

19-7002

No.19A288

~~ORIGINAL~~

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT C. DENHAM, Jr. – PETITIONER

VS.

JAMES DZURENDA, Director of Nevada
Department of Correction, individually and
in his official capacity; et al., – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE NINTH CIRCUIT COURT OF APPEALS

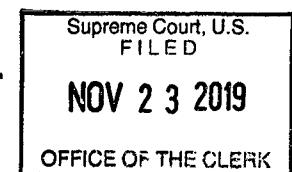
PETITION FOR WRIT OF CERTIORARI

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The “Questions Presented” Is Intended
To Present The Reasons For Granting The Petition

(a)

I.

Is whether or not Plaintiff’s Reply, Motions’ Affidavit
to Screening Order dated 01-09-19 was timely, and satisfied
the \$75, 000 amount-in-controversy requirement pursuant
to 28 U.S.C. §1332(a)(1), to File Amended Complaint?

(Id Appx “E, E1, E2”).

II.

Is whether or not Plaintiff’s Motion to proceed informa
pauperis pursuant 28 U.S.C. § 1915, to Proposed Amended
Plaintiff’s 42 U.S.C. § 1983,1985(2) Civil Rights Complaint,
was given an opportunity to heard on subject-matter jurisdiction?

(Id Appx “E”)

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II. Is whether or not Plaintiff's Motion to proceed informa pauperis pursuant 28 U.S.C. § 1915, to Proposed Amended Plaintiff's 42 U.S.C. § 1983,1985(2) Civil Rights Complaint, was given an opportunity to heard on subject-matter jurisdiction? (Id Appx "E")	
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Nevada State Statute:

NRS 209.433

JURISDICTIONAL STATEMENTS

(e) From January 29, 2018 to January 9, 2019, District Court of Nevada, examine Plaintiff's Title 42 U.S.C. § 1983, original Complaint (Id Appx H) and found an independent basis of jurisdiction did not exist 28 U.S.C. § 1331 and this action lacks federal-question subject-matter jurisdiction, and determined the claims did not met 28 U.S.C. § 1915(a)(1)(e)(2)(B)(ii) fails to state a claim upon which relief may be granted, the court applies the same standard as is applied under Rule 12(b)(6) . . . "A pro se litigant must be given leave to amend his complaint, and some notice of its deficiencies . . . original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000," is between citizens of different states. 28 U.S.C. §1332(a)(1), then issued its Screening ORDER on Plaintiff's application to proceed in forma pauperis for non-prisoners (ECF No. 5) is denied as moot; It is further ordered . . . file the complaint (ECF No. 1-1 . . . that the court dismisses the complaint . . . without prejudice, for lack of subject-matter jurisdiction . . . close this case and enter judgment accordingly. (Id Appx "D").

- (i)** On June 26, 2019, the Ninth Circuit Court of Appeal entered judgment. (Id Appx "B")
- (ii)** On July 18, 2019, the Ninth Circuit issued MANDATE. (Id Appx "A")
- (iv)** Court jurisdiction Rule 12.2, Rule 13.1,3, and 5 "For good cause, a Justice may extend the time

to file for a period not exceeding 60 days." Id. Petitioner's petition for a writ of certiorari is timely filed.

PROVISIONS INVOKED

(f). The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case are: The First, Fifth, Eighth, and Fourteenth Amendments of the United States Constitutions, and Titles:

5 U.S.C.A. § 552(a); 42 U.S.C. § 1983; 42 U.S.C. § 1985(2)(3); 42 U.S.C. § 1988; 42 U.S.C. § 1977(e); 28 U.S.C. § 1291; 28 U.S.C. § 2107(a); 28 U.S.C. § 1331; 28 U.S.C. § 1332; 28 U.S.C. §1332(a)(1); 28 U.S.C. § 1367(a); 28 U.S.C. § 1915(a)(1)(e)(2)(B)(ii); Federal Rules Appellate Procedure, Rule 24(a)(c); Federal Rules of Civil Procedure, Rule 15(a)(1)(B) and Rule 12(b)(6); Federal Rules of Civil Procedure, Evidence, and Rule 12(b)(6).

STATEMENT OF THE CASE

(g) [A concise statement of the case setting out the facts material to consideration of the questions presented]:

The United District Court, District of Nevada January 9, 2019, Screening Order issued a dismissal of complaint for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii), the court applies the same standard as is applied under Rule 12 (b)(6). (Id. Appx D, pg 1)

The Screening process was from January 29, 2018 through January 30, 2019. Petitioner's complaint sues defendants NDOC employees James Dzurenda, David Tristan, Dwayne Dell, Shelly Williams and John Does for events that took place after petitioner's release from prison [1990]. (ECF No. 1-1 at 1, 3-4). (Id. Appx D, pgs. 1) Petitioner alleges four counts and seeks monetary damages "in excess of ten thousand dollars." (Id. at 16-17) Petitioner attempted to seal his criminal records pursuant to Nevada state law. (" (Id. at 7-8) Petitioner's petition to seal was heard in state court. (Id. at 8)(Id. Appx D, pgs. 2) See, Appx J, Petitioner's original Complaint filed herein are exhibits omitted, and Appx E2, Motion for leave to file Amended Plaintiff's Complaint Pursuant to Title U.S.C. Section 1983 and 1985(2), Pendent Jurisdiction (Jury Trial Demand) was filed on 02-04-19, with Proposed Amended Plaintiff's Complaint, Exhibit A, which had Exhibits 1-8 attachments, with Exhibit 3, Robert Carroll Denham vs. State of Nevada, Case No. A-15-729298-S, Recorder's Transcript Re: Sealing the Record, which was filed on April 25, 2017.

The state court judge provided the parties time to file supplemental briefs on the issue. (Id. at 8-9). Plaintiff contacted NDOC employees at the offender management division in an attempt to acquire parole discharge and sentence expiration documents. (Id. at 9). In correspondence with Williams, plaintiff specifically told her that he needed the NDOC to provide him with a written document explaining his "total statutory credits deduction" as applied to his particular sentence structure. (Id. at 10). Plaintiff also corresponded with Dell to get the documents necessary to seal his criminal record. (Id. at 11). Plaintiff was unable to obtain a report that contained a numeric analysis of plaintiff's "flat-time, good-time, and meritorious credits deduction from the maximum term imposed by the 'judgment of conviction,' for the purpose of sealing his criminal record." (Id. at 12).

Petitioner sues defendants for: (1) negligence and the “rights guaranteed by the Fifth and Fourteenth Amendments”; (2) breach of employment duty and the “rights guaranteed by the Fifth and Fourteenth”; (3) intentional infliction of emotional distress and violations of The First, Fifth, Eighth, and Fourteenth Amendments; and (4) fraud. (Id. at 7, 12-13, 15-16). (ECF No. 1) (Id. Appx. D) and (Id. Appx. H w/exhibits).

Petitioner invoked additional jurisdiction under Denham vs. Summer, et al., Case No, CV-S-83-844-PMP (RJJ), SETTLEMENT AGREEMENT AND RELEASE, “retain the right to bring independent actions for adverse . . . practices arising or occurring after the date of this AGREEMENT (Sept. 25, 1991, pg. 3) See, Appx J, Motion To Direct The Clerk To File Plaintiff’s Civil Rights Complaint Pursuant to Title 42 Section 1983, Pursuant to U.S.C.A. §t 1915, dated filed January 23, 2018, affidavit, para 2, pg 2., and Appx E2, Proposed Amended Plaintiff’s Complaint, Exhibit A, attachment, Exhibit 1, exclusively.

On February 4, 2019, Petitioner’s reply and affidavits and other motions were timely filed, pursuant to Fed R Civ Proc, Rule 15(1) Motions (Id Appx E, E1, and E2), the later being the Proposed Amended Complaint, 42 U.S.C. § 1983, which added 1982(2) Conspiracy; which incorporated the Defendants’ “unlawful objective, which conspirators are jointly and severally liable,” pursuant to **The United States Constitution**: First, Fifth, Eighth, and Fourteenth Amendment, wherefrom Courts decisions did not give plaintiff an opportunity to be heard on subject-matter jurisdiction “merits” as pertains to “federally created statutes and privileges and 5 U.S.C.A. § 552(a),” and for brevity which applies to all civil actions pursuant NRS 209.433, mandates “those minimum procedures appropriate circumstances required by the Due Process Clause to insure that the state-created rights is not arbitrarily abrogated.” See, Appx E1, Memorandum.

Petitioner’s Reply’s affidavit presented related issues by Thomson Reuters’ Jury Verdict Research Trends Summary Analysis for 2008 to 2015, for Injuries sustained findings by comparing plaintiff and defendants analysis for compensatory award means cases rendered nationwide, as the basis for the “deficiencies . . . controversy . . . \$75,000, ” verdict expectancy for claims involving: **A. Occupational Negligence; B. Breach of Contract or Duty; C. Discrimination and Civil Rights Violations; D. Prisons, E. State Government, F. Fraud, Deceit, Misrepresentation; and G. Intention Infliction of Emotional Distress.**” (Id. Appx(s) E1, para 5, pg 3) Appx D, ln(s) 11-15, pg 3.

The January 9, 2019, SCREENING ORDER, “[a] pro se litigant . . . be given . . . some notice of its deficiencies, unless it is absolutely clear . . . could not be cured by amendment.” (Id. Appx D),

thus Thomson Reuters' Trends Summary analysis included punitive damages awards possibility against the defendants to punish the offender(s) or to function as a deterrent to future acts of misconduct, no Court's decision reached on merit "between citizens of different states. 28 U.S.C. §1332(a)(1)." See, Appx E1, Petitioner's application to proceed in forma pauperis for "non-prisoner," was not given an opportunity to be heard on the merit of subject-matter jurisdiction. See, Appx G.

The May 5, 2019, ORDER, "[p]resently before the court is plaintiff's motion for leave to file an amended complaint. (ECF No. 12) [See, Appx G] the time to file an amended complaint passed . . . to the extent that . . . plaintiff has not provided the relevant points and authorities for such a motion . . . 'the motion constitutes a consent to the denial of the motion.' (Id. Appx C1) See, Appx E1. Petitioner's Motion for Clarification of its ORDER dated 04/05/2019, pursuant to Fed R Civ Proc, Rule 15, "non-prisoner" "make it by motion under this rule." (Id Appx "F"; (ECF No.11); (ECF No. 14); DENIED." (Id Appx "C"), Petitioner had no opportunity to be heard. See, Id Appx "G," and Id Appx "H").

On June 7, 2019, Plaintiff's Notice of Appeal and Motion for leave tp proceed in forma pauperis pursuant 28 U.S.C. § 1915(a)(1) and Fed. R. App. P. 24(a)(c)(sic), both were filed with District Court of Nevada. (Id Appx "H"), See also, (Id Appx "G").

On June 26, 2019, the Ninth Circuit Court of Appeals' Order to Appeal was dismissed for lack of jurisdiction because District of Nevada's Judgment was entered January 9, 2019, and Plaintiff's Notice of Appeal was filed on June 7, 2019. (Id Appx "B"); See also, (Id Appx "G") It is clear no forma pauperis and application to proceed without prepaying fees or costs pursuant 28 U.S.C.A. § 1915, was given an opportunity to be heard by the lower Court's. See, Appx E1 and Appx H.

(g) (i)

I.

Is whether or not Plaintiff's Reply, Motions' Affidavit to Screening Order dated 01-09-19 was timely, and satisfied the \$75, 000 amount-in-controversy requirement pursuant to 28 U.S.C. §1332(a)(1), to File Amended Complaint?
(Id Appx "E, E1, E2")

Plaintiff's Reply's Re was filed-stamped on February 4, 2019, and it was not until April 5, 2019, that the Court articulated in its April 5, 2019, Order, "Plaintiff's case has already been closed, and the time to file an amended complaint has passed." Id Appx C1. See also, Id Appx C2.

Apparently, this Nevada District Court's missed the "direct victim" claims arise from the breach of a duty that is assumed by defendant or imposed on defendant as a matter of law, or that arises out of defendants' preexisting relationship with plaintiff. There is recovery for negligent infliction of emotional distress in "direct victim" cases not involving physical injury does not require preexisting relationship between parties or out rageour conduct by defendant(s), but is governed by traditional negligence principles. Wooden v. Raveling, 61 Cal. App. 4th 1035, 71 Cal. Rptr. 2d 891 (2d Dist. 1198) review denied, (May 13, 1998)

In addiction, Nevada District Court retained 1983 Jurisdiction when signing an order in Denham vs. NDOP, et. al. (aka "NDOC"), Plaintiff's Class Action against former Director for NDOP and former Warden for Indianspring prison, thus the court appointed Cal J. Potter, III, to represent Plaintiff's Class Action from 1983 to 1991. Id. 28 U.S.C.A. § 1915 (e)(1). The Nevada District Court in 1991, signed, Robert C. Denham vs. James Dzurenda, et al., D. C. No. 2-18-cv-00163-JCM-VCF, (Dist Ct Nev. Sept. 25, 1991, pg. 3) SETTLEMENT AGREEMENT AND RELEASE, "retain the right to bring independent actions for adverse . . . practices arising or occurring after the date of this AGREEMENT," (See, Appx E2, exhibit 3, pgs. 1-3).

Plaintiff was present during the settlement negotiations and discussions that changed the “class action” status, and Mr. Potter reached an agreement as to fees. The agreement was exclusive in regards to Section 1367(c) governs “tolling” and the “substantially predominates claims over which the district court has original jurisdiction,” with the basis “Section 1367(a) has the broad scope of “supplemental jurisdiction,” which incorporates the constitutional analysis of United Mine Workers of America v. Gibbs, this rationale is reflected Denham vs. James Dzurenda, et al., *supra*.. Settlement agreement and release, “retain the right to bring independent actions for adverse . . . practices arising or occurring after the date of this AGREEMENT,” (See, Appx E2, exhibit 3, pgs. 1-3). The Diversity Jurisdiction amount-controversy requirement was not resolved and there was on comments in regards Plaintiff’s Reply to the Screening Order, besides referencing back to the January 9, 2019, Order (Id Appx D). Thus, Section 1332 was not resolved and Plaintiff’s Reply and Motions were not allowed an opportunity to be heard under the “federal created rights and privileges,” under Fed R. Civ. Proc., Rule 15(a).

Plaintiff’s Reply’s Affidavit, verbatim:

“(Exhibit “A”) is annexed to Motion for leave to file amended Plaintiff’s Complaint Pursuant to Title 42 U.S.C. Section 1983 and 1985(2)(3), Pendent Jurisdiction (Jury Trial Demand)

1. Affiant assertions in the original or first complaint were inadvertently not clear or specific “in excess” of \$10,000 per cause of actions issues against each defendants, as such, the totaled would not satisfied the \$75, 000 amount-in-controversy requirement “ to state a claim to relief that is plausible on its face.” Id.

3. Affiant submits the proposed amended plaintiff’s civil rights complaint will establish federal-question jurisdiction under 42 U.S.C. § 1985 (2) requires that the conspiracy to impede justice be with the purposeful intent to deny a citizen the equal protection of the laws was not explicit in the original or first complaint filing, notwithstanding the statute of limitations remain applicable under the particular circumstances. Thus, plaintiff could not have discover the “NDCOMD” defendants conspiracies to “obstruct the course of justice” before seeking to “seal . . . criminal record . . . in Case No. 15-729298-S” (Id. ECF No.1-1 at 11-12, 16-18). In addition, the attached exhibits are

governed under Federal Rules of Evidence Rule 201, to establish conspiracy and the contentions and reasons for FRAUD against the Defendants.

3. Affiant believes this court has jurisdiction on the basis this court previous screening of the facts and attached exhibits were not viewed under 42 U. S. C. A. § 1985 (2) violation against defendants, for their failure to adhere to plaintiff's requests under NRS 209.433 mandates to NDOC, State Government agency, which is unquestionable defendants occupational duties for its NDOC's administrators to determine with accuracy for a specific "Judgment of Conviction" with the "primary offence and enhancement penalty" expiration dates being challenged based upon NDOC, May 28, 2015, (Id. Exhibit 4(a)), as such, the sealing of ones criminal records is a critical stage or phase of "due process" in this cause of action against defendants.

4. Affiant recognized this court stated: (1) negligence and the "rights guaranteed by the Fifth and Fourteenth Amendment"; (2) breach of employment duty and "rights guaranteed by the Fifth and Fourteenth Amendment"; (3) intentional infliction of emotional distress and violations of the Fifth, Eighth, Ninth, and Fourteenth Amendments"; and (4) fraud." (Id. at 3.)

5. Affiant's submits for this court consideration the affidavit's Motion for leave to file amended Plaintiff's Complaint, the specific to the Personal Injury Valuation Handbook by Jury Verdict Research, Inc., verdict expectancy for claims involving: **A.** Occupational Negligence; **B.** Breach of Contract or Duty; **C.** Discrimination and Civil Rights Violations; **D.** Prisons, **E.** State Government, **F.** Fraud, Deceit, Misrepresentation; and **G.** Intention Infliction of Emotional Distress, without the particular Compensatory Wards distribution tables percentage for government negligence involving each level of government, and Median Punitive Award or distribution tables percentage of the total number of within each dollar range for the above categories, in which to determine dollar amount subject-matter under §1332. (Id. at 3.)

6. Affiant know that jury trial sometimes awarded Punitive damages to plaintiff who have been victims of intentional inflicted injuries. In these cases to punish the offender(s) or to function as a deterrent to future acts of misconduct, as such, circumstantial evidence may provide adequate proof of a conspiracy. Hensley vs. Gassman, 763 F. Supp. 2d 876 (E.D MI 2011).

to achieve the unlawful end against plaintiff rather than avoid litigation, defendants knew there was no administrative grievance for “non-prisoners” to redress NDOC defendants deliberate indifference toward plaintiff’s written requests, in violation of the First Amendment under Section 1977 (e) and the Eighth Amendment, both are applicable to the States through the Due Process Clause of the Fourteenth Amendment.

The United States Supreme Court has held that once a state creates a right that implicates a person’s liberty, the individual possessing this right is entitled to “those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created rights is not arbitrarily abrogated.” Wolff v. McDonnell, 418 U.S. 539, 557 (1974).

Thus, NDOC defendants, to wit: (1) NO administrative grievance for “non-prisoners;” (2) NRS 209.433 mandates defendants duties for “non-prisoners;” to insure “life” . . . “liberty;” and (3) A constitutional violation occurs when the deprivation objective of NDOC defendants is to obstruct justice is violation of plaintiff equal protection of laws and equal privileges under the law and to seal criminal records is a critical stage of due process under the law and this court articulated Proposed Amended Plaintiff’s Complaint, at “1, 3-4, 16-17; then 7-12” (omitted specific facts). Id. 2-3.

The three require to possess minimum procedures to insure that rights are not “arbitrarily abrogated,” regarding “non-prisoners plaintiff,” by NDOC defendants, thus under Federal Rules of Civil Procedure, Rule 15: (1) Amending as a Matter of Course. A party may amend, and (B) 21 days after service of a motion under Rule 12(b), and this court, to wit:

“A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” Cato v. United States, 70 F.3d 1130, 1106 (9th Cir. 1995)

Id. at 2.

Jurisdiction is conferred pursuant to Title 28 U.S.C. § 1332 (a) where the matter in controversy exceeds the sum

or value of \$75,000, exclusive of interest and costs, and is between:(1) citizens of different States.

Jurisdiction is further invoked or conferred upon this Court by PENDENT JURISDICTION, this Court, to wit:

The basic statutory grants of federal- subject-matter jurisdiction are contained in 28 U.S.C. §§ 1331 and 1332.

Arbaugh v. Y&H Corp., 546 U.S. 500, 513 (206) . . . “If plaintiff wishes to pursue his state law claims for negligence, breach of employment duty, intentional infliction of emotional distress, and fraud, **he should file a complain in state court.**” (Emphasis added)

Id. at 3-4.

The United States Supreme Court holds a *pro se* complaint, “however inartfully pleaded,” to a less stringent standard than formal pleadings drafted by lawyers. **Compare Haines v. Kemer**, 404 U.S. 519, 520 (1972) with **Caterpillar Inc. vs. Williams**, 482 U.S. 386, 392 (1987)(‘well-pleaded complaint rule.’)

Henderson v. United States, 517 U.S. 654, 657 n. 2 (1996) the doctrine of pendent jurisdiction, notwithstanding a federal court has the power to exercise when the state and federal claims “derive from a common nucleus of operative fact.” **United Mine Workers v. Gibbs**, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138 (1966)(“If, considered without regard to their federal or state character, a plaintiff’s claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.” Id. (Emphasis in original).

This Court dismissed plaintiff first 42 U.S.C. § 1983 Complaint, which was filed on January 23, 2018, and on January 9, 2019, dismiss[ed] the complaint in its entirety, without prejudice, for lack of subject-matter jurisdiction.” It further stated, “where the matter in controversy exceeds the sum of value of \$75,000 and between citizens of different states. . . . 28 U.S.C. § 1332 (a)(1) . . . **the court finds that there is no diversity jurisdiction in this case.**” (Id. at 3 cited Arbaugh, supra.)

[C]onstitutional right of access exists JURISDICTION is further invoked or conferred upon this Court by Jury Trial demanded, 42 U.S.C. § 1985 (2)(3), and 28 U.S.C. § 1332 (a)(1)(See also, affidavit of Motion for Leave to Amend plaintiff's complaint), were not in the previous complaint. Id. (ECF No. 1-1, 1-18), and are Federal-questions Jurisdiction to be resolved in the Proposed Amended Plaintiff's Complaint, exhibit "A."

Black's Law Dictionary, in pertinent:

"original jurisdiction resting under federal claim extends to any nonfederal claim against the same defendants, if the federal question is substantial and the federal and nonfederal claims constitute a single cause of action." Fullerton vs. Monogahela Connection R. Co., D.C. Pa., 242 F.Supp. 622, 626. Such Jurisdiction exists, even though it is determined that no cause of action is made out under federal grounds. Taussig v. Wellington Fund, Inc., D.C. Del., 187 F. Supp. 179, 191. The test is whether substantially the same evidence will prove both the federal and nonfederal claims. Wagner vs. World Wide Automobiles Corp., D.C.N.Y., 201 F. Supp. 22, 24."

Id. Supra.

B. Diversity Jurisdiction

The Court finds that, "to a legal certainty, plaintiff's claims for being unable to obtain specific documents from the NDOC will not satisfy the \$75,000 amount-in-controversy requirement . . . Dismisses . . . without prejudice, for lack of subject-matter jurisdiction. Id. at 4.

NDOC defendants and its "employee were acting within the scope of employment," pursuant to § 1331, and under 42 U.S.C. § 1983 and 42 U.S.C. § 1985 (2)(3) violated plaintiff's 14th Amendment to the U.S. Constitution: "No State shall make or enforce any law which shall abridge the privileges . . . nor shall any State deprive any person . . . without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Id. Bowen v. City of New York, 476 U.S. 467, 106 S.Ct. 2022 (1986)(a federal limitation period was

tolled because the very policy being attacked by the . . . plaintiffs had been a secret policy as well as an illegal one.)

[I]s basis for pendent jurisdiction against NDOC defendants fraudulent concealment and failure to perform legally required duties, and for the deprivation of the plaintiff's constitutionally protected rights violations, are applicable, under **The Constitution of the State of Nevada includes “equal protection:” “[h]ave certain inalienable rights . . . and happiness,”** in Costa, supra., 2014, this court issued its “Trial Order” after reviewing comparable Nevada statutes involving occupational professional negligence. This court Constitution Case Law Legal Analysis, considered two types of plaintiffs classes categorically for the purpose of constitutional violations, and its Legal Analysis basis for liability under the Nevada statute. Thus, which class define the “non-prisoner” plaintiff liability and is NDOC defendants in violations of plaintiff's federally created rights and privileges?

Id. Appx E2, at 5-9.

as pertains to “federally created statutes and privileges and 5 U.S.C.A. § 552(a),” and for brevity which applies to all civil actions pursuant NRS 209.433, mandates “those minimum procedures appropriate [in the instance under these] circumstances required by the Due Process Clause to insure that the state-created rights is not arbitrarily abrogated,” Article 1, **Section 9**, “No . . . ex post facto law shall be passed,” [Universal Declaration of Human Rights] **Article 3**, “Everyone has the life, liberty and security of person,” **and 7, 8, 29 (1)(2)**.

Plaintiff's presented issues by Affidavit's verbatim:

1. That affiant is the Plaintiff in the above-entitled matter; that this information is made in good(sic) faith for a jury trial, which relief is requested against NDOC defendants for punitive damages as a direct and proximate result -in the Amended Complaint and he is able and willing to testify to his asserted claims.

2. Affiant contends he is entitled to put his facts before the jury to determine whether a constitutional violation occurs when the deprivation of 5 U.S.C.A. § 552(a) [Id Appx D] Records maintained on individuals and (b) Conditions of disclosure pursuant to a written request, notwithstanding ignoring a request became the objective of NDOC defendants to obstruct justice or interfered with plaintiff equal protection of the laws and equal privileges under the law to seal his criminal record.

3. Affiant incorporated § 1985 conspiracy under § 1983 in the proposed Amended Complaint against NDOC defendants agreement or

meeting of the minds to ignore several requests and their failure to perform legally required duties infringes and violates plaintiff's constitutional rights.

4. Affiant believe justifiable reliance by Plaintiff on NDOC defendants' conduct or its employees are not mere allegations and are the basis of his claims.

5. Affiant proposes to show at the time of trial through testimony of NDOC employees, that specific defendants were involved in a conspiracy and acted despite their knowledge of depriving plaintiff of the equal protection of the laws and equal privileges under the law.

6. Thus, whether Affiant should have found out earlier about the asserted claims against the NDOC defendants in the Amended Complaint is a question of fact to be determined by the jury or trial, the facts are susceptible to opposing inferences.

7. Affiant contends for original jurisdiction value of \$75,000 under 28 U.S.C. § 1332((a)(1)," for this court consideration the Personal Injury Valuation Handbook by Jury Verdict Research, Inc. [**Id Appx L**], verdict expectancy for similar claims involving: **A. Occupational Negligence; B. Breach of Contract or Duty; C. Discrimination and Civil Rights Violations; D. Prisons, E. State Government, F. Fraud, Deceit, Misrepresentation; and G. Intention Infliction of Emotional Distress**, are as follows:

Verdict Award:	A.	B.	C.
Median	\$200,000	\$54,396	\$22,5000
Probability Range	\$52,875 – 657,081	\$13,631 – 353,500	\$651 – 147,500
Range	\$1-21,000,000	\$1,000 – 111,500,000	\$1-14,500,000
Mean	\$807,266	\$1,830,577	\$404,235
Verdict Award:	D.	E.	F.
Median	\$55,000	\$243,750	\$102,200
Probability Range	\$5,750-262,500	\$41,750-1,400,000	\$38,150-500,000
Range	\$1-50,000,000	\$1-137,000,000	\$1,457-8,000,000
Mean	\$1,136,354	\$2,492,735	\$590,705
Verdict Award:	G.		
Median	\$102,200		
Probability Range	\$38,150 – 500,000		
Range	\$1,457 – 8,000,000		
Mean	\$590,705		

8. That no previous application for the relief now sought have been made to any court or judge.

9. Therefore, Affiant prays that an ORDER be issued to file proposed amended complaint in this matter.

10. This request is further based upon Plaintiff's Motion for leave to proceed in forma pauperis and application to proceed in this Court without prepaying fees or cost, appendix herewith.

Petitioner was deprived of any opportunity to be heard, paragraphs (2-6) reference 5 U.S.C.A. § 552(a) pertains to “Records maintained on individuals,” this is applicable to Defendants to state a claim under Sections 1983, which added 1985(2), when (1) the defendants acted under color of state law; and (2) the defendants conduct deprived Petitioner of a right secured by the Constitution or laws of the United States. AmlMfrslMut.Ins. Co. V Sulliyan. 526 U.S. 40, 49-50, 119 S. Ct. 977 (1999) Lugar v. Edmondsom Oil Col. Inc., 457 U. S. 922, 924 (1982); see also, Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S. Ct. 183 (1980)(a willful participant in joint action with the State or its agents.)

Paragraph 7, Petitioner contends further his reply and affidavit and the other motions were timely filed on February 5, 2019, with applicable Federal Rules and established case law, to include and 2008 to 2015, Thomson Reuters’ Jury Verdict Research Trends Analysis General Comments and Summary of the Research for Injuries Sustained with Plaintiff Recovery Probability findings by comparing plaintiff verdicts to the total number of verdicts for a particular liability and Punitive damages are generally awarded in these cases to punish the offender(s) or to function as a deterrent to future acts of misconduct.. In addition, for both plaintiff and defense verdicts and settlements and settlements negotiations analysis for compensatory award means cases rendered nationwide could have been a method for the District Court’s “consideration” in determining diversity amount-controversy requirement. There are three (3) defendants times \$10,000 = \$30,000, four (4) claims would be \$120,000, it was easier say \$75, 000, pursuant to Section 1332.

The “deficiencies . . . controversy . . . \$75,000,” which no determination was made liability against defendants, thus Thomson Reuters’ Trends Summary analysis included punitive damages awards possibility against the defendants to punish the offender(s) or to function as a deterrent to

future acts of misconduct, none of the Courts' decisions was reached on merit "between citizens of different states. 28 U.S.C. §1332(a)(1)."

Memorandum of points and authorities, verbatim:

I. SCREENING STANDARD

II. SCREENING OF COMPLAINT

Plaintiff does have a set of facts to base his claims against NDOC defendants, if accepted, a jury could find that Plaintiff is entitled to relief under Section 1983, which provides for relief only against those who, through their personal involvement as evidenced by affirmative acts, participation in another's affirmative acts, or failure to perform legally required duties, cause the deprivation of the plaintiff's constitutionally protected rights. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.1978).

In addition, Section 1985, further provides for relief under conspiracy for an agreement or meeting of the minds to violate the plaintiff's constitutional rights must be shown. See Woodrum v. Woodward County, 866 F.2d 1121, 1126 (9th Cir.1989); Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 626 (9th Cir.1988).

NDOC defendants culpable state of minds were with knowledge to prevent the conspiracy in violation of 5 U.S.C.A. § 552(a), where constitutional right of access exists after several "written request" have been ignored is unquestionable intentional or purposeful discrimination entered into an agreement, express or tacit, to achieve the unlawful end against plaintiff rather than avoid litigation, defendants knew there was no administrative grievance for "non-prisoners" to redress NDOC defendants deliberate indifference toward plaintiff's written requests, in violation of the First Amendment under Section 1977 (e) and the Eighth Amendment, both are applicable to the States through the Due Process Clause of the Fourteenth Amendment.

The United States Supreme Court has held that once a state creates a right that implicates a person's liberty, the individual possessing this right is entitled to "those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created rights is not arbitrarily abrogated." Wolff v. McDonnell, 418 U.S. 539, 557 (1974).

In addition, (1) NO administrative grievance for "non-prisoners;" (2) NRS 209.433 mandates defendants occupational duties for "non-prisoners;" to insure "life". . . "liberty;" and (3) a constitutional violation occurs when the deprivation objective of NDOC defendants is to obstruct justice or interfered with plaintiff equal protection of the laws and equal privileges under the law to seal his criminal record.

These three are required to possess minimum procedures to insure that rights are not "arbitrarily abrogated," regarding "non-prisoners plaintiff," by NDOC defendants, thus under Federal Rules of Civil Procedure, Rule 15: (1) Amending as a Matter of Course. A party

may amend, and (B) 21 days after service of a motion under Rule 12(b), and this court, to wit:

“A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” Cato v. United States, 70 F.3d 1130, 1106 (9th Cir. 1995)

Id. at 2.

For the reasons stated in affidavit and above herein, justice will be served and will not be prejudicial to NDOC defendants, thus, Plaintiff’s Motion for Leave to File Amended Complaint should be granted.

Id. Appx E2, pg

On April 5, 2019, the Court’s ORDER reads: “Presently before the court is plaintiff’s motion for leave to file an amended complaint. (ECF No. 12) [See, Appx G] the time to file an amended complaint passed . . . to the extent that . . . plaintiff has not provided the relevant points and authorities for such a motion . . . ‘the motion constitutes a consent to the denial of the motion.’ (Id. Appx C1) [See, Appx E1.

Petitioner’s contends on April 17, 2019, his Motion for Clarification of its ORDER dated 04/05/2019 (Id Appx F), set out to correct what happen inadvertently as those “deficiencies,” indicated in the April 5, 2019, Order, pursuant Rule 12(h)(1)(B)(i) was “make by motion under this rule.” See Appx “F.” “If plaintiff wishes to proceed on the claims asserted in this matter, he must file a new action that is void of the deficiencies noted by the court in its previous order. Plaintiff’s motions are denied.” Id. Appx C

The JVR’s findings is a sound method and workable viewpoint from which the District Court of Nevada could have measure and determine whether or not the value exceed the jurisdictional-amount, but no filing of motion for leave could be had and no “detailed inquiry into the preliminary

jurisdictional question regarding recoverable damages could well become a trial of the merits of the case.” Id. 303, at 288-89, 58 S. Ct, 590.

Plaintiff’s Reply and accompanying motions were made in good-faith. In Maty v. Grasselli, Co., 303 U.S. 197, 58 S. Ct 507, this Court found that when the basic facts giving rise to the injury were the same in both and the original complain and in the proposed amendment, no new case of action was stated under New Jersey law.” The SCREENING ORDER, “[i]f plaintiff wishes to pursue his state law claims for negligence, breach of employment duty, intentional infliction of emotional distress, and fraud, he should file a complaint in state court. Id. Appx D.

In addition, Petitioner had no opportunity to be heard on claims against defendants. See, Brandon v. Holt, 105 S.Ct. 873, 877-78 (1985)([T]o permit plaintiff to amend pleading to conform to proof and findings of fact that public entity was the actual target of plaintiff’s damage claim under 42 U.S.C. § 1983).

In Foman v. Davis, 371 U.S. 178, 182 (1962), this Court stated:

“if the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits . . . the refusal or denial of an opportunity to amend is with the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.”

Id. 371 U.S. at 182. See,

Petitioner’s believes his February 4,2019, Reply and accompanying motions collectively were related to the issues and merits (Id Appx E, E1,E2) to cure the January 9, 2019, Court Screening Order dismissal without prejudice, for lack of subject-matter jurisdiction. There was no given opportunity to heard on the merits of these filings, which were timely filed pursuant Fed R Civ Proc, Rule 15(a).

II.

Is whether or not plaintiff's Motion to proceed informa pauperis pursuant 28 U.S.C. § 1915, to Proposed Amended Plaintiff's 42 U.S.C. § 1983,1985(2) Civil Rights Complaint, was given an opportunity to be heard on subject-matter jurisdiction? (Id Appx "E1")

On January 23, 2018, Plaintiff original filing was titled, " Motion to Direct the Clerk to File Plaintiff's Civil Right Complaint Pursuant To Plaintiff's Title 42 Section 1983 pursuant 28 U.S.C.A. § 1915. Id Appx J(a)), see Affidavit

This titled motion was not acceptable for filing and the Court Clerk forward another "Application to proceed without prepaying fees or costs (Short Form)" with instruction to complete and return, which was filed-stamped February 17, 2018. (Id Appx E1(a)).

On April 5, 2019, the Order, stated: "motion to process application for leave to in forma pauperis." (ECF No. 11). No response has been filed, and the time to do so has passed. Also before the court is plaintiff's "motion for clarification." (ECF No. 14). (Id Appx C)

From January 29, 2019 through April 5, 2019, Plaintiff has been deprived of an opportunity "to proceed in forma pauperis for non-prisoner," became "absolutely destitute to enjoy the benefits of the statute," which is a "federal created rights and privileges" under 28 U.S.C.A. § 1915(a)(1). See, Adkins v. E.I. Dupon de Nemours & Co, 335 U.S. 331, 338-9, 198, 69 S.Ct. 85(1948) ("[o]ne who makes this affidavit exposes himself 'to the pains of perjury in a case of bad faith . . . [w] think an affidavit is sufficient which states that one cannot because of his poverty 'pay or give security for the cost.'") (1948).

In addition, Plaintiff's invoked jurisdiction under Denham, supra., "SETTLEMENT AGREEMENT," demonstrate a "personal stake in the outcome," necessary for the proper resolution of constitutional questions. Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 703 (1962)

On June 7, 2019, Plaintiff's pursuant to 28 U.S.C.A. § 1915(a)(1) and Fed. R. App. P. 24(a)(c), for Motion for leave to proceed in forma pauperis and application to proceed in the Ninth Circuit Court of Appeal without prepaying fees or costs for purpose of Appeal.

Affidavit, verbatim:

pro se litigant believes he is entitled to a Motion for leave to proceed in forma pauperis for purposes of appeal to the Ninth Circuit Court of Appeals without prepayment of filing fees pursuant to 28 U.S.C.A. § 1915.

2. Affiant is entitled to the relief sought herein and also in Plaintiff's Amended Complaint (ECF No. 12) will show the affirmative conduct on part of defendants (NDOC) which would, under the circumstances of his case, will lead a reasonable person to believe that he did have a claim for relief. Thus, the issues complained of against each defendants can be too resolved on appeal.

3. Affiant is a non-prisoner, and will be 67 years old on July 25, 2019, thus his financial obligations has not changed since the February 27, 2019, filing of "application to proceed in District Court without prepaying fees or costs (Shout Form). See, (exhibit "1").

4. The May 7, 2019, Order denied Plaintiff previous application for the relief now sought stating "No response has bee filed, and the time to do so has passed . . . he must file a new action that is void of the deficiencies noted by the court in its previous order." Id. See (ECF No. 11, 14).

5. The April 5, Order denied Plaintiff's Motion for leave to file an amended complaint stating "the time to file an amended complaint has passed . . . plaintiff has not provided the relevant points and authorities for such a motion." Id. (ECF N. 12). Thus, on April 17, 2019, Plaintiff's Motion for Clarification and Memorandum and Points and Authority was filed to cure or resolve the "relevant points and authorities" missing for such a motion.

6. Affiant believes his January 30, 2019, reply cured the January 9, 2019, Court Screening Order "reviewing the adequacy of a complaint under to 28 U.S.C.A. § 1915(e)(2)(B)(ii) . . . applies the same standard as is applied under Rule 12(b)(6) . . . ordered that the application to proceed in forma pauperis for non-prisoner (ECF No. 5) is denied as moot . . . dismisses the complaint in its entirety, without prejudice, for subject-matter jurisdiction (ECF Nos. 7,9)." Id. Thus, on February 4, 2019, affaint's filed: (1) Plaintiff's Reply to SCREENING ORDER; (2) Motion for Leave to Proceed in District Court without prepaying fees or costs pursuant 28 U.S.C.A. § 1915, Propose Amended Plaintiff's Civil Rights Complaint §§ 1983, 1985(2); and (3) Motion for Leave to file AMENDED Plaintiff's Civil Rights Complaint, with EXHIBIT "A,"Propose Amended Plaintiff's Civil Rights Complaint §§ 1983, 1985(2) Pendent Jurisdiction (Jury Trial Demand), Exhibit "A." These Motions were filed within "21 days after service of a motion under Rule 12(b)," in a

timely manner pursuant to Federal Rules of Civil Procedure, Rule 15(a)(1)(B) application.

7. On April 5, 2019, an Order was issued denying "the time to file an amended complaint has passed . . . plaintiff has not provided the relevant points and authorities for such a motion. Thus, on April 17, 2019, Plaintiff's Motion for Clarification and Memorandum and Points and Authority was timely filed to cure, address, or hence the relevant points and authorities for such a motion. (ECF No. 14). Notwithstanding Plaintiff's Reply to SCREENING ORDER articulated the applicable law and rules in a timely manner under Federal Rules of Civil Procedure, Rule 15(a)(1)(B), thus, this was not taken into consideration by the Courts review and determination as being applicable in its Orders, in spite of Rule 15(a)(1)(B) being quoted in the Motion for Leave to file AMENDED Plaintiff's Civil Rights Complaint. (ECF No. 12).

8. On May 7, 2019, an Order was issued denying Plaintiff's Motion for Leave to Proceed in District Court without prepaying fees or costs pursuant 28 U.S.C.A. § 1915, as it pertains to the records on appeal. (ECF No. 15).

9. The original application for Motion for Leave to Proceed in District Court without prepaying fees or costs pursuant 28 U.S.C.A. § 1915, were denied as moot by the court or judge. (ECF No. 9).

10. Affiant believes the denial by federal district judge of a motion to proceed *in forma pauperis* is an appealable order. 28 U.S.C.A. §§ 1291, and NO prior application have been made for this type of relief.

Id. Appx Ja.

MEMORANDUM OF POINTS AND AUTHORITIES, in pertinent part:

Motion for Leave to Proceed . . . is the basis of his 1983 and 1985 amended complaint . . . exhibits . . . for review and consideration . . . as it pertains to the records on appeal.

A federal court is presumed to lack subject matter jurisdiction until plaintiff establishes otherwise. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994) . . . the original complaint (ECF Nos. 1-1, 5) was found not to be frivolous on January 9, 2019, only moot under 28 U.S.C.A. § 1915(e)(2)(B)(ii) to proceed *in forma pauperis*, . . . a pro se litigant is entitled to notice of the complaint's deficiencies . . . an opportunity to amend prior to dismissal of the action. Was there consideration given to these particular motions as a cure to the application of Rule 12(b)(6) under 28 U.S.C.A. § 1915(e)(2)(B)(ii)? (ECF Nos. 7,9). . .

[t]he court has broad discretion in denying an application to proceed *in forma pauperis* . . . under Fed. R. Civ. P. 12 (b)(1), a complaint must be dismissed if, considering the factual allegations in the light most favorable to the plaintiff, the action: (1) does not arise under the Constitution, laws, or treaties of the United

States, or does not fall within one of the other enumerated categories of Article III, Section 2, of the Constitution; (2) is not a case or controversy within the meaning of the Constitution; or (3) is not one described by any jurisdictional statute. . . “be absolutely destitute to enjoy the benefits of the statute.”

Id. Appx Ja.

Petitioner's contends the April 5, 2019, Order, is a denial by federal district judge, a motion to proceed in forma pauperis is an appealable order pursuant to 28 U.S.C.A. §§ 1291.

Plaintiff's Motions were timely filed. See, Brandon v. Holt, 105 S.Ct. 873, 877-78 (1985)([T]o permit plaintiff to amend pleading to conform to proof and findings of fact that public entity was the actual target of plaintiff's damage claim under 42 U.S.C. § 1983).

In addition, in Foman v. Davis, 371 U.S. 178, 182 (1962), this Court stated:

“if the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits . . . the refusal or denial of an opportunity to amend is with the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.”

Id. 371 U.S. at 182. See,

This Court consider in a single appeal all interlocutory rulings. See Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221(1949) (“The purpose [of the final judgment rule] is to combine in one review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results.”) Federal courts are not required to interpret procedural rules so as to excuse mistakes by those who proceed without counsel. See McNeil v. United States, 508 U.S. 106, 113 (1993).

Plaintiff's in pertinent part:

On June 26, 2019, the Ninth Circuit Court of Appeals' Order to Appeal was dismissed for “lack of jurisdiction,” due to District of Nevada's Judgment was entered January 9, 2019. (Id Appx G) However, the April 7, 2019, Order: “no further filings shall be entertained by the court pursuant to this action. If plaintiff wishes to proceed on the claims asserted in this matter, he must file a new

void of the deficiencies noted by the court in its previous order. Plaintiff's motions are denied. It is ordered that plaintiff's motion to process application for leave to proceed in forma pauperis (ECF No. 11) be, and the same hereby is DENIED.

Id. Appx C.

Thus, Petitioner has not been afforded any opportunity to test his claims on "subject-matter jurisdiction" against the Defendants, on the basis plaintiff's motion to process application for leave to proceed in forma pauperis denials by Nevada District Court means not being afforded an opportunity to be heard, and on decision could be rendered on the merits **28 U.S.C.A. 1332(a)(1)**. This Court has continually held that "a fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133, 75 S. Ct. 623, 625 (1955).

Petitioner's contends on February 22, 2016, a hearing in Denham v. State of Nevada, Case No. A-15-729298-S, was held on "SEALING THE RECORDS. (Id. Appx E1, exhibit 3) Thus, "[m]isuse of power, possessed by virtue of state law and possible only because the wrong doer is clothed with the authority of state law, is action taken 'under the color' of state law." United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031(1941); Levering & Garrigues Co. v. Morrin, 289 U.S. 103, 53 S.Ct. 549 (1935)(The State and Federal claims must derive from a common nucleus of operative fact.) Petitioner believes the district court should have granted him leave to proceed in forma pauperis and permission to file his proposed amended complaint 42 U.S.C.A. § 1983, which added 42 U.S.C.A. § 1985(2), and no determination has been reached as to whether or not, if Petitioner cured the adequacy of the original complaint filing and the Proposed Amended Complaint's application to proceed in forma pauperis for non-prisoner was barred likewise under 28 U.S.C.A. 1915(a)(1). See, App G. That denial by federal district judge of a motion to proceed in forma pauperis is an appealable order under 28 U.S.C.A. §§ 1291.

(h) The reasons relied on for allowance of the Writ is under Rule 10 (c), the original court of jurisdiction “has decided an important federal question in a way that conflicts with relevant decisions of this Court,” in Baker v. Carr, 369 U.S. 186, 198 (1962); D.G. Rung Indus., Inc. v. Tinnerman, 626 F.Supp. 1062, 1063 (W.D. Wash. 1986), “under Fed. R. Civ. P. 12 (b)(1), a complaint must be dismissed if, considering the factual allegations in the light most favorable to the plaintiff, the action: (1) does not arise under the Constitution, laws, or treaties of the United States, or does not fall within one of the other enumerated categories of Article III, Section 2, of the Constitution; (2) is not a case or controversy within the meaning of the Constitution; or (3) is not one described by any jurisdictional statute.” Id. Baker v. Carr, 369 U.S. 204, 82 S.Ct. 691 (“a personal stake in the outcome of the controversy,”); Hishon v. King & Spalding, 467 U.S. 69, 73(1984)(if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle him to relief)(citing Conley v. Gibson ,355 U.S. 41, 45-46(1957); The Actual knowledge of the fraud will be inferred if the aggrieved party, by the exercise of due diligence, could have discovered it, and Plaintiff’s complaint describes how defendants conspired with such a purpose in mind. Cf. Bowen v. City of New York, 476 U.S. 467, 106 S.Ct. 2022 (1986)(a federal limitation period was tolled because the very policy being attacked by the . . . plaintiffs had been a secret policy as well as an illegal one.); Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339 (1948)(“be absolutely destitute to enjoy the benefits of the statute.”)

CONCLUSION

That Writ be issued for all of the above reasons.

Dated this 23 day of September, 2019.


Robert C. Denham, Jr. (aka Bobbie)
Petitioner Pro Se