgment on.

"Reason For Granting Petition"

There is a conflict amongst Circuits on the same exact points involved

in this case. The Third Circuit has a long line of cases (mostly unreported and many brought in propria persona of complaining of USP-Lewisburg SMU programs running of its penitentiary and the use of force and cruel and unusual punishments that are occurring in that penitentiary amongst prisoners that are already handcuffed by the back).

The Courts have mentioned to have viewed the evidence but the Courts did not give petitioner a chance of defense to have the document/evidence that he requested on his behalf for his defense, once he submitted "three motions" for the production of documents pursuant to Federal Rules of Civil Procedure; Rule: 34.

The District Court erred in not placing such burden on the respondents to produce such and the U.S. Court of Appeals once aware did not place such burden on the District Court for the respondents to produce, as petitioner was entitled to pursuant to the Federal Rules of Civil Procedures, Rules: 15(a); 19(a) and 34; petitioner followed the Rules of Civil Procedures to obtain document/evidence for his defense but the Courts neglected such procedures and Rules.

Conversely the Eighth's Circuit among other Circuits reasoned and the Third Circuit's judgment was flawed and this Court has the discretion to overlook such judgment that the Third Circuit overlooked and overruled judgment upon.

The Courts erred in not addressing the second application of restraints which were the ambulatory chain restraints, where the cruel and unusual punishment ends to commence again, when petitioner applied to ambulatory chain restraints after coming off of 4-point restraints in an excessive manner, this part of the video was also asked by the petitioner for petitioner's defense but the Court erred in not observing that this complaint is mentioned in two parts, two parts that have been addressed by the petitioner through his Court filings (to the District Court and the US Court of Appeals) which were 1) 4-point restraints and 2) ambulatory chain restraints.

"Petitioner's Motion for Production of Documents for the District Court to Place Such Burden on the Respondents, Should Have Been Allowed, pursuant to Rule 34 of the Civil Procedures"

Petitioner, has continually submitted motions for production of documents, for the District Court to place such burden on the respondents to produce documents; see *Dillon v. Coles* 746 F.3d 998, 9th Cir.) see also: *Texas Dept of Community Affairs v. Burdine* 450 U.S. 248, 1981) but failed to do so, and if the respondents fail to produce evidence, the Court must enter judgment for petitioner.

Petitioner, requested document evidence in style motions once the respondents claimed that they brought petitioner bag lunches and he refused to eat, they claim that petitioner, was combative and assaultive towards staff physically and verbally while u-painted restrained, they claim to have followed policy by rotating the inmate so he won't get sore or stiff muscles and also because they left petitioner for more than 24 hours face down hiked to a bed without food, water, body rotation and bathroom breaks, where petitioner, had to sleep on his own urine without the exchange of clothing. They claimed to bring petitioner, papers to sign and petitioner allegedly refused to sign.

The Supreme Court in *Winter v. N.R.D.C Inc.* 555 U.S. 7, 20, 2008). Explained that in each case Courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. Petitioner's, relief was for the respondents to produce such feeds that were mentioned in his three-motions for production of documents to be able to litigate his case in a good faith manner for his defense and to rebutt the allegations against him, but the respondents failed and the District Court erred in not placing such burden upon them to produce. In which petitioner, was harmed by the language and deserved for the District Court to place such burden upon the respondents to produce such requested documents pursuant to Rule 34 of Civil Procedures, for petitioner's defense, especially to have been given a chance to rebutt allegations against him.

"Use of the Constitutional Language May
Have Been Protected," It's A Question For this
Higher Court:

Even if unwittingly pleaded by petitioner, see: *ERICKSON v. PARDUS* 551
US 89), the Courts have more knowledge than the petitioner, to understand his
logical claim, pro-se litigants are held to a lower standard than a professional
lawyer submitting a brief, where if the petitioner uses the Constitutional protected
language, the Courts should acknowledge the basis behind his bringing of the
Constitutional language whether it is written or spoken, the logical stance of the
Courts is to understand the language of the land.

Because the language itself was used by petitioner with a Constitutional basis
and form, it is protected by the statute of the 4th Amendment, if the language is not
used in the right form of a protected U.S Constitutional liberty or interest, it should
not be applied. Petitioner, has always used the language as a pro-se litigant in the
form of a Constitutional protected liberty and basis within his filings for the Courts
to understand his logical claim. The District Court and the U.S Court of Appeals
failed to acknowledge the language knowing law and erred in not applying it to his
filings.

"Respondents and Unknowns Violated Prison"
Policy Per: Program Statement: 5566.06

Prison regulations governing the conduct of correctional officers are also
relevant in determining whether an inmates right was clearly established, see: *Hope v.
Pelzer* 536 U.S 730. It's well established an 8th Amendment violation, especially
when it's done in a malicious or sadistic manner to cause harm.

The petitioner, claims that while being 4-pointed restrained face down, the
respondents and unknowns did violate policy by applying steel restraints and

Not using vinyl, per 5566.06 section 552.24, had the petitioner resisted or had the restraints proved to be ineffective previously or during application, then their rights are to take other means but this did not happen with petitioner, the respondents per video footage on Docket, did continue to apply metal cuffs (even after petitioner complained of the tightness) and did not apply vinyl as policy states to do, petitioner, while on the floor being restrained was not combative, he just let the officers take their course in restraining him, all petitioner did was spit on the officer once he was placed in the holding shower cell.

The respondents not only used metal one time but applied metal leg irons double times on both ankles so petitioner would have no movement and then they stretched petitioner, up more to apply metal hand restraints, observe video on Docket: "Knowhere in policy it gives the respondents the authority to apply 2 leg irons on each ankle, one was enough only if they proved to be ineffective previously or during application, this is not petitioner's case.

In order to use 4-point restraints the only means to obtain and maintain control over an inmate, the following procedures must be followed: soft restraints (e.g. vinyl) must be used to restrain an inmate unless:

- A) such restraints previously have proven ineffective with respect to that inmate or
- B) such restraints are proven ineffective during the initial application procedure.

The respondents, also violated policy per: 5566.06 section 24(d) where general welfare of the inmate, when an inmate is restrained to a bed, staff shall periodically rotate the inmates position to avoid soreness and stiffness, the petitioner claims that staff nor supervisors rotated him, to avoid soreness and stiffness as policy states to do, they agreed to leaving petitioner, face down for 24 hours when in fact it was more than 24 hours, these acts by the respondents created petitioner's, current medical issues, nerve damage, carpal tunnel syndrome and spinal stenosis problems, symptoms he never had before the application of restraints on August 22, 2011, where petitioner had underwent surgery for such above mentioned on June 14, 2017, to his left wrist canal, per his medical historic records and Doctor analysis.

The respondents violated policy per: 5566.06 section: 552.24(E) not every two hours review the inmate will be afforded the opportunity to use the bathroom unless, the inmate is continuing to actively resist or becomes violent while being released from the restraints for this purpose. The petitioner, claims that this is not his case and the respondents violated policy because he neither was resisting the restraints while 4-pointed or was being violent while 4-pointed, the respondents didn't have no justification to not let the petitioner use the bathroom, where petitioner had to urinate on himself and sleep on his own urine. The respondents were not trying to release petitioner, they were being vindictive of past incident when in fact the petitioner was long calmed down.

Per policy statement 5566.06: section: 552.24*(3) ambulatory restraints are similar to 4-point restraints where; 1) when it is necessary to use continued restraints after any force incident hard restraints (I.E. steel, cuffs or leg irons are to be used only after and 2) soft restraints are proven ineffective or past history of ineffective exist.

The petitioner, claims that there was no need to apply him to ambulatory chain restraints in a hog-tying manner because he was long calmed down and records never proved that petitioner's, 4-point restraints which were metal not soft, ever proved ineffective during application, the petitioner, was applied to steel cuffs and leg irons without any soft restraints previously or historically proven to be ineffective.

Although the proper application of restraints may result to some discomfort prohibited use of restraints include but are not limited to hog-tying, unnecessarily tightness or improperly applied restraints per. 5566.06 use of force policy statement.

The respondents and unknowns who applied petitioner to ambulatory chain restraints did in fact take the petitioner off of 4-point restraints and applied him to ambulatory chain restraints in a hog-tying manner to be vindictive, the District Court and the US Court of Appeals failed and erred to observe such part of application to conclude on the actual facts pleaded in the petitioner's whole case.

I). The Third Circuit's Reasoning Is Flawed, the Eighth Circuit's Reasoning Captures the Requirements of *Hope v. Pelzer*:

Like every other Circuit that has ruled on such similar matter, *Hope*, captures the requirements that the Third Circuit Court of Appeals have seemed to pass judgment on and overlapped on, knowing the law is in favor of the petitioner.

Petitioner's, allegations establish an Eighth Amendment violation among the unnecessary and wanton infliction of pain (constituting cruel and unusual punishment forbidden by the Amendment) are those without penological justification, see: *Hope v. Pelzer* 536 U.S. 730) see also: *Jackson v. Gutzmer* 866 F.3d 969, 8th Cir 2017, this determination is made in the context of prison policy conditions by ascertaining whether an official acted with "deliberate indifference" to the inmates health or safety, see: *Hudson v. McMillian* 503 U.S. 1) A state of mind that can be inferred from the facts that the risk of harm is obvious, see: *Farmer v. Brennan* 511 U.S. 825). the 8th Amendment violation here is obvious on the facts alleged by the petitioner, per petitioner's, extensive medical records in which he never had such nerve damage prior to incident and any safety concerns had long since been abated by the time he was 4-point restrained and hitched face down to a metal bed because he had already been subdued, placed in restraints when already handcuffed by the back and then placed on 4-point restraints, anything after that was unnecessary and only being deliberate indifferent and being vindictive due to past incident just like in, *Hope v. Pelzer* 536 U.S. 730) despite the emergency the petitioner needed for the respondents to loosen his restraints, the respondents knowingly subjected him to a substantial risk of physical harm, unnecessary pain and suffering

prolonged his thirst, taunting and deprivation of food and bathroom breaks, in which he had to urinate on himself and sleep on his own urine without the exchange of clothing, which caused humiliation and it was degrading, see: *Robinson v. Danberg* 673 Fed. Appx 205, 3rd cir 2016). see: also, *Hope v. Pelzer* 536 U.S. 730, 2002).

The respondents may nevertheless be shielded from liability for their constitutional impermissible conduct if their actions did not violate clearly established statutory constitutional rights of which a reasonable person would have known, see: *Harlow v. Fitzgerald* 457 U.S. 800. Qualified immunity operates to ensure that before they are subjected to suit, officers are on notice that their conduct is unlawful, see: *Hope v. Pelzer* 536 U.S. 730, 2002). In which petitioner did put the respondents on notice of their unlawful conduct and that he was gonna sue them for such conduct.

A reasonable officer would have known that by hitching an inmate face down on a metal bed for more than 24 hours was unlawful and then by placing an inmate on ambulatory chain restraints was unlawful and unnecessary. The obvious cruelty inherent in the practice should have provided the respondents with some notice within their job title and practice, that their conduct was unconstitutional and not part of their training, custom or practices, as their conduct upon petitioner, as *Hope v. Pelzer* 536 U.S. 730, 2002) reasoned. In *Gates v. Collier* 501 F.2d 1291 held that handcuffing inmates to the fence and to the cells for long period of times was unconstitutional while in petitioner's case, he was hitched to a bed and then applied to another form of restraints unnecessary for a long period of time.

"The Third Circuit"

Like every other Circuit that has ruled on the matter, the Third Circuit has held that the Eighth Amendment protects convicted prisoners

from cruel and unusual punishments. Force amounts to cruel and unusual punishment when it is applied maliciously and sadistically for the very purpose of causing harm instead of in a good faith effort to maintain or restore discipline like in *Kingsley v. Hendrickson* 135 S.Ct. 2466; see also: *Smith v. Messinger* 293 F.3d 641, 3rd Cir., held several factors that should be considered and the petitioner covered all of them which were 1) the need for application of force 2) the relationship between the need and amount of force used 3) the extent of injury inflicted 4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials and 5) any efforts made to temper the severity of a forceful response. The extent of injury may suggest whether the use of force could plausibly have been thought necessary in a particular situation but the absence of serious injury while relevant to the Eighth Amendment inquiry does not end it, see: *Robinson v. Danberg* 673 Fed. Appx 205, 3rd Cir. 2016) see: *Jackson v. Gutzmer* 866 F.3d 969, 8th Cir. 2017) see also: *Hudson v. McMillian* 503 U.S. 1).

II) Jackson and Hope are sound Whereas
the Third Circuit was unfair to petitioner and
invites future mistakes

The petitioner, was denied life's necessities, especially basic human needs as the human body asks of us to do. Whether this standard has been met ultimately turns on whether the force was used and applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the purpose to cause harm, see: *Wilkins v. Gaddy* 559 U.S. 34, 2010) see also: *Giles v. Kearney* 571 F.3d 318, 3rd Cir.). In petitioner's case the restraints were used to be vindictive and to cause harm because the respondents and unknowns already had applied force to maintain control and restore discipline, the actual injury of nerve damage, spinal stenosis and carpal tunnel syndrome to petitioner was

caused by the excessive use of force of restraints and records show that he was harmed by the language of cruel and unusual punishment and excessive use of force.

Petitioner, underwent surgery to his left wrist canal due to the application of restraints per his medical history and grievance filings, these symptoms per medical records occurred after the application of restraints, 4-point and ambulatory, petitioner, never had such symptoms previously to such incident on August 22, 2011).

The opinion of the Court of Appeals for the Third Circuit mentioned in the context that the application of force used was in a good-faith effort but the Courts in, *Smith v. Mensinger* 293 F.3d 641, 3rd Cir. found five factors of cruel and unusual punishments as follows:

1) The need for application of force? to restore and maintain control; not the excessive use of force through 4-point restraints for more than 24 hours face down without food, water, bathroom breaks and body rotation; not the excessive force through the ambulatory chain restraints, after an inmate long been calmed down.

2) The need and amount of force that was used? the need was; to restore discipline; amount of force; to maintain control; there was no need or amount of restraints to be used when petitioner long been calmed down and there was no need to apply double leg irons and there was no need to apply petitioner to ambulatory chain restraints because any safety concerns had long been abated by the time he came off of 4-point restraints.

3) The extent of injury inflicted? the petitioner never had nerve damage, spinal stenosis and carpal tunnel syndrome, symptoms that consist of numbness tingling sensation with pain that radiates his both hands and seldom feet. Petitioner has to take medications for such symptoms and wears wrist braces on both hands to alleviate symptoms and the discomfort and pain he goes through on a daily basis is serious. The petitioner underwent surgery for

for such symptoms on 6-14-18) which left him with a scar for life, an inch and a half to his left wrist to hand area, petitioner, has more surgeries pending but are currently delayed due to his transfer.

4) The threat to safety of staff and inmates as reasonably perceived by the responsible officials on the basis of facts known to them? petitioner gave the officer a minor shove with his shoulder while already handcuffed by the back, didn't harm the officer or attempted to harm the officer, petitioner spat on the officer, then respondents and unknowns used restraints to be vindictive against petitioner and used them excessively in which it caused physical unnecessary injury per records and the safety concerns to staff had long been abated by the time petitioner was applied to 4-point restraints.

5) Any effort made to temper the severity of the forceful response? petitioner continually asked the respondents and unknowns to release the cuffs that were hampering his blood circulation, asking for bathroom breaks, water and food but petitioner was denied all even after long calmed down. Petitioner, after recognizing that the symptoms were not going away after the tight application of restraints, the petitioner, started to complain to medical but medical didn't want to document his complaint, so petitioner started to utilize the grievance procedure to be able to have it documented but that as well was being obstructed by the petitioners counselor at USP-Lewisburg-SMU program, and its on the Courts records that petitioner made efforts.

The Eighth Amendment's prohibition of cruel and unusual punishment necessarily excludes recognition of de minimis use of physical force provided that the use of force is not repugnant to the conscience of mankind, see: *Foulk v. Charrion* 262 F.3d 687, 8th Cir; see also: *Hudson v. McMillian* 503 U.S. 12.

If the Courts would have viewed the more than 24 hours video

of petitioner face down hitched to a metal bed and then taken off of 4-points restraints to be applied to ambulatory chain restraints, the Courts would have seened that the force used was cruel and unusual punishments and an inmate who sleeps on his own urine, when denied bathroom breaks and denied food and water, is only a deliberate act maliciously and sadistically to the conscience of mankind. The District Court failed to place such burden on the respondents to produce such video "for this Court's future viewing", as petitioner in a good faith effort, per the Rules of Civil Procedure, requested such documented evidence for his defense but the Courts neglected petitioner's request. The deprivation of food, water, body rotation and bathroom breaks is only an act of deliberateness, by leaving petitioner, face down for more than 24-hours after long calmed down, is an act of a deliberate malicious act, then to apply petitioner to another form of restraints, is only an act to be deliberate indifferent and vindictive.

The petitioner, must prove both an objective and subjective component under the Eighth clause, the objective component is that the injury petitioner suffered rises to a level sufficiently serious to be cognizable under the cruel and unusual punishment clause of the 8th Amendment. The subjective component is that the respondents, knew petitioner faced a substantial risk of serious harm and disregarded that risk by failing to take necessary measures to be able to abate it, see: *Kirk v. Burke* 2017 U.S App. Lexis 19912).

The respondents and unknowns knew petitioner's, 4-point restraints as well as ambulatory chain restraints were tight but neglected petitioner's, pleads and the condition petitioner complained of and has been going through per medical records, is sufficiently serious to implicate a constitutional protection, see: *Voisine v. U.S* 195 Fed2d 736, 2016 but disregarded the risk.

Petitioner's, updated surgical procedure for nerve damage to his left wrist canal, one of the same wrists respondents acted with deliberate indifference

to not loosen the restraints once asked of by petitioner is sufficiently serious to implicate a constitutional protection.

The law recognizes order and discipline are important in running a correctional institution but that does not authorize the arbitrary use of force see: *Faulk v. Charriser* 262 F.3d 687, 8th Cir. Not every resistance justifies the use of force standard, a right is clearly established if its contours are sufficiently clear that a reasonable official would have fair warning of what type of action would violate a right, see: *Hope v. Pelzer* 536 U.S. 730, 2002).

It is pain, not actual injury that is a touchstone of an Eighth Amendment claim. Even if an officer's use of force serves no good faith disciplinary purpose, the force may be so de minimis that it does not violate the 8th Amendment. Still while de minimis uses of force are non-actionable a prisoner need not suffer serious injury in order to bring an 8th Amendment claim, see *Hendrickson v. Cooper* 589 F.3d 887. In petitioner's case, his injuries are not de minimis by the language, It's a lifetime medical problem petitioner, has to take care of and live with by taking medications, using waist braces and surgical procedures to alleviate his symptoms.

The unnecessary and wanton infliction of pain constitutes cruel and unusual punishment, forbidden by the 8th Amendment clause. What constitutes the unnecessary and wanton infliction of pain, varies based on the constitutional violation, whoever and whenever a prison official stand accused of using excessive physical force in violation of the cruel and unusual punishment clause, the core judicial inquiry is whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the purpose to cause harm, see: *Hope v. Pelzer* 536 U.S. 730, 2002) and see also: *Jackson v. Gutzmer* 846 F.3d 969, 8th Cir 2017).

This inquiry turns on such factors as the need for the application of force, the relationship between the need and amount of force that was used and the extent of injury inflicted, from which inferences can be

drawn as to whether the use of force could plausibly have been through necessary or instead evinced such wantonness with respect to the justified infliction of harm as is tantamount to a knowing willingness that occurred, see: JACKSON v. GUTZMER 866 F.3d 964, 8th Cir 2016). In petitioner's case, the inferences to be drawn is through his medical history, in which he never had such living on going symptoms before the application of restraints due to the excessive force that was used on him on August 22, 2011 and if the respondents would have produced the documents petitioner requested to rebut the respondents alleged claims against him, the Courts would have seen that the use of force was not justifiable, it was humiliating, degrading and petitioner was in pain and suffering without any psychological reason for a long period of time after such safety concerns have long since been abated by the time petitioner was 4-point restrained, the other use of application of ambulatory chain restraints was unnecessary and only an act of being deliberate and indifferent in a malicious and sadistic manner to cause harm upon petitioner.

"DISCUSSION"

The absence of injury is not irrelevant to the 8th Amendment inquired clause. The extent of injury suffered is one factor that may suggest whether the use of force could plausibly have been thought necessary in a particular situation.

The extent of injury may also provide some indication of amount of force applied, Not every serious touch by a guard gives rise to a federal cause of action, only when the injury is serious and causes something different that the prisoner is going through health wise that was not there before. In petitioner's case, he never had any type of nerve damage problems before 8-22-2011 when he was applied to two forms of restraints 1) 4-point

And 2) ambulatory chain restraints. Petitioner underwent surgery on 6-14-2017; for carpal tunnel syndrome, nerve damage to his left wrist canal, till date he has to take care of future medical problems.

The 8th Amendment's prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition de minimis of physical force provided that the use of force is not sort of repugnant to the conscience of mankind.

An inmate who complains of a push or shove that causes no discernable injury almost certainly fails to state a valid excessive force claim. Injury and force however are only imperfectly correlated and it is the latter that ultimately counts, petitioner's, injury was an 8th Amendment violation by the plain language and his medical history proves such.

The administration wrote abt in their logs but it's not what would be shown in the more than 24 hours of video footage, of petitioner, hitched to a metal bed face down without food, water, body rotation and bathroom breaks and then applied to ambulatory restraints in a hog-tying manner, the District Court failed to address these issues.

Petitioner was calmed and collected when he asked the respondents, to release his restraints because they were in fact hampering his blood circulation. The same wrist that petitioner complained of to the respondents and unknowns about, is the same wrist that petitioner underwent surgery for on 6-14-2017 for nerve damage, carpal tunnel syndrome to his left wrist canal, the symptoms respondents created.

If petitioner, would have been combative or uncompliant in any form he would not have been released to ambulatory restraints and if he would have been combative in any form while on ambulatory as the respondents claimed, he would not have been released to a regular visit.

Although petitioner, continually submitted motions to produce documents of the video in the corner of the cell that records over the inmate who

is 4-point restrained, the respondents have yet to produce such feed to rebut petitioner's claims against them. "Petitioner, himself has not reviewed the more than 24 hours footages, nor the footage of him being applied to ambulatory chain restraints after coming off of 4-point restraints, so how could the Court of Appeals for the Third Circuit have said that they viewed all the evidence when that part of the case has yet been presented for review, despite petitioner's, continuous motions for production of documents, pursuant to the Federal Rules of Civil Procedure Rule 34).

Petitioner, was humiliated and embarrassed due to the denial of life's necessities, see: *Hope v. Pelzer* 536 U.S. 730, 2002) see also: *Jackson v. Gutierrez* 866 F.3d 969, 8th Cir 2017) and *Parker v. Danberg* 833 F.3d 313, 3rd Cir 2016).

Hope; was treated in a way antithetical to human dignity, he was hitched to a post for an extended period of time (Petitioner longer) in a position that was painful under circumstances that were degrading, humiliating and dangerous. Nine hours on a hitching post violated the 8th Amendment claim to the U.S. Constitution, petitioner, was hitched to a bed face down for more than 24 hours, by such petitioner was injured by the meaning of the 8th Amendment, see: *Fountain v. Talley* 104 F. Supp. 2d 1345, 2000).

"Conclusion"

This Court may see that this case is divided in two parts, two parts that have been mentioned throughout this whole case as follows:
1) 4-point and 2) ambulatory chain restraints.

The District Court failed to place such burden on the respondents and the U.S. Court of Appeals failed and erred to review such two events that occurred and have been mentioned throughout this case.

As a pro-se litigant, petitioner, has limited access to certain

documented evidence due to his incarceration and could only ask the "Courts" in a stye motion, as he did in his motions "for production of documents" to count on the righteous District Court to demand the respondents to produce such documents that were central to petitioner's defense to rebutt the claims against him but the District Court erred in not placing such burden upon the respondents.

By the respondents admitting to leaving petitioner, face down for 24-hours undermines the facts that they claimed to have followed per policy and practice.

Wherefore petitioner is asking this Court to review the overlapped judgment by the lower Courts and to grant his writ of certiorari.

Date: Aug 16, 2018

Submitted by: *J.D.J.* #1945328
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STATEMENT OF THE CASE

The Court of Appeals mentioned that petitioner was combative, cursing and assaultive towards staff, they claimed that Diaz was offered water, food and restroom, the respondents never offered petitioner such, the respondents not once mentioned that they rotated the petitioner's body per policy as he was entitled to, when he was long calmed down.

The Court of Appeals went as far as claiming that petitioner, was 4-pointed for 24 hours, the statement of the case are within for full explanation, had the lower Courts reviewed the actual video feed of petitioner 4-pointed restrained face down hitched to a metal bed for more than 24 hours, they would see that petitioner was ¹⁾not combative ²⁾was never brought a long lunch, how the respondents claim ³⁾was never given water, till the next day at the end of his release after being highly dehydrated ⁴⁾was never given bathroom breaks after continually asking respondents and unknowns, in which petitioner had to urinate on himself and sleep on his own urine, where he was humiliated and degraded ⁵⁾was never given body rotation per policy so he wont get stiff or sore muscles and ⁶⁾was then placed in ambulatory chain restraints in a hog-tying manner and also ⁷⁾was restrained with metal not vinyl as policy states to do per its criteria.

Petitioner, pushed the officer away with a minor shove with his shoulder, while already cuffed by the back, the shove (de minimis) was not an effort to harm the officer but to get the officer away from him, petitioner was restrained to the floor and control was immediately taken by the guards, while on the floor Diaz was ~~not~~ combative, cursing or assaultive like the respondents claim.

Petitioner, was then moved to a holding shower cell and spat on the officer that were grabbing his asphyxus (unnecessary) petitioner was then maced with OC spray and then was decontaminated an hour or so later by a brief shower, not like the respondents, claim 5 minutes later, record shows in time frame, he was then escorted in a gurney to another place in 2-block and placed on 4-point restraints in cell 2-024, in which it has a 24 hour camera on the 4-pointed inmate located at the corner of the cell, then after more than 24 hours, he was placed on ambulatory chain restraints in a hog-tying manner for almost more than 12 hours or so.

Petitioner, sent the District Court's motions for production of documents pursuant to Federal Rules of Civil Proc: Rule 34 and also a motion to add unknowns pursuant to rule 15(a) and 19(a) of the Federal Rules of Civ: Proc: the District Court failed to place such burden upon petitioner's filings and accepting his motions as a lay person, pro-se.

The defendants/respondents violated policy, practice and custom per federal regulations, petitioner continually stressed to the Courts of the use of excessive force and cruel and unusual punishments that was done to him.

in a maliciously and sordid manner, in essence of the plain language of the 4th Amendment and 8th Amendment the petitioner used within his filing, that the respondents violated the U.S. Constitution.

REASONS FOR GRANTING THE PETITION

- 1) That there is a conflict among circuits on the exact points and issues that are in petitioner's case. The Third Circuit has a long line of cases (mostly unreported decisions and many brought by pro-se litigants); conversely the 8th circuit has ruled that the same circumstances do result in cruel and unusual punishment see *Jackson v. Gutierrez* 866 F.3d 969. Other circuits reasoned also, as this Court in *Hope v. Pelzer* 536 U.S. 730. as follows: A) degrading and dangerous B) using force for punishment C) force used as the reprimand to the conscience of mankind D) restraining an inmate as a mean for punishment E) cruel and unusual punishment in all respect of the language. This case is addressed in two parts 1) 4-point restraints and 2) ambulatory restraints.
- 2) The failure of the lower Courts in not placing a burden upon the respondents to produce such requested documents by petitioner, pursuant to Federal Rules of Civ. Pro: Rule 34. "For petitioner's defense and viewing" and "for the Courts viewing" to have concluded justly upon viewing such requested documents and evidence.
- 3) The failure of respondents following the prison rules and regulations to maintain order and discipline the proper way and not as a mean of punishing an inmate to restore order through cruel and unusual punishments.
- 4) The 4th Amendment language that petitioner used to protect the language of the 4th Amendment right through his continuous filings, since the District Court commencement.
- 5) The failure of the lower Courts to add and accept petitioner's motion to add unknowns once petitioner discovered some of the unknowns names through Court documents and petitioner did ask continually the Courts to add unknowns to this case but the District Court failed Court Civil Rules: to add such unknowns that were infact responsible, after receiving a written motion by a pro-se prisoner per Federal Rules of Civil Procedure Rules 15(a) and 19(a).
- 6) The failure of the Courts to view the more than 24 hour video feed of petitioner restrained to a metal bed, face down and then applied to ambulatory chain restraints in a hog-tying manner violating policy, custom and practices, to conclude correctly on the requested documents on petitioners behalf.
- 7) The Courts erred in claiming to have seen all the facts in the case, when the documents of facts mentioned by petitioner in a style motion per Federal Rules of Civil Pro; were also not presented for review when petitioner requested documents as a pro-se lay person, the Courts abused their discretion because petitioner is a lay person, indigent and a pro-se litigant doing all this on his own and could only receive certain evidence/documents due to his placement as an inmate without a lawyer.

8) The petitioner was harmed by the language and his extended medical records proves such, petitioner did not have such mentioned symptoms throughout this whole case before the incident occurred on 8-22-11. Symptoms that consist of numbness tingling sensation with pain that radiates his hands and seldom feet, diagnosed with Carpal Tunnel Syndrome, Nerve Damage Spinal Stenosis problems; the Courts erred in not acknowledging petitioners actual then to presents medical history to determine if theres an inference that can be drawn to prove petitioners allegations to conclude upon facts and law. Petitioner did present the Courts with such then and after medical history of before the incident to after but yet the Courts neglected to acknowledge such factual knowledge that was presented for review.

9) The petitioner had a surgery done for such mentioned symptoms within this whole case on 6-14-2017 to his left wrist canal in which he is scarred for life with an "inch and a half scar" on his hand and has to get more surgeries done, due to the excessive use of force.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Juan Diaz Jr
J.D.J.

Date: August 16, 2018