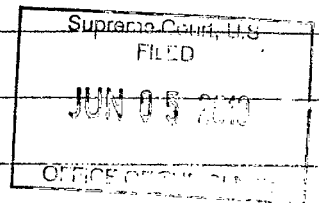


19-5649

ORIGINAL

No 18A1069



In The Supreme Court Of The United States

Terry Lee O'Brien, Petitioner

v

Carla Hacker Agnew et.al., Respondent

On Petition For A Writ Of Certiorari To
The United States Supreme Court

Petition For Writ Of Certiorari
In Pro Se

Terry Lee O'Brien

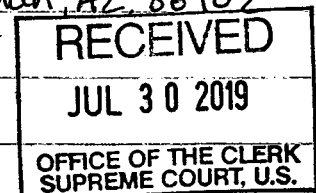
Terry Lee O'Brien

ADC# 150761

ASPC Kingman Cerbat Unit

P.O. Box 3009

Kingman, Az. 86402



1. To what degree for interpretation of a constitution, statute, rule and regulation is a question of law for consideration by the full Supreme Court is necessary to secure and maintain governing precedent laws. Where there may be no published cases arguable in law or fact opens the opportunity for the Supreme Court to create laws governing the utilization of new methods of interference in the Nations Institutions for the future?

2. To what degree for interpretation of a constitution, statute or authority law is a question of law where there is existing case law of substantial rule of national application for the totality theory and retaliatory transfers for filing grievances and a lawsuit, obstructing witnesses, obstructing surveillance audio and video recording and where one of these things that each defendant does in overt acts in furtherance of any offense, adds up to create an total overall effect of an ongoing campaign of harassment, retaliation and obstruction of Justice for 1155 days consecutively in which there is an overriding need for National Uniformity?

3. To what degree for interpretation of a constitution, statute or authority of case law is a question of law where prison officials and doctors violate the 8th Amendment by being deliberate indifferent to ongoing exposure to a serious medical need presenting a high degree and excessive risk of harm or danger when they intentionally deny, delay or interfere with providing adequate treatment?

1. Terry Lee O'Brien, Petitioner

2. Carla Hacker-Agnew, Warden, Yuma complex in her official and individual capacity, aided and embetted personal involvement

3. Charles L. Ryan, Director ADC, Central Office in his official and individual capacity, aided and embetted personal involvement

4. Ms. Rodriguez, Officer, Yuma Complex, Cibola Unit, 10PM-6AM, in her official and individual capacity, aided and embetted Personal involvement

5. Mr. Ovila, Officer, Yuma Complex, Cibola Unit, 10PM-6AM in his official and individual capacity, aided and embetted personal involvement

6. Ms. Valtierra, Officer, Yuma Complex, Cibola Unit, Associate psychiatrist Corizon health Care, in her official and individual capacity, aided and embetted Personal involvement.

7. Unknown male Officer, Yuma Complex, Cibola Unit, 10PM-6AM, in his official and individual capacity, aided and embetted Personal involvement.

8. Two Unknown Officers, Yuma Complex, Cibola Unit, in their official and individual capacity, aided and embetted personal involvement

1. 9. Ms Torres, COIL Officer, Yuma Complex, Cibola Unit in her official and
2. individual capacity, aided and embetted personal involvement.
3.

4. 10. Ms Martin, Corizon Health Care Psychiatrist, Yuma Complex, Cibola and
5. Lapaz Unit, in her official and individual capacity, aided and
6. embetted personal involvement.
7.

8. 11. Ms Miller, Corizon Health Care Doctor, Yuma Complex, Cibola and
9. Lapaz Unit, in her official and individual capacity, aided and
10. embetted personal involvement.
11.

12. 12. Ms Smalley, Corizon Health Care Doctor, Yuma Complex, Cibola and
13. Lapaz Unit, in her official and individual capacity, aided and
14. embetted personal involvement.
15.

16. 13. Mr Brisbois, Corizon Health Care Doctor, Yuma Complex, Cibola
17. and Lapaz Unit, in his official and individual capacity, aided
18. and embetted personal involvement.
19.

20. 14. Jeffery Wiggler, Warden, Kinsman Complex, Cerbat Unit, in his
21. official and individual capacity, aided and embetted personal
22. involvement directly or indirectly.
23.

24. 15. As above 1-14, Defendants were acting under color of state
25. law at all relevant times, in performance of their duties.
26.
27.
28.

1.		
2.	Cover Page	
3.	Questions Presented For Review Of Law	i
4.	Parties To The Proceedings	ii, 1, 2
5.	Table Of Contents	iii
6.	Authority Case Laws and Statutes	iv 1, 2, 3
7.	Opinions Below In Appendix's	1
8.	Appendix A The 9 th Circuit Court Of Appeals Opinion	
9.	Appendix B The District Court Opinion	
10.	Appendix C The 9 th Circuit Informal Opening Brief Opinion	
11.	Appendix D The Witnesses Declaration Affidavit Petition Opinion	
12.	Appendix E The District Court Opinion For Newly Discovered Evidence	
13.	Appendix F The Administrative Grievance and Appeals Opinion	
14.	Appendix G The F.R.A.P. 60 Motion Opinion	
15.	Appendix H The Judicial Commission and ABA Complaint Opinion	
16.	Statement Of Jurisdiction	2, 3
17.	Provisions Of Law Involved	4, 5
18.	Reasons Certiorari Should Be Granted	6
19.	Petition For Writ Of Certiorari	7, 10
20.	Reasons Certiorari Should Be Granted And Warranted For Review	
21.	I. Review is warranted for interpretation for issue one.	11-19
22.	II. Review is warranted for interpretation for issue two.	20-31
23.	III. Review is warranted for interpretation for issue three	32-
24.	Statement Of The Case	33- 39
25.	Conclusion	40
26.	Proof Of Service	
27.		

1. Helling v McKinney, 509 US 1, 11 S.Ct 995, 117 Ed.2d 156 (1992) 13
2. Farmer v Brennan, 571 US 825, 114 S.Ct 1970, 1976-77, 128 Ed.2d 811 (1994) 13
3. Hudson v McMillan, 503 US 1, 112 S.Ct 995, 117 Ed.2d 156 (1992) 13
4. Wilson v Sieter, 501 US 294, 111 S.Ct 2321, 115 Ed.2d 271 (1981) 14
5. City of Canton v Ohio, Ottavious, 489 US 378, 109 S.Ct 1197, 103 Ed.2d 412 (1989) 14
6. U.S. v Classic, 313 US 299 (1941) 23, 27
7. Harrison v Nelson, 394 US 286, 300 S.Ct 1082 (1969) 20
8. Anderson v Creighton, 483 US 635, 640, 107 S.Ct 3034, 3039, 97 Ed.2d 523 (1987) 20
9. Estelle v Gamble, 429 US 97, 104-05 (1970) 32

Federal Court Cases

11. Sorrels v McKee, 290 F.3d 965, 970 (9th Cir 2002) 11
12. Boyd v Benton County, 374 F.3d 773, 781 (9th Cir 2004) 11
13. Deorle v Rutherford, 272 F.3d 1272, 1216 (9th Cir 2001) 12
14. Malik v Brown, 71 F.3d 724, 727 (9th Cir 1995) 11
15. Serrano v Francis, 345 F.3d 1071, 1079-81 (9th Cir 2003) 19
16. Capoeman v Reed, 754 F.2d 1512, 1514 (9th Cir 1985) 20
17. Lamarca v Turner, 995 F.2d 1526, 1535 (11th Cir 1993) 15
18. Kirby v Siegleman, 195 F.3d 1285, 1291 (11th Cir 1999) 26
19. Piggie v McBride, 277 F.3d 972, 925 (7th Cir 2002) 19, 30
20. Thoddeus-x v Blatter, 125 F.3d 378 (6th Cir 1991) 19, 23
21. Calhoun v Harcones, 312 F.3d 730 (5th Cir 2002) 22
22. Palmer v Johnson, 193 F.3d 346 (5th Cir 1992) 22
23. Geo v Pollard, 607 F.3d 583 (9th Cir 2010) **, 18
24. Hoskins v McBride, 702 F.Supp.2d 389 (W.D.IND 2002) 19, 22, 30, 29
25. Rivera v Fisher, 110 Ad.3d 1277, 973 NYS (3d dept 2013) 19, 22, 30
26. Davis v Kellery, 110 F.3d 917, 920 (2nd Cir 1998) 22, 21
27. Humphrey v Demistro, ND.ILL 1996, 48 FRD 426 17, 21, 20, 21
28. Brown v Montoya, 662 F.3d 1152, 1168 (10th Cir 2011) 25

1.	Peterson v Stanczak, N.D. Ill. 1969, 48 FRD 426	21, 22
2.	Baltoski v Pretorius, N.D. Ill. 2003, 291 F.Supp.2d 807, Civil rights 1395(7) 21	21
3.	Caldwell v Luzerne County Correctional Facility Management Employees, 20	20
4.	M.D. Pa. 2010, 732 F.Supp.2d 458	18, 21
5.	Burgos v Canino, Ed. Pa. 2009 Fed. Appx 302, 2009 WL 5031958	21
6.	Taguchi v Chung, 391 F.3d 1051, 1060 (9th Cir 2004)	32
7.	Arizona Court Cases Federal and State	
8.	District of Arizona, Muecke J. 834 F.Supp 1553	
9.	Parson v Ryan, cv-12-60601 PHX- DJH	32
10.	Stok v City of Glendale, 3 Ariz. App 254, 257, 413 P.2d 585 (1966)	30
11.	Southern Pac Co v. Cavallo, 84 Ariz 24, 323 P.2d (1958)	30
12.	Jett v Penner, 479 F.3d 1091-1096 (9th Cir 2006)	32
13.	Federal Statute	
14.	42 USC § 1983 ch 21 sec 419, 5440, 2264, 2627	** 22, 24, 26, 27
15.	42 USC § 1985-1986	** 22, 24, 26, 27
16.	42 USC § 1983 ch 21 sec 1521-2510	** 22, 24, 26, 27
17.	42 USC § 1983 Ch 21 sec 3482-3551	** 22, 24, 26, 27
18.	42 USC § 1983 Ch 21 sec 2241-2251	** 22, 24, 26, 27
19.	28 USC § 2511 (2)(C)-(d)	** 22, 24, 26, 27
20.	18 USC § 52, 241	** 22, 24, 26, 27
21.	Cr. Code 18, 19, 20	** 24, 27, 32
22.	18 USC § 2500-2600	**
23.	Federal Rules of Civil Procedure	
24.	Rule 59(a)	Rule 27(b), 43(a) 38
25.	Rule 60(b)(2)	Rule 15(d) 38
26.	Rule 60(d)(1)	F.R. of Evidence 602, 701, 401, 611, 614
27.	Rule 60(d)(2)	F.R. of Evidence Recordings 1001-1007
28.	Rule 60(d)(3)	32

13. Arizona Revised Statute Title 13

Interpretation of federal statute implicit is essentially equivalent to state statute is a matter of comity rather than jurisdictional since the law library is denying access to the courts having no 18 USC code books or Supreme Court Rules available and said they would not provide any.

ARS § 13-2916 Use of electronic communications device to terrify, intimidate, harass and threaten

Page links - 12, 14, 26, 27, 31

ARS § 13-1201 Endangerment

ARS § 13-1202 Threats and Intimidation

ARS § 13-1203 Assault

ARS § 13-1504 Trespass

ARS § 13-2402 Obstruction

ARS § 13-2202 Deceptive Business Practice

ARS § 13-2904 Disorderly Conduct

ARS § 13-2310 Fraudulent Schemes

ARS § 13-2921 Harassment

ARS § 13-2311 Fraudulent Schemes

ARS § 13-2923 Stalking

ARS § 13-2921.01 Aggravated Assault

ARS § 13-3112 Concealed Weapon

ARS § 13-3102 Misconduct Involving a Weapon

ARS § 13-4105 Use of Depositions

ARS § 13-4064 Order to Compell Witnesses

ARS § 13-1405 Crime Against Minor

ARS § 13-4103 Order Examining Witnesses

ARS § 13-1406 Crime Against Minor

ARS § 13-705 Dangerous crime against minor

ARS § 13-1410 Crime Against Minor

ARS § 13-

14. Federal Rules Of Civil Procedure and Evidence

Rule 15(d) Supplement Pleadings

Rule 611 Witness Evidence

Rule 27(b) Depositions Pending Appeal

Rule 402 Admissibility Relevant Evidence

Rule 43(a) Witness Evidence

Rule 406 Routine Practice

Rule 103 Witness Evidence

Rule 407 Remedial Measures

Rule 401 Witness Evidence

Rule 704 Opinion On An Ultimate Issue

1. The opinion of the 9th Circuit Court of Appeals, NO. 18-16962 Jan. 24, 2019
2. and Feb. 8 2019, which is subject of this petition, is included in Appendix
3. A. The Opinion Affirmed District Courts Dismissal of Third Amended Comp.

4. ✓
5. The Opinion of the District Court, cv-00166-GMS-DMF Sept. 25, 2018, which is
6. subject of this petition, is included in Appendix B. Dismissal of Complaint.

7.
8. The 9th Circuit Informal Opening Brief, NO. 18-16922 Nov 7, 2018, which is subject
9. of this petition, is included in Appendix C. Raising liberty interests, due
10. process violations for failure to apply authoritative case law.

11.
12. The Witnesses Declaration Affidavit, June 4, 2019, which is subject of this
13. petition, is included in Appendix D. Preservation of rights, privileges, immunities

14.
15. The Opinion of the District Court on Newly Discovered Evidence, March 11, 2019,
16. which is subject of this petition, is included in Appendix E. Dismissal

17.
18. The Administrative grievances and appeals from Cibola, Lapaz, Cerbat Units,
19. which is subject of this petition, is included in Appendix F.

20.
21. The FRAP Rule 60 Motion for independent cause of action on newly
22. discovered evidence, which is subject of this petition, is included in
23. Appendix G. Denial of Reconsideration, but was for independent action.

24.
25. The Judicial and ABA Complaint including misc. motions, which is subject
26. of this petition, is included in Appendix H. Complaints to Judicial
27. committee and ABA for failure to act, on new methods of interference
28.

1. On May 2018, The District Court accepted Jurisdiction of the Third Amended
2. Complaint. On August 25, 2018, The District Court dismissed the claims
3. as frivolous and for failure to state a plausible claim. see Appendix B.
4. The District Court failed to argue any clearly established Published cases
5. relevant to the facts. The Courts failure to find facts at all in overt acts
6. in furtherance of an offense is an actual unreasonable determination of
7. the facts presented. The Court made conclusions objectively unreasonable
8. without looking into witnesses, surveillance audio and video and the
9. administrative and appeals hearings that supported clear and convincing
10. evidence, was relevant evidence, when not used in determining the fact-
11. finding process and procedure. The Courts interpreted the facts incorrectly,
12. based a ruling on this misinterpretation of the law and facts by omitting
13. and ignoring relevant statute and authority laws relevant to the facts in
14. dispute in this case and further obstructed: (1) witnesses testimony, (2) surveillance
15. audio and video, (3) Motions for Taking Depositions pending interlocutory appeal, (4)
16. Motions for Supplemental Pleadings where encompassing the supplementation
17. would still have violated FRCP Rule 3.4 in a 4th Amendment Complaint.

18.
19. 2. On January 24, 2019, The 9th Circuit accepted Jurisdiction on appeal. The 9th Circuit
20. alleged the district court did not abuse its discretion dismissing the motions
21. for taking of depositions and supplemental Pleadings. The 9th Circuit alleged the
22. district court properly dismissed O'Brien's retaliation and deliberate indifferent
23. claims because O'Brien failed to allege facts sufficient to state a plausible
24. claim. However the 9th Circuit did not apply the total overall effect of overt acts.
25. The 9th Circuit alleged the district court properly dismissed as frivolous O'Brien's
26. claims as to the "Prisons alleged broadcasting of psychotic sounds" because
27.

these claims lacked any arguable basis in law or fact. *Neitzke v Williams*, 490 US 319, 325 (1989) (under §1915(e)(2), a 'frivolous' claim lacks an arguable basis either in law or in fact; "the term 'frivolous' ... embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.") Appendix A

3. Thus, the 9th Circuit has properly preserved the issue of the allegation "relating to the prison's alleged broadcasting of psychotic sounds because these claims lacked any arguable legal basis in law or fact." Therefore interpretation of a constitution, statute, rule and regulation is a question of law for consideration by the full Supreme Court is necessary to secure and maintain governing precedent laws where there may be no published cases with arguable basis in law or fact, this opens the opportunity for the Supreme Court to create laws governing the utilization of new methods of interference in the nations institutions for the future. The Supreme Court has jurisdiction pursuant to 42 USC § 1983.

USCA Constitutional Amendment I

Congress shall make no law respecting any right of the Peaceful to assemble and to Petition the Government for a redress of grievances in respect to Civil Rights and Penal Offenses constituting harassment and retaliation.

USCA Constitutional Amendment IV

These provisions protects the rights of the people to be secure in their person, houses, papers and effects. These rights also prohibit the deprivation of reasonable expectation to privacy and trespassors.

USCA Constitutional Amendment V

Due Process Clause, No person shall be *** deprived of life, liberty or property without due process of law.

USCA Constitutional Amendment VII

In Suits at common law, where controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved, and no fact tried by a jury, shall otherwise be re-examined in any Court of the U.S., than according to rules of common law.

USCA Constitutional Amendment VIII

Punishments Clause prohibits inhumane and degrading treatment, nor cruel and unusual punishment.

USCA Constitutional Amendment XIV

Privileges and Immunities, Equal Protection of the law. These provisions where *** No State shall make or enforce any law which shall abridge the

the privileges or immunities of citizens of the U.S., *** nor deny to any person within its jurisdiction the equal protections of the laws.

Customary International Laws

These laws prohibit practice of torturous acts and violations of generally accepted human rights standards or Conventions or International Covenants on Civil and Political Rights Offenses.

Universal Declaration OF Human Rights

These provisions embodies the right to life, liberty and security. Its provisions enshrine the right to an adequate standard of living for the health and well being of persons. These provisions are inherited belonging to all persons that cannot be granted or withdrawn by anyone or any state or government.

Federal Communication Commission Rules and Regulations

These provisions prohibit any person acting under the color of any law or any private person not acting under the color of any law to the deprivation of any right, privilege, immunity, statute or law secured and protected by the constitution, statute or law prohibiting the use of any electronic communication device used to terrify, harass, retaliate, degrade, defame, threaten or intimidate. The petitioner is a Licensed General Radio Operator by the Federal Communications Commission having the duty and responsibility to report such violations.

ADC Policy, Practice, Customs and Usages

The department standards for every day operation and management. DO 125 Zero tolerance for sexual harassment and retaliation is prohibited.

I. Review is warranted for interpretation of a constitution, statute, rule and regulation is a question of law for consideration by the full Supreme Court is necessary to secure and maintain governing precedent laws. Where there may be no published cases with arguable basis in law or fact, this opens the opportunity for the full Supreme Court to create laws governing the utilization of new methods of interference in the Nations Institutions for the future.

II. Review is warranted for interpretation of clearly established constitution, statute and case law is a question of law where existing opinions of substantial rule of national application applies to retaliatory transfers, harassment, obstruction of witnesses, surveillance audio and video, investigations pursuant to chronology or totality theory. Where one of these things that officers do in overt acts in furtherance of the offense, adds up to create a total overall effect of an ongoing campaign of conspiracy, harassment and retaliation in which there is an overriding need national uniformity.

III. Review is warranted for interpretation of a constitution, statute or case law is a question of law where prison officials and doctors violate the 8th Amendment by being deliberate indifferent to ongoing exposure to a serious medical need presenting a high degree and excessive risk of harm or danger when they intentionally deny, delay or interfere with providing adequate medical treatment where there is existing opinions of substantial rule of national application in which there is an overriding need for national uniformity.

1) The full Supreme Court has jurisdiction for interpretation into the scope and extent of review of decisions of federal district courts, for general rules of construction and operations of constitutional provisions and laws, for police and purposes in general, for power to enact and validity of civil rights offenses and penalties of constitutional and statutory provisions is a question of law, secured and protected in the ambit of the 1st, 4th, 6th, 8th and 14th United States Constitutional Amendments.

2) Under Procedural Enforcements statute 42 USC § 1983 ch 21 section 4194~~18~~ for being deliberate indifferent to abuse or misuse of authority or power, to the rights secured to him by the constitution within statute making it a penal offense for anyone who, acting under color of any law, or for any private citizen not acting under color of any law, willfully subjects or causes to be subjected any inhabitant of any state to penal offenses constituting conspiracy, retaliation, harassment, for obstruction or perverting justice or hindering the execution of law, to different punishment,

1. pains or penalties on account of new methods of interference, to the use of a
2.
3. concealed electronic communication device used to terrify, harass, retaliate,
4.
5. target, threaten and intimidate, to insure and oppress any citizen to the free
6.
7. exercise of a right or privilege protected by the federal constitution and it is
8.
9. no extension to the Statute, ARS § 13-2916 or implicit federal statute, to find a
10.
11. violation in it, with the right which its words protect, since it is the constitutional
12.
13. right regardless of the new methods of interference which is the subject of
14.
15. the statute and which precise terms it protects from injury, oppression and tyranny.
16.
17. 3) On January 24, 2019, The 9th Circuit Court Of Appeals disagreed with
18.
19. the Petitioners contention in raising liberty interest in the Informal Opening
20.
21. Brief to challenge the district Courts decision for the first time on Appeal. The
22.
23. 9th Circuit and District Courts should have provided due process of law with
24.
25. existing opinions in their own Courts Circuit, another Court Of Appeals or
26.
27.

the Supreme Court for a substantial need that affects a rule of national application in which there is an overriding need for national uniformity.

4) The Courts overlooked an important substantial material facts and points that had the power to enact and validate in the defendants' cautions, aiding and abetting, in overt acts in furtherance of the offense, in misuse of authority or power, showing a chronology order of overt acts constituting targeting, conspiracy, retaliation, harassment and knowingly, intentionally and willingly causing mental health derailment to either misapprehend him from the Unit or to prevent a lawsuit from being filed, a secured and protected right within the ambit of the federal constitution, where one defendant's causation on their own may not make a claim of harassment or retaliation on their own, but if it keeps happening, it adds up to create a total overall effect that can make a claim of ongoing campaign of harassment or retaliation for 1155 consecutive days. USCA Const. Amend. 1, 8, 14; Appendix "D"

5) The petitioners in the medical causations was prison officials and doctors engaged in the same misuse of authority or power while acting under the color of state law making it a penal offense to intentionally deny, delay, interfere and stonewall a serious medical need from 5/1/15 through 1/28/18 by being deliberate indifferent to ongoing exposure to a high degree and excessive risk of harm or danger presented by splenomegally about to rupture, liver cell carcinoma history, hypertension main vein valve, excessive dilated main vein valve, severe cirrhosis of the liver with irreparable damage left untreated and excessively high degree blood cell viral count of 210 million for Hepatitis C, damages flowing to other organs, and encephalopathy blood poisoning due to liver damages, the failure to do something about it was detrimental and in violation of the 8th and 14th Amendment, a guaranteed right or privilege secured by the federal constitution and laws to adequate medical care. USCA Const. Amend. 8, 14; DO 1101, 1102

And Warranted For Review

1. **I.** Review is warranted for interpretation of a constitution, statute, rule
2. and regulation is a question of law for consideration by the full Supreme
3. Court is necessary to secure and maintain governing precedent laws
4. where there may be no Published cases with arguable basis in law
5. or fact, this opens the opportunity for the Supreme Court to create
6. laws governing the utilization of new methods of interference
7. in the Nations Institutions for the future.
8.

9. **ii.** Were the Constitutional, Statute, Rules and Regulations,
10. rights, privileges or immunities at issue clearly established;
11.
12.

13. **6)** In *Malik v Brown*, 71 F.3d 724, 727 (9th Cir 1995), It is not
14. necessary that the alleged acts have been previously
15. held unconstitutional, as long as the unlawfulness of a
16. persons actions was apparent in light of preexisting law.
17. Closely analogous preexisting case law is not required
18. to show that a right was clearly established. In other
19. words while there may be no 'Published' cases holding
20. similar policies constitutional, this may be due more to
21. the 'illegality' than the novelty of the legal issue, see
22. also *Sorrels v McKee*, 290 F.3d 965, 970 (9th Cir 2002)
23. see also ¶ 17 at n.2 ("Misuse of authority or power in new methods of interference.")
24.

25. **7.)** In *Boyd v Benton County*, 374 F.3d 773, 781 (9th Cir 2004),
26. "When a persons conduct is so patently violative of the
27. constitutional rights that reasonable persons would know
28.

without guidance from the Courts that the actions was unconstitutional, closely analogous preexisting case law is not required to show that the law is clearly established, (Quoting *Deorle v Rutherford*, 272 F.3d 1272, 1286 (5th Cir 2001))

(8) Petitioners contention is that there is federal statute and State statute that clearly establishes that the defendants not only commit Penal Offenses but are analogous to criminal offenses. Cr Code 18, 19, 20; 18 USC § 52; 18 USC § 2511(2)(C)-(D); All Provisions of law cited in App 13 Statute at ¶ iii 3-5; at ¶ vi 1-3; F.R. of Civ P. Rule 43, 27; F.R. of Evid. Rule 103, 406, 602, 611, 701, 1001-1007

(C) The Subjective Element Of The Responsible Parties

(9) In *Hoskins v McBride*, 702 F. Supp. 2d 389 (W.D. Ind. 2002), Once a problem has been grieved the prison officials can't ignore the problem, they have to do something about it. "Prisoners have a right to call witnesses to testify on their behalf. Whether to have witnesses present or allow them to submit written statements is the prisons discretion, but preference is live testimony, there must be a legitimate justification for the refusal to call witnesses. When prison officials decide that it is not appropriate or otherwise ignore witnesses they have to explain why they have made this decision. Appendix D, F. "The Prison officials failed to explain why they refused to interview witnesses and why witnesses is not direct evidence. see Appendix D (Witnesses)

The Subjective Element

1. (10) In *Helling v McKinney*, 509 US 1, 12 S.Ct. 995, 17 LEd.2d 156 (1992),
2. "Where the Court held that an 8th Amendment violation can
3. occur in the absence of any present or future physical injury if the
4. threat of actual injury is imminent and is posed by some "hazard"
5. that the prison officials ought to have prevented.

7. (11) In *Farmer v Brennan*, stands for the same proposition as *Helling*
8. where any inmate need not be actually attacked before the
9. Court will act in the face of a pervasive threat of violence
10. that is left uncorrected will surely cause injury. 511 US 825,
11. 114 S.Ct. 1970, 1976-77, 128 LEd.2d 811 (1994); see also Appendix C.
12. at ¶ 6, 9, 10, 12, 14; This lawsuit is injury financial loss, FRd Evid. Rule 406

14. (12) In *Hudson v McMillan*, applied *Helling* and *Farmer* "where Justice
15. Blackman suggested in concurring opinion, Hudson 112 S.Ct at 1004,
16. that the unnecessary pain prohibited by the 8th Amendment
17. could include "Psychological Pain" as well as physical pain"
18. 503 US 1, 112 S.Ct 995, 117 LEd.2d 156 (1992). Hudson makes sense
19. particularly after the Court's decision in *Helling*, which did not
20. require any present injury to state a claim. "Psychological
21. pain can be every bit as debilitating as physical pain." What
22. is more, in a prison setting, the potential for the prison officials
23. that have such control over inmates, the potential for the
24. infliction of severe psychological pain or harm is quite real.
25. To fence out psychological pain from an 8th Amendment
26. protection would open the opportunity for prison officials
27. to "maltreat" inmates without constitutional review.

13) In *Wilson v. Sietter*, the Supreme Court has engrafted a 'Subjective' element into all 8th Amendment analysis. If a practice cannot be characterized as punishment, the 8th Amendment does not prohibit, no matter how conscious indifferent a person may be to inhumane, cruel and unusual punishment inflicted. However, the Courts held that in a case involving pain that is not formally meted out as punishment by the Statute or the Sentencing Judge, there must be an inquiry into "the mental state of mind" of the persons responsible for the conduct that is an issue in the case, "new methods of interference" in Statute ARS§13-2916; 3112, 3102, 2202, 2310, 2311, 2921, 1202, 1504, 1701, 1703, 2402, 2904, 2923; 18 USC§52; 42 USC§1983 ch 21 § 419; 42 USC§1986; 18 USC§ 2511(2)(C)-(D); 42 USC§ 2340; 42 USC§ 1521-2510; 42 USC§ 3482-3551; USCA Const. Amend 1, 4, 6, 8, 14; P.O. 803, Appendix H "Judicial Commission and ABA Complaint", F.R. of Evid. Rule 406

14) In *City of Canton v. Ohio*, *Utari*, The objective approach is when a prison condition is obviously harmful to the mental well being of any inmate, and if it is serious it serves no penological purpose interest to impose the condition, then it is permissible to infer that the persons must have known of the risk, and the failure to correct it can be 'evidence' of the subjective state of mind of the persons to be deliberate indifferent to the condition their exposing inmates to. 489 US 378, 109 S.Ct 1197, 103 LEd.2d 412 (1989); see also *O'Brien v. Hacker Agnew et al* CV-00166-GMS-DMF "where the prison officials knew the prison condition is obviously harmful to the mental well being of the petitioner, filing this lawsuit, failed to correct the condition

is evidence of the subjective state of mind of the persons to be deliberate indifference, and the illegality of new methods of interference."

This approach conforms to the Constitutional standards of established

Tort principals, is wonon or recetors conduct according to professor

Prosser and Keeton. That the actors has intentionally done an act

of an unreasonable character in disregard of a known or obvious

risk that was so 'great' as to make it highly probable that harm

would follow, and which, is usually accompanied by a conscious

indifference to the consequences. Since conscious indifference is

almost never admitted, "then can only be proven, only by the conduct

and circumstances, "an objective approach of necessity must be

applied. Therefore, the "willful requirement" breaks down and

receives at best lip service, "whatever their state of mind," has

proceeded in disregard of a high degree and excessive risk of harm

or character either known to him or her, or apparent to a reasonable

person in their position. see Appendix D "witnesses exposed to harm or danger"

(16) In *Lamarca v Turner*, a person need not psychoanalyze the

persons responsible to prove his 8th Amendment Claim. If

a person(s) know of or should know of deprivation of a person

constitutional rights is being violated and have not repaired them,

deliberate indifference is established. If a person(s) knowingly

act with disregard of our inmate, or if the persons proceed in

obvious disregard for risks that might be an obvious 8th Amendment

violation, then accountability can be laid at the door of the

prison officials with responsibility for their institutions 995 F.2d

1526, 1535 (11th Cir 1993)

1. 17) The petitioners contention is there is clearly established case law, statute
2. and rules and regulations provisions. It's not the legality of modern day
3. advanced technology in surveillance security systems capable of two
4. way, bidirectional audio communications integrated with video. It's the
5. misuse of authority or power and the conspiracy to utilize the new
6. methods of interference as a weapon for targeting, retaliation,
7. harassment, terrifying, threatening and intimidating and further overt
8. acts of obstruction to prevent witnesses testimony and surveillance
9. audio and video from developing the facts from being developed.
10. The departments failure to investigate or correct constitutional violations
11. brought to their attention supports the district courts finding that there
12. was a policy or custom that led to the violation. A policy or custom need
13. not be formal or written to serve as the basis for liability. "Tacit" authorization
14. may be sufficient, holding that an official who implicitly authorized,
15. approved or knowingly acquiesced his subordinated action could be
16. held liable. The subordinates subsequent acceptance of recklessness
17. dangerousness by the policy maker or official who creates or governs the
18. policy tends to prove their preexisting disposition policy, practices, customs or
19. usages. An Informal or Tacit policy or practice can be proven by the chronology
20. order of events, their conduct, the circumstances, more than 60 witnesses willing
21. to testify, surveillance audio and video recordings the new methods of
22. interference and conduct, the long duration for 1155 days becoming a
23. routine business practice in daily operations and management, it's wide-
24. spread and systematized on multiple complexes, the fact the petitioner
25. has served many years in prison never experiencing the new methods of
26. interference prior to September 27, 2016 easily heard, to the present day,
27. where targeting a person is atypical treatment during "stalking" a person,

1. the fact that the prison officials are doing nothing about it even after admitting they
2. are hearing and sensing the sounds, but claim "you can't prove we're doing it,"
3. Retaliatory fraudulent and deceptive business practice to involuntarily medicate
4. at a psychotropic medication review board hearing where prison officials are
5. [ordered] to investigate and interview witnesses and produce surveillance audio
6. and video but instead they retaliated by transferring the petitioner to another
7. complex to prevent a lawsuit and witnesses from developing the record and
8. surveillance audio and video from developing the record, despite being
9. transferred the new prison complex is engaged in the same new methods of
10. interference in overt acts to insure or oppress the lawsuit at administrative
11. grievance and appeals hearings, where prison officials are more interested in
12. cost containment and liability as opposed to the mental well being of prisoners
13. mental health, where if the prison officials and subordinates were correct in
14. their position they should have proved it by interviewing witnesses and produce
15. surveillance audio and video at hearings, where two incidents in the community
16. have occurred after inmates were released from Yuma Complex with a high
17. degree of possibility of a post traumatic stress disorder disease panic attack
18. resulting in one person returning to prison over the incident and a second
19. person who "hears rap music" loses control and murders a young citizen in
20. the community in Phoenix Arizona on July 5, 2019 in State v Adams and
21. the petitioners contention was that prolonged exposure can develop into a
22. post traumatic stress disorder disease triggered by a specific condition in the
23. community with a high degree and excessive risk of harm or danger
24. that would follow by some hazard the prison officials could have prevented.
25. This was petitioners opinion upon belief of information, knowledge and experience.
26. see 42 USC 1983, ch 21, sect 418, 419, 1521-2510, 3482-3551, 2241-2251, Cr Code 18, 19, 20, 28 USC 2511(2)(C)(d);
27. ARS 13-1201, 1202, 1203, 2402, 2202, 2310, 2404, 2421, 2311, 2421, 2423, 3112, 3102, 2916; FR of End 101-1007.

18) Under Civil Rights Offenses and Penalties a conspiracy to engage in organized deceptive business practice and organized fraudulent schemes for no valid penological or correctional purpose interests to impose new methods of interference; to knowingly, intelligently and willfully cause mental derailment; to prevent the petitioner from filing a lawsuit is a conspiracy to injure and oppress the petitioner in the free exercise of a right or privilege secured or protected to him/her by the constitution where filing of a lawsuit is a protected conduct that clearly falls within the ambit of the First Amendment Petitions Clause, and thus the 1st Amendment is implicated in this case which petitioner has alleged that he has suffered adverse actions in retaliation for filing a lawsuit and for overt acts in furtherance of retaliation when prison officials and officers transferred the petitioner to further punish him to prevent a lawsuit where the average person would have already stopped. See *Caldwell v Luzerne County Correctional Facility Management Employees*, M.D. Pa. 2010, 732 F. Supp. 2d 458; *USCA Amend 1, 14*; *Geo v Pollard*, 607 F.3d 346 (9th Cir 2010) F.Rof Evid Rule 406 "Routine practice, whether it is corroborated or whether there was an eye witness."

19) Under Civil Rights Offenses and Penalties a conspiracy to prevent witnesses from testifying and to obstruct surveillance audio and video from developing the record of evidence on the claims is a conspiracy to injure and oppress the petitioner in the free exercise of a right or privilege secured or protected to him/her by the constitution where it is a due process of law under the Fourteenth Amendment as it applies to the Sixth Amendment, Compulsory Clause, the right to compel witnesses testimonial evidence and to compel surveillance audio and video evidence recording the sound and conduct to develop the facts on his claims, where the facts in this case are in dispute and the petitioner requested a hearing to develop the record

1. on his claims, where specific allegations and surveillance audio and video before
 2. the court show reason to believe that the petitioner may, if the facts are
 3. fully developed, be able to demonstrate that he is entitled to relief, it is
 4. the duty of the court to provide the necessary facilities and procedures
 5. for an adequate inquiry. *USCA Const. Amend 6, 14*, see also *Harris v Nelson*,
 6. 394 US 286, 300, 89 S.Ct. 1082 (1969); see also *Serrano v Francis*, 345 F.3d 1071, 1079-81
 7. (9th Cir 2003) (due process violation because correctional officers failed to document
 8. a reason for failing to allow prisoner to call witnesses at hearings); *Rivera v*
 9. *Fisher*, 110 Ad.3d 1277, 973 NYS (3d dept. 2013) (due process violation when hearing
 10. officers denial of a witness without stating a good faith reason for refusal or lacked any
 11. effort to obtain requested witnesses testimony constitutes a clear constitutional violation);
 12. see also *Hoskins v McBride*, 702 F. Supp. 2d 389 (W.D. Ind 2002) (prisoners have a right to
 13. call witnesses to testify in their behalf. Whether to have witnesses present or allow
 14. them to submit a written statement is the prison's discretion, but live testimony
 15. is preferred.); see *Piggie v McBride*, 277 F.3d 922, 925 (7th Cir 2002) (due process
 16. violation because prison officials denied the opportunity to present surveillance
 17. tape evidence without giving a good faith reason.); see F.R. of Evidence Rule
 18. 611 Mode and Order of examining witnesses and presenting evidence, where the
 19. Court or prison officials at administrative grievances or appeals hearings should
 20. exercise reasonable control over the mode and order of examining witnesses
 21. and presenting evidence so as to make those procedures effective for determining
 22. the truth; to avoid wasting time and to protect witnesses from harassment
 23. or undue embarrassment. A witness may be cross-examined on any relevant
 24. matter, witnesses testimony is relevant evidence if has the tendency to
 25. make a fact more or less probable than it would be without the evidence,
 26. the fact is a consequence in determining the action. see Rule 406, 611, 614, 702
 27. 1001-1007 in F.R. of Evidence; see also *Thaddeus-x v Blatter*, 175 F.3d 378 (6th Cir 1999)

1. ... II, Review is warranted for interpretation of clearly established constitution,
2. Statute and case law where there is existing opinions of substantial
3. rule of national application of retaliatory transfers, harassment, obstruction
4. of witnesses, surveillance audio and video, investigations Pursuant
5. to chronology or totality theory. Where one of these things that
6. officers do in overt acts in furtherance of the offense, adds up to
7. create a total overall effect of an ongoing campaign of harassment
8. and retaliation, ongoing for 1155 consecutive days that is unconstitutional?
9. See Appendix B; C at ¶ 1-26; Third Amended Complaint. O'Brien v
10. Hacker Agnew et.al. CV-00166-GMS-DMF Chronology. Appendix F
11.

12. (20) Harris v Nelson, 394 US 286, 300, 89 S.Ct. 1082 (1969), "Where the
13. facts in this case are in dispute and the petitioner requests a hearing,
14. to develop the record on his claims. "Where specific allegations before
15. the Court would show reason to believe that the petitioner may
16. if the facts are fully developed, be able to demonstrate that he is
17. entitled to relief, it is the duty of the Court to provide the necessary
18. facilities and procedures for adequate inquiry. see Appendix D "Witnesses"
19.

20. (21) Andersson v Creighton, 483 US 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed 2d
21. 523 (1997). It is not necessary that the alleged acts have been previously
22. held unconstitutional, as long as the unlawfulness was apparent in light
23. of preexisting law. Id "In the absence of binding precedent, a
24. court should look to whatever decisional law is available to
25. ascertain whether the law is clearly established" for any qualified
26. immunity purposes. Capoman v Reed, 754 F.2d 1512, 1514 (9th Cir 1985)
27. Therefore the law was clearly established set forth hereafter.
28.

1. (22) In 42 USC § 1983 Ch 21 Sect. 5440 Although conspiracy requires agreement,
2. agreement may not be overt, if it's not, alleged acts must be sufficient
3. to raise inference of mutual understanding acts performed together by
4. members of conspiracy are adequate when they are unlikely to have
5. been undertaken without agreement. *Humphrey v. Demitro*, ND, Ill
6. 1996 F. Supp. 571, reversed in part 148 F.3d 719.
7.
8. (23) In *Peterson v. Stanczak*, N.D. Ill 1969, 48 FRD 426, In Civil cases
9. conspiracy damages flow from overt acts made in furtherance of
10. conspiracy, in other words the more the acts are done in conspiracy
11. the more the damage adds up, becoming unconscious competent deliberate indifferent.
12.
13. (24) In *Baltoski v. Pretorius*, ND, Ill 2003, 291 F. Supp. 2d 807, Civil Rights 1395(2),
14. To State a § 1983 claim for retaliatory treatment, prisoner complaints against
15. Prisoner officers need only allege a chronology of events from which
16. retaliation can be inferred. 42 USC § 1983 Ch 21 § 419, 2263; 1986, 1985
17.
18. (25) In *Caldwell v. Luzerne County Correctional Facility Management Employees*,
19. M.D. Pa 2010, 732 F. Supp. 2d 458, the filing of a lawsuit is protected
20. conduct that clearly falls within the ambit of the First Amendment
21. petition clause, and thus 1st Amendment is implicated in cases which
22. Prisoners have alleged that they have suffered adverse actions in
23. retaliation for lawsuits. 42 USC § 1983 ch 21 sect 419, 2264; see also
24. *Burgos v. Lanino*, Ed. Pa 2009 Fed. Appx 302, 2009 WL 5031358 Civil Rights
25. 1098 "Were filing grievances and lawsuit during retaliatory transfer." See also
26. 42 USC § 1983 ch 21 sect 419, 2677 Personal involvement after grievances were filed
27. and conduct was not corrected. Once a grievance has been filed
28.

1. notifying prison officials of constitutional violations, the prison official
2. has knowledge of the problem, they can't ignore it. *Hoskins v McBride*,
3. 702 F.Supp.2d 389 (W.D.TND. 2002) "Where prisoners have a right to call witnesses
4. to testify on their behalf. Whether to have them testify in person or allow
5. them to submit written statements is the prison's discretion, but,
6. preference is live testimony, there must be a legitimate justification
7. for the refusal to call witnesses. When prison officials decide that it is
8. not appropriate or otherwise ignore witnesses they have to explain why
9. they have made this decision. One reason prison officials would not call
10. witnesses is because they are preventing witnesses from developing
11. the record. *Rivera v Fisher*, 110 Ad.3d 1277, 923 NYS (3d dept 2013); *Davis v*
12. *Keller*, 160 F.3d 917, 920 (2nd Cir 1998) (claim stated when prisoner alleged
13. retaliatory transfer); 42 USC § 1983 ch 21 Sect 2266, 2267 at Constitution law
14. 1996, *Rivera v Goord*, SDNY, 2003, 253 F.Supp.2d 735 "Where substantial
15. motive factor for retaliation is to prevent new methods of interference
16. from being exposed and testimony developing the record by obstructing
17. witnesses, surveillance audio and video, and investigations. 42 USC § 1983 ch 21
18. sect 2267; 42 USC § 1985, FR of Evid 602, 701, 103, 406, 602, 614, 701; FR of P 43
19. Recordings 1001-1007, Cr Code 18, 19, 20; Appendix D ("Witnesses willing to testify.")

20. (25) In *Palmer v Johnson*, 193 F.3d 346 (5th Cir 1999), "Where the totality of the
21. conditions, even though certain conditions might not be unconstitutional
22. on their own, they add up to create an overall effect that is
23. unconstitutional falls within the ambit of the 8th Amendment."

24.
25. (27) In *Calhoun v Hargone*, 312 F.3d 730 (5th Cir 2002) "Where there are
26. subtle things officers can do to harass you, "one" of these small
27. events may not be enough to make a claim of retaliation, but if
28.

1. if it keeps happening, it may be enough to make a claim of ongoing campaign
2. of harassment or retaliation see *Thaddeus-X v Blatter*, 175 F.3d 378 (6th Cir
3. 1999) (Prison officials may not punish you for filing lawsuits for yourself or
4. someone else.); See D.O. 125 "zero tolerance sexual offense laws S.1435.
5. Federal laws for sexual assault inside correctional systems." See D.O 803
6. "Inmate Discipline rule violations and penalty charts" Prison officials or officers
7. do not have qualified immunity inflicting those rules on inmates."

8.
9. 28) *US v Classic*, "Constitutional Laws of General Rules Of Construction, In
10. determining whether a provision of the constitution applies to a new subject
11. matter involving new methods of interference inside correctional systems
12. today, it is of little significance that it is one with which the Framers
13. were not familiar with when they drafted the constitution and hence
14. the Supreme Court reads its words, not as legislative codes which are
15. subjected to continuous revision with the changing course of events, but
16. as the revelation of the purpose which are intended to be achieved by
17. the constitution as a continuing instrument of government." 313 US 229
18. (1941). This provision provides the opportunity for the full Supreme Courts
19. interpretation of the constitution, statute, and laws as a continuing
20. instrument of government to create new laws on new subject matter
21. for new methods of interference inside correctional systems for in
22. the future.

23.
24. 29) The ongoing penal injury is persistent hallucinatory effects, extreme emotional
25. distress and anxiety, migraine head aches, ear aches, disorientation, confusion,
26. excessive preoccupation of the mind, can't read-write-focus, constant
27.

1. exposure to intense electromagnetic waves sensing in the body and
 2. headphones while watching TV, rapid cycle post traumatic stress disorder
 3. from a past injury and panic attacks, loss of control, potential future post
 4. traumatic stress disorder disease due to prolonged exposure and mental
 5. health, neurological and nervous system derailment, future potential of
 6. panic attacks during a trigger condition, recklessness endangerment, trespasser
 7. on person, assault, mental anguish and torturous effects, necessary
 8. and wanton infliction of mental pain and suffering.

9. 30) In Civil Rights Offenses and Penalties to state a claim in §1983 for retaliatory
 10. treatment, a prisoners complaints against prison officers need only allege
 11. a chronology of events from which retaliation can be inferred. In the
 12. Third Amended Complaint petitioners contention alleged overt acts in aiding
 13. and abetting in misuse of power or authority in each defendants causation
 14. implies making it a penal offense for anyone who acting under color of
 15. any law or any person not acting under color of any law, who willfully subjects
 16. or causes to be subjected any inhabitant of any state to the deprivation
 17. of any rights, privileges or immunities, secured or protected by the federal
 18. constitution and laws or to different punishments, pains or penalties on
 19. account of new methods of interference and intentionally, knowingly and
 20. willfully causes mental health derailment, pain and suffering over a
 21. prolonged period of time analogous to torturous or criminal acts it is no
 22. extention of the statute to find a violation in it with which the right
 23. the words it protects, since it is the constitutional right, regardless of the new
 24. method of interference, which in precise terms it protects from injury, oppression
 25. and tyranny, which is the subject of the statute, Cr Code 18, 19, 20; ARS §13-
 26. 2916; 42 USC §1975; 42 USC §1983 ch 21. sect. 419; USCA Court Amend 1, 4, 6, 8, 14.
 27. 42 USC §1983 ch 21 Sect 1521-2510, 3482-3551, 2241-2251, 28 USC § 2511 (a)(c)-(d); F.R. of Evid 406

1. 31) The Petitioner's contention now points to the overt acts of the defendants
2.
3. causations, inferring aiding and embetting in their official and individual capacity.
4.
5. in misuse of authority or power in chronological order that the facts, conduct, circumstances,
6.
7. dates witnesses signed declaration affidavit petition, add up to create a total overall
8.
9. effect that is unconstitutional in actions of a routine business practice involving
10.
11. conspiracy, retaliation, harassment and mental derailment over a prolonged period of
12.
13. time in new methods of interference constituting an ongoing prison program campaign.
14. see ARS § 13-2916, 42 USC § 1985; 42 USC § 1983 ch21 Sect 418, 419, 1521-2510, 34B2-3551, 2241, 2251; F.R. of Evid 406
15. 32) In Count three from February 2016 throughout July 2016 Officer Rodriguez and Avila
16. intentionally and knowingly recklessly endangered Petitioner's life alleging on 25
17. different nights on duty, in their assigned work station, surrounded by 112 inmates, from
18. 10 PM through 11:30 PM while in a quiet dorm alleged O'Brien is a child molester, chomp,
19. and sexual predator. Rodriguez and Avila knew that inmates physically assaulted
20. or sometime kill child molesters placing Petitioner in a heightened state of alert of
21. inmate attacks. Petitioner has liberty interest in not being labeled a child molester
22. while never being convicted, indicted and had no information or complaints ever
23. filed for a sex crime against a minor or any other person in the USA. see ARS § 13-
24. 705, 1405, 1406, 1410; 42 USC § 1983 ch21 Sect 2241-2251 or implicit federal statute; see D.O. 125, 803
25. "zero tolerance to sexual harassment or retaliation"; see also Brown v Mantora, 662 F.3d 1152, 1168
26. (liberty interest in not being labeled a child molester when not previously convicted of sex crime)
27.

1. see also Kirby v Siegleman, 195 F.3d 1285, 1291 (11th Cir 1999) (same); USCA Const Amend 1, 14
2. 33) On or about September 25, 2016 petitioner witnessed a Sergeant and PPST Officer
3. install 4 Black electronic communication devices into the mechanical room in
4. dorm 4E/F at 3:45 PM through 4:30 PM appearing to be speakers or security devices.
5. Two days later from 10 PM throughout 6 AM while awake petitioner began hearing
6. psychotic sound tracks coming from the area around the mechanical room, washer
7. and dryer area, bathrooms, and shower rooms. This raises the inference of a
8. mutual understanding the acts of installing the devices were performed together
9. by members of a conspiracy when there are unlikely to have been undertaken
10. without an agreement by Director Charles Ream and Warden Carla Hacker-Agnew.
11. the policy makers who govern policy, was tacit policy, because there was no written
12. policy, custom, usage or practices notifying the inmates tends to prove the illegality.
13. This is where the new methods of interference began, this technique has been labeled
14. as Waveboarding, scouring mental derailment causing loss of control, mental pain and
15. suffering over a prolonged period of time analogous to torture, every bit as debilitating
16. as Physical Pain, Waterboarding. The petitioner has liberty interest in not being targeted, harassed,
17. or retaliated against by the use of an electronic communications device used to ferret, harass,
18. retaliate and cause mental derailment. see ARS § 13-2916; 18 USC § 2500-2600; 42 USC § 1985;
19. 42 USC § 1983 ch 21 sect. 419; International Treaty laws; Universal Declaration of Human Rights,
20. Federal Communications Commission Rules and Regulations; USCA Const Amend 1, 4, 8, 14
21. 34) From October 1st 2016 throughout January 4th 2017 Psychiatrist Martin with pretention
22. prevaricately denied there was any form of testing, evaluations or outside
23. specialist that existed for the problem on 4 different colloquy meetings. Martin
24. denied everything until on January 4th when petitioner showed Martin the
25. medication data sheets and Therapeutic Manual. Martin then said "OK your right
26. there is testing but ADC won't pay for testing." Petitioner told Martin, "I'm filing

because for four months now you obstructed investigations and adequate mental health care testing, evaluations and outside specialist care, leaving me mental health in derailment with sound tracks never heard before." When the meeting was over Martin "abandoned" my mental health care against D.O. 1101, 1102, 1103, 1104; USCA Amend 1, 4, 8, 14.

35) On January 10th 2017 Petitioner filed the lawsuit, that same day the prison officials and officers began certain arbitrary and invasive acts violently broadcasting the psychotic sound tracks during the day and night that "shocked the consens" to invade and oppress for no valid penological or correctional purpose interest while petitioner was protected by the 1st Amendment Petitions Clause, see ARS § 13-2916, 1201, 1202, 2402, 2202, 2310, 2921, 3102, 3413; 42 USC § 1985; 42 USC § 1983 ch 21 sect 418, 419, 1521-2510; 3482-3551; 18 USC § 52, 2500-2700; INT; UDHR; FCC Rules and Regulations; Cr Code 18, 19, 20; USCA Const. Amend I.

36) On or about February 10th 2017 and March 20th 2017 Petitioner woke up to a substance thrown on his genital area, T-shirt and bedding soiling wet. On or about April 20th 2017 Petitioner was awoken feeling his genital area becoming wet, sat up suddenly, there was an unknown officer standing next to his living cube with a container in his hand, swiftly walked around the cube, around the officers station, stumbled up the stairs, threw the container in the mail trap, I heard it bounce, then the officer did his count. Two week later the officers on duty that night transferred off the unit because they compromised themselves to a prea offense. Petitioner has liberty interest in not being sexually assaulted and battered, sexually harassed, sexual contact while protected by D.O. 125, 802, 803 zero tolerance against those offenses. Mark, Dale and David were watching and there is audio and video of all the occurrences. This raises inferences of conspiracy mutual understanding unlikely to occur without an agreement with aiding and abetting Rodriguez on the same shift. 10PM-6AM.

37) On May 10th 2017 Associate Psychiatrist Valterra obstructed a prea investigation by failure to act when petitioner reported it to her during the monthly meeting ARS § 13-2402, 1201, 202.

38) On or about July 1st 2017 inmate Escallante signed a declaration affidavit petition

1. because the atrocious sound tracks were causing extreme emotional distress and anxiety causing
2. persistent nose bleeds for the past three weeks. On July 30, 2017 inmate Wilson signed the
3. Petition when he overheard officer's talking about the officers sexually harassing petitioner on
4. the night shift 10PM-6AM. From July 1st through August 15th 2017 five more inmates signed
5. the petition hearing and sensing the same exact psychotic sound track causing them problems.
6. ~~39~~ On about August 2nd, 2017 an unknown inmate during 3AM-5AM was chasing the sounds around
7. the dorm, the sounds were derailing his mental health recklessly endangering his life, he
8. gave petitioner all his hygiene, tobacco, coffee, commissary then went down to the chow hall
9. and threatened to stab a "negro", the officers shackled the inmate, put him in psychiatric
10. lockdown. The prison program recklessly endangered this inmates life with grave consequences.
11. ~~40~~ On or about September 20, 2017 Petitioner walked outside his dorm 4E/E, Corti Torres was
12. standing with her back toward petitioner, in a direct conspiracy telling inmates walking by
13. "Thank you for your cooperation, Terry didn't react, it didn't work" inferring he didn't leave the unit,
14. Torres turned saw petitioner watching swiftly walked to the gate, then ran into the administration
15. building, its on video outside dorm 4E/E, later that same day Torres in front of Dorm 4A/B was
16. telling inmates "Thank you for your cooperation, he didn't react, it didn't work", Torres saw me
17. walk next to her, turned ran into dorm 4A/B. Its on video outside dorm 4A/B, Then Transferred.
18. ~~41~~ On September 20, 2017 at 4:00 PM Court Officer Ochoa in his officers station on the intercom with
19. two unknown persons, a fast talking mexican male and an english talking female said "Why isn't
20. Terry reacting, everyone else is."; On September 23, 2017 again Officer Ochoa on the intercom
21. the same two unknown officers, the female said "Why isn't Terry reacting [we're] going to
22. get in trouble for harassment;"; later at 8:30 PM Court Ochoa on the intercom, the female
23. said "Terry isn't reacting, everyone else is [we] need to get rid of those two they are
24. filing too many lawsuits on our unit." On September 27, 2017 again Ochoa on the intercom
25. with the same two unknown defendants, the female said "Terry's not going to react, [we] are
26. [all] prepared to move forward with this program, we're not going to stop it because
27. of him." Petitioner asked Ochoa who was on the intercom, Ochoa said it was Diaz.

1. The petitioner alleges that he overheard the two unknown officers on the intercom on more than 25
2. nights from September 1st 2017 throughout November 24, 2017 making similar comments they were
3. in trouble for harassment and retaliation because Terry wasn't reacting by leaving the unit
4. or dropping the lawsuit. The ongoing campaign prison program became a routine business
5. practice every day and night. 42 USC § 1983 Ch 21 Sect 1521-2510, 3482-3551; ARJ § 13-1201, 1203, 2921.
6. (42) August 22, 2017 Petitioner showed associate psychiatrist Valtierra the witnesses declaration
7. affidavit Petition alleging hearing the exact same psychotic sounds. I told Valtierra "from
8. September of last year until today, August 22, 2017 you knew that they were broadcasting
9. these psychotic sound tracks and didn't do a damn thing, you lied to me, you didn't even
10. try to investigate or schedule an appointment with another psychiatrist or outside specialist.
11. On the way out, Valtierra was following me, as I began walking through the door inside
12. medical, I suddenly turned around, Valtierra was turning to a nurse next to a medical cart
13. telling her, placing her hands to her mouth "We fucked the wrong person, now we're in
14. trouble." Valtierra turned saw me listening quickly walked back to her office. One week
15. later Valtierra transferred of the unit because she compromised herself in the program.
16. (43) October 14, 2017 inmate Sokoloff was experiencing mental derailment from hearing the
17. atrocious sounds that day, Sokoloff thought inmates were going to attack him, Sokoloff
18. placed a razor in mouth to protect himself, his neighbor told me, he fetched Sokoloff to
19. my dorm, I took the razor blade from Sokoloff's mouth before he swallowed the razor
20. blade and killed himself, it's on video in dorm 4E/F. This is recklessness endangerment.
21. These prison officials and defendants are deliberate indifference to grave consequences.
22. (44) January 1st through January 28th Prison officials and officers obstructed witnesses, surveillance
23. audio and video to insure and oppress the case from developing the facts for the record at
24. Administrative Grievances without providing a reasonable good faith effort for refusal or
25. lack of any effort to interview witnesses or allow presentation of surveillance recordings at
26. the official hearings during a critical stage. See witnesses petition Appendix D; see also
27. Administrative and appeals responses Appendix F, E. The COTU told petitioner he had to

1. obtain a court order since he was filing a lawsuit. see *Piggie v McBride*, 277 F.3d 912, 975
2. (7th Cir 2001) (due process violation because prison officials denied inmate opportunity to present
3. surveillance tape evidence without giving reason for denial); see also *Hoskins v McBride*,
4. 702 F.Supp.2d 389 (W.D.Ind. 2002); see also *Rivera v Fisher*, 110 Ad.3d 1273, 973 N.Y.S.2d 473 (3d dept. 2013)
5. (due process violation when prison officials failed to document reason for denial of witnesses
6. testimony without stating a good faith reason for refusal or lack of any effort to obtain
7. requested witnesses testimony constitutes a clear constitutional violation); *Stok v City of*
8. *Glen Dale*, 3 Ariz 254, 257, 413 P.2d 585 (1966); *Southern Pac Co v Covello*, 84 Ariz 24, 323 P.2d 1 (1988) (cf)
9. 45) December 22, 2017 Petitioner forced a meeting with Psychiatrist Martin, showing her the witnesses Petition
10. asking her to investigate, Martin said "I don't investigate, investigating is not my job." On January 12,
11. 2018 Martin retaliated for filing a lawsuit by conspiring with 10 officials and officers to an
12. organized deceptive business practice and organized fraudulent scheme to deceive or trick
13. A Senior Official Psychiatrist to forcibly involuntarily medicate at a psychotropic medication review
14. board hearing. Petitioner presented his evidence of 15 witnesses hearing the exact same sounds.
15. Martin and an unknown COIV became belicose and truculent attempting to deceive the official.
16. The official's decision was a direct [ORDER] to investigate the sounds and witnesses with the
17. Petitioner. On January 22, 2018 Supervisor Nurse Milward told Petitioner, "Yes I hear the psychotic
18. sounds, I don't believe it's a very nice thing to be doing to anyone," she also said "I don't
19. know why they are doing this, but it is a very bad thing to be doing." The next day on
20. or about January 23, 2018 The prison officials retaliated by transferring the petitioner
21. to another complex to obstruct the investigation and the lawsuit, injuring and oppressing
22. the petitioners case from developing the evidence and facts. USCA Const. Amend 1, 6, 8, 14.
23. 46) January 24, 2018 Despite being transferred, the new prison complex is engaged in the exact
24. same ongoing campaign prison program using a concealed electronic communications device
25. as a weapon for new methods of interference to target, retaliate, harass, inmates filing lawsuits
26. and to control and manipulate inmates. On May 15, 2018 Petitioner filed Administrative and
27.

1. appeal requesting they interview more than 40 witnesses, in overt acts in furtherance of the offense
 2. of obstructing, perverting Justice and hindering the execution of law to injure and
 3. oppress the case from developing the facts provided no reasonable explanation for
 4. refusal or lacked any effort to interview witnesses in person, in camera, or by a written
 5. statement in detriment and in violation of the due process clause of the 14th
 6. Amendment. On November 5, 2018 Deputy warden Pasdella, on January 18, 2019 an unknown officer,
 7. on 2/20/19 another officer, on 5/15/2019 another officer admitted to hearing the psychotic sounds,
 8. but said, "You can't prove we're doing it." From January 2019 during every telepsych appointment
 9. throughout July 1st 2019 Petitioner complained requesting witnesses be interviewed but no
 10. response by Samuel Wolde. On July 1st 2019 Petitioner told Wolde your company is knowingly,
 11. intelligently and willingly causing psychological derailment of inmates to control and
 12. manipulate them and to get them to drop lawsuits. Wolde said "we're only here
 13. to make sure you have food to eat and clothes to wear." Petitioner told Wolde "I realize
 14. you can't go against your company or else you wouldn't have a job." FRof CrP 43.27(b);
 15. FRof Evid 408, 602, 611, 614, 702, 1001-1007; ARS 15-2916, 1201, 1203, 2402, 2921, 2923, 3102, 2921.
 16. (47) The Petitioner's contention is for the full Supreme Courts Interpretation of the constitution,
 17.
 18. statute or authority law is a question of law where the facts add up to create an
 19.
 20. overall effect that is unconstitutional in which there is a substantial need for a rule
 21.
 22. of national application of Appellate Binding Precedent, Appellate Persuasive precedent or
 23.
 24. Supreme Court Precedent in which there is an overriding need for national uniformity,
 25.
 26. on new methods of interference in Arizona Institutions that has become systemic.
 27.

1. III Review is warranted for interpretation of a constitution, statute or case authority is a
2. question of law where Prison officials and doctors violate the 8th Amendment and engage in
3. a conspiracy to being deliberate indifferent to an ongoing exposure to a serious medical
4. need presenting a high degree and excessive risk of harm or danger when they intentionally
5. deny, delay or interfere with providing adequate treatment. see Appendix E, G, F
- 6.
7. 48) Where Prison officials and doctors from 5/1/15 throughout 1/28/18 engage in overt acts of a
8. conspiracy to obstruct and hinder adequate medical care is a conspiracy to injure or oppress
9. the citizen in the exercise of a right or privilege secured to him by the constitution
10. within statute where misuse of authority or power, possessed by virtue of the state law and
11. made only possible because the wrongdoer is clothed with the authority of state law, is action
12. taken under the color of law within statute making it a penal offense for anyone who's
13. acting under the color of law willfully subjects or causes to be subjected any inhabitant of
14. any state to the deprivation of your rights, privileges or immunities secured or protected by
15. the federal constitution and laws where prison officials intentionally deny, delay or interfere
16. and stonewall an ongoing serious medical need presenting a high degree and excessive
17. risk of harm or danger, where Kingman Mountain West Hospital emergency room doctors
18. discover through an MRI, severe liver cell carcinoma, hyper-tension main vein valve, excessive
19. main vein dilated, severe cirrhosis of liver with irreparable damage, splenomegally about to
20. rupture and high levels cell counts for Hepatitis C and totally disregards to do something
21. about it for three years. see Appendix E, G; Rule 60 motion; Parson v Ryan, CV-12-00601-PHX-DWH
22. (2012) where Judge Duncan imposes 103 performance measurement correction actions that have
23. not been met in 2019, where the 19 Cases are to be relitigated because of being deliberate
24. indifferent. see Third Amended Complaint; see also Jett v Penner, 479 F.2d 1091, 1096 (9th Cir 2006);
25. Dake v County of Lassen, 97 F.3d 540, 546 (9th Cir 1994); see also Estelle v Gamble, 429 US 97, 104-05 (1976);
26. Farmer v Brennan, 511 US 825, 837 (1994); Tachuchi v Chong, 391 F.3d 1051, 1060 (9th Cir 2004)
27. Cf Code 18, 19, 20; USCA Const Amend 8, 14; 42 USC § 1983 ch 21 sect 418, 419; 42 USC § 1985-86. DO 1101, 1103, 1104.

1. 49) On January 17, 2018 Petitioner filed a pro se civil rights complaint. In an April 27, 2017 Court order
- 2.
3. Granted Application to proceed in forma Pauperis and dismissed the claim, leave for 1st Amended Complaint
- 4.
5. On May 19, 2017 Petitioner filed his first Amended Complaint. On July 31, 2017 Order, the Court
- 6.
7. dismissed the First Amended Complaint, leave for a second amended complaint.
- 8.
9. 50) August 24, 2017 Petitioner filed a Second Amended Complaint and Motion for an
- 10.
11. Injunction relief. Because of the changing course of events where witnesses was
- 12.
13. coming forward supported by surveillance audio and video recording the psychotic
- 14.
15. sounds the complaint alleged the defendant's causation was acting in concert in
- 16.
17. over acts in furtherance of the offenses in new methods of interference to misapprehend
- 18.
19. Petitioner from the Unit or drop the lawsuit. The Petitioner was forced to change
- 20.
21. the the original complaint and write independent defendant causations ordered by
- 22.
23. the court. The second issue for changing the original complaint was to comply
- 24.
25. with the Declaration Affidavit sworn under oath of penalty of perjury that the
- 26.
27. complaint was true and correct to the best of my ability and knowledge.

1. (51) On May 10, 2018 Petitioner filed a Third Amended Complaint (Doc 27), and a Motion for a
2.
3. Preliminary Injunction and Temporary Restraining Order. The Third Amended Complaint alleged
4.
5. defendants' cautions acting in misuse of authority or power while acting under color
6.
7. of state law, inferring aid and abetting, making it a penal offense constituting a
8.
9. conspiracy, targeting, retaliation, harassment, trespassing on his person and effect (abuse of
10.
11. and unconstitutional mental pain and suffering over a prolonged period of time is
12.
13. analogous to torturous acts for 1155 days in detriment and in violation of petitioners
14.
15. 1st, 4th, 8th, 14th Amendment; International Laws; U.D.H.R.; FCC Rules and Regulations.
16.
17. (52) Aside from the above deprivations the defendants engaged on a course of
18.
19. conduct in overt acts in new methods of interference utilizing a concealed electronic
20.
21. communications device as a weapon to further target, retaliate, harass, threaten and
22.
23. intimidate and terrify Petitioner to either misapprehend him from the unit and to
24.
25. insure and oppress his case in overt acts in furtherance of the offense by intentionally
26.
27. obstructing witnesses, surveillance audio and video, then retaliated by transferring

1. the petitioner to another prison complex, despite being transferred the new prison complex is

2. evaded in the same new methods of interference to further insure and oppress the case.

3. The new prison complex obstructed more than 40 witnesses from developing the facts

4. on the claims during a new round of Administrative and Appeals proceedings where the

5. petitioner had the guaranteed protected right to call witnesses pursuant to the Compulsory

6. clause under the 6th Amendment to perpetuate their testimony in case of a future court

7. Proceedings to prevent a failure or delay of justice, see Appendix D.

8. The petitioner did allege in the defendants' cautions they had the opportunity, duty

9. or responsibility to report a conspiracy on new methods of interference pursuant to

10. 42 USC § 1986. Their failure to report a conspiracy did so in a manner that violated the

11. constitution is guilty of a conspiracy 42 USC § 1985. see Third Amended Complaint (Doc 27).

12. The Preliminary Injunction and Temporary Restraining Order was requested

13. from the courts, by petitioner and witnesses, immediate relief from real and imminent

14. danger of high degree and excessive risk of harm and danger where the defendants

1. were aware of or should have been aware that the new methods of interference was
- 2.
3. "knowingly, intelligently and willfully causing derelictment of inmates mental health" when
- 4.
5. they witnessed an inmate in dorm 4E/F chase the sounds around the dorm acting psychotic
- 6.
7. in loss of control, went down to the chow hall, and threatened to stab a negro, the
- 8.
9. officers physically restrained the inmate and locked him up in psychiatric lockdown.
- 10.
11. 56) On a second occasion inmate Sokoloff was hearing the psychotic sounds on October
- 12.
13. 14th, lost control thinking inmates was going to attack him, Sokoloff placed a razor-blade
- 14.
15. in his mouth, an inmate brought Sokoloff to my cube, where petitioner took the razor-
- 16.
17. blade from Sokoloff, who subsequently went to psychiatric lockdown in fear for his
- 18.
19. health and safety, both inmates life was in real and imminent danger, its all on video.
- 20.
21. 57) On a third occasion inmate Escalante and Blysmouth suddenly began to experience
- 22.
23. persistent nosebleeds, due to extreme emotional distress and anxiety from hearing
- 24.
25. the psychotic sounds. Escalante needed to stop his psychotropic medication to cope
- 26.
27. with the psychotic sounds, like the petitioner did the same to cope, also on video.

1. (58) At this point, "the defendants were intelligently, knowingly and willingly causing derailment
2. of inmates mental health and safety" for no valid Penological or Correctional purpose interest
3. in deprivation and trampling on petitioners 1st, 4th, 6th, 8th, 14th Amendment while attempting
4. to misapprehend, prevent and obstruct witnesses, surveillance audio and video, to invade and
5. oppress petitioners lawsuit while petitioner was protected by the Petitions Clause pursuant
6. to the 1st Amendment. Without Constitutional review by the Supreme Court the Prison
7. officials and defendants will continue to maltreat inmates intentionally, knowingly
8. and willingly until they are forced to stop the new methods of interference by this
9. Supreme Court of last resort. Their scourging the brain with new methods of interference.
10.
11. (59) On May 15th 2018 After filing the Third Amended Complaint the prison officials and
12. defendants became shockingly wretched with atrocity in their new methods of interference
13. Petitioner filed a 12 counts Supplemental Pleading pursuant to F.R. Civ P. 15(d), On Motion
14. and reasonable notice setting out occurrences or events that happened after the date
15. of the Pleading of the pleading to be supplemented. The Court was supplementation

even though the original Pleading is defective in stating a claim.

(60) On May 18, 2018 District Court dismissed supplementation, to encompass it into a 4th Amended Complaint per Rule 3.4, but would rule on Third Amended Complaint if no 4th Amended complaint was filed. Supplementation encompassed into a 4th Amended complaint would nevertheless still violated Rule 3.4. The Courts violated FRof Civ.P Rule 15(d) where supplementation may be ruled on even if the original Pleading is defective in stating a claim.

(61) On May 20, 2018 Petitioner filed a Motion For Taking Of Depositions (Doc 31) Pending an interlocutory Appeal pursuant to F.R.Civ.P Rule 27(b). Improperly mooted motion.

On June 18, 2018 Petitioner filed a Notification (Doc 41) further alleging an increase in new methods of interference to stop the petitioner from filing his claim.

(62) On August 22, 2018 9th Circuit in (Doc 10) denied preliminary injunction while motion for taking of depositions was pending an interlocutory appeal procedure in violation of F.R.Civ.P Rule 27(b) which injured and oppressed the case. USA Amended 14.

1. 63) On August 27th 2018 Petitioner filed a "Second Notification" (DOC 44) because
2.
3. the prison officials and defendants continuation of shocking wretched
4.
5. atrocious new methods of interference to force him to drop the lawsuit.
6.
7. The petitioner was telling the District Court to Notify the Federal Prosecutor
8.
9. of a criminal complaint against Director Charles Neam, Warden Carla Hacker-Agnew
10.
11. and Warden Jeff Wiggler for assault, reckless endangerment and harassment
12.
13. by use of an concealed weapon, an electronic communication device to terrify,
14.
15. harass, threaten and intimidate the petitioner for filing a lawsuit. The District
16.
17. Court refused to recognize or acknowledge the second notification, quickly,
18.
19. dismissed the Third Amended Complaint after dismantling, mischaracterizing,
20.
21. misconstruing, minimizing, omitting impact words, sentences and paragraphs, and
22.
23. refused to apply a substantial rule of national application in which there was an
24.
25. overriding need for national uniformity to precedent, binding precedent and
26.
27. persuasive precedent laws in their interpretation of the Constitution or statute.

1. 1) Without Constitution law review of this case will allow a systematized use of new
2.
3. methods of interference to maltreat inmates in our nations institutions world to no
4.
5. end. It is in the best interest of justice because it is problematic to the public,
6.
7. and inciting inmates to harass, threaten, intimidate and make threats to safety.

8.
9. 2) Petitioner suggest that the prison officials motivation is Organizational Demands
10.
11. more interested in Cost Containment and liability as opposed to a prisoners mental
12.
13. health and safety for: (1) So their officers don't have to do the harassment and
14.
15. retaliation preventing a lawsuit, (2) To prevent or deter a person from filing a lawsuit
16.
17. where the average person would have already stopped, (3) To intelligently, knowingly
18.
19. and willingly derail a persons mental health to either: control, manipulate, misapprehend,
20.
21. or to force them off their psychotropic medication, all cost and liability issues.

22.
23. 3) The Petitioner Prays for the Supreme Court to Grant the Writ of Certiorari.
24. Petitioner Prays for the Supreme Court to demand a trial. USCA Const. Amend. VII.

25.
26. Respectively Submitted this 22 day of July 2019

Terry Lee O'Brien

Terry Lee O'Brien