NO. 19-6371 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

WESLEY JEFFERSON, PETITIONER

VS.

WENDY KELLEY ET.AL. RESPONDANT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE 8TH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PRO. SE. WESLEY JEFFERSON # 104933

PO BOX 600

GRADY, AR. 71644

QUESTIONS PRESENTED

1. Would a United States Federal Court be in error, if it granted qualified immunity to a Defendant in a case, where video and/or documentary evidence, clearly proves that Defendant to have, willfully – intentionally – and deliberately committed obstruction of the investigative proceedings into his violating the constitutional rights of the Plaintiff in that particular case, in clear and direct violation of [**18 U.S.C.A. 1505**, **1515** (6) (b) and **1519**]?
2. Would a United States Federal Court be in error, if it adopted a magistrate initial scheduling order, by which granted all parties six (6) months to complete discovery and seven (7) months to file any dispositive motions (except on the issue of exhaustion) dated October 2nd 2018. Then as defined in document # 40-0 dated December 4th 2018, and clearly acknowledged by the court, that on November 20th 2018, the Plaintiff filed a notice of appeal, and a motion for leave to file additional interrogatories, and the magistrate denied the Plaintiff motion for leave, without prejudice to refilling, once the court made a ruling on his proposed findings and recommendations to dismiss the Plaintiff's claim. The court then acknowledges that fourteen (14) days after filing this motion the Plaintiff, on December 3rd 2018 filed a motion for extension of time to file his objections to the magistrates recommendation due to he had yet to receive the discovery he had requested from the Defendants. The court then preposterously

and absurdly , the very next day on 12-4-18 proclaimed that the interrogatories sought by the Plaintiff in his request for discovery, were not directed at the issues on which the magistrate recommended summary judgment be granted namely "Failure to exhaust administrative remedies " and "Officer Gibson's entitlement to qualified immunity under the facts." When actually infact, all of the Plaintiff interrogatories that were directed and were addressed to Officer Terry Gibson, if answered would have clearly proven Officer Gibson's willful –intentional- and deliberate obstruction of the investigative proceeding into his violating the Plaintiff's constitutional rights, in clear and direct violation of [**18 U.S.C.A. 1505**, **1515** (6) (b) and **1519**] therefore scripting Officer Terry Gibson of any entitlement he may have had to the qualified immunity that he was erroneously granted by the court.

3. Would a United States Federal Court be in error, if it granted Summary Judgment to the Defendant's case, for which video evidence and documentary evidence clearly proves willful-intentional-and deliberate conspiracy and obstruction of the investigative proceedings by so-said Defendants clearly violating [**18 U.S.C.A. § 241**, **242**, **371**,**1001**,**1346**, **1505**, **1515**(6) (b), **1519**]

LIST OF PARTIES

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

[*] All parties do not appear in the caption on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(1) Disciplinary Hearing Officer Mr. Keith Waddle.

(2) Warden James Gibson # (1.)

(3) Disciplinary Hearing Administrator Ms. Lorrie Taylor # (1.)

(4) Director Ms. Wendy Kelley.

(5) Warden James Gibson # (2.)

(6) Director Dexter Payne

(7) Internal Affairs Administrator Ms. Lorrie Taylor # (2.)

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **Federal Courts**:

The opinion of the United States court of appeals appears at Appendix **A** to the petition and is

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

- The opinion of the United States district court appears at Appendix **B** to the petition and is

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[ ] For cases from **State Courts**:

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

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

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

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[✓] For cases from **Federal Courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **July 08, 2019** , and a copy of the order denying rehearing appears at Appendix **A2** .

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

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

[ ] For cases from **State Courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[U.S. Const. Amend VIII] provides:

"It is the right of the people, that excessive bail shall not be required, nor, excessive fines imposed, nor, cruel and unusual punishment inflicted."

[U.S. Const. Amend XIV] provides:

"In relevant parts," "Nor, Shall any state deprive any person of life-liberty-or property without due process of law, nor, deny any person within its Jurisdiction the equal protection of the law."

STATEMENT OF CASE

As this case was decided on a motion of Summary Judgment brought by the Defendants, the evidence of the non-Movant/Plaintiff/Petitioner is to be believed and all justifiable inference [are] to be drawn in his favor. [ANDERSON V. L.L.I. 477 U.S. 242, 255] citing [ADICKES V. S.H.K.C. 398 U.S. 144, 158-159] as the courts below failed to, and clearly have not done.

As stated, on 8-21-17 the Petitioner was subjected to excessive force at the hand of Defendant Terry Gibson, a prison guard working the Petitioners barracks. When the Petitioner had repeatedly advised Officer Gibson that he needed to speak with him Officer Gibson nonchalantly ignored and disregarded the Petitioners repeated request to speak with him. So when Officer Gibson

finally decided to open the door to give the barracks porter the broom and mop the Petitioner stepped out into the hallway with Officer Gibson, and told him again that he needed to speak with him, when Officer Gibson attempted to give the broom and mop to the barracks porter, the Petitioner grabbed the broom, in a non-threatening manner, by the middle of the handle, and told Officer Gibson that he would take the broom back in the barracks with him, when he went back in the barracks just in case a supervisor walked up and wanted to know what the Petitioner was doing in the hallway, by it appearing as if he had came out to retrieve the broom to clean up, would justify his means. At this point Officer Gibson finally takes the Petitioner serious about needing to speak with him, Officer Gibson then closes and locks the door to the barracks, and for a short while engages in this discussion with the Petitioner with no threatening gestures made by the Petitioner or Officer Gibson, the Petitioner then looks to the left down the hallway towards the max, and upon turning back around to face Officer Gibson and continue their discussion and out of nowhere Officer Gibson just panics, he forcefully, and aggressively shoved the Petitioner so hard that he almost pushed/shoved him off his feet. This shove from Officer Gibson was with so much force, that the Petitioners body bounced off the window to the barracks like a basketball bounced off a wall, and when the Petitioner bounced off of the window, Officer Gibson grabbed him around his torso in a bear hug type lock, at this point, the Petitioner asked Officer Gibson

"What was he doing?" Instead of answering the Petitioners question Officer Gibson is in a rage, making growling sounds as he continues to squeeze and hold the Petitioners in a bear hug type lock. At this time after concluding that Officer Gibson was not going to answer his question and apparently was not going to release him from his bear hug type lock, the Petitioner then takes both of his hands, and places them palms flat against Officer Gibson's chest and pushes out and backward in attempt to free his body from Officer Gibson's unwarranted and unjustified bear hug type lock, after a short struggle in this fashion, the Petitioner was finally able to break Officer Gibson's lock and attempted to run in the opposite direction away from Officer Gibson, to avoid any misconstruing that he imposed any type of threat to Officer Gibson who panicked and was attacking him. The Petitioner's attempt to run away from Officer Gibson's attack was hindered, due to Officer Gibson holding on to the back of the Petitioner's shirt and pulling him backwards into a second bear hug type lock, this time from the rear, the Petitioner still trying to run away from this attacking Officer, Officer Gibson, then picks the Petitioner up and slams him face down on the concrete floor. Officer Gibson then straddles the Petitioner's back, and with two closed fists, began to administer between 50 to 100 blows to the back of the Petitioner's head while he was pinned face down on the concrete floor under Officer Gibson's weight until assisting Officers arrived and separated the two. Placed the Petitioner in restraints and escorted

him to isolation, where it was noticed that as a result of the blows administered to the back of the Petitioner's head, there was a golf ball size knot from Officer Gibson's knuckles, a picture was taken , and when seen by the nurse, the Petitioner explained to him that he was just attacked by Officer Gibson in the hallway and Officer Gibson had repeatedly punched him in the back of his head with his fists, resulting in this golf ball sized knot on the back left hand side of his head. See the well established federal law as was determined by this United States Supreme Court in [**WILKINS V. GADDY 130 S.CT. 1175, 1177-80**] "According to the complaint, Gaddy, apparently angered by Wilkins's request for a grievance form, snatched Wilkins off the ground, and slammed him onto the concrete floor, Gaddy then proceeded to punch, kick, knee, and choke Wilkins until another officer had to physically remove him from Wilkins." See also the United States Federal Court's Holding in [**ROMAINE V. RAWSON 140 F.SUPP.2D 204, 211-13**] "repeatedly slapping a prisoner because he had been disrespectful violated the Eighth Amendment, this objectively reasonable standard of behavior, by its very definition, as the Supreme Court has long recognized prohibits guards from maliciously – sadistically- or wantonly, slapping, striking, kicking or punching prisoners simply because a prisoner shows a disrespectful attitude towards the guard." Also [**EVANS V. HENNESSY 934 F.SUPP. 127,133**] "Striking a prisoner with fist because he had previously been verbally abusive, violated the Eighth Amendment." And after the

Petitioner has clearly and directly explained to the nurse exactly what had happened to him, the nurse wrote the Petitioner's name, number and the time down on a piece of paper, then he left isolation and walked all the way to the opposite end of the prison to the infirmary where he erroneously state in his medical assessment of this incident, that the knot came from the Petitioner hitting his head on the floor, this is simply not true. Meanwhile officer Terry Gibson, Shift Lieutenant Ashlee Shabazz, and Sergeant McEwen who had to football tackle Officer Gibson off the Petitioner's back to stop him from punching the Petitioner in the back of his head, had all conspired to concoct and fabricate a story and scenario by which fabricated threats allegedly perceived from the Petitioner, that would justify Officer Gibson's actions. So then officer Terry Gibson wrote a fabricated disciplinary report that claims that the Petitioner came out of the barracks, grabbed the broom from him and was trying to hit him with it, Officer Gibson further fabricates that he grabbed the Petitioner around his torso, when the Petitioner was supposedly trying to hit him with the broom again for the second time, Officer Gibson then fabricates that the Petitioner began swinging his closed fist at him, so he then used the necessary force to regain control of the situation. See (appendix C # 20 and 23) [**WINSTON V. COUGHLIN 789 F.SUPP. 118, 120-21**] "holding allegation that officers filed fabricated reports to conceal their 8th Amendment violations, stated a claim." As required by departmental regulations and directives

pertaining to inmate disciplinary proceedings (appendix C-28-33) officer Terry Gibson, was in fact required to sign his disciplinary report thereby affirming that the information within his report to be true and correct. See the well established federal law as was determined by this United States Supreme Court in [SERVICE V. DULLES 354 US 363] [C.B.S.I. V. UNITED STATES 316 US 407] [UNITED STATES V. NIXON 418 US 683, 695-96] as well as the United States Federal Courts in [U.C.S. V. A.E.C. 163 US APP D.C. 64,77][P.E.P.L.C. 613 F.2D 1120] all of which state and hold that, "We do not believe the commission should have authority to play fast and loose with its own regulations. It has become axiomatic that an agency is bound by its own regulations. The fact that a regulation as written, does not provide a quick way to reach a desired result, does not authorize it to ignore the regulation, or label it inappropriate." See also [STATE V. JONES 338 ARK 781, 786] "An agency regulation, is part of the [substantive law], the court [must determine] and then apply to the facts of the case before it." Next eight days later, the Petitioner is brought before the disciplinary hearing officer Keith Waddle, whom is required by law and departmental regulations and directives to be impartial, prudent, and unbiased in favor of the charging officer., see (appendix # C(27), (33)) after being read the charges against him, the Petitioner advised the hearing officer Keith Waddle, that he was not guilty of the charges, and the only way to prove his innocence, would be for him to review the video footage from the security

camera, yet this supposed impartial, unbiased, and prudent fact finder deliberately refused to review evidence of possible innocence, clearly violating the Petitioner's right to procedural due process. See the United States Federal Courts holdings in [**HOWARD V. U.S. BUREAU OF PRISONS 487 F.3D 808,813-15**]: Where the Plaintiff alleged that a video tape existed and would exonerate him, failure to review it, denied due process." [**PHELPS V. TUCKER 370 F.SUPP.2D 792,797**] "Refusal to review video tape, denied due process, not withstanding officials claim that it wasn't very clear." [**MAYERS V. ANDERSON 93 F.SUPP.2D 962, 965-68**] "Failure to review a requested video tape, without a stated reason, denied due process." See (appendix #C-(27)) Where the Petitioner then following the Departmental disciplinary appeal process, notified all departmental personnel with discretionary review authority within the inmate disciplinary appeal process of this clear violation of due process, and they refused to overturn the decision of this biased hearing officer [**GABAI V. JACOBY 800 F.SUPP. 1149, 1156**] "holding allegation that a supervisor, who reviewed a deficient disciplinary proceeding on appeal, and did not overturn it, pled personal involvement." [**SEALEY V. GILTNER 116 F.3D 47, 51**] "To establish personal involvement, a Plaintiff must demonstrate that a supervisor either directly participated in the violation, or failed to remedy the violation after learning of it." Our very own Eighth Circuit Court of Appeals have turned a blind eye to their very own holdings in [**HOWARD V. ADKISON**

887 F.2D 134, 138] "Supervisors, in addition to being liable for their own actions, are liable, when their corrective inactions, amount to, deliberate indifference to, or tacit authorization of, the violative practices." [WILSON V. CITY OF NORTH LITTLE ROCK 801 F.2D 316, 322 (8TH CIR.)] "Tacit authorization of subordinate practices requires notice of those practices." [WILLIAMS V. WILLITS 853 F.2D 586,588 (8TH CIR)] "This court has consistently held that reckless disregard on the part of a supervisor, [will] suffice to impose liability." Clearly displaying their tacit authorization of the hearing officer Keith Waddle's constitutionally violative practices. See [PINO V. DALSHEIM 605 F.SUPP. 1305, 1319] "Commissioner, held liable, based on actual knowledge of unconstitutional disciplinary proceedings." See (appendix # C-(36)). It is the well established Federal Law as was determined by this United States Supreme Court in [SERVICE V. DULLES 354 US 363], [C.B.S.I. V. UNITED STATES 316 U.S. 407], [UNITED STATES V. NIXON 418 US 683, 695-96] as well as the United States Federal Courts holdings in [U.C.S. V. A.E.C. 163 US APP D.C. 64, 77] and [P.E.P.L.C. V. F.E.R.C. 613 F.2D 1120] all of which state and hold that, "We do not believe the commission should have the authority to play fast and loose with its own regulations, it has become axiomatic that an agency is bound by its own regulations, the fact that a regulation as written does not provide a quick way to reach a desired result does not authorize it to ignore the regulation, or label it inappropriate." Also the

well established state law as was determined by the Arkansas Supreme Court in [STATE V. JONES 338 ARK 781, 786] "an agency regulation is part of the [substantive law] that the trial court [must determine], then apply to the case before it." [THARP V. STATE 294 ARK. 615] "We take judicial notice of, state agency regulations, which are duly published." The Arkansas Department of Correction has an employee conduct and discipline regulation, and directive, see (appendix # C-(54), (59)) in which specifically prohibits Departmental Personnel from, "Falsifying verbal or written statements or information." Also it prohibits, "falsifying inmate information and/or files." This departmental regulation, and directive only authorizes one type of remedial action to be taken upon proof of either of the above listed violations, and that is discharged, termination of employment. In this case it is clear and obvious, from documentary evidence presented by the Petitioner that the Department engaged in a conspiracy to cover up Defendant "Officer Terry Gibson" use of excessive force on the Petitioner. The documentary evidence in this case also proves the willful, intentional, and deliberate attempts made by Defendant "Officer Terry Gibson" to obstruct the investigative proceeding into him using excessive force on the Petitioner. See (appendixes C#(20),(23),(33),(76),(80)) then see (Appendix #C-(54),(59),(61),(62),(71),(72)) From the very start by him falsifying and fabricating in his initial report that he signed affirming the information within to be "True and Correct," the threats that he allegedly

perceived from the Petitioner, thereby justifying his actions and response in force. The video evidence clearly contradicts the first threat allegedly perceived by Defendant "Officer Terry Gibson", that the Petitioner was trying to hit him with a broom, see (Appendix #C-(76),(80)) and the video evidence its clearly unable to corroborate the second threat allegedly perceived by Defendant "Officer Terry Gibson" that the Petitioner was swinging his closed fist at him, due to the Defendant's own admission that this part of this incident, took place just slightly out of view of the camera, see (appendix #C-(76)-(80)) yet the district court erroneously grants summary judgment to the Defendants in this case, in total disregard of the undeniable documentary evidence presented by the Petitioner which proves and points out, these Defendants, employees of a state government agency, turning a blind eye to, and having tacit authorization of the constitutionally violative practices of their subordinates, by which clearly subjected the Petitioner to the deprivation of his constitutional right to be free from cruel and unusual punishment, as well as, his right to proper procedural due process of law, therefore by the district court's granting of summary judgment to Defendants of a state government agency, which documentary evidence clearly shows to have conspired to deprive the Petitioner of his right to procedural due process, in order to cover up another one of the agencies employee's violation of the Petitioner's Eighth Amendment right to be free from cruel and unusual punishment, and then granting qualified immunity to

that state government agency's employee that violated the Petitioner's Eighth Amendment right to be free from cruel and unusual punishment, whom which documentary evidence and video evidence clearly shows to have willfully, intentionally, and deliberately obstructed the investigative proceedings of this government agency, into his use of excessive force on the Petitioner, clearly violating [United States Code Annotated §1505-1515 and 1519] thereby in total disregard of the well established federal law as was determined by this United States Supreme Court in [**TERRY V. OHIO 392 US 1, 13**] "courts will not be made party to lawless invasions of constitutional rights of citizens by permitting unhindered governmental use of fruits of such invasions." As well as [**ROCHIN V. CALIFORNIA 72 S.CT. 205 AT HN.11**] "under 14th Amendment Due Process a states conviction cannot be brought about by methods that offends a sense of justice." In other words "The Government must play the game fair and cannot be allowed to profit from its own illegal acts." See dissent in [**OLMSTEAD V. UNITED STATES 277 US 438, 469,471**.]

Petitioner filed a pro se amended complaint for the present action on September 10th 2018 the above mentioned amended complaint alleged that the Petitioner suffered injuries as a result of various Defendants from a State Government Agency, violating his Constitutional Protected Rights under the Eighth and Fourteenth Amendment to the United States Constitution, which arose out of all Defendants, state government

agency, Arkansas Department of Corrections Employees actions from August 21 2017 until November 9th 2017.

[See appendix C-(2.) and (3.)] Where on October 2nd 2018 United States Magistrate Judge Joe J. Volpe ordered an initial scheduling order in this action, stating in relevant parts, "it is, therefore, ordered that the parties shall complete discovery on or before March 4th 2019 and file any dispositive motions on or before April 2nd 2019."

Next, ironically, in total disregard of the above mentioned scheduling order that had been ordered by Magistrate Judge Joe. J. Volpe, setting the deadline to complete discovery at March 4th 2019, the Defendants rushed and filed a motion for summary judgment on November 1st 2018, the Petitioner did not immediately respond to this motion due to the court order setting the discovery deadline at March 4th 2019. So erroneously and in clear disregard of his own initial scheduling order, on November 19th 2018 Magistrate Judge Joe. J. Volpe, after allegedly reviewing all of the evidence submitted, including the video of this incident, the same exact documentary evidence that proves a conspiracy to deprive the Petitioner of his constitutional protected right to proper procedural due process of law, and the same exact video evidence, that clearly and without doubt eradicates Defendant Officer Terry Gibson's threats that he allegedly perceived from the Petitioner that justified his use of force, see [appendix C-(76)-(80)] the video evidence clearly does not show the Petitioner trying to hit Defendant Officer Terry Gibson with a broom as was previously fabricated by

Defendant Officer Terry Gibson, as justifying his use of force on the Petitioner. [**WINSTON V. COUGHLIN 789 F.SUPP 118, 120-21**] "Holding allegation that officers filed fabricated reports to conceal their Eighth Amendment violations stated a claim." See also [**United States Code Annotated § 1505-1515-1519**] Also [**18 U.S.C.A § 1001**]

Now see [appendix B-(1) and C-(19)] where the Petitioner, on November 20th 2018 filed a notice of appeal related to a prior order of the court, and a motion for leave to file additional interrogatories, discovery, by which according to magistrate Joe J. Volpe's initial scheduling order, wasn't required to be completed until March 4th 2019. The above mentioned prior order from the court that the Petitioner was appealing, was the courts order from October 31st 2018 where the court dismissed all of the Petitioner's due process claims without prejudice to be re-filed at a later date, obviously for one particular reason, and that is to prevent this court from reviewing the Petitioner's due process claims in the same setting with the Petitioner's excessive force claim, due to the fact that a blind man could see the conspiracy and due process violations by this state government agency in attempt to cover up Defendant Officer Terry Gibson's use of excessive force on the Petitioner. See [Appendix C-(20)-(94)]

And last but not least, see [Appendix B-(10 and C-(9)-(18) where the court clearly in its order passed down on December 4th 2018, acknowledged that the Petitioner, on November 20th 2018, well within the six month time period, already ordered by the court on October 2nd 2018 which granted all parties to this action, to

explore and/or complete discovery by March 4th 2019, See [Appendix C-(2.) and (3.)] also filed a motion for leave to file additional interrogatories, by which are considered "Discovery" which this court clearly had previously granted a deadline to be complete by March 4th 2019, yet you can see that the same Magistrate Judge Joe J. Volpe who ordered the six month deadline, now ironically and prematurely denies the Petitioners motion without prejudice to re-filing once the court had ruled on the proposed recommendations and findings, see [appendix C-(6)], This erroneous action taken by the court is in direct violation of [**INGLE V. YELTON 439 F.3D 191,196**] as well as [**LEIGH V. W.B.I. 212 F.3D 1210, 1219**] "A court should not grant summary judgment against a party who has not had an opportunity to pursue discovery, or whose discovery request have not been answered." See [appendix B-(1)] at the bottom of the page where the court, after approving and adopting the erroneous findings and recommendation of the Magistrate Judge, the court preposterously proclaims that its reason for doing so was because "the outstanding discovery [25 Interrogatory questions, **Fed. R. Civ. Proc. 33**] propounded by the Petitioner, did not and/or was not directed at the issues on which the magistrate recommended that the summary judgment be granted namely failure to exhaust administrative remedies, and Defendant Officer Terry Gibson's entitlement to qualified immunity under the facts. Let's do just that, discuss the facts, #(1) the Petitioner had no available remedy for addressing Director Wendy Kelley's deliberate violations of state statutory law – well established Federal law as was determined by this United States Supreme Court – and

Departmental policy and procedures, her willful participation in this governmental agency departmental conspiracy in attempt to cover up Defendant Officer Terry Gibson's use of excessive force on the Petitioner, and her tacit authorization of such. See Appendix C-(9)-(18)] all of the interrogatory questions addressed and pertaining to Director Wendy Kelley, if they would have been answered would have proven the above listed violations, see [**BOOTH V. CHURNER 532 US 731, 736-38**] "A prisoner must exhaust only such administrative remedies as are available" **42 U.S.C.A. § 1997** (e) (A), that is those prison grievance procedures that provide, "the possibility of some relief for the action complained of" the statutory requirement of an available remedy presupposes authority to take some action in response to a complaint. Thus "If the relevant Administrative Procedure Lacks authority to provide any relief, or to take any action whatsoever in response to a complaint," then a prisoner is left with nothing to exhaust and the P.L.R.A. does not prevent the prisoner from bringing his or her claim directly to the District Court." So the question is "who other than the court can remedy such violations made by the Director of the Department of Corrections, there is no one within the Department with a higher position, and clearly failure to exhaust does not apply. #(2) The Court preposterously and absurdly proclaims that the Petitioners requested interrogatories are not directed at Defendant Officer Terry Gibson's entitlement to qualified immunity on the facts, see [appendix C-(9)-(18)] all of the interrogatory questions address and pertaining to Defendant Officer Terry Gibson, if they would have been answered would have proven obstruction and perjury

in direct violation of [18 United States Code Annotated § Iod; 1505-1515-1519 and 1621-1622 and 1623] see Appendix C-(61)-(75)] the Petitioner just as every other United States Citizen is afforded guaranteed protection against governmental abuse of authority and power, so therefore by Defendant Officer Terry Gibson's willful intentional and deliberate acts of obstructing the investigation into his use of excessive force on the Petitioner clearly violates [**HARLOW V. FITZGERALD 457 US 800, 815** n.8] "we have held that qualified immunity would be defeated if an official knew or reasonably should have known, that the action he took within his sphere of official responsibility would violate the Constitutional rights of the Plaintiff." Everybody with common sense is aware that every U.S. Citizen has a right to due process of law and Defendant Officer Terry Gibson's Deliberate attempts to obstruct this investigation clearly is what the interrogatories would have proven, and would surely eradicate any entitlement to qualified immunity for Defendant Officer Terry Gibson see [**ZINERMON V. BURCH 494 U.S. 113, 126** n.2] "The due process clause, encompasses a third type of protection, "A guarantee of fair procedure." Therefore the court was clearly wrong.

REASONS FOR GRANTING THE PETITION

This court should grant the present petition for a writ of certiorari because:

1. Because without doubt, clearly there is genuine issue of material facts to be determined by a jury

2. Because the Eighth Circuit Court of Appeals; and the Arkansas District Court, has clearly failed and/or refused to comply with their ministerial duty as a Federal Reviewing Court;

3. Because prior to the Order passed down on October 31st 2018, all listed Defendants in this action, is clearly in violation of numerous [United States Code Annotated Statutes]

1. Clear Genuine issue of material facts to be determined by a jury: see [appendix C-(2) and (3) of which clearly show that the District Court, in its order passed down on October 2nd 2018, set a deadline in this case for all discovery to be complete by March 4th 2019. Next see [appendix B-(3-11)] of which clearly shows the relevant findings and recommendations of the magistrate which just so happens to contain inaccurate claims as to what the video evidence show-next, due to the court's order received by the Petitioner, see [appendix C-(2) and (3)] that ordered him to complete the discovery process by March 4th 2019, on November 20th 2018 the Petitioner filed a motion for leave to file additional interrogatories (discovery) see [Appendix-B-(1) and C-(96)] well within the six months granted by the courts order on October 2nd 2018, next see Appendix B-(1) and C-(5)] where on November 28, 2018 Defendants filed a

motion to stay discovery until the court made a ruling on the magistrates findings for which was the same reason the magistrate gave when he denied the Petitioner's motion for leave, now even though the court denied the Defendants motion to stay, as moot, it still excepted the magistrates denial of the Petitioners motion for leave to file additional discovery well within the time set and ordered by the court to do so. This United States Supreme Court has clearly and specifically prohibited this type of court action in [**CELOTEX CORP V. CATRETT 477 US 317, 324 N.6, 326** n.8] "any problem can be dealt with under rule (56) (F). "Which allows a summary judgment motion to be denied, or the hearing on the motion to be continued if the non-moving party has not had an opportunity to make [full] discovery." In this case there is documentary evidence and video evidence, "Although the government is continuously trying to manipulate this evidence," this evidence clearly proves and shows obstruction on the part of the Defendants, employees of this government agency, by which is in direct violation of [**18 U.S.C.A. 1505**, **1515** and **1519** see [appendix C-(20)-(94)], yet the Eighth Circuit has erroneously upheld the District Court's granting of summary judgment in such a case, in total disregard of this courts holding above in [**CATRETT 477 US AT 324 N.6, 326** n. 8] they also disregard the well established federal law as was determined by this United States Supreme Court, in its holding in [**UNITED STATES V. DIEBOLD I.N.C. 369 US 654, 655**] "Moreover, in determining whether a genuine issue has been raised, a court must resolve all ambiguities, and draw all reasonable inferences against the moving party." This United States Supreme

Court as well as a couple of United States Federal Courts have made it crystal clear in their holding in [SERVICE V. DULLES 354 US 363],[C.B.S.I V. UNITED STATES 316 US 407], [UNITED STATES V. NIXON 418 US 683, 695-96], [U.C.S. V. A.E.C. 163 US APP DC 64, 77] and [P.E.P.L.C. V. F.E.R.C. 613 F.2D 1120] all of which holds that, "we do not believe the commission should have authority to play fast and loose with its own regulations, it has become axiomatic that an agency is bound by its own regulations, the fact that a regulation as written, does not provide a quick way to reach a desired result, does not authorize it to ignore the regulation, or label it inappropriate." See [Appendix C-(33)] which is the relevant part of this government agency's departmental regulation/policy, that all of its employees are trained and very familiar with, now look at # (2) which states clearly that, "the major disciplinary form must be signed by the charging officer, affirming that the information in the report is true and correct." See [appendix C-(20) and (23)] for which is the major disciplinary report written by Defendant Officer Terry Gibson, on the night this incident took place, clearly when the events that took place, was the clearest in his mind, you can see from this documentary evidence, that Defendant Terry Gibson proclaimed to have perceived two threats from the Petitioner in which justified his response in force, #(1) that the Petitioner came out of his barracks, grabbed the broom from him and was trying to hit him with it. # (2) That the Petitioner was swinging his closed fist (at) him. These were the two threats that this government agency's employee Defendant Officer Terry Gibson, signed his signature affirming to be true and correct, as to what

took place in this incident where he is being accused of using excessive force violating the Petitioners constitutional rights. Now look at [appendix C-(43)] which is the response from the warden pertaining to the Petitioner's grievance that launched this action. Look at the arrow, where warden James Gibson, in the mist of this Government Agency's Departmental Investigation into the Petitioners complaint, 22 days after this incident occurred, reveals and (I Quote) "Officer Gibson advised [you pushed him] and took the broom out of his hand." Look back at [Appendix-C (20) and (23)] The documentary evidence clearly shows that this claim was never made by Defendant Officer Terry Gibson, on the night this incident took place, when it was the clearest in his mind, the documentary evidence clearly shows that this claim was never made by Defendant Officer Terry Gibson, in his initial report of the incident, by which he signed affirming the information within to be true and correct. Next look at [Appendix-C (54)-(59)] for which is this government agency's regulation and directive on employee conduct standards, by which specifically prohibit (B.) "Falsification of written/Verbal statements/information." And (c.) "Falsification of inmate information and/ or files." Now look at [Appendix-C-(76) and (77)] for which is the relevant part of the Defendants statement of undisputed facts filed by Assistant Attorney General Vincent P. France, revealing millisecond by millisecond what the video evidence of this incident shows, look at #(30)-(37) nowhere in his millisecond by millisecond revelation does Assistant Attorney General Vincent P. France state that the video evidence show the Petitioner trying to hit Defendant Officer Terry Gibson

with a broom, for which was clearly fabricated and falsified by Defendant Officer Terry Gibson in his initial report in the beginning of this investigation. In direct violation of [**18 U.S.C.A. 1505, 1515** (6) (b) and **1519**] see also [**WINSTON V. COUGHLIN 789 F.SUPP 118, 120-21**] "Holding that allegation that Officers filed fabricated reports to conceal their 8th Amendment violations stated a claim." Look at #(31)-(37) nowhere in his millisecond by millisecond revelation does Assistant Attorney General Vincent P. France state that the video evidence shows the Petitioner [push Officer Gibson and take the broom out of his hand] as was willfully and deliberately, verbally fabricated by Defendant Officer Terry Gibson, to the face of Warden James Gibson, his supervisor, whom was conducting this government agency's departmental investigation into the Petitioners allegations of him using excessive force. Next see [Appendix C-(78)-(79)]for which is an affidavit by Defendant Officer Terry Gibson, look at #(4)-(14) nowhere in this document, filed by Defendant Officer Terry Gibson, in the United States Federal District Court, under the penalty of perjury, does he state that the Petitioner was trying to hit him with a broom, as documentary evidence clearly shows that he fabricated and falsified in his initial report that he signed affirming to be true and correct, in the beginning of this government agency's departmental investigation into him using excessive force on the Petitioner look at #(15) Defendant Officer Terry Gibson 14 months later this incident took place, in this document filed in the United States Federal District Court, under the Penalty of perjury, proclaims that in this incident the Petitioner threw several

punches [at him] with [one striking him in his face], look back at [Appendix C-(20) and (23)] in his initial report that he signed affirming to be true and correct, on the night this incident took place, when it was the clearest in his mind, Defendant Officer Terry Gibson, only claimed that the Petitioner was swinging his closed fist [at him], so he had to use the necessary force to regain control of the situation, nowhere on the night this incident took place, did he ever state and/or claim that the Petitioner punched him in the face. Every judge that is sitting on this panel is left with no other choice but to use your basic common sense, if someone was to enter your office, jump across your desk and start swinging his closed fist at you and with one of his swings he actually punches you in your face, there is no humanly way possible, when you contact the authorities today, to report this incident that happened- today- when it is the clearest in your mind, will and/or can you forget to mention in your report that this man punched you in your face, it literally would take a wizard with a magic wand to make you leave that out of your report. See United States Federal Courts holding in [**SMITH V. MASCHNER 899 F.2D 940, 949** n.14] "when a Defendant moves for summary judgment, the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair minded jury could return a verdict for the Plaintiff on the evidence presented [**ANDERSON 477 US AT 252, 106 S.CT AT 2512**] where Defendants motives are seriously at issue, trial by affidavit is particularly inappropriate, credibility determinations the weighing of the evidence- and the drawing of legitimate inferences from the facts, [are jury functions], [not those

of a judge], whether he is ruling on a motion for summary judgment or direct verdict. The evidence of the non-Movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. [at 255,106 S.Ct at 2513] citing [**ADICKES V. S.H.K.C. 398 US 144, 158-59**] see Appendix B-(1)] Where the court erroneously claimed that the Petitioner's requested interrogatories (discovery) was not directed at exhausting administrative remedies or Defendant Officer Terry Gibson, entitlement to qualified immunity, this claim by the court is clearly preposterous and absurd, see [Appendix C-(12), (15)] for which is the relevant interrogatories directed to Defendant Officer Terry Gibson, and had they been answered, they would have further proven obstruction in violation of [**18 U.S.C.A. 1505**, **1515** (6) (b) and **1519** see [**CHAMBERS V. TRM.C.C.C. 43 F.3D 29**] "If, as to the issue on which summary judgment is sought there is any evidence in the record from any source from which a reasonable inference could be drawn in favor of the non-moving party, summary judgment is improper." See also the well established Federal Law as was determined by this United States Supreme Court in [**HARLOW V. FITZGERALD 457 US 800, 815** n.8] "we have held that qualified immunity would be defeated, if an official knew or should have know, that the actions he took within his sphere of official responsibility would violate the constitutional rights of the Petitioner." This court is well aware, that all government agency employees know or reasonably should know that willfully-Intentionally- and deliberately obstructing a departmental investigation into their alleged use of excessive force on a prisoner, violates that prisoners constitutional right

to procedural due process of law, and is clearly an ambiguity and justifiable inference that a court must draw in favor of that prisoner. See [ATKINS V. COUNTY OF ORANGE 372 F.SUPP 2.D 377, 401 n.23] "It is indisputable that freedom from the use of excessive force is a clearly established constitutional right." [MILLS V. FENGER 216 FED.APPX. 7, 8-9] "Denying summary judgment on excessive force claim where Plaintiff alleged that, Officer grabbed him and threw him down." See also [WELCH V. CITY OF NEW YORK 1997 WL 436382 AT *6] "reversing grant of summary judgment on excessive force claim where parties account of the facts differed markedly." As well as [BEE V. DEKALB COUNTY 679 F.SUPP 1107, 1113 n.5] "the credibility of the parties, and the truthfulness of each person's version of the incident [are] questions for determination by a jury." Therefore granting summary judgment in this case was error and inappropriate, due to the above mention, clear genuine issues of material facts to be determined by a jury. See Appendix C-(20)-(96)] also [SCREWS V. UNITED STATES 325 US 91]

(2) the Eighth Circuit Court of Appeals, and the Arkansas District Court, has clearly failed and/or refused to comply with their ministerial duty as a federal reviewing court:

"A ministerial duty is one in which nothing is left to discretion, it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts [SLETTEN V. RAMSEY COUNTY 675 N.W.2D 291, at 306] see also [W.R.C. V. COUNTY OF HENNEPIN 517 N.W.2D 329, 333] "holding that

duties fixed by requirement of statute or municipal policy are ministerial and not protected by official immunity." Without doubt, it is clear that the 8th and 14th Amendment Violations conducted by all listed Defendants above and in the appeal that was denied by the Eighth Circuit, is in direct violation of the well established federal law as was determined by this United States Supreme Court in the two following cases, [**CRUZ V. BETO 405 US 319,321**] "Federal Courts sit not to supervise prisons, but to enforce the constitutional rights of all persons, including prisoners," as well as [**UNITED STATES V. PRICE 383 US 787** and n.2] "§ 242 is enforcement legislation enacted under § 5 of the Fourteenth Amendment and encompasses violations of rights guaranteed under the due process clause." Moreover the Arkansas District Court, and the Eighth Circuit Court of Appeals conduct is in direct conflict with this courts holdings in [**RHODES V. CHAPMAN 452 US 337, 362**]: If the prison authorities do not conform to constitutional minima, the courts are under an obligation to take steps to remedy the violations." Citing [**PROCUNIER V. MARTINEZ 416 US 396**],[Appendix C-(63)-(66)]

#(3) prior to the order passed down on October 31st 2018, all listed Defendants in this action, are clearly in violation of numerous [United States Code Annotated Statues]: first and foremost see [Appendix C-(1)] which is an affidavit the Petitioner tried to file, but was disregarded by the court of appeals, advising them that he had two separate appeals to two different court orders. One from October 31st 2018 of the original complaint, and another one from the court's order on December 4th 2018, and

that it was in error for trying to merge his appeals in to one, due to them addressing two different issues, this was clearly disregarded by the eighth Circuit, the courts order that the Petitioner was appealing from October 31st 2018, was an order, were the district court apparently conspiring with the state, when it dismissed the Petitioners due process claims without prejudice for refilling, while they allowed the excessive force claim to move forward, clearly knowing that the Petitioners due process claims were relatively relevant to his excessive force claim, because the due process claims would have shined a bright light on the conspiracy conducted by this government agency in attempt to cover up the use of excessive force by one of its employees, so the district court created that separation needed by the state, to have the excessive force claim reviewed by the Eighth Circuit without being reviewed as a whole with the due process claims, as so was required by United States Federal Court law, see [**MILHOUSE V. CARLSON 652 F.2D 371**, 373-74] "Allegations viewed as a whole supported conspiracy to discipline prisoner for initiating civil rights suit against officials, contrary to first amendment right to access to courts. Prisoners allegations should be viewed as a unit rather than as isolated incidents, so viewed, they indicate a series of actions designed to punish prisoner for seeking access to the courts." Clearly and without doubt, willful and deliberate disregard of the well established federal law as was determined by this United States Supreme Court in [**CRUZ V. BETO 405 US 319, 321**] "Federal Courts sit not to supervise prisons, but to enforce the Constitutional Rights of all persons, including prisoners." [**UNITED STATES V.**

PRICE 383 US 787 and n.2] "§ 242 is enforcement legislation enacted under § 5 of the Fourteenth Amendment, and encompasses violations of rights guaranteed under the due process clause." And [**RHODES V. CHAPMAN 452 US 337**, 362] "If prison authorities do not conform to Constitutional Minima, the courts are under an obligation to take steps to remedy the violation." Citing [**PROCUNIER V. MARTINEZ 416 US 396**]. So let's take a look at the original complaint Due Process violations and excessive force violating the 8th Amendment, (1st) as stated by the Petitioner, he was attacked by Defendant Terry Gibson on August 21st 2017, when he was pushed/shoved by Defendant Officer Terry Gibson into a window, placed in a bear hug type lock, picked up then slammed face down on the concrete floor, then punched in the back of his head with two closed fists between (50) to (100) times, clearly depriving the Petitioner of his constitutional right to be free from the use of excessive force by one acting under color of state law, in violation of [**18 U.S.C.A. § 241** and **242**]. In an attempt to obstruct and/or impede this government agency's Departmental investigation into his use of excessive force on the Petitioner, Defendant Officer Terry Gibson, fabricated and falsified a disciplinary report on the Petitioner claiming two threats that he allegedly perceived from the Petitioner, of which justified his response in force on the Petitioner, yet video and documentary evidence has clearly proven those two threats, allegedly perceived from the Petitioner. To be pure fabrication and falsified claims by Defendant Officer Terry Gibson, there by clearly violating [**18U.S.C.A. § 1001**] "by knowingly and willfully making a materially false,

fictitious, and fraudulent statement or representation, or makes or uses any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. Also Violating [**18 U.S.C.A. 1505**, **1515** (6) (b) and **1519** by "knowingly falsifying an incident report, with the intent to impede, obstruct, and influence the investigation of a matter within the jurisdiction of a department or agency of the United States." Next the Petitioner is taken in front of this government agency's impartial fact finder/decision maker, where he explains that he is not guilty of the charges brought against him, and the only way to prove his innocence, would be for the supposed impartial fact finder/ decision maker to review the video footage of this entire incident. This government agency's so-called impartial fact finder/ decision maker, flat out refused to review video evidence of possible innocence, by which is specifically prohibited by departmental policy and United States Federal Court Law, during the department's appeal process, his decision was reviewed by Defendants, warden James Gibson, hearing administrator Lorrie Taylor, and Director Wendy Kelley, all of which whom are very aware, and familiar with the undeniable fact that, this government agency's so called impartial fact finder/ decision maker's choice to not review video evidence of possible innocence at the Petitioners disciplinary hearing, was specifically prohibited by Director Wendy Kelly's very own personally signed departmental policy which prohibits being bias in favor of the charging officer, as well as declared to violate due process of law by our United States Federal Courts. See [Appendix C-(30)] Also now take a look at [Appendix C-

27)and(36)] which verifies the Petitioner advised all supervisors with discretionary review authority in this government agency's departmental inmate appeal process, that he requested the video evidence of possible innocence be reviewed by this government agency's so called impartial fact finder/ decision maker, and this government agency's so called impartial fact finder/decision maker, willfully and deliberately refused to review that video evidence of possible innocence, clearly violating the Petitioner's right to procedural due process of law, guaranteed and protected by the Fourteenth Amendment to the United States Constitution, by one acting under color of law and Director Wendy Kelley's Memorandum, where she clearly acknowledged the Petitioner had requested that video evidence of possible innocence be reviewed yet this request was willfully and deliberately disregarded and refused by this government agency's so called impartial fact finder/decision maker, clearly violating the Petitioners right to procedural due process of law, guaranteed and protected by the Fourteenth Amendment to the United States Constitution, by one acting under color of law. Now see United States Federal Court holding's declaring such actions / conduct of government agency employees , in direct violation of due process of law, [**HOWARD V. U.S. BUREAU OF PRISONS 487 F.3D 808, 813-15**] :where Plaintiff alleged that a video tape existed and would exonerate him, failure to review it, denied due process." [**PHELPS V. TUCKER 370 F.SUPP.2D 792, 797**] "Refusal to review video tape denied due process, not withstanding officials claim that it wasn't very clear." [**MAYERS V. ANDERSON 93 F.SUPP.2D 962, 965-68**]

"Failure to review a requested video tape, without a stated reason denied due process." As well as, far as Director Wendy Kelley's conduct in this proceeding see [**ZINERMON V. BURCH 494 US 113, 126** n. 2] "The due process clause encompasses a third type of protection, a (Guarantee of fair procedure.)" and [**PINO V. DALSHEIM 605 F.SUPP. 1305,1319**] "Commissioner, held liable, based on actual knowledge of unconstitutional disciplinary proceeding." As well as in relation to all of this government agency's appellant review supervisor's, for which includes Director Wendy Kelley, see United States Federal Courts holdings in [**GABAI V. JACOBY 800 F.SUPP 1149, 1156**] "Holding allegation that a Supervisor, who reviewed a deficient disciplinary proceeding on appeal, and did not overturn it, pled personal involvement." [**SEALEY V. GILTNER 116 F.3D 47, 51**] "To establish personal involvement, a Plaintiff must demonstrate that a supervisor, either directly participated in the violation, or failed to remedy the violation after learning of it." [**WILSON V. CITY OF NORTH LITTLE ROCK 801 F.2D 316, 322 (8TH CIR)**] "Tacit authorization of subordinate practices requires, notice of those practices." [**HOWARD V. ADKISON 887 F.2D 134, 138 (8TH CIR)**] "Supervisors in addition to being liable for their own actions, are liable, when their Corrective inactions amount to deliberate indifference to, or tacit authorization of the violative practices." And [**PIZZUTO V. C.O.N. 239 F.SUPP2D 301,312,** n.17,18] "Supervisory liability may be imposed when an official has actual, or constructive notice of unconstitutional practices, and demonstrates gross negligence, or deliberate indifference by failing to act." Which in

and of itself, the conduct of this Government Agency's supervisors over the inmate appeal process, clearly demonstrates their tacit authorization of this government agency's so-called impartial fact finder/Decision maker's deliberate violation of the Petitioner's constitutional right to procedural due process of law. Thereby clearly and without argument, displaying a departmental conspiracy amongst those supervisors, by willfully and intentionally disregarding departmental policy and United States Federal Law, all in attempt to assist the Departmental cover up of Defendant Officer Terry Gibson's use of excessive force on the Petitioner, in clear violation of [**18 U.S.C.A. § 241**] "If two or more persons conspire to injure, oppress, threaten, or intimidate any person, in any state, territory, commonwealth, possession, or district in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States or because of his having so exercised the same." [**18 U.S.C.A. § 242**] "Whoever under color of any law, statue ordinance, regulation, or custom, willfully subjects any person in any state, territory commonwealth, possession, or District to the deprivation of any rights, privileges, or immunities, secured or protected by the constitution or laws of the United States." Also [**18 U.S.C.A. § 371**] "if two or more persons conspire either to commit any offense against the United States or to defraud the United States, or any agency thereof in any manner, or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both." See [Appendix C-(67)] where in the revision notes

and legislative report, displayed in [**18 U.S.C.A. § 371**] where the United States Congress referenced and quoted, the well established federal law as was determined by this United States Supreme Court in [**HAAS V. HENKEL 216 US 462**] where this United States Supreme Court clearly states, "The statute is broad enough in its term to include any conspiracy for the purpose of impairing – obstructing- or defeating the lawful functions of any department of government." So what is the Department of correction? It's clearly obviously, "A State Government Agency."

Conclusion

The decision below is wrong, due to all of the above listed, and proven video, and documentary evidence of this government agency's employee's willful and deliberate violations of the Petitioners 8th and 14th Amendment rights, where for clearly and undeniably displaying multiple genuine issues of Material facts that are to be determined by a jury, not a judge, whom could have a bias and personal vendetta against prisoners who litigate against government officials,, see the United States Federal Courts Holding, in Relevant Part [**SMITH V. MASCHNER 899 F.2D 940, 949** n.14] "Where Defendant's motives are seriously at issue, trial by affidavit is particularly inappropriate, credibility determinations – the weighing of the evidence – and the drawing of legitimate inferences from the facts, are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or direct verdict. The evidence of the non-Movant is to be believed, and all justifiable inference, are to

be drawn in his favor" [**ANDERSON V. L.L.I. 477 US AT 252**] citing [**ADICKES V. S.H.K.C. 398 US 144,158-59**] Also see [**SCOTT V. COUGHLIN 344 F.3D 282,291** n. 11] "Although the Plaintiff's evidence may be thin, his own statement is adequate to counter a summary judgment, and It must] be weighed by a Trier of fact." Under the circumstances of this case, the video and documentary evidence, clearly demonstrates a departmental conspiracy – departmental cover-up of use of excessive force, by one of this government agency's employees on the Petitioner. See the well established Federal law as was determined by this United States Supreme Court in [**UNITED STATES V. DIEBOLD I.N.C. 369 US 654,655**] "Moreover, in determining whether a genuine issue has been raised, a court must resolve all ambiguities, and draw all reasonable inferences against the moving party." This government Agency Supervisors deliberately disregarding law and departmental policy, their tacit authorization of, by turning a blind eye to,, their subordinates deliberately disregarding law and departmental policy, as well as, by way of video and documentary evidence, clearly proving that one of this government agency's employees has been undeniably obstructing the government agency departmental investigation into allegations of him using excessive force on the Petitioner, clearly resolves all ambiguities, and for sure are reasonable inferences that must be drawn against the moving party. See [In Re J.E.P.A.L. 723 F.2d 238, 258] "If... there is any evidence in the record from any source, from which a reasonable inference in the non moving party's favor may be drawn, the moving party simply cannot obtain summary

judgment." Therefore, in the instant case, apart from those listed above, where you have a Magistrate Judge, in his findings and recommendations to the court, fabricating and falsifying what the video evidence display and depict, claiming that the video shows the Petitioner doing things in this incident, that if true, would justify the officers use of force, yet the problem with this is that prior to the magistrate reviewing the video evidence, it had already been reviewed and its content documented, first by the head warden James Gibson, in this government agency's investigation, see [appendix-C-(43)], then by Assistant Attorney General Vincent P France, the attorney representing this government agency in this action , see [Appendix-C(76)—(77)] and last but not least, the video evidence was also reviewed by the culprit, Defendant Officer Terry Gibson, see [Appendix C-(78)-(80)] yet neither one of these prior reviewing of this video evidence, by this government agency, and /or its attorney Assistant Attorney General Vincent P France, can confirm or have ever claimed, that as does the magistrate in [Appendix B-(8)] That the video evidence show the Petitioner, between [07:15:54 – 07:16:10] begin to [push officer Gibson against the door – or that the Petitioner (holds) Officer Gibson against the door for approximately fifteen seconds…, now if only the court will see [Appendix C-(77)] For which is the relevant part of the Defendant's statement of undisputed facts, filed in the district court, under the penalty of perjury, by Assistant Attorney General Vincent P. France. Look at #(33)-(37), in #(33) the attorney for this government agency, states under the penalty of perjury, that between [07:15:45 – 07:16:10] the video evidence show the

Petitioner was aggressively leaning into Defendant Officer Terry Gibson's (personal space) and that the Petitioner is trying and eventually does, steal the broom away from Defendant Officer Terry Gibson, [not pushing Defendant Officer Terry Gibson against a door] as was clearly fabricated by the magistrate, nor does the video evidence show the Petitioner, during this time period, holding Defendant Officer Terry Gibson against a door, as was clearly fabricated by the magistrate. Although speaking from a criminal perspective, also applying to a civil perspective, the late Justice Scalia held in [**EDWARDS V. BALISOK 520 US 641, 647**] " A Criminal Defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him [**TUMEY V. OHIO 273 US 510, 535**], [**ARIZONA V. FULMINANTE 499 US 279**] etc..., see [Appendix C-(78)-(79)] which is an affidavit filed in the district court, by the actual officer that is in the video with the Petitioner, if you would look at #(13) where this officer, admitted in this affidavit that he filed in the District Court under the penalty of perjury, that this incident with the Petitioner was recorded on surveillance video, which he had seen, and was familiar with. If you will, take a look at # (4) – (13) nowhere does Defendant Officer Terry Gibson himself ever claim that the Petitioner pushed him against a door, nowhere does Defendant Officer Terry Gibson claim that the Petitioner held him against a door, as was clearly fabricated by the magistrate, and this court must ask and respect, "What better person would know, whether or not these things happened to him, then the actual Defendant Officer Terry Gibson himself? Therefore without doubt the

actions of this magistrate, and all named Defendants employed by this government agency, is in direct violation of the well established Federal Law as was determined by this United States Supreme Court in [**DENT V. WEST VIRGINIA 129 US 114, 123**] "the touchstone of due process is protection of the individual against Arbitrary action of government." [**TERRY V. OHIO 392 US 1, 13**] "The government must play the game fairly, and cannot be allowed to profit from its own illegal acts." [**ROCHIN V. CALIFORNIA 72 S.CT. 205** n. 11] "Under 14th Amendment due process, a state conviction cannot be brought about by a method that offends a sense of justice." Thereby the District Court granting, and the Eighth Circuits affirming of that grant of summary judgment and Qualified Immunity, under all of the above listed violations of the Petitioners 8th and 14th Amendment rights. Clearly violating [**VITAL V. I.M.C. 168 F.3D 615, 621-22**] "The Court erroneously made an impermissible credibility determination and weighed contradictory proof, due to the fact that it is well established Federal Law that the credibility of a Plaintiff statements and the weight of contradictory evidence, may only be evaluated by a Trier of fact." [**MILLS V. FENGER 216 FED.APPX. 7, 8-9**] "Denying summary judgment on excessive force claim, where Plaintiff alleged that, officer grabbed him and threw him down." [**WELCH V. CITY OF NEW YORK 1997 WL 436382*6**] "Reversing grant of summary Judgment on excessive force claim where parties account of the facts differed markedly." As well as the well established Federal Law as was determined by this United States Supreme Court in [**SAUCIER V. KATZ 533 US 194, 201**] "As a

threshold matter, a court must determine whether the facts, when viewed in the light most favorable to the Plaintiff, show that the Officer's conduct violated a constitutional right." Clearly and without doubt it did in this case, full of genuine issues of material facts.

Respectfully Submitted

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