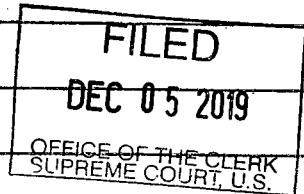


ORIGINAL

No. 19-7252



IN The
United States Supreme Court

CLARENCE JOSEPH JASON, PETITIONER

VERSUS

ROBERT TANNER, WARDEN, RAYBURN
CORRECTIONAL CENTER; SHANE LADNER,
LIEUTENANT; BRADLEY PIERCE, SERGEANT,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT; CASE DOCKET NO.: 18-30837

PETITION FOR WRIT OF CERTIORARI

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Questions Presented:

- 1). "Whether a Prison Tool Control Policy can 'create' duty upon prison officials to which liability attach? And, if so, 'is there a conflict between U.S. Court of Appeals' for which there is a need to resolve?"
- 2). "Whether the court-below erroneously applied 'subjective knowledge' inquiry contrary to this Court holding in Farmer v. Brennan when holding that evidence must be adduced showing prison officials "knew" 'fellow inmate would attack the Petitioner with swing-blade?" And,
- 3). "Did the court-below 'misrepresentation of evidence in 'failure-to-train claim' resulted in erroneous finding? And, is there 'a conflict between U.S. Court of Appeals' deciding 'single incident' criteria in inmat-on-inmate violence showing deliberate indifference to inmate health or safety?"

No.

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CLARENCE JOSEPH JASON, PETITIONER

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UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT; CASE DOCKET NO.: 18-30837

CERTIFICATE OF INTERESTED PARTIES:

THE PETITIONER CERTIFIES THAT THE FOLLOWING LISTED PERSONS
AND ENTITIES AS DESCRIBED IN THE RULES OF THE UNITED STATES

Supreme Court, Rule 14(b), have an interest in the outcome of this case:

1) Respondents; Robert Tanner, Warden, Rayburn Correctional Center; Shane Ladner, Lieutenant; Bradley Pierce, Sergeant.

2) Jeff Landry, Attorney General for the State of Louisiana, and Christopher N. Walters, Assistant Attorney General for the State of Louisiana, Counsel for Respondents.

3) United States Court of Appeals, Fifth Circuit:
The Honorable Smith, Graves, and Willet, Circuit Judges.

4) U.S. District Court, Eastern District of Louisiana;
The Honorable Susie Morgan, Judge.

5) U.S. District Court, Eastern District of Louisiana;
The Honorable Michael North, Magistrate Judge

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- "Exhibit-C": 'Order And Reasons', United States District Court, Eastern District of Louisiana, Civil-Action: *15-607.
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Chronological Citations Of The
Official And Unofficial Report Of
The Opinions And Orders Entered
In The Case:

- 1). On September 25th, 2017, the United States District Court, Eastern District of Louisiana, in Clarence Joseph Jason v. James LeBlanc, ET AL, Civil-Action No.: 15:607, "Denied" defendants' motion for summary judgment based on qualified immunity' "Without Prejudice" ordering "limited discovery". (See Appendix, "Exhibit-C").
- 2). On June 13th, 2018, in Civil Action No.: 15:607, the district court "Denied" defendants' re-urged 'motion for summary judgment based on qualified immunity'. (See Appendix, "Exhibit-B").
- 3). On September 9th, 2019, the United States Court of Appeals For The Fifth Circuit, in case docket: 18-30837, "Reversed" the district court 'denial' of defendants' 'motion for summary judgment based on qualified immunity'. (See Appendix, "Exhibit-A").
- 4). On October 14, 2019, Clerk of Court, United States Court of Appeals For The Fifth Circuit, took "no action" on Petition for Rehearing *en banc*, citing "untimeliness". (See Appendix, "Exhibit-A4").

5). On October 9th, 2019, in Civil Action No.: 15-607; the district court 'denied' Plaintiff's Motion for Appointment of Counsel. (See Appendix, "Exhibit-D").

6). On October 28th, 2019, in Civil Action No.: 15-607; the district court "granted" appointed counsel Alysson L. Mills and Jesse C. Stewart 'motion to withdraw'. (See Appendix, "Exhibit-E").

7). On November 5th, 2019, in Civil Action No.: 15-607; the district court "Denied" the Plaintiff's 'Second Motion for Appointment of Counsel'. (See Appendix, "Exhibit-F").

Jurisdictional Statement:

This Court vest jurisdiction in accordance with the United States Constitution, Article III, Section 1 and 2; in which, appellate jurisdiction as to Law and Fact to review ruling and judgment entered by lower court, United States Court of Appeals, Fifth Circuit, Case docket: 18-30837; date of judgment entered on: September 9th, 2019; and, denial of Rehearing on October 16, 2019.

Statutory Provision On Court Jurisdiction:

"In accordance with the Rules of United States Supreme Court, Rule 10(a) and (c); jurisdictional-review of the lower court judgment for which 'conflict with the decision of another United States Court of Appeals on the same important matter,' as well as, the lower court 'has decided an important federal question that conflicts with relevant decisions of this Court' warrant the granting of Petition For Writ of Certiorari in the instant case in order that 'a full consideration on the merit' can be held.

Constitutional Provision Involved:

VIII Amend., U.S. Constitution:

"EXCESSIVE bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." (See also Appendix, "Exhibit-K").

Statutes Involved:

Federal Rules of Civil Procedure, Rule 56(a).
(See Appendix, "Exhibit-L").

Statement Of Case:

On February 18, 2015, the Petitioner filed his federal 42 U.S.C. 1983 Civil Violation suit in the United States District Court, Eastern District of Louisiana, in civil-action arising under case number: 15-067, Section (E)(5) involving 'prison condition' with regard to the 'unsafe and detrimental prison practice' taken in conjunction with the 'failure to protect' and 'failure to train and supervise claim' in accordance with the Eighth Amendment. The nature surrounding civil-action proceeding stems from violent and brutal assault-attack committed upon the Petitioner at the hands of another prisoner using a swing-blade¹ issued by defendants to several inmates on prison housing yard without providing "direct supervision by staff" nor "ensuring direct supervision by prison staff oversaw inmates use of inherent and potential fatal weapon" as was mandated by the Rayburn Correctional Center "Tool Control" Policy.² Petitioner sustained severe head and back injuries, (See Appendix, "Exhibit-H") after another³ swing-blade in question is a flat, sharp metal plate on both side, roughly three inches wide by twelve inches long, attached to a three-foot-long wood stick. (See Appendix, "Exhibit-I").

² See Rayburn Correctional Center "Tool Control" Policy, at Appendix, "Exhibit-G", page 3, "Restricted Tools" provision.

prisoner retrieved a swing-blade from prison housing yard and stalked Petitioner from behind violently beating the Petitioner in the head and back with swing-blade. (See Appendix, "Exhibit-H"). The violent assault-attack was discovered by housing yard supervisor, Lt. Shane Ladner, after making rounds on prison housing yard and coming across a large pool of blood. Violent assault occurred on prison-housing yard known to prison officials for high-volume inmate-on-inmate violence in a maximum-security prison facility. On June 13th, 2018, after the taking of 'limited discovery', the district court denied the defendants Robert Tanner, Warden; Shane Ladner, Lieutenant, and Bradley Pierce, Sergeant, 'motion for summary judgment based on qualified immunity'. (See Appendix, "Exhibit-B"). The district reason for denying qualified-immunity to defendant Bradley Pierce and Shane Ladner stem from the fact that "there are genuine disputes of material fact with respect to whether there were R/C officials actually looking at inmates with restricted tools all times"; and, further providing that: "[B]ecause Ladner and Pierce rest their right to qualified immunity on this assertion, which remains in dispute..." (See Appendix, "Exhibit-B"; at page 17, line 9 thru 12). The district court denied 'qualified immunity' to defendant Robert Tanner, Warden,

after finding that: "[t]he Court finds a genuine dispute of material fact exists as to whether Defendants Pierce and Ladner, as well as other RLC officials, were adequately trained on the supervision required when inmates are using dangerous tools in the Wind Yard." (See Appendix, "Exhibit B," at page 20, line 6 thru 8). However, the U.S. Fifth Circuit Court of Appeals, reversing judgment by district court identified the prison 'Tool Control Policy' as only "[i]nstructing prison officials on how to inventory and categorize tools." (See Appendix, "Exhibit-A," at page 2, line 26-27). The appellate-court failed to identify and acknowledge 'third-component' of 'prison tool control policy' that which 'instructed prison officials "direct supervision by staff" was required when allowing prisoners access to both 'restricted tools' and 'non-restricted tools' inside the fenced compound. (See Appendix, "Exhibit-A," at page 3, "Restricted Tool" provision). The appellate-court contend that defendant Bradley Pierce and Shane Ladner did not "shirk[ed] their duties," (See Appendix, "Exhibit-A," at page 8, line 19), as the appellate-court would identify defendant Pierce and Ladner's job consists of, inter alia, "[i]n and [i]ng out sling-blades [on prison housing yard]," and "do their rounds [on prison housing yard]." (See Appendix, "Exhibit-A," at page 7-8, line 24-1). The appellate-court found

defendant Pierce and Ladner was not liable in assault-incident and further contend that the district court erred when it "[f]ailed to identify evidence indicating that they [Pierce and Ladner] knew of a 'substantial risk' that a fellow inmate would attack Jason [Petitioner]." (See Appendix, "Exhibit-A", page 7, line 11 thru 13). Thus the appellate-court reversed the district court denial of 'qualified-immunity' against defendant Bradley Pierce and Shane Ladner granting both defendants 'qualified immunity'. Moreover, the appellate-court would also reverse the district court denial of 'qualified-immunity' against defendant Robert Tanner, Warden, in 'failure to train and supervise claim'. The appellate-court contends "[t]here was training", (See Appendix, "Exhibit-A", at page 13, line 18), of 'subordinate' prison officials defendant Bradley Pierce and Shane Ladner with regard to 'prison tool control policy' despite the record-evidence showing defendant Bradley Pierce received 15 minutes training on 'tool control' on 10/4/16 well over a year-and half after assault-incident. (See Appendix, "Exhibit-J", 'a transcript of defendant Bradley Pierce training'). In any regards; the appellate-court would find that "...[i]t's not so much about insufficient training... 'Instead, it's about insufficient protocol.'" (See Appendix, "Exhibit-A", at page 14, line 1-2).

On October 14, 2019, Petitioner's 'Petition for Rehearing' was 'untimely' filed as court-appointed counsel Alysson L. Mills and Jesse C. Stewart neither filed for re-hearing nor notified the Petitioner of time prescriptive with which to file 'Petition for Rehearing'. Consequently, the Clerk of Court notified the Petitioner "no action would be taken" on 'Petition for Rehearing En Banc'. (See Appendix, "Exhibit-Aa"). On October 28th, 2019, the district court 'granted' appointed counsel A. Mills and J. Stewart 'motion to withdraw'. (See Appendix, "Exhibit-E"). Petitioner filed 'motion-for-appointment of counsel' following the district court 'granting' appointed-counsel's 'motion-to-withdraw'. The district court 'denied' 'motion-request' on November 3th, 2019. (See Appendix, "Exhibit-F").

Writ Grant Consideration: "Question Presented" (1):
U.S. Supreme Court Rules, Rule 10(a):

Consideration for granting 'petition for writ of certiorari' to resolve conflict with the decision of another United States court of appeals on the same important matter surrounding issue involving Prison "Tool Policy" 'created duty' upon prison officials for which liability attach. The appellate-court below in reversing the district court denial of

prison officials' summary judgment motion based on qualified immunity' contends that the defendant Bradley Pierce and Shane Ladner did not "shirked their duties", (See Appendix, "Exhibit-A"; at page 8, line 19), in making assessment determination of 'liability' in violent assault-attack committed on the Petitioner at the hands of another prisoner wielding a 'swing-blade' issued by the defendants Pierce and Ladner to several inmates on prison housing yard 'unsupervised'.¹ While the appellate-court tend to identify both Bradley Pierce and Shane Ladner's duty when stating, inter alia, that: "[Ladner] out sling blades [to inmates on prison housing yard] and ... 'do their rounds.'" (See Appendix, "Exhibit-A"; at page 7-8, line 34-1). The court-below failed to observe the most critical aspect of 'prison tool control policy' with which 'created' a duty upon prison officials permitting inmates access to 'tools' for which can be used as weapons 'inside of fenced compound (prison housing yard) mandating 'direct supervision of staff' overseeing inmate

¹ Here, the defendants 'randomly pick' inmates who they arm with 'inherently dangerous' and 'potentially fatal' tools that can be used as weapons and 'pose a security risk'.

use of tools. Where this can be observed from 'prison tool control policy for which read in part that:

"Restricted Tools:

Offenders may only use certain tools, because of their potential security risk, within the fenced compound under direct supervision of staff. Such tools will be classified as 'restricted' tools. 'Restricted tools are implements that can be used to fabricate weapons; or that can be used as weapons; or can be used to facilitate an escape. 'Generally, restricted tools will be etched, when possible, with the letter "R" and/or color coded with a band of red paint at least one-half inch wide at the point of least wear. However, such tools lacking these markings are still considered restricted tools." (See Appendix, "Exhibit-15": 'Prison Tool Control Policy' at page 3 and 4). (Emphasis mine).

In view of the mandatory language employed by 'prison tool control policy' prison officials had "duty" to "directly supervise" inmates use of 'tools' on prison housing yard as was "created" by 'prison tool control policy'. The district court recognized 'duty' created by

'prison tool policy' and thus explained in it reason for denying defendants' 'summary-motion for qualified immunity' that:

"...the sling blade at issue is clearly a restricted tool, RC's own policy mandates that inmates only be allowed to use the tool when under direct supervision."

(see Appendix, "Exhibit-B", at page 6-7, line 34-1).

MOREOVER, unlike the court-below, the district court noted an identical case decided by the Seventh Circuit Court of Appeals, in Goka v. Bobbit, 862 F.2d 646 (7th Cir. 1988); in which, the court there recognized 'prison tool control policy' created 'duty' upon prison officials and consequently prison officials was liable in assault - incident in 'failure to follow prison tool control policy'.

The district court in the instant case pointed out that:

"[I]n Goka v. Bobbit, the Seventh Circuit considered a factually similar case. 'An inmate had been assaulted by another inmate who was wielding a broom handle which he had been allowed to keep in his cell. Under the tool control policy in effect at that prison, all tools were to be controlled by prison

"staff when not in use." (See Appendix, "Exhibit-B" at page 13, line 3-7).

Similarly, like the case of *Goka*, *supra*, the district court denied defendant Bradley Pierce and Shaun Ladner 'qualified immunity' after evidence established 'there was no prison official "watching" inmates use of swing-blades at "all times" as these defendants rested their right to 'qualified immunity'. As the district court stated that:

"[D]efendants Ladner and Pierce rest their right to qualified immunity on their argument that there is "someone watching the inmates at all times" while the inmates are in Wind Yard and that this defeats a finding that either one of them disregarded the risk of substantial harm. 'Neither Pierce nor Ladner, nor any other officer, saw Turner abandon the tool, and no officer witnessed the attack on the Plaintiff. Had there been "eyes on" supervision of the inmates in the Wind Yard "at all times," as Defendants claim, a guard would have seen the abandonment of the tool and the assault. The Court finds the Plaintiff has established that there are genuine disputes of material fact with respect to whether there were REC officials actually looking at inmates with restricted tools all times while they were in Wind Yard.'" (See

Appendix "Exhibit-B," at page 14-17, line 2-),
Consequently, the district court correctly denied the Defendant Bradley Pierce and Shane Ladner 'qualified immunity' after finding that Defendants "shirked their duties" when failing to "directly supervise" inmates use of "inherently dangerous" 'tools' (swing-blades) on prison housing yard or 'ensuring direct supervision of staff was in place before issuing 'tools' to inmates on prison housing yard. Ironically, the appellate-court below contend that the 'prison tool control policy' simply "[i]nstruct the prison on how to inventory and categorize various tools." (See Appendix, "Exhibit-A," at page 2, line 26-27). Because the court-below failed to identify an essential component of the 'prison tool control policy' that which 'created' duty upon prison officials with regard 'to permitting inmates access to 'tools' "inside [prison] fence compound" (prison housing yard). And, taken in conjunction with its failure to observe 'the legal jurisprudence of law' in Goka v. Bobbitt, supra, the court-below, nonetheless, committed 'grave-error' in its determination assuming Defendant Bradley Pierce and Shane Ladner was not liable by their action and conduct as neither Defendant "shirked their duties" in violent assault-attack incident. Accordingly,

the granting of Petitioner's 'petition for writ of certiorari' should follow in order to resolve issues as to whether a 'prison tool control policy' can 'create' duty upon prison officials 'failure to follow prison tool control policy' subjecting prison officials to liability where inmates is exposed to 'a substantial risk of serious harm' on account of prison officials' dereliction of duty, as well as, the granting of 'petition for writ of certiorari' in order to resolve conflict between United States Court of Appeals upon such issue of importance with regard to 'prison tool control policy' create duty upon prison officials.

Writ Grant Consideration: "Question Presented" (a):
U.S. Supreme Court Rules, Rule 10(c):

The granting of Petitioner's 'petition for writ of certiorari' is further observed from the appellate-court 'misapplication of the law' as was decided by this Court in *Farmer v. Brennan*, 511 U.S. 825 (1994); with regard to 'subjective knowledge' requirement of 'a substantial risk of serious harm to health or safety'. The court below contends that the district court "misapplied the ['subjective knowledge'] test" when determining whether Defendant Bradley Pierce and Shane Ladner

possessed 'subjective knowledge' of 'a substantial risk of serious harm to inmate health or safety'. As the appellate court stated that: "...[t]he district court seemed to misapply the ['subjective knowledge'] test. The court determined that Ladner and Pierce knew the risk. 'But the court failed to identify evidence indicating that they knew of a "substantial risk" that a fellow inmate would attack Jason.' (See Appendix, "Exhibit-A," at page 7, line 10-13).

In view of the court-below application of 'subjective knowledge' requirement, it can be observed the court-below 'misapplied' 'subjective knowledge' test when holding that the district court was 'required to point to evidence that indicated Defendant Bradley Pierce and Shane Ladner "knew" "a fellow inmate would attack [Petitioner]"'. (Id., at page 7, line 2). First, this Court counselled against such a requirement in *Farmer v. Brennan*, *supra*, and rather explained that: "[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." Id. Next, in its

Footnote the district court correctly stated that:

"[I]t is not necessary to show that Defendants were aware of any risk specific to the Plaintiff, as the Plaintiff need not show that he was especially likely to be assaulted. (Citation omitted)²¹ Rather, Plaintiff need only show that the officials deliberately ignored a substantial risk to the safety of all inmates." (See Appendix, "Exhibit-B," at page 12, footnote #88).

Here, the district court determined that the Defendant Bradley Pierce and Shane Ladner possessed 'subject knowledge' of 'a substantial risk of serious harm to inmate health or safety' as derived from, inter alia, defendant's own testimony at 'deposition hearing', in which the district court said that:

"[D]efendant Pierce testified it was "foreseeable" that "the situation like what we're dealing with" could

²¹ The district court quoted from *Farmer v. Brennan*, 511 U.S. at 843 when it stated that: "[I]t does not matter whether the risk comes from a single source or multiple sources, any more than it matter whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk."

"happen. (R. Doc. 99-6 at 15). Pierce also testified that he had read the RLC Tool Control Policy, and was aware the Policy provided that "offenders may only use certain tools because of their potential security risk within the fenced compound under direct supervision of staff. (Id., at 22). 'Ladner conceded that tools "could be used for assault," and prison staff "should always keep offender and tools in sight." (R. Doc. 99-11 at 101). 'Ladner testified that he was familiar with the RLC Tool Control Policy, including its requirements regarding restrictive tools. (R. Doc. 92 at 111). Based on the evidence before the Court, it appears likely that these Defendants had subjective knowledge of the substantial risk of harm." (See Appendix, "Exhibit-B," at page 12, line 3-14).

In conjunction with these reasoning the district court continued to explain that: "[E]ven if Ladner and Pierce did not have subjective knowledge of the substantial risk of harm, "a factfinder may conclude that a prison official knew of substantial risk from the very fact that the risk was obvious." (See Appendix, "Exhibit-B," at page 13, line 1-3). Certainly, 'a factfinder can conclude defendants was aware of 'a substantial risk

of harm' because of its 'risk obviousness'; especially, in light of Defendant Robert Tanner, Warden, deposition testimony admitting that "the potential for violence among inmates in the Wind Yard is high." (See R. Doc. 92-9 at 30 lns, 11-16). Accordingly, the granting of Petitioner's 'petition for writ of certiorari' in the instant case is warrant as the court-below 'has decided an important federal question in a way that conflicts with relevant decisions of this Court' as was decided in *Farmer v. Brennan*, *supra*.

Writ Grant Consideration: "Question Presented" (3):
U.S. Supreme Court Rules: Rule 10(a) and 10(c):

Finally, the granting of Petitioner's 'petition for writ of certiorari' is further observed stemming from the court-below has decided 'an important federal question that which conflict with decision by this Court' in *City of Canton v. Harris*, 489 U.S. 378 (1989); and, also the granting of 'petition for writ of certiorari' is warrant 'to resolve conflict between United States Court of Appeals' in prison 'failure to train' claim.

A.

In reversing the district court denial of 'qualified immunity' in 'failure to train' claim. In any essence

the court-below granted the Defendant, Robert Tanner, Warden, 'qualified immunity' after making determination that: "[I]t wasn't the lack of training that caused the risk to [Petitioner in assault incident]." (See Appendix, "Exhibit-A"; at page 9, line 20). Rather, the court-below subsequently identified reasons for which caused the violent and brutal assault committed upon the Petitioner by another inmate wielding a swing-blade in terms explaining that: "[I]t was the sufficiency of the overall protocol—having only two guards making rounds [on prison housing yard] and relying on other guards peering out of windows." (See Appendix, "Exhibit-A"; at page 9, line 21-22). In fact, the court-below ultimately concluded that in this case "[t]here was training," (See Appendix, "Exhibit-A"; at page 13, line 19), with regards to defendant Bradley Pierce and Shane Ladner as to 'prison tool control policy'. Hence, the factors surrounding "the need for more training" or "prison officials assigned too many duties" resulting in the failure to ensure the safety and health of inmates on prison housing yard where several 'unsupervised' inmates were allowed to roam freely armed with 'inherently dangerous' 'tools' (swing-blades) on prison housing yard. Simply appeared to have escaped the attention of the court-

below. First, the court-below 'misrepresented the record-evidence' when contending that the defendant Bradley Pierce "I[re]ceived only 15 minutes of documented training related to 'tools' training, ... 'all prior to 2009.'" (See Appendix, "Exhibit-A"; at page 9, line 13-16). At the very outset the record-evidence establish that defendant Bradley Pierce received only "fifteen-minutes" of "tool training" on October 4th, 2016; over two-years after the violent assault incident. (See Appendix, "Exhibit-3"; Part of 'Training Transcript of Bradley Pierce; also see R. Doc. at 2674, entire 'training transcript' of Bradley Pierce). Because it was defendant Bradley Pierce who issued swing-blades to several 'unsupervised' inmates on prison housing yard.^{3/} This critical evidence was essential in the determination process of whether defendant Robert Tanner, Warden, 'failed to train' 'subordinate officials' on 'tool control policy'. Certainly, 'a causal connection' exist in 'the failure to train' and

^{3/} Here, the defendant "randomly" 'hand-pick' inmates to which swing-blades are issued. As there is 'no system' in place for which defendant utilize to assess inmates 'mental background', 'prison disciplinary history', nor 'criminal background'.

assault-incident. Where had there been 'direct supervision of staff' overseeing inmates use of 'tools' on prison housing yard as was 'mandatory' under 'prison tool control policy,' there would not have been an opportunity for an inmate to abandon swing-blade on prison housing yard' and 'another inmate retrieving 'tool' committing violent assault-attack.' Clearly, the petitioner satisfied the first two-analysis of a three-analysis test of a 'failure to train claim' as outlined in the case of *City of Canton v. Harris*, 489 U.S. 378 (1989). However, though, the petitioner was unable to show 'a pattern of similar incident' to establish 'deliberate indifference' and relied instead on the 'single incident' exception to meet 'deliberate indifference' test.

While the court-below erroneously rejected petitioner's showing of 'deliberate indifference' under the 'single incident' exception and reiterating its position that: "It's not so much about insufficient training. Instead, it's about insufficient protocol," (See Appendix "Exhibit-A" at page 14, line 1-a), that led to the Petitioner's injuries. And, consequently stating that: "the Supreme Court's caselaw ... 'emphasize that only inadequately training can establish vacarious liability.' (Id. at page 14, line 5-7). Again; the court-below 'misrepresented' the record-evidence surrounding the

defendant Bradley Pierce training received on 'tool control' issue. Defendant Bradley Pierce received absolutely 'no' 'tool training' prior to assault-incident and received "fifteen-minutes" of 'tool training' on October 4th, 2016, 'two-years' after assault-incident. (See R. Doc. at 8674). As this Court stated in *City of Canton v. Harris*, supra, "the need for training can be said to be so obvious, that failure to do so could properly be characterized as deliberate indifference to constitutional rights even without a pattern of constitutional violations." *Id.*, 489 U.S. 378, 390 n.10 (1989). Certainly, the defendant Tanner 'had sufficient notice' that 'the failure train' would obviously likely lead to the violation of Plaintiff's rights once observing defendant Tanner's testimony where defendant stated that "the RCL Tool Control Policy was drafted to address the 'obvious' risk that the inmates might use a yard tool as a dangerous weapon" and further stated that "the potential for violence among inmates in the Wind Yard is high." (See R. Rec. Doc. 92-9 at 301ns. 11-16). Moreover, defendant Tanner testified that under the 'prison tool control policy' "direct supervision" means "eyes on them", (See R. Doc. 92-9 at 781ns. 5-6), thus;

convincingly showing the defendant TANNER was aware of 'predictable consequences' that an inmate would use 'tools' to assault another inmate. Accordingly, "a reasonable jury could find that the failure to train RLC officials on the RLC Tool Control Policy, or otherwise train them with respect to the supervision needed over inmates using dangerous tools, was "obviously likely" to lead to an assault." (See Appendix, "Exhibit-B" at page 29, line 3-5; quoting district court ruling). As the district court stated in sum "a triable issue of fact exists in this case as to whether the risk of a tool-related attack created by the failure to train was so obvious as to constitute deliberate indifference." (See Appendix, "Exhibit-B"; at page 29, line 7-9).

B.

The court-below has decided an 'important issue in conflict with another United States Court of Appeals' on related 'failure to train claim' in prison case based on identical facts as was decided by the Third Circuit Court of Appeals in Thomas v. Cumberland County, 749 F.3d 219 (3d Cir. 2014). Where it was the district court in the instant case after making research of case-authority for which

examined the evidentiary requirements for the single incident exception in Eighth Amendment failure to train cases in which the failure to train results in an inmate-on-inmate assault. Had the occasion to visit 'cases from other circuits' happen upon the case of Thomas v. Lumberland County, *supra*, in which, the Third Circuit reversed the district court's grant of qualified immunity on the plaintiff's § 1983 'failure to train claim,' finding that a triable issue remained as to whether the county exhibited deliberate indifference to the need for training of officers in conflict de-escalation. Facts of the Thomas case provide that the plaintiff was an inmate who had been assaulted by another inmate. The plaintiff in Thomas had not put forward evidence of a pattern of similar constitutional violations, but the court found the "volatile nature" of the prison would make it more predictable that the need for such training would be apparent. Because the circumstances that made an inmate-on-inmate assault likely were present, the Thomas Court did mention that "the lack of training here is akin to a failure to equip law enforcement officers with specific tools to handle recurring situations." *Id.* As the Thomas Court would apply the 'single incident' exception under

the guidance of City of Canton v. Harris, 489 U.S. 378, 390 N.D (1989). It would consequently deny summary judgment on qualified-immunity in 'failure to train claim'. Nonetheless; though, the court-below would simply fail to consider the 'legal-principle' of Thomas, supra, even as guidance notwithstanding the similar facts presented in relation to 'claim of 'failure to train' in inmate-on-inmate violence and where both plaintiff relied on the 'single incident' exception in establishing 'deliberate indifference'. In comparison of the instant case and that of Thomas, supra, similar 'factual' characteristics are noted. First, it was "the volatile nature" of the prison" for which the Thomas Court found "would make it more predictable that the need for such training would be apparent." Because the circumstances that made an inmate-on-inmate assault likely were present, "the lack of training here is akin to a failure to equip law enforcement officers with specific tools to handle recurring situations." (See Thomas, supra, at 149 F.3d 317, 325). In the present case the "volatile nature" of prison housing yard was submitted through the testimony of defendant Robert Tanner, Warden, in his deposition stating that "[t]he potential for violence

"among inmates in the Wind Yard is high." (See R. Doc, 92-9 at 30 lns. 11-16). In view of this evidence there can hardly be any dispute that 'because of the 'high-volume' of inmate-on-inmate violence on prison unit for which violent assault occurred. 'Obviously makes it more predictable that the need for such training of prison officials with regard to "direct supervision" of inmates possessing 'inherently dangerous' 'tools' for which can be used as weapon on prison housing yard was apparent'. When taking other factors into consideration as pointed out by the district court for which explained that:

"[D]efendants' testimony establish that at any given moment, Defendant Pierce might be the sole officer indirectly supervising 300 inmates, some armed with tools that can be used as dangerous weapons, on a yard so big it includes a full-size football field, baseball field, basketball court, and other recreational spaces." (R. Doc, 91-1 at 1131)

"In this large space, the lack of comprehensive 'eyes on' or monitored camera surveillance appears to have left areas of the Wind Yard shield entirely from RUC surveillance, at least at

'times. Given these logistical difficulties, it would be essential for RLC officers to be trained on what "direct supervision" is required.

At this point, the training Tanner required and provided on this topic for the officers under his command is in dispute." (See Appendix "Exhibit-B" at page 28, line 5-14).

The court-below failed to take into consideration the fore-mention evidence, as well as, failed to observe case-authority decided by the U.S. Third Circuit Court of Appeals in Thomas v. Cumberland, supra, that which involved claim of 'failure to train' in inmate-on-inmate assault and involving 'single incident' exception-test in establishing deliberate indifference'. Accordingly, the granting of 'petition for writ of certiorari' is warrant in light of conflict between United States Court of Appeals upon important federal question that conflict with relevant decisions of this Court.

Prayer

Petitioner prays that this Honorable Court grant 'petition for writ of certiorari' so that the Petitioner can 'fresh-out' claim involving violation of Petitioner's civil-

rights under the Eighth Amendment. Where the facts and evidence evince a finding that the court-below committed 'grave-error' in its finding and determination leading to its reversal of the district court denial of prison officials' motion for summary judgment based on qualified immunity' in prison-condition case for which the petitioner has clearly shown 'deliberate indifference' by defendants (prison officials) who failed to provide 'reasonable measures of safety and protection' from violence at the hands of another prisoner, as well as, 'fail to train' subordinate prison officials.

Respectfully submitted,

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