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18-6274

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**In the Supreme Court of the United States**

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SERGEI KOVALEV,  
*Petitioner,*

v.

CITY OF PHILADELPHIA; PAULA WEISS, Executive Director of  
Philadelphia Office of Administrative Review, in her individual  
capacity; YOLANDA KENNEDY, Clerical Supervisor of Philadelphia  
Office of Administrative Review, in her Individual Capacity;  
ANGELINEL BROWN, Deputy Sheriff Sergeant of Philadelphia  
Sheriff's Office, in her Individual Capacity,  
*Respondents.*

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**On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Third Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

On December 10, 2015, the City of Philadelphia and its officials denied constitutionally protected human rights of the United States Citizen, who had the right to request and obtain the public information, to express his grievances, to be present in public areas, and to enter public areas, when such areas were open to any member of the public during the hours of operation. Despite clearly existing rights awarded to Sergei Kovalev by the United States Constitution, neither the District Court, nor the Federal Court of Appeals for the Third District ever stepped in to protect the U.S. Constitution and the nation's longstanding protections afforded by the First and Fourteenth Amendments, including the right of access information, the right to peacefully express grievances, and the right to access the areas designated for public use during specified hours of operation.

This case created an issue of exceptional importance, because the Federal Court of Appeals for the Third District applied different standards in Kovalev's case.

### THIS PETITION PRESENTS THREE QUESTIONS:

1. Whether the First Amendment to the United States Constitution guarantees the right of citizens to enter the areas of the public offices maintained by the municipalities for public use during business hours, to seek and to obtain information or to petition the government for redress of grievances.
2. Whether the local municipality can be held liable for wrongdoings and omissions of its own municipal employees, when municipality completely fails to train and to supervise such employees.
3. Whether municipal employees can be immune from the liability.

## **PARTIES TO THE PROCEEDING**

All parties appear in the caption of the case on the cover page. Petitioner Sergei Kovalev was Plaintiff-Appellant in the court of appeals. Respondents City of Philadelphia, Paula Weiss, Yolanda Kennedy, Angelinel Brown were Defendants-Appellees.

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**IN THE SUPREME COURT OF THE UNITED STATES**

**PETITION FOR WRIT OF CERTIORARI**

Petitioner Sergei Kovalev respectfully petitions for a writ of certiorari to review the judgments below.

**OPINIONS BELOW**

The date on which the United States Court of Appeals for the Third Circuit decided this case was May 29, 2019, and the court's opinion is included in Petitioner's Appendix A (1a-8a).

Petition for rehearing by panel and the court *en banc* was timely filed on June 12, 2019 and was denied by the United States Court of Appeals for the Third Circuit on July 12, 2019. The denial of the petition for rehearing *en banc* is included in Petitioner's Appendix B (9a-10a).

The date on which the United States District Court granted in part the defendants-respondents Motion for Summary Judgment (addressed in this petition) was September 22, 2017, and the court's opinion and order is included in Petitioner's Appendix C (11a-37a).

**JURISDICTION**

Sergei Kovalev invokes this Court's jurisdiction under 28 U. S. C. § 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the July 12, 2019 denial of Mr. Kovalev's petition for rehearing.

After the final judgment entered in this case on January 12, 2018, the appeal to the United States Court of Appeals for the Third Circuit was timely filed on

February 4, 2018. On May 29, 2019, the United States Court of Appeals for the Third Circuit decided this case and the court's opinion is included in Appendix A (1a-8a).

On June 12, 2019, Mr. Kovalev timely filed a petition for rehearing that was denied by the United States Court of Appeals for the Third Circuit on July 12, 2019. The denial of the petition for rehearing is included in Appendix B (9a-10a).

The order entered for the defendants' motion for summary judgment became a final order when jury trial produced the final judgment disposing all remaining claims on January 12, 2018. The date on which the United States District Court granted in part defendants (respondents) motion for summary judgment was September 22, 2017, and the court's opinion and order is included in Petitioner's Appendix at C (11a-37a). The matters of defendants' motion for summary judgment were included in the Third Circuit appeal.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE**

Sergei Kovalev was denied guaranteed constitutional rights when the District Court and the Court of Appeals for the Third Circuit decided that citizens' constitutional rights do not exist.

1. The First Amendment to the United States Constitution provides in relevant part:

"Congress shall make no law respecting ... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Beginning with *Gitlow v. New York*, 268 U.S. 652 (1925), the Supreme Court

applied the First Amendment to states through the Due Process Clause of the Fourteenth Amendment.

2. The Fourteenth Amendment to the United States Constitution provides in relevant part:

"... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The Fifth Amendment to the United States Constitution provides in relevant part:

"...[N]or shall any person be ... deprived of life, liberty, or property, without due process of law..."

## INTRODUCTION

This case involves utmost important civil rights attributable not only to the Petitioner, but to all other citizens of the United States and can affect thousands of the citizens similarly situated. This case involves constitutional violations and appalling abuses of civil rights that cannot be tolerated in any civilized world. Nevertheless, the United States Court of Appeals for the Third Circuit created a decision that gives a notion that justice would not be available when the most egregious constitutional violations are performed by City's employees and by Philadelphia that never trained own employees; and accordingly, never supervised employees in relevance to civil rights abuses.

This case created an issue of exceptional importance, because the Third Circuit applied different standards in deciding almost the same questions that were already decided in totally different way by other federal courts and by this Supreme Court.

The Court of Appeals for the Third Circuit infringed the rights guaranteed by the United States Constitution and created standards that are unconstitutional.

On December 10, 2015, defendant City of Philadelphia and City's employees denied constitutionally protected human rights of the United States citizen, who had the right to request and obtain public information, to express his grievances, to be present in public areas, and to enter public areas, when such areas were open to any member of the public during hours of operation.

Despite clearly existing rights awarded to Sergei Kovalev by the United States Constitution, neither the district court, nor the United States Court of Appeals for the Third Circuit ever stepped in to protect U.S. Constitution. Not only lower courts refused to protect Constitution, these courts attempted to create unconstitutional new laws that would be beneficial only for municipal abusers.

Because the Third Circuit distorted the law by deciding that the First and Fourteenth Amendments' rights do not exist in public areas, certiorari is warranted, the judgment below should be vacated, and the case be remanded for further proceedings not inconsistent with Supreme Court's decision.

For the reasons set forth in this Petition, this Court should grant Petitioner's request for a writ of certiorari to review the decision of the district court and the United States Court of Appeals for the Third Circuit.

## **STATEMENT OF THE CASE**

### **I. FACTUAL ALLEGATIONS**

Sergei Kovalev found himself caught in a web of bureaucratic hearings and appeals concerning refuse assessments incorrectly imposed for his property. Attending one such hearing conducted by Philadelphia Tax Review Board on December 10, 2015, Mr. Kovalev was so surprised by incompetence of Hearing Board officials that after conclusion of the Hearing, Mr. Kovalev walked to the area of public reception of the Office of Administrative Review (OAR) and politely asked the receptionist to provide him with a list of Hearing Board members' names. Receptionist visited administrative officials (respondents) Weiss and Kennedy, who in mutual agreement staged a phone call to the City's own (cooperating and friendly) Sheriff's Office and falsely reported Mr. Kovalev as disorderly person, when in reality, Mr. Kovalev, a person with doctoral degree (who is perfectly knows how to behave in public areas), only politely asked receptionist for the public information representing a list of the Board members that were present at the Board Hearing that he attended earlier. See Complaint – Appendix E (39a-59a).

Philadelphia Tax Review Board (TRB) and Office of Administrative Review (OAR) are representing one municipal office, where OAR manages and schedules TRB hearings. It has a public reception area, where people can communicate with City officials (Appendix F, 60a-61a - photographs of the area that was a part of trial exhibit book). This office and all hearings are open to any member of the public, according to Philadelphia Code (Chapter 19-1700 provides that all hearing of the Tax Review Board shall be open to the public §19-1701(3)(e)) – Appendix G, 62a.

Acting on the phone call placed by respondents Weiss and Kennedy,

Sheriff's Office immediately sent three "armed to the teeth" sheriff's deputies in bulletproof vests, to harass, to intimidate, and to subdue respectful, polite, and highly educated Mr. Kovalev; only because he dared to ask City's employees for the public information, such as a list of the Board members, after he previously criticized the activities of administrators working in OAR that was managed by Weiss and Kennedy.

Sheriff's Office was located only one floor above OAR/TRB. Deputies needed to descent only one section of the staircase. Sheriff's deputies arrived almost instantaneously and *instead of disorderly person*, they observed Mr. Kovalev, who in *peaceful manner* did nothing but was *placing his own papers into his own briefcase and was exiting the public reception area*. See Sherriff's Office Incident Report – Appendix H, 63a-65a.

Acting on City officials' false reporting, without any evidence and without observation of any disturbing activities, the squadron leader, (respondent) sheriff's deputy Brown forcibly removed Mr. Kovalev from the public area (hallway) located outside of OAR, despite the fact that such area was open to any member of the public at that time (Appendix I, 66a-67a - photographs of the hallway that was a part of trial exhibit book).

At the time of unprecedented attack on Kovalev's liberties, Brown was fully aware or should be aware that she was not a law enforcement officer, as she pretended to be; and the state law never gave her any investigative power. Sheriff's deputies in Pennsylvania are able to act only if they personally observe illegal

activities. The Supreme Court of Pennsylvania previously decided that in this state, sheriff's deputies do not have investigative power and they are not law enforcement officers, they only can perform accessory functions supplemental to the assistance in legal, judicial, and police department proceedings. Sheriff's deputies in Pennsylvania only can enjoy common law enforcement functions in the same extent as any other citizens. See *Kopko v. Miller*, 892 A. 2d 766, Pa. Supreme Court (2006).

Sergei Kovalev, was outside of any office; he was in the public hallway. Mr. Kovalev was "*guilty*" of *nothing*" and was staying in the area designated for the public use during business hours (Appendix I).

After Sergei Kovalev was attacked and forced out of the public area by defendant Brown, Mr. Kovalev went to Philadelphia Sheriff's Office that had a different lobby entrance in the same building, with intention was to file a complaint about Brown. Respondent Brown was waiting in front of the entrance to Sheriff's Office and did not allow Mr. Kovalev to enter Sheriff's Office by physically stopping him; Brown was placing herself in front of Mr. Kovalev, and Brown told that he has nothing to do there, despite the fact that Sheriff's Office was open to any member of the public at that time and it specifically had a public reception area where people are receiving services. See Appendix J, 68a - photograph of the area where Mr. Kovalev was attacked by Brown for the second time; it was a part of trial exhibit book). Mr. Kovalev managed to ask another deputy (that walked out of Sheriff's Office) to give him Incident Report. Report was given to Mr. Kovalev by sheriff's deputy who actually witnessed the event and wrote such report (App. H, 63a-65a).

On December 9, 2016, Sergei Kovalev filed in the United States District Court for the Eastern District of Pennsylvania a civil complaint (*Kovalev v. City of Philadelphia et al*, Case No. 2:2016-cv-06380, Kearney, J.), by asserting deprivation of civil rights and seeking damages, penalties and other remedies established by the laws of the United States and the laws of the State of Pennsylvania. Complaint is attached to this petition as Appendix E, 39a-59a.

Sergei Kovalev was seeking a federal court's determination that his First Amendment rights of access were violated during December 10, 2015 events, that he was subjected to discrimination and retaliation in connection with exercise of constitutional rights, that City officials' conduct shocked the conscience, that the City was deliberately indifferent to violations of constitutional rights by failing to provide City's employees with any form of training related to avoidance of civil rights violations and City never supervised its employees in reference to prevention of constitutional abuses.

## **II. PROCEEDINGS IN THE DISTRICT COURT AND IN COURT OF APPEALS**

### **A. Defendants' motion for summary judgment.**

After discovery, defendants filed a motion for summary judgment and received unjustified relief, when on September 22, 2017 the district court dismissed all Kovalev's constitutionally guaranteed claims, dismissed other claims fully supported by previous decisions made in other courts and in this Supreme Court, and also dismissed from the case defendants City of Philadelphia and deputy Angelinel Brown, and dismissed most of the constitutional claims made against

Weiss and Kennedy, by granting in part the defendants' motion for summary judgment. The court's opinion and order included in Petitioner's App. C, 11a-37a.

The district court left only a single claim that would be impossible to litigate when all other important claims were already dismissed. The only claim that was allowed to proceed to trial was a claim for retaliation based on the false report made by Weiss and Kennedy. As an independent claim, it was destined for failure, especially after the district court prohibited using at trial Sheriff's Office Incident Report written by deputy who witnessed the events, the court also prohibited to talk about Report. See Appendix H, 63a-65a (notarized Sheriff's Office Incident Report was a part of exhibit book prepared for trial, but the court removed it before trial).

The fact that Mr. Kovalev was not the disorderly person was confirmed only in the Sheriff's Office Incident Report (63a-65a). Such report had no any reference to any form of disorderly activities, but only described a male person [Mr. Kovalev] placing papers into his bag and exiting the public reception area.

#### **B. January 10-12, 2018 Jury Trial.**

This case went to trial with only one single question, whether defendants Weiss and Kennedy retaliated against Mr. Kovalev by *false*ly reporting him to the Sheriff's Office as allegedly disorderly person. As it would be expected, jury panel was not able to decide whether Weiss and Kennedy retaliated against Kovalev because the district court prohibited even to talk about Incident Report; and trial was simply futile.

#### **C. Appeal to the United States Court of Appeals for the Third Circuit.**

After the trial was concluded and final judgment entered, Sergei Kovalev timely filed on February 4, 2018 (District Court Docket #196) Notice of Appeal and appealed to the United States Court of Appeals for the Third Circuit (Case No. 18-1237) from the summary motion judgment (that is a subject of this Petition), previous relevant orders, court actions, jury verdict, and final judgment entered in this legal action. On April 26, 2018, the appellate court granted Kovalev's Motion to Proceed on the Original Record (Appendix D, 38a).

On May 29, 2019, the court of appeals cursory affirmed all district court's decisions (1a-8a). The Third Circuit copied and pasted the district court's conclusions and stated that it agrees; and in such way created a notion that citizens do not possess any constitutional rights, at least in the Third Circuit.

Existence of the First and Fourteenth Amendments were clearly undermined, disregarded and jeopardized, when it was decided that no matter how atrocious are municipal violations, defendant Philadelphia and its municipal actors are untouchable and immune.

#### **D. Denial of Petition for Rehearing.**

On June 12, 2019, Sergei Kovalev timely filed petition for rehearing that was denied by the Third Circuit on July 12, 2019 (Appendix B, 9a-10a).

#### **E. Petitions for a Writ of Certiorari.**

Sergei Kovalev invoked this Court's jurisdiction under 28 U. S. C. § 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the July 12, 2019 denial of Mr. Kovalev's petition for rehearing.

Sergei Kovalev only intends to ask this Court to review the questions related to decisions made by in district court on September 22, 2017 in relevance to defendant's motion for summary judgment, where such decisions disturbed and disallowed all constitutional claims that Kovalev intended to litigate (Appendix C, 11a-37a).

## **REASONS FOR GRANTING THE PETITION**

### **I. SUMMARY OF ARGUMENT**

Certiorari is warranted when the court of appeals redefines principles of already established and well-defended Constitution of the United States and when the lower courts are deciding to override constitutional rights, as it happened in Sergei Kovalev's case. This case created an issue of exceptional importance, because the Third Circuit applied different standards undermining the United States Constitution.

Errors made in the courts below are extremely important for the entire nation, because these errors degraded the most important Amendments of the United States Constitution.

#### **A. The Third Circuit conflicted with decisions of other United States courts of appeals and the Supreme Court.**

The United States Court of Appeals for the Third Circuit has entered a decision in conflict with decisions of other courts of appeals deciding the same important matters and the Third Circuit decided important federal questions in a way that conflicts with previous decisions made by the United States Supreme Court.

The courts below wrongly decided that Citizen Sergei Kovalev cannot exercise the First and Fourteenth Amendments of the Constitution, and that he had no right to enter the areas of public offices specifically maintained by the municipalities for public use during business hours.

The courts below wrongly decided that Sergei Kovalev cannot seek and obtain information from City of Philadelphia.

The courts below wrongly decided that Mr. Kovalev cannot petition the municipal government for redress of grievances.

The courts below wrongly decided that municipal employees can harass, intimidate, abuse, threaten and intimidate the law-abiding citizens.

The courts below wrongly decided that municipal employees can concoct false accusations against citizens and according to the courts below, citizens cannot hold municipal employees liable for any form of wrongdoing.

The courts below wrongly decided that municipal employees have a full immunity from any form of liability for any form of wrongdoings.

The courts below wrongly decided that local municipality, such as City of Philadelphia cannot be held liable for wrongdoings and omissions of its own municipal employees, when municipality completely failed to train and to supervise such employees.

**B. The decision made in the courts below so far departed from the acceptable standards that such errors should be corrected immediately.**

Decisions made in below courts have significantly departed from the accepted

usual course of judicial proceedings and enormously deviated from the acceptable standards. Such errors should be corrected immediately and Supreme Court must exercise its supervisory power.

The Third Circuit distorted what it means to deprive a person of the First Amendment protection.

The Third Circuit relieved the municipal government of its burden to obey constitutional provisions and failed to balance the severity of the constitutional deprivations against the government's purported interest.

Finally, the Third Circuit redefined in the wrong way entire substance of the First Amendment protection. Nothing in this Court's precedents or the plain language of the First Amendment supports such a redefinition.

The Federal Court of Appeals for the Third Circuit rejected the nation's longstanding protections afforded by the First and Fourteenth Amendments, including the right of access information, the right to peacefully express grievances, and the right to access the areas designated for public use during specified hours of operation.

## **II. ARGUMENT**

This Petition is only raises questions related to the district court's September 22, 2017 decisions related to defendants' summary motion judgment (Appendix C, 11a-37a). This decision was timely appealed and argued in the court of appeals after the final judgment was rendered in this case.

**A. The district court and the Third Circuit decided important constitutional questions without examining relevant facts.**

The Third Circuit never made its own examination of the case, but simply reiterated the district court erroneous decisions by copying and pasting parts of the district court opinion and by adding a statement that the Third Circuit agrees.

The Third Circuit devoted just a few paragraphs related to September 22, 2017 order granting defendants motion for summary judgment; where the Third Circuit's statements in many parts are not even reflecting the correct facts.

De Novo standard applies to evaluation of decisions granting motions for summary judgments. The court of appeals should give no deference to the lower court's decisions and should apply the same standard as the district court would apply. *Whatley v. CNA Ins. Co.*, 189 F.3d 1310, 1313 (11th Cir. 1999).

The Court of Appeals must make an independent examination of purely legal issues without any deference to the district court's legal conclusions. See, e.g., Judge Harry Pregerson, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. Rev. 431, 437 (1986) (explaining that ignoring standards of review is the fifth sin).

Adoption of a *de novo* review standard in due process adheres to this Court's longstanding policy of mandating independent appellate review on nearly all questions relating to the scope of fundamental constitutional rights. The Supreme Court, for example, has spoken of independent review in the context of examining Due Process Clause claims as nothing less than a "duty of constitutional adjudication." *Haynes v. Washington*, 373 U.S. 503, 515 (1963). Similarly, in

rejecting deference to trial courts on First Amendment challenges, Supreme Court has stated that the constitutional nature of the precepts at stake render it imperative that their proper application be entrusted to appellate judges, the actors most competent to ensure the safeguarding of such rights. *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 502 (1984).

The Third Circuit never performed *de novo* review and its Opinion is overwhelmed with factual mistakes. It is well settled that the duty of constitutional adjudication resting upon this Court requires that the question whether the Due Process Clause of the Fourteenth Amendment has been violated be the subject of an independent determination, see, e.g., *Ashcraft v. Tennessee*, 322 U. S. 143, 322 U. S. 147-148; "we cannot escape the responsibility of making our own examination of the record," *Spano v. New York*, 360 U. S. 315, 360 U. S. 316. Also see *Haynes v. Washington*, 373 U.S. 503. 515 (1963) ("...[W]e [the Supreme Court] cannot avoid our responsibilities by permitting ourselves to be "completely bound by ... court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by distorted factfinding." *Stein v. New York*, 346 U. S. 156, 346 U. S. 181.").

Without *de novo* evaluation of district court's records and appeal arguments, the Third Circuit disposed the most important constitutional questions simply by stating that the Third Circuit is in agreement with the district court. The Third Circuit refused to evaluate anything.

## **B. The Third Circuit cursory and wrongful conclusions.**

The Third Circuit is plainly and disastrously wrong. Firstly, the order granting partially defendants' motion for summary judgment should be reviewed *de novo* (*by disregarding any district court's conclusions, including arguments of parties*). The Third Circuit had all records from the district court; but it was not examining any records. To say that Mr. Kovalev was not sufficiently challenging the decision related to defendants' motion for summary judgment, or that Mr. Kovalev was not presenting "pertinent evidence or legal authority" is simply incomprehensible. The Third Circuit should be able to notice that defendants' motion for summary judgment was vigorously challenged in the district court with arguments presenting "pertinent evidence and legal authority", including significant records supporting Kovalev's position (see Appendix K, 69a-93a representing Kovalev's Response to Defendant's Motion for Summary Judgment). Moreover, it was the responsibility of the Third Circuit to make its own *de novo* conclusions.

Mr. Kovalev indeed cited specific, pertinent evidence and legal authority to challenge all aspect of the District Court's summary judgment ruling (Appendix K) and continued it in the Appeal Brief.

Later, in the Footnote on the page 7 of the Opinion, the Third Circuit continues with another wrongful claim:

The issue was substantially addressed in the lower court and Mr. Kovalev presented well-supported arguments in the district court (Appendix K). All filings made in the lower court were available to the Third Circuit. On August 26, 2017,

Defendants filed a Motion for Summary Judgment (district court doc. #120). On September 11, 2017, Kovalev requested (doc. # 124) and received a short extension to file his Response. On September 13, 2017, Mr. Kovalev timely filed his Response opposing Defendants' Motion for Summary Judgment (Appendix K, 69a-93a), and included multiple relevant exhibits supporting his position, including a proof that respondent City never trained Weiss, Kennedy, and Brown in any form or in any way for the avoidance of civil rights violations. On September 14, 2017, Mr. Kovalev filed Declaration of Plaintiff under FRCP 56(d) in Opposition to Defendants Motion for Summary Judgment (doc. #128). The district Court granted to Mr. Kovalev on September 19, 2017 (doc. #133) leave to file Sur-Reply and on September 20, 2017 (doc. #137), Kovalev filed Sur-Reply that was including additional exhibits.

With expectation that the appellate court would be examining the entire district court record and based on limitations for words, Mr. Kovalev presented sufficient *Pro Se* argument in his Informal Appeal Brief.

**C. The Third Circuit overlooked or misapprehended relevant facts when it failed to apply liberal pleadings standard for parties proceeding *Pro Se*.**

Sergei Kovalev prosecutes this legal action *Pro Se*. Mr. Kovalev also presented sufficient *Pro Se* argument. Mr. Kovalev submitted efficient arguments in the lower court and during appeal in the Third Circuit. Kovalev sufficiently argued his position in his Informal Brief; and it was sufficient for the legal machinery to move forward.

Mr. Kovalev never waived any challenge to the district court's summary

judgment determinations, because as *pro se* appellant he presented sufficient *pro se* arguments. It was the responsibility of the appellate court to examine the district court's summary judgment ruling and all relevant records, accepting Kovalev's *Pro Se* status.

Applying liberal pleadings standard for parties proceeding *pro se* is well settled in the United States. If, for any reason, the court decides that *pro se* party made some omissions, it should be treated with reasonable degree of tolerance.

"If the court can reasonably read pleadings stating a valid claim on which the litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or the litigant's unfamiliarity with pleading requirements". *Boag v. MacDougall*, 454 U.S. 364 (1982).

The Supreme Court of the United States created a rule of special consideration for *Pro Se* pleadings and unanimously held in *Haines v. Kerner*, 404 U.S. 519 (1972), a *pro se* pleading, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" *Id.*, at 520 521, quoting *Conley v. Gibson*, 355 U.S. 41, 45, 46 (1957).

**D. The district court and the Third Circuit presented facts in erroneous perspective because Mr. Kovalev was never a disorderly person.**

The Third Circuit writes in its Opinion about September 22, 2017 district court's order granting Defendants summary judgment in part (Appendix A):

Summarizing the case before it at summary judgment, the District Court stated: "Today, we address state actors' removal of a citizen for alleged

disorderly conduct in a receptionist area of a small government office which does not host hearings or public meetings but is allegedly near the hearing room.” AR 52. Concluding that clear constitutional guidelines for conduct in the receptionist area is lacking in the case law, the District Court granted the individual Defendants qualified immunity on Kovalev’s claim that he was deprived of his First Amendment right to access a public forum...”

The Third Circuit is clearly wrong. The public reception area of the Office of Administrative Review indeed was open to any member of the public during business hours (See Appendix G, 62a-Philadelphia Code).

Enforcing egregious constitutional violations, the district court and the Third Circuit are using very misleading statements that are disturbing the real and proven facts. The lower courts were making erroneous accent that the city employees were allegedly reporting disorderly person to the Philadelphia Sheriff’s Office (it was the Sheriff’s Office and not to the police department as the Third Circuit stated). The lower courts are building their arguments on hypothetical and not applicable to this case assumption that city employees can report disorderly person to the Sheriff’s Office; and lower courts were creating a misleading illusion that possibly Mr. Kovalev did something “disorderly”.

The proven fact is that *Mr. Kovalev never did anything disorderly*. After the Tax Review Board Hearing (amazed by incompetence of the Board members), Kovalev walked to the public reception area (that was open to any member of the public) of the Office of Administrative Review (OAR) that is a management department for the Tax Review Board (TRB) and politely asked the receptionist (approximately), “Excuse me, can I get a list of board members and their professional background”. This information was a matter of public record because

people need to know who is judging them. Mr. Kovalev was talking in normal tone of voice, he was not creating any noise, he was not arguing, he was not shouting, not yelling, and not boycotting anything. At that time, he was the only person in the reception area. At that moment, receptionist went to the adjoining rooms to consult with defendants Weiss and Kennedy, who telephoned Sheriff's Office located a floor above and *falsey informed* that they have a "disorderly person". A few moments later, receptionist handed to Mr. Kovalev a list of Board Members and he was placing silently all his papers into his briefcase when squadron of armed sheriff's deputies arrived to OAR. At that time, Mr. Kovalev exited OAR reception area and positioned himself (silently) in the public hallway outside of any city's office (App.66a-67a). The evidence confirms that Mr. Kovalev was not disorderly person and defendants Weiss and Kennedy were *falsey* reporting Mr. Kovalev to City's own Sheriff's Office that was acting as enforcement arm for the corrupted city employees. The fact that *there was no any "disorderly person"* is a proven fact and not "he said-she said", as the district court erroneously was stating in its opinion. The Sheriff's Office Incident Report supported by notarized statement of sheriff's deputy who witnessed the events and wrote the Report (App.63a-65a), confirms the fact that Mr. Kovalev never acted in any "disorderly" manner. Peaceful placement of own papers into own briefcase is not "disorderly conduct" and it was exactly what Sheriff's Report was telling about Mr. Kovalev. This Incident Report was attached and discussed in the Appeal Brief and in Kovalev's response to defendants' motion for summary judgment, it was also a part of exhibit book prepared for trial; however

the district court intentionally removed Report from the exhibit book and ordered Kovalev never to mention this Report at trial. Mr. Kovalev's case was intentionally predestined from the beginning to fail at trial without the most crucial evidence (Sheriff's Report).

**E. On December 10, 2015, Mr. Kovalev was in public areas that were open to any member of the public at that time.**

The Third Circuit misapprehended and clearly disregarded the most important citizens' right – the right to enter designated public areas of the government property for allowed purposes, to present grievances, and not to be discriminated while being present on municipal property in the areas specifically designated for the public use.

The U.S. Constitution indeed gives to citizens (and to all people) the right to enter and remain on public property (even when it is a limited public forum), as long as citizens are compliant with applicable conditions.

Mr. Kovalev was compliant with all rules of public area use. He never did anything disorderly; all areas were specifically designed and offered for public use during business hours, he attended a public hearing, and he was within his rights to file a complaint about corrupted sheriff's deputy.

The Third Circuit wrongfully accepted, without reviewing, the district court's incorrect conclusions about limited public areas in municipal buildings.

The Third Circuit made a wrong decision by stating, "Concluding that clear constitutional guidelines for conduct in the receptionist area is lacking in the case law..."

However, *Mr. Kovalev was not in the “receptionist area” at the time of attack on his constitutional rights*. See Complaint - App.39a-59a.

The district court and the Third Circuit are using tactics of extreme confusion, just to create a presumption that Mr. Kovalev was in some sort of restricted area, by claiming that Mr. Kovalev was in “receptionist area” and by adding that no case law exists for removal of person from “receptionist area”.

It is anticipated that respondents would misleadingly claim (as it was done before) that Mr. Kovalev was not in public space, the same way as the district court and Third Circuit erroneously claimed that no case law exists for “receptionist area”. It is possible that specific case law for “receptionist area” do not exist only because in the history of the United States nobody ever stated that case law should exist for “receptionist area”. If somebody enters restricted area in public/municipal building (for example, private office of municipal official), this will be a matter of simple trespassing and there is no need for any case law related to entering to the private office of public official.

In Kovalev’s case, he never vent to any private offices, neither had he ever gone to any “receptionist area”. (App.39a-59a – Complaint).

Firstly, Mr. Kovalev was initially in the Office of Administrative Review (OAR) *public reception area* that represents *not the “receptionist area”* (that is usually considered to be the area used strictly by receptionist), but Mr. Kovalev was in specific area designated for the public use that has a physical barrier separating public area from other city offices. Mr. Kovalev was on the public side of the barrier

and receptionist area was on another side of such separation barrier (Appendix F-60a-61a).

Furthermore, Mr. Kovalev left OAR public reception area after he received the Board members' list and *Kovalev was in the public hallway* (Appendix I, 66a-67a) outside of OAR *at the time when sheriff's deputy Brown attacked him.*

Unlike sheriff's deputies in other states, the Supreme Court of Pennsylvania (*Kopko v. Miller*, 892 A. 2d 766, Pa. Supreme Court (2006)) made determination that despite the fact that sheriff's deputies are performing actions resembling law enforcement activities, deputies are not law enforcement officers; and can enjoy only a common law enforcement functions (only to the same extent as other citizens). To be able to perform any common law-enforcement functions, any Philadelphia sheriff's deputy must personally observe unlawful activity, so deputy can restore public order, as any other citizen would. If there is no public emergency or disturbance of public order that is personally observed by the sheriff's deputy, sheriff's deputy cannot harass, or interfere with legitimate presence of any citizen in any public office or on any public land or property, when such public offices and public areas are open to the public during normal business hours. Sheriff's deputies, as any other citizens, have no statutory right to interfere with law abiding members of the public. In this matter, defendant Brown was violating Plaintiff's constitutional rights without any legal authority to do it.

*At the time when defendant Brown attacked Mr. Kovalev, he was in total silence in large hallway outside of any "receptionist area" and outside of OAR.* This

was the area specifically designed to host members of the public and to offer them a variety of reading information (App.66a-67a). The hallway was specifically designed for the public use during business hours and Mr. Kovalev was there at that time.

The hallway had informational boards describing activities of the Philadelphia Tax Review Board/OAR; it had public pay-phone, table placed for the public use, several chairs, and it was designed to provide public accommodations (Appendix I, 66a-67a).

Furthermore, the Philadelphia Code provides that Board Hearings are open to any member of the public (See Appendix G, 62a representing Philadelphia Code - Chapter 19-1700 provides that all hearing of the Tax Review Board shall be open to the public). The public hallway was the only way (the road) for public to access any hearing rooms. This public hallway (the road to city's offices and public hearing rooms) was in fact a modified public road leading to the hearing rooms that are open to any member of public during the hearings' days. When on December 10, 2015, Mr. Kovalev's suffered from attacks of untrained and unsupervised municipal employees, it was the hearing day and facilities were open to all members of the public, including Mr. Kovalev.

Secondly, the district court and the Third Circuit are in joint silence by totally disregarding the fact that on December 10, 2015, Mr. Kovalev suffered twice (in one day) abuses of his constitutional rights. The first time, when he was forcibly removed by defendant Brown from the public hallway on the fourth floor of the building; and the second time, when Mr. Kovalev was forcibly precluded by the

same defendant Brown from entering the Sheriff's Office where he wanted to lodge a complaint about defendant Brown.

After Mr. Kovalev was forcibly removed from the public area on the fourth floor of the building, Mr. Kovalev decided to lodge a complaint about sheriff's deputy (defendant) Brown and went to the Philadelphia Sheriff's Office. However, when Mr. Kovalev arrived to the floor hosting Philadelphia Sheriff's Office, defendant Brown was waiting at the entrance of the Sheriff's Office. Appendix J, (68a) representing a place where Mr. Kovalev was attacked for the second time by Brown. and Brown precluded him from entering into the Sheriff's Office that was open to any member of the public at that time. Sheriff's Office had a front room specifically designated for the public use (public reception room). When Mr. Kovalev asked why Brown is not allowing him to enter Sheriff's Office, Brown responded that he has nothing to do there and Brown was continuing precluding Mr. Kovalev from entering Sheriff's Office by putting her own body in front of Mr. Kovalev, so he would not be able to make any further step into the Sheriff's Office, until he left. All relevant details are provided in Kovalev's Complaint (App.39a-59a).

Sheriff's Office public reception room is specifically designated to accommodate needs of the public to receive multiple varieties of paid services offered by Sheriff's Office (that was selling its services to the public). Accordingly, the public reception room of the Sheriff's Office was clearly a public forum, especially for the purpose of filing complaint against Brown.

On December 10, 2015, Mr. Kovalev was in public areas that were open to any

member of the public at that time. He had unrestricted right to be there. He was responsible and law-abiding citizen. Nevertheless, he was attacked and removed from the public areas by armed sheriff's deputy Brown working for City of Philadelphia, only because defendants Weiss and Kennedy did not like the fact that a citizen wanted to know names of Board members that were incompetent in judging his case. Accordingly, defendants Weiss and Kennedy transmitted false information to City's own Sheriff's Office to harass and to intimidate Mr. Kovalev.

Respondents were intentionally abusing citizen's constitutional rights. "... [T]he deprivation of the protected rights themselves ... is fundamental..., not only because of the effect on the individual..., but because of the effect on our system of law and justice... Official misconduct creates disrespect for law..." *Haynes v. Washington*, 373 U.S. 503, 515 (1963).

The First and Fourteenth Amendments together prohibit "governments from 'abridging the freedom of speech, or of the press ...'. This right "encompasses the positive right of public access to information and ideas," which includes the right to "some level of access" to public buildings where information is disseminated. The right to freedom of speech includes a right of public access in a variety of proceedings including public meetings.

The Supreme Court decisions amply support the proposition that there is a general right to go to or remain on public property for lawful purposes. See *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969).

More recently, a plurality of the Supreme Court in *City of Chicago v. Morales* (*City of Chicago v. Morales*, 527 U.S. 41 (1999)) held "the freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment... The Court found it "apparent that an individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers ... or the right to move 'to whatsoever place one's own inclination may direct' identified in *Blackstone's Commentaries*. At least three Courts of Appeals have followed *Morales* and found a liberty interest to remain in a place open to the public.

This case is not whether Mr. Kovalev expressed himself through the conduct. It is whether Appellant's the First and Fourteenth Amendments' rights were infringed when he was not doing absolutely nothing improper. Citizen has the right not to be subjected harassment and discrimination, has the right to access information about how public servants operate in public, to peacefully express his grievances in the form of filing a complaint, and the right to access the areas designated for public use during specified hours of operation.

While, the First Amendment clearly covers expressive conduct, the facts of discrimination are generally addressed as the Fourteenth Amendment violations.

The United States Supreme Court already decided similar questions in *Hague v. Committee for Industrial Organizations*, 307 U. S. 496, 307 U. S. 515 (1939). Public access is not a matter of grace by government officials, but rather is inherent in the open nature of the locations. As a result, expressive activity is compatible

with the normal use of a public forum, and can be accommodated simply by applying the communication-neutral rules used to regulate other, non-speech related conduct on the premises. See also *Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U. S. 788, 473 U. S. 800 (1985).

In *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U. S. 37 (1983), the Court announced a tripartite framework for determining how First Amendment interests are to be analyzed with respect to Government property.

The Supreme Court stated before, "We have held that "[t]he government does not create a public forum by . . . permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Cornelius, supra*, 473 U.S. at 473 U. S. 802 (emphasis added).

Thus, the regulation at issue must be analyzed under the standards set forth for limited public forum (for areas dedicated for limited public use). It must be reasonable and "not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry, supra*, 460 U.S. at 460 U. S. 46.

**F. The Third Circuit wrongly decided that municipality never training its employees cannot be held liable for constitutional violations.**

**Constitutional torts are independent torts.**

The Third Circuit is plainly wrong. Constitutional torts are independent torts and it is a trespass on citizens' liberties. To prove constitutional tort, Mr. Kovalev had no need to prove any physical injuries. Trespass on constitutional rights is already the most horrendous injury to citizen's rights.

**Medical evidence is not required to prove emotional distress.**

Moreover, “medical evidence” is not required to prove emotional distress. The testimony of the claimant alone, if sufficiently specific, may be enough to meet the burden of proving an actual injury caused by the defendant. See, e.g., *Webner v. Titan Distribution, Inc.*, 267 F.3d 828, 836-37 (8th Cir. 2001) (holding that a reasonable jury could have found that plaintiff was entitled to compensatory damages even though the only evidence he presented was his own testimony). Despite the absence of medical or expert evidence, a plaintiff’s own testimony may provide ample evidence when heard in combination with the circumstances. *Mathieu v. Gopher News Company*, 273 F.3d 769, 782-83 (8th Cir. 2001); *Price v. City of Charlotte*, 93 F.3d 1241, 1254 (4th Cir. 1996), cert. denied, 520 U.S. 1116 (1997) (the court concluded that “a plaintiff’s testimony, standing alone, can support an award of compensatory damages for emotional distress”); *Williams v. Trader Publishing Co.*, 218 F.3d 481, 486 (5th Cir. 2000) (upholding a jury award).

**Liability for failure to train and to supervise.**

Municipality indeed can be held liable for wrongdoings and omissions of its municipal employees, when municipality completely failed to train and to supervise employees.

Plaintiff’s district court’s filings made in opposition to Defendants’ Motion for Summary Judgment (App.69a-93a) were including exhibits representing defendants’ answers to Interrogatories confirming the fact that not a single individual defendant, during decades of employment with the City of Philadelphia

ever received any training regarding prevention of civil rights violations; and not a single individual defendant ever received any training for interaction with public, neither any form of customer service training. See:

Weiss' (working for the City of Philadelphia since 1984) selected answers to interrogatories (Appendix L, 94a):

"I have not received any additional training specific to dealing with public and 42 U.S.C. § 1983 (prevention of civil rights abuses, First Amendment matters and access to public property, conspiracy to infringe citizens' rights, retaliation, prevention of other civil rights abuses)".

Kennedy's (working for the City of Philadelphia since 1986) selected answers to interrogatories (Appendix M, 95a):

"I have not received any additional training related to the dealing with public and 42 U.S.C. § 1983 (prevention of civil rights abuses, First Amendment matters and access to public property, prevention of other civil rights abuses".

Brown's (working for the City of Philadelphia since 1995) selected answers to interrogatories (Appendix N, 96a):

"Defendant has not received any direct training on section 1983".

In *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978), the Supreme Court established that local governing bodies can be sued directly under 42 U.S.C. § 1983 for monetary, declaratory, or injunctive relief when action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.

Failure to train can be the basis of *Monell* liability when the municipality's failure to train reflects deliberate indifference to constitutional rights. *City of*

*Canton, Ohio v. Harris*, 489 U.S. 378 (1989); *Amnesty America v. Town of West Hartford*, 361 F.3d 113, 124-25 (2d Cir. 2004).

The United States Supreme Court in the *City of Canton v. Harris* (1989) held that municipality may be liable for the acts of its officers if it fails to adequately train or guide them, as a basis for managerial liability under Title 42 United States Code Section 1983.

Municipal liability may be based upon “constitutional deprivations pursuant to governmental ‘custom’ even though such a custom has not received formal approval through the body’s official decision-making channels.” *Monell*, 436 U.S. at 694. “This does not mean that the plaintiff must show that the municipality had an explicitly stated rule or regulation.” *Vann v. City of New York*, 72 F.3d 1040, 1049 (2d Cir. 1995).

A widespread custom of failure to provide relevant training constitutes a standard operating procedure of the City of Philadelphia. Absence of training related to prevention of citizens’ civil rights violations by City employees established the fact of deliberate indifference that created constitutional deprivations. City’s failure to provide training for the prevention of civil rights violations was a causal nexus leading to Plaintiff’s civil rights violations and injuries.

All courts of appeals that addressed similar issues have found that a failure to train can create section 1983 liability. See *Spell v. McDaniel*, 824 F.2d 1380, 1389-91 (4th Cir. 1987); *Warren v. City of Lincoln, Neb.*, 816 F.2d 1254, 1262-63 (8th Cir.

1987); *Bergquist v. County of Cochise*, 806 F.2d 1364, 1369-70 (9th Cir. 1986); *Wierstak v. Heffernan*, 789 F.2d 968, 974 (1st Cir. 1986); *Fiacco v. City of Rensselaer*, N.Y., 783 F.2d 319, 326-27 (2d Cir. 1986); *Gilmere v. City of Atlanta*, Ga., 774 F.2d 1495, 1503-04 (11th Cir. 1985); *Rock v. McCoy*, 763 F.2d 394, 397-98 (10th Cir. 1985); *Languirand v. Hayden*, 717 F.2d 220, 227-28 (5th Cir. 1983); *Hays v. Jefferson County, Ky.*, 668 F.2d 869, 874 (6th Cir. 1991).

**Failure to train can relate to one violation – pattern is not required.**

Failure to train or guide can relate to one violation where specialized training and guidelines are necessary. See *Amnesty America v. Town of West Hartford*, 361 F.3d 113, 124-25 (2d Cir. 2004).

As long as the causal link is not too tenuous, the question whether the municipal policy or custom proximately caused the constitutional infringement should be left to the jury.

**G. The district court and the Third Circuit wrongly decided that municipal employees are immune from the liability.**

The district court erroneously decided and the court of appeals wrongfully affirmed that municipal employees in this legal action are immune from the liability. Defendants are not entitled to qualified immunity.

Municipal officials are only entitled to qualified immunity if their "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

All respondents were working for the City of Philadelphia for decades. Weiss

and Kennedy worked for the same department (Office of Administrative Review/Tax Review Board) for almost 30 years each. Respondent Brown was working for City's Department of Corrections for approximately 10 years and for City's Sheriff's Office for approximately 10 years. All respondents are fully aware about public areas in City's offices and the First Amendment. It is the policy in the City of Philadelphia to provide areas accessible to the public during business hours for communication with city's officials. City simply cannot exist without points of contact with taxpayers.

During almost 20-30 years spent in city's employment, all respondents were fully aware about City policy providing public reception area in the Office of Administrative Review (OAR) and the public hallway used to access OAR and Hearing Rooms that by Philadelphia Code regulations were open that provides that all hearing of the Tax Review Board shall be open to the public). The same policy applies to the public reception area in the Philadelphia Sheriff's Office. As sheriff's deputy, Brown was fully aware that by City's policy, Sheriff's Office reception area was open to any member of public during business hours.

Petitioner's First Amendment claims are based on (defendant) Ms. Kennedy filing and (defendant) Director of OAR Weiss approving a false report. The law clearly established the fact that government official could not falsely accuse a citizen of violating the law. Conduct of defendant Brown was also absolutely unlawful. Brown had no statutory or other legal authority to forcibly remove Mr. Kovalev from the public area and later not to allow him to enter the Philadelphia Sheriff's Office, when he wanted to file a complaint about Brown's illegal activities.

Neither defendant can be relieved by qualified immunity. Acts of all defendants are not falling into entitlement to any form of qualified immunity because such acts were violating clearly established policy and constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Qualified immunity only protects government officials from liability for damages “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). In this case, qualified immunity entails an inquiry into (1) whether the defendants conduct violated Plaintiffs’ First Amendment rights, and (2) if so, whether the First Amendment right at issue was clearly established at the time of the violation. See *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The answer would be positive to each question and defendants are not entitled to qualified immunity. Entrance to all public areas in municipal offices was protected by the First Amendment during business hours of their operation.

This is the case where the right at issue flows from well-settled constitutional principles and City’s own laws and regulations (citizens can access dedicated public areas in City’s offices during business hours). A right can be clearly established even absent binding authority from the Supreme Court.

**H. Reversal of the district court’s decision related to partial granting of defendant’s motion for summary judgment would restore the injustice inflicted to Sergei Kovalev by lower courts.**

Sergei Kovalev intends to ask this Court to review only the most important

questions that are affecting the entire nation; such as municipal and municipal employees liability for wrongdoing, and infringement of the First and Fourteenth Amendments of the United States Constitution guaranteeing the due process and the right of citizens to enter the areas designed for the public use during business hours, to seek and to obtain information, or to petition the government for redress of grievances.

Sergei Kovalev asks this Court to grant his petition and to hold that citizens have the right to enter designated public areas in the municipal buildings (or in any buildings used by municipal entities) to seek and to receive desired information and to express citizens' grievances.

Furthermore, Sergei Kovalev also asks this Court to hold that municipalities and municipal employees are not immune from any liability for wrongdoing.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: October 9, 2019

Respectfully submitted,



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