18-9753

IN THE
SUPREME COURT OF THE UNITED STATES
NO. _____

JASON BROOKS
Petitioner,

-vs-

PHIL WEISER, Colorado Attorney General
RICK RAEMISCH, Executive Director of the Colorado Department of Corrections,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATED COURT OF APPEALS
FOR THE TENTH CIRCUIT

Jason Brooks #150014 Pro Se
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P.O. Box 6000
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QUESTIONS PRESENTED

(1) Whether a federal district court's adoption of a Department of Corrections Administrative Regulation and implementing it in D.C.COLO. L. Civ. Rule 5.1(c), which limits only "unrepresented prisoners" 42 U.S.C. § 1983 complaints to 30 pages, violates the First and Fourteenth Amendments to the United States Constitution?

(2) Whether the Tenth Circuits heightened pleading standard for screening of prisoners complaints pursuant to 28 U.S.C. § 1915(e) is too burdensome, untenable, and/or unconstitutional?

(3) Whether the mutually enforcing effect of this heightened pleading standard, coupled with the arbitrary 30 page limit are unconstitutional as applied?

(4) Whether an inmate's filing of claims against prison officials and helping others to do so was protected activity under the First Amendment and/or whether an exception is required to the general rule that an inmate does not have standing to assert another inmates rights or interest, when without such exception the third party inmate's rights or interest cannot otherwise be preserved?

(5) Whether the holding in *Lewis v. Casey*, 518 U.S. 343 (1996) needs to be revisited due to federal courts interpretations that have emboldened Department of Corrections to carefully craft prison policies intended on hindering, deterring, and obstructing prisoners efforts to litigate complaints after their filing?

(6) Whether the Tenth Circuit improperly assed two strikes against Petitioner for his allegedly filing a single frivolous complaint and whether the finding explicitly contradicts the Tenth Circuits own holding in *Jennings v. Natrona Cty. Det. Ctr. Med. Facility*, 175 F.3d 775, 780 (10th Cir. 1999)?

PARTIES

The petitioner is Jason Brooks, a prisoner being held at the Sterling Correctional Facility in Sterling, Colorado. The respondents are Phil Weiser, Attorney General of the State of Colorado, and Rick Raemisch, Executive Director of the Colorado Department of Corrections.

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The decision of the United States Court of Appeals for the Tenth Circuit is unpublished. It is cited at *Brooks v. Colo. Dep't of Corr.*, 2019 U.S. App. LEXIS 3538 (10th Cir. 2019) and a copy is attached as Appendix A to this petition. The order of the Colorado District Court denying Petitioners 42 U.S.C § 1983 is unreported and not cited anywhere. A copy is attached as Appendix B to this petition.

The order of the Tenth Circuits denial of Petitioners interlocutory appeal of a preliminary injunction request in this case is unpublished and reported at *Brooks v. Colo. Dep't of Corr.*, 730 Fed. Appx. 628 (10th Cir. 2018). A copy is attached as Appendix C to this petition. The Order of the Colorado District Court Directing Plaintiff to File an Amended Complaint is unreported and not cited anywhere. A copy is attached as Appendix D to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on February 5, 2019. An order denying a petition for rehearing was entered on March 15, 2019, and a copy of that order is attached as Appendix E to this petition. Jurisdiction is conferred by 28 U. S. C. § 1254(1) and the ability for GVR (if necessary) is conferred by 28 U.S.C. § 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment I to the United States Constitution, which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In addition to Amendment XIV to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

These Amendments are Enforced by Title 42, Section 1983, United States Code:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at 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.

STATEMENT OF THE CASE

The unending retaliation Defendants perpetrated against Petitioner for exercising his First Amendment rights was ultimately made successful and secure by the Colorado Districts Courts egregious abuse of discretion in mandating Petitioner to fie "an amended complaint no longer than thirty pages," which resultantly forced Petitioner to file a defective complaint, abandon numerous claims, and eliminate six Defendants Petitioner wished to adjudicate claims against. The district court not only denied ordering the Colorado Department of Corrections ("CDOC") to allow Petitioner an ability to print out his Complaint a *single instance*, but went so far as to adopt CDOC's 30 page printing limit on prisoners section 1983 complaints (at the Colorado Attorney General's request) by implementing D. Colo. Civ. R. 5.1(c), which was made effective December 1, 2014. Due to these obstructions, Petitioner was only able to submit 29 pages of his 72 page Complaint, which he was requesting an ability to print a complete copy of off of CDOC law library computers—at his own expense; however, the district court denied Petitioner's request, violating its own holding in *Johnson v. Parke*, 642 F.2d 377 (10th Cir. 1981), and forced Brooks to file a completely different thirty page Verified Amended Complaint ("VC"). This egregious order required

Petitioner to abandon claims against the State of Colorado, William Campbell, Michael Bellipanni, Julie Hoskins, Timothy Kerns, Susan Tiona, Janet Smith, and Physician Health Partners. These orders also limited the amount of information that Petitioner could present to the court, prevented him from being able to comply with federal rules pleading requirements, burdened Plaintiff with untenable pleading mandates, violated the First and Fourteenth Amendments of the United States Constitution, brings into question the independency of the judiciary in the District of Colorado, violated the screening requirements in 28 U.S.C. § 1915, tilted the scales of justice against Petitioner, and caused irreparable injury to Brooks. Despite Petitioner specifically warning all that occurred was *imminent*, the Tenth Circuit has incorrectly interpreted Lewis v. Casey, 518 U.S. 343 (1996) to require actual injury (while ignoring *imminent* injury) and denied Brooks' Preliminary Injunction Request to lift the exact impediments that ultimately prevented Petitioner from being able to "present [his] grievances to the courts." Brooks v. Colo. Dep't of Corr., 730 Fed. Appx. at 631(*citing* Lewis, 518 U.S. at 360). As such, "[i]t is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm." Lewis, 518 U.S. at 349-350.

The district court's justification for dismissing all of Petitioner's claims were premised upon Brooks not being able to submit a complete copy of his Complaint

due to the dictates of D.C.COLO. L. Civ. R. 5.1(c), therefore making it impossible to comply with the federal pleading rules. The Tenth Circuit went on to uphold this unconstitutional 30 page limit by somehow reviewing "Brooks' intended claims," *Brooks*, 2019 U.S. App. LEXIS 3538 at *7, without being able to read Brooks' complete complaint. The Tenth Circuit determined Brooks' 30-page second amended complaint still contained "many repetitive and/or unnecessary allegations that could have been omitted to make room for other, more relevant factual allegations," *id.* at *7-8, while simultaneously requiring Brooks to pay "careful attention to particulars, especially in lawsuits involving multiple defendants. It is particularly important that plaintiff's make clear exactly *who* is alleged to have done *what* to *whom*...as distinguished from collective allegations." (*citing Pahls v. Thomas*, 718 F.3d 1210, 1225-26 (10th Cir. 2013). These two findings, subsequently, were at irreconcilable odds and unconstitutionally burdensome at the screening of the complaint stage of the proceeding pursuant to 28 U.S.C. § 1915(e). The Tenth Circuit asserts that its summary judgment standard of review at the simple screening of the complaint pursuant to 28 U.S.C. § 1915(e) "is the standard of review we apply to determine the sufficiency of all pleadings." *Id.* at *11 n.6; however, this standard is in direct conflict with this Court's decision in *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 513-515 (2002).

The district court further mandated that Brooks somehow pay "careful attention to particulars," against seventeen defendants, in thirty pages or less, which was a requirement that was simply insurmountable to complete. The Colorado District Court obstructed Brooks' lawsuit by acting as an advocate of the CDOC, in which the Colorado District Court has gone so far as to impose Defendant CDOC's arbitrary thirty page limit on 1983 Complaints by implementing D.C.COLO. L. Civ. R. 5.1(c), obstructing all claims Petitioner wished to bring forward in his Complaint and maliciously preventing Brooks an ability to present his grievances to the Court, in direct violation of this Court's holding in *Lewis*.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the First and Fourteenth Amendments to the United States Constitution. The district court had jurisdiction under the general federal jurisdiction conferred by 28 U.S.C. § 1331.

REASONS FOR GRANTING THE WRIT

Title 28 U.S.C. § 2106 appears on its face to confer upon this Court a broad power to GVR: "The Supreme Court or any other court of appellate jurisdiction may . . . vacate . . . any judgment, decree, or order of a court lawfully brought

before it for review, and may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances." *Lawrence v. Chater*, 516 U.S. 163, 166 (1996). "In an appropriate case, a GVR order conserves the scarce resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court's insight before we rule on the merits, and alleviates the "potential for unequal treatment" that is inherent in our inability to grant plenary review of all pending cases raising similar issues, *see United States v. Johnson*, 457 U.S. 537, 556, n. 16, 73 L. Ed. 2d 202, 102 S. Ct. 2579 (1982)." *Lawrence*, 516 U.S. at 167.

A. Conflicts with decisions of Other Courts.

(I) 30 page limit and Printing Policy

As the Tenth Circuit acknowledged, "Brooks cites no authority for the proposition that this [30] page limit violated his constitutional rights and *we are aware of none*." *Brooks*, 2019 U.S. App. LEXIS 3538 at *7. This Court should easily dispose of this issue by declaring it is flatly unconstitutional to limit "only unrepresented" 1983 complaints to thirty pages or less. Accordingly, this Court should declare the mandates of D.C.COLO. L. Civ. R. 5.1(c) unconstitutional and remand or GVR the case back to the district court to allow Brooks an ability to file a complete copy of his complaint for review by the district court. Furthermore, this

Court has steadfastly declared "[o]rdinary pleading rules are not meant to impose a great burden upon a plaintiff." Swierkiewicz, 534 U.S. at 513-515. The Tenth Circuit stating that Brooks could have omitted some allegations to make room for other, more relevant factual allegations," Brooks, 2019 U.S. App. LEXIS 3538 at *7-8, just to comply with the unconstitutional 30 page limit is the exact type of encumbrance this Court has warned against. The Colorado District Court has imposed extremely onerous burdens upon *pro se* incarcerated Plaintiffs in simply screening complaints in the District of Colorado for years and unbelievably required Brooks to somehow provide "fair notice of what a plaintiff's claim is and the ground upon which it rests," against seventeen defendants, in under thirty pages or less, while also mandating he be clear and concise...??? Such mandate, however, was a factual impossibility and has resulted in obstruction of Brooks' access to the Courts.

The district court's obdurate refusal to order the CDOC to allow Brooks an ability to print a *single copy* of his complete complaint, at his own expense, is also in direct conflict with the Tenth Circuits own holding in Johnson v. Parke, 642 F.2d 377 (10th Cir. 1981). In *Johnson* the Tenth Circuit found that a prison policy that allowed "one copy and one copy only" of materials to be sent to the courts violated the Constitution. *Id.* at 379. The court noted "allowing inmates to pay for and receive photocopies of the legal materials required by the courts is part of the

'meaningful access' to the courts that inmates are constitutionally entitled to." *Id.* (citing *Bounds v. Smith*, 430 U.S. 817, 823 (1977)). The Tenth Circuit also explained that it would be "needlessly draconian" to force an inmate to hand copy the court documents when photocopy equipment is available and the inmate is willing to pay. *Id.* Brooks, however, was not even permitted to make "one copy and one copy only" of his 72 page Complaint that was completed on CDOC law library computers, nor was he permitted to even hand copy his complaint, thus preventing him from obtaining *a single copy* of his complete Complaint. Strangely, however, the Tenth Circuit noted *Johnson* in upholding the denial of Brooks' preliminary injunction request in this case, but insufferably went on to posture that Brooks' assertions that the printing and copying restriction that was preventing him the ability to print *a single copy* of the Complaint was somehow akin to Brooks "requesting unlimited access to photocopying machinery." *Brooks*, 730 Fed. Appx. at 632. Brooks, however, never made such an assertion that he was entitled to "unlimited access to photocopying machinery," nor would he ever attempt to make such a baseless claim. Brooks was requesting an injunction to overcome CDOC's arbitrary printing policies to print a *single* copy of his Complaint, as the policy has been carefully crafted (with the cooperation of the Colorado Attorney General) for the express reason of making it as difficult as possible for inmates to present all their grievances to the Courts, therefore limiting the amount of liability the CDOC,

its agents, principals, and employees can be held accountable for by *pro se* incarcerated inmates.

Contrary to the district court's manufacturing some imagined theory that Brooks was complaining about his ability to "effectively litigate," he was arguing that "prison officials may not *affirmatively* hinder a prisoner's efforts to construct a non-frivolous appeal or claim." Green v. Johnson, 977 F.2d 1383, 1389 (10th Cir. 1992). "Any deliberate impediment to access [to the courts], *even a delay of access*, may constitute a constitutional deprivation." *Id.* (internal quotation marks and citation omitted). CDOC's printing policies and the district courts zealous defense of these *per se* unconstitutional policies clearly violated Brooks' First Amendment rights by preventing him the ability to "present [his] grievances to the courts." Lewis, 518 U.S. at 360. This is an undisputed fact and constitutes irreparable injury, which the Tenth Circuit ignored.

(II) Requirements in Screening and Dismissal of a Complaint pursuant to 28 U.S.C. § 1915

The district court argued that Rule 8(a) of the Federal Rules of Civil Procedure "underscore the emphasis placed on clarity and brevity," while simultaneously stressing "the need for careful attention to particulars." Apx. D, pg. 3-6. Such requirements, however, are at irreconcilable odds. The district court first

concluded that the "particulars" Brooks prepared in his Verified Prisoner Complaint was largely "redundant and unnecessary background information." Apx. D, pg. 4. Contrariwise, if that information was, in fact, redundant and unnecessary, then it is clear the district court would make it impossible for Plaintiff to pay careful attention to "particulars" because the Court would reject those particulars as "redundant and unnecessary." The district court then underscored the emphasis placed in clarity and brevity pursuant to Rule 8(a) and (d)(1), but went on to require Brooks to somehow *briefly* "make clear exactly *who* is alleged to have done *what* to *whom*," citing the holding in Pahls v. Thomas, supra. Apx. D, pg. 6. The Courts tortured rational makes clear to any lay person that no matter what Brooks plead or how it plead it, the district court would have rejected Plaintiff's arguments due to the district courts obvious animus towards Brooks, which an trier of fact could easily deduce. The district court in this case took on the responsibility of serving as CDOC's defense attorney and prevented this case from even getting started, violating the clear dictates of the Codes of Judicial Conduct

Even after the Court made its Order forcing Plaintiff to limit his Complaint to no more than thirty pages (*see* Apx. D), Brooks rearranged all his arguments, was forced to abandon numerous claims and defendants, and complied with the Courts erroneous request. Even so, Brooks Complaint still provided Defendants with "fair notice of what plaintiff's claim is and the grounds upon which it rests."

Conley v. Gibson, 355 U.S. 47, 47 (1957); Fed. R. Civ. P. 8(a)(2). The pleading standard Rule 8 announces *does not* require detailed factual allegations—especially at the inception of the case—and never has a federal district court denied a complaint because there was too much information in it. This Court has stated that "[t]he Federal Rules *reject* the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principal that *the purpose of pleading is to facilitate a proper decision on the merits.* Conley, 355 U.S. at 48 (*citing* Maty v. Grasselli Chemical Co., 303 U.S. 197); however, the Colorado district court has been routinely holding *pro se* inmates to untenable pleading standards at the simple screening of the Complaint, before the Defendants are served process, prior to an prisoner Plaintiff having any knowledge of the depth or breadth of their plausible claims. Prior to discovery an incarcerated inmate would never be privy to the information litigation would mandate the CDOC to disclose and the CDOC purposely prevents such information being acquired until litigation. Discovery allows a Plaintiff the ability to then describe "*who* is alleged to have done *what* to *whom*" by the time summary judgment motions are filed. The district courts repeatedly citing Pahls v. Thomas, supra, substantiates Brooks' argument that the district court is abusing its discretion in requiring burdensome, heightened pleading standards before an inmates' case is even permitted to be served on the opposing party. *See* Apx. D, pg. 5-6. Couple these facts with the

district court itself restricting the Complaint to thirty pages and this entire case becomes an abject atrocity that simply shocks the conscience. *Compare with* Wilhelm v. Rotman, 680 F.3d 1113, 1123 (9th Cir. 2012)("low threshold" for proceeding past the *sua sponte* screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b)).

At the screening of the Complaint stage pursuant to 28 U.S.C. § 1915, this Court should clarify what pleading standard is required at the screening of the complaint for a *pro se*, incarcerated, indigent Plaintiff. This Court should also announce whether or not dismissals pursuant to 28 U.S.C. § 1915, without prior notice or an opportunity to respond first, should be permitted. While this Court has held that in connection with the PLRA's administrative exhaustion requirement, that the screening requirement "does *NOT*—explicitly or implicitly—*justify* deviating from the usual procedural practice beyond the departures specified by the PLRA itself," Jones v. Bock, 549 U.S 199, 214 (2007), since a plaintiff's ability to amend the complaint freely is part of the "usual procedural practice," *see* Rule 15(a)(2), Fed. R. Civ. P., it would appear that the basis for district courts being able to dismiss cases *sua sponte* should not be permitted without a plaintiff's being given notice or an opportunity to respond first. This Court, once again, has repeatedly conceded that ordinary pleadings rules are not meant to impose a great burden on a plaintiff. *See* Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 347

(2005)(*citing* Swierkiewicz v. Sorema N.A., supra). "When viable complaint is filed *in forma pauperis*, pauper *must be treated like all other litigants* in decision to dismiss, otherwise scales of justice would be tilted against those who by coincidence of life are poor." McTeague v. Sosnowski, 617 F.2d 1016, 1019 (3rd Cir. 1980). Section 1915(d) states that "the court . . . may dismiss the case if . . . satisfied that the action is frivolous or malicious. This provision does not, however, permit a cursory treatment of meritorious complaints." *Id.* Accordingly, the Third Circuits holding should be adopted by this Court.

Furthermore, the *in forma pauperis* statute, 28 U.S.C. § 1915, which provided the basis of the district courts entire dismissal in this case, "is designed to ensure that indigent litigants have *meaningful* access to the federal courts." Neitzke v. Williams, 490 U.S. 319, 324 (1989) (emphasis added) (*citing* Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 342-43 (1948)). The district court's dismissal of the complaint due to the unconstitutional 30 page limit, coupled with the untenable pleading requirements, has clearly violated Brooks' "meaningful access" to the federal courts because, contrary to Tenth Circuits rational, Brooks Complaint was not frivolous, nor did he seek damages from a defendant whom was immune from such relief under 28 U.S. C. § 1915 (e)(2)(B)(i) & (ii).

Finally, at the time § 1915 was enacted, Congress recognized that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying

litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." Denton v. Hernandez, 504 U.S. 25, 31(1992) (internal quotation marks omitted) (quoting Neitzke, 490 U.S. at 324). It was also clear that the absence of a cost barrier is the primary reason indigent litigants do not refrain from filing frivolous lawsuits. *See, e.g.*, Zatko v. California, 502 U.S. 16, 16-17 (1991) (per curiam) ("*In forma pauperis* petitioners lack the financial disincentives—filing fees and attorney's fees—that help to deter other litigants from filing frivolous petitions[.]"); In re Amendment to Rule 39, 500 U.S. 13, 14 (1991) (per curiam) (noting lack of economic disincentives and amending Supreme Court Rule 39 so that the Court can deny *in forma pauperis* status to those who submit "frivolous or malicious" filings); however, this cost barrier was not intended to discourage, impeded, or deter good faith litigation undertaken by an indigent petitioner, which has been a strategy adopted by the Colorado district court in order to discourage Brooks, and other *pro se* indigent prisoners, from pursing litigation against the CDOC.

Congress could have never imagined that judges in the federal courts would abuse § 1915 as a basis to impose untenable pleading requirements upon an indigent petitioner, nor deter indigent petitioners from pursing good faith litigation, or obstruct an indigent petitioners access to the courts. What the district court did by unethically dismissing this case upon an unconstitutional 30 page limit is

essentially fine Brooks $505 by mandating he appeal the district courts revolting abuse of discretion in order to simply begin the lawsuit. "An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous *without any factual development* is to disregard the age-old insight that many allegations might be 'strange, but true; for truth is always strange, Stranger than fiction.' Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, & W. Pratt eds. 1977)." Denton v. Hernandez, 504 U.S. at 33. Brooks' claims, however, were not at all "strange," nor were they frivolous or malicious. The Tenth Circuit's decision in this case was one made in bad faith and dilatory motive, is unsubstantiated, a tortured application of law, and should be actionable in and of itself. "Of what avail is it to the individual to arm him with a panoply of constitutional rights if, when he seeks to vindicate them, the courtroom door can be hermetically sealed against him by a functionary who, by refusal or neglect, impedes the filing of his papers? McCray v. Maryland, 456 F.2d 1, 6 (4th Cir. 1972). The judges whom ruled on this case were functionaries whom, by refusal or neglect, have hermetically sealed Brooks' access to the Courts by mandating he spend $855 to simply try beginning this action against the CDOC, which is an egregious, malicious abuse of authority. Section 1915 is being routinely abused by judges in the Colorado District Court in

order to intentionally discourage *pro se* incarcerated inmates from pursuing good faith litigation and should not be tolerated under any circumstance.

(III) Whether an inmate's filing of claims against prison officials and helping others to do so was protected activity under the First Amendment?

As the Tenth Circuit noted, "[t]o the extent Scott v. Coughlin, 344 F.3d 282, 288 (2d Cir. 2003), cited by Brooks, supports this proposition, it is contrary to the governing law in this circuit." Brooks, 2019 U.S. App. LEXIS 3538 at *15 n.9 (*citing* Smith v. Maschner, 899 F.2d 940, 950 (10th Cir. 1990)). The holding in *Smith*, however, does not seem to be at odds with *Scott*. In fact, the Tenth Circuit in Smith clarified the following:

> "Litigation undertaken in good faith by a prisoner motivated to bring about social change and protect constitutional rights in the prison is a 'form of political expression' and 'political association' much as the Supreme Court has held litigation to be for certain organizations outside the prison setting. A properly stated first amendment claim by an inmate *does not fail simply because the allegedly protected activities were conducted on behalf of others*. The right of free expression is cherished for its force as an agent of social change and not only as a right of self-interested individuals." Smith, 899 F.2d at 950."

The Court also held that "[p]rison inmates do not possess the right to a particular prisoner's help in preparing their legal materials, *so long as prison officials make other assistance available. See* Ramos v. Lamm, 639 F.2d 559, 583 (10th Cir. 1980) (inmates have no right to particular type of legal assistance), *cert. denied*, 450 U.S. 1041, 68 L. Ed. 2d 239, 101 S. Ct. 1759 (1981); *cf.* Johnson v. Avery, 393 U.S. 483, 490 (1969)(prison may prohibit inmates from giving legal assistance *if reasonable alternative available*)." Smith v. Maschner, 899 F.2d at 950. Brooks, however, alleged that the CDOC does *NOT* provide reasonable forms of assistance to inmates in the preparation of filing meaningful legal papers, which ultimately *forces* inmates to get help from other inmates if they cannot access the courts on their own accord. This Court has explicitly and unambiguously stated that "[u]nless and until a state provides some *reasonable* alternative to assist inmates in the preparation of petitions for postconviction relief, it *may not validly* ***enforce*** a prison regulation barring inmates from furnishing such assistance to other prisoners." Johnson, 393 U.S. at 490-491 (LEdHN[9]). Brooks was written up and physically punished for helping his friend Jamie Valdiviezo-perea by the Defendants, whom have no constitutional authority to ***enforce*** any of their arbitrary policies that prevent inmates in the CDOC from helping one another since the CDOC provides *no* reasonable forms of *assistance* to inmates wishing to challenge their convictions or conditions of confinement. Brooks allegations,

therefore, were sufficiently plead because, as a matter of law, Brooks could not be written-up for his conduct "jailhouse lawyering" due to Brooks' allegations that the CDOC *does not* provide any reasonable assistance to inmates, in violation in the holding in Bounds v. Smith, 430 U.S. 817, 828 (1977), as well as imposing arbitrary policies that cannot be enforced pursuant to the unambiguous clarification by this Court in Johnson v. Avery, supra. These precedents substantiates the merit of all Brooks' claims, as they clearly had merit and were plausible.

The concurring opinion by Justice Douglas in *Avery* describes unconditionally "[t]he plight of a man in prison may...be even more acute than the plight of a person on the outside" and explains perfectly "the demand for legal counsel in prison is heavy, the supply is light." *Id.* at 492-493. This opinion outlines the vital importance of allowing inmates an ability to access the courts, while *eliminating* any barriers that prevents inmates' *from helping one another.* "Where government fails to provide the prison with the legal counsel it demands, the prison generates its own. In a community where illiteracy and mental deficiency is notoriously high, it is not enough to ask the prisoner to be his own lawyer. Without the assistance of fellow prisoners, some meritorious claims would never see the light of a courtroom. In cases where that assistance succeeds, *it speaks for itself.* And even in cases where it fails, it may provide a *necessary* medium of expression." *Id.* at 496. Brooks' pleadings spoke for themselves

succinctly and sufficiently. The basis of each and every claim raised in Petitioner's Complaint were meritorious and cannot be rebutted by a single fact actually alleged. This Court should announce that Brooks has a constitutional right to express his condemnation of CDOC policies, which became the factual predicate for this entire lawsuit, and should be constitutionally permitted to help other inmates in the CDOC *without interference*, unless and until the CDOC proves it does—in fact—actually provide "reasonable forms of assistance."

The distinction of whether or not Brooks has a constitutional right to have legal standing to help other inmates was inconsequential at the screening of his Complaint because "[a] properly stated first amendment claim by an inmate *does not fail* simply because the allegedly protected activities *were conducted on behalf of others*." Smith, 899 F.2d at 950; Scott v. Coughling, 344 F.3d at 287-88. It is undisputed, therefore, that Brooks' accessing the courts—whether on his own behalf or others—is completely immaterial to the heartbeat of Brooks' claim because he is still exercising *his* First Amendment rights while "jailhouse lawyering" (i.e. helping other inmates). It appears that federal courts have convoluted the term "jailhouse lawyering" to somehow infer that inmates helping one another while in prison is akin to a belief that jailhouse lawyers are contesting that they have "standing" to file motions on other inmates' behalf. Brooks, however, is not asserting he has standing to represent other inmates in litigation, he

is simply asserting he has constitutional protections in exercising *his* First Amendment rights, which obviously e*xtends to helping his fellow inmates seek legal redress*. This Court should acknowledge this differentiation and announce that "jailhouse lawyering" is just that—inmates exercising their own First Amendment rights—and has nothing to do with actual standing. This Court should also address the fact that the CDOC could not have validly enforced any of their prison regulation barring inmates from furnishing assistance to other prisoners unless they *prove* that they do, in fact, provide "reasonable" forms of assistance to each and every inmate in the CDOC. Brooks repeatedly alleged the CDOC does *NOT* provide reasonable forms of assistance, and this allegation is sufficient—in and of itself—for Brooks' to have alleged a plausible First Amendment retaliation claim against the CDOC.

(IV) Improper interpretation of *Lewis v. Casey*.

This Court has required that Departments of Corrections to provide court access that is "adequate, effective, and meaningful." Bounds v. Smith, 430 U.S. at 822. The Tenth Circuit, however, routinely perverts the holding in *Bounds* through justifying cherry-picked rationale made in Lewis v. Casey, supra, and has specifically explained to Brooks the following:

"[t]he right to access the courts does not, however, guarantee inmates 'the right to a law library or to legal assistance,' but *merely* to 'the means for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." Lewis v. Casey, 518 U.S. 343, 350-51 (1996) (quoting Bounds, 430 U.S. at 825). The right to access the courts is 'only [the right] to present . . . grievances to the courts,' and does not require prison administrators to supply resources guaranteeing inmates' ability 'to litigate effectively once in court' or to 'conduct generalized research.' *Id.* at 354, 360. The right 'guarantees no particular methodology but rather the conferral of a capability—the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts.' *Id.* at 356." Brooks v. Colo. Dep't of Corr., 730 Fed. Appx. [redacted] at *631.

Such rationale, however, effectively dismisses *Bounds* in its entirety and is diametrically opposed to prison officials having to provide inmates "adequate, effective, and meaningful" access to the Courts. If a "capability of bringing contemplated challenges to sentences or conditions of confinement before the courts" is all this Court has mandated the CDOC to provide inmates in order to access the Courts, then *Bounds* ultimately has no effect and has been superseded in its entirety by *Lewis*. CDOC's policy limiting Plaintiff's Complaint to thirty pages clearly obstructed Brooks "capability" of bringing all his claims into court, which has violated this Courts rational in *Lewis*. Following such tortured logic to its conclusion, according to the Tenth Circuit, all the CDOC needs to provide inmates

in order to access the courts is a mailbox. Even this destitute holding, however, may be undermined because "when access to courts is impeded by mere negligence, as when legal mail is inadvertently lost or misdirected, no constitutional violation occurs." *Simkins v. Bruce*, 406 F.3d 1239, 1242 (10th Cir. 2005). This Court should be offended by these findings, as they obliterate firmly rooted constitutional law on these issues.

This Court also needs to acknowledge the undisputable fact that the CDOC does not provide any "capability" which allows non-English speaking inmates an ability to access the Courts without "reasonable forms of assistance." Considering how much political clout surrounds immigration, the CDOC not providing any "reasonable forms of assistance" to non-English speaking inmates effectively prevents immigrants the ability to access the Courts without help from other inmates like Brooks. Jamie Valdiviezo-perea, whom was dismissed as a Plaintiff in this case due to his inability to even file *in forma pauperis* without Brooks' help, could not access the courts without the assistance of Brooks, which is another *de facto* reason that Brooks began this lawsuit, as the CDOC could not validly enforce any prison regulation barring Brooks from furnishing assistance to Valdiviezo-perea pursuant to *Johnson*. This is an undisputable fact—the CDOC does not provide any interpreters for non-English speaking inmates in their law libraries,

which is a deplorable fact considering Plaintiff Valdiviezo-perea is a legal immigrant in this country.

(V) Two Strikes cannot be applied in a single case.

The Tenth Circuits findings in this case are diametrically opposed and indicative of the unprofessional animus the Tenth Circuit obviously holds towards Brooks, only resulting from exercising his first amendment rights. First, in upholding the denial of Brooks' preliminary injunction request in this case, a division of the Tenth Circuit articulated that Brooks "advanced a 'reasoned, non-frivolous argument on the law and facts in support of the issues raised on appeal.'" *Brooks*, 730 Fed. Appx. at 633. It is, therefore, impossible for the Tenth Circuit to state that Brooks' claims were frivolous, when the same court clarified that the exact same claims were "non-frivolous." Moreover, the Tenth Circuit went so far as to ridicule Brooks by baselessly asserting he believed he had "mastered the federal pleading rules," *Brooks*, 2019 U.S. App. LEXIS 3538 at *11 n.6, and once again went on to destroy uniformity of its own precedent in *Jennings v. Natrona Cty. Det. Ctr. Med. Facility*, 175 F.3d 775 (10th Cir. 1999); *accord* *Hains v. Washington*, 131 F.3d 1248, 1250 (7th Cir. 1997) (per curiam); *Henderson v. Norris*, 129 F.3d 481, 485 (8th Cir. 1997) (per curiam); *Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996); *Chavis v. Chappius*, 618 F.3d 162, 167 (2nd Cir. 2010).

The Tenth Circuit improperly counted two strikes against Brooks in this single case, despite the Tenth Circuits own holdings articulating "[i]f we affirm a district court dismissal under 28 U.S.C. § 1915(e)(2)(B), the district court dismissal then counts as a single strike. (Under the plain language of the statute, only a dismissal may count as strike, not the affirmance of an earlier decision to dismiss.)." *Id.* at 780. This Court should announce the same.

B. Importance of the Questions Presented.

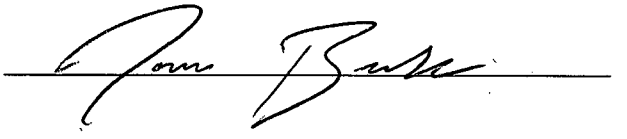
This case presents enormous importance, as it would affect every single prisoner in this county. The holding in *Lewis* has resulted in federal courts essentially allowing states Department of Corrections to deter, hinder, and obstruct inmate's access to the Courts. The Court has recognized that the basis for the constitutional right of court access is "unsettled," but has identified the Privileges and Immunities Clause of Article IV, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses as sources. *See* *Christopher v. Harbury*, 536 U.S. at 415 & n.12. In *Lewis v. Casey*, supra, Honorable Justice Thomas expressed his concern as to the vague constitutional roots of the right to court access for prisoners. *See* *Lewis*, 518 U.S. at 365-85 (Thomas, J., concurring). Justice Thomas noted this Court's "inability . . . to agree upon the constitutional source of the

supposed right" and stated that "in no instance . . . [has the Supreme Court] engaged in rigorous constitutional analysis of the basis for the asserted right." *Id.* at 367 (Thomas, J., concurring). Despite the uncertainties of the right's constitutional roots, the present framework for the analysis of a court access claim is grounded in decades of case law in the prisoner and civil contexts, but that "rigorous constitutional analysis" needs to be settled to prevent Department of Corrections being able to carefully craft policies that effectively hinder, deter, and obstruct inmates access to the Courts. Honorable Stephanie K. Seymour, once Senior Judge for the Tenth Circuit, noted that the right of court access is "basic to our system of government" and well established as a fundamental right that the Constitution protects. Smith v. Maschner, 899 F.2d at 947 (*quoting* Nordgren v. Milliken, 762 F.2d 851, 853 (10th Cir. 1985)). The Tenth Circuit, however, has interpreted the holding in *Lewis* to effectively allow the CDOC to obstruct, deter, punish, and obstruct inmate's access to the Courts. The despondent standards the Tenth Circuit has interpreted *Lewis* to propagate is simply at odds with Constitutional requirements. This case can hopefully settle the basis for constitutional court access of prisoners to prevent federal courts trampling inmates First Amendment freedoms, which has been routinely exhibited by the Colorado District Court, as this actions proves.

CONCLUSION

For the foregoing reasons, certiorari or GVR should be granted in this case.

Respectfully submitted on this 11th day of June 2019.



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