No. 19-7801

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

James-Benjamin; Barstad© — PETITIONER
(Your Name)

vs.

STATE OF WASHINGTON; et.al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DISTRICT COURT - EASTERN WASHINGTON DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James-Benjamin; Barstad©
(Your Name)
C/O BARSTAD, JAMES [#759730]
COYOTE RIDGE CORRECTION CENTER
P.O. BOX 769; MSC-IB-23-1L
(Address)

CONNELL, WA [99326]
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1) When STATE OF WASHINGTON repeatedly imposes sanctions back-to-back, i.e., when "temporary" restrictions become perpetual through various schemes, is it equitable to then allow Sandin v. Conner to preclude any/all inmate claims?

2) Is punishing inmates, who are acting ~~as~~ correctly, for the misdeeds of other inmates equitable and in agreement with penological objectives, especially when said punishment is imposed in an arguably unconstitutional manner, i.e., racially, arbitrarily and capriciously?

3) Should STATE OF WASHINGTON be allowed to continue the use of a Policy that is not authorized by statute, especially when it is applied in an arguably unconstitutional manner?

4) What exactly is the minimum due process required when an inmate loses merely "privileges," the question left open by this Court in Baxter v. Palmigiano?

5) Did STATE OF WASHINGTON breach their Contract with the Plaintiff, James-Benjamin; Barstad®, subjecting them to the damages set forth in said Contract?

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption. A list of the parties is as follows:

NOTE: ALL DEFENDANTS ARE SUED IN JOINT AND SEVERAL CAPACITY, AS WELL AS BOTH PRIVATE/PERSONAL AND PUBLIC/OFFICIAL CAPACITIES

Defendants:

1) Correctional Officer(s) John Doe(s), who made the "Close Associate" determination.

2) Correctional Officer(s) John Doe(s), who served the Sanction/Restriction upon Plaintiff

3) Superintendent (WSP) Donald Holbrook

4) Secretary (DOC) Stephen Sinclair

5) Secretary (DOC) Robert Herzog

6) Asst. Attorney General John C. Dittman

7) U.S. District Judge Thomas O. Rice

Plaintiff: James-Benjamin; Barstad®

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X] For cases from **federal courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[X] For cases from **state courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

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

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

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

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

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

[X] District Court has certified that the case is unappealible.

November 12, 2019

[X] For cases from **state courts**:

The date on which the highest state court decided my case was July 10, 2019. A copy of that decision appears at Appendix ___B___.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) "No State shall ... make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any ... Law impairing the Obligation of Contracts[.]" U.S.Const. Art.1, § 10,1.

2) "Congress shall make no law respecting ... the right of the people to freely assemble[.]" U.S.Const.Am. I

3) "The right of the people to be secure ... against unreasonable ... seizures[.]" U.S.Const.Am. IV

4) "No person shall be ... deprived of ... property, without due process of law, ... without just compensation." U.S.Const.Am. V

5) "In suits of common law, ... the right of trial by jury shall be preserved[.]" U.S.Const.Am. VII

6) "No State shall ... deprive any person of ... property, without die process of law[.]" U.S.Const.Am. XIV, § 1

7) STATE OF WASHINGTON, by becoming a corporator (See 22 U.S.C.A. 286e) has laid down its sovereignty and can exercise no power which is not derived from the corporate charter. (See The Bank of the United States v. Planters Bank of Georgia, 6 L.Ed. (9 Wheat) 244))

8) Plaintiff is not a "person," is not a party to the State Constitution by oath, pledge, contract, or as signatory, since not expressly named. (See, The People v. Herkheimer, 4 Cowen 345; 1825 N.Y. LEXIS 80)

9) All the government does and provides legitimately is in pursuit of its duty to provide protection for **private rights**, which duty is a debt owed to its creator, We The People (Wynhammer v. People, NY 378) ... and the private unenfranchised individual; which debt and duty **is never extinguished** nor discharged, and is perpetual. No matter what the government/state provides for us in manner of convenience and safety, the unenfranchised individual **owes nothing** to the government." (Hale v. Henkel, 201 U.S. 43).

10) STATE/State Legislature has no "Constitutional Legislative Authority" over the private rights of the sovereign people (Plaintiff). (Hale v. Henkel, 201 U.S. 43, at page 74 (1905)

11) All crimes/court actions are commercial. (See CFR Title 27, § 72.11)

12) The Law Merchant applies, pursuant to UCC 1-103; Title 17 U.S.C.A, § 1775.04; RCW 6.44.130

13) Once jurisdiction is challenged, it must be **proven.** Plaintiff is a non-resident alien and not subject to presumed jurisdiction of STATE OF WASHINGTON or any other corporation.

STATEMENT OF THE CASE

Plaintiff, **James-Benjamin; Barstad®** is a Private human being OUTSIDE the UNITED STATES. While incarcerated, Plaintiff's private property was seized for a thirty-day period, as punishment for the actions of other inmates. There was no "notice" prior to the taking and no "opportunity to be heard" at any time. Plaintiff brought suit for tort, demanding damages of $46.98 million dollars, pursuant to the holding in Trezevant v. City of Tampa, 741 F.2d 336 (11th Cir. 1994), wherein the court awarded $25,000.00 for a period of 23-minutes of Trespass. Plaintiff calculates damages as 30-days of continuous Trespass in this case.

Plaintiff has exhausted state remedies. The state concludes that the issue is frivolous, based on Sandin v. Connor, 515 U.S. 472, 115 S.Ct. 2293, 49 L.Ed.2d 18 (1995). They hold that Plaintiff "has no due process right," that the private property seized is a "privilege," that the taking was merely "temporary." They also cited In re Gronquist, 138 Wn.2d 388, 978 P.2d 1083 (1999) as providing no due process to the Plaintiff, albeit they ignore the fact that Gronquist received "notice" and "opportunity to be heard" prior to his takings.

They are also ignoring the Maritime contract entered between Plaintiff and STATE OF WASHINGTON ("Notice and Legal Demand," attached herein as **EXHIBIT "C"**) in which the state agrees that Plaintiff is not a "United States citizen," is outside their in personam and subject matter jurisdiction, and therefore **accepts no benefits** from STATE OF WASHINGTON. Along with the "Notice and Legal Demand" are Certificates of Title (lien) covering all private property of the Plaintiff, including the cestui que trust known as "JAMES BENJAMIN BARSTAD®." STATE OF WASHINGTON has made no attempt to register any of said property in the Commercial Registry (Secretary of State/UCC), nor have they contested this status **in any of**

multiple opportunities to do so. They have ceded that they have no authority, jurisdiction, or title over the private property of the Plaintiff, yet they offer no remedy for the tort. Further, while challenged to do so, they have never proven jurisdiction (See EXHIBIT "D").

As Plaintiff argued in state and federal courts, Sandin cannot be allowed to explicitly preclude due process to inmates, as well as preclude them from bringing actions against prison administration. This becomes evident when the scheme of the Group Violence Reduction Strategy (GVRS) is applied racially, the determination of "who" gets punished is determined arbitrarily, capriciously, and racially, and punishes men who are not involved in violent acts. Finally, GVRS (DOC Policy 470.540) is not authorized by statute, does not decrease violence, erodes the legitimacy of prison administration, is applied unconstitutionally, and can be applied in perpetuity, along with other schemes (not merely "temporary"). As such, the GVRS scheme is not equitable and is counter to true penological objectives. Plaintiff should not be precluded from bringing this case to the court's attention, simply because it is deemed frivolous. This type of preclusion also erodes the legitimacy of the judicial system.

Plaintiff also requests this Court to evaluate the minimum due process required prior to taking an inmates's mere "privileges," i.e., balancing prisoners' rights and answering the question left open in Baxter v. Palmigiano, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976). In that case, this Court foresaw that this issue would ripen for adjuication. STATE OF WASHINGTON cannot be allowed to continue to take private property without "notice" and "opportunity to be heard," especially when they are taking said property from inmates that are acting as expected, and not involved in violent/gang activity.

REASONS FOR GRANTING THE PETITION

Since at least as early as 1933, the Bankruptcy of the UNITED STATES, all Courts are federal tribunals operating under Admiralty/Maritime jurisdiction. Subsequently, all "judges" operate with a tacit presumption that the UNITED STATES and STATE OF WASHINGTON (in this case) are "Holder-In-Due-Course" of the present Petitioner and His Private Property.

Petitioner is now appearing in **special visitation** as Secured Party/Creditor. The legal "presumption" has been properly rebutted, as evidenced by **Exhibit A** herein. Said rebuttal is filed with the Secretary of State, Colorado Regional Office, File No. 2016-201-0433.

STATE OF WASHINGTON has not challenged this rebuttal (See **Exhibit F** herein). Petitioner has also offered STATE OF WASHINGTON/UNITED STATES agents multiple opportunities to "prove their claim(s)" and/or jurisdiction over the res. ALL agents served have failed/refused to respond, and have entered default. Finally, Petitioner, as Secured Party/Creditor, has Accepted For Value all presentments from STATE OF WASHINGTON/UNITED STATES. See attached "'Affidavit Denying Corporate Existence" **Exhibit H.**

Since STATE OF WASHINGTON/UNITED STATES agrees with Petititoner that they have no jurisdiction, it then follows that the Corpus must be released from prison, as well as all Bonds/Instruments written in the name of the DEBTOR, JAMES BENJAMIN BARSTAD®. STATE OF WASHINGTON is also liable to the Petitioner for $46.89 Million U.S. Dollars, as damages for Trespass/Conversion/Slander of Title in this case. Petitioner will place lien on John C. Dittman and Thomas O. Rice for the damages due to remedy the situation.

TAKE JUDICIAL NOTICE that the "contract," (STATE OF WASHINGTON VS. JAMES BENJAMIN BARSTAD, SPOKANE COUNTY SUPERIOR COURT No. 96-1-01310-3) has been Accepted for Value, Dishonored, and aliened to Larry D. Steinmetz, dba: SPOKANE COUNTY DEPUTY PROSECUTOR (See, Colorado Regional Office, Master Filing No. **2019-205-6570.** Finally, the F.O.B on that "contract" was inadvertently (intentionally) omitted from the agreement/contract. As Secured Party, Petitioner retains a Security Interest in His labor and services - Standard Terms - 2% 10, Net 30 days; 18% per annum on the unpaid principal, exclusive any taxes (including excise, privilege, use occupation, trade, sales, etc. -Federal, State, and/or local) and that as the Creditor first in priority having given value to the DEBTOR ORGANIZATION PERSON "JAMES BENJAMIN BARSTAD" acquiring

Rights in the collateral, this court must provide remedy, as Petitioner has Right to Contract (USC § 1981) and the States cannot impair the obligation of contract, ESPECIALLY where they were not parties to the Security Agreement which preceded the "contract", the value, the attachment, and the perfection of the Petitioner's Security Interest. Petitioner is entitled to indemnification.

At no time has any "person" and/or agent of STATE OF WASHINGTON/UNITED STATES rebutted My Commercial Affidavit(s), point-for-point to show any validity of the Assessment. STATE OF WASHINGTON/UNITED STATES are non-judicially foreclosed from operating against the Secured Party pursuant to UCC § 9-610 through 9-614. This comprises a Compulsory Counterclaim which must be addressed. All lower courts have failed/refused to address the compulsory counterclaim, exhibiting absolutely no appearance of fundamental fairness.

Order dismissing from the Court of Appeals, Ninth Circuit is attached herein as **EXHIBIT G**, also Accepted For Vaslue.

James-Benjamin; Barstad, Plaintiff
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CONNELL, WA [99326]

District Court of the United States
Eastern District of Washington

Barstad, James-Benjamin; Plaintiff, Vs. WASHINGTON DEP'T OF CORRECTIONS, et.al.	No. 4:19-cv-05195-TOR PLAINTIFF'S OPENING BRIEF

1.1) Prison disciplinary procedures ideally provide "a standardized system to determine whether misconduct by an offender has occurred," Washington Administrative Code (WAC) 137-28-140, which "clearly links an offender's behavior ... with the receipt or denial of ... privileges." WAC 137-28-140; Revised Code of Washington (RCW) 72.09.130. As such, a prisoner can expect to be punished for their misbehavior. However, a prisoner should not expect to be punished for someone else's misbehavior, especially absent minimal due process.

1.2) The Fifth and Fourteenth Amendments protect individuals from deprivations of life, liberty, and property without due process of law and from the arbitrary exercise of the powers of government. (U.S.C.A. V, XIV § 1; Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); Hurtado v. California, 110 U.S. 516, 527, 4 S.Ct. 111, 28 L.Ed.2d 548 (1972)).

1.3) The threshold question in every challenge is whether the challenger has been deprived of a protected interest in life, liberty, or property. In re Pers. Restraint of Pullman, 167 Wn.2d 205, at 211-12 (2008). A protected liberty

interest may arise from the Constitution itself, by reason of guaranties implicit in the word "liberty," or from an expectation or interest created by state laws or policies. Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.Ed.2d 174 (2005) (citing Vitek v. Jones, 445 U.S. 480, 493-94, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980); Wolff, 418 U.S. at 556-58. State can create an expectation that the law will be followed, such as the WAC and RCW cited in ¶ 1.1., and this expectation can rise to the level of a protected liberty interest. In re Pers. Restraint of Cashaw, 123 Wn.2d 138, at 144 (1994).

1.4) Washington Department of Corrections (DOC) Group Violence Reduction Strategy (GVRS), Department of Corrections (DOC) Policy 470.540 punishes prisoners that are not involved in violent acts, but rather punishes them because they had some social interaction with the perpetrators of those violent acts. Since DOC Policy 470.540 is not statutorily authorized, this Court should look to whether the GVRS "falls within the expected parameters of the sentence imposed by a court of law." Sandin v. Conner, 115 S.Ct. at 2301. The WAC and RCW cited above show there needs to be a clear link between the offender being punished and that offender's behavior, not another offender's behavior. Therefore GVRS, DOC 470.540 is contrary to statutory authority and does not fall within the parameters of the sentence(s) imposed.

1.5) The state argues that Sandin allows them to inflict any punishment, so long as the treatment of the prisoners does not impose "atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. This concept gives prison administration a green light on prisoner abuse. It was not too long ago that Washington prisoners received a "finger wave" during strip searches, wherein the searching officer would insert a finger into the prisoner's

anus. This was an "ordinary incident of prison life," and therefore would be subtantively barred as a tort claim by the prisoner, under Sandin.

1.6) Similarly, it is common for prisoners to be sent to Administrative Segregation for "investigation" lasting up to 45 days. Then, the prisoner is released for a day or so into general population and taking again to Ad.Seg. for more "investigation." While this can continue in perpetuity, it is substantively/technically barred under Sandin, since "each" trip to Ad.Seg. is within "ordinary incidents of prison life."

1.7) "[A]n inmate cannot be forced to sacrifice one constitutionally protected right solely because another is respected." Allen v. City of Honolulu, 39 F.3d 936, 940 (9th C. 1994); Hebbe v. Pliler, 627 F.3d 338 (9th C. 2010). So long as prison officials do not violate the constitutional rights of prisoners, their discretion in the administration of the prison will be honored. The present case involves the taking of private property, a recognized liberty interest. However, since it was "only for thirty days," Plaintiff has been barred from any relief. Yet the prison could take that propert for 30 days, give it back for one day, and then take it again, into perpetuity.

1.8) A balance must be drawn between the maximum opportunity for the exercise of prisoners' constitutional rights and the practical necessities of managing and administering a complicated penal community. Gittlemacher v. Prasse, 428 F.2d 1 (3rd C. 1970). The rights retained by prisoners include due process and equal protection. Clutchette v. Procunier, 328 F.Supp. 767 (N.D. Cal. 1971). This also includes protections to inmate property. Coffin v. Reichard, 143 F.2d 443 (6th C. 1944). (Bold emphasis added).

1.9) In balancing these interests, courts have allowed the prisoners' rights

of association to be curtailed if the security of the institution is threatened by the exercise of these rights. Garland v. Polley, 594 F.2d 1220 (8th C. 1979). However, GVRS punishes for associating with the only other prisoners one can come into contact with. Prisoners live, eat, shower, and recreate in the same living unit and yard while housed in Golf Unit of Washington State Penitentiary (WSP). Prisoners are forced into close contact, and then are expected to not interact socially for fear of being deemed an "associate" or a "close associate." When later one of the men in the unit commits a violent act, others are punished, merely because they spoke together at one time or another.

1.10) Common sense states that prisoners should be free from punishment while they are behaving as expected, however GVRS will still punish those behaving correctly, merely because they spoke to another prisoner who did misbehave. The GVRS removes the "clear link" between a prisoners behavior and replaces it with a Hobson's choice. RCW states that the Sentencing Reform Act of 1981 (SRA) purposes to "offer the offender an opportunity to improve himself or herself," but the GVRS takes that away, replacing it with chilling of free speech. GVRS places the onus of curtailing the rights of association upon the prisoners themselves.

1.11) In the recent case of Wilkinson v. Austin, 545 U.S. 209 (2005), the Court applied a test to determine the balance of three factors listed in Mathews v. Eldridge, 424 U.S. 319, 47 L.ED.2d 18, 96 S.Ct. 893 (1976) as requiring consideration whether government procedures satisfy the Constitution's due process requirements -- (1) the private interests that would be affected by the application; (2) risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substantive procedural safeguards; and, (3) government's interest, including the function

involved and the fiscal and administrative burdens that the additional or substantive procedural requirement would entail. In Wilkinson, the Court found conditions of Supermax prison to impose an atypical and significant hardship on inmates in relation to ordinary incidents of prison life.

1.12) Yet, GVRS imposes a Hobson's choice to **voluntarily** subject oneself to segregation, in fear of reprisal for speaking to another prisoner. This chills free speech, removes the legitimacy of the penal institution, creates an environment of distrust and animosity, leading to increased chances of continued violent acts. GVRS actually does not lessen violent acts, but creates an environment that is more violent.

1.13) GVRS compels a man of reasonable fortitude to say, "Don't talk to me, I can't know you. You might do something that I will get punished for," when a new man enters the living unit, holding out his hand to introduce himself. This will be taken as an offense. This becomes more poignant when considering that one cannot leave the proximity of this new prisoner. Prisoners in Golf Unit **only** interact with other Golf Unit prisoners. It defies logic and common sense to expect that these prisoners will **not** socialize, and then punish them when they **do** socialize. This is then arbitrary and capricious as applied, making it also unconstitutional, as well as contrary to statute.

1.14) The state also argues In re Pers. Restraint of Gronquist, 138 Wn.2d 388 along with Sandin. Gronquist states "prisoners charged with general infractions are not entitled to minimal due process and the process afforded by [prison] regulation is all that is due. See, Wolff, 418 U.S. at 571-72 (noting "[w]e do not suggest, however, that the procedure required ... for the deprivation of good time would also be required for the imposition of lesser penalties such as the loss of

privileges."). Thus, prisoners are not entitled to minimal due process, as that term of art is used, **in general infraction hearings**, but are entitled to minimal due process in serious infraction cases; they are entitled to the process set forth in prison regulations." *[7] 138 Wn.2d at 397-98. (Bold emphasis added).

1.15) Plaintiff contends that this holding is misplaced. Gronquist received **minor infraction hearings**. GVRS does not provide **any** opportunity to be heard prior to the takings. Further, while GVRS states that notice will be given in writing (DOC 470.540 (III.A.1) and explained in Orientation (III.A.2), written notice is only available when you search for it by going to the law library and reading the Policy. Yearly meetings (III.B) were not held. Itelligence and investigation Unit (IIU) find the desigmations of "associate" and "close associate" in arbitrary, capricious manner. In the present case, Plaintiff was observed "speaking to a perpetrator in the shower area for five minutes," and that is the **only record** available relative to his designation as a "close associate."

1.16) The designation of "close associate" to a perpetrator implies that Plaintiff was "able to influence the perpetrator's behavior." At the time of the violent incident, Plaintiff has been housed in Golf Unit for merely six weeks. At no time did **anyone** analyze the five minute conversation as to content, and/or determine exactly "what" influence Plaintiff imposed upon the perpetrator. This is the epitome of arbitrary and capricious, especially when then taking private property without (admittedly) minimal due process. When forced into close proximity 24/7/365 it is all but guaranteed that eventually one will be deemed and "associate" and/or "close associate" with a perpetrator of a violent act.

1.17) This begs the question, passed over by the United States Supreme Court in Baxter v. Palmigiano, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976), that

question being, "Exactly what should be the minimum process due when a prisoner is only going to lose 'privileges?'"

1.18) Baxter, *[16], Opinion Part V:

> "Finally, the Court of Appeals for the 9th Circuit in No. 74-1194 [Emomoto v. Clutchette] held that minimum due process - such as notice, opportunity for a response, and statement of reasons for actions by prison officials - was necessary anywhere inmates were deprived of privileges. 510 F.2d, at 615. We did not reach this issue in Wolff; indeed, we said: 'We do not suggest, however, that the procedures required by today's decision for the deprivation of good time would also be required for the imposition of lesser penalties such as the loss of privileges.' 418 U.S., at 572 n.19, 14 L.Ed.2d 935, 94 S.Ct. 2963, 71 Ohio Ops 2d 336. Nor do we find it necessary to reach the issue now in light of the record before us. None of the named plaintiffs in No. 74-1194 was subject solely to loss of privileges; all were brought before prison disciplinary hearings for allegations of the type of 'serious misconduct,' 418 U.S., at 558, 41 L.Ed.2d 935, 94 S.Ct. 2963, Ohio Ops 2s 336, that we held in Wolff to trigger procedures therein outlined. See, n.1, supra. Without such a record, we are unable to consider the degree of 'liberty' at stake in loss of privileges and thus whether some sort of procedural safeguards are due when only 'lesser penalties' are at stake. To the extent that the Court of Appeals for the 9th Circuit required any procedures in such circumstances, the Court of Appeals acted prematurely, and its decision on the issue cannot stand.
>
> "We said in Wolff v. McDonnell, 'As the nature of the prison disciplinary process changes in the future years, circumstances may then exist which will require consideration and reflection of this Court. It is our view, however, that the procedures we now require in prison disciplinary proceedings represent a reasonable accommodation between the interests of the inmates and the needs of the institution.' 418 U.S., at 552, 41 L.Ed.2d 935, 94 S.Ct. 2963, 71 Ohio Ops 2d 336. We do not retreat from that view. However, the procedures required by the Court of Appeals in Nos. 74-1187 and 74-1194 are either inconsistent with 'the reasonable accommodation' reached in Wolff, or premature on the basis of the records before us. The judgments in Nos. 74-1187 and 74-1194 accordingly are reversed.

This issue is now ripe. Court of Appeals for the Ninth Circuit suggests that "notice" and "opportunity to be heard" should be required prior to the taking of "privileges" from a prisoner. That is Plaintiff's argument, as well.

1.19) Reasoning for this argument was well-articulated in Clutchette v. Procunier (II), 510 F.2d 613; 1974 U.S. App. LEXIS 6424 (No. 71-2357):

> "Any deprivation of the small store of 'privileges' accorded a confined or relatively confined group causes a far greater sense of loss than a similar deprivation in a free setting, as anyone can attest who has been a student in a strict boarding school, a sailor aboard ship, a combat soldier, or a prisoner

> in time of war or peace. Within prison walls, the denomination 'privilege' can encompass a host of matters, ranging from simple amenities through such cherished concerns as access to visitors, schooling, recreation, and institutional employment. Grievousness of the loss depends upon the nature and extent of the privileges withdrawn for disciplinary purposes and upon the circumstances and makeup of the prisoner who suffers the loss. Deprivation of the more highly valued privileges can have a debilitating effect on the amenability of a prisoner to rehabilitation as the loss of good-time credit or a period of isolation from the general prison population. We therefore believe that some process is due to prisoners where privileges are being removed. Because of the severity of the loss of privileges depends on multiple variables, we do not purport to draw a detailed constitutional blue print governing the removal of privileges for disciplinary purposes. Process due can and should be flexible to meet the exigencies of the situation. We require only that any plan to establish prison disciplinary procedures attending withdrawal of privileges embrace at least these due process minima: A prisoner subject to removal of one or more privileges (1) must be given notice of intent to remove one or more stated privileges, (2) together with a statement of grounds for removal, (3) at a reasonable time **before discipline is imposed**, and (4) must be given an **opportunity to respond before** such discipline is imposed. We leave to the prison administration the fashioning of a plan to implement these guaranties, with appropriate regard for the seriousness of the infraction, the severity of the deprivation, and the circumstances of the affected prisoner.

Clutchette II, 510 F.2d 613, at 615. (Bold Emphasis added).

1.20) GVRS on its face aims to reduce gang violence. However, without any due process, it irrationally punishes up non-gang members by classifying them as "associates" and "close associates." Such a scheme prejudices non-gang members, and is usually based upon their skin color. In the present case, all parties punished for speaking to the alleged perpetrators of the violent act were caucasian. The issue is related to thw case of City of Cleburne v. Cleburne Living Center, 432 U.S. 432 (1986), wherein group homes for mentally disabled were required to obtain permits, as one of the concerns was potential harassment of the residents by high school students nearby. GVRS raises similar concerns regarding safety of the victims of violent acts in prison. Cleburne overruled the deferential "rational basis" test, and similarly GVRS should also be rescinded as irrational.

1.21) Further, since "gang-related" translates into "racially-based" (diversity in prison gangs is the exception, and not the norm) within the prison setting, GVRS needs to be under a "strict scrutiny" test. It was held in Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 132 L.Ed.2d 155, 115 S.Ct. 2097 (1995), that "strict scrutiny held applicable to all racial classifications imposed by federal, state, or local government actor[s]." Also, Romer v. Evans, 517 U.S. 620, 134 L.Ed.2d 855, 116 S.Ct. 1620 (1996) provides:

> *[4] "Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the equal protection clause of the Federal Constitution's Fourteenth Amendment." (citing, Louisville Gas & Elec. Co. v. Coleman, 227 U.S. 32, 37-38, 72 L.Ed 770, 48 S.Ct. 423 (1928));
>
> *[5] "Central to the Federal Constitution's guarantee of equal protection is the principal that government and each of its parts remains open on impartial terms to all who seek government's assistance; equal provision is not achieved through indiscriminate imposition of inequalities; a law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection in the most literal sense; the guaranty of equal protection of the laws is a pledge of the protection of equal laws." (citing Yick Wo v. Hopkins, 118 U.S. 356, 369, 30 L.Ed 220, 6 S.Ct. 1064 (1886));
>
> *[7] "The federal constitution conception of equal protection of the laws must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate government interest." (citing Department of Agriculture v. Moreno, 413 U.S. 528, 534, 37 L.Ed.2d 782, 93 S.Ct. 2821 (1973));
>
> *[9] "The equal protection clause of the Federal Constitution's Fourteenth Amendment does not permit a legislative classification of persons undertaken for its own sake.";
>
> *[10] "Class legislation is obnoxious to the prohibitions of the Federal Constitution's Fourteenth Amendment." ([9, 10] citing Civil Rights Cases, 109 U.S., at 24, 27 L.Ed. 835, 3 S.Ct. 18.

Romer v. Evans, 517 U.S. 620. The most obvious way to hold the "strict scrutiny" test is to write an infraction and hold a hearing proior to the taking when GVRS

is implicated. This will also some sort of "qualitative" review of the interactions between "associates/close associates" and the perpetrators of violent acts, thus insuring the constitutional safeguards are in place. The prison already has procedure in place; therefore it will create no hardship upon the prison adminsitration.

1.22) To summarize this issue, GVRS has no authorizing statute. Punishing men for the misdeeds of others is inequitable and unconstitutional. It becomes more poignant when the reason for being punished is speaking to someone who you live, eat, and recreate with, **exclusively**. No due process if admittedly provided prior to the taking of "privileges," showing the ripeness of the question posed and passed upon by the U.S. Supreme Court in Baxter. "Notice" and "opportunity to be heard" **prior** to the taking of "privileges" is necessary. Gronquist is misplaced, as Gronquist was not "similarly placed," i.e., Gronquist received notice and hearings.

1.23) This concludes Plaintiff's argument based upon STATE OF WASHINGTON (UNITED STATES) presumption that Plaintiff is a franchise of their corporation(s), i.e., "statutory jurisdiction" argument. The use of the term "privilege" within this previous argumetn IN NO WAY grants any rights to the corporations from the Plaintiff (See, Notice and Legal Demand, EXHIBIT A, attached to Complaint). Petitioner receives no "privileges" from the corporations.

1.24) At this time the court and Defendant(s) need to peruse and sign the attached "Injury Defense Franchise and Agreement (See, EXHIBIT B, attached herein). If they decide they will not sign this Agreement, Plaintiff propounds that they have already evidenced their conditional consent to this Agreement, as

shown in Section 7.1 Generally, page 43 of 70, in all actions represented therein, except "Number 1. Signing this agreement." Further, Defendant(s) have also fulfilled Section 7.4 (3), "Penalizing ... Protected Party ... when he ... does NOT satisfy the statutory definition of 'person,'" (Page 43 of 70) and § 7.4 (10), wherein the "Taking any action adversely affecting the private property interest of the Submitter" (Page 48 of 70).

2.1) This case is a private property interest case, and can not be dismissed as frivolous. Defendant(s) committed the tort of trespass/conversion upon private rights of property. Pursuant to Trezevant v. City of Tampa, 741 F.2d 336 (11th Cir. 1984), Plaintiff is entitled to $46,980,000.00 ($25,000.00 per every 23-minutes of continuing trespass), as Defendant(s) seized the private property for a thirty day period.

2.2) Plaintiff and Defendant(s) have contracted that Plaintiff is not a "person." (See "EXHIBIT A", "Notice and Legal Demand"). Defendant(s) have breached this contract. Plaintiff has liberty of contract protected by the U.S. Constitution. 16 AmJur2d Const.L § 373. This includes right to acquire and possess property and to contract concerning it. Lawrence v. Rutland Railroad Co., 80 Vt. 370, 67 A 1091. This is a guranty against arbitrary or unreasonable restraint upon the right to contract. Lochner v. State (NV), 198 U.S. 45, 49 L.Ed 937, 25 S.Ct. 539; State ex.rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 117 P.1101 (1911). See UCC § 1-102(3)(4); 42 U.S.C. § 1981; Also, Generally Changing Conceptions of Property in Law, 86 U.Pa.L.Rev. 691, 7021 (1938) (describing property rights as the liberty to use, power to alienate, and control against interference by others) (Emphasis added).

2.3) 42 U.S.C. § 1981 states Plaintiff has a right to contract which is

protected against impairment under color of state law. If state is allowed to impair, the Plaintiff has access to courts under 5 U.S.C.S. § 702, as legal wrong (right to review). Further, § 1982 assumes the right to purchase property is to be interpreted in same manner as § 1981. Since state, under color of law, is now abridging the contract, § 1983 is appropriate venue for remedy. Article I § 10, clause 1: "No state shall ... pass any ... Law impairing the Obligation of Contracts."

2.4) State courts have also said "We shall not invoke public policy to override the otherwise proper contract even though its terms may be harsh and its necessity doubtful." State Farm Gen. Ins. Co. v. Emerson, 102 Wn.2d 477, 483, 687 P.2d 1139 (1984). Also, Mary Imhof Trucking, Inc. v. Valley Ins. Co., 2000 WAL 968.

2.5) Sambasivan v. Kadlec Med. Ctr., 184 Wn.App. 567 (2014) also provides:

> *[11] "The civil rights protection of § 1981 (as to contracts) and § 1982 (right to buy/sell property) are construed similarly."
>
> *[12] "An act that might be contractually permissive for a defendant can be actionable as a violation of the U.S.C. § 1981 right to contract if disciplinary intent and harm can be proved."

2.6) Finally DOC Policy allows for inmates to enter contracts. See, for example, 200.000(VI)(B); 610.010(IV)(A); 670.500(X)(D); 700.350; 710.400; 890.000.

2.7) This case is about contract breach and slander of title/tort of conversion via trespass. Therefore, Maritime/Admiralty rules will apply. Since this court has stipulated that "neither State nor its officials" nor "arms of the State" qualify as "persons," then they also agree that all parties are upon an equal footing in this litigation, **take judicial notice** of the following sections in EXHIBIT B: Page 10 of 70, number 9. (ll. 27-48); page 15 of 70, ll. 16-21;

page 38-39 of 70, Section 5, Consideration; page 44-46 of 70.

2.8) As a private secured party, Plaintiff has filed his claim over the DEBTOR, JAMES BENJAMIN BARSTAD©, and the Property. (See, document entitled UCC FINANCING STATEMENT and FINANCING STATEMENT ADDENDUM, approx. page 10-11 of EXHIBIT A) (At this time, Plaintiff has no idea what order the documents were e-filed to this court), COLORADO UCC Filing No. 2016-201-0433, Feb.03, 2016. To date, STATE OF WASHINGTON has failed/refused to register any claim against this property. Plaintiff is requesting a UCC 11-R Search to confirm this, but will take a few weeks to process. Since Plaintiff is "first in line, first in time" with the perfected Security Interest, STATE OF WASHINGTON has/had no valid claim over the property they seized/converted. **(Search Results now attached, "EXH. "F")**

2.9) At this time, Plaintiff would like this court to **take judicial notice** of EXHIBIT B, **Page 44-46 of 70,** Judges. STATE OF WASHINGTON and John C. Dittman have had multiple oppportunities to "prove their claim" via the Conditional Acceptance For Value (CAFV) documents served upon them. To date, they have all failed/refused to answer, therefore they are in default and have stipulated to the terms contained therein. This creates a compulsive counterclaim. STATE OF WASHINGTON has hijacked Plaintiff's exemption and is failing to pay the taxes upon the stolen Bonds in the name of the DEBTOR.

2.10) Since Plaintiff has requested full settlement of the underlying charges and return of his Private Secured Property, and STATE OF WASHINGTON has faild/refused, **take judicial notice** of EXHIBIT B, **pages 48-58 of 70,** Rights Acquired by Protected Party... After 30 days of failing to provide proof of the debt, they have forfeited their right to further collection activity, have repudiated the debt. and must return all Plaintiff's property, including his

corpus. (See 15 U.S.C. § 1692g(b).

2.11) This litigation also shows the ripeness of the question passed upon in Baxter v. Palmigiano, as to the exact minimum due process required prior to taking of a "privilege" in prison. Plaintiff is prepared to take this litigation to the United States Supreme Court, unless and until there is some caselaw that explicitly answers that question. Sandin v. Conner holding does NOT answer that question, thereby the issue is not precluded. (See, EXHIBIT B, page 15 of 70, ll. 25-27).

2.12) Plaintiff declines dismissing this case, and requests Certificate of Appealability to the Ninth Circuit Court of Appeals, should this court decide to dismiss as frivolous without hearing the actual merits of the case. Plaintiff is not a UNITED STATES franchise/corporation. Since "all crimes are commercial" (See CFR § 72.11) all crimes need to operate under commercial laws, i.e. contract laws, i.e. "Maritime/Admiralty" laws. Therefore, the Maritime Contract (Legal Notice and Demand) is also relevant. Plaintiff Acceptes For Value that this court needs to administer the United States Bankruptcy, and therefore is only in the business of "collecting" monies from the citizens of the United States. (See, Senate Report No. 93-549, dated Nov. 19, 1973, 93rd Congress, 1st Session at pg. 1, par. 1; at pages 187 & 549; Executive Orders 6073, 6102, 6111 & 6260; Trading With the Enemy Act, 65th Congress, Session 1, Ch. 105 & 106, Oct. 6, 1917; Codified at 12 U.S.C.A. 95(a); the 1950 Bankruptcy Declaration and Reorganization Plan, number 26, 5 U.S.C.A. 903, Pub. L. 94-564, and the Legislative History thereof, pg. 5967, stating in part, "The Secretary of the Treasury was appointed as the Receiver in the Bankruptcy.").

2.13) The CAFV papers, along with proof of service upon STATE OF WASHINGTON

and JOHN C. DITTMAN, can be provided upon request. Further, Plaintiff will provide a set to Mr. THOMAS O. RICE,* in order for this court to Prove any Claim over the DEBTOR. While in personam jurisdiction over the Plaintiff is presumed, subject matter jurisdiction over the DEBTOR is wanting, has never been "proven" by STATE OF WASHINGTON (they only say "because we say so," and that is not proof) See, pages 68-69 of 70, Burden of Proof... . (* SEE, EXHIBIT C, herein).

2.14) This litigation also shows the ripeness of the question passed upon in Baxter v. Palmigiano, as to the exact minimum due process required prior to taking of a "privilege" in prison. Plaintiff is prepared to take this litigation to the United States Supreme Court, unless and until there is some caselaw that explicitly answers that question, as Sandin v. Conner holding does NOT answer that question, thereby precluding the answering of the question. (See, EXHIBIT B, page 15 of 70, ll. 25-27).

2.15) Plaintiff declines dismissing this case, and requests Certificate of Appealability to the Ninth Circuit Court of Appeals, should this court decide to dismiss as frivolous without hearing the actual merits of the case. Plaintiff is not a UNITED STATES franchise/corporation. Since "all crimes are commercial" (See CFR § 72.11) all crimes need to operate under commercial laws, i.e. contract laws, i.e. "Maritime/Admiralty" laws. Therefore, the Maritime Contract (Legal Notice and Demand) is also relevant. Plaintiff Acceptes For Value that this court needs to administer the United States Bankruptcy, and therefore is only in the business of "collecting" monies from the citizens of the United States. (See, Senate Report No. 93-549, dated Nov. 19, 1973, 93rd Congress, 1st Session at pg. 1, par. 1; at pages 187 & 549; Executive Orders 6073, 6102, 6111 & 6260; Trading With the Enemy Act, 65th Congress, Session 1, Ch. 105 & 106, Oct. 6, 1917;

Codified at 12 U.S.C.A. 95(a); the 1950 Bankruptcy Declaration and Reorganization Plan, number 26, 5 U.S.C.A. 903, Pub. L. 94-564, and the Legislative History thereof, pg. 5967, stating in part, "The Secretary of the Treasury was appointed as the Receiver in the Bankruptcy.").

2.16) CAFV papers can be delivered upon request, along with proof of service upon STATE OF WASHINGTON and JOHN C. DITTMAN. Further, Plaintiff will provide a set to Mr. Thomas O. Rice, in order for this court to Prove any Claim over the DEBTOR. While in personam jurisdiction over the Plaintiff is presumed, subject matter jurisdiction over the DEBTOR is wanting, has never been "proven" by STATE OF WASHINGTON (they only say "because we say so," and that is not proof). See, EXHIBIT B, page 68 of 70, Burden of Proof...

2.17) Since STATE OF WASHINGTON lost all Authority and Official Capacity due to the National Bankruptcy (Congressional Record Vol. 33, 1933, Chapter 11 Reorganizations of the United States; 26 I.R.C. 165(g)(1); Westfall v. Bradley, 10 Ohio 188; Adams v. Richardson, 337 S.W.2d 911; Ward v. Smith, 7 Wall. 447, among other references), they are acting IN NAME ONLY and are a de facto organization operating outside of their corporate charter (See, EXHIBIT B, page 14 of 70). Therefore, they do not have the authority to violate the Good Faith, Commercial Law, Contract Law, and Securities Law, in binding the Plaintiff to an undischargable contract to incapacitate him or his rights. "A contract made by a corporation beyond the scope of its corporate power is Unlawful and Void." McCormick v. Market National Bank, 165 U.S. 538. (The Judgment and Sentence over DEBTOR, which was deemed "Commercial Paper" and deposited into a bank and/or converted into an item of deposit for the commercial benefit of the SPOKANE COUNTY PROSECUTOR, the SUPERIOR COURT JUDGE, SPOKANE SUPERIOR COURT, ATTORNEY

GENERAL OF THE STATE OF WASHINGTON, COUNTY OF SPOKANE, CITY OF SPOKANE, STATE OF WASHINGTON, UNITED STATES, and/or the World Bank.

2.18) This court takes the stance that "we can violate your rights just a little," pursuant to Sandin v. Conner. This is an extremely slippery slope. Assume that the Eastside Drip Gang decides to start poking the eyes of prison staff with their fingers. Anyone who speaks to a member of the Drips starts having his index fingers removed, as they can be deemed "associates/close associates" of the Drips. Soon, all new prisoners start having their index fingers removed, upon entering the prison system, as it is determined that they wil inevitably interact with a Drip gang member. The holding in Sandin v. Conner states, "well, you still have some fingers, and since we cut off everyone's index fingers, this is legal." Since the GVRS is racially applied, with no due process, there is a manifest injustice in its application. Further, since it can be applied back-to-back repeatedly in perpetuity, it is also "outside ordinary incidents of prison life." It needs to be looked at in an equitable and constitutional frame of mind with the proper balancing test. Outright dismissal of this issue without review removes all appearance of fundamental fairness by this and state courts, proving that EXHIBIT B is a necessary "Non-franchise Franchise Agreement" to defend against the de facto government.

Executed this 21 th day of September, 2019 A.D.

James-Benjamin Barstad© ttee/ucc1-308

James-Benjamin Barstad, Sui Juris
Authorized Representative of the
JAMES BENJAMIN BARSTAD® TRUST
WITHOUT PREJUDICE, UCC 1-308, TRUSTEE

Defendants have committed Trespass upon the Plaintiff's unalienable Private Property rights. Damages pursuant to Trezevant are warranted. Further, Defendants have breached their Contract, giving rise to damages for Distraint under that Contract. Defendants cannot be allowed to continue their schemes to abuse the holding of Sandin, a slippery slope that will eventually cause the injustice to seep out of the prison into the community. This Court must address Plaintiff's concerns and award remedy.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Benjamin Bartel TTEE/UCC 1-308

Date: November 27, 2019

WITHOUT PREJUDICE