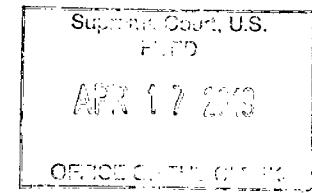


18-9098 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Joel Marvin Munt --- PETITIONER
(Your Name)

vs.

Eddie Miles --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joel Marvin Munt
(Your Name)

5329 Osgood Ave N.
(Address)

Stillwater, MN 55082
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Should a COA have been issued?
2. Do inmates lose all constitutional rights merely because actions were taken in the guise of prison discipline no matter how pretextual?
3. Can prison officials prevent any redress for violation of those constitutional rights maintained by inmates merely by doing so under the pretext of prison discipline and then ensuring that they cannot file for relief while in SEG?
4. Should *Sandin v. Conner* be re-evaluated?
5. Did the combination of the "in custody" requirement, Court Doctrines regarding Mootness, the Exhaustion Requirement and Heck's favorable determination requirement act in concert to unconstitutionally suspend the privilege of writ of habeas corpus and right to petition the government for redress for a large class of claims (virtually all claims resulting from unconstitutional prison discipline) regardless of how blatantly the Constitution was violated, what the lasting effects are or how likely the violations are to be repeated?
6. Was the Petition for Writ of Habeas corpus moot?
7. Do Constitutional Restrictions apply to Prison Disciplinary Rules?
8. Was the Discipline Retaliatory?

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:

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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 B 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 United States district court appears at Appendix A to the petition and is

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 is unpublished.

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
January 30, 2019.

[] 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: 3/13/2019, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for 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 _____.

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

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

[] An extension of time to file the petition for 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

Provision	Appendix D	Page Number
U.S. Const. Amd. 1		1
U.S. Const. Amd. 14		1

STATEMENT OF THE CASE

1. Should a COA have been issued?

"a COA determination is a separate proceeding, one distinct from the underlying merits." *Miller-El v. Cockrell*, 537 US 322, 342 (2003); *Hohn v. U.S.*, 524 US 236, 241 (1998). "question is the debatability of the underlying constitutional claim, not the resolution of that debate." *Miller-El* at 342.

Since this is shown by a discussion of the issues, I will proceed with the other questions so that this court can see that they were indeed debatable. But 1st I ask this court three general questions that it should resolve before other inmates waste this much time, resources and energy attempting to defend the rights this court has said they retain.

2. Do inmates lose all constitutional rights merely because actions were taken in the guise of prison discipline no matter how pretextual?

Under the guise of discipline the State took actions that its own people admitted to Plaintiff were retaliatory. The rule used was overbroad and vague, permitting the DOC to routinely use it as a tool to arbitrarily punish inmates. Obviously I must discuss each of those things in the claims themselves, but I ask this court to consider this question while doing so. I currently have three suits over various retaliatory acts and am preparing three more. Many other inmates have experienced

retaliation. It is a culture within the American prison system used to try to stamp out any exercise of rights by inmates. If this court decides to hear this case it will be deciding if inmates in truth retain any rights.

3. Can prison officials prevent any redress for violation of those constitutional rights maintained by inmates merely by doing so under the pretext of prison discipline and then ensuring that they cannot file for relief while in SEG?

While in SEG the Petitioner had no access to the Law Library nor to the legal materials he would have needed to file a petition in the courts while there.

Under the guise of discipline the State took actions that its own people admitted to Plaintiff were retaliatory. The rule used was overbroad and vague, permitting the DOC to routinely use it as a tool to arbitrarily punish inmates. Obviously I must discuss each of those things in the claims themselves, but I ask this court to consider this question while doing so. I currently have three suits over various retaliatory acts and am preparing three more. Many other inmates have experienced retaliation. It is a culture within the American prison system used to try to stamp out any exercise of rights by inmates. If this court decides to hear this case it will be deciding if inmates in truth retain any rights.

4. Should Sandin v. Conner be re-evaluated?

In *Sandin v. Conner*, 515 US 472 (1995) this court essentially ruled inmates have no due process rights in the vast majority of situations. Prison officials have adopted this as an excuse to arbitrarily and capriciously punish inmates and in most situations this court has left them with no recourse. Both the right to petition and privilege of habeas corpus have been suspended.

Prison rules serve no deterrent purpose and no purpose whatsoever if an inmate cannot expect to remain out of SEG if he follows them. Permitting staff to utilize vague and overbroad rules to punish inmates they do not like who have not done anything wrong does not serve any penological interest. Under *Sandin*, prison rules themselves no longer serve any penological interest.

Plaintiff has been repeatedly thrown in SEG. Each time it was either openly retaliatory or the actual motive was retaliatory. In none of them could any inmate have guessed that his actions violated the rules in question or any rules. Should this court choose to hear this case I hope it will allow me to present all of these instances rather than just the one that was part of this case to show the extent at which this is occurring. I would also hope to be allowed to show it is occurring to other

inmates as well, though most have not suffered the extended periods of retaliation that Petitioner has.

Overall, **legitimate** penological interests are harmed by *Sandin*. Inmates have no reason to obey rules when they know that at any moment they may lose their liberty, property and position under any pretext a staff member who dislikes them or is in a bad mood chooses to raise. And no legitimate penological interest is served by permitting arbitrary, capricious and retaliatory punishment, nor by permitting punishment to occur without even the minimal protections offered by *Wolff v. McDonnell*.

Note that I have not discussed the due process violations themselves in this case due to the Page Limit for this petition and that it doesn't matter if this court doesn't rule on this matter. Therefore a remand or further briefing would be needed if this court decides to re-evaluate *Sandin*.

5. Did the combination of the "in custody" requirement, Court Doctrines regarding Mootness, the Exhaustion Requirement and Heck's favorable determination requirement act in concert to unconstitutionally suspend the privilege of writ of habeas corpus and right to petition the government for redress for a large class of claims (virtually all claims resulting from unconstitutional prison discipline) regardless of how blatantly the Constitution was violated, what the lasting effects are or how likely the violations are to be repeated?

The "in custody" requirement of the federal habeas statute¹ requires that the Petitioner still be "in custody" or the Petition is moot². There are exceptions to this jurisdictional doctrine but the Judge seems to think they only apply to the requirement once the action is filed and not upon filing (though the Judge presented nothing to prove this and only briefly mentioned one of the exceptions to mootness that were raised). No thought is given in this to whether the Defendant has prevented Petitioner from filing in any court while "in custody" or that the Exhaustion requirement made it impossible to do so.

¹ Privilege of habeas corpus can only be suspended in case of insurrection or invasion. There is no provision for mootness. "the common-law lineage of these rights does not mean that they are defeasible by statute or remain mere common-law rights; they are, rather, constitutional rights and form the fundamental law of the land." *Alden v. Maine*, 144 L.Ed.2d 636, 527 US 706, 119 S.Ct. 2240 (1999).

² A law "beyond the power of Congress" for any reason, is "no law at all" *Bond v. United States*, 131 S.Ct. 2355, 2368 (2011) The government has all incidental powers necessary to carry into effect the powers expressly given by the Constitution, but may not exercise any power inconsistent with the spirit of the Constitution. *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816)

Mootness is a doctrine that is supposed to only exist when there is no meaningful relief that a court may grant on the issues before it. In practice courts often forget that part and claim issues are moot even when relief meaningful to the Plaintiff/Petitioner could still be granted³ There are a number of exceptions to this doctrine, though they have been ignored in this case.

The Exhaustion requirement of the federal habeas statute⁴ requires petitioners to first exhaust their state court remedies before they can file in federal court⁵. As the present case shows, this can take years.

The *Heck*⁶ favorable determination requirement is another court created doctrine that requires Plaintiffs to first succeed

³ Violating privilege of habeas corpus and/or right to petition.

⁴ The constitution contains no such requirement.

⁵ "The Federal Constitution being the Supreme law, the courts must refuse to give effect to a statute which conflicts with the Constitution." *Carter v. Carter Coal Company*, 80 LED 1160, 296 US 238 (1936).

⁶ The powers granted the Federal and State governments "are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution." *Williams v. Rhodes*, 393 US 23, 29 (1968) "To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those powers do not confine the persons on whom they are imposed ... Between these alternatives there is no middle ground. The constitution is either a superior

in overturning their conviction before bringing any suit that would imply the invalidity of that conviction or sentence. The Supreme Court has applied this to prison discipline. Thus the Supreme Court made the right to petition for redress dependent upon exercise of the privilege of habeas corpus⁷. This arguably exceeds their power, violates the Supremacy Clause, impedes both rights, and violates Separation of Powers (in so much as it adds requirements⁸ to §1983 Suits)⁹. No thought is given to whether the restrictions on habeas petitions make this impossible. It has even been applied where the Plaintiff was never in custody. This restriction is fundamentally unjust and thus violates equity as well.

In Minnesota Disciplinary Seg is limited to 90 days, though Ad Seg can come afterwards. While in Seg you have basically no

paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it."

Marbury v. Madison, 2 LEd 60, 73 (1803).

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Marbury v. Madison* at 69

⁷ Constitution contains no such requirement. If Supremacy clause bars state laws from shielding states from 1983 liability, Supremacy Clause and Separation of powers bar it from this? See *Martinez v. California*, 444 US 277, 284 & 284 n.8 (1980)

⁸ *Jones v. Bock*

⁹ Page limit prevents fully arguing this.

access to the courts (and recently the DOC has ensured it has been none whatsoever for Appellant).

When you combine all of these things and you create a situation where it is impossible for Petitioners/Plaintiffs to exercise either their privilege of habeas corpus or right to petition. The government cannot take these rights away by direct nor indirect means¹⁰, but yet it has done so¹¹.

"A federal law that knocked out prisoners' ability to obtain redress in situations where they are victims of official misconduct, yet lack any non-judicial means to protect themselves, would have to be set aside as unconstitutional." *Ripp v. Nickel*, 838 F.Supp.2d 861, 866 (W.D.Wis. 2012)

Appellant asks this court to do just that.

In the present case the State made it impossible to file anything while "in custody", the Federal Habeas Exhaustion requirement made it take years to bring the petition, the mootness doctrine claims no relief is possible despite numerous forms of relief still being possible, and *Heck* means that if you cannot have your habeas petition heard then you cannot get any

¹⁰ *U.S. v. Butler*, 297 US 1, 56 S.Ct. 312, 323, 80 L.Ed. 477 (1936)

¹¹ "If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States*, 277 US 438, 485, 72 L.Ed. 944, 48 S.Ct. 564 (1928)

relief no matter how heinous the constitutional violations¹². It also means the Minnesota DOC can take any action under the guise of discipline and be shields from the Constitution¹³.

Page limit prevents fully briefing this issue.

6. Was the Petition for Writ of Habeas corpus moot?

Mootness is flexible discretionary doctrine, and generally requires situation arise rendering Court "unable to grant effectual relief". *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005); *State v. Barrientos*, 837 N.W.2d 294, 304 (2013). Crucial question for if case is moot is "whether granting a present determination of the issues will have some effect in the real world." *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1303, 1311 (10th Cir. 2010). As the following argument will show, meaningful relief can still be granted.

a. Appeal not moot when collateral consequences attach to judgment. *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). Respondent did not dispute disciplinary history lasts entire sentence (forever) or that it will affect future discipline.

¹² *Heck* also violates the principles of equity as it denies people any effective or timely remedy at law or equity.

¹³ "the common-law lineage of these rights does not mean that they are defeasible by statute or remain mere common-law rights; they are, rather, constitutional rights and form the fundamental law of the land." *Alden v. Maine*, 144 L.Ed.2d 636, 527 US 706, 119 S.Ct. 2240 (1999)

This being unchallenged, it was not argued further. Despite no dispute, Judge ruled there were no collateral consequences.

Adult Facilities OFFENDER HANDBOOK (2006 and 2011) page 5: "Repeated minor violations may result in a major penalty." Referencing DOC Policy 303.010.

DOC Policy 303.010(H) (3) (b): Hearing officer determines what penalty is imposed on completion of hearing. Penalty based on seriousness of violation, presence of aggravating/mitigating factors, and offender's disciplinary record.

St. Cloud Facility Handbook page 13: "All formal discipline will remain a part of your discipline file forever." DOC Policy 303.010 supports this assertion.

DOC Policy 303.010(K): 1) Original notice of violation and hearing findings retained in offender's base file, unless hearing officer dismisses all charges (in which case neither notice or findings are placed in base file). Copies must be retained in offender's discipline unit file whether charges are dismissed or not. 2) All notices of violation and dispositions, even if withdrawn or dismissed, are entered into correctional operations management system (COMS) for statistical purposes.

Discipline will have collateral consequences for rest of Petitioner's life. *Favors*, 2013 U.S. Dist. LEXIS 11230, 2013 WL 4052668 noted discipline was "part of Petitioner's record and could adversely affect any future proceedings, which means that the [discipline] could have collateral consequences for Petitioner in the future." "[C]ase is moot **only if it is shown** that there is no possibility that any collateral legal consequences will be imposed on basis of challenged conviction." (emphasis added) *U.S. v. Walgren*, 885 F.2d 1417 (9th Cir. 1989). There is a "presumption of collateral consequences" and the government has the burden of disproving this presumption. *Id.*

The policies quoted above prove beyond a doubt that there are collateral consequences.

DOC has not shown there will be no collateral consequences and their policy shows there are.

b. Court can grant relief requested. Nothing prevents Court ruling on habeas petition from 1) declaring rule in question unconstitutional, 2) vacating conviction, and 3) expunging it from your record. Nor from finding 4) due process violated or 5) that charges were retaliatory. Nor from 6) any other findings material to claims before it.

Two would occur in any successful habeas corpus petition.

Court may order expungement of DOC records in Habeas proceeding. See *State ex rel. Djonne v. Schoen*, 299 Minn. 131, 217 N.W.2d 508; 1974 Minn LEXIS 1425 (Minn. 1974) (Reversed discharge of **writ of habeas corpus**. Remanded with instructions to enter judgment ordering DOC afford appellant hearing on alleged work-release violations or **expunge department's records.**); *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981) (Inherent judiciary authority to order expungement.). Three is possible.

One, Four, Five and Six occur automatically in any successful claim challenging validity of conviction on those grounds.

Clearly the Court had power to grant relief.

c. Mootness exception for issues capable of repetition but evading review (*In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989); *U.S. v. Sanchez-Gomez*, 798 F.3d 1204, 1204-5, 1206 (9th Cir. 2015) does apply. Cannot file until administrative process exhausted. I was IRed 5/28/2015 and Disciplinary Appeal not denied until 6/17/2015 (over half -way through SEG time). In SEG no access to Law Library and nearly all legal materials. Not provided with enough paper and envelopes to permit filing while in SEG nor knowledge how do so with no access to Law Library. DOC cannot prevent filing from SEG and then have Court deny relief because could not do so.

That an issue is capable of repetition can be shown by the fact that there is a particularly low standard required for prison discipline. See *Parkell v. Danberg*, 833 F.3d 313, 333 (3d Cir. 2016) (citing *Micklus v. Carlson*, 632 F.2d 227 (3d Cir. 1980)). Since this incident, Petitioner has been repeatedly placed in SEG (he had not been in it at all before he started suing the DOC), every instance of wish he wishes to challenge in Court (once even under this very rule again (in that situation even better displaying the vagueness of this rule, another time under rules that directly attack access to the courts and the next two times the DOC did not even bother to charge him with anything nor do the paperwork for Ad Seg¹⁴, each of which will go

¹⁴ Each "breach of the fundamental laws ... impairs that sacred reverence, which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches". *The Federalist No. 25*.

unredressed if this court says the Constitution is unenforceable for prison discipline).

Note that infringement of personal liberty for even a short period of time "cannot immunize constitutional deprivation" See *Pritchard v. Perry*, 508 F.2d 423, 424, 425 (4th Cir. 1975).

"De minimis rule is not a limitation on right of action by individual for admitted violation of constitutional rights, nor are constitutional rights separable into redressable rights and nonredressable rights, or major and minor unconstitutional deprivations." *Pritchard* at 424, 425.

Mootness doctrine exception applies.

d. Mootness Doctrine Exceptions exist if : a) challenged conduct too brief to be fully litigated prior to cessation or expiration **and** 1) if it is reasonably likely complaining party will be subject to same action again. *Daywitt v. State of MN*, 2015 U.S. Dist. LEXIS 87951 (D.Minn. 2015) (citing *Smith v. Hundley*, 190 F.3d 852, 855 (8th Cir. 1999); *Hickman v. State of Mo*, 144 F.3d 1141, 1141-2, 1143 (8th Cir. 1998) (Exception to mootness doctrine for challenged activity whose very nature is short in duration so it could not be fully adjudicated.

"If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. U.S.*, 277 U.S. 438, 485 (1928). Here the State's escalating disregard for the Constitution stands as proof this is true (and prison discipline is not the only area where I can demonstrate a clear pattern of escalation on the part of the state). They believe they are above the law, it is for this court to disabuse them of that notion.

"segregation w[ould] normally terminate and the inmate would be returned to the general...population long before a challenge to his segregation...c[ould] be litigated fully." at 1143 (quoting *Clark v. Brewer*, 779 F.2d 226, 229 (8th Cir. 1985))); see also *Roe v. Wade*, 410 US 113, 125 (1973); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1547 (8th Cir. 1995). 30 days too short to complete litigation, denied ability to even file from SEG, and litigation against DOC crimes continues so could again be subjected to retaliatory discipline. As long as unconstitutional rule exists it may be used against me even if I do nothing wrong, as in the case at hand. Judge belabored irrelevant criminal conviction but ignored my lack of disciplinary history prior to this incident. Disciplinary report's own text connects it with protected speech.

Exception to mootness doctrine applies.

e. *Heck* applies. No prison disciplinary challenges challenge an inmate's underlying criminal conviction. They challenge disciplinary conviction. See *Atwell v. Lavan*, 557 F.Supp.2d 532 (M.D.Pa. 2008) (excessive confinement *Heck* barred until declared invalid). *Heck* even applies when Plaintiff is no longer in custody. *Parks v. Dooley*, 2011 U.S. Dist. LEXIS 23189 (D.Minn. 2011) (referencing *Entzi v. Redmann*, 485 F.3d 988, 1003 (8th Cir. 2007)); *Bronowicz v. Allegeny County*, 804 F.3d 338, 345 n. 12 (3rd Cir. 2015) (Even a plaintiff who has never been incarcerated and who has no recourse under habeas is subject to

Heck.). State Habeas corpus is only remedy to challenge discipline, which must be overturned before claims can be raised in federal lawsuit. See *Heck v. Humphrey*, 512 US 777 (1994). Federal complaints seeking redress for things related to prison discipline fail if they have not first overturned conviction. *Bronowicz v. Allegeny County*, 804 F.3d 338, 339,344, 344-5 (3rd Cir. 2015); *Favors v. Hoover*, 2014 US Dist. LEXIS 140714 (D. Minn. 2014); *Wilkinson v. Dotson*, 544 US 74, 82 (2005); *Edwards v. Balisok*, 520 US 641 (1997); *Portley-El v. Brill*, 288 F.3d 1063 (8th Cir. 2002); *Case v. Pung*, 413 N.W.2d 261,262 (Minn.App.1989) (Petitioner has burden to show that he was confined in violation of fundamental constitutional rights). Many cases exist where relief has been denied due to *Heck*.

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right." *Gilmore v. People of the State of California*, 220 F.3d 987, 1006 (9th Cir. 2000) (*Gilmore*) (quoting *Marbury v. Madison*, 5 US 137, 163 (1803)).

Judge's ruling that *Heck* only applies when challenging underlying conviction is clearly erroneous. Privilege of Writ of Habeas corpus and Right of Access to Courts serve important function of providing people with peaceable means of seeking redress when government commits wrong doing. Courts have created situation where both constitutional protections are

infringed to point where neither is meaningful. By permitting arbitrary punishment, Courts give inmates very little reason to obey rules since they know they will be punished whether they obey rules or not. The Courts would leave inmates no remedy for flagrant violation of their constitutional rights.

f. Relief is not moot where "the resumption of the challenged conduct...depend[s] solely on the defendants' capricious actions by which they are 'free to return to [their] old ways.'" *Jones v. Federal Bureau of Prisons*, 2010 U.S. Dist. LEXIS 78 912 (D.Minn.) (quoting *Steele v. Van Burden Public School Dist.*, 845 F.2d 1492, 1494 (8th Cir. 1988) (quoting *Allen v. Likins*, 517 F.2d 532, 535 (8th Cir. 1975))). See also *City News & Novelty, Inc. v. Waukesha*, 531 US 278, 284 n.1 (2001).

g. Summary

State Court decision contrary to Supreme Court precedent and involved unreasonable application of facts. Writ of habeas corpus can afford meaningful relief. There are collateral consequences to the discipline. The issue is capable of repetition (and has repeated) yet evading review. DOC prevented filing while in SEG. *Heck* does apply. And other exceptions to the mootness doctrine exist.

Failure to approve this request tells DOC and Courts that they are free to take arbitrary actions as prisoners no longer have remedy at law.

7. Do Constitutional Restrictions apply to Prison Disciplinary Rules?

Disorderly Conduct (320)

- A) No offender shall engage in disruptive or nuisance conduct. This includes any activity which has the potential of causing injury to self, another person or canine; or which has the potential of causing damage to property; or throwing any object or substance on a person.
- B) No offender shall create sufficient noise to disturb others. Any offender activity loud enough to disturb others in nearby cells/rooms or areas is a violation of this rule.

Censorship of protected speech.

Even in the false Incident Report (IR) there is no allegation of a threat of violence. This is supported by the failure of the guards to intervene in the alleged incident, which would surely have occurred had there been any indication violence was possible. The guards on duty any of the days in question are not even listed as witnesses, only the two people with interests in impeding Petitioner's access to the courts (Jensen and Michels), nor was Petitioner permitted to call them as witnesses nor to use the video footage as evidence. The notice does however indicate Petitioner notified Jensen he would have to subpoena her after she refused to put the assertions she was making in writing regarding her testimony that proved Michels perjured herself in a sworn affidavit to a federal court. Even without the Court background showing the motivations of Jensen and Michels, on the face it appears a

clear case of retaliation for Petitioner's exercise of his freedom of speech and right of access to the courts.

The Supreme Court unfailingly rebukes attempts to censure speech based solely on its potential to hurt, disgust or offend. See *R.A.V. v. City of St. Paul, Minn.*, 112 S.Ct. 2538, 505 US 377, 414 (1992).

The First Amendment demands tolerance of "even hurtful speech" so that "we do not stifle public debate." *Snyder v. Phelps*, 562 US 443, 131 S.Ct. 1207, 1220, 179 LEd2d 172 (2013).

Clearly, all that was involved here was retaliation against Petitioner's exercise of his freedom of speech and right of access to the courts. They did not like what he was saying, did not like that he wanted Jensen to put her assertions in writing for submission to the court, and did not like that Petitioner was preparing a suit against Michels and trying to get her charged with perjury (18 USC § 1621) for false statements she made in an affidavit to a Federal Court (statements which were provably false, in part with assertions made verbally by Jensen).

In *Abu-Jamal v. Kane*, 2015 US Dist. LEXIS 55250 (M.D. Penn. 2015) a statute was overturned because you cannot constitutionally make it an offense merely because someone does not like what you said or how you said it, even if you are a prisoner. "Free speech extends to convicts whose expressive conduct is *ipso facto* controversial or offensive." Id. *11.

"[free speech] may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Texas v. Johnson*, 109 S.Ct. 2533, 491 US 397, 408-09, 105 LEd2d 342 (1989) (quoting *Terminiello v. Chicago*, 337 US 1,4, 69 S.Ct. 894, 93 LEd 1131 (1949)).

"The United States Constitution precludes any state enactment that effectively limits expressive conduct when the essential injury is personal affront." Jamal *11

"Offense to the few is the repercussion of freedom for all." *Coleman v. Gettysburg Coll.*, 335 F.Supp.2d 586, 589 (M.D. Pa. 2004).

Even when a court discerns from speech "nothing of any possible value to society," it must nevertheless accord that expression the same protections granted to the Nation's most prized literature. *Brown v. Entm't Merchs. Ass'n*, 131 S.Ct. 2729, 2737 n.4, 180 LEd2d 708 (2011) (quoting *Winters v. New York*, 333 U.S. 507, 510, 68 S.Ct. 665, 92 LEd 840 (1948)).

There is no evidence, even in the false report, that the incident was anything other than free speech resulting from Petitioner's efforts to exercise his right of access to the courts which both Jensen and Michels were impeding. There is no evidence the discipline was due to anything more than the exercise of these rights.

The State Court of Appeals did not consider this issue due to its finding of mootness. Nor did the State District Court, calling it a mere rule of statutory interpretation and ignoring it. Clearly the State Court decision was both contrary to Supreme Court precedent and involved unreasonable application of facts.

Rule is unconstitutionally vague.

"Vagueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment." *United States v. Williams*, 553 US 285, 304, 128 S.Ct. 1830, 170 LEd2d 650 (2008); *Grayned v. Rockford*, 408 US 104, 108-9 (1972). It requires the government to advise precisely what conduct is impacted so that the public may tailor its behavior accordingly. See *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 US 489, 498-99, 102 S.Ct. 1186, 71 LEd2d 362 (1982). Substantive "Due process requires prison officials provide inmates with adequate notice of what conduct is prohibited." *Booker v. Maly*, 2014 WL 1280579 (ND NY 2014) (quoting *Collins v. Goord*, 581 F.Supp.2d 563, 578 (SD NY 2008) (citing, *inter alia*, *Chatin v. Coombe*, 186 F.Supp.2d 82, 87 (2d Cir. 1999))). "[I]nmates must be free to avoid prohibited conduct, and prison regulations must therefore place them on notice" *Leitzsey v. Coombe*, 998 F.Supp. 282, 289 (WD NY 1998).

A disciplinary rule "is unconstitutionally vague if persons of common intelligence must necessarily guess at its meaning and differ as to its application, or if it fails to give a person of ordinary intelligence fair notice of conduct proscribed or required by the regulation and encourages arbitrary and erratic behavior on the part of the officials charged with enforcing the rule." *Booker* (quoting *Williams v. Fischer*, 2010 WL 3910129, at *10 (ND NY 2010) (citing *Giano v. Senkowski*, 54 F.3d 1050, 1057 (2d Cir. 1995))).

The Supreme Court has rejected the "theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp". *Johnson v. United States*, 192 L.Ed.2d 569, 582 (6/26/2015).

"When a Statute is capable of reaching First Amendment freedoms, the doctrine of vagueness 'demands a greater degree of specificity than in other contexts'" because "'uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.'" *Long v. State*, 931 S.W.2d 285, 287-8 (Tex.Crim.App. 1996) (quoting *Grayned*, 408 US at 109; *Kramer v. Price*, 712 F.2d 174, 177 (5th Cir. 1983)).

The "law must be sufficiently definite to avoid chilling protected expression" or be struck down. See *Grayned*, 408 US at 109.

Legislation falls short of this mandate when it "fails to provide a person of ordinary intelligence fair notice of what is prohibited." *FCC v. Fox TV Stations, Inc.*, 132 S.Ct. 2307, 2317, 183 LEd2d 234 (2012) (citing *Williams*, 553 U.S. at 304). See also *Kramer v. Price*, 712 F.2d 174, 174, 176 (5th Cir. 1983); *Smith v. Goguen*, 415 US 566, 574-8 (1974); *Connally v. General Const. Co.*, 269 US 385, 391 (1926); *Papachritou v. City of Jacksonville*, 405 U.S. 156, 162 (1972). "When a statute is capable of reaching First Amendment freedoms, the doctrine of vagueness demands a greater degree of specificity than in other contexts." *Kramer v. Price* at 175, 177; *Smith v. Goguen* at 573; *NAAACP v. Button*, 371 US 415, 432-3 (1963).

In Jamal *9 the act referred only to "conduct" that causes "a temporary or permanent state of mental anguish", but offered no guidance to courts in determining if a plaintiff was entitled

to relief, if an objective or subjective standard will be used, or what level of "anguish" will suffice. See Williams, 553 US at 306 (vague statutes include those which define prohibited conduct in terms such as "annoying" or "indecent", requiring "wholly subjective judgments without statutory definitions, narrowing context, or unsettled legal meanings" (citing *Reno v. ACLU*, 521 US 844, 870-71 & n.35, 117 S.Ct. 2329, 138 LEd2d 874 (1997); *Coates v. Cincinnati*, 402 US 611, 614, 91 S.Ct. 1686, 29 LEd2d 214 (1971))). A "statute is unconstitutionally vague when the standard of conduct it specifies is dependent on each complainant's sensitivity" *Kramer v. Price* at 178; See *Coates*.

The use of the term "includes" is also suspect, indicating further unspecified conduct is included. Jamal *9.

In the Disorderly Conduct rule "disruptive", "nuisance", and "disturb" are all evidence of unconstitutional vagueness. That the examples in the "includes" section of A) do not appear in any fashion to be related to its text further evidences its unknown scope.

As in the present case, the DOC takes advantage of this vague rule to harm inmates who have done nothing wrong.

Rule is unconstitutionally overbroad.

"Overbreadth concerns ... arise when a statute restricts more conduct than is necessary to accomplish its legitimate purpose. The Supreme Court has long held that courts may invalidate legislation restricting free speech when 'a substantial number of its applications are unconstitutional, judged in relation to the statute's

plainly legitimate sweep." Jamal *8 (quoting *United States v. Stevens*, 559 US 460, 473, 130 S.Ct. 1577, 176 LEd2d 435 (2010)).

"This Court has long recognized that a demonstrably overbroad statute or ordinance may deter the legitimate exercise of First Amendment rights." *Erznoznik v. City of Jacksonville*, 422 US 205, 216, 95 S.Ct. 2268, 45 LEd2d 125 (1975)

A statute is substantially overbroad if "it is unclear whether it regulates a substantial amount of protected speech." Williams, 553 US at 304 (citing *Reno v. ACLU*, 521 US 844, 870-74, 117 S.Ct. 2329, 138 LEd2d 874 (1997)).

"The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected speech merely because it resembles the latter. The Constitution requires the reverse." This rule reflects the judgment that "[t]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted[.]" *Ashcroft v. Free Speech Coal.*, 535 US 234, 255 (2002); *Broadrick v. Oklahoma*, 413 US 601, 612 (1973)

Challenged enactment need not be unconstitutional in all its applications to be found overbroad. See *Broadrick* at 612.

As in Jamal *9, the Disorderly Conduct rule is "boundless in its potential applications, encompassing in its scope virtually any expressive activity by any" inmate.

It is unclear what legitimate goals may have been intended with this rule, but it is clear from its text and the illegitimate ends it has been put to that it includes considerable unconstitutional applications.

"In the First Amendment context ... this court recognizes 'a second type of facial challenge', whereby a law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to

the statute's plainly legitimate sweep.'" Stevens, 559 US at 473.

Rule is subjective, content-based censorship.

Legislation restricting expression based on content is inherently suspect, and such enactments demand the highest level of judicial scrutiny. See *United States v. Alvarez*, 132 S.Ct. 2537, 2543, 183 LEd2d 574 (2012) (quoting *Ashcroft v. ACLU*, 535 US 564, 573, 122 S.Ct. 1700, 152 LEd2d 771 (2002)). Enactments regulating speech must be 1) necessary to serve 2) a compelling state interest and 3) be narrowly drawn (ie. employ the least restrictive means to achieve its goal and there must be a close nexus between the government's compelling interest and the restriction). See *Denver Area Educ. Telecomms. Consortium, Inc. v. FCC*, 492 US 115, 126 (1989).

A legislative proscription conditioned upon the impact an expression has on its listeners "is the essence of content-based regulation." *United States v. Playboy Entm't Grp.*, 529 US 803, 811-12, 120 S.Ct. 1878, 146 LEd2d 865 (2000); *Forsyth Cnty v. The Nationalist Movement*, 505 US 123, 134, 112 S.Ct. 2395, 120 LEd2d 101 (1992) ("[l]isteners' reaction to speech is not a content-neutral basis for regulation"); *Boos v. Barry*, 485 US 312, 321, 108 S.Ct. 1157, 99 LEd2d 333 (1988) (prohibition premised on "the direct impact that speech has on its listeners...must be considered content-based")

"content-based" laws "target speech based on its communicative content" and "the government's benign motive,

content-neutral justification, or lack of animus toward the ideas contained...cannot transform a facially content-based law into one that is content neutral" *Reed v. Town of Gilbert*, 135 S.Ct. 2218, 2226-7, 2228-31 (6/18/2015); *United States v. Williams*, 690 F.3d 1056, 1061 (8th Cir. 2012).

The Supreme Court has held that even when a law "generally functions as a regulation of conduct" it is nonetheless subject to strict scrutiny when "as applied to the plaintiffs[,] the conduct triggering coverage under the statute consists of communicating a message." *Holder v. Humanitarian Law Project*, 561 US 1, 27-28, 130 S.Ct. 2705, 177 LEd2d 355 (2010).

In Jamal, as with the Disorderly Conduct rule, the statute referred to "conduct". It was clearly intended to "inhibit expression based exclusively on content - in particular impact the content has on a listener, reader, or other recipient." Both A and B of Disorderly Conduct are likewise subjective and are one of the default charges used against inmates to ensure they will be punished whether an actual violation occurred or not. Staff may always claim conduct was "disruptive", "nuisance" or disturb[ing]", and who is to challenge their opinion? As in the present case, the hearing officer generally considers the report sufficient to convict regardless of its contents nor the evidence against it.

"the mere assertion of a content-neutral purpose" will not "be enough to save a law which, on its face, discriminates based on content" *TBS, Inc. v. FCC*, 512 US 622, 642, 114 S.Ct. 2445, 129 LEd2d 497 (1994).

As in Jamal, this rule singles out a distinct group and seeks to chill the exercise of their constitutional rights, as it has been employed against the Petitioner.

"Even the noblest governmental intentions cannot cure impermissible legislation when the United States Supreme Court has explicitly foreclosed the legislation's purpose." Jamal *7; see *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 US 105, 118, 112 S.Ct. 501, 116 LEd2d 476 (1991); Snyder, 131 S.Ct. at 1218 (even when expression "inflict[s] great pain...we cannot react...by punishing the speaker"). The "First Amendment protects against the Government; it does not leave us at the mercy of noblesse oblige." *United States v. Stevens*, 559 US 460, 474 (2010). The "First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chicago v. Mosley*, 408 US 92, 95 (1972).

Summary

Punishment for this "crime" deprived Petitioner of meaningful access to the courts for a month (lack of materials to prepare pleadings, denial of law library access, denial of access to my legal materials) contributed to the irreparable harm suffered by multiple pleadings (most notably his state 590 Post-Conviction Petition and US Supreme Court Certiorari Petition - which were both late as a direct result of the

inadequate access to resources) and harming many others (through the loss of legal books, years of research notes, and case law printouts; forcing multiple handwritten and unresearched pleadings; ensuring Petitioner lacked the funds to purchase legal materials or pay for copying services; etc). The harm extended his ability to challenge that very discipline.

Violation of First Amendment rights "for even minimal periods of time unquestionably constitutes irreparable injury." *Swartzwelder v. McNeilly*, 297 F.3d 228, 241 (3d Cir. 2002) (quoting *Elrod v. Burns*, 427 US 347, 373, 96 S.Ct. 2673, 49 LED2d 547 (1976)). Unlike in Jamal (where victims of the unconstitutional law were merely harmed by the chilling effect caused by fear of the law), here the DOC has often imposed the unconstitutional rule on inmates. The rule is employed as a tool to impede constitutional rights, to harass and retaliate against inmates for the exercise of those rights. It has served all 3 purposes against the Petitioner.

"[T]he enforcement of an unconstitutional law vindicates no public interest." *ACLU v. Ashcroft*, 322 F.3d 240, 151 n.11 (3d Cir. 2003).

"The First Amendment does not evanesce at any gate, and its enduring guarantee of freedom of speech subsumes the right to express conduct that some may find offensive." Jamal *11.

Minnesota's own laws have faced similar challenges. See *Baribeau v. City of Minneapolis*, 596 F.3d 465 (8th Cir. 2010); *In re Welfare of S.L.J.*, 263 N.W.2d 412 (Minn. 1978); *State v.*

Machholz, 574 N.W.2d 415 (Minn. 1998). As noted in the preceding pages, the Courts have been clear that these protections extend to inmates.

I urge this Court to hold prison rules to these Constitutional restrictions to protect those few rights maintained by inmates.

NOTE: I had more arguments, but the Page Count limit considerably restricts my ability to present them.

8. Was the Discipline Retaliatory?

To make a *prima facie* case of retaliatory discipline you must show: 1) constitutionally protected rights were exercised, 2) prison officials disciplined prisoner, and 3) the exercise of rights were the motivation for the discipline. See *Haynes v. Stephenson*, 588 F.3d 1152 (8th Cir. 2009).

The District Judge stated "An offender cannot prove the third requirement if the offender's actions violated a legitimate prison regulation that maintains the security of the facility." (#12 of 2/17/2016 Order). Though the findings were rather incoherent, I am guessing he is claiming this was the case. Again his findings are clearly erroneous and contrary to the law.

"Prison officials do not have the discretion to punish an inmate for exercising his First Amendment rights" *Cornell v. Woods*, 69 F.3d 1383 (8th Cir. 1995).

Charge was pretext for retaliation.

A claimed justification for discipline is unconvincing if it is just a pretext for retaliation. *Orebaugh v. Caspari*, 910 F.2d 526 (8th Cir. 1990) (referencing *Womack v. Munson*, 619 F.2d 1292, 1296 (8th Cir. 1980)). See also *Schacht v. Wis. Dept. of Corr.*, 175 F.3d 497, 499 (7th Cir. 1999) ("sham procedures do not satisfy due process"); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 US 123, 164 (1951) (Hearing "must be a real one, not a sham or a pretense"); *Williams v. Norris*, 277 Fed. Appx. 647 (8th Cir. 2008) (same). In the present case both the IR and the Hearing Officer's comments indicate the discipline was merely a pretext for retaliation. As in *Haynes v. Stephenson*, 588 F.3d 1152, 1156-7 (8th Cir. 2009), in Petitioner's case the very IR clearly demonstrates that it was filed in response to Appellant's exercise of his rights of freedom of speech and access to the courts - as laid out in his Petition for Writ of Habeas corpus.

Retaliation claim was more than "conclusory allegations".

Hearing Officer's statements to Petitioner provide ample evidence discipline occurred due to Petitioner's exercise of protected rights. Other statements were from witnesses as well. Proximate cause is sufficient to survive dismissal of a retaliation claim. *Orebaugh*. In this case the required causal connection is present for multiple instances of retaliation,

including the discipline. The same exercise (seeking perjury charges against Michels) resulted in a transfer, further evidence of culture of retaliatory behavior that continues.

No legitimate regulation was involved.

With the rule in question having been proven unconstitutional then no "legitimate prison regulation" was involved. Rule was merely a tool for arbitrary and capricious punishment of inmates. "States may not disregard a controlling, federal constitutional command in their own courts." *Montgomery v. Louisiana*, 2016 WL 280758 (1/27/2016). "When a state enforces a proscription or penalty barred by the Federal Constitution, the resulting conviction or sentence is, by definition, unlawful." Id.

Petitioner was innocent of the charges.

Appellant did not violate the rule in question, even vague and overbroad as it is. The actions (or lack thereof) of the guards at each of the alleged incidents demonstrates that the "security of the facility" was never in danger. Had Appellant at any point gotten "extremely angry" or "aggressive" then surely the guards who were only a few feet away would have acted. Surely too they would have been witnesses to the incidents. Instead just the librarian and Jeanne Michels (who was not even there for the 1st three "incidents") are listed, the two people with the greatest motives to retaliate. The IR

clearly shows that Appellant was talking, that they were not "fighting words" and that his speech focused solely on access to the courts issues. Jeanne Michels in particular (Sadie Jenkin's boss) sought to retaliate against this and to impede it, both due to the Suit against her and the perjury she committed (both of which she has indeed significantly impeded).

Summary

1) Petitioner exercised his constitutionally protected rights (freedom of speech, privilege of habeas corpus, right to petition for redress, due process (in seeking perjury of Michels to be addressed)). 2) officials took adverse action (discipline). 3) Exercise was motivation for discipline (as shown by proximate timing, and the hearing officer's words). Thus a *prima facie* case of retaliatory discipline has been made. See *Haynes v. Stephenson*, 588 F.3d 1152 (8th Cir. 2009).

State District Court quoted standard for retaliatory discipline but failed to address the evidence that it was in fact retaliatory and that Petitioner did not violate the rule in question. Decision was both contrary to Supreme Court precedent and involved unreasonable application of facts.

REASONS FOR GRANTING THE PETITION

I am not sure what is expected of this section above what the preceding one contained, but I will try. Much of this I believe was in the last section so I will try not to be repetitive.

S.Ct.R. 10 states a non-exhaustive list of reasons for which review may be granted. This list includes:

- (c) United States court of appeals decided a federal question [1] that has not been, but should be settled by this Court, or [2] in a way that conflicts with relevant decisions of this court.

It further states the list is "neither controlling nor fully measur[es] the Court's discretion".

1. Should a COA have been issued?

I believe the arguments herein have shown that debatable constitutional issues exist that warranted the granting of a COA. Further, it is apparent that there is a split in the courts over these issues, and that there are matters that should be settled by this court. Each discussed in each issue.

2. Do inmates lose all constitutional rights merely because actions were taken in the guise of prison discipline no matter how pretextual?

The rulings of the lower courts have the result of depriving inmates in Minnesota of all their Constitutional rights so long as the deprivations are taken in the guise of prison discipline. This conflicts with the decisions of this court regarding the rights retained by prisoners (S.Ct.R.10(c)(2)). This is an important matter that deserves the attention of this court. The Constitution has eroded

substantially. Failure to rule on this issue leaves it as a legal fact despite this court's rulings to the contrary.

3. Can prison officials prevent any redress for violation of those constitutional rights maintained by inmates merely by doing so under the pretext of prison discipline and then ensuring that they cannot file for relief while in SEG?

The rulings of the lower courts have the result of depriving inmates in Minnesota of all their Constitutional rights so long as the deprivations are taken in the guise of prison discipline. This conflicts with the decisions of this court regarding the rights retained by prisoners (S.Ct.R.10(c)(2)). This is an important matter that deserves the attention of this court. The Constitution has eroded substantially. Failure to rule on this issue leaves it as a legal fact despite this court's rulings to the contrary.

4. Should *Sandin v. Conner* be re-evaluated?

This court has held that precedent is not insurmountable, particularly where Constitutional issues are involved.

"adherence to precedent is not rigidly required in constitutional cases" *Arizona v. Rumsey*, 467 US 203, 81 L.Ed.2d 164, 104 S.Ct. 2305 (1984)

"Rule of stare decisis is not inexorable command and certainly is not such in every constitutional case" *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US 833 (1992) (citation omitted).

Whatever this Court's intentions where in *Sandin*, the harm it has caused to the Constitution and the malicious behavior it has encouraged in prison personnel demand that it be re-evaluated. Officials now have discretion unfettered by the Constitution. This is a matter of national significance that I urge this Court to hear.

Staff do not even bother to provide petitioner with rule books anymore when they charge him with alleged violations.

5. Did the combination of the "in custody" requirement, Court Doctrines regarding Mootness, the Exhaustion Requirement and Heck's favorable determination requirement act in concert to unconstitutionally suspend the privilege of writ of habeas corpus and right to petition the government for redress for a large class of claims (virtually all claims resulting from unconstitutional prison discipline) regardless of how blatantly the Constitution was violated, what the lasting effects are or how likely the violations are to be repeated?

Each of these doctrines by itself restricts a constitutional right, but together they amount to a complete suspension of the privilege of habeas corpus and right to petition which render all other rights unenforceable. This is a matter of national importance that I urge this court to clarify.

6. Was the Petition for Writ of Habeas corpus moot?

This should be heard for a number of reasons. First, the interpretation of mootness in this case encourages prisons to ensure that petitions are mooted to ensure that it is impossible

to enforce constitutional rights. This has occurred over and over and will continue to occur if this court does not act.

Second, it appears to be a split on mootness law over whether their actions can render a petition moot.

7. Do Constitutional Restrictions apply to Prison Disciplinary Rules?

Though discussed in the context of a specific rule that has been used over and over to punish protected exercises, the core of this is more whether any Constitutional restrictions can be applied to disciplinary rules. I have made a case that the rule in question is unconstitutional on multiple levels. It is an important issue of national concern for this court to rule on whether prison disciplinary rules can be held to constitutional standards.

Further, there appears a split on whether such is the case.

As with the other issues, failure to rule on this is to say that arbitrary action by staff is acceptable, as is punishment for exercise of violation of constitutional rights, suppression of constitutional rights and that inmates have no right to an opportunity to avoid prohibited conduct.

8. Was the Discipline Retaliatory?

By staff's own statements the discipline was retaliatory. By deciding to hear this question the court is basically delivering

a decision on whether retaliation is permissible. Failure to rule on the issue says that it is, atleast within Minnesota. But this is a matter of national significance that this court needs to rule on.

CONCLUSION

Zinermon v. Burch, 494 US 113, 136 (1990) is highly instructive. As there, Plaintiff "seeks to hold state officials accountable for their abuse of their broadly delegated, uncircumscribed power to effect the deprivation at issue". A state cannot escape liability when it gives "officials broad power and little guidance ... when those officials fail to provide constitutionally required procedural safeguards to a person whom they deprive of liberty". *Id* at 135. See also *Mackey v. Montrym*, 443 US 1,21 (1979) ("When deprivation is irreversible" the need for some sort of pre-deprivation process "is all the more important."); *Logan v. Zimmerman Brush Co.*, 455 US 422, 436 (1982).

Prison officials exercise exactly this sort of broad power, unrestricted by guidelines or meaningful oversight. Deprivations not only affect an inmate's liberty and property, but generally affect his access to the courts as well. It is power wielded in an arbitrary and capricious manner and generally used to specifically target inmates the staff member does not like, such as those who exercise their rights.

Petitioner therefore respectfully asks this court to grant his petition for a writ of certiorari.

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Respectfully submitted,



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