

NO: 19-5265

IN THE  
SUPREME COURT OF THE UNITED STATES

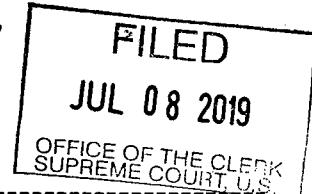
BENJAMIN E. SCHREIBER, PETITIONER

-VS-

ORIGINAL

Dr. STEPHEN SPARKS, NICK LUDWICK, et al.,

RESPONDENTS.



ON PETITION FOR A WRIT OF CERTIORARI TO  
EIGHT CIRCUIT COURT OF APPEALS  
(CASE NO: 18-2305)

PRO SE PETITION FOR WRIT OF CERTIORARI

BY  
BENJAMIN E. SCHREIBER  
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P.O. BOX 316  
Fort Madison, Ia.  
52627-0316  
[319]372-5432

## LIST OF PARTIES

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

[ X ] All parties **DO NOT** appear in the caption of the case on the Cover page. A list of all parties to this proceeding in the court Whose judgment is the subject of this Petition are as follows:

Iowa Department of Corrections {IDOC}  
510 East 12<sup>th</sup> Street  
Des Moines, Ia. 50319 {Added by 8<sup>th</sup> Circuit}

University of Iowa Hospitals & Clinics {UIHC}  
200 Hawkins Dr.  
Iowa City, Ia. 52242 {And the listed below Doctors and Nurses as  
Added by the 8<sup>th</sup> Circuit}

Catherine S. Jurgens[RN]  
Michael E. Takacs[MD]  
Kevin Doerschug[MD]  
Jordan Homan[RN]  
Dana Fowler[RN]

## **QUESTION[S] PRESENTED**

- 1. Did the Court of Appeals violate Petitioner's Due Process Rights when it "ADDED" extra Defendants not in the original lawsuit and in which the U.S. District Court Dismissed in its INTIAL REVIEW ORDERS.**
- 2. Is 42 U.S.C. § 1993(e) Exhaustion requirement of All Administrative Remedies absolute were clearly presented issues show Civil and/or Constitutional Violations have occurred?**
- 3. What is the true meaning of DO NOT RESUSCITATE {D.N.R} and if the Petitioner died while in State custody, was his Life Sentence fulfilled by IDOC Staff having him revived?**
- 4. Just what Administrative Remedies are required to be taken when IDOC Policy[s]do not cover money damage[s] law suits and Petitioner's suit was a "BIVENS" type suit?**
- 5. UNDER IOWA'S CONSTITUTION AT ARTICLE I, section: 10- ALL CITIZENS BRINGING CASES TO COURT INVOLVING LIFE OR LIBERTY ARE GUARANTEED THE APPOINTMENT OF COUNSEL.**

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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,  
[xx] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
xxx 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 March 1, 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: April 11, 2019, and a copy of the order denying rehearing appears at Appendix n.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including n/App (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:**

- 1. FIRST AMENDMENT RIGHT TO THE FREE EXERCISE OF RELIGIOUS BELIEFS:**
- 2. 42 U.S.C.A § 1997(e)'s REQUIREMENT THAT ALL 42 U.S.C.A § 1983 LAWSUITS "MUST HAVE FULL EXHAUSTION OF ADMINISTRATIVE REMEDIES EVEN THOUGH THERE HAS BEEN CLEAR VIOLATION[S] OF CIVIL/CONSTITUTIONAL RIGHTS"?**
- 3. VIOLATIONS OF IOWA STATE LAW REGARDING "DO NOT RESUSCITATE[DNR] AND THAT OF LIFE-SUSTAINING PROCEDURES:**
- 4. VIOLATION OF DUE PROCESS BY ADDING ADDITIONAL RESPONDENTS TO PETITION'S CASE BY THE EIGHT CIRCUIT COURT OF APPEALS.**
- 5. VIOLATION OF IOWA'S CONSTITUTION AS TO EFFECTIVE ASSISTANCE OF COUNSEL IN ALL CASES INVOLVING THE LIFE AND/OR LIBERTY OF AN INDIVIDUAL.**

### **1. FIRST AMENDMENT RIGHT TO THE FREE EXERCISE OF RELIGIOUS BELIEFS:**

Petitioner informs this Court that he was raised and believes in the teachings of the Jehovah's Witnesses. Please see, SCHREIBER v. AULT, 280 F3d 891,892(8<sup>th</sup> Cir 2002). And that as a part of this belief he holds the teaching that upon his death, his sins will be forgiven; Romans 6:7, "FOR HE WHO HAS DIED HAS BEEN ACQUITTED FROM HIS SIN. {New World Translation of the Holy Scriptures} [FIRST AMENDMENT RIGHT.]

Petitioner asserts and holds true that on or about the night/morning of March 30, 2015, he dies {HIS HEART AND LUNGS QUIT WORKING}. And that having served the Doctor of the Iowa State Penitentiary (ISP), the Medical Staff thereof and the Medical Staff of the University of Iowa Hospital & Clinics (UIHC) with a true copy of his "LIVING WILL/MEDICAL POWER OF ATTORNEY, DURABLE POWER OF ATTORNEY FOR MEDICAL CARE DECISION and his DECLARATION RELATING TO USE OF LIFE-SUSTAINING PROCEDURES" Respondents knew or should have known of Petitioner's medical wishes. However, they chose to ignore them {See, Exhibits: 1, 2, 3, 4.}

The fact remains that Petitioner at the time could not in any manner make any decisions needed to assert his medical wants or to refuse medical treatment. So, the medical staff of ISP called Petitioner's brother in Austin, Texas [who holds the Power of Attorney] in an attempt to gain permission to save Petitioner's life. But, when requested for his permission to treat Petitioner the Brother told the ISP Staff Member that "If he is pain, you may give him something for the pain, but otherwise you are to let him pass."

Petitioner was looking forward to his "RESURRECTION" either in heaven or on the NEW EARTH as promised in the teachings of the Jehovah's Witnesses. But, by the States {therein by medical staff}, Petitioner was forced back to life to serve even more time and Petitioner asserts they {ISP Staff} had no right to do so. In the mean time Petitioner is SERVING Double Jeopardy, as well as being forced to suffer cruel and unusual punishment by being continually confined/imprisoned in violation of his Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

## **2. 42 U.S.C.A. § 1997(e) REQUIREMENT OF EXHAUSTION IN ALL 42 U.S.C.A. § 1983 LAWSUITS;**

The District Court dismissed Petitioner's suit due to having not exhausting all administrative remedies. However, Petitioner showed that he attempted every administrative remedy that he could, even some that may not have been required, such as TORT CLAIMS and Appeals to the IDOC Main Office regarding the issues presented in Federal District Court. Petitioner presented these to his Court Appointed Counsel but, she refused to present them to the district court. This very Court has held that exhaustion of administrative remedies is not required where it would be futile. See, McCARTHY v. MADIGAN, 503 U.S. 140, 112 S.Ct. 1081, 117 L.Ed.2d 291(1992). And the Prisoners Litigation Reform Act does not require an inmate to plead and demonstrate complete exhaustion of administrative alternatives to a lawsuit before filing suit, nor does it require dismissal of a plaintiff's entire complaint. See, JONES v. BOCK, 549 U.S. 199, 127 S.Ct. 910, 166 L.Ed.2D 798(2007).

The district court held Petitioner to a higher standard than was required and it dismissed the entire complaint even though it showed clear violations of Petitioner's Civil and Constitutional Rights. The Court of Appeals affirmed the district court's decision even after Petitioner showed that his court appointed counsel was ineffective in her representation of her client.

Further, by the district court's dismissal of Iowa Department of Corrections and the University of Iowa Hospitals and Clinics and the medical staff, it removed the requirement of exhaustion as the remaining Defendant/Respondents were name individuals being sued in their individual capacities and not their Official capacities.

The district court and the Court of Appeals erred in their rulings and this must be corrected by reversal of the case to district court. This is because Petitioner case was actually a "BIVENS" style action and not solely a suit against the State or the institutions. District Court failed to follow the requirement to only dismiss part of the action due to court appointed counsel's refusal to present the other attempts to exhaust administrative remedies. Petitioner holds that under the Equal Protection of the Laws he must be given the same right when his case was for money only against "NAMED INDIVIDUALS" and not the State of Iowa Department of Corrections {IDOC} or the Iowa State Penitentiary {ISP} and not in their Official capacities.

### **3. VIOLATION OF IOWA STATUTE REGARDING "DO NOT RESUSCITATE {DNR/DNI} AND THAT OF LIFE SUSTAINING PROCEDURES.**

**"WE, AT DOC, ENCOURAGE ALL COMPETENT ADULT PATIENTS TO COMPLETE A LIVING WIIL/MEDICAL POWER OF ATTORNEY. WOULD YOU LIKE A DOC CHAPLAIN TO ASSIST YOU."** Id. Iowa Department of Corrections (IDOC) HEALTH SERVICES LIVING WILL/MEDICAL POWER OF ATTORNEY Cover sheet @ Question 7. See, Exhibit 1.

These are the words of the Formal Document supplied by IDOC to inmates {Form HSF-04.620(6-04)}. But, in Petitioner's case DOC failed to follow its own written information/instruction sheet. At #6 of the Cover Sheet it asks "Do you wish to have an "ADVANCED DIRECTIVE" (DNR); to which Petitioner marked "YES". It then goes on to ask "If YES check appropriate boxes", it then asks further; "I want life support treatment {i.e., ventilation}", to which Petitioner marked "NO". It then asks "I want C.P.R. {cardiopulmonary resuscitation}", and Petitioner marked "NO". It should be noted that the only thing Petitioner did mark "YES" to was to be kept pain-free. [See, Exhibit 1.]

These legal documents were signed by Petitioner and the (ISP Institutional Doctor (Stephen E. Sparks)) and should have prevented IDOC and UIHC Medical staff from performing any Life-Sustaining Procedures and/or RESUSCITATION upon Petitioner. LIFE-Sustaining Procedures are defined by Iowa Code as "Life-Sustaining Procedure: Means any medical procedure, treatment, or intervention, 'Including RESUSCITATION means any medical intervention that utilizes mechanical or artificial means to sustain, RESTORE, or supplant a spontaneous vital function, including but not limited to chest compression, defibrillation, intubation, and EMERGENCY DRUG[s] intended to alter cardiac function or otherwise to sustain life." **Id. I.C.A. §§ 144A.2(8)(1) & (2) and 144A.2(12).**

As a "QUALIFED PATIENT" (to which Petitioner was) "Means a patient who has executed a declaration or an out-of-hospital do-not-resuscitate order in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition." **Id. I.C.A §144A.2(11){IOWA CODE 2016, CHAPTER 144A(13.1)}.**

## **THEREIN LIES THE QUESTION OF WHAT IS DEATH AND HOW DO YOU MEASURE IT?**

Petitioner holds that he died, but what is death as defined by law? **BLACKS LAW DICTIONARY** defines death as : the cessation of life -In man death is manifest by loss of heart beat; the ceasing to exist; defined by physicians as a total stoppage of the circulation of the blood; and a cessation of the animal and vital function consequent thereon, such as respiration, pulsation, ect." **BLACK'S LAW DICTIONARY**, Revised Eight Edition 2004.

Petitioner has already stated, his heart had stopped beating. This went on for eleven (11) minutes and UIHC records show that he also had : SEPTIC SHOCK, CARIGENTIC SHOCK with ACUTE RESIRATORY FAILURE WITH HYPOXIA plus, : PULMONARY EDEMA. **The Report goes to state that PETITIONER's: Assessment:** SEVERE SEPTSIS WITH SHOCK; ACUTE RENAL FAILURE ... ACUTE RESPIRATORY FAILURE, resolving with diuresis." {See, Exhibits 5, 6.}

Therein, the crucible of the problem is – **IF PETITIONER DIED IN FACT and MEDICALLY WHY HAVEN'T STATE OFFICIALS ORDERED HIM RELEASED FROM IMPRISONMENT? Just how many LIFE SENTENCES must he be forced to serve before his original LIFE SETENCE is found to have been served?**

Petitioner was Sentenced to only “ONE LIFE SENTENCE” and not to multiple LIFE SENTENCES as the State deems. Granted, there is not a time or year limit involved, but what is LIFE SENTENCE? Common-sense would dictate that once a person has died that his sentence would have been fulfilled. WHAT? Can the State keep on adding life sentences to imprisoned individuals? It was no fault of Petitioner that he began ill and died. Is the State trying to cover-up their misstate in the reviving of Petitioner? Petitioner followed the letter of the law {IOWA'S} in completing the required forms so as to give the State Department of Corrections {IDOC} and hospital staff thereof the guidance as to what to do in case he became unable to provide them with what he wanted done and these are legal document. If they will not follow the legal documents then what good are the documents?

#### **4. VIOLATION OF DUE PROCESS RIGHTS BY THE ADDING OF ADDITIONAL RESPONDENTS BY THE EIGHTH CIRCUIT COURT OF APPEALS.**

On February 21, 2019, the Eight Circuit Court of Appeals served the following: Dear Mr. Schreiber: “Upon further review, the caption has been updated for the above case. Please note the enclosed caption listing THE ADDITIONAL PARTIES AS APPELLEES.” The document goes on to list the following parties: “Nick Ludwick, Stephen E. Sparks, Catherine S. Jurgens, Michael E. Takacs, Kevin Doerschug, Jordan Holman, the University of Iowa Hospitals and Clinics, Dana Fowler; the Iowa Department of Corrections.” These were all added as NEW Appellees and Defendants. [See, Exhibits 7-8.]

These listed Defendants-Appellees were not in Petitioner’s original law suit as they were dismissed by U.S. District of Iowa, Southern Division on 05/01/17 [page 3 of 4, Case No: 4:17-cv-00043-RP-CFB, Document #8].

“For the reasons stated in this order, the claims against Defendant Ludwick, may proceed, AND THE CLAIMS AGAINST UIHC MEDICAL STAFF ARE DISMISSED.” [See, Exhibit 9.]

However, earlier in the Initial Review Proceedings, the District dismissed Iowa Department of Corrections on 04/03/17 [page 3 of 4 Case NO: 4:17-cv-00043-RP-CFB, Document #5], bottom of the page it states:

"Next, the Iowa Department of Corrections is not a proper defendant in this § 1983 case as it is an agency of the State of Iowa. States and their agencies are immune from being sued in federal court under the Eleventh Amendment unless Congress has abrogated the State's immunity by some express statutory provision or the State has consented to suit. ... Consequently, defendant Iowa Department of Corrections is dismissed as a defendant." {See, Exhibits [Excerpts] 15, 16.}

## **STATEMENT OF THE CASE**

### **PART I.**

Petitioner states for the record that there were clear violations of his Civic and Constitutional Rights so, to that end this STATEMENT.

**#1.** Petitioner was convicted for First-Degree Murder on August 21, 1997. On October 13, 1997, PETITIONER was Sentenced to LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE. From there Petitioner was placed into the Iowa Medical and Classification Center (IMCC), was later transferred to the Anamosa State Penitentiary (ASP) and then to the Iowa State Penitentiary (ISP), where he remains today.

**#2.** On June 10, 2008, Petitioner signed and filed the following documents with ISP Medical Staff: a "DECLARATION RELATING TO LIFE-SUSTAINING PROCEDURES", a "LIVING WILL/MEDICAL POWER OF ATTORNEY FOR HEALTH CARE DECISIONS", and a cover page to the Living Will. These documents had to be completed by the institutional doctor {Dr. Sparks} and a R.N. and it required Petitioner's signature next to Dr. Sparks' signature. Petitioner delivered a true copy of all documents to the ISP Staff, sent the original to his brother in Austin, Texas and Petitioner of course kept a copy for his files/records, [See, Exhibit 1, 2, 3, 4].

**#3.** During eye surgery to correct cataracts on June 23, 2013, that Petitioner informed the eye surgeon that he had a DNR/DNI and that "if something was to happen and his heart stopped beating for some reason, she was to do nothing and let me pass." The Eye Doctor said that she had not received anything in his medical files regarding this, So, when Petitioner returned on June 30, 2013 [to have surgery on his other eye] Petitioner hand delivered true copy of the relevant documents to the EYE Doctor and she had her assistant scan them into the hospital main-frame and verified they were there. Petitioner then had surgery on his other eye.

#4. On the night of March 29, 2015, Petitioner was talking to the Pill Officer about his being off sick when Petitioner collapsed with seizures and fits. Petitioner was rushed to ISP Medical Center but, they were unable to care for him. Petitioner was then taken to the local hospital Fort Madison Community Hospital {FMCH} with a fever of 102.7, plus. {See, Exhibit 14.} It was during this time that Petitioner became unconscious and was unable to provide any instructions to their staff. So they ordered Petitioner sent to UIHC E.R.. Once there, the medical staff called Petitioner's brother in Austin Texas to request permission to revive him. Petitioner's brother ask about his Brother's condition and then informed them; "If he is in pain, you may give him something for the pain, otherwise you are to let him pass, and he does have a DNR/DNI." To which the medical staff said they knew of the DNR/DNI.

#5. UIHC Medical Staff administered a pain med to help with Petitioner's pain. It was at this time Petitioner's heart stopped again. Supposedly UIHC administered resuscitation in the form of epinephrine {norepinephrine [Levophed]} along with nitroglycerine and Dobtamine ggt(drip). These drugs restarted Petitioner's heart {forcefully} and kept it beating. The record shows that they administered "RESUSCITATION in the amount of five (5) liters. [See, Exhibit 17.] This was done via a jugular IV in his neck and Petitioner never knew anything about it or even approved of such. This falls under Iowa's "LIFE SUSTAINING PROCEDURE ACT". See, I.C.A. § 144A.(2)(12) and I.C.A. § 144A(8)(a). And they were clearly violated as a DUE PROCESS RIGHT, the Petitioner's Fifth and Fourteenth Amendments.

#6. The whole problem was a direct result of the ISP's staff doctors {Dr. Steven E. Sparks} deliberate indifference to Petitioner's having passed [large] kidney stones. These stones were so large that they had ripped open Petitioner's left kidney at the uretha tube on his left side. Petitioner had been urinating internally into his abdomen for over eight (8) months and this caused a septic infection that in the end caused his bodily functions to close down and thereby Petitioner DIED AS A RESULT THEREOF.

#7. The UIHC doctors were at the time were at a loss to explain why Petitioner was so sick. It wasn't until a special doctor from the urinalysis department came and spoke to him, and Petitioner and the Doctor started discussing Petitioner's having passed kidney stones and that was when he understood what had happened and sent Petitioner to get X-Rays of his kidneys. It was discovered that Petitioner had been urinating into his abdomen. After that, Petitioner was rushed into surgery and had a tube [stint] placed into left side to drain off the puss build-up and to allow urine to flow into a bag. Petitioner was then transferred to IOWA MEDICAL and CLASSIFICATION CENTER {IMCC} for further treatment. Petitioner had this bag on his left side for about three(3) months and Petitioner was there for a total of about six(6) month and then transferred back to ISP where HE REMAINS STILL.

## **PART II: LEGAL PROCEEDINGS**

#1. Upon returning to ISP, Petitioner filed three (3) different TORT CLAIMS addressing the events surrounding his medical problems. Petitioner later received notice that all three (3) Applications had been dismissed. So, on June 03, 2016, Petitioner filed with the local State District Court a Petitioner for a WRIT OF HABEAS CORPUS, along with the required documents to allow him to proceed. However, the North Lee County Iowa District Court dismissed the action stating: "Finally, the petition is frivolous because of the ridiculous claim made by the Petitioner that he dies and was resuscitated, consequently, he has fulfilled his life sentence. Petitioner was committed to the custody of the Director of the Iowa Department of Corrections for the rest of his life. If he is alive, he must continue to remain committed to the custody of the DOC."

#2. So, Petitioner went through the Appeal Process but, was denied any relief. So, Petitioner began his Grievance Procedures and then his Civil Rights Law Suit.

#3. Petitioner was granted permission to proceed with his lawsuit after the U.S. District {DES MINES, IOWA} had dismissed 90% of the defendants. District court granted the Appointment of Counsel, who refused to present the above attempts to get relief and in so doing lost the case because, the district court said that Petitioner had not exhausted ALL of his ADMINISTRATIVE PROCEDURES {See, Exhibits 10, 11}.

#4. Petitioner thenAppealed to the Eight Circuit Court of Appeals [St. Louis, Mo.], and was denied and Petitioner applied for REHEARING EN BANC and denied. So, this is where Petitioner stands today.

### **REASONS FOR GRANTING THE PETITION:**

#### **A. PETITIONER'S LAWSUIT SHOULD BE CONSIDERED A "BEVENS" ACTION.**

This very Court has ruled that in a "BEVENS" type suit, the Plaintiff need not exhaust every administrative remedy before filing his lawsuit. It was held that a [federal] prisoner need not resort to the internal grievance procedure before initiating a "BEVENS" action solely for money damages, because (1) Congress had not meaningfully addressed the appropriateness of requiring exhaustion in this context; (2) the grievance procedure regulations heavily burden the individual interests of the petitioning inmate by (a) imposing short successive filing deadlines that create a high risk of forfeiture of a claim for failure to comply, and (b) not authorizing an award of money damages;

And (3) the interests of the institution [State or Federal] do not weigh heavily in favor of exhaustion of the view of the remedial scheme and particular claim that is presented. {See, generally, McCARTHY v. MADIGAN, 503 U.S. 140, 112 S.Ct. 1081, 117 L.Ed.2D 291(1991).

Further, the Court went on to say; "Administrative remedies need not be pursued "IF" the litigant's interest in immediate judicial review outweigh the governments' interests in the efficiency or the administrative autonomy that the exhaustion doctrine is designed to further." Federal courts must take cognizance of the valid claims of prison inmates.

In determining whether exhaustion of administrative remedies are required courts must balance the interests of the inmate and his prompt access to the federal jurisdiction forum against any countervailing institutional interests favoring complete exhaustion; an application of the balancing test is intensely practical because attention must be directed to both the nature of the claim presented and the characteristics of the particular administrative procedures involved.

Further, by the U.S. District Court's dismissal of the institutions and Iowa State Department of Corrections, it changed Petitioner's Suit from a requirement to exhaust administrative remedies to a 'BEVINS" claim for money only. The district court erred in its dismissal of all of Petitioner's claims and failed to make rulings against the "NAMED INDIVIDUALS" in the remaining Suit. This error requires reversal to the district court for further proceedings.

## **B. WHAT IS DEATH AND HOW WOULD ONE MEASURE IT?**

As Petitioner has stated above, the record shows that his basic bodily functions stopped. This went on for over eleven (11) minutes. The UIHC records also show that he had "SEPTIC SHOCK, CARIGENIC SHOCK, ACUTE REPSIRTORY FAILURE WITH HYPOXIA, PULMONAY EDEMA and ACUTE RENAL FAILURE." In other words Petitioner's body stopped functioning as a living body/person. (See, Exhibits 5, 6.)

Herein lies the most crucible question of the problem—**IF PETITIONER'S BODY DIED IN FACT, WHY WILL NOT IOWA STATE OFFICIALS RELEASE HIM FROM IMPRISONMENT? AND JUST HOW MANY LIFE SETENCES MUST PETITIONER GIVE-UP BEFORE HIS [ONE] LIFE SENTENCE IS A COMPLETED LIFE SENTENCE?**

As previously stated, Petitioner was only sentenced to ONE {1} Life Sentence and not to extra life sentences. It would seem that IDOC hasn't used common sense which would dictate that once someone dies and they [IDOC] elect to revive an inmate after knowing the inmate has a valid DNR/DNI they must release him from imprisonment. Not to do so is cruel and unusual punishment to so the least, thereby violating the Fifth and Fourteenth Amendments to the U.S. Constitution. This Court must order corrective relief, in that Petitioner be ordered released from imprisonment. To fail to do so would violate the United States Constitution's Eight Amendment as to cruel and unusual punishment.

C.

### **IS 42 U.S.C. § 1997(e)'S HAUSTION REQUIREMENT ABSOLUTE AND ARE THERE EXCEPTIONS?**

#### **DOES AN EXCEPTION TO THE EXHAUSTION REQUIREMENT OF 42 U.S.C. § 1997(e) EXIST?**

There are, however, they are limited to instances where plaintiffs' may be excused from exhausting administrative remedies. The exceptions to the exhaustion requirement occur when "(1) EXHAUSTION WOULD BE FUTILE [as in this very case]; (2) Exhaustion **would** fail to provide adequate relief; or (3) an agency has adopted a policy and/or pursued a practice of general applicability that is contrary [to] law. *Id. J.B. v. AVILLA SCHOOL DIST.*, U.S. DIST. LEXIS, 14934, Dec. 2011; *MEGAN C. v. INDEPENDENT SCHOOL DIST.* NO: 625, 57 F.Supp. 2d 776,789( D. Minn. 1999)(quoting ASSOCIATION FOR COMMUNITY LIVING IN COLORADO v. ROMER, 977 F.2d 1040, 1043-44(10<sup>TH</sup> CIR. 1993))."

In Petitioner's case there are no procedures to exhaust when the ISP Administrative Law Judge states in his ruling on Petitioner's Grievance to be a "NON-GRIEVANCABLE MATTER." {See, Exhibits 12, 13.} There are also NO provisions in the ISP Policy to cover law suits for monetary damages against only named individuals. See, generally, *McMARTHY v. MADIGAN*, 503 U.S. 140, 112 S.Ct. 1081, 117 L.Ed.2d 291(1991).

There is also, the matter of the district Court's responsibility to be alert to violations of civil/constitutional invasions upon a liberty interest. In, **WEBSTER BIVENS v. SIX UNKNOWN FEDERAL BUREAU OF NARCOTIC**, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2D 619(1971), the Honorable Justice HARLAN, stated in his concurring opinion that; "That Federal Courts had the power to award damages for violation of constitutionally protected interests, and that the traditional judicial remedy of damages was appropriate to vindicate the personal interests protected by the Fourteenth Amendment."

BEVINS also goes on to state; "Where federally protected rights have been invaded, the {district & Appeals} court[s] will be alert to ADJUST THEIR REMEDIES so as to grant the necessary relief. Where legal rights have been invaded, and federal statute provides for general right to sue for such invasion, federal courts may use ANY AVAILABLE REMEDY TO MAKE GOOD THE WRONG DONE."

"The essence of [a] civil liberty consists in the right of every individual to claim protection of the laws whenever he receives an injury. And "where federally protected rights have been invaded, IT HAS BEEN THE RULE FROM THE BEGINNING [THAT] THE COURT WILL BE ALERT TO ADJUST THEIR REMEDIES SO AS TO GRANT THE NECESSARY RELIEF. (QUOTING , BELL v. HOOD, 327 U.S. @ 684, 90 L.Ed. @ 944, 13 ALR2D 383[footnotes omitted]; BEMIS BROS. BAG CO. v. UNITED STATES, 289 U.S. 28,36, 77 L.Ed.1011, 1015, 53 S.Ct. 454(1933); THE WESTERN MAID, 257 U.S.419,483, 66 L.Ed . 299,303, 42 S.Ct.159(1922)(HOLMES, J.)."

Further, "that damages may be obtained for injuries consequent upon violation of the [fourth] Amendment [and] federal officials should hardly seem a surprising proposition. Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty. See, NIXON v. CONDON, 286 U.S. 73, 76 L.Ed 984, 52 S.Ct. 484, 88 ALR 458(1932)."

#### **D. INEFFECTIVE ASSISTANCE OF COURT APPOINTED COUNSEL:**

In 1846, the United States Congress approved Iowa's Application into the United States of America and that of its Constitution. In accepting Iowa's TREATY in the United States, it also accepted Iowa's Constitution and under Iowa's Constitution at its BILL OF RIGHTS, ARTICLE I, section 10, it states: "{I}n all criminal prosecutions and IN CASES INVOLVING THE LIFE, OR LIBERTY OF THE ACCUSED SHALL HAVE A RIGHT ... TO ASSISTANCE OF COUNSEL." Iowa Const. Article I, section 10.

So, under Iowa's Constitution, Plaintiff was entitled to the effective assistance of counsel for his suit, as it contained both life and liberty interests. This came about under the Iowa Supreme Court's newest ruling regarding when counsel is to be provided to parties in civil action {Post Conviction and lawsuits}. Under this decision (See, 2018 IOWA SUP. LEXIS 76—Allison v. STATE, June 29, 2018) {also listed as ALLISON v. STATE, 914 N.W.2d 866, 884-85(Ia.2018)}. And accordingly this right to counsel in cases involving LIFE and/or LIBERTY means that Plaintiff was to receive the effective assistance of said counsel.

Further, ALLISON was not the first case that the Iowa Supreme Court ruled accordingly so on this same issue. In STATE v. YOUNG, 863 N.W.2d 249(Ia.2015) the Iowa Supreme Court went so far as to define the Iowa Constitution as having a **DOUBLE-BREASTED PROVISION**. "Unlike the Federal counter-part (the Fifth Amendment), the Iowa provision is **DOUBLE-BREASTED**, IT HAS AN "ALL CRIMINAL PROSECUTIONS CLAUSE" and a "CASES CLAUSE" involving life and/or liberty of an individual. The Iowa Supreme Court has overturned years of error in its old decision of DIBLE v. STATE, 557 N.W.2d 881(Ia.1996) and as such the new decisions of STATE v. YOUNG 863 N.W.2d 249, 278-79 (Ia.2015). and ALLISON v. STATE, 914 N.W.2d 866, 884-85(Ia.2018) ARE NOW CONTROLLING AND Petition asserts that this Iowa Constitutional guaranteed Right must be applied to this case as a matter under the Treaties made by the U.S. Congress of 1846. This falls under the Protections of the Laws of the United States Constitutional guarantees of the Fourteenth Amendment. Otherwise, the treaty made in 1846 by Congress is invalidated and this cannot be allowed.

By the Court of Appeals decision of not granting the matter of counsel's effectiveness into the Appeal, the LAWS of the TREATY HAVE BEEN BROKEN and must be corrected. As the United States Constitution states:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and **ALL TREATIES , or which shall be made, under the authority of the United States, SHALL BE THE SUPREME LAW OF THE LAND; and JUDGES in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.**"

**Id. United States Constitution Article VI, second Paragraph.**

Petitioner holds that his Due Process Rights have been violated by the 8<sup>th</sup> Circuit Court of Appeals refusal to grant him appointment of counsel. Further, as the Iowa Supreme Court stated in its **ALLISON v. STATE , 914 N.W.2d 866, 884-85(Ia. 2018)**: "WE HELD THE STATUTORY GRANT OF A {POSTCONVICTION} APPLICANT'S RIGHT TO COUNSEL NECESSARILY IMPLIES THAT COUNSEL BE EFFECTIVE. Id. THUS, WHERE THE ONLY COUNSEL PROVIDED TO AN APPLICANT HAS BEEN INEFFECTIVE, **A VIOLATION OF THE STATUTE OCCURS.**"

Further, Petitioner is entitled to the Right to have counsel in all of his proceedings which involve his life and/or liberty. Unlike the Federal counter-part, the Iowa Constitution provision is "DOUBLE-BREASTED". It has an "IN ALL Criminal prosecutions Clause" along with the "AND {IN} ALL CASES INVOLVING THE "LIFE OR LIBERTY [CLAUSE] OF THE INDIVIDUAL SHALL HAVE THE RIGHT TO COUNSEL."

**Id. STATE v. YOUNG, 863 N.W.2d 249, 278-79(Ia.2015).**

So, Petitioner asserts that he was denied both the effective assistance of counsel and the to the effective assistance of said counsel in all proceedings involving his life and/or liberty. And this can only be corrected by this Most Honorable Court reversing and remanding the case to the U.S. District Court with proper instructions , that of rendering the case a “**BIVENS**” type case/suit and appointing effective assistance of trial counsel, plus a finding that Trial Counsel in this case was ineffective. To do otherwise would violate the Petitioner’s Due Process Right and his Equal Protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution. As stated before, Iowa’s Admittance into the Union of the United States of America by Congress as a Treaty made in 1846 requires the extension of the Iowa DOUBLE BREASTED CLAUSE regarding the appointment of counsel and the effective assistance of said counsel to Petitioner’s case. As is guaranteed by the Iowa Constitution’s “BILL OF RIGHTS,” Art. I, section 10.

## **CONCLUSION:**

Petitioner assert that for the errors made in the lower courts decisions, this case must be granted A WRIT OF CERTIORARI to review, investigate and to correct errors made. Further, Petitioner asserts that his First, Fifth and Fourteenth Amendments have been violated.

**RESPECTFULLY SUBMITTED:**

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BENJAMIN E. SCHREIBER [PRO SE/IN FORMA PAUPERIS]

DATE: July 08, 2019.

**CC: BES/FILE**