

6/23/18  
17A1070

Done  
ORIGINAL

No. 18-6613

IN THE  
SUPREME COURT OF THE UNITED STATES  
HECTOR R.De JESUS/ PETITIONER  
Pro-se

vs.

FILED  
JUN 28 2018  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

SALVADOR GODINEZ, JOSEPH YORKOVICH,  
GREG GOSSETT, KEVWE AKPORE, JAMES RUNDLE,  
JEFF CARSON, TAMMY BENNETT, JAMES COLIN,  
STEVEPHEN DAMEWOOD, BRADLY LIVINSTON,  
WAYNE STEELE, SHAWN GIBBS, LOIS LINDORFF,  
MEDICAL STAFF  
Dr.KUL SOOD, WEXFORD MEDICAL PROVIDER,  
RUTH BROWN, SARAH FAETANINI, and LARNA  
STOCKES.

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

The paging of the lower courts judgments are cited as follows:  
the Seventh Circuit order is cited as (A-page or P-0001-7 or 1-7)  
The district court's order is cited in this petition as:  
Page or P-0008-23 or P-8-23 or R.1181-1997).  
(R.refers to pages on the district court record in the docket.

Hector R.De Jesus/N90115  
P.O.Box 1700  
600 Linwood Road  
Galesburg, IL.61402  
No Telephone.

## QUESTION PRESENTED

1. Did the defendants show there were no material issue in dispute to any material fact and that they were entitled to the judgment as a matter of law?
2. Whether a sworn declaration under penalty of perjury is admissible evidence to oppose or support motion for summary judgment?

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IN THE  
SUPREME COURT OF THE UNITED STATES

Petition for certiorari

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

OPINION BELOW

1. The opinion of the United States Court of Appeals appears at appendix (A) to this petition. It is unpublished. the citing on the table of cases is not included because it's impossible to get it at the prison library.

2. The order of the United States District Court appears at Appendix (B) to this petition, and it was also unpublished.

3. The order of the Court of Appeals granting leave to filed a late motion for rehearing appears at Appendix(C) to this petition.

## JURISDICTION

[X] For cases from the Federal courts:

1. The United States Court of Appeals decided my case on December 21/2017.
2. A late motion for rehearing was allowed to be filed on 1/26/2018. Copy of this order is omitted here.
3. The late motion for rehearing was denied on 1/30/2018, and a copy of the order denying rehearing appears at Appendix (C) to this petition.
4. An application for extension of time to file the petition for certiorari was granted to and include June 28/2018.
5. On July 12/2018, the Clerk of the court returned De Jesus' petition because it was not filed in the proper form and it extended the time for an additional 60 days, extending the dead line to Sept. 10/2018 to file the petition for certiorari.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves the Amendment Eight to the United states-constitution which provides:

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

Section 5. The congress shall have power to enforce, by appropriation of legislation, the provision of this Article:

The amendment is enforced by Title 42 Sec. 1983, United states Code:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or district of columbia, subject or cause to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the constitution and laws, shall be liable to the party injured in an action or law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's Judicial capacity..injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

For the purpose of this section, any Act of congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## STATEMENT OF THE FACTS

1. De Jesus' first 1983 suit was filed on 6/30,2014.(R.24). The court dismissed it with leave to amend.(R.85). De Jesus first amended complaint was filed on 9/19/2014.(R.89). This complaint was accepted.(R.112),and it alleges as follows: \*\*

2. Defendants Jeff Carson,James Rundle,Wayne Steele,Shawn Gibbs,Tammy Bennett, Stevephen Damewood, Bradley Livinston, Greg Gossett, with Salvador Godinez, Joseph Yorkovich,and Kevwe Akpore condoning,(R.99-91;R-97,1027-pars.17-a-h), subjected or caused to be subjected De Jesus to cruel and unusual punishment by pesecuting him by using gang predators to cell him with, as a form of punishing him from 2007,off and on,until he was assaulted and permanently injured on 7/8/2012.(R.89,95-pars.59-67). Defendants used food rations-tactic which stimulated the predators into violence against De Jesus.(R.96-Pars.66-74,R.93-36-40). Defendants continue De Jesus' persecution beyond 2012.(R.97-pars.80-84,R.1035-Par.64-1036-par.66).

3. Prison and medical staff denied adequate medical care to De Jesus for serious injuries to the entire tulso and throath and subjected him to endure needless pain and suffering for a long time, likely,preventing internal injuries from properly healing causing new hip injury impairing his walking ability extending his suffering for live unless adequate care is allowed and correct the injury(ies). Defendants concealed large part of the evidence of the trauma of the assault by the elapse of time and denial of timely medical care to protect the wrong doers,hoping the time cure all injurues.(R.1028-33-

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\*\* Note, that the defendants used leading questions to create what they called,"De Jesus' claim that the defendants maintained policy placing weaker with stronger inmates,"(R.924-P-4-12-Q; and R.938-P-40-1-Q), to challenge it in their motion for judgment and avoid having to answer to De Jesus's real claims,see (Petition p-17,Pars.57-58;page.28,par.Seventh), in his declaration(R.1025-36 and Amended complaint.(R.89-97,99). or(R.1025-36,89-97,99).



a-c;R.89,93-42-45;R.94-pars.48-56A).

4. De Jesus' ordeal began on July 2007 in cell R-1-B-23)(R.1087) De-Jesus, cell assignment history) when defendants celled him with the first hardened inmate with assaultive record known to them. After De Jesus complained of being robbed and threatened with harm, defendants move him to a kitchen worker cell (At.R.3-A-15), and gave him a kitchen job working for Defs. Rundle and Carson. Later, he learned this was a practice to supply workers to the kitchen. (Par.7, below). (R.1028-pars.40-41, R-95-par.58).

5. On 9/12/07, De Jesus was required to leave the kitchen job to attend school, which required him to move from the kitchen cell into a school cell at (R-3-D-28). Upon learning he was leaving, Def. Carson was angered. (R.1029-pars.42). The next day, 7/13/07, Def. Damewood approached De Jesus at the gate of the house in his way to the library. He took his pass from his hand, accused him of an unauthorized movement and ordered him return to his cell to begin the persecution that ended in his assault on 7/8/2012 and continued into 2016. (R. 1029-Par.43-a). (R.1035-Par.64-1036;R.95-57-65;R-95-57-65;R.97-pars.80-84). Damewood's action made De Jesus reluctant to return to work at the kitchen again.

6. In the summer of 2009, inmate Larry Gatorfield (N83315) became De Jesus' celly in cell (R-1-B-20). Larry is a large man, gang affiliated. He was being subjected to similar persecution than De Jesus. De Jesus saw him being provoked and harassed in and out of the cell until he was bogusly placed in segregation and transferred, because he had quit his kitchen job, according to him. Because he was a big man, defendants used mentally unsound inmates to cell with him, most of the time, to deprive him of sleep, make him angry hoping he catch an assault. (R.1024-17-a-h;R.1053-57 for this practice in De Jesus' declaration).

7 On 9/18/2010, De Jesus was moved from cell R-1-B-20 to R-1-A-15 to cell with Robert Taylor, a gang affiliated, 6'3" tall, about 240-50Lbs, muscular and about 20 years younger than De Jesus. The move came after Taylor had robbed and threatened his much smaller celly and Defs switched Taylor celly with De Jesus. Counselor Gareth Beams told De Jesus he was being celled with Taylor because somebody wanted to give him a job. (R1029-44-b, R-95-62) After complaining of being threatened with harm and robbed, Defs. moved De Jesus to a kitchen cell at R-2-A-62 and returned him to work at the kitchen for Defs. Rundle and Carson. But De Jesus cancelled the job before he started working. (R.1029-44-c)

8. After Taylor, De Jesus was moved to cell R-1-C-19 with a very hard to cell inmate who stayed awake at night and was designed to deprive De Jesus of sleep. Later De Jesus was move to cell R-1-C-32. During all this time, De Jesus was ignoring kitchen staff requests to return to work. (R.1029-45). While here, De Jesus ran into Defs. Rundle and Gossett at the kitchen. Rundle was angry with his finger pointed at De Jesus because De Jesus had cancelled his recent job assignment after being celled with Taylor (Par.7 above). (R. 1029-46). (R.947, 1087 De Jesus cell movement Histry).

9. On April 2012, De Jesus was being celled with inmate Christ Wilson (CW) in cell R-1-c-32. CW is a physically handicapped with a serious back injury that requires doses of pain killer daily, he has a battery implanted in his chest to help his hearth beats, and a machine to help him breathe, so he expected no jog assignment.

10. But to cell De Jesus' assailant with De Jesus on 4/12/12, Defs. gave CW a porter job at R-1-D gallery, and they forced a cell switch between De Jesus assailant at cell R-1-D-67 and CW at R-1-c-

32. Cell R-1-D-67 is a second floor cell And CW could only be celled in first floor cells by doctor's order because his disability. (R.1030-a,R-95-65) See Jamie Avans(De Jesus assailant) cell-assignment sheet.(R.1088 Date 4-12-12),

**Defendants own food ration and the brunch:(R.1030-1032)**

11. Starting 2009-10, Defendants began reducing the one 6 0zs cup of grain and pasta of the IDOC 3-meals-per day menu (R.103,927) by more than half( $\frac{1}{2}$ ),while they were celling De Jesus with large predators with no money to buy their own food at the commissary. Defendants were over-heard telling their worker to serve little bits. (R.1031-b-c,R.96-67).

12. De Jesus attached Victor Cabrera's affidavit stating he worked at the HCC kitchen in 2011. Defendants always toll him to serve little bits of food.(R.1042) The trays were nearly empty. (R.1030-49-b).

④ 13. On 4/16/12, Defendants started serving the two meals brunch, which the IDOC dieticiant,Suzann Bailey,drafted on March 2012.(R. 1041,104, R-1031-b-c, R-96-69). This brunch menu adopted defendants' own food ration by directing them to reduce the one cup grain and pasta to half( $\frac{1}{2}$ ) cup.(R.104; R.96-pars.69-70). But at the prison level the half cup became few T-spoons.(R.1032-54).

14. The brunch replaced the 3 meals per-day breakfast entrees (main-meals), the bread and desserts with that of the lunch and left the few spoons of cold cereal.(R.1030-50,R-96-70).

15. DeJesus attached Pacheco,Eduardo's affidavits stating he was being served a extremely reduced brunch at the HCC kitchen.(R. 1043),which is the equivalent of the nearly empty trays.(R.934-P-22-6-A).

16. Later, Defendantants took away the few T-spoon they had left of the breakfast cereal, and they started serving the reduced lunch and dinner. (R.1030-52)(R-96-72)

17. The taking of the few spoons of the brakfast sparked a wave of violence in protest of the starvation being waged. It caused numerous lockdown from 2012 to 2013. The warden was seen with his special Tacteam ransacking cell and taking inmates to segregation. Numerous grievances were filed, one by De Jesus cellmate and assailant, (R.1030-51-1031-a-c;96-74) , protesting the starvation.

18. By July 2012, defendantants had De Jesus surrounded by the dangerous Latin King gang, their leaders and an associate of the gang celled with him. De Jesus' celly depended on free-weekly meals from his leaders to survive the starvation. His leader became unwilling to continue feeding him . They started punshing him to force De Jesus to join-up the gang for exploitation. De Jesus had money. (R.1098; R.1031 53-a-10-1032-54-56-a-g). Defendantants allowed this gang free range to abuse and exploit others, including De Jesus. (R.1026-a-d).

19. On 7/8/12, De Jesus celly beat him for 20-30 minutes by punching and kicking him to the entire tulso, slammed his head on the wall, and chocked him and bent his back like a hourse shoes. He ended the assault by screaming, "now I can take your commissary, am always hungry." (R.1032-56-a-g; R.96-74, R-93-35-40); (R.100-101).

#### **Medical care given to De Jesus on 7/8/12**

20. Upon arrival at the prison clinic, Lt. Tammy Bennett, Nurses Faetanini, Stokes, a black Nurse and others awaited with a segregation suit and a blister with 14, 200 Mg. Advil or ibuprofen for pain as the only treatment they were going to allow. After DeJesus

pointed to his throat and tulsio where he was punched and kicked and chocked, the black nurse counted sixt bruises to his tulsio, one to his throat, while Faetanini documented the bruise from distance. A taller Nurse care for De Jesus wound to his head. She handed him the pain pills. Lt. Bennett ordered De Jesus placed in segregation concealed in one man cell under investigation with nothing to investigate because his assailant confessed. (R.1033-57-a-c; 1028-33-7-a-c; R.93-42-45). (R.1100-5-1101) (R.1100-par.5-1101).

**Treatment in segregation: 7/16/12: (R.94-47-51)**

21. On 7/14/2012, De Jesus wrote a letter to the medical staff complaining of severe pain to the entire tulsio, back, chest and requested for X-rays and offering to pay. Nurse Nelso answered the letter stating, "The doctor decides X-rays, not you, put in for sick-call. (R.107, R.1033-58-a-c) I summoned the nurses.

22. On 7/16/2012, Nurses Faetaninin and Stokes came to segregation to check on De Jesus. When he requested to see a doctor and to be put for X-rays to tackle the pain, Faetanini whispered Stokes' left ear. Stokes turned cranky and stated, "You are bullshitting us about being in pain from back broken bones, what you got are sore back muscles, exercise your back muscles, keep puting for sick call, and we decide if you need to see a doctor," without looking at De Jesus and while he stood withing ten feet away fully clothed. (R.1033-59-a; R.94-48-49)

23. On 7/21/2012, Srgt. Anderson noted De Jesus had difficulty walking. He talked Dr. Sood into coming to segregation to check on him. (R.1033-59; R.94-50).

24. DR. Sood came to segregation on 7/23/and 8/1/12. On 7/23/12,

he denied De Jesus' requests for X-rays because X-rays caused cancer, his request for lifting restriction and for a lower bunk-bed permit to allow internal injuries to heal. He diagnosed De Jesus for back, internal injuries by placing his flat hand once against his back and pressing and forced De Jesus to retreat, indication presence of injuries. He prescribed 500Mg. Naprosyn for pain and inflammation. He pretended nothing was wrong by adopting Nurse Stokes' recommendation by advising De Jesus to exercise his back muscles. (par. 22 above). De Jesus tried to exercise his back muscles. Pain rose and he stopped. (R. 1033-60-1034-a-c; R-94-51).

#### Treatment in population (2012 to 2013)

25. On 8/12/12, 5/13/13 and 8/14/13, De Jesus saw the nurses during sick-call about continuous pain in his torso and paid \$5 each time. At all the time De Jesus remained fully dressed and at distance from the nurses. (R. 99 for the treatment and medication received). On 8/14/13, De Jesus reported a <sup>1</sup>hip injury to Nurse Hawk. The Hip injury was caused by a nerve snap on the right side of De Jesus' back causing a temporary right knee lock. The painful injury moved upward to the thigh and lodged in the hips causing a permanent walking impairment. (R. 94-Pars. 53-55). Nurse Hawk denied De Jesus' request for a girdle to support his back and prevent similar injuries. She cited policy for the denial. De Jesus stopped summoning the nurses. They were no help.

X-rays were ordered and taken on 3/1 and 5/1/2014

26. On 2/26/14, the new practitioner, Pamela Broomfield (PB), ordered X-ray of De Jesus chest upon complaint of chest pain that interfered with his ability to breathe, and based on complaint of back pain she ordered X-rays of his back on 3/19/14. De Jesus also complained to (PB) of hip pain and the walking impairment. (R. 94-56; 1103-24-25).

**X-Rays results:**

27. Defendants' pay radiologist report shows the X-rays of De Jesus' chest X-ray revealed a spectus(cave) excavatun or congenital deformity where De Jesus claimed his assailant punched him 10-15 times. (R.105,R.94-56,99-2).

28. The report of De Jesus ~~back~~ X-rays was taken on 5/1/2014. Before the X-rays were taking, Dr. Sood paid him a cell-house visit on 4/8/2014. He was angry at the practitioner Bloomfield for ~~ordering~~ the X-rays because X-rays caused cancer, and he did not approve them. Dr. Sood said Bloomfield and he had a falout and she left the clinic. (R.1103-28).

**Change of X-rays order:** (R.1157-1158)

29. After Dr. Sood house visit, Nurse Stokes visited DE Jesus at the cell-house. She agreed to put him in for the back X-rays Bloomfield had ordered, but she said she was changing the X-rays to be taking from the front rether than from De Jesus' back. (R.1103-28)

**The unauthorized X-rays of De Jesus's hip:**

30. On 5/1/2014, the radiologist took the X-rays of De Jesus back while he lay on his back. She also took a X-ray of his right hip while he lay on his left hip. (R.1102-21-c).

31. The report of De Jesus' back X-rays reveal what was called, "Hipertrophic spurring througout the thoacic spine. (R.106), where De Jesus claimed his assailant punched and kicked him for a long time. (R.93-35-40, R.1032-56-a-c)

32. De Jesus was never explained the results of the X-rays, even though he was called to the clinic once for that purpose. (R.1104-29-32).

**De Jesus persecution continue throug 20017: (R.1035-1036,R.97-80-84).**

33. After he was released from segregation Defendants celled De Jesus with a very aggressive homosexual. He survived him. (R.1035-64,94-51). On June 20/2013, Defendants released a dangerous gang predator from segregation one day earlier to cell him with De Jesus. The predator was in segregation for the bloody beating of his celly. (R.1055-64-1036-66-a-c). De Jesus request to be moved away from the predator was ignored for months. Later De Jesus was celled with another predator with stabbing and extortion record. His request to be moved away from him was conditioned on him accepting a job he could not perform because his injuries. (R.1036-66-a-c; R.1034-1035) De Jesus safety and life still at risk. (R.1062-1065).

**The policy and custom connected to the assault: (R.1052-56)**

34. The policy is entitled "Man against Man" and it means prisoner against prisoners to De Jesus. (r.1052-56) The policy was taking from Shawnee CC but the content is enforced at the Hill. CC. It prescribes numerous cruelties to staff to inflict on un-co-operative prisoners and anyone staff don't like. It include humiliation, withholding mail, isolation punishing un-co-operative inmates, inflicting fear, inducing hostility between cellmate and others which the author called criminal. (R.1052, 1054-10; 1050-20; 1050-25 and 1055-par.4).

35. It's argued that the policy include or was supplemented to include the use of inmates on inmates as a form of discipline as it was used on De Jesus and others, with denial of request to be remove from the harm placed in by staff and denial of medical care to conceal evidence that can be used against the persecutioners. (R.1024-17-a-h; 1025-22-a; 1025-25; 1028-40-1030-a)



## DeJesus' testimony

36. De Jesus was deposed twice. (R.738,929). He testified that his persecution was planned by defendants. (R.939-p-41-18-P-42) Defendants used hardened gang predators with no money to buy their own food to cell him with. Thereafter, told their kitchen workers to serve little bits of food, making it obvious the predators were going to use force against him to extort him to survive the hunger. (R.934-P-22-23-A-R-935-p-24),

37. Defendants had De Jesus surrounded with the dangerous gang of the Latin King and celled with a member. The leaders pushed De-Jesus' celly to force De Jesus to join-up to exploit him because they were hungry causing the 7/8/12 assault of 20-30 minutes beating. (R.936-p-31-12-A-R-937-p-35-15-A: R-1031-par;53-1033)

## Medical care on 7/8/12

38. Upon arriving at the prison clinic after the assault, De-jesus was stiff or frozen from the legs-up, with walking difficulty, talking difficulty: (the) A black Nurse looked for bruises and found five, one to the throat. They did not diagnose for internal injuries. Lt. Bennett ordered De Jesus placed in segregation. (R.743-P=21-24)

39. On 7/16/12, Nurses Faetanini and Stoke came to segregation to check De Jesus on complaint of severe pain to his tush, back. When De Jesus requested to see the doctor and to be put in for X-rays, Faetanini whispered Stokes left ear. She turned cranky and said, "You are bull-shitting us about being in pain from back broken bones, what you got are sore muscles without looking at him. (R.745-P=32)

40. At the time the HCC clinic had no full time doctor, it had not hire a radiologist since 2011-to 2013, and no practitioner ass. Doctor. (R.740-p-41-42; R.750-P-49-50)

**FIRST MOTION FOR EXPERT OR INDEPENDENT DOCTOR:(R.629-32)**

41. De Jesus requested the court to appoint an expert or independent doctor to resolve the dispute of the doctor Sood claim that the pain De Jesus still suffering from is consistent with arthritic not from the 7/8/12 assault. (R.106,633-634)

42. De Jesus claimed that his back pain started and was reported from day one of his 7/8/2012 assault. He never had any back pain. Minutes before the assault he was exercising free from pain.(R.1032-56; R.1103-a-d;R-99-1-3) Dr.Sood affidavit does not explain how he reached the conclusion in(Par.41).(R.781-17-782-19-21), Dr.Sood Affidavit does not explain the pain De Jesus still feels in his chest.(id) He ignored De Jesus hip injury claim.(R.1034 present pain there). De Jesus claims pain to the entire ~~back~~ spinal cord and on both side of the spinal cord.(id). (R.1105).

43. The X-rays report of De Jesus chest indicated De Jesus has a cave where he claimed he was punched 10-15 time.(R.105,634;R.782-19-21).But neither the report nor Dr.Sood explain the pain De Jesus still feel in his left chest which affect his ability to breathe.(R.1034-present pain there). (R.629-32;1165-1171)

44.The District court denied the motion holding that De Jesus failed to show he needed an expert to prove his case.(R.633-34). But later it granted summary judgment to defendants because De Jesus failed to offer admissible evidence to dispute the medical testimony. (R.1181;1191-1191.The Seventh Circuit affirmed.(A-pages6-7-4).

**Motion to compel production of documents:(R.654-693)**

45. De Jesus soughtout to compel production of all reported violence incidents at the HCC prison from 2011-to-2015.(R.660-3-665-23). But later he reduced his claim for documents between 2011-to-2013.(id) The record are relevant to prove that defendants food

ration caused chaos between inmates and inmates and staff which caused numerous lockdowns of the prison by inmates protesting the starvation waged by defendants. The reports have names of witnesses and the reasons for the chaos to support defendants starvation caused or substantially contributed to De Jesus' assault in 7/8/2012. (PAGES.4-8-pars.2-19;R.936-p-29-1-Q-7-A). Inmates filed grievance protesting.

46. De Jesus also sought out disclosure of his assailant's Jamie Avans's rap-sheet to show defendants knew he had a substantial assaultive record and was dangerous when they celled him with De Jesus. (R.1026-pars.27-28,R-93-pars.35-40).

47. Finally, De Jesus sought out disclosure of his former celly, Carter Lawrence's rap-sheet for the same reason he sought out his assailant, and to show defendants released him from segregation one day early to cell him with De Jesus. He was in Segregation for the bloody beating of his cellmate. (R.1035,R-97-Pars.80-84).

48. The district court sided with the defendants' claim that the records were irrelevant to De Jesus' claims and presented a security risk. (R.694-95).

#### **State defendants motion for judgment**

49. Defendants offered the affidavit of IDOC dietitian, Bailey, to disprove De Jesus' claim that the defendants' food ration caused or substantially contributed to his assault on 7/8/2012. (R.891). For the reasons that follow Bailey affidavit can't disprove or dispute De Jesus' claim:

50. **De fendants:** De Jesus testified that serving two rather than 3 meals per-day violated his 8th Amendment, (Ex.6,P-25-26), fails because Bailey attested that the 2 meals per-day brunch has the same 22-2400 calories and 8 oz protein the former 3 meals per-day had, adequate to maintain health. (Bailey affidavit. (910=9=9-11-9-10)).

**Dejesus' response**

51. What De Jesus testified(R.935-pp-25-26) is that Bailey's 2012, 2 meals brunch replaced the 3-meals entrees, the bread, the deserts with that of the lunch and reduced the portions to nearly empty trays evincing under-feeding.(id).

52. De Jesus is claiming that defendants starved his cellmate and his gang into assaulting him, not that his rights were violated by defendants' food ration.(Petition pp-4-7,12) (Appendix A-P-5-3).

53. Bailey's affidavit does not show she had personal knowledge of what defendants were serving at the prison's kitchen level, required by Rule 56(e)(1) F.R.C.P..(R.1030-51-1031-c).(R.910 Bailey's affidavit).

54. Bailey adopted defendants' prison level starvation in her 2012, 2 meals brunch menu (the only relevant menu here) by directing them to reduce the full cup of cereal, grain and pasta of the 3 meals menus(R.927-928) to half cup(R.104,1041). Moreover, defendants took away all breakfast of the 3 meals making it obvious the 2 meals could not provide the 22-2400 calories and 8 oz protein of the 3 meals.(R.1030-Par.51). (Petition P-7-par.13).

55. To support defendants' motion for judgment, Bailey printed two 2014-2015 brunch menus(R.925-926) equivalent to the 3 meals per day. She supported her affidavit that the 2014-15 brunch menus have the same 22-2400 calories and 8 oz protein the 3 meals had.(R.910-4-911-9-10) (R.927-928).

56. Finally, Defendants claim that De Jesus gained weight during the time the brunch was served(2012-2015) is irrelevant.(R.par.52) De Jesus had money in 2012-14 and he could buy his own food.(R.1098). He ran out of money by 2015.(R.1099) (Reason R.1092-97)

## Defendants double celling policy

57. Defendants claimed that De Jesus alleged the Hill CC had a policy either celling weaker inmates with more aggressive inmates or placing weaker inmates against stronger inmates in violation of the 8th Amendment. (Ex.6, P-4, Or. (R.929-p-4, R.938-p-40-1-Q.)

### De Jesus' response

58. But DeJesus testified that his persecution was planned by the defendants who used hardened gang predator with no money to buy their own food to cell with him. Thereafter, they told the inmates, kitchen worker to serve little bit of food, making it obvious that the predators were going to use force against him to extort him. (Petition page-12) Defendants persecuted De Jesus with the predators as a form of punishing him. (R.1021) from 2007, off and on, until he was assaulted in 2012. ~~Thereafter~~ defendants denied adequate medical care and concealed substantial evidence of the trama, (id). (Petition Pp-4-7 above), and injuries.

59. Defendants also claimed De Jesus testified he had no idea ~~whom~~ mandated the policy of intentionally mis-matching cellmates. (Ex. 6, P-5; R.902)

### De Jesus' response

60. But De Jesus testified that defendants Damewood, Livinston, Steele and Sergeant Gibbs were the principle enforcer, and they were using everybody (all staff). (R.930-P-5-14-A) (R.929-P-3-15-Q and 24-A). DeJesus named all the parties involved. (id). (R.90-92)

61. Defendants claim they were not deliberate indifference to a serious risk of harm by double celling De Jesus because De Jesus admitted he or ~~no one~~ in the department knew the attack would occur. (R.893-13, 903-par.2)

#### **De Jesus' response**

62. But De Jesus testified that defendants knew his assailant was dangerous. Defendants had dangerous gang and their rival mixed with vulnerable inmates with no classification to curb assaults (R. 937-p-36-938-p-37-3-A-7-A). (Pages. 4-7, 12 above). De Jesus was assaulted as a result of defendants' policy/custom of persecuting him by using gang predators to cell with him to punish him. They allowed De Jesus to be assaulted and nearly kill. (R. 1021-21-par. 1; 1024-19). P-4-7, 12 above). De Jesus can't say whether other had knowledge of his impending risk. (p-17-par. 61 above).

63. Defendant Steele affidavit states that inmates are double celled only after they are classified for double cell. (R. 894-34-39, 902).

#### **De Jesus' response**

64. Whether inmates are or are not approved for double celling is irrelevant to defendants' intentional act of using dangerous prisoners to punish him and causing him to be assaulted. (p-4-7-12 above). But there is no such thing as single celling in IDOC.

#### **Defendants**

65. Double celling does not create a substantial risk of harm (R. 901-902) because defendants Steele's affidavit states cell assignments are based on age, size, gang affiliation, release day, and history of violence with cellmates. (R. 984-41-895), and others. (R. 1026-29-a-d).

#### **De Jesus' response**

66. De Jesus declaration states that defendants have a long standing practice to cell all the prisoners mixed, gangs, rival gangs, elderlies and all vulnerable prisoners in same house, gallery and cell. (R. 1025-23, Par. 62 above). Still, it is irrelevant to defendants intentional act cited in pages # 4-7, 12 above). (R. 100-6-13-101-14-21).

On 9/18/2010, defendants celled De Jesus with a predator nearly twice his size. (Petition page 6, Par. 7). On June 20/2013 defendants released a dangerous predator from segregation, where he was for the bloody assault of his celly, earlier, to cell him with De Jesus. (R. 1055-55-1036-66-a-c; R. 97-80-84). This is not a rational policy. (R. A-P-5-3, 1195).

67. Defendants state after cell-assignment, an inmate can alert the staff of any problems with cellmate; one inmate will be removed if cause is found. (R. 895-42). Steele's affidavit. (R. 914-9).

#### **De Jesus' response**

68, De Jesus' declaration states that reports of problems with cellmates are ignored and cellies are forced to fight. (R. 1025-22-a-25).

69. Defendants stated according to their classification and Department records De Jesus is 5'3" tall, 169Lbs, 64-year-old, no gang affiliation, and his assailant is 5'10", 196Lbs., black, no gang affiliation. This information did not contradict the two as cellmates. (R. 895-43-45).

#### **De Jesus' response**

70. De Jesus' declaration states his assailant is at least 10" taller than him, about 60 Lbs. heavier, a gang affiliated with the Lating King Gang, and a dangerous prisoner. (R. 1026-27; R. 1031-51-a-1032-55-56-a-b; R. 1026-28-a; R. 93-35-40). However, this information and all information upon which defendants based their motion for summary judgment (Petition P-17-19, Pars. 57-70) are irrelevant to their intentional act of persecuting De Jesus from 2007 to 2012 and beyond and allowed him to get beat-up and nearly killed and continue the lawless persecution beyond 2012. (R. Petition Pp-1-8-pars. 1-19, P-12-par. 13, page. 13-pars. 36-37).

**Medical staff motion for judgment**

71. Defendant Faetanini's affidavit states that on 7/8/2012 she conducted an examination on DeJesus concerning injuries he sustained in a altercation with his cellmate. She stated De Jesus suffered superficial laceration to his head, mild-abrasion to his shoulder. She said De Jesus spoke throughout the examination without difficulty, blood pressure was normal, neurological function was intact. She cleaned his head wound and placed a bandage on it. (R.783-84 affidavit of Faetanini). On 7/16/2012 Faetanini and Stokes conducted a follow-up exam. corroborating the 7/8/2012 Exam.. (R.787-6 Stokes affidavit).

72. On 7/25 and 8/1/2012, Dr. Sood conducted examinations of DeJesus concerning the same injuries he sustained on the 7/8/2012 assault by cellmate. He corroborated the injury reports of his nurses Faetanini and Stokes, which he reviewed before he saw De Jesus 18 days after the assault. (R.723-Pars.26-32; R.724-23) Dr. Sood Affidavit (R.779-4-783-13).. (Petition p-13-pars. 38-40)

73. De Jesus sworn declaration and deposition state that neither Faetanini nor Stokes conducted any examination to based their findings of 7/8/2012 and 7/16/2012. (Petition Pp-8-9-pars.20-22; R-1100-5-1101)

74. De Jesus' declaration also state that Dr. Sood came to segregation to check on him on 7/23/ and 8/1/2012. He conducted a diagnose for internal back injuries by placing his hand on De Jesus back and pressing in, and forced De Jesus to retreat from the pain, indicating presence of injury. He prescribed pain-killers, pretended nothing was wrong and adopted Nurse Stokes' recommendation by advising De Jesus to exercise his back muscles. (R. Petition Pp-9-10-pars.22-24). Dr. Sood never reported he diagnosed De Jesus for internal injuries.



## **Dr.Sood Opinion**

75. He opined that the ongoing back pain De Jesus still suffering is consistent with arthritis product of his degenerative change on his spine revealed on the X-rays taking on 5/1/2014, not caused by his 7/8/2012 assault.(Dr.Sood's affidavit R.781-17-18-182). Dr.Sood copied his nurses Faetanini and Stokes by stating De Jesus only suffered a superficial laceration to his head, mild shoulder abrasion and experienced soreness consistent with a fight.(id,P-9-par.22,P-20-71-above).

76. De Jesus' declaration (page-8-pas.18-19 above), his deposition, (R.936-p-31-12-A-R.937-15-A), state he was severely beat-up for 2-30 minutes by his assailant punching and kicking him on his entire torso and by choking him. (De Jesus' declaration R.1031-par.53-1033). (Amended complaint R.93-pars.36-40).

77. De Jesus' present disabilities: (R.1105). (1) 24 hours low pain on both sides of the spinal cord, which increases when he is moving or writing bent in a 300°. (2) Low pain on the lower area of the spinal cord, which also increases when writing or moving. (3) periodical, harsh, hip pain spreading to the buttock, which turns permanent when walking distance. (R.94-par.55, for details). (4) Not able to perform significant exercise, unable to run or walk fast because pain increases. (5) Permanent walking impairment from the hip injury. (6) On December 24/2015, De Jesus was rushed to the prison clinic in a wheel-chair unable to walk, move or talk. (R.1105, Appendixes D and E). **Second motion for independent doctor.** (R.1165-70 Details omitted).

78. The district court order. (R.1181-96, or Pp-8-22). The court held that all defendants were entitled to summary judgment because they offered admissible evidence showing they were no material issues in dispute and De Jesus' sworn declaration consisted of inadmissible,

unsupported speculations. Based on the same ground the court of appeals affirmed.(Pp-0001-7).

#### BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the 8th amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C Sec.1331

#### REASONS FRO GRANTING THE WRIT

A.Conflict with this court and other courts

B.The court of appeals sanctioned the district court's depature from the accepted and usual course of judicial proceddings.

First, the lower courts holding that all the defendants against whom De Jesus claim deliberate indifference are entitle to sumary judgment, based on the affidavit of RN.Faetanini, corroborated by RN. Stokes and Dr.Sood, (R.1182-83,1181), stating she conducted an examination of De Jesus on 7/8/2012 for injuries he sustained in an assault by cellmate on 7/8/2012, and she found De Jesus only ~~sufered~~ superficial head injury and mild-shoulder abrasion, and that DeJesus talked throughout the examination without difficulty, was alert and his neurological function was intact, and De Jesus' sworn declaration consists of inadmissible, unsupported speculation, amount to a judgment about credibility and is contrary to the settled principle of law supported by this court's and others court decision holding that the court may no decide credibility in summary judgment: (A pp-5-7)

See Masson v. New Yorker Magazine, Inc., 501 U.S, 490,496,111 S Ct 2419(1991); Wilson v Williams, 997 F.2d 348,350-51(7th Cir. 1983); Gravy v.Spilliman, 925 F.2d 90, 95 (4Th Cir.1991); Jerking vs, Winter, 540 F.3d 742,750 (8th Cir..2008).

De Jesus' sworn declaration(R.1101-5-1105; Petition P-8-10-~~par-20-~~ 25), his deposition (Petition P-13-pars.38-40), squarely contradict the medical staff affidavit as to the fact that no examination was

conducted by Def.Faetanini to rule-out sesious injuries.(id).

De Jesus' declaration (Petition P-8-9-par.20) and his deposition,(R.743) state that upon De Jesus arrival at the prison clinic on 7/8/2012,after the assault, he had problems talking,walking , he was stiff or frozen from the legs-up,and he was still having talking problems on July 2015 when he was deposed. He was beat-up for 20-30 minutes by punching and kicking to his entire tulso.(R.936-31-A-937).

De Jesus declaration has a sworn list of disabilities and injuries, including the fact that on December 24/2015, he was rushed to the prison clinic in a wheel-chair unable to walk,move or talk, a cause of nerves injuries to his back.(R. 1105). Therefore,the lower courts holding also conflict with other courts decision holding that conflict between medical staff affidavit and the plaintiff's affidavit can only be decided by the trier of the facts.Wilson v. Williams, 997 F.2.at 350-51. So as conflict between medical reports and plaintiff's affidavit.See Scott v.Coughlin, 344 F.3d 282,289-90.

Moreover, the lower court holding failed to honor the principle that in ruling on summary judgment, the evidence of the non-movant is to be believed and every reasonable inferences are to be drawn in his favor,see Tolan Catton,134 S.Ct 1861,1863 (2014).

#### Doctor opinion and judgment

The lower courts holding that Dr.Sood exercised his judgment that De Jesus did not needed X-rays untill 2014,and that after the X-rays were talking it confirmed Dr.Sood diagnosis,is contrary to what DeJesus' sworn declaration state. First,Dr.Sood judgmen was based on the faulty judgment of his Nurses faetanini and Stokes. (Petition p-20-pars.71-74-). And his opinion was based on his nurses. (Petitionp-21-par.75). The nurses conducted no exam.(Petition p-20-73).

De Jesus' sworn declaration also states that Dr. Sood denied his requests for X-rays because X-rays caused cancer, (Petition P-9-10-Par.40), which is not a medical judgment. He had a fall-out with the practitioner who ordered the X-rays. (Petitioner P-11-par.28). He ordered the X-rays order changed for the X-rays to be taken from the front rather than from De Jesus' back. (Petition P-11-par.28). He ordered an unauthorized X-ray of De Jesus hip injury and kept it quiet. (Petition p-11-Par.30), and he never explained the results of the X-rays to De Jesus as he does to others patients. (Petition P-11-32).

Doctor Sood opined that the ongoing back pain De Jesus still suffering from is consistent with arthritis product of his generative change of his spine revealed in the X-rays taking on May 1/20-14. But he does not explain how he reached that conclusion, require by case law, See Hit v. S.F.C. Inc. 170 F.R.D. 182, 185 (D.Kan.1992); Fitzgerald v. Correctional Corp. of America, 403 F.3d 1134, 1142-43 (10th Cir.2005), (R.781-17-782 Dr. Sood Affidavit).

De Jesus' sworn declaration states that he never had back pain prior to the assault on 7/8/2012. (R.1103-par.d). He reported the pain from day one of the assault. (id). Dr. Sood opinion overlooks the fact that the back pain is not just to the spinal cord, but on both sides of it, and Dr. Sood also ignore De Jesus' hip injury cause by bone or nerve cell snap on his back, which indicate injuries in his back. (Petition P-11-par.25, P-21-par.77). affidavits, Wilson v. Williams, 997 F.2d at 351; and declarations, Taylor v. Rodriguez, 238 F.3d 188, 195 (2d Cir.2001), are admissible as evidence in summary judgment to determine whether genuine issues of material fact exist; On December 24/2015 De Jesus was rushed to the prison clinic unable to walk, move, talk. (Appendix D and declaration explanation of

the medical report attached)(R.1105).

**Second**, lower courts holding that defendants were not deliberate indifference because De Jesus received some treatment.(R.A-P-6-par.3,B-P-15,or R.1189), is contrary to the Seventh Circuit court's decisions in Pretties v.Carter, 836 F.3d 727,729(7th Cir.2016);Greeno vs. Daley, 414 F.3d 645,655(7Th.Cir.2005);see also Satton v.Wrigh 262 F.Supp 2d 292,300(S.D.Y2003)( holding that extensive treatment, claim is stated if the gravement of the problem was not addressed), Here,Defendants ignored De Jesus' sworn statement of his injuries and disabilities.(R.1105). They have been watching and ignoring De-Jusus walking with an impairment for years.(Petition P-10-par.25). On December 24/2015 Defendants received De Jesus in the prison clinic unable to walk,talk,move a cause of his back injuries they left untreated.See Appendixes D-E for medical report). This is part of Wexford's policy to save money by ignoring patients'medical need or is a mean to protect the wrong doers who caused De Jesus' assault or both.(R.1028-pars.33-c).See Wexford understaffing list.(R.1106).

**Third**, the record before the court showed that De Jesus suffered a serious injury(ies) and serious medical need and were ignored. De Jesus declaration,(R.1033-pars.59-61-a-b; Petition P-9-10-pars 23-24) state that on 7/21/2012,Sgt.Anderson saw him walking with an impairment.He talked Dr.Sood into coming to segregation to check on him. Dr.Sood came and diagnosed him for back,internal injuries. When he became aware De Jesus had injuries,he prescribed 500Mg. medication,pretended nothing was wrong and he adopted his nurse recommendation by advising him to exercise his back muscles. The court stated a serious medical need is none diagnosed by a doctor as mandating treatment or one perceived by a lay person.(R.1188).

Again, the judgment of the lower courts was based on the credibility of the medical staff's affidavits and their belief that De Jesus' own sworn statements were not credible. (petition P-22 for case law).

Fourth, the lower court holding that De Jesus did not need an expert to prove his case, (A-p-7-par.1; R.733-34; Petition P-14), is contrary to the seventh circuit decision in Gilman v. Amos, 445 Fed. Appx.860,864 (7th cir.2011) (holding expert needed when the seriousness of the plaintiff condition is contested). Here, the court said the defendants are contesting the seriousness of De Jesus's medical need and he needs medical evidence because he is not a doctor. (A-p-6, par.3-line 7; A-P-7-par-1). See also Washaway v. Couhlin, 37 F.3d 63,68 (2d Cir.1994). And Boring v. Kozakiewicz, 833 F.2d 468,473-74 (3d Cir.1987) (holding that when the seriousness of the medical need is not apparent to a lay person, medical evidence is needed). See also Spann v. Roper, 453 F.3d 1007,1008-09 (8th cir.2008) (per curia) (rejecting the lower court denial of motion for appointment of expert followed by granting defendants motion because plaintiff lacked medical evidence). (R.1165-1171 second request for expert).

See also Stele vs. Shah, 87 3d 1266, 1271 (11th cir.1996) (Appointing expert to avoid one-sided presentation of opinion). Here the district court allowed one-sided presentation of opinion by the same defendants accused of denying De Jesus adequate treatment, ignoring De Jesus' sworn declaration and deposition disputing the fact that no medical examination was conducted. (Petition P-13, 20-21). (R.1182-84, 1188). Declarations are admissible to oppose or support motion for summary judgment. Taylor vs. Rodriguez, 238 F.3d. 188,195 (2d Cir.2001); So are deposition. Scicluna v. Well, 345 F.3d 441,445 (6th cir.2003). This is another judgment based on credibility which courts can not decide in summary judgment. (Page 22 above).

The case of the state defendants. ~~(A-0002, Par. 1, B-00018-19 or R.1192-93)~~.

fifth, The lower courts' holding that the defendants were entitled to summary judgment of De Jesus' claim that two rather than three meals per-day caused or sustantially contributed to his assault, (Petition pp-15-16-pars.49-55), because Dieticiant Bailey affidavit states the two meals have the same 22-2400 calories and 8 ozs of protein the former ~~three~~ meals had, and is adequate to maintain health, runs afaul with Rule 56(e)(1)F.R.C.P., and cases interpreting this rule as requiring that affidavit supportion or oppsing sumary judgment must be base on personal knowledge. See Colon v. Coughlin, 58 F.3d 865, 872(2d Cir.1995). ~~(R.1192-93)~~. (R.1192-93)

Bailey's affidavit does not show she had personal knowledge of the portions of food Defendants were serving at the prison, kitchen level, but she only attested that her two 2014-2015 menus had the equivalent 22-2400 calories and 8 oz protein than that former three meals per-day. (R.925-28).

Bailey adopted Defendants food ration, ~~or~~ starvation in her 2012, brunch menus, the only relevant menu here. (Petition. P-16-par.54). Thereafter, to support defendants motion for judgment, she mis-represented the 2012 brunch menu with her two, new, 2014-2015 menus, (petition, P-16-par.55), equivalent to the three meals menus. (R.927-928). The holding of the lower courts is contrary to this court decision in Colettex Corp., v. Catrett, 427 U.S.317, 323-24(1986) (requiring the moving party to meet his burden with proper documentary evidence showing the absence of a genuine ~~issue~~ of meterial fact).

Part of defendants motive was to shift the cost of incarceration to prisoners and their family, without regard to poor inmates. (R.1022-par.8-a-e; 1030-par.49-1032). (R.1057-61, 1067-69, 1074-84).

~~Sixth,~~ The courts holding that defendants were entitled to summary judgment of De Jesus claim that the defendants maintained an unconstitutional policy/custom of celling weaker with stronger inmates which caused his assault, because Def. Steele's affidavit (914-8; R-894-par.41, motion for judgment), states they have a rational celling policy of celling inmates based on age, size, gang-affiliation and violences against cell-mates, and because De Jesus offered not contrary evidence, (A-page5-par.3, B-page 20-21, or R.1194-1195), is also a judgment based on the credibility of Steele's affidavit vs. De Jesus sworn declaration stating that the defendants cell all prisoners mixed, gangs, their rival, elderlies and all vulnerable inmates in the same galleries and cells without any classification. (R.1025-par.23), De Jesus deposition. (R.938-p-37-7A, R.97-pars.76-79, A-complaint). (Petition page 13). (R.1031-par.53-1032-54-56=a-f). See Washington vs. Hauptert, 481 F.2d 543, 550 (7th.Cir.2007) (holding courts may not make credibilty determination on summary judgment). (Petition P-22 above). (R.100-6-13-101-14-21; 1026-29-a-d).

~~Seventh,~~ the policy of celling weaker with stronger inmates is the sole product of the Ass.state's attorney's leading question. (R.924-p-4-12-Question) and (R.938-p-40-1-Question). "You alleged that there is a policy that places weaker against more aggressive inmates." "Is there anything else regarding the claim that the IDOC places weaker with stronger inmates." (R.938-p-40-1-Q.). (Petition p-4, footnote there). By using these line of leading questions, the state avoided having to answer to De Jesus account as to how and why he was assaulted by the dangerous gang of the Latin King. (R.936-16-Q-p-30-937-p-33-35), (petition P-13). (Petition P-8-pars.18-19).



~~Eight~~ ~~The~~ courts, in holding that De Jesus offered no evidence that an unconstitutional policy/custom existed which caused his assault, ignore or rejected as inadmissible, De Jesus declaration's chronological order stating how the defendants used large, dangerous predators from 2007, off and on, until he was assaulted and permanently injured on 7/8/2012, using food ration that prompted the assault, (R. Petition Pp-4-pars. 2-19), Denying adequate medical care which caused a new hip injury, (Petition Pp-9-10-pars. 20-25), to get De Jesus a job at the kitchen, to punish him for leaving the kitchen job to attend school, for ignoring defendants invitation to return to work at the kitchen, and for cancelling a job assignment after being celled with a large predator, and continuing De Jesus persecution with dangerous predators beyond 20012. (Petition P-12-pars. 33-35). Not to mention that counselor Gerath Beams told De Jesus he was been celled with the predators because Defs. want to give him a job. (Petition page. 6, Par. 7). (A-p-5-2-3, B-pp-21-22, or R. 1194-95).

Defendants' persecution of De Jesus using dangerous predators to force him to return to work at the kitchen became unconstitutional when they allowed him be assaulted and nearly killed by his gang affiliated assailant. (Petition p-8-pars. 18-19). See Hope vs. Pelzer, 536 U.S. 736, at 743 (2-g) 122 S.Ct. 2508 (2002) (Holding the constitution will be violated if the method of coercing the resisting inmate, reach a point where his health is placed at Risk).

Here, defendants created an unconstitutional policy/custom that caused De Jesus to be assaulted and his 8th amendment violated. See Colon V. Coughlin, 58 F.2d. 865, 823 (2d Cir. 1995) (holding personal involvement, is shown if defendants create a policy/custom under which unconstitutional practice occurred or allowed the continuation of such policy/custom. (R. 97-pars. 76-79). See also. Hildebrandt v.

Illinois. Dept. of Natural Resources, 347 F.3d 1014,1039(7th Cir. 2003); Valdes v. Crosby, 450 F.3d 1231,1237(11th Cir.2006)(holding that causal connection for 1983 exists where a policy/custom resulted in deliberate indifference to constitutional rights). Here, the defendants also had a policy/custom not to allow cell transfers away from predator they celled with the targeted victims. (R.1025-pars.22-a;Par25; R.1036-pars.66-ac: R-1062-1065; 938-p-40-10-A-939-p-41-3-12-A).

De Jesus' assailant was known to all defendants to be very dangerous, mentally, unsound prisoner, former, mental patient of Dixon CC, mental hospital with an uncontrollable, schizophrenic, outburst of anger, gang predator. He only worked few months at the kitchen and was fired by defendants because he threatened a fellow worker. He knew how to fight with his hands. (R.1026-27-28-a; R-93-Pars.36-40). He was twenty or more years younger than De Jesus and ten inches taller, weight lifter. De Jesus was a 61 year-old elderly at the time. (id).

Finally, the courts statements, (A-page 5, B-pp-20-21 or R.1194-1195), that Defendants were entitled to summary judgment because De Jesus failed to give them adequate, timely notice of an impending risk to him, is contrary to this court holding in Farmer v. Brennan, 511 U.S.825,848, 114 S.Ct. 1970(1994)(holding that the failure to give notice is not dispositive because the plaintiff asserted records denied to him in his motion under Rule 56(f) F.C.P., would have established defendants' knowledge of his impending Risk).

Here, the documents De Jesus requested in his motion for production of documents of violence incidents defendants created by waging starvation on inmates, which caused or substantially contributed to his assault, would have established, further, defendants knowledge.

See Farmer v. Brennan, 511 U.S. at 848; Gaka v. Robbitt, 802 2d 646, 651 (7th. Cir. 1988). (Petition Pp-14-15-par. 45)

De Jesus was also denied disclosure of his assailant's rap-sheet to show defendants knew he had extensive assaultive records before celling him with De Jesus. (Petition P-15, Par. 46).

The rap-sheet of De Jesus' former cellmate, Carter Lawrence, would have revealed that defendants also knew he had extensive assaultive records and that defendants released him from segregation earlier, where he was for the beating of his cellmate, to cell him with De Jesus, contrary to defendants' claim they consider violence against cellmates in celling prisoners. (Petition p-18-par. 65).

Therefore, summary judgment was improperly granted where De Jesus was denied needed discovery. Warner Bros, Inc. 212 F.3d 1210, 1229 (11th. Cir. 2000). See Brown v. Bud, 398 F.3d 904, 914 (7th. cir. 2001) (holding that deliberate indifference of defendants could be established by their knowledge of the predatory nature of the assailant in assault case).

C. Importance of the question presented.

The question presented here as to "whether sworn declaration are admissible as evidence to support or to oppose summary judgment" has not being settled by this court and it has a uge importance to the the administration of justice nation-wide and affects all litigations and litigators also nation-wide, but specially prisoners nation-wide who do not have access to notary. Only few courts have accepted declaration as evidence in summary judgment. See Taylor v. Rodriguez. page 24, par. 3 above). Here, the lower courts recently rejected De Jesus sworn declation as not admissible evidence. (page 28 above).

#### Conclusion

FOR THE FOREGOING REASONS, CERTITIORARI SHOULD BE GRANTED.

Respectfully submitted

Date. June 18/2018.

X Hector R. De Jesus  
Hector R. De Jesus  
P.O. Box 11700/Galesburg,  
IL. 61402.