

IN THE  
SUPREME COURT OF THE UNITED STATES

DOUGLAS JACKSON

CASE No. 19-7702

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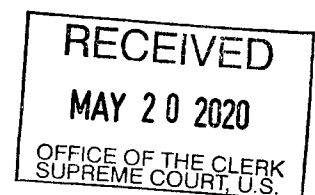
LEAH BERKEAN ET AL,  

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PETITION FOR REHEARING

BY: DOUGLAS JACKSON  
IN PRO SE  
# 748757

BARAGA CORRECTIONAL FACILITY  
13924 WADAGA ROAD  
BARAGA, MICHIGAN 49908



## STATEMENT OF FACTS

PETITIONER DOUGLAS JACKSON (HEREINAFTER "JACKSON") IS PRESENTLY CONFINED IN BAYAGA CORRECTIONAL FACILITY (AMF), ADMINISTRATIVE SEGREGATION, LOCATED IN BAYAGA, MICHIGAN. JACKSON, IS NOT ALLOWED LAW BOOKS, LEGAL REFERENCE MATERIAL, LAW LIBRARY REQUEST, PHYSICAL ACCESS TO THE LAW LIBRARY OR ELECTRONIC LAW LIBRARY, OR ASSISTANCE FROM PERSONS TRAINED IN THE LAW.

ON MAY 5, 2020, JACKSON RECEIVED A LETTER FROM THE CLERK DATED APRIL 27, 2020, STATING: THE PETITION FOR WRIT OF HABEAS CORPUS IS DENIED.

THEREFORE, JACKSON SUBMITS THIS PETITION FOR REHEARING, ON THE GROUND THAT IN JACKSON'S VERIFIED COMPLAINT AND SUPPORTING AFFIDAVIT HE PUT FORWARD A NUMBER OF SPECIFIC, SUFFICIENT NON-CONCLUSIVE DIRECT AND CIRCUMSTANTIAL ALLEGATIONS AND IDENTIFIED AFFIRMATIVE EVIDENCE OF RETALIATION ON RESPONDENT LEAH BEREEAN'S PART THAT COULD SURVIVE THE DISTRICT JUDGE'S SCREENING AND SUPPORT A JURY VERDICT AT TRIAL. JACKSON'S COMPLAINT CONCERNS RETALIATORY EVENTS ARISING BETWEEN MAY 31, 2018 WHEN HE ARRIVED AT OAKS CORRECTIONAL FACILITY (ECF), AND OCTOBER 31, 2018, WHEN HE FILED HIS FIRST COMPLAINT ENTITLED PRISONER CIVIL RIGHTS COMPLAINT.

JACKSON DEMONSTRATED THAT ECF LAW LIBRARY, LEAH BEREEAN (HEREINAFTER "BEREEAN") RETALIATED AGAINST HIM FOR EXERCISING HIS FIRST AMENDMENT RIGHT TO FILE FEDERAL LAWSUITS, AND PRISON GRIEVANCES. JACKSON, IDENTIFIED BEREEAN'S ADVERSE ACTIONS TAKEN AGAINST HIM THAT WOULD DIETER A PERSON OF ORDINARY FIRMNESS FROM CONTINUING TO ENGAGE IN FILING LAWSUITS AND GRIEVANCES. HOWEVER, THE UNITED STATES DISTRICT JUDGE CONCLUDED THAT JACKSON FAILED TO STATE A RETALIATION

CLAIM AGAINST RESPONDENT BEREAN. JACKSON APPEALED TO THE SIXTH CIRCUIT. THAT COURT AFFIRMED THE DISTRICT JUDGE'S DISMISSAL AND DENIED REHEARING. JACKSON THEREAFTER FILED A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT, WHICH DENIED CERTIORARI ON APRIL 27, 2020. MEANWHILE, ON MARCH 19, 2020, JACKSON FILED A MOTION TO REOPEN THE CASE IN THE U.S. DISTRICT COURT. CONSTRUING THE MOTION AS ONE SEEKING RELIEF FROM JUDGMENT, THE COURT DENIED IT ON MARCH 27, 2020. JACKSON FILED NOTICE OF APPEAL AND AN APPLICATION TO PROCEED IN FORMA PAUPERIS, ON APRIL 27, 2020 THE DISTRICT COURT GRANTED HIS APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL. JACKSON SEEKS A REHEARING.

GROUND I. IN PETITIONER'S VERIFIED COMPLAINT AND SUPPORTING AFFIDAVIT HE PUT FORWARD A NUMBER OF SPECIFIC, SUFFICIENT NONCONCLUSORY DIRECT AND CIRCUMSTANTIAL ALLEGATIONS AND IDENTIFIED AFFIRMATIVE EVIDENCE OF RETALIATION OF LEAH BEREAN'S THAT COULD SURVIVE THE DISTRICT JUDGE'S SCREENING AND SUPPORT A JURY VERDICT.

## DISCUSSION

"WHERE THE RECORD TAKEN AS A WHOLE COULD LEAD A RATIONAL TRIER OF FACT TO FIND FOR THE PETITIONER, THERE IS A GENUINE ISSUE FOR TRIAL." MATSUSHITA ELEC. INDUS. CO. V. ZENITH RADIO CORP., 475 US 574, 587 (1986). THE EVIDENCE OF SPECIFIC FACTS, VIEWED IN THE MOST FAVORABLE LIGHT REVEALS THAT THERE IS A GENUINE ISSUE FOR TRIAL. JACKSON'S VERIFIED COMPLAINT AND ADDITIONAL AFFIDAVIT, AS PRESENTED IN THIS CASE, SATISFIED THE BURDEN OF THE RESPONDENT TO RESPOND. FEDERAL

RULES OF CIVIL PROCEDURE 56 (c)(1)(A). SUMMARY JUDGMENT IS INAPPROPRIATE IF THE PLEADINGS ... AND ADMISSIONS ON FILE, TOGETHER WITH THE AFFIDAVITS, SHOW THAT THERE IS A GENUINE ISSUE AS TO ANY MATERIAL FACT AND JACKSON IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW.

THE U.S. DISTRICT JUDGE WAS PROHIBITED FROM WEIGHING EVIDENCE IN MAKING THAT DECISION. CRAWFORD - EL V. BRITTON, 523 US 574 (1998), CLARIFIES THAT EVEN WHEN THE PLAINTIFF'S AFFIRMATIVE CASE REQUIRES A SHOWING OF THE SUBJECTIVE ELEMENT OF RETALIATORY MOTIVATION ON THE PART OF THE DEFENDANT, AS THIS CASE DOES, THE ABOVE STANDARDS FOR SUMMARY JUDGMENT APPLY. THIS STANDARD APPLIES EQUALLY TO DISMISSALS OF INMATE CASES ON INITIAL REVIEW UNDER 28 U.S.C. §§ 1915A(b)(1) AND 1915(e)(2)(B)(i).

THIS COURT'S LAW PROVIDES, THE COURT MUST READ PLAINTIFF'S PRO SE COMPLAINT INDULGENTLY, SEE HAINES V. KERNER, 404 US 519, 520 (1972), AND ACCEPT PLAINTIFF'S ALLEGATIONS AS TRUE. DENTON V. HERNANDEZ, 504 US 25, 33 (1992). APPLYING THESE STANDARDS, JACKSON DID IN FACT AND LAW STATE A RETALIATION CLAIM AGAINST BEREAN. THE ANALYSIS OF MOTIVE IN RETALIATION CLAIMS IS WELL ESTABLISHED. ONCE JACKSON MET HIS BURDEN OF DEVELOPING THAT HIS FIRST AMENDMENT RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES WAS A MOTIVATING FACTOR BEHIND BEREAN'S RETALIATION, THE BURDEN OF PRODUCTION SHIFTED TO BEREAN. MOUNT HEALTHY CITY SCH. DIST. BD. OF EDUC. V. DOYLE, 429 US 274 (1977), ID AT 287.

IN THE CASE AT BAR, JACKSON PRESENTED DIRECT EVIDENCE OF BEREAN'S RETALIATION THAT IS NEAR IN TIME TO THE ADVERSE ACTION SHE TOOK. JACKSON'S CIVIL RIGHTS COMPLAINT

ASSERTS THAT ON JUNE 22, 2018, BEREAN TOLD HIM THAT SHE HAD MADE COPIES OF HIS CIVIL RIGHTS COMPLAINT AND FOR HIM NOT TO EXPECT LEGAL WRITER ASSISTANCE AS LONG AS JACKSON FILE SUITS AGAINST DEPARTMENT EMPLOYEES. BEREAN THEN ACKNOWLEDGED A GRIEVANCE JACKSON HAD FILED AGAINST HER, AND TOLD JACKSON HE WOULD RECEIVE NO LEGAL WRITER HELP. REVIEW PARAGRAPH (PAR) 12 OF JACKSON'S COMPLAINT.

FOUR DAYS LATER ON JUNE 26, 2018, WHEN JACKSON REQUESTED BEREAN TO PROVIDE HIM WITH LEGAL WRITER PROGRAM ASSISTANCE, BEREAN TOLD JACKSON, "YOU'VE GOT SOME NERVE. YOU FILED LAW SUITS AGAINST PRISON STAFF AND GRIEVANCES AGAINST ME." REVIEW PAR. 13 OF COMPLAINT. JACKSON HAD REQUESTED CONSTITUTIONALLY SUFFICIENT LEGAL ASSISTANCE ABOUT MAY 31, 2018. TWENTY-TWO DAYS PRIOR TO BEREAN'S JUNE 22, 2018 VERBAL REMARKS. REVIEW PAR. 9 OF COMPLAINT. THEREFORE, RATIONAL JUIZIST COULD CONCLUDE THAT BEREAN'S REFUSAL TO OBEY MICHIGAN DEPARTMENT OF CORRECTIONS (MDOC) POLICY DIRECTIVE (PD) 05.03.116, SECTION T., AND PROVIDE JACKSON LEGAL WRITER PROGRAM ASSISTANCE WITH PREPARING ITEMS IDENTIFIED IN PARAGRAPH 6(a) OF HIS COMPLAINT WAS THE ADVERSE ACTION MOTIVATED BY JACKSON'S FILING CIVIL RIGHT LAW SUITS AND PRISON GRIEVANCES. JACKSON DID SATISFY ALL THE ELEMENTS, AT THE SCREENING STAGE, TO ESTABLISH A PRIMA FACIE CASE OF RETALIATION UNDER THE UNITED STATES CONSTITUTION. THIS COURT SHOULD GRANT REHEARING ON THIS "SPECIFIC ISSUE".

KEEPING WITH CHRONOLOGY, TWENTY-THREE DAYS AFTER BEREAN'S JUNE 26, 2018 RETALIATORY STATEMENTS, ACCORDING TO JACKSON'S COMPLAINT, BEREAN REFUSED TO MAKE NECESSARY COPIES OF PAPERS NEEDED TO APPEAL A HEARING DECISION. JACKSON ATTEMPTED TO RESOLVE THE ISSUE WITH BEREAN, WHOM TOLD JACKSON, "WRITE ANOTHER GRIEVANCE," THEN TOLD PRISON

GUARDS THAT JACKSON HAD PROPERTY OF THEIRS, RESULTED IN HIS SEGREGATION CELL BEING SEARCHED. BEREAN WAS REFERRING TO JACKSON'S JUNE 29, 2018 PROPERLY FILED GRIEVANCE RELATING TO BEREAN'S JUNE 26, 2018 STATEMENTS REGARDING RETALIATION, WHICH IS THE ONLY PLAUSIBLE EXPLANATION FOR BEREAN'S JULY 19, 2018 ACTION OF ATTEMPTING TO COERCE JACKSON TO SIGN TWO DISBURSEMENTS. ONE IN THE AMOUNT OF \$2.40, AND THE <sup>OTHER</sup> FOR .16¢.

THIS WAS A MORE SUBTLE FORM OF RETALIATION FOR JACKSON FILING LAWSUITS AND CONTINUING TO FILE GRIEVANCES AGAINST BEREAN. BY FILING MULTIPLE GRIEVANCES AGAINST BEREAN, IN PARTICULAR, JACKSON ENGAGED IN ACTIVITY PROTECTED UNDER THE FIRST AMENDMENT. HERIRON V. HARIZON, 203 F.3D 410, 415 (6TH CIR. 2000) (HOLDING THAT AN INMATE HAS AN "UNDISPUTED FIRST AMENDMENT RIGHT TO FILE GRIEVANCES AGAINST PRISON OFFICIALS ON HIS OWN BEHALF"). MR. JACKSON'S COMPLAINT DOES NOT CLAIM THAT HE REQUESTED COPIES OR THAT HE RECEIVED THE ALLEGED PAPERS. SIMILARLY, JACKSON'S COMPLAINT DOES NOT STATE THAT BEREAN BELIEVED THAT HE HAD PAPERS THAT BELONGED TO HER. BEREAN'S REQUEST THAT JACKSON'S CELL BE SEARCHED WAS JUST ANOTHER INSIDIOUS METHOD OF RETALIATION CONNECTED TO HER JUNE 26, 2018, STATEMENT REVEALING HER MOTIVE FOR THE REQUEST.

ACCORDING TO THE COMPLAINT, ONE DAY LATER, ON JULY 20, 2018 BEREAN AGAIN ATTEMPTED TO COERCE JACKSON <sup>TO SIGN</sup> DISBURSEMENT AUTHORIZATION FORMS (CSJ-602) AND (CAR-893). WHEN JACKSON REFUSED, BEREAN THREATENED TO WRITE A NOTICE OF INTENT TO CONDUCT AN ADMINISTRATIVE HEARING (N.O.I). JACKSON'S COMPLAINT STATES THAT HE DID NOT RECEIVE THE N.O.I UNTIL SEPTEMBER 11, 2018. HOWEVER, HE RECEIVED THE COPIES OF THE CSJ-602 AND CAR-893, ON JULY 19, 2018, REVEALING THAT HIS PRISONER ACCOUNT HAD BEEN CHARGED FOR THE ITEMS LISTED ON EACH

FORM. HERE, THE RETALIATION WAS TO CHARGE JACKSON FOR ITEMS HE NEVER REQUESTED, THEN IN HINDSIGHT ISSUE AN N.O.I IN SEPTEMBER, 2018, AND NEVER ALLOW THE HEARING OR JACKSON HIS FOURTEENTH AMENDMENT RIGHT UNDER THE DUE PROCESS CLAUSE, TO BE HEARD. (EMPHASIS ADDED)

NOTWITHSTANDING, BEREAN'S RETALIATORY MOTIVE, JACKSON HAD AN INHERENT RIGHT TO REFUSE TO PAY FOR COPIES HE DID NOT ASK FOR, OR RECEIVE. SECOND, THE WITHHOLDING OF AN ADMINISTRATIVE HEARING TO DETERMINE WHETHER JACKSON'S PROPERTY MAY BE TAKEN IS A SHEER ADVERSE ACTION, AND DENIAL OF THE PROCESS THAT WAS DUE. BEREAN'S HARASSMENT CAMPAIGN WAS SUFFICIENT TO STATE A RETALIATION CLAIM UNDER § 1983 AND A QUESTION OF FACT, NOT DISMISSIBLE AS A MATTER OF LAW. SEE THADDEUS-X V. BLATTER, 175 F.3D 378, 398 (6TH CIR.1999) QUOTING BART V. TELFORD, 677 F.2D 622, 625 (7TH CIR.1982), FURTHER, **THREE DAYS AFTER** BEREAN'S JULY 20, 2018 ADVERSE ACTION SHE REFUSED JACKSON'S REQUEST FOR LEGAL WRITER PROGRAM SERVICE WITH PREPARATION OF A MOTION TO LIFT HIS MOTION TO STAY AND ABIDANCE OF HABEAS PROCEEDING, AND AN AMENDED PETITION FOR WRIT OF HABEAS CORPUS. REVIEW PAR. 15, AND 17, OF JACKSON'S COMPLAINT.

WITH RESPECT TO BEREAN REFUSING TO PROVIDE JACKSON ASSISTANCE WITH THE LEGAL DOCUMENTS IDENTIFIED IN THE COMPLAINT. THE HARM THAT JACKSON SUFFERED IS THE ADVERSE CONSEQUENCES WHICH FLOWED FROM HIS CONSTITUTIONALLY PROTECTED ACTION. IN THE RETALIATION CONTEXT, INSTEAD OF BEING DENIED ACCESS TO THE COURTS, JACKSON WAS PENALIZED FOR ACTUALLY EXERCISING THAT RIGHT. JACKSON'S ALLEGED FAILURE TO SHOW A MORE SUBSTANTIAL INJURY DOES NOT NULLIFY HIS RETALIATION CLAIM. CF, HINES V GOMEZ, 108 F3D 265, 269 (9TH CIR.1997) CITED BY THADDEUS-X V. BLATTER, 175 F3D AT 394.

WITH RESPECT TO THE 60 DAY BAN, JACKSON'S COMPLAINT ASSERTS, "BEREAN CANNOT BAR ME FROM THE LAW LIBRARY AS PUNISHMENT FOR RECEIVING A CLASS II MISCONDUCT NOR BAN ME FOR 60-DAYS, ... BEREAN DID NOT REQUEST AUTHORIZATION PRIOR TO BANNING ME FROM THE LAW LIBRARY." REVIEW PAR. 20, P. 8 OF THE COMPLAINT. JACKSON'S COMPLAINT FURTHER STATES IN THIS REGARD, "THE ONLY PLAUSIBLE REASON FOR BEREAN TO GRANT ME ADDITIONAL LAW LIBRARY TIME, AND THEN IMPOSE A 60-DAY LAW LIBRARY RESTRICTION IS RETALIATION FOR MY CONTINUED EFFORTS TO PROSECUTE MY CIVIL ACTIONS AGAINST PRISON OFFICIALS, AND PROPERLY FILING GRIEVANCES AGAINST BEREAN ON MY OWN BEHALF. THEREBY, PREVENTING ME FROM MEANINGFUL ACCESS TO THE COURTS." (EMPHASIS ADDED)

THEREFORE, JACKSON PRESENTED SUFFICIENT EVIDENCE TO SURVIVE THE U.S. DISTRICT JUDGE'S SCREENING UNDER 28 U.S.C. §§ 1915(e)(2) AND 1915A(b), BECAUSE THE RECORD REFLECTS THAT BEREAN SUBJECTED HIM TO THE FOREMENTIONED VARIOUS ADVERSE ACTIONS WITHIN CLOSE CHRONOLOGICAL TEMPORAL PROXIMITY OF HIS CONTINUED EFFORTS TO FILE AND PROSECUTE HIS LAWSUITS AGAINST PRISON OFFICIALS AND HIS FILING OF SEVERAL GRIEVANCES AGAINST BEREAN. RELATED TO HER RETALIATION, WHICH ARE PREREQUISITE TO FILING SUCH CIVIL RIGHTS ACTION.

TEMPORA PROXIMITY BETWEEN JACKSON'S PROTECTED CONDUCT AND THE ADVERSE ACTIONS ARE SIGNIFICANT ENOUGH TO CREATE AN INFERENCE OF RETALIATORY MOTIVE, MUHAMMAD V. CLOSE, 379 F.3D 413, 417-18 (6TH CIR. 2004), BECAUSE OF THE "OTHER ACTS" EVIDENCE OF RETALIATORY MOTIVE AFOREMENTIONED. SEE SMITH V CAMPBELL, 250 F3D 1032, 1038 (6TH CIR. 2001); FRE 404(b)(2). FACTS FROM WHICH TO REASONABLY INFER BEREAN'S ACTIONS WERE MOTIVATED BY JACKSON'S PROTECTED CONDUCT IS ALSO CONTAINED WITHIN HIS COMPLAINT. ACCEPTED



AS TRUE, JACKSON ALLEGED THAT BERBEAN WAS AT ALL TIMES OAKS CORRECTIONAL FACILITY (ECF) LAW LIBRARIAN AND ACTING IN THAT CAPACITY. REVIEW PAR. 8, OF COMPLAINT. HENCE, DRAWING UPON JUDICIAL EXPERIENCE AND COMMON SENSE, A LAW LIBRARIAN, IS NOT AN ADMINISTRATIVE JUDGE AS REQUIRED BY MICH. COMP. LAWS § 791.251(4), OR A HEARING OFFICER FROM THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS (LARA), THEREFORE BERBEAN WAS NOT AUTHORIZED TO IMPOSE ANY SANCTION AFTER JACKSON WAS FOUND GUILTY OF INSOLENCE (A CLASS II MINOR OFFENSE).

AS JACKSON POINTS OUT IN HIS COMPLAINT, ONLY RESIDENT UNIT MANAGERS, CAPTAINS, AND/OR LIEUTENANTS DESIGNATED BY THE WARDEN SHALL CONDUCT CLASS II MINOR MISCONDUCT HEARINGS, AND ONLY THOSE DESIGNATED STAFF IS AUTHORIZED TO IMPOSE ONE OR MORE OF THE SANCTIONS SET FORTH IN PD 03.03.105 "PRISONER DISCIPLINE, ATTACHMENT D. ATTACHMENT D, UNDER THE HEADING: SANCTIONS FOR CLASS II MISCONDUCT - B, PROVIDES, LOSS OF PRIVILEGES, NOT TO EXCEED 30 DAYS FOR ALL VIOLATIONS ARISING FROM A SINGLE INCIDENT. PD 03.03.105, ATTACHMENT E, UNDER THE HEADING: LOSS OF PRIVILEGES SANCTION - F., UNAMBIGUOUSLY COMMANDS, "DIRECT ACCESS TO GENERAL LIBRARY (NOT LAW LIBRARY). FURTHER, THERE IS NO LANGUAGE PD 05.03.115 "LAW LIBRARIES, WHICH REMOTELY SUGGEST THAT LAW LIBRARIANS ARE AUTHORIZED TO IMPOSE A "LAW LIBRARY" BAN FOLLOWING CONVICTION ON A CLASS II MINOR OFFENSE OR OTHERWISE. WHEN PD 05.03.115 IS READ IN HARMONY WITH PD 03.03.105, NO PRESUMPTION OF SUCH AN ABILITY TO IMPOSE THE BAN EXISTS. REVIEW PAR. 18-23, OF THE COMPLAINT.

A GREAT INJUSTICE HAS OCCURRED IN THIS CASE AND MR. JACKSON SUFFERS UNFAIR PREJUDICE AS A RESULT. THE U.S. DISTRICT JUDGE'S DECISIONS WITH REGARD TO JACKSON'S RETALIATION CLAIM AS IT RELATES SPECIFICALLY TO BERBEAN

WERE SO GROSSLY VIOLATIVE OF FACT AND LOGIC THAT THEIR EVIDENCES PERVERSITY OF WILL, DEFIANCE OF JUDGMENT, AND THE EXERCISE OF PASSION OR BIAS. AN UNPREJUDICED PERSON, CONSIDERING JACKSON'S RETALIATION CLAIM, WOULD SAY THERE WAS NO JUSTIFICATION OR EXCUSE FOR THE RULING. THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT AFFIRMED THE DISTRICT JUDGE'S RETALIATION RULING AND DENIED REHEARING.

HOWEVER, JACKSON'S VERIFIED COMPLAINT AND ADMISSIONS ON FILE, TOGETHER WITH THE AFFIDAVITS, SHOW THAT THERE IS A GENUINE ISSUE AS TO BERMAN'S RETALIATORY MOTIVE AND BERMAN SHOULD BE REQUIRED TO BE SERVED A COPY OF THE COMPLAINT AND GIVE RESPONSE AS A MATTER OF LAW. THE RECORD BEFORE THIS COURT REVEALS THAT THE DISTRICT JUDGE ERRED BY WEIGHING EVIDENCE IN MAKING ITS RETALIATION DECISION, AND RELIED HEAVILY UPON EVIDENCE NOT SUBMITTED IN THE CONTROVERSY FOR ITS SUPPORT.

### RELIEF

PETITIONER JACKSON, ASKS THIS HONORABLE PANEL TO OVERLOOK HIS INARTFUL PLEADINGS AND EXERCISE ITS POWERS OF EQUITY TO PREVENT MANIFEST INJUSTICE AND GRANT A REHEARING, AND ANY OTHER APPROPRIATE REMEDY THAT THE CASE MAY REQUIRE.

DATED ON: NIY/SHEVAT 11, 2020

RESPECTFULLY SUBMITTED,  
S/ DOUGLAS JACKSON  
IN PRO SE  
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BADAGA CORRECTIONAL FAC.  
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