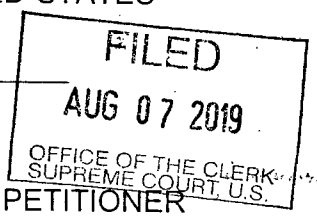
No. _____

19-5584

IN THE

SUPREME COURT OF THE UNITED STATES



_____

CHRISTOPHER ISAAC SIMMONS — PETITIONER

(Your Name)

vs.

R. GRISSOM, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Isaac Simmons

(Your Name)

1600 California Dr., P.O. Box 2500

(Address)

Vacaville, Calif. 95696-2500

(City, State, Zip Code)

none available N/A

(Phone Number)

QUESTION(S) PRESENTED

Did the Ninth Circuit impermissibly revoke Appellant's In Forma Pauperis (IFP) Status under 28 U.S.C. 1915(g) where Heat Risk prisoner clearly made allegations of ongoing pattern of conduct with supporting evidence conduct demonstrated significant and "imminent danger of serious physical injury?"

Was the Ninth Circuit decision to revoke Appellant's IFP Status who alleged ongoing threat of imminent danger of serious physical injury "a clear departure from the accepted and usual course of judicial proceedings and Ninth Circuit's own binding precedents"? If so,

By Revoking IFP Status did the Ninth Circuit improperly "immunize" the district court's alleged "clearly erroneous" decision by denying review on appeal and refused to entertain any further motion(s)?

If the Appellees raise issue of Appellant's "Vexatious Litigant" history under 28 U.S.C. § 1915(g), is Appellant [Petitioner] entitled to assert "New Argument" in defense showing State Governmental actor's Perpetual pattern of "Direct Obstruction and Interference" with Prisoner's Access to the Courts and legal mail tampering, had motive to intentionally cause legal injury resulting in "STRIKES" against Prisoner?" If so,

Does that same pattern of conduct resulted in strike dismissals substantiate "Vexatious Litigant" Branding?; and

Does it immunized the judgments entered against the victim of "State Governmental Official's impermissible conduct causing those injuries?"

NOTE: This court has held that the constitution requires the waiver of filing fees in criminal cases. Mayer v. Chicago, 404 U.S. 189, 92 S.Ct. 410; Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585. In the civil context, however, the Constitution only requires waiver of filing fees for indigent persons who are challenging termination of their parental rights, id., or seeking a divorce, See Boddie v. Connecticut, 401 U.S. 371 however, this petitioner is currently denied filing in both state and federal courts with no other means to acquire redress.

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 the proceeding in the court whose judgment is the subject of this petition is as follows:

Anthony Hedgpeth ..... Warden-Kern Valley State Prison (KVSP)
Nate Dill, Jr., ...Associate Warden (KVSP)
R. Grissom, ...Associate Warden (KVSP)
Jonathan Akanno, M.D. .....Physician (KVSP)
P. Keiley .....Correctional Plant Manager (KVSP)
A. StLucia .....Chief Engineer (KVSP)
L. Sauceda, LVN .....Medical Personnel (KVSP)
T. Ellstrum, LVN .....Medical Personnel (KVSP)
Rufino, LVN .....Medical Personnel (KVSP)
J. Jey, RN .....Medical Personnel (KVSP)
Rubles, ...Correctional Officer (KVSP)
M. Rients .....Correctional Officer (KVSP)
DOES 1 to 10 .....NURSES-Medical Personnel (KVSP)
DOES 11 to 20 .....Correctional Officers (KVSP)
DOES 21-22 .....Correctional Sergeants (KVSP)
DOES 23 to 50 .....Administrative, Custodial, and Employees (KVSP)

NOTE: Second Amended Complaint named previously unidentified DOES, however, it was not permitted to proceed-Motion for Leave denied

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APPENDIX A • • • January 23, 2019, ORDER Revoking Appellant's "In Forma Pauperis Status under 1915(g) [Alleged "Clearly Erroneous" Revocation•• and Contrary to Ninth Circuit's own Binding Authorities/Precedents]

APPENDIX B • • • Appellant's "RESPONSE TO APPELLEE'S MOTION TO REVOKE IN FORMA PAUPERIS STATUS [all exhibits attached to this 'Response' cannot be TIMELY FOUND due to issues with storage in CMF Main Property for "Legal Materials"]

APPENDIX C • • • March 13, 2019 ORDER--Acting as "MANDATE OF THE COURT"

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APPENDIX E • • • APPELLEE'S "Reply in Support of Motion to Revoke" with Attached "Summary of SIMMONS' EXHIBITS"

APPENDIX F • • • PETITIONER'S Supporting Exhibits previously attached to his "Response••a good faith attempt to reconstruct has been attempted [Exh. A to F].

NOTE: This Petitioner is quite unsure of the proper documents to include for addressing an issue not reviewed on the merits, but dismissed on the procedural grounds perpetually used by opponents to avoid review of the court's alleged "Clearly Erroneous" decisions, as here. Petitioner suspects the documents are "mixed-up" within six boxes currently stored.

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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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix **"A"** to the petition and is **a ORDER Revoking IFP Status--before reaching merits**

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished. **ORDER**

The opinion of the United States district court appears at Appendix _____ to the petition and is **Not included--did not reach review on the merits before matter wass "Dismissed--Revocation of IFP Status in 9th Cir. only.**
[X] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was **"Stayed pending resolution of § 1915(g) matters···Certiorari review**

[X] No petition for rehearing was timely filed in my case./ **a Rule 52 Motion ["Clearly erroneous" Revocation] was filed Feb. 21, 2019, instead.**

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **March 13, 2019 ORDER**, and a copy of the order denying rehearing appears at Appendix **"C"**.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including **August 10, 2019** (date) on **April 14, 2019** (date) in Application No. **18**A**1138**.

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

NOTE: This matter includes allegations of Governmental "Obstruction" of Legal Mail, Access to the Courts [including research, etc,] Mail Tampering, and Censoring Legal/Confidential Mail.

[ ] 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

U. S. Constitution, First Amendment provides:

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

Petitioner, a state prisoner has a right of access to the courts to vindicate violations of his Constitutional rights [Bounds v. Smith, 430 U.S. 817; Johnson v. Avery, 393 U.S. 483; California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508 (both physical and obstruction legal access)], have the right to send and receive confidential/legal mail [Turner v. Safley 482 U.S. 78, 89, 107 S.Ct. 2254 (1987); Witherow v. Pafl, 52 F.3d 264, 265 (9th Cir.1995); Crofton v. Roe, 170 F.3d 957, 961 99th Cir.1999)], the First Amendment among the most fundamental. The scope of denial of access to the courts include not only physical prevention from filing, but obstruction as well [Morello v. James, 810 F.2d 344 (2d Cirl987). Petitioner submitted unrebutted evidence which demonstrated that jail and prison officials have, since October 1998 [original discovery-Sacramento County jail], through to date, regularly, routinely, and illegally, opened Petitioner's incoming and outgoing legal mail outside his presence; destroyed outgoing legal mail addressed to the courrts, attorneys, other governmental agencies, and during these events, have removed direct unrebutted admissible evidence tending to demonstrate asserted facts, allegations, etc., clear and convincingly and that these events are directly related to this Petitioner's unlawful branding as a "vexatious litigant," in furtherance of the "unconscionable Plan/Scheme". Because the lower courts have refused to even consider such events could occur, demonstrates the success of this carefully executed Plan/Scheme currently causing extreme prejudice to this Petitioner. Therefore, pursuant to Ex Parte Young, 209 U.S. 123, 28 S.Ct. 441; Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, when a governmental official comes into conflict with the Supreme Authority of the Constitution and law of the Land, "he is to be stripped of his official representative capacity" and held to answer in his person. No "State" can impart an immunity to a governmental official when they come into conflict with that Supreme Authority.

Petitioner has alleged an "Unconscionable PLAN/SCHEME and supported these allegations with unrebutted evidence that several identified governmental/prison officials and agents thereof have and continue to violate Petitioner's fundamental right of access to the court and have caused an "injury in fact," for which relief may be granted.

U. S. Constitution, Fourteenth Amendment provides:

All persons born or naturalized in the United States, and subject t 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 imminities 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 any person within its jurisdiction the equal protection of the laws.

Under the Equal Protection Clause of the Fourteenth Amendment commands that no State shall, "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that "all persons similarly situated should be treated alike." City of Cleburne, Tex v. Cleburne Living Center, 473 U.S. 432, 439 (1985); Plyler v. Doe, 457 U.S. 202, 216, 102 S.Ct. 2382 (1982). The general rule is that legislation is presumed to be valid and will be sustained of the classification drawn by the statute is rationally related to a legitimate state interest [Schweiker v. Wilson, 450 U.S. 221, 101 S.Ct. 1074; United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 101 S.Ct. 453; Vince v. Bradley, 440 U.S. 93, 99 S.Ct. 939.]. Thus, when it appears that an individual is being singled out by the government, the specter of arbitrary classification is fairly raised, and the Equal Protection Clause requires a "rational basis for the difference on treatment [Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 128 S.Ct. 2146 (citing Village of Willow Brook v. Olech, 528 U.S. 562, 120 S.Ct. 1073]. Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination ..." To state a viable claim under the Equal Protection Clause, however, a prisoner must plead intentional unlawful discrimination or allege facts that are at least susceptible of an inference of discriminatory intent." Byrd v. Maricopa County Sheriff's Dept., 565 F.3d 1205, 1212 (9th Cir.2009) (quoting Monteiro v. Tempe Union High School District, 158 F.3d 1022 (9th Cir.1998). "Intentional discrimination means that a defendant acted at least in part because of a plaintiff's protected status." Serrano v. Francis, 345 F.3d 1071 (9th Cir.2003) (quoting Maynard v. City of San Jose, 37 F.3d 1396 (9th Cir.1994)). Petitioner suffers from an "identifiable depressive disorder protected under 42 U.S.C. § 12031 [American's With Disability Act], and was denied meaningful assistance from someone knowledgeable in law to assist him during preparation of the early complaints filed in the federal courts; was denied physical access to conduct meaningful research to prepare adequate allegations to meet the pleading standards, and prison officials repeatedly destroyed both incoming and outgoing legal filings to the courts during critical stages of the litigation to create the "Strikes" against this Petitioner and control his free access to the courts (IFP) because of his impoverished status, no family support, or financial means.

This Petitioner's clearly identified "protected status" existed at the time he was intentionally targeted by court officer(s) and governmental officials in the conspiracy to violate his United States and California Constitutional rights, by, among other things, presenting "fraudulently produced documents to present in a court proceeding; suppressing documents demonstrating the issue surrounding the State's "Jurisdiction over the party" factually demonstrated an absence of authority to act but in one single manner [California Rules of Court, Rule 4.130], suspend all proceedings and order a competency hearing a second separate evaluation/hearing, presented with "substantial evidence of incompetence (GAL appointment). By discussing the very case showing that "substantial evidence of incompetence" and failing to act as required by law [Pate v. Robinson, 383 U.S. 375; Cooper v. Oklahoma, 517 U.S. 348], the trial court acted without jurisdiction, which cannot be waived by a defendant's

counsel, or the court. Thus, this Petitioner alleged that these facts support his allegations of the "Unconscionable Plan and/or Scheme designed to prevent this Petitioner from meaningful access to the court to vindicate the ongoing violation of his United States Constitutional rights.

Because the Plan/Scheme involves the intentional denial of access, and impairment thereof (fraudulent branding as "Vexatious"), contrary to Respondent's assertion that the facts surrounding this Petitioner's conviction having no bearing on this matter is a mischaracterization of the unrebutted factual showing made by this Petitioner in response to Respondent initiating the issue of this Petitioner proceeding IFP. Belied by the facts established from unrebutted documentary evidence prison officials repeatedly obstruct from being reviewed by the courts, or intentionally disregarded by courts of original jurisdiction legally bound to determine a question properly before the courts.

At no time can "JURISDICTION" over the party(ies) be waived [Pate v. Robinson, 383 U.S. 375; People v. Laudermilk (1967) 67 Cal.2d 272, nor can jurisdiction be time barred. Petitioner's evidence establishes that at the time of his criminal trial the judge, prosecutor, and public defender discussed a matter involving an erroneous dismissal of a action where jurisdiction to act was limited to ordering a competency determination (only act on substantial evidence of incompetence-but in one manner alone); not to try a defendant while a significant question remained regarding his competency being at issue. Evidence that a "Guardian-Ad-Litem" had remained in place by an appointment of a superior court judge, constituting "significant evidence" that this Petitioner's competency remained at issue [after the "Certificate of Restoration of Mental Competence" had been issued] in a separate civil matter. No hearing on record was held, by the criminal trial judge to make findings that this Petitioner was actually restored to competence. This forms the basis or motivation for the "UNCONSCIONABLE PLAN/SCHEME" Petitioner alleged that is unrebutted by Respondent that "is relevant" to Petitioner being branded as a "Vexatious Litigant" repeatedly used in each action resulting in dismissal to preclude reaching the merits and/or making specific findings.

28 U.S.C. § 1651 [All Writs Act-Rule of Equity] provides:

In Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, this Court held that:

"Federal courts, both trial and appellate, long ago established the general rule that they would not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered. Bronson v. Schulten, 104 U.S. 410, 26 L.Ed. 797. This salutary general rule springs from the belief that in most instances society is best served by putting an end to litigation after a case has been tried and judgment entered. This has not meant, however, that a judgment finally entered has ever been regarded as completely immune from impeachment after the term. From the beginning there has existed along side the term rule a rule of equity to the effect that under certain circumstances, one of which is

after-discovered fraud, relief will be granted against judgments regardless of the term of their entry. Marine Insurance Company v. Hodgson, 7 Cranch 332, 3 L.Ed. 362; Marshall v. Holmes, 141 U.S. 589, 12 S.Ct. 62; Christopher v. Harbury, 536 U.S. 403, 122 S.Ct. 2179,

This equity rule, which was firmly established in English practice long before the foundation of our Republic, the courts have developed and fashioned to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule. Out of deference to the deep rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious in exercising their power over such judgments. United States v. Throkmorton, 98 U.S. 61, 25 L.Ed. 93. But where the occasion has demanded, where enforcement of the judgment is 'manifestly [322 U.S. 245] unconscionable,' Picford v. Talbott, 225 U.S. 651, 657, 32 S.Ct. 687, they have wielded the power without hesitation. Pickens v. Merriam, 242 F. 363 (9th Cir.1917); ..."

This 'historic power of equity to set aside fraudulently begotten judgments,' id. is necessary to the integrity of the courts, for tampering with the administration of justice in [this] manner ... involves more than an injury to a single litigant. id., at 246, 64 S.Ct. at 1001. It is a wrong against the institutions set up to protect and safeguard the public.' id. at 246, 64 S.Ct. 1001. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580, 66 S.Ct. 1176. A party seeking to invoke the Court's equitable powers "must come into court with clean hands."

It is alleged that from October 1998 (initial discovery) through to this current date, that this Petitioner's Confidential Legal mail has regularly and routinely been opened outside his presence, documents removed during the critical stages of litigation (such as summary judgment and/or proceedings which would result in dismissal), prison officials intentionally and recklessly obstruct and/or interfere with the outgoing and incoming legal mail [18 U.S.C. § 1702], by among other things, destroying sealed filings to the courts, removing direct supporting evidence from submissions, failing to deliver legal mail timely (upto and including three weeks after service), and may have actually changed the substance of the moving and/or opposing papers filed by this Petitioner. An example is the Ninth Circuit's January 23, 2019 Order indicating this Petitioner failed to allege "imminent danger of serious physical injury. This Petitioner having lodged the allegation in his Notice of Appeal, followed by his "Response to Appelle's Motion to Revoke" this Petitioner's IFP Status. Respondents supported this in Appellee's Reply in Support, which actually referenced the supporting documents while mis-characterizing this Petitioner's arguments and evidentiary showing [See Appendix C; Jan. 23, 2019 ORDER; Appellee's Reply, Appdx. D].

One of Petitioner's specific allegations regarding the PLAN/SCHEME is that his criminal conviction is inexplicably tied to all of the civil rights actions designed to distract this Petitioner from pursuing the major JURISDICTIONAL QUESTION the State courts refuse to make specific findings in; because the matter was specifically discussed between the criminal

trial judge, prosecutor, and defense attorney on the public trial record [See Exhibit (A,) pp. 1-6]. Because the trial court did not have jurisdiction to try this Petitioner and proceeded anyway, he was without jurisdiction to do so and constitutes a "conspiracy to violate this Petitioner's Constitutional rights. This Petitioner has been deliberately and intentionally branded a "Vexatious Litigant" early in his litigation history to control his free access to the courts and defile the courts by wrongfully influencing the court's ability to render decisions which is an important legal and social interest, and thereby control the outcomes. This Petitioner previously lacked evidence to sufficiently allege and support allegations of the PLAN/SCHEME early on, but has since then acquired that evidence and is currently being obstructed from presenting that evidence fully and fairly, making this a "CLASS OF ONE" Equal Protection claim [Village of Willow Brook v. Olech, 528 U.S. 562, 120 S.Ct. 1073 (2000); Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct. 190; Squaw Valley Dev. Co. v. Goldberg, 375 F.3d 936.

28 U.S.C. § 1915(g) provides:

"In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to sate a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

A prisoner can meet the "imminent danger of serious physical injury requirement by alleging a condition which places the prisoner imminently or about to suffer serious physical harm. There is no holding that requires the prisoner to sue for that imminent danger in order to proceed with an action, only that the prisoner faced "imminent danger of serious physical injury at the time of the filing." This must be so, because not every danger a prisoner faces is actionable because there must also be an "injury in fact" in order to obtain relief. There is no holding that held there must be an actual injury in order for a "vexatious litigant" to proceed In Forma Pauperis. Note: 28 U.S.C. § 1292(e) provides that : "The Supreme Court may prescribe rules, in accordance with section 2072 of this title [28 U.S.C. § 2072], to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under sibsection (a)-(d)."

In Williams v. Paramo, 775 F.3d 1182 (9th Cir.2014), opinion by Stephen Reinhardt stated"

"The limited office of 28 U.S.C. § 1915(g) in determining whether a prisoner can proceed in forma pauperis counsels against an overly detailed inquiry into the allegations that qualify for the exception ... This is even more so when an inquiry must be conducted by a court of appeals, which, unlike a district court, is ill-equipped to engage in satellite litigation and adjudicate disputed factual matters. It is thus the prisoner's facial allegations and that these allegations be liberally construed. ... We do so reluctantly because if a prisoner is denied forma pauperis status on appeal on the ground that he no longer faces an

imminent danger, his inability to pay the filing fee may deprive a court of appeals of the opportunity to correct any errors committed by the district court. Although the PLRA was intended to impose the costs of litigation on prisoners, its purposes do not extend as far as immunizing erroneous district court decisions. See Abdul-Akbar v. McKelcie, 239 F.3d 307, 314 (3d Cir.2001). Moreover, as scholars and judges have noted, the three-strikes provision raises grave constitutional concerns. See, e.g., Thomas v. Holder, 750 F.3d 899, 904-09, 409 U.S. App. D.C. 403 (D.C. Cir.2014)[Id., 775 F.3d at 1190-91].

Thus, we hold, consistent with Andrews, that a prisoner subject to the three strikes provision may meet the imminent danger exception and proceed in forma pauperis on appeal if he alleges and ongoing danger at the time the notice of appeal is filed. ..."

We are not suggesting that a prisoner must always allege that the continuing practice has caused past harms in order to constitute an "ongoing danger." Such a look to history is simply one was a prisoner can make the dispositive showing that the ongoing practice, if continued, "evidenc[es] the likelihod of serious physical injury" at the moment the complaint was filed. Martin, 319 F.3d at 1050. The harm from some ongoing practices may be sufficiently obvious without showing a past injury resulting from it. See Brown, 387 F.3d at 1350 (finding the alleged denial of medicaion to treat HIV and hepatitis constituted "imminent danger" because of "the alleged danger of more serious afflictions if he is not treated"); Gibbs v. Cross, 160 F.3d 962, 965 (3d Cir1998)(finding the imminent danger requirement satisfied when an inmate alleged he was forced to breathe particles of dust and lint whicn were continuously being dispersed into his cell theough the ventilation system," because it is common knowledge that improper ventilation and the inhalation of dust and lint particles can cause disease.").

In Ibrahim v. District of Columbia, 463 F.3d 3, Opinion by Circuit Judge Griffith--holding:

"Jibril Ibrahim, who is serving a life sentence ..., filed a pro se suit ... claiming they denied him adequate medical treatment for Hepatitis C and Prostrate Cancer. ... In his complaint, Ibrahim alleges that defendants have "fail[ed] ... and refused to treat him with "possible eradication treatment" for his Hepatitis C, placing him in the posture of serious physical injury or humiliating death and suffering." Amicus argues that these allegations satisfy the "imminent danger" requirement.

We agree. The PLRA does not define the term "Imminent Danger," and we have not previously addresed whether allegations of an ongoing injury, or a pattern of misconduct likely to produce harm--the allegations Ibrahim and his amicus press here--are sufficient to satisfy the requirement. We need not resolve the precise contours of "imminent danger" in this case because we think it clear that failure to provide adequate treatment for Hepatitis C, a chronic and potentially fatal disease, constitutes "imminent danger."... That surely is sufficient to constitute "imminent danger." See Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir.2003); Ashley v. Dilworth, 147 F.3d 715, 717 (8th Cir.1998)."

Petitioner has alleged in his Notice of Appeal; followed by his Response to Appellee's Motion to Revoke, that he was under imminent danger of serious physical injury and "remains under imminent danger of serious physical injury [See, Notice of Appeal file dated July 18, 2019; Appellant's Response dated Oct. 17. 2018--Appendix B]. The Ninth Circuit revoked this Petitioner's IFP in its "clearly erroneous" Order dated January 23, 2019--stating that "Petitioner failed to allege imminent danger of serious physical injury. Further, the Ninth Circuit refused to hear a timely Rule 52 Motion properly before it, asserting "Clear Error." [See APPENDIX D]. Petitioner asserts that, based on the totality of his circumstances, application of § 1915(g) in this matter is unconstitutional.

NOTE: Rodriguez v. Cook, 169 F.3d 1176: In fact, only two circuit courts have specifically addressed whether § 1915(g) violates a prisoner's access to the courts. Both courts have found the three strikes rule to be constitutional. In Carson v. Johnson, 112 F.3d 818, 821 (5th Cir.1997) the fifth circuit held that the three-strikes rule does not violate the Fifth Amendment due prooess clause because it does not prohibit prisoners from filing a lawsuit, it only denies them IFP status. Likewise in Rivera v. Allin, 144 F.3d 719, 723044 (11th Cir.1998) the Eleventh Circuit held that IFP sttus is a privilege, not a right, and that § 1915(g) does not unconstitutionally aburden a prisoner's access to the courts. Significantly, the Supreme Court has at times prospectively denied IFP status to prisoners filing for writs of certiorari because those prisoners had filed numerous frivolous writs. See Shieh v, Kakita, 517 U.S. 343, 343-44, 116 S.Ct. 1311 (1996); Martin v. Distruct of Columbia Court of Appeals, 506 U.S. 1, 2, 113 S.Ct. 397 (1992); In re McDonald, 489 U.S. 180 [169 F.3d 1180] 109 S.Ct. 993 (1989).

STATEMENT OF THE CASE

I. ABOUT THE PETITIONER

Christopher Isaac Simmons, Petitioner hereafter, suffers from an identifiable major mental disorder and a form of dyslexia which actively affects his construction and transference of sentences from his mind to documents being prepared for submission to the courts and various other entities. Because of this impediment, it may at times require additional time and may be confusing, especially chronologically recording the breadith of 24 years of facts. Petitioner most times is very descriptive and may be repetitive in doing so; the fact "Petitioner has NO Family, NO financial means or outside support" notwithstanding the prison job he is allowed at .08¢ per hour just recently increased, and is prevented from marketing exceptional art Petitioner creates for financial gain. [See Exhibit (Exh.) "A", pp 1-2; Exh. "C", p 1 (Supvr.Rep.].

Petitioner maintains his actual innocence, and is serving a sentence of 175 years to life for a non-violent offense, and is currently attacking the judgment on lack of jurisdiction grounds [Tried a "Incompetent Defendant"]. During this 24 year incarceration, Petitioner has been subjected to several life threatening circumstances, deliberately infected with Hepatitis C Virus, forced a prisoner with TB who refused to take medications into Petitioner's cell infecting Petitioner, an many other instances placing his safety and life at issue. Petitioner is an actual innocent citizen improperly branded a vexatious litigant to prejudice his credibility and prevent vindication. [Exh. "C" p 2-6].

Petitioner's clearly identified "Legal Mail" has been perpetually opened outside his presence dating back to incarceration as a "pretrial detainee" at the Sacramento County Jail, and is perpetrated to intentionally obstruct and/or interfere with the rights and privileges to freely access the courts. As a direct result, Petitioner has suffered two "Injuries In Fact," including, but

not limited to, improperly branded a "Vexatious Litigant," prejudiced throughout all courts, and therefore Petitioner had filed numerous civil rights complaints, and hereby alleges a perpetual "Unconscionable Plan and/or Scheme" perpetrated against Petitioner by identified Court Officers, Governmental Officials, their agents, employees and others working on their behalf.

Consider the prisoner where the totality of his circumstances has been manipulated by law enforcement professionals using their expertise to completely undermine a "actually innocent citizen" from exposing a "Racially Motivated Conviction," where they lacked the jurisdiction to proceed with a criminal trial of a mentally incompetent defendant unable to defend his innocence because he is not mentally present during those proceedings? While the claim may seem far fetched, that is precisely the simplicity of this perpetual unconscionable plan. Very simple but well supported with stigma and professional expertise in law enforcement procedures and criminal prosecutions. So prejudiced, Petitioner cannot receive an impartial meaningful hearing on the merits.

To assist the Court with a greater understanding··the breadith of a 24 year history is essential in explaining the nexus of the "underlying injuries in fact" with the instant matter, and all previously filed complaints, including, but not limited to, the unconscionable plan/scheme, governmental obstruction of legal access to the courts, communications seeking relief from governmental officials able to correct the abuses, etc. Petitioner asserts the "Root Cause" is the State "never had JURISDICTION OVER THIS PRISONER," and conspired to fraudulently convict Petitioner. Who will believe a "Mentally Ill Convicted Felon?"

II

Imminent Danger Upon Filing This Appeal

First an foremost, Petitioner made specific allegations that he was under "imminent danger of serious physical injury" twice during the appeal [See Notice

of Appeal; Appellant's Response to Appellee's Motion to Revoke Appellant's In Forma Pauperis Status ("Mot. to Revoke"); Judicial Notice (Jud.Not.) 201(b).

a. Facts Of The Case [District Court Proceedings]:

On October 14, 2005, Petitioner was transferred from Salinas Valley State Prison (SVSP) to Kern Valley State Prison (KVSP) (Successors in Interest). Petitioner had been suffering under retaliatory treatment from officials at SVSP prior to the transfer to KVSP, and had previously been suffering under retaliatory treatment from jail officials at the Sacramento County Jail. Most of the acts and/or omissions were alleged in the civil rights complaints filed by Petitioner, however, many were dismissed by the district courts.

On July 17, 2007, Petitioner filed the instant action as a 28 U.S.C. § 2254 seeking injunctive relief pursuant to 28 U.S.C. § 1651 of the "All Writs Act." Petitioner sought to enforce an Injunction issued by the Honorable Claudia Wilken, United States District Judge in the matter of Armstrong v. Schwartzenegger, Case No. 94-cv-02307, file dated January 17, 2007, to require the California Department of Corrections and Rehabilitation (CDCR) and KVSP to transfer the ADA Plaintiff class identified in the injunction, exercising a protected activity. Judicial Notice requested, Federal Rules of Evidence (Fed.R.Evid) Rule 201(d).

The district court dismissed, and Petitioner appealed. During the appeal in the Ninth Circuit, Petitioner was forced to file numerous moving papers seeking relief from increased retaliatory treatment by prison officials, including, but not limited to, Immediate Injunctive Relief, a Temporary Restraining Order (TRO), Leave to Amend to a Rule 23 Calss Action. Denying these motions, the Ninth Circuit did, however, indicate that "nothing prevents Appellant from fling a Section 1983 during this appeal." [See 9th Cir. Case No. 08-15143; Jud.Not. requested 201(d)].,

In the Injunction issued by the court on January 18, 2007, the court found that defendant California Department of Corrections and Rehabilitation (CDCR) "continued to injure the Plaintiff Class through increased risk of injury causing serious harm" and stated in its Order the following in pertinent part:

> Finding: "[T]he court hereby finds and Orders: ... Contrary to law, the permanent injunction, and the Armstrong Remedial Plan, defendants [CDCR] are systematically failing to provide safe, accessible housing to prisoners with mobility impairments, resulting in significant harm to the Plaintiff Class, including through increased risk of injury. ...
>
> Remedy: Starting immediately, defendants shall not house DPW, DPO, and DPM prisoners in the CIM dayrooms or Kern Valley State Prison until those locations have adequate accessible housing, including working accessible toilets and showers."

This Order included such issues as: i) Inaccessible Housing; ii) Denial of Language Interpreters; iii) Confiscation of Medically Prescribed Assistive Devices; iv) Late and Inadequate Disability Grievance Responses; and v) Inadequate Disability Tracking. Each having sub-issues inclusive in the Order.

Petitioner had also filed a state tort action against several KVSP custodial and medical personnel, and was subjected to increased retaliatory treatment, culminating into Petitioner having been found "unconscious" and "unresponsive" on his cell floor, regaining consciousness hours later at the local hospital, as a result of the retaliatory treatment Petitioner filed Simmons v. Akanno, USDC Eastern Case No. 08-cv-00659 **[Exh. C, 2-6; J.N. 201(d)]**.

During summary judgment proceedings, Petitioner submitted a report from a governmental agency which directly contradicted the evidence submitted by defendants, including Petitioner's evidence that defendants fraudulently altered the recorded temperatures from 90 degrees and above inside, to 79 to 89 degrees while misrepresenting that the "evaporative coolers on the roof were working, when their own evidence demonstrated that they were not during the "Heat Wave of 2006" reported to have claimed 350 lives in California. Petitioner, an identified "Heat Risk" prisoner was forced to draw air from under the two inch

gap under the cell door to survive heat in excess of 105° with NO AIR coming through the ventilation system, no ice, cold water fountain access--witnessed by 54 other inmates in the building. This evidence Petitioner was denied.(J.N.) requested, Federal Rules of Evidence (Fed.R.Evid.) Rule 201(b) and (d) ("201" hereafter).

The district court erroneously granted summary judgment to all defendants despite clear and convincing evidence to the contrary, including, but not limited to, an Official "REVIEW OF JULY 2006 HEAT WAVE RELATED FATALITIES IN CALIFORNIA" prepared by Roger B. Trent, Ph.D., California Department of Health Services Epidemiology and Prevention for Injury Control Branch," judicial notice had been requested; presented under Rules of Evidence 201 803 [mandatory request]. Petitioner alleged the order is "clearly erroneous" as a matter of fact and law.

The district court entered judgment on June 21, 2018. Petitioner filed a timely "Notice of Appeal--stamp filed on July 18,, 2018. The Notice of Appeal specifically set out an allegation "Plaintiff was found to be under imminent danger of serious physical injury, and remain under imminent danger of serious physical injury" ...

b. Section 1915(g) Applied To This Appeal:

Following receipt of the "Scheduling Order" from the Ninth Circuit, Appellees immediately filed a "Motion to Revoke Appellant's In Forma Paupris Status and Request for Stay" to avail themselves of this meritorious action, as the "State" has perpetually done in each action filed once improperly declared "Vexatious Litigant." [Request for judicial notice of § 1915(g) dismissal 5],

In addition to allegations in his notice of appeal, Petitioner's IFP Status has never been revoked in the district court in this case. Petitioner filed a timely "Response to Appelleee's Motion to Revoke on October 18, 2018. Appellee's filed a "Reply in Support of Motion to Revoke and attached

Appellant's "Exhibits" supporting his Response. The Ninth Circuit, contrary to its own binding precedents, revoked this Petitioner's IFP Status stating "Appellant has not alleged imminent danger of serious physical injury. See 28 U.S.C. § 1915(g)," on January 23, 2019, dismissing this appeal.

III IMPROPER MANIPULATION OF 28 U.S.C. § 1915(g):

Petitioner asserts and submits that utilizing statues which are designed to apply to genuine "vexatious litigants" rather than an individual genuinely seeking relief and is caught-up in retaliatory treatment which "manipulates" the boundaries between protecting the court system from "abuse" to elected governmental officials who actually are abusing the court process unethically--to reach unconstitutional results requires this Court's attention.

Petitioner asserted "New Argument" in defense of his IFP Status pursuant to this Court's holding in Yee v. Esconaido, 503 U.S. 519, 112 S.Ct. 1522, and Ninth Circuit's holding in United States v. Pallares-Galan, 359 F.3d 1088, 1095 (9th Cir.2004) ("It is claims that are deemed waived ... not arguments ..."). The Ninth Circuit's revocation of Appellant's IFP Status is contrary to its' own binding precedents [See Hart v. Massinnari, 266 F.3d 1155 (9th Cir.2001); Williams v. Paramo, 775 F.3d 1182 (9th Cir.2014); Andrews v. Cervantes, 493 F.3d 3; DeLong v. Hennessey, 912 F.2d 1144 (9th Cir.1990)], including several sister circuits holdings [Ibrahim v. District of Columbia, 463 F.3d 3; Brown v. Johnson, 387 F.3d 1344 (11th Cir.2004); Ciarpaglini v. Saini, 352 F.3d 328 (7th Cir.2003); Gibbs v. Cross, 160 F.2d 96 (3d Cir.1998)], among others.

a. FACTS SUMMARIZING UNDERLYING CLAIMS/UNCONSCIONABLE PLAN/SCHEME:

Following the January 23, 2019 Order, Appellant filed a timely "Rule 52 Motion" under the federal rules of civil procedure [FRCP] advising the Ninth Circuit of the "clearly erroneous" decision. Additionally, the 1/23/19 Order provides support to Appellant's "New Argument" regarding obstruction of mail:

i) opened outside his presence; ii) knowingly destroyed identified critical filings; iii) obstructed from receiving court orders timely, serving and receiving legal pleadings from opponents, (from prison officials) once the institution receives it from clearly recognized confidential sources; and vi) maintaining the integrity of the pleadings Petitioner has submitted (Documents and evidence being removed prior to reaching the addressees). These violations commenced while confined at the Sacramento county jail and continues as demonstrated herein. **[See also, Aplnt's "Respons & Exh.'s; Reply SSE; J.N. 201].**

On December 30, 1995, Petitioner was arrested with five (5) baskets of his and his daughter's laundry, [presently] unaware he had rented a car that was stolen and unconscious of the fact he was [presently] suffering from his major mental impairment. He was given keys to the car, its condition gave no indication of its stolen status. The car was not altered which would alert any average person to the vehicle's actual status. When arrested Petitioner did not give any false information-did not attempt to flee from the arresting officer, and apparently directed the officer to his residence (his mother lived next door--she immediately told Petitioner not to make any statement).

At the Sacramento main jail during booking and screening process to determine whether Petitioner was "fit for incarceration," the Reception Nurse found Petitioner was a "psych referral," however, failed to ensure Petitioner was immediately examined by a mental health professional and prescribed necessary medications. Not until over a year later was Petitioner officially given a "mental health assessment" or "evaluation" (February 1997), despite clear evidence raising a doubt regarding his competence. Petitioner was charged with Penal Code § 496a, Health and Safety Code (H&S) § 11350a, and Vehicle Code § 10851a at that time. **See, Simmons v. Sacto.Sup.Ct., 318 F.3d 1156; Reply SSE.**

On February 12, 1996, Petitioner obtained a $50,000.00 bail to undergo

back surgery [previously scheduled at U.C. Davis Medical Center by his family member(s)] stemming from the April 10, 1995, MIRANTE accident that occurred more than eight months before Petitioner was arrested or charged with any crime. Petitioner was a full time-above average Business Administration college student when he presented "President's Honors" to successfully discharged parole March 28, 1995.

Petitioner was interrogated by a Sheriff Detective (Dect.) Stephen Hughes an hour and a half before arraignment. Hughes was investigating a "rare series of burgalary cases" involving 40 or more "unique night-time 'cat burglaries," in and around the city and county of Sacramento and had NO SUSPECTS. After Petitioner bailed out, Hughes discovered Petitioner made bail rearrested and charged Petitioner with nine (9) of the 40+ rare/unique night-time cat burglaries [PC §459]-Hughes had provided "fraudulent Probable Cause Evidence" to the Magistrate judge to obtain Petitioner's February 27, 1996 arrest warrant.

After several court ordered examinations, Petitioner was found "Incompetent" on July 13, 1997, but not actually transferred for treatment until November 17, 1997, long after the first mandated initial 90 day Report was due despite an order of commitment for treatment at Atascadero State Hospital (ASH). Petitioner was returned for further proceedings March 8, 1998, with a "Certificate of Restoration of Mental Competence," however, he was never found competent by the originating court and "remained incompetent" according to a superior court judge's order on April 10, 1998, made a finding confirming that Petitioner remained "incompetent" by substituting Petitioner's brother Michael Simmons, the current "Guardian Ad-Litem" (GAL) who was replaced with Petitioner's mother Mary Bennett. This remained in place until the matter was fraudulently dismissed on September 21, 1998. **Exh. A pp 1-8; Appdx E Reply SSE.**

On December 1, 1998, in People v. Simmons, Sacto.Sup. No. 96F00053, the

trial judge "Michael Garcia," prosecutor "Marjorie Koller," and Public Defender "Peter Vlautin," combined, confederated, and/or conspired to unconstitutionally convict Petitioner, by, with the entire court file physically present, each of them discussed the matter of "SIMMONS v. MIRANTE, Sacto.Sup. No. 96AS01528" during the criminal trial taken against Petitioner. This entire showing has been placed properly before the "state and federal courts," and specifically before the Ninth Circuit in Appellant's Response to Appellee's Motion to Revoke, including examples of the continuous governmental obstruction of meaningful access in support of Petitioner's "New Argument" regarding his improper vexatious litigant branding as intentional, erroneous and has been improperly created for repeated use. Appdx. B, Response; E, Reply SSE; Exh. A, 1-13; 201(d)

IV. Underlying Injuries:

Marjorie Koller, the prosecutor insisted on using the fraudulent dismissal of Simmons v. Mirante, No. 96AS01528 in Petitioner's criminal trial [The dismissal was based on R. Duane Skelton's fraudulent representation that [Plaintiff] abandoned the case--to obtain judgment in favor of the defense they were not entitled to by law"], despite clear awareness of Petitioner's unresolved incompetence and standing GAL (People v, Simmons Case No. 96F00053 at RT 359-60, 409-10, 412; Exh. A, 1-13; Simmons v. Sacramento Co. Superior Court, et al., 318 F.3d 1155 (9th Cir.2003); Simmons v. Mirante, Case No. 96AS01528; Jud.Not. requested, 201(d)]. Petitioner lacked the mental awareness to provide a meaningful defense at these proceedings, particularly mentally present to be heard. [Exh. A 1-13; Appdx. E, Reply SSE, 1-6, 21-23; Jud.Not. 201(d)).

Understanding one day Petitioner would regain his mental competence and discover "some evidence" of wrongdoing, the creation of an "Unconscionable Plan and/or Scheme" was necessary as means to prevent Petitioner from attacking the fraudulent judgments entered against him, including, but not limited to, People

v. Simmons, Sacto.Sup. No. 96F00053; Simmons v. Mirante, Sacto.Sup. No. 96AS01528; Simmons v. Hambly, USDC Eastern No. 97-01165; SIMMONS v. CLARK, (both State and Federal Cases), and numerous others filed by Petitioner. These cases were deliberately and intentionally obstructed and/or interfered with to create "Dismissals" for the purpose of producing "STRIKES" and prejudice against Petitioner to impair Petitioner's privileges of freely accessing the courts, and to injure his credibility in the courts as demonstrated by a pattern of governmental obstruction since 1998. The supporting documents of specific unrebutted evidence left unchallenged by any Defendant(s) or any Respondent(s) is as follows:

Petitioner alleges three separate categories of governmental obstruction and interference with meaningful access to the courts violations, causing an "injury in fact" and "strikes." 1) selectively destroying critical moving, opposing papers, supporting documents, complaints, and communications seeking relief; 2) opening clearly identified incoming and outgoing legal and confidential mail outside Petitioner's presence for censoring, tampering and delaying legal mail matter to cause injury; and 3) intentional denial of meaningful access to research and legal materials, denial of assistance from someone trained and/or knowledgeable in the law prior to Petitioner's self education in the law, including instruction on stating proper elements to a legitimate claim for relief,

1) In every action Petitioner filed, routine, continuous obstruction, destruction and delaying moving and opposing legal documents, delivery of court orders during the most critical stage or review on the merits has caused injury. In each complaint filed, jail and prison officials intentionally caused their dismissals prior to review on the merits, or appellate review of a district court's "clearly erroneous" decision to

obtain judgment in their favor, to add a strike and prejudice against Petitioner. The following is part of a more substantial showing of unrebutted admissible evidence Petitioner possesses, for example:

a) Petitioner was unable to consistently file, serve, and receive important legal mail from the courts, opposing parties, and other confidential sources timely, and at times not at all [such as in Simmons v. Mirante, Sacto.Sup. No. 96AS01528 below], while at the Sacramento County Jail (SCJ). As a result, Petitioner created a "Outgoing Legal Mail Log (OLML) to maintain a record of his outgoing legal mail that the Sacramento County Sheriff's Department who was running the Jail (SCJ) did not, and would not document. This OLML contains chronological entries, starting at One (1) through 1070, a "complete true copy" of the OLML is attached as Exhibit "B" ending on September 20, 2008, because retaliation against Petitioner increased significantly, the threat to his health and safety made it almost impossible to continue to accurately maintain. Each legal entry can be verified, and should be verified. [See Appellee's Reply Attachments--Summary of Simmons' Exhibits ("Reply SSE") # 8; Exhibit "B"; Judicial Notice (Jud.Not.) requested, Federal Rules of Evidence, Rule 201(b) and (d) (F.R.E. 201 hereafter)].

b) In SIMMONS v. MIRANTE, Sacramento Superior Court, Case No. 96-AS-01528, Petitioner submitted a "Motion to Set New Trial" in the Superior Court, County of Sacramento, located at 720 Ninth Street, Sacramento, Calif. 95814, and served a true copy on R. Duane Skelton, Mirante's attorney of record. On February 10, 1999, Petitioner submitted a subsequent "Motion to Set New Trial Date" to the same court, servicing Skelton, however, Petitioner never received any response to either motion [See, OLML #'s 7-8, 18-19; Reply SSE, # 8; Jud.Not. F.R.E. 201(b) and (d)]

c) In Simmons v. Mirante, Petitioner submitted "Case Status Requests (CSR) on May 12, August 12, 15, 1999, to the Superior Court, County of Sacramento. Unresponsive, Petitioner submitted a "Motion to Vacate Judgment" on September 29, 1999, and served a true copy on R.Duane Skelton [See OLML #'s 60, 89, 115-16, respectively; Reply SSE #'s 9, 11, 21; Jud.Not. 201(b) and (d)].

d) In Mirante, Petitioner again submitted a CSR to the Superior Court, County of Sacramento inquiring into the status of his "Motion to Vacate Judgment" filed on September 29, 1999, however, the Court Clerk returned the motion with instructions to make corrections. After completing the corrections, Petitioner resubmitted the motion on November 22, 1999. On December 16, 1999, Petitioner received from the Sacramento Superior Court Clerk, a "Memorandum" indicating that: "Your Motion to Vacate Judgment, Memorandum of Law, and Affidavit in Support of Motion to Vacate Judgment" have been forwarded to Department 58 for review." Included was an "Order on Waiver of Fees and Costs" file dated Dec. 8, 1999. On January 19, 2001, Petitioner received a "Memorandum" indicating: "Case Dismissed on 9/21/98. No

record of Motion to Vacate for this case number." [See OLML #'s 135, 160, 180; Reply SSE #'s 8, 21, 22, respectively; Jud.Not. 201(b) and (d); Exh. "A" 1-13; Simmons v. Sacto.Sup.Ct., 318 F.3d 1156].

e) Petitioner initiated Simmons v. Hambly, USDC Eastern No. 97-cv-01165, his first 42 U.S.C. § 1983 ever. Petitioner was denied meaningful access to legal research and materials during critical stages such as discovery, pretrial motions, and summary judgment proceedings. Examples of governmental obstruction and denial of access to legal research and legal materials is evident by scrutiny of Petitioner's early pleadings, during the trial stage, throughout the appeal, Petitioner presented evidence of repeated allegations and complaints of denial of access, during critical stages of that litigation destruction of mail matter, delaying and tampering continued. This began at the SCJ and continued at Salinas Valley State Prison (SVSP), throughout the Ninth Circuit and the United States Supreme Court during preparation of the "Petition for Writ of Certiorari" filed on April 12, 2002. This case is material to People v. Simmons, No. 96F00053 [Allegations of the denial of medically necessary Walking-Assistive Devices during the criminal trial" was created for false evidence to obtain Petitioner's unconstitutional conviction. [Exh. E, 5-12; Jud.Not. 201(d) of early pleadings filed; Reply SSE #'s 13-17, 30].

f) In Simmons v. Sacramento County Superior Court [the first attempt] USDC, Eastern No. 99-cv-00789, Petitioner was denied meaningful access to the courts, including, but not limited to, assistance from someone experienced with conducting legal research, preparing legal documents, a meaningful complaint which properly states a bona fide "claim for which relief may be granted." The facility was on lockdown and prison officials used it as reason to obstruct Petitioner from asserting his First Amendment right to Petition. While a judicial officer may be immune from damages [notwithstanding Ex Parte Young, Shceuer v. Rhodes], they are not immune from injunctive relief. Petitioner wasdenied material facts suppressed by perpetrators of the "unconscionable plan/scheme, without research .... See Simmons v. Sacramento Superior Court, 318 F.3d 1156 (9th).

g) On June 15, 1999, Petitioner initiated Simmons v. Clark, et al., Case no. 99-cv-03293, a § 1983 Complaint in the wrong United States District Court at 501 I Street, because he lacked sufficient information on venue, however, it was forwarded to the Northern District Court. An order indicated that Petitioner's "Motion to Vacate was denied. Petitioner's "In Forma Pauperis" application submitted simultaneously was destroyed to cause a dismissal injury. Ths first one was destroyed, the second delayed and rejected by the Northern District Court causing by prison official's obstruction of mail matter [See, No. 20 to Appellee's "Reply in Support Attachment" (Reply Attmt.; Exh. E, pp 2-3; Judd.Not. 201(d)].

h) On April 22, 28, May 21, Jun 30, July 27, an August 12/15, 1999, Ptitioner sent letters to his "Criminal Appellate Attorney" representing his "Direct Appeal" with specific information and

documentstion In People v. Simmons, Sacto.Sup. No. 96F00053, however, Petitioner was forced to mail the 8/12/99 letter through his neighbor in A-142 in order to reach his attorney and advise him of the violations [See Exh. **E, pl;** 9/26/18 response; Reply SSE 10-11

i) In the matter of Simmons v. Clark, Monterey Co. No. M-64369, Petitioner was obstructed from pursuing this case through governmental destruction of critical opposing pleadings [a State actor is not entitled to "qualified immunity" as that is only available in a "federal civil rights suit] during the opposition of the summary judgment motion; Petitioner's **motion to vacate- "lost, finding a piece of the envelop"** by the U.S. Postal Service-served by Willie Jamison on Petitioner's behalf during critical stages of this matter [See, Exh. F ; Jud.Not. of Case No. M-64369].

j) In the matter of Simmons v. Clark, USDC, Northern No. 01-cv-03078 Northern District Judge Martin J. Jenkins improperly delayed that decision on the existing "exhaustion doctrine" until this Court's decision in Booth v. Churnner,[] was decided, thereafter dismissing the case for failure to exhaust all available remedies--causing an additional "strike" and "prejudice" when the decision should have been made pursuant to Rule One (1) of the federal rules of civil procedure's "speedy determination clause," on the existing rule prior to that decision--as Petitioner filed the case long before it became the "new rule of exhaustion." Every dismissal following this was an improper accumulation designed to further injure and prejudice Petitioner--but for the unconscionable plan to violate Petitioner's Constitutional rights; incur an accumulation of 1915(g) "Strikes" designed to impair Petitioner's rights, a malicious prejudicial branding as a "Vexatious Litigant."

k) Other instances which show that Petitioner's legal mail has been obstructed from timely reaching the intended addressee, and at times not at all are stored by Prison Officials in Main Property at CMF.""

Below is a list of examples where Petitioner's legal mail was illegally, and unduely delayed or destroyed. Petitioner had filed numerous complaints with CDCR and various outside agencies and the courts [See Exh. "D" pp 1-6 (not a complete list/showing)]. See also, OLML entries···outside governmental agencies.

i) On August 12, 1999, T. Richardson, a correctional officer (C/O) refused to "pick up" Petitioner's legal mail for depositing in the United States Postal Service. That mail was the In Forma Pauperis application to the matter of Simmons v. Dr. David S. Clark, et al., USDC Northern No. 99-03293. Kept out of the legal library Petitioner was prevented from acquiring the proper information resulting in the dismissal [See Exh."E" pp 1-2].

ii) On January 24, 2002, Petitioner sent a letter to "Prentice & Scott,

L.L.P., attorneys at law seeking assistance with prosecuting Simmons v. Clark, et al., USDC, Northern No. 01-03078. The letter was mailed Jan. 24, 2002, however, the addressee received it on March 13, 2002, their previous letters were not received. [Exh. E, p 4].

(iii) On March 17, 2002, Petitioner submitted a "Request for an Extension" to prepare and file his Writ of Certiorari to the United States Supreme Court in Simmons v. Hambly, USDC No. 97-01165. In addition to receiving a letter from "Porter Scott Weiberg & Delehant written on June 6, 2002, Petitioner had also been denied meaningful access during proceedings in the Ninth Circuit. However, SVSP prison officials destroyed the copies of the "Extension request" served on opposing parties, they maliciously delayed the original addressed to the office of the United States Supreme Court Clerk for months after the time allowed had passsed [See Exh. "E" pp 3-;0; Reply SSE. No.s 14-17; OLML No.'s 537-39 (Exh. B)].

iv) By letter on June 6, 2002, a defendant in Simmons v. Hambly USDC Eastern No. 97-01165 had written to advise Petitioner of his "obligation to serve them with all documents submitted to the Courts," however, evidence establishes Petitioner had served each party to the action timely [See, "e" above; Reply SSE # 14; OLML #'s 537-39].

v) On or about August 7, 2002, the U.S. Supreme Court clerk sent a letter to Petitioner advising him that the application for an extension was received August 5, 2002 [this was actually mailed March 19, 2002], and that the time allowed had since passed; again causing legal injury and dismissal as a result of prison official's obstruction of mail matter.[See Exh. "E" pp 5-12 ; Reply SSE #'s 15-17; Jud.Not 201(d)].

vi) In Simmons v. Clark, Monterey County Superior Court No. M64369, Petitioner's "Motion to Vacate Order dated Aug. 12, 2004" had been served by "Willie Jamison" on August 25, 2004 on Petitioner's behalf. Pieces of it was found at the San Francisco Bulk Mail Center listed as "Ordinary Mail" on 9/14/2004, only a small portion of the "Envelop" remained bearing the addressee' information prepared by Petitioner, and Willie Jamison prepared his own return address. The meter stamp [No. 7141335] showed the cost was $4.75 post-marked on Aug. 27, 04. Jamison, three cells over from Petitioner's had previously served the Opposition to Summary Judgment (that did not reach the court) on Petitioner's behalf during the most critical stages [Summary Judgment]. However, it should be noted that each of Petitioner's "Title Pages" were clearly marked with his 'return address' on the face of each stapled document [see Reply SSE No. 24]; Exh. F, pp 1-9; Jud.Not. requested, 201(b) and (d)].

As a result of the above allegations, Petitioner has suffered the following "Injuries in fact:"

A) Petitioner was the prevailing party in Simmons v. Mirante, Sacto.Sup. Case

No. 96AS01528 pursuant to a "$10,000.00 Arbitration Award" in "PLAINTIFF'S FAVOR" (Petitioner rejected as grossly inadequate compensation for damages), based upon the necessity for a surgical procedure, pain and suffering, property damages, etc., prior to the fraudulent misrepresentation made by an officer of the court--R. Duane Skelton on September 21, 1998, to obtain a judgment defendant was not entitled to as a matter of law. Immediately used by the prosecution to fraudulently convict Petitioner, a "incompetent defendant"; [R.T. 359-60, 409-10, 412].

B) Petitioner suffered an unconstitutional conviction and was sentenced to a Eighth Amendment excessive punishment of 175 years to life for a nonviolent offense (a crime he did not commit) while he was legally "unconscious" and mentally incompetent (supported by substantial evidence•••a "Guardian-Ad-Litem" remained in place during the criminal trial--then discussed on the record in the criminal matter People v. Simmons, Case No. 96F00053. Thereafter, unconstitutionally confined 24 years without jurisdiction; and

C) Petitioner was deprived of successive bona fide civil actions--Simmons v. Hambly, USDC Eastern No. 97-cv-01165, among others, under the American's With Disabilities Act (ADA) for the denial of necessary Medical Assistive devices following his April 10, 1995 accident caused by Michael Mirante--used to manufacture false evidence to procure a fraudulent conviction against Petitioner.

Petitioner has presented, as best he could under his current circumstances, a small showing, of the mounds of evidence and supporting facts not presented here, stored by prison officials at CMF, and was stored at each preceding prison. Petitioner has discovered that the "Book of 'Legal Mail Receipts' signed by the officer receiving his legal mail is now missing, or may be misplaced and cannot be located•••which supports each OLML entry until 2008 at KVSP, which verified those mailings by an governmental CDCR Officer. Petitioner reserves the latter "Obstructions" until further briefing is ordered, if any..**including six boxes of legal materials stored in CMF's Main Property.**

Petitioner submits and asserts that this Petition for Writ of Certiorari should be granted because it affects more than this petitioner alone, and our judicial system needs to return to the integrity once our beacon of justice. It was once said: "It is better to release a thousand guilty men, than to condemn "one innocent man." **Additionally, there are no Supreme Court "Heat Risk holdings."**

REASONS FOR GRANTING THE PETITION

Pursuant to Rule 10, subsections (a) and (c) of the Supreme Court Rules, Petitioner respectfully submits the following reasons for requesting this Court to exercise its "Supervisory Powers" in the above entitled cause.

I

CLEARLY ERRONEOUS DEPARTURE

Petitioner asserts and submits that the Ninth Circuit, acting on Appellee's Motion to Revoke Appellant's In Forma pauperis Status" based on a history created by jail and prison officials direct obstruction and interference with the First Amendment right to access the courts and right to Petition as set forth above. If permitted to stand, the Ninth Circuit would have been permitted act in a manner contravening the United States Constitution, clearly established law, and legalize a fraudulent means to deprive a party with "clean hands" to be denied the Equal Protection of the laws. Usurpation affects more than just one litigant, it tarnishes the integrity of the entire judicial system.

In United States v. United State Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, this Court stated and held: "Although the meaning of the phrase "clearly erroneous" is not immediately apparent, certain general principles governing the exercise of the appellate court's power to overturn findings of a district court may be derived from our cases. The foremost of these principles, as the Fourth Circuit itself recognized, is that "[a] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Under Rule 52(b) "On a party's motion filed no more than 28 days after the entry of judgment, the court may amend its findings-or make additional findings-and may amend the judgment accordingly. The motion may accompany a motion for new trial under Rule 59." The Ninth Circuit and district court failed

to follow this holding.

II

GENUINE "HEAT RISK" DISPUTE

Petitioner asserts and submits that there are no bona fide "Heat Risk" cases in which the prisoner is actually designated "a heat risk patient" in the prison setting, where numerous legal and procedural issues provide this Court with an opportunity to instruct the lower courts on a very serious subject matter that holds human life in the hands of arbitrary state action without firm guidance from this Court, the Nation's "Heat Risk" patients will be affected.

III

MANIPULATION OF 28 U.S.C. § 1915(g)

Petitioner asserts and submits that utilizing statues which are designed to apply to genuine "vexatious litigants" rather than an individual genuinely seeking relief and is caught-up in retaliatory treatment which "manipulates" the boundaries between protecting the court system from "abuse" to trusted governmental officials who actually are abusing the court process unethically to reach unconstitutional results requires this Court's attention..

In William v. Paramo, 775 F.3d 1182, the Ninth Circuit themselves stated: "The limited office of 28 U.S.C. § 1915(g) in determining whether a prisoner can proceed in forma pauperis councils against an overly detailed inquiry into the allegations that qualify for the exception. ... Opinion by Stephen Reinhardt--We do so reluctantly, because if a prisoner is denied forma pauperis status on appeal on the ground that he no longer faces an imminent danger, his inability to pay the filing fee may deprive a court of appeals of the opportunity to correct any errors committed by the district court... Moreover, as scholars and judges have noted, the three-strikes provision raises grave constitutional concerns. See, e.g., Thomas v, Holder, 750 F.3d 899, 904-09, 409

U.S. App. D.C. 403 [Id., at 775 F.3d at 1190-91]." The district court disregarded a "report by a governmental agency that contradicted the evidence proffered by Defendants. Review by this Court on the 1915(g) issue is important to more than a single case and can become a new practice by governmental officials.

IV

LAWLESSNESS OR CONFORMITY

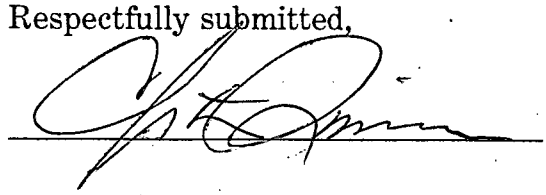
Finally, Petitioner asserts and submits that the courts are charged with enforcing the constitutional rights of its citizens. When they fail to do so, miscarriages of justice is the least of that individual's concern. "Lawlessness" is a concept that threatens humanity over the entire world.

This Court's holding in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, held that "a judgment finally entered has ever been regarded as completely immune from impeachment after the term." In this regard, despite it properly before the courts, and presenting this principle to the lower courts--supported with sufficient facts and evidence, it apopears to have fallen on deaf ears--or is merely because of the prejudice Petitioner has suffered from being branded a "Vexatious Litigant?"

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: AUG 5, 2019