No. _____

IN THE

Supreme Court of the United States

HANSEN,

Pro Se Petitioner,

v.

SALT LAKE CITY CORPORATION,

Respondent.

On Petition for a Writ of Certiorari
to The United States Court of Appeals
for The Tenth Circuit
***Re* Case No.'s: 18-4104 (10th Cir.); 2:15-cv-00722 (D. Utah)**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED FOR REVIEW
Under Supreme Court Rule 10(c)

a) Petitioner questions the correctness of the Appeals Courts' access-to-the-courts cases as noted in *Christopher v. Harbury*, 536 U.S. 403 at n.9 (2002); as well as, *as applied* to the facts here and municipal liability.

b) Petitioner, amongst potential future plaintiffs, need clarification of municipal liability in backward-looking access-to-the-courts cases, as well as, *as applied*. Petitioner respectfully requests erudite and perspicacious review and a holding and dicta cementing the apparent lacuna between the Courts of Appeals and this Court regarding municipal liability and backward-looking access-to-the-courts claims.

c) Thereafter answering "b)" – Petitioner questions the correctness of the judgments of the District Court of Utah and the 10th Circuit Court of Appeals' decisions, *de novo*. For example: 1) Did Plaintiff/Petitioner state a claim upon which relief may be granted? *Harbury* at 416. The District Court and Defendant both failed to meaningfully address Petitioner's *Monell* x *Canton* x *Tuttle* x *Connick* x *Harbury* (etc..) (municipal liability access claim) as it relates to Petitioner's State of Utah Constitutional right to a remedy (Section 1, Article 11) – the 10th Circuit declined to enter such a "morass;" and, 2) Should the opinions below be vacated, reversed and remanded, with leave to amend, and/or with instructions consistent with opinion?

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JURISDICTION

a) District Court Jurisdiction and Venue

The United States District Court for the District of Utah (Central Division) had original jurisdiction over Mr. Hansen's Second Amended Complaint (SAC) pursuant to 28 U.S.C. § 1391(b)(1)-(2), 28 U.S.C. § 1331 ("action arising under the Constitution ... of the United States"), 28 U.S.C. § 1343(a)(3)-(4), 42 U.S.C. § 1983, 28 U.S.C. § 1367(a) and Fed. R. Civ. P. 82. Both parties exist and are located within Salt Lake County, Utah, and the actual injuries (assault and subsequent backward-looking denial of access-to-the-courts claim) occurred within said domicile.

b) 10th Circuit Court of Appeals Jurisdiction

That Court had jurisdiction over this matter pursuant to 28 U.S.C. § 1291, "from all final decisions of the district courts of the United States..." This appeal arises from a final judgment (Dkt. 37) disposing of all of Mr. Hansen's Claims (Count V being the sole count for review on appeal) that was issued 10/2/2017. Mr. Hansen filed a timely Fed. R. Civ. P. 60(a), (b)(1), (b)(6) motion pursuant to Fed. R. Civ. P. 60(c) and in accordance with Fed. R. App. P. 4(a)(4)(A)(iv) (Dkt. 38) on 10/20/2017, that was subsequently denied by the Court on 6/12/2018 (Dkt 40). Therefore, pursuant to Fed R. App. P. 4(a)(1)(A), the notice of appeal (Dkt. 42) was timely filed, thus establishing that Court's subject-matter jurisdiction.

c) U.S. Supreme Court Jurisdiction

Appeal to the United States Court of Appeals for the Tenth Circuit affirmed (perfunctorily) 3/4/2019[1] and subsequent Petition for Rehearing and Suggestion for Rehearing *En Banc* denied 4/4/2019.[2]

STATEMENT OF ISSUES

a) Did Mr. Hansen state a § 1983 municipal liability,[3] backward-looking denial of adequate, effective and meaningful access-to-the-courts claim (Count V) in his Second Amended Complaint ("SAC") (Dkt. 15, at p. 15) under his supposed failure to train (patently obvious[4]) and "first victim of a policy or custom that would foreseeably and avoidably cause an individual to be subjected to deprivation of a constitutional right" theory as dictated in *Oklahoma City v. Tuttle*, 471 U.S. 808, 832 (1985), and under *Christopher v. Harbury*, 536 U.S. 403, 414 (2002) ("*all the material evidence*") (emphasis added) or *Flagg v. City of Detroit*, 715 F. 3d 165, 174 (6th Cir. 2013) ("*obstructive actions by state actors*" - i.e. - custom of failing to process DNA/photographic evidence within statute of limitations. SAC at FACTS, p. 6), as it relates to his State of Utah Constitutional right to redress of injuries (Ut. Const. Art. 1 Sec. 11) that warrants reversal, remand and/or leave to amend?

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[1] See APPENDIX A.

[2] See APPENDIX B.

[3] See *Monell v. New York City Dept. of Social Servs.*, 436 US 658 (1978).

[4] "To satisfy the statute, a municipality's failure to train its employees in a relevant respect must amount to "deliberate indifference to the rights of persons with whom the [untrained employees] come into contact." *Canton v. Harris,* 489 U.S. 378, 388 (1989). Only then "can such a shortcoming be properly thought of as a city `policy or custom' that is actionable under § 1983." *Id.,* at 389." (quoting *Connick v. Thompson,* 131 U.S. 1350, 1369 (2011).

b) If the answer to a) is negative, did Mr. Hansen provide sufficient facts/evidence in support of a *Monell* municipal liability claim in his Reply Memorandum in Opposition *In re* Defendant's Motion to Dismiss (Dkt. 27, at Ex. A) of a failure to train theory (patently obvious[5]) and/or of a custom so well settled as to "constitute a custom or usage with the force of law,"[6] that works (or did work) to the detriment of assault victims (including Plaintiff) seeking civil justice from their assailant(s) within the State of Utah's four (4) year statute of limitations, 78B-2-307(3), as it relates to his state Constitutional right to redress of injuries (Ut. Const. Art. 1 Sec. 11), that warrants reversal, remand and/or leave to amend? ("In light of our liberalized pleading rules, plaintiffs generally "should not be prevented from pursuing a claim merely because the claim did not appear in the initial complaint."" *Pater v. City of Casper*, 646 F.3d 1290, 1299 (10th Cir. 2011) (quoting *Alpenglow Botanicals, LLC v. US*, (10th Cir. 2018)). "[If] it is at all possible that the party against whom the dismissal is directed can correct the defect in the pleading or state a claim for relief, the court should dismiss with leave to amend." 6 C. Wright, A. Miller & M. Kane, *Federal Practice & Procedure,* Civil 2d § 1483 (West 1990). Also, see Dkt. 34 at p. 3, 4.

c) *De novo* review.

d) Clear error review. AND;

e) Prevention of manifest injustice review.

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[5] See SAC, Dkt. 15, at n. 2.

[6] *Id.* at 695.

STATEMENT OF THE CASE

a) Relevant Facts to Count V of Plaintiff's SAC.

1. On March 4, 2012, shortly after midnight, Mr. Hansen was walking on the sidewalk down Main Street in Salt Lake City, Utah. As he was passing the front of a bar named Cheers to You, he was attempting to light a cigarette, when suddenly and innocently, was struck by a punch to the face. As a result, he was rendered unconscious and fell to the ground, of which caused a severely broken nose, lacerations and bruising to the face, and irreparable damage to his hamstring ligament (iliotibial band).[7]

2. There were multiple witnesses to the happening, as well as another victim whose nose was bitten off.[8]

3. Shortly thereafter, before any of the group of suspects involved had an opportunity to leave, several members of the Police Department of Defendant arrived on scene and put an end to the apparent melee that had occurred. This incident is memorialized as case #12-36515.[9]

4. "The suspects were all photographed by crime lab and I (Officer McClelland) collected their information. The victims were also photographed by crime lab."[10]

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[7] See SAC at p. 6.

[8] *Id.* at p. 7.

[9] *Id.*

[10] *Id.*

5. "Suspect () had a small quantity of blood on the front of the white T-shit [sic] that he was wearing. I collected the shirt and booked it as seized evidence."[11]

6. As police were processing the incident/scene, Plaintiff was approached by a witness, one Chris Mosher, who affirmatively directed his attention by way of hand to the perpetrator witnessed to have struck him. Said witness was recording the incident with his phone at the time (although the footage is of poor quality).[12]

7. The person to whom witness was pointing was the only of the group dressed to show a red blood-like substance on his white shirt, and particularly exposed under his black jacket.[13]

8. Plaintiff has never seen the photos taken that morning of the suspects to this day, although he could easily identify the clothing of the perpetrator. With regards to the photos, the incident report reads "Latent processing done: No."[14]

9. Upset with his injuries, Plaintiff retained an attorney (3/20/2012) shortly thereafter (Rand Henderson, deceased 7/2/2016) for the limited purpose of civilly prosecuting his assailant in state court for damages. For whatever reason(s), that attempt proved fruitless.[15]

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at p. 8.

[15] See Dkt. 34 at p. 11.

10. In any event, Plaintiff maintains, as he shall prove, that Defendant failed to even process any of the evidence collected at the crime scene (as requested[16]) throughout the four-year statute of limitations period (and beyond) of which he could have commenced, and perhaps prevailed upon, a non-frivolous suit against his assailant (with all the material evidence).

11. This failure could only have been a product of inadequate training/supervisory practices,[17] a custom/practice, that if not widespread, was entirely forseeable to result in a Constitutional violation;[18] if not a widespread custom having the force of law; each of which display a deliberate indifference on the part of Defendant to Plaintiff's (*inter alia*) right of access-to-the-courts (with all the material evidence).

b) Relevant Procedural History (all such being hereby incorporated by reference)

1. Mr. Hansen brought suit against Salt Lake City by filing his original Complaint on 10/06/2015 (Dkt. 1).

2. Upon realizing some deficiencies in his original Complaint, Plaintiff filed an amended complaint as a matter of course on 11/9/2015 (Dkt. 6).

3. After further research of the law and Rules, Plaintiff sought, and obtained, leave of the Court to file his proposed SAC which was filed by the Court on 9/13/2016 (Dkt. 23).

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[16] *Id.*

[17] *Id.* at p. 14.

[18] *Id.*

4. Defendant subsequently filed a motion to dismiss (Dkt. 24), the SAC, of which the magistrate issued a report and recommendation (R&R) (Dkt. 33) to the Court recommending dismissal WITH PREJUDICE, that the Court subsequently adopted[19] as to Count V (Dkt. 37).

5. Aggrieved with its decision, Mr. Hansen sought relief from final judgment based on clear error and manifest injustice by filing an expedited FRCP Rule 60 motion (Dkt. 38) on October 20, 2017, which was perfunctorily denied by Order (Dkt 40) dated 6/12/2018.

c) Rulings Presented for Review

1. Mr. Hansen appeals from (a) Final Judgment (Dkt. 37, 10/2/2017), and (b) Memorandum Decision and Order Denying Relief from (a), (Dkt. 40, 6/12/2018), within the District Court of Utah; as well as his Appeal to the United States Court of Appeals for the Tenth Circuit (*Aff'd.* 3/4/2019) and subsequent Petition for Rehearing and Suggestion for Rehearing *En Banc* (denied 4/4/2019).

SUMMARY OF APPELLANT'S ARGUMENT

Mr. Hansen asserts that he has affirmatively stated a backwards-looking denial of adequate, effective and meaningful access-to-the-courts claim (with *all* the material evidence) and provided evidence of a custom by Defendant so widespread to have the force of law and an obvious lack of training of its officers; of which provides proof of deliberate indifference to Plaintiff's (amongst others) rights.

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[19] See APPENDIX C.

ARGUMENT

a) Standard of Review

"Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Specific facts are not necessary; the statement need only "'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (quoting *Conley v.* Gibson, 355 U.S. 41, 47 (1957)). In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp., supra,* at 555, 556 (citing *Swierkiewicz v. Sorema N. A.,* 534 U.S. 506, 508, n. 1 (2002); *Neitzke v. Williams,* 490 U.S. 319, 327 (1989); *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974))... *Petitioner, in addition, bolstered his claim by making more specific allegations in documents attached to the complaint and in later filings....* The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is "to be liberally construed," *Estelle v. Gamble,* 429 U.S. 97, 106 (1976), and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice")." See *Erickson v. Pardus,* 551 U.S. 89, 2200 (2007). "We engage in de novo review of the district court's rulings on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), and we accept the facts

alleged in the complaint as true and view them in the light most favorable to the plaintiffs." *Lincoln v. Maketa,* 880 F.3d 533, 537 (10th Cir. 2018) (brackets and internal quotation marks omitted).

[The Tenth Circuit] has consistently held that a "notice of appeal that names the final judgment is sufficient to support review of all earlier orders that merge in the final judgment under the general rule that appeal from a final judgment supports review of all earlier interlocutory orders." *Siloam Springs Hotel, LLC v. Century Surety Co.*, 906 F.3d 926, 931 (10th Cir. 2018) (quotation omitted).

Appellant has also argued for plain error review, *See U.S. v. Zubia-Torres,* 550 F.3d 1202, 1205 (2008). To show plain error, a party must establish the presence of (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 1208.

b) Contentions

Petitioner maintains his previous arguments previously presented to the District Court and The Tenth Circuit; all being properly preserved for review by this Court on appeal.

An "act [or omission] performed pursuant to a `custom' that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law." *Board of County Com'rs of Bryan County, Okla. v. Jill Brown,* 520 U.S. 397, 403 (1997) (internal citations omitted). The plaintiff must show "(1) the existence of a municipal custom or policy and (2) a direct causal link between the custom or policy and the violation alleged."

Hollingsworth v. Hill, 110 F.3d 733, 742 (10th Cir. 1997) (internal citation omitted). If a municipality is deliberately indifferent to or tacitly approves unconstitutional conduct that is continuing and widespread, and if such conduct results in an injury to the plaintiff, then municipal liability can be established. *Cf. Gates v. Unified School Dist. No. 449,* 996 F.2d 1035, 1041 (10th Cir. 1993).

In his SAC, Plaintiff alleges that "Defendant's behavior (and lack thereof) exerts a "custom" and "subjected" Plaintiff a "deprivation of his constitutional rights." *Id.* at [0014]. Plaintiff further proffered evidence (prior to any discovery) of Defendant's widespread custom of failing to timely (or even at all) submit for processing of evidence relating to assault cases (with the force of state law). *See* Reply Memorandum in Opposition *In re* Defendant's Motion to Dismiss Second Amended Complaint and Memorandum in Support at APPENDIX A and n. 7. This custom undeniably caused Plaintiff's injury to his contemplated, now foreclosed, litigation opportunity and efforts against his attacker.

Both the Court and Defendant apparently are cognizant of the existence of a backward-looking denial of access-to-the-courts claim.[20] However, both have mysteriously omitted acknowledgement to Plaintiff's repeated assertions of the most critical and determinative factor relating to the case at bar regarding the Supreme Court's decision in *Christopher v. Harbury*, 536, U.S. 403, 414 (2002). Wherein, it states:

> "The second category [backward-looking] covers claims not in aid of a class of suits yet to be litigated, but of *specific cases that cannot now be tried* (***or tried with all material evidence***), **[emphasis exclaimed]** no matter what official action may be in the future."

[20] See e.g. Dkt. 36.

Id. at 414 (parenthetical and bracketed emphasis exclaimed).

Defendant not only failed to attempt any criminal prosecution of Plaintiff's assailant (of which Plaintiff conceded to the criminal component of the claim) but failed to at least process **ANY OF THE MATERIAL EVIDENCE** ((a) "suspect () had a small quantity of blood on the front of the white T-shit [sic] that he was wearing. I collected it and booked it as seized evidence,"[21] and (b) the photographic evidence[22]) of which it collected and was the gatekeeper of - within the Utah statute of limitations (4 years from 3/4/2012 (incident 12-36515)), thereby "**concealing**"[23] (*Vasquez v. Hernandez*, 60 F.3d 325, 328 (7th Cir. 1995)) (upon which the Court and Defendant rely) "**evidence** so that the plaintiff is unable to ever obtain an adequate remedy on the underlying claim." *Id.* Plaintiff need not have used the word "conceal" in his SAC for the reasonable inference(s)[24] of the fact that evidence was effectively concealed to be drawn, pursuant to Defendant's widespread custom of failing to process evidence as it pertains to assault cases, at least under *Monell*,

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[21] SAC at FACTS ¶ 9.

[22] *Id.* At ¶ 15.

[23] "To hide; secrete; withhold from the knowledge of others. The word "conceal," according to the best lexicographers, signifies to withhold or keep secret mental facts from another's knowledge, as well as to hide or secrete physical objects from sight or observation". *Gerry v. Dunham*, 57 Me. 339. *Accord Black's Law.*

[24] "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.,* at 556, 127 S.Ct. 1955. (quotations omitted).

However distinguishable the cases collectively relied upon by the Court and Defendant, all cases cited by both regarding *civil* access-to-the-courts claims (except for *Flagg*, 715, F.3d 165, 174 (6th Cir. 2013)) of which cases are non-binding precedent, were decided well before *Harbury*. Moreover, *Flagg* was purposed by Plaintiff to identify the elements of a backward-looking-denial-of-access-to-the-courts claim, of which shall be recited again as it pertains to the facts at bar:

> "*Swekel* and *Christopher* permit us to enumerate the elements of a backward-looking denial of access claim: (1) a non-frivolous underlying claim [assault/battery], *see id.* at 415, 122 S.Ct. 2179 (citing *Lewis v. Casey,* 518 U.S. 343, 353 and n. 3, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996)); (2) obstructive actions by state actors [widespread custom of failing to process probative evidence relating to assault cases within civil statute of limitations[25]], *see Swekel,* 119 F.3d at 1262-63 (discussing cases); (3) "substantial[] prejudice" to the underlying claim that cannot be remedied by the state court [statute of limitations expired 3/4/2016 (injury to contemplated civil litigation)], *see id.* at 1264; and (4) a request for relief which the plaintiff would have sought on the underlying claim and is now otherwise unattainable [See Relief and Redress Demanded from Defendant (SAC)], *see Christopher,* 536 U.S. at 421-22, 122 S.Ct. 2179. Plaintiffs must make out the denial-of-access elements against each defendant in conformance with the requirements of § 1983." [See SAC; Reply in Opposition: Motion to Dismiss] Quoting *Flagg v. City of Detroit*, 715 F. 3d 165 6th Cir. (2013).

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[25] Plaintiff even has proffered evidence of the City's widespread custom (See *Monell*, 436 US 658 (1978)) of failing to process probative evidence within the statute of limitations relating to assault victims. See (a) Reply Memorandum in Opposition *In re* Defendants Motion to Dismiss Second Amended Complaint and Memorandum in Support,[25] and (b) Utah Code § 78B-2-307 *Within four years.* (3).

Further, the pertinent gravamen of Plaintiff's complaint (beside the claims conceded to dismissal) is not that, in the district court's interjected words, "that the city did not try hard enough to assist his civil litigation efforts,"[26] but that Defendant "fail[ed] to analyze the DNA"[27] evidence collected from the scene of incident 12-36515, and further failed to even process the photographic evidence collected, "[l]atent processing done: No."[28]

Plaintiff was, at no point here, complaining that the City failed to notify him of his right to obtain a restraining order (under New Jersey's Domestic Violence Act) against his attacker as litigated in *Grabowski*,[29] rather, he attempted diligently, with assistance of counsel, to civilly prosecute his attacker ***(with all the material evidence*** [yet alone ANY]*)*, yet, as a factual matter, **NONE** of the evidence collected was processed **WHATSOEVER** for well over 7 years, now; far beyond Plaintiff's 4-year statutory-limitation possibility of civilly accounting his assailant for Plaintiff's injuries sustained therewith. As the Court noted[30] without citation to authority:

> "[t]he constitutional right to access to the courts does not require a police department to allocate some constitutional minimum amount of its resources to identify the perpetrator of a crime so that the victim can sue the perpetrator."

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[26] Dkt. 36 at p.4.

[27] SAC at FACTS ¶13.

[28] SAC at FACTS ¶15.

[29] 922 F.2d 1097, 1116 (3rd Cir. 1990). Also, Dkt. 36 at pp. 4-5.

[30] Dkt. 36 p. 3.

Plaintiff flatly contests that notion as it pertains to access-to-the-courts under *Harbury* and otherwise as described herein. Were this unadorned statement to be true, municipalities would not only be immune from § 1983 claims under *Linda R.S.*, but now *Harbury*. As a result, assault victims around the country would be left to resort to their own non-judicial activities and devices (with no probative evidence) in order to personally identify and "settle the score" with their attacker(s), albeit with no redress for their injuries (unless theft successfully occurred). The Court's analysis and Defendant's custom would therefore indemnify and in many ways encourage would-be perpetrators of violent assault behavior (at least). Plaintiff would never have acquired his attorney in the first place if he knew he simply had to go be a thug to reap "justice." As the Supreme Court characterized the right of access in 1907:

> "The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship.."

Chambers v. Baltimore & Ohio Railroad, 207 U.S. 142, 143 (1907).

According to *Harbury* **[with ALL the material evidence]** **[emphasis exclaimed]**, Plaintiff's Count V, within his Second Amended Complaint, is unquestionably meritorious, and must further proceed before the District Court according to the controlling Supreme Court law as applied to the facts alleged (which are essentially undisputed). To whittle down the Supreme Court's analysis of backward-looking-access-to-the-courts claims as authoritatively described within *Harbury* through a series of inapposite Circuit Court

decisions rendered prior to or following[31] *Harbury*, is completely contrary to the Supreme Court's analysis therein.

What about ***all the material evidence***? What was on the "T-shit [sic]?"[32] If, in fact, it was *Plaintiff's* DNA splattered upon, wouldn't that fact make it more likely than not (by a preponderance of that evidence) that that person was Plaintiff's assailant? Further, following post-incident witness identification by way of hand,[33] Plaintiff is still able to recall the superficial attire and general appearance of his attacker, yet has never been apprised of the photographs taken at the scene of incident SLCPD 12-36515, because they have never even been developed (at least). Instead, all such evidence remains housed (perhaps destroyed) in an undisclosed location; and at all times relevant to this matter, unprocessed and unavailable (concealed) to Plaintiff and his counsel. The aforementioned evidence MUST have been processed (at least) to potentially afford Plaintiff an opportunity (foregone) to recover from his assailant (***with all the material evidence***). Now, the present backward-looking access-to-the-courts claim MUST remain entirely within its civil component thereto, or be held contrary to the United States Supreme Court's decision of *Harbury*. Plaintiff is highly certain that the Supreme Court of the United States said what they meant and meant what they said when deciding *Harbury*, the controlling decision here, not the qualified

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[31] *Flagg v. City of Detroit*, (citations omitted).

[32] SAC at FACTS n. 9, via SLCPD Report 12-36515 (December 14, 2015) (version).

[33] *Id* at n. 11.

immunity analysis set forth in *Brown v. Grabowski,*[34] immunity of which the City certainly does not enjoy. When *Harbury* is coupled with *Monell* (notwithstanding *Canton*, *Leatherman*, etc.), it becomes clear that Defendant's widespread custom of failing to process evidence relating to assault cases, that ultimately caused Plaintiff's injury to his contemplated litigation; makes Defendant liable to Plaintiff. To hold otherwise would, indeed, run afoul of those collective holdings, as applied, especially as it pertains to Plaintiffs Utah Constitution Article 1 Section 11 entitlement to a remedy by due course of law.[35] Like *Bivens*, it is "damages or nothing."[36]

Finally, to further emphasize the evidence presented in Appellant's Reply Memorandum in Opposition *In re* Defendant's Motion to Dismiss (Dkt. 27, at Ex. A), Utah state legislators took affirmative action on the issues presented herein, except only limited to victims of *sexual* assault (See Utah Code 76-5-601 *et. seq.*, "Sexual Assault Kit Processing Act"). However admirable that may be, how many other victims of *any* assault go without redress throughout their four-year limitations period to pursue such because of

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[34] 922 F.2d 1097, 1116 (3rd Cir. 1990). Also, Dkt. 36 at pp. 4-5. "The constitutional right of access to the civil courts plainly does not encompass a right to receive assistance in gaining access to the civil courts."

[35] "[A] cause of action is a species of property protected by the Fourteenth Amendment's due process clause." See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). "A property interest exists only where "existing rules and understandings that stem from an independent source such as state law... secure certain benefits and [] support claims of entitlement to those benefits." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). "Responsive pleadings thus may be necessary for a pro se plaintiff to clarify his legal theories." See *Neitzke v. Williams*, 490 U.S. 319 at n. 9 (1989).

[36] 403 U.S. 388. at 410 (1971).

municipalities' custom(s) of failing to even process the evidence they collect as it pertains to criminal/civil assault/negligence?

RELIEF SOUGHT

Petitioner seeks a) reversal of the District Court's judgment dismissing with prejudice Count V within his SAC and the subsequent affirmance by the Tenth Circuit Court of Appeals, b) a holding that Defendant Salt Lake City committed an access-to-the-courts violation pursuant to its "custom," and is therefore liable to Mr. Hansen as a result; and/or c) remand to the District Court for leave to properly file an amended pleading; and/or d) remand to the District Court for further proceedings consistent with this Court's opinion.

IMPORTANCE OF THE ISSUE(S)

Although the recent headlines emphasize the fact that many thousand pieces of *sexual* assault evidence collected by law enforcement are never processed,[37] that fact most likely tips the iceberg of *assault* cases generally, whose evidence goes unprocessed within the victims' statutes of limitations to seek civil redress from their assailant(s). Nevertheless,

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[37] See e.g. a) https://www.ksl.com/article/46547137/five-years-after-rape-kit-backlog-controversy-salt-lake-police-celebrate-huge-strides b) https://abc3340.com/news/inside-your-world/thousands-of-rape-kits-nationwide-never-sent-to-crime-labs c) kuer.org/post/salt-lake-city-council-agrees-all-rape-kits-should-be-tested d) https://www.researchgate.net/publication/312545878_Justice_Denied_Low_Submission_Rates_of_Sexual_Assault_Kits_and_the_Predicting_Variables

even assuming that only sexual assault evidence goes unprocessed, that alone would be sufficient to evidence a "custom" of failing to process evidence collected relating to assaults generally, as civil redress may be obtained within the constraints of assault case limitations (at least in the State of Utah). Petitioner, amongst many other victims of assault, deserve their Constitutional guarantee of access to the courts, with ALL the material evidence, in order to be able to civilly hold their assailants accountable in the appropriate court. A potentially landmark decision would result.

CONCLUSION

Plaintiff was clearly denied "adequate, effective and meaningful"[38] access to the courts "with all [of the] material evidence"[39] within the applicable statute of limitation.[40] To hold otherwise would essentially render firmly established, fundamental, state[41] and federal constitutional rights, dead letters.

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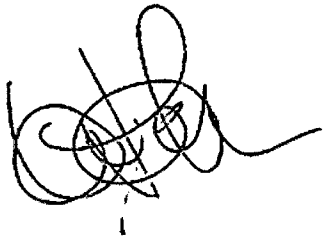
[38] *Bounds v. Smith*, 430 U.S. 817, 822 (1977).

[39] *Harbury*, at 414.

[40] Utah Code § 78B-2-307.

[41] Provisions such as section 11 have been referred to as "open courts" clauses and "remedies" clauses. McGovern, *supra* at 615-16. In fact, section 11 was designed to accomplish several purposes. The clear language of the section guarantees access to the courts and a judicial procedure that is based on fairness and equality. *See generally Celebrity Club, Inc. v. Utah Liquor Control Comm'n,*Utah, 657 P.2d 1293, 1296 (1982); *Industrial Commission v. Evans,* 52 Utah 394, 409, 174 P. 825, 829 (1918). A plain reading of section 11 also establishes that the framers of the Constitution intended that an individual could not be arbitrarily deprived of effective remedies designed to protect basic individual rights. *A constitutional guarantee of access to the courthouse was not intended by the founders to be an empty gesture; individuals are also entitled to a remedy by "due course of law" for*

Respectfully submitted,



DATE 8/28/2019

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injuries to "person, property, or reputation." See *Berry By and Through Berry v. Beech Aircraft*, 717 UT P.2d 670, 675 (1985).