ORIGINAL

No. 19-8153

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

KEITH CLAYTON BROOKS, — PETITIONER
(Your Name)

vs.

CELIA SCHWARTZ, LEGAL ASSISTANT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Your Name)
KEITH CLAYTON BROOKS,
CDOC #108827

(Address)
FREMONT CORRECTIONAL FACILITY
PO BOX, 999
CAÑON CITY, CO 81215
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

PETITIONER IS A STATE PRISONER ALLEGING FIRST AND FOURTEENTH AMENDMENT VIOLATIONS FOR RETALIATION AND DUE PROCESS VIOLATIONS AGAINST PRISON STAFF. PETITIONER IS INDIGENT AND HAS THREE STRIKES BUT MADE SPECIFIC, CREDIBLE ALLEGATIONS OF IMMINENT DANGER OF SERIOUS PHYSICAL HARM TO PROCEED WITHOUT PREPAYMENT OF FEES PURSUANT TO 28 U.S.C. §1915(g). PETITIONER ALLEGED A PATTERN OF MISCONDUCT THAT AGGRAVATED HIS POST-TRAUMATIC STRESS DISORDER, TRIGGERED, AND AGGRAVATED SUICIDAL URGES OR IMPULSES. EVENTUALLY, THE CONDITIONS BECAME SO CRITICAL THAT PETITIONER BROKE OUT INTO STRESS RELATED HIVES OVER 75% OF HIS BODY THAT BENADRYL SHOTS WOULD INADEQUATE TO TREAT. THIS CONDITION LASTED TWO WEEKS UNTIL PETITIONER WAS TRANSFERRED WITH THE ASSISTANCE COMMUNITY ADVOCATES.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO DENIED THE MOTION, PRE-TRANSFER, FINDING THAT PETITIONER FAILED TO ALLEGE OR DEMONSTRATE HE WAS IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY.

THE TENTH CIRCUIT COURT OF APPEALS DISMISSED THE CASE WITHOUT APPLYING ANY STANDARD FOR EVALUATING WHETHER THE CONDITIONS OF CONFINEMENT, AS ALLEGED IN THE PRISONER'S COMPLAINT AND IN SUPPORT OF THE MOTION TO SHOW CAUSE, CREATED A CONDITION OF IMMINENT DANGER OF SERIOUS PHYSICAL HARM OR A PATTERN DEMONSTRATING AGGRAVATION OF POST-TRAUMATIC STRESS DISORDER, TRIGGERING, THEN AGGRAVATING SUICIDAL URGES OR IMPULSES ACCORDING TO THE FIRST AND FOURTEENTH AMENDMENTS. A WRIT OF CERTIORARI IS NEEDED ON THE FOLLOWING ISSUE:

WILL CONDITIONS OF CONFINEMENT THAT DEMONSTRATE A PATTERN OF MISCONDUCT UNDER THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION LEADING TO SUICIDAL IMPULSES OR URGES, THEN AGGRAVATING THOSE IMPULSES AND URGES INEXTRICABLY INTERTWINED WITH POST-TRAUMATIC STRESS DISORDER MEET THE BURDER OF THE EXCEPTION TO 28 U.S.C. §1915(G) FOR PERMITTING REVIEW OF A PRISONER'S COMPLAINT?

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LIST OF PARTIES

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

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

SHIELDS, individually and in his officialcapacity as CDOC Hearing Officer,

AMY MORRISON, individually and in herofficial capacity as CDOC Major,

JENNIFER HANSEN, individually and in herofficial capacity as CDOC Major,

SIMON DENWALT, individually and in hisofficial capacity as CDOC Case Manager,

JOHN NITSCH, individually and in hisofficial capacity as CDOC Captain,

ALAN HYSJULIEN, individually and in hisofficial capacity as CDOC Disciplinary Officer,

ANTHONY DECESARO, individually and inhis official capacity as Grievance Officer.

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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 A 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 United States district court appears at Appendix B to the petition and is

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

[ ] For cases from state courts:

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

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

The opinion of the _____court appears at Appendix _____to the petition and is

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

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JURISDICTION

✖ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was January 10, 2020.

✖ 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).

[ ] For cases from state courts:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT, UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FOURTEENTH AMENDMENT, SEC. 1, UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1915

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

On October 17, 2005, Petitioner, Keith Clayton Brooks, was shot in the back by an El Paso County Sheriff's Deputy during a burglary (theft) that escalated into an officer involved shooting. After fleeing Petitioner was left in a hotel room to die by the co-defendant and accomplices that the co-defendant corralled as a fugitive. Petitioner separated from the group and was apprehended alone on October 20, 2005. Detective Cliff Porter met with Petitioner at Memorial Hospital and Petitioner refused to speak with him about the burglary. Detective Porter then engaged Petitioner about his parole status and prior criminal history. Porter asked hospital staff to forgo administering pain medication because he was concerned about the admissibility of his report. Petitioner was in substantial pain as MRI showed that the bullet passed through Petitioner's sacroiliac joint and lodged just between the spine and kidney in several fragments.[1]

Petitioner's injury *that was not a flesh wound to the "buttocks"* took over a year to heal from several inches into his torso out to the surface of his body while in custody.

The Co-Defendant, Nickolaus Acevedo, was killed on November 4, 2005 arrested after a brief foot chase. An Officer testified that Acevedo had confronted him armed with a gun and pointed the gun at him causing him to use deadly force. Acevedo was in possession of the gun he used in the October Twentieth burglary.

Petitioner filed a 42 U.S.C. §1983 Prisoner's Complaint while awaiting trial.

Once trial proceedings commenced, Petitioner made several attempts at firing Public

[1] The Tenth Circuit Court of Appeals diminished the injury's severity by wholly retracting the legal definition of deadly force from the ruling and downgrading the injury in context to a flesh-wound. *See Brooks v. Gaenzle*, 614 F.3d 1213, 1215, fn. 3 (10th Cir. 2010)(finding shot to "buttock" as opposed to lower-back factual allegation was immaterial in order to conclude that degree of restriction from injury was not of constitutional porportions).

Defender William Schoewe due to a conflict of interest. Petitioner demanded very little from defense counsel Schoewe, mainly that Schoewe secure witnesses Jessica Weikert, Catherine, and Brandy, last names unknown (discoverable through Petitioner's phone records), all of whom had contact with Petitioner and Acevedo immediately prior to the burglary. Among reports generated by law enforcement, several alleged Petitioner admitted to either shooting at the Deputy or possessing a separate gun. Key to this mounting theory was Porter's report wherein he alleges Petitioner confessed to saying "Me and Nick had guns" completely spontaneously at the outset of his arrival. Critical to this strategy is that Petitioner was never accused or alleged to have conspired to commit any of these crimes with Acevedo.

Detective Porter went on to report that Petitioner confessed to being with Acevedo for the purposes of committing burglaries and had been on a crime spree with Acevedo. The sought after witnesses impeached these allegations in an incredible degree. Phone records, in addition to events preceding Acevedo picking up Petitioner negated this manufactured motive and fabricated context.

Defense counsel Schoewe was too dismissive of the need for these witnesses and when Petitioner got aggressive, having exhausted all other options, Schoewe twisted this to publicly accuse Petitioner of being unhelpful and "disrupting" his ability to defend him. It did not make sense when these facts clearly impeached Porter's report so Petitioner lost trust as it appeared Schoewe had an agenda. Schoewe went as far as to tell David Lane, a private defense attorney, not to take Petitioner's case because Petitioner "admitted" to having a gun.

Petitioner's attempts at firing Schoewe failed with state judges cutting off Petitioner during his statements why there was a conflict of interest and the trial judge denying a conflict of interest hearing regarding the successive representation of co-defendant Acevedo and his current client Petitioner. Schoewe also failed to pursue a simple challenge to a prior

conviction in support of a habitual criminal enhancement. This conviction was later found to have an illegal sentence. Furthermore, Schoewe advised Petitioner not to speak with Probation Officer's preparing a Presentence Investigation Report (PSIR) due to "the appeal process." The PSIR contained statements that Petitioner shot a deputy despite no law enforcement official being shot or injured and the jury acquitting Petitioner of possessing, using, or threatening the use of a weapon. Schoewe failed to object to this error of black and white magnitude. Schoewe also abandoned Petitioner during a reconsideration hearing that was ripe for proportionality arguments.

At a suppression hearing, in addition to Porter's statements that Petitioner blurted out "we had guns" prior to Porter introducing himself, or rather immediately after Porter read Petitioner his *Miranda*[2] rights, or after Porter determined that Petitioner was in state of mind to speak, or prior to reading Petitioner his *Miranda* rights, whichever version of events that *this* Court is inclined to believe if Porter is found to be the least bit credible, Schoewe failed to elicit any testimony impeaching *why* Petitioner was on the victim's street and with Acevedo in the first place. Although it was obvious that Porter was tremendously acrobatic in reconstructing the version of events in cross-examination, the trial court denied the motion to suppress the statements.

Schoewe did make specific and meritorious objections to the complicity instruction[3] but failed to ever caution the jury against ambiguities that may mislead them into returning a verdict of guilty for the crimes arising from the act of shooting at the deputy. While the jury demonstrated definite confusion about the complicity instruction, asking how it applied to

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[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[3] Colorado permits convictions for substantive offenses on a complicity theory. *Bogdanov v. People*, 941 P.2d 247, 255 (Colo. 1997). The "theory" appears in the jury instructions as elements of a crime but not as part of the elements of the offense charged.

the charge of possessing, threatening the use of, or using a gun, the court flouted the jury's question regarding the correct interpretation of the complicity instruction as a matter of law, *not desire.*

At trial, Petitioner was stunned with a defense witness who had arrested Acevedo just months prior to this crime. The Officer testified that they were called to an apartment about a burglary and that when he and his partner arrived, a man in a trenchcoat pointed an "SKS assault rifle" out the door which was locked at the chain at them. They were able to coax the suspect out of the apartment who then started to "raise the barrel of the rifle" at which point this Officer tackled Acevedo, bringing him into custody. This was March 27, 2005.

Schoewe had a plea deal set to have Acevedo released in just 29 days. The Probation Department recommended Intensive Supervised Probation (I.S.P.) and on July 11, 2005, the state court sentenced Acevedo to 4-years I.S.P. and in the same breath, ordered the destruction of the "SKS assault rifle."[4] Acevedo immediately becomes a fugitive and meets Petitioner after September 11, 2005.

On appeal, Petitioner's Alternate Defense Counsel (A.D.C.) "procedurally defaulted" due process claims to include error in the complicity instruction causing the jury to be confused, the prosecutor's misstatement of law regarding the mental state required to convict Petitioner of the complicity instruction, and the trial court's failure to answer the jury's question of whether the complicity instruction "applied to each or all the charges" – a very distinct question with opposite interpretations in terms of guilt or innocence according to accomplice liability. The errors reviewed on appeal involved a consecutive 48-year on a 96-

[4] It took Petitioner several attempts to just acquire the Register of Actions which is public record in case of *People v. Acevedo*, 05CR1535, and two of the four transcripts that he has applied for. The two yet to be released are the entry of appearance where Schoewe informs the court of a potential conflict of interest due to representing the co-defendant in "another case" and the judge's comments at sentencing.

year sentence amounting to 144-years, a reference to a booking photograph error for mistrial, and whether or not there was enough evidence to support the complicity conviction. To this day, no court has reviewed the due process errors "procedurally defaulted" by State appointed A.D.C.

Petitioner's case for excessive force was dismissed because Petitioner was not killed by the bullet, arrested, or made himself a target for more responsive rounds to his back, by this Court's very own JUSTICE GOURSUCH and comany. *Brooks, supra.*

Colorado failed to avail itself of this blatant marginalizing of errors and refused to find any merit to this long symphony of professional misconduct, unethical behavior, and abuses of power, ultimately denying him post-conviction relief and federal habeas corpus relief.

In seeming coordination with the judiciary at the state and federal level, Petitioner was labeled a "security threat" for admitting to be "from California" and was referred to mental health for an emergency evaluation by Limon Correctional Facility Warden Angel Medina for a phantom episode of "homicidal acts" toward prison staff only to later have this same Warden call Petitioner's Grounds Maintenance Supervisor with instructions to hand him an ice pik and strand him alone, away from witnesses just below a gun tower while Medina, also alone, came out of the administration building toward the parking on a path that Petitioner was sitting on. This failed attempt to portray Medina and the armed gun tower staff heroes for killing Petitioner *an attempted cop killer, Black STG (Security Threat Group) member, who recently was seen by mental health for "homicidal actions" toward staff,* caused Petitioner much grief and mistrust of staff as the locus taken by the Executive and Judicial Branches of State Government against Petitioner exploded from adversarial and supervisory/custodial into a interactions that Petitioner could not handle as an accused cop killer, Black STG member, whose challenges to abuses via pursuit of relief is perverted into

defiance and disrespect for authority.

Upon Petitioner's arrival at Buena Vista Correctional Complex (BVCC), in 2016 this treatment of Petitioner intensified with Case Manager Sandra Brownlee refusing to give him a clemency application, only to later become his Supervisor (Lieutenant) while assigned to recreation, the reassignment by her for him to canteen and a fraudulent report of a STG related theft preceding his submission of the clemency application Colorado C.U.R.E. had to wrestle out of BVCC staff to issue him, and removed from the Incentive Unit – a theft that occurred under the recording of two cameras, the footage of which Petitioner was denied by BVCC in pursuit of exonerating himself of the STG activity and theft.

Petitioner went on a hunger strike that lasted fourteen days as a result of being targeted by misconduct of staff. After getting out of the hole, Petitioner's $280.00 television was cracked, cleanly at the neck of the base. Staff denied breaking the neck and refused to remedy the damage until Petitioner showed the thumb print where staff applied pressure to break the neck in the precise area in such a neat manner and threatened to pay out of his own pocket a fingerprint analysis to determine which staff's fingerprint it was. Property is directly across from Canteen. BVCC promptly offered to replace the stand and did so within 24-hours. Petitioner lost $250.00 worth of canteen due to the trip to segregation.

Meanwhile, Lt. Brownlee denied Petitioner's attempts to have pictures taken for 9-months. Finally out of pretext or subterfuges, Lt. Brownlee credited Petitioner back his money after he took a picture with his hair in an Afro. It took a *tenth* attempt before Petitioner was able to take a picture in the recreation Photo Program run by Lt. Brownlee.

This Lieutenant later directed security to harass Petitioner sitting outside on the yard knowing Petitioner would take issue about being harassed. On June 1, 2019, security asked him to get off of the recreation jungle gym he was sitting on watching softball practice.

Security passed *every other piece of recreation equipment on the yard, to include tables, weight benches, and jungle gyms* that had prisoners also sitting on. Petitioner ignored these unreasonable and discriminatory orders. Petitioner finally responded that he was not doing nothing wrong, and asked what the problem was. Sergeant Ross told Petitioner that he was violating a Posted Operational Rule (P.O.R.) because he was not using the jungle gym for its intended use. Petitioner noted that every apparatus at that time on the yard, jungle gyms, tables, weight benches had someone sitting on them and that this pretext was laughable as much as it was novel.

Security then became acrobatic with pretexts and told Petitioner it was unsafe and that was the impetus for their orders. Petitioner noted the preposterousness of *this* pretext, that they would be concerned about an able bodied 36-year old man in exceptional physical health would fall from a sitting position, and somehow be injured by this while fifty or so men engaged in some actual physical activity were beyond their delicate standard injury. Petitioner refused to entertain the harassment. Security then ordered Petitioner to cuff up which he responded to.

Shift Commander Captain John Nitsch came to escort Petitioner to his office and asked Petitioner what happened. Petitioner responded "I was sitting down outside on the yard." In disbelief, Cpt. Nitsch asked Sgt. Ross what happened and Sgt. Ross stated "Lt. Brownlee told us to get Brooks off the rec. equipment." This was a dog whistle "*Lt. Brownlee told us...*" Cpt. Nitsch released Petitioner with the caveat that a disciplinary charge would likely follow. Petitioner was in a quasi-Incentive Housing at that time and a disciplinary charge would result in his removal. The next morning on June 2, 2019, Petitioner was moved out of the Dorms, just 39-days after moving into the area.

On June 8, 2019 Petitioner asked Lt. Brownlee why she sent Sgt. Ross to provoke him

during med line at 7:30 in the morning and she stated that he wasn't "supposed to be sitting on rec equipment like that," and Petitioner responded:

> LIKE WHAT! You were sitting on the muthfuckin' table, that's not what it was Designed for! MAKE SURE YOU BRING YOUR LYING ASS TO THE HEARING AND BE PREPARED TO EXPLAIN WHAT RULE PROHIBITS ME FROM SITTING DOWN AT REC!"

She responded, "Oh—uh-oh yea, well I don't lie." Petitioner said we'll see how that works out for you when I got your ass under oath!" She responded "I'll be there!"

The very next day, Petitioner was served with an Immediate Accountability Resolution (IAR) which states on the report that disciplinary charges will not be brought, there is no conviction under Code of Pena Discipline (COPD), and *will not affect cell assignment or housing status*. When Petitioner brought this to the attention of Unit Staff, all denied making the decision to move Petitioner on June 2, 2019 for the incident meaning Lt. Brownlee and Cpt. Nitsch orchestrated the move. The penalty was one day restriction from recreation.

Finally, on July 31, 2019, Unit Captain Argys, who previously denied making the decision, accepted responsibility and denied being influenced by Lt. Brownlee or Cpt. Nitsch. Petitioner was placed in restraints by Cpt. Argys after exploding in the Lieutenant's Office with Lt. Bobst present. Cpt. Argys continued with the charade that IAR's *always* resulted in the prisoner being removed from the Incentive Unit or Dorms unit, which was a lie as ***SEVERAL*** prisoners currently were pending disciplinary charges and that several more who were facing disciplinary charges were served with IAR's ***to avoid removal from Dorms and the Incentive Unit,*** and this practice has been in place since the IAR's were implemented and continue to this day. Argys was treating Petitioner as if he was ignorant or not intelligent enough to know the rules. Petitioner was infuriated until finally Lt. Bobst broke the farce and admitted that there were a number of prisoners in the Incentive Unit and Dorms who

were allowed to stay *because of* the IAR policy. Petitioner was taken out of the handcuffs and allowed to leave.

When Cpt. Argys asked if Petitioner wanted to move back to the Dorms to remedy the improper removal, Petitioner stated "why, so you guys can help Brownlee and Nitsch come up with a bulletproof way to cross me out? Not gonna happen."

Cpt. Nitsch himself participated in this pattern by canceling Incentive Food Sales as soon as Petitioner was able to order and used as a pretext that this Food Sale was not optional for Dorms, denying a Step-1 grievance. Posted Operational Rule (POR) 19 in the Dorms area explicitly stated in print that Dorms prisoners were eligible for Food sales. After removal from the Dorms for the yard incident, the Step-2 was granted but Petitioner was no longer in the Dorms. BVCC staff just prevented Petitioner from participating in Food Sales as a privilege.

Precipitating this act by then Lt. Nitsch was an incident that occurred on July 20, 2017. Legal Assistant Celia Schwartz (a white femle) was upset at the news that the Nevada Department of Corrections (NDOC) granted O.J. Simpson's discretionary parole. Oblivious to this event, Petitioner had his hair in an Afro style. Having no control over her emotional response to this news, Schwartz was belligerent, combative, and hysterical in responding to prisoners attending the law library in the afternoon session. She slammed the door to her office shut in the face of several prisoners after she refused to perform her most basic duties as Legal Assistant. Mental Health Director Tucker came down the hallway to see what the commotion was, and when he saw the source of the disruption was Schwartz, did not inquire into whether she needed assistance. In the midst of her agitated states, Petitioner asked her if she would be able to process his photocopy request and she responded that she would.

After calling security on prisoner Byron Todd for attempting to make a verbal complaint

Tucker about her refusal to make copies, who again, after hearing the slamming of the office door, came down the hallway due to the commotion. Petitioner heard Todd say "she called First Responders on me."[5] He was escorted out of the law library. Schwartz then announced that she would not be processing any more photocopy requests.

Petitioner approached her in her office again and asked if she was going to process his request. She responded "no" and when Petitioner asked why she stated that there was "not enough time." This was at 2:50 PM and the session ended at 3:30. Petitioner turned around to log off his computer and said "well, I guess you're going to call first responders on me too because I'm going to go make the same complaint to Mr. Tucker." Petitioner then walked out of the law library down the hallway toward the room Mr. Tucker was located in. (Schwartz office is adjacent to the only entryway into the law library.) Then, *Lt.* Argys was coming down the hallway to investigate the complaints made by Todd when he met Petitioner who was placed in restraints by security staff.

Petitioner was taken to the Shift Commander's Office where then *Lt.* Nitsch was. Todd was being released by the acting Shift Commander, Lt. Nitsch. Lt. Nitsch asked what happened and Petitioner explained that Schwartz was mentally unstable and emotionally distraught and that it was impossible for any prisoner to communicate with her without an explosive response. She slammed the door to her office several times to violently end arguments she was losing to prisoners and not once having had a confrontation with Petitioner that day, she called first responders after he informed her that he would make a complaint to Mr. Tucker about her behavior. Petitioner explained that due to a breakdown of communications witnessed by him between prisoners and *every other* prisoner, with no

[5] First responders is an emergency radio call that staff uses in the most extreme circumstances necessitating safety and security in the highest degree practical.

discernible criteria for her backlash, he felt seeking the assistance of another staff to get her to make the copies was the mature route and avoid her argumentative attitude. She still had 45-minutes before the law library session was scheduled to end at that point.

Lt. Nitsch stated that if you did nothing wrong, I'll send you back to your unit. The phone rang and he went back to answer it. When he came back, Lt. Nitsch stated "you didn't tell me you threatened her," and ordered security staff to place leg restraints on Petitioner and take him to segregation for punitive prehearing confinement. Petitioner merely stated, "I didn't threaten her over copies."

In the Notice of Charges, Schwartz alleged under oath that Petitioner lunged at her in her office in attempt to attack her, *while making the statement,* whereby she slammed the door shut which thwarted an attack. The charges were Threats and Advocating or Creating Facilitating A Facility Disruption. Petitioner asked for Nitsch, Todd, Schwartz, and video footage of the alleged incident. None were called, and the video footage was "unavailable." No more than that generic response was issued. After the hearing, the Threats charge was dismissed, but in order to justify the punitive prehearing segregation and to fully effectuate the abuse, Petitioner was convicted of Advocating or Creating A Facility Disruption and given the full measure of hole time – fifteen days. Essentially, because punitive prehearing confinement was initiated, prior to a determination of guilt for threats, Petitioner was punished because he was sent to the hole.

Petitioner's appeal, *inter alia,* asked for reversal because if no threatening behavior occurred, no conduct could support the conviction of Advocating or Creating A Facility Disruption because First Responders was a self-executed action by the Defendant Body and Petitioner had no control over the prerequisite trip to seg before a hearing. This evident Due Process issue was side-stepped via the go-to for courts nowadays, the nonsensical focus on

procedural bars, specifically whether the video records missing from the investigation and therefore formal hearing process by the self-regulating state agency was fair.

During this deeply penetrating period of blatant abuse, bullying, harassment, discrimination, and retaliation, Petitioner had indeed submitted an application for sentence commutation which was denied by Colorado Governor John Hickenlooper's Executive Clemency Board. Petitioner requested a copy of the packet submitted to BVCC Warden Jason Lengerich and discovered that the Executive Branch of government, much like, but more daring than the officials of the Judicial Branch of government, through Warden Lengerich's sanctimonious authority, stated that "[Petitioner] shot a police officer" and therefore was not eligible for clemency. And in responses to formal grievances, failed to concede that this statement was flagrantly, outrageously, and irrevocably bogus.

Eventually, it became too much for Petitioner to handle and the assortment of psychological and institutional strategies to mitigate the damage done failed. This included simply innuendos from mental health staff to take action on violent thoughts toward the sources of mistreatment, follow through on suicidal urges and impulses, and heavy sedation from mind-altering prescription drugs. When these failed, lame attempts at empathizing with mistreatment and racial authority were employed. These half-hearted attempts were poorly disguised.

Finally the physical toll Petitioner's inner conflict and restraint to control these powerful urges, impulses, and thoughts emerged with an outbreak of stress hives. These hives were immune to treatment such as Benadryl shots and lasted the final two weeks Petitioner was at BVCC when Dianne Tramutola-Lawson from Colorado C.U.R.E. intervened after being asked to help Petitioner transfer. The hives numbered 70+ and combined to form large rings on the surface of Petitioner's skin. They were on the scalp, behind the ears, engorged the

upper lip, covered the back, torso, arms, fingers, posterior, upper legs, lower legs, scrotum, and anus. The pain and discomfort is inexplicable. All from Petitioner's self-control *to not act on his response to triggers to the pattern of abuses* in the conditions of confinement.

II. PROCEDURAL HISTORY

Petitioner filed a Prisoner Complaint pursuant to 42 U.S.C. §1983 claiming First and Fourteenth Amendment violations of his United States Constitutional rights on July 19, 2019. Petitioner filed the motion provided with the Prisoner Complaint seeking to proceed in this case without prepayment of fees as he is claiming poor person status before the court.

The U.S. Magistrate Judge has issued an Order to Show Cause on his burden to establish a showing for waiving the imminent danger of serious physical injury exception to the three-strike provision of 28 U.S.C. §1915(g) to proceed *in forma pauperis* despite three-strikes. The U.S. Magistrate Judge denied Petitioner's request for a limited hearing to determine whether an imminent danger of serious physical injury exists.

On August 23, 2019, the District Court Judge denied Petitioner's Motion and Affidavit to Proceed on Appeal without prepayment of costs pursuant to 28 U.S.C. §1915(g).

Petitioner filed an appeal, and on October 1, 2019, the United States Court of Appeals issued an Order to Show Cause why the appeal should not be dismissed pursuant to 28 U.S.C. §1915(g). On October 15, 2019, Petitioner filed a Motion to Show Cause To Proceed On Appeal Without Prepayment Of Fees Pursuant to 28 U.S.C. §1915(g). On January 10, 2020, the Tenth Circuit Court of Appeals dismissed the appeal for failing to pay the court fee.

REASONS FOR GRANTING THE PETITION

WHERE A PATTERN OF ABUSE BY PRISON OFFICIALS MEANT TO TRIGGER A CATASTROPHIC MENTAL BREAKDOWN BY A STATE PRISONER IS UNDERTAKEN, MAY THE FIRST AND FOURTEENTH AMENDMENTS BE VIOLATED TRIGGERING 42 U.S.C. §1983 RELIEF? IF SO, IS SUCH A PATTERN SO OBVIOUS THAT ANY REASONABLE OFFICIAL WOULD KNOW THEIR CONDUCT TO BE UNLAWFUL?

The Tenth Circuit Court of Appeals did not even bother to examine whether conditions of confinement in the form of a pattern of abuses triggering suicidal urges and impulses that manifested into a physical injury may excuse a state prisoner from paying filing fees pursuant to 28 U.S.C. §1915(g). This Court has yet to decide whether a pattern of abuses of constitutional magnitude alleged in a Prisoner's Complaint meets the requisite criteria at the pleading stage to make a preliminary conclusion that an "imminent danger" exists. Petitioner asserts in good faith that federal authority is properly exercised and relief under 42 U.S.C. §1983 is not frivolous according to the majority consensus of cases rendering decisions regarding "imminent danger" and the scope of 28 U.S.C. §1915 according to this Court.

28 U.S.C. §1915 is intended to ensure that prisoners have meaningful access to the courts. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). Because the federal court system was inundated with a flood of lawsuits that originated from prisons, Congress enacted the Prison Litigation Reform Act. The issue of primacy was two-fold. First was to make sure that prison officials were afforded the opportunity to remedy perceived grievances thereby eliminating a need for federal intervention by requiring exhaustion of administrative remedies and the second was to install a mechanism designed to filter out bad claims. *Jones v. Bock*, 549 U.S. 199, 202-203 (2007). Indeed, Congress had an eye on filing fees and court costs as a deterrent for "filing frivolous, malicious, or repetitive lawsuits." *Nietzke, Id.*

What constitutes an "imminent danger" has not been clearly drawn by this Court. However, this Court's history dictates that it does not turn a blind eye to conditions of confinement that are malicious

in nature, counterproductive to rehabilitation, or calls into question the integrity of the criminal justice system. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)("When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated"); *Pell v. Procunier,* 417 U. S. 817, 822 (1974)("a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system"); *Wolff v. McDonnell*, 418 U.S. 539, 565 (1974)(written records of disciplinary hearing help keep accountable prison administrators accountable to state officials and public).

Liberal construction is requested. *Haines v. Kerner*, 404 U.S. 419 (1974).

HOW DO LOWER COURTS VIEW 28 U.S.C. §1915(g) AND THE PLEADING REQUIREMENT TO PROCEED WITH THREE STRIKES?

A prisoner is not barred from proceeding *in forma pauperis* if he is in "imminent danger of serious physical injury." *See* 28 U.S.C. §1915(g); *Schlicher v. Thomas*, 111 F.3d 777, 782 (10th Cir. 1997). In deciding whether there exists an imminent danger of serious physical injury, the general consensus among the qualifying decisions identifies a need to demonstrate a present danger for a risk of harm. *Hafed v. Fed. Bureau of Prisons,* 635 F.3d 1172, 1179-80 (10th Cir. 2011).

The imminent danger exception is essentially a pleading requirement. *Vandiver v. Prison Health Services, Inc.*, 727 F.3d 580, 585 (6th Cir. 2013); *Stine v. United States Fed. Bureau of Prisons,* 465 Fed. Appx. 790 (10th Cir. 2012). As such, the Court is required to construe liberally the allegations in the complaint which it must accept as true. *See Ibrahim v. District of Columbia*, 373 U.S. App. D.C. 217, 463 F.3d 3, 6 (D.C. Cir. 2006) (quoting *Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir. 2004)). A plaintiff need only to assert allegations of imminent danger; he need not affirmatively prove those allegations at this stage of litigation. *Vandiver*, 727 F.3d at 585. The onus is on this Court to rely on its judicial experience and common sense to draw a reasonable inference that a plaintiff is under an existing danger at the time he filed his complaint. *Vandiver, Id.*

ACCORDING TO LOWER COURTS, WHAT IS AN IMMINENT DANGER?

To satisfy the "imminent danger" exception, a complainant must offer "specific fact allegations of ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury." *Fuller v. Wilcox*, 288 Fed. Appx. 509, 2008 U.S. App. LEXIS 16581, 2008 WL 2961388, at *1 (10th Cir. Aug. 4, 2008) (quoting *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003)). Reliance on past injuries or harm, or offering vague or conclusory allegations, is insufficient. Id.; *see White v. Colorado*, 157 F.3d 1226, 1231-32 (10th Cir. 1998). In other words, the injury must be "imminent or occurring at the time the complaint is filed." *Fuller*, 2008 U.S. App. LEXIS 16581, 2008 WL 2961388, at *1 (quoting *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003)). Carrying the burden of pleading the threat of serious physical injury need not rise to the level of an Eighth Amendment violation. *Ciarpaglini*, 352 F.3d at 330-31.

WHY SHOULD PETITIONER AND SIMILARLY SITUATED PRISONER LITIGANTS BE ALLOWED TO PROCEED WITHOUT PREPAYMENT OF FEES PURSUANT TO THE IMMINENT DANGER EXCEPTION OF 28 U.S.C. §1983?

As inferred from Petitioner's course through the criminal justice system, he is serving a life sentence and therefore is virtually placed outside of the legislative intent of 42 U.S.C. §1983 to seek a federal remedy for constitutional violations that do not involve broken bones, loosened teeth, or spilled blood. Unless a corollary purpose to this rigid rule was to preclude prisoner's similarly situated as himself (lifer, self-educated self-represented writ writer and civil suit practitioner) from utilizing the omnipotent power of the constitution to seek remedies in a world where the authority is self-regulating and exercises absolute authority until publicly decried, then this Court should evaluate whether Petitioner's case is properly subject to the exception contained in 28 U.S.C. §1915(g).

This case does not arrive due to the fantastic imagination wrought from idleness, nor is it designed to harass prisoner officials conducting the good-faith business of criminal justice, specifically corrections, and the court must take note that these are not run-of-the-mill exaggerated responses,

innocent mistakes, or errors because due process, for the most part does not allow such errors to go unreviewed. Sticking to the law as it is written, Petitioner believes that prison officials have adapted to blood laws regarding 42 U.S.C. §1983 and have resorted to less than lethal, less than physically painful means of actualizing abuse.

Having a body covered in hives that does not respond to intravenous antihistamine treatments is *indeed* discomfort. So to say that the consequence of this physical manifestation of stress, for lack of the proper medical terminology – uncontrolled response[6] – from the constant mental and emotional control of suicidal urges and impulses is simply discomfort is entirely misleading. Had Petitioner succumb to these strong responses to abuses and the complete disregard for acknowledging mistreatment, Petitioner would have inflicted a self-mortal wound or worse, he would have mortally wounded a peace officer thus ending all hope of defeating the forces in power that are instituted to keep him in the state of society that a lot of energy and brass has endeavored to carry-out and uphold.

Petitioner simply calls on this Court's exclusive supervisory power to do what the Tenth Circuit Court of Appeals failed to do: issue an opinion on the matter of federal law deciding whether Petitioner's Prisoner's Complaint rises to the level of imminent danger. Petitioner reminds the Court that at the time this complaint was filed, he was covered in hives and battling suicidal urges and impulses for several months.

In order to sufficiently allege imminent danger, the threat or prison condition must be real and proximate and the danger of serious physical injury must exist at the time the complaint is filed. *See Tripati v. PharmaCorr*, 2013 U.S. Dist. LEXIS 146421, (W.D. Okla., Oct. 10, 2013)(citing *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002); *Abdul-Akbar v. McKelvie*, 23f9 F.3d 307, 315 (3d Cir. 2001); *See also Vandiver*, 727 F.3d at 585.

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[6] Petitioner's laymen and restrictive environment is laid bare as he is referring to the automatic physiological performances by the nervous system such as the release of hormones, testosterone, etc.

As the U.S. Magistrate Judge duly noted, a prisoner must demonstrate a nexus between the imminent danger alleged and the legal claims asserted in the complaint. *Lomax v. Ortiz-Marquez*, 754 F. App'x 756, 759 (10th Cir. 2018). In determining whether a nexus exists between the prison condition that is real and proximate to the danger of serious physical injury, the court must decide if the abuses or violations alleged in the complaint are fairly traceable to a favorable judicial outcome that will remedy, resolve, or otherwise eliminate any threat the abuse poses. *Lomax, Id*; *See also Pettus v. Morgenthau*, 554 F.3d 293, 299 (2nd Cir. 2009).

1. Mr. Brooks alleges a nexus between the pattern of misconduct that aggravates his PTSD, triggers suicidal urges or impulses, and clearly established claims for relief

The complaint raises five claims, all based on First Amendment retaliation and Fourteenth Amendment due process issues. Petitioner identifies policies, customs, and practices of retaliation and due process violations that go unremedied. These actions administer punishment in violation of the lawfully adopted rules and regulation of the Department of Corrections, are undertaken at the behest of the administrative head, and fairly achieve the goals of racially motivated discrimination and harassment by staff under the color of law.

a) Calculated harassment is achieved through the practice of administrative punishment

Proper characterization of the policies, customs, and practices that are so vivid, permanent, and pervasive is consistent with opinions that define prison conditions. Although the Constitution does not require comfortable prisons, it does not permit inhumane ones. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The United States Supreme Court has long held that calculated harassment is an evil that the constitution forbids. *Hudson v. Palmer*, 468 U.S. 517, 547 (1984)(observing that prisoners are not without remedy for calculated harassment that are "unrelated to prison needs").

Petitioner claims that there is a policy, custom, and practice that involves a conspiracy by prison staff to violate his civil rights. The complaint alleges that prison officials have conspired to cover-up

abuses, suppress exculpatory evidence of alleged misbehavior, destroys records that are damaging to prison staff's reputation or may be used to invoke disciplinary procedures against staff, authorize through review procedures the retaliatory nature of false reports documented in his prison file, and make use of these maliciously prepared documents to Plaintiff-Appellant's current and future detriment. *Bell v. Milwaukee*, 746 F.2d 1205, 1261 (7th Cir. 1984)(conspiracies to destroy or cover-up evidence of abuse is cognizable due process claim). This condition of confinement includes racial discrimination and is achieved more so than ordinary harassment.

b) This condition of confinement triggers PTSD episodes and falls under the exception

There is enough precedence to establish that "mental health needs are no less serious than physical needs." *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004); *See Hope v. Pelzer*, 536 U.S. 730, 738 (2002) (highlighting "taunting" and "humiliation" as circumstances which contributed to finding that handcuffing petitioner to a hitching post after "[a]ny safety concerns had long since abated . . . violated the basic concept underlying the Eighth Amendment, which is nothing less than the dignity of man") (internal quotation and citation omitted); *Smith v. Aldingers*, 999 F.2d 109, 109 (5th Cir. 1993) (reversing dismissal of Eighth Amendment claim because district court failed to consider whether purely psychological injury could constitute an Eighth Amendment injury); *Strickler v. Waters*, 989 F.2d 1375, 1381 (4th Cir. 1993) (explaining that serious physical or emotional injury may give rise to an Eighth Amendment violation); *Northington v. Jackson*, 973 F.2d 1518, 1524 (10th Cir. 1992) (holding that psychological injury may constitute pain under the Eighth Amendment).

Although each of these cases involve Eighth Amendment claims, the analysis that the district court must apply here falls well short of the deliberate indifference standards applicable to such claims. *Ciarpaglini, supra.*

In ascertaining whether PTSD and suicide triggers merit advancement of this case in order to eliminate the conditions of confinement that establishes an imminent danger of serious physical injury,

the court should exercise restraint from imposing its own theories of penology on the nation's prisons. *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). In other words, the court may consider whether the prison conditions at issue in the complaint warrant a reasonable inference of the unnecessary and wanton inflictions of pain that are "totally without penological justification." *See Rhodes, Id.* Without question, calculated harassment unrelated to prison needs that triggers PTSD episodes is a nexus between policies and imminent danger of serious physical injury.

Petitioner asks this Honorable Court to apply the nexus analysis to the triggering factors for his PTSD and suicide urges and impulses and determine whether they are inflicted totally without penological justification under mental illness criteria. Petitioner is constantly subjected to exercises of authority that go unremedied.

It is this unremedied aspect of the policy, customs, and practices that is the source of Petitioner's present PTSD condition. Petitioner has yet to encounter meaningful remedies issued either by prison staff or the courts. Although expungements in many cases have been issued by penal authority, the act is a formality rather than meaningful as Petitioner does not receive good or earned time and the administrative punishments inherent in disciplinary convictions are immediate rendering the expungement remedy meaningless. In essence, without punitive damages or injuctive relief, putative remedies are meaningless as JUSTICE MARSHALL noted in his dissent in the landmark due process case before the Supreme Court. *Wolff,* 418 U.S. at 581 (1972)(the rights spelled out are little more than empty promises). This is true here, where the policy, custom, and practice in place at BVCC is tantamount to no remedies at all. The federal courts inability to grant federal relief supplemental to the inadequate state court relief provided under §1983 adds weight to the plight of no meaningful remedy as experienced by Petitioner. It's irrefutable that the state's power is at its apex in the prison context. *Johnson v. Blake*, 543 U.S. 499, 511 (2005). Prison officials enjoy a presumption of validity in the actions they take. *City of Colorado Springs v. District Court*, 184 Colo. 177, 181, 519 P.2d 325, 327 (1974).

Courts generally find allegations of "self-inflicted injury" as means to "sidestep" the legislatively enacted three-strikes rule. *Argetsinger v. Ritter*, No. 08-cv-1990, 2009 U.S. Dist. LEXIS 90192, 2009 WL 3201088, at *4 (D. Colo. Sept. 29, 2009) (collecting cases) (noting that "allowing a self-inflicted injury" to satisfy a PLRA requirement "would create a perverse incentive of self-harm in prison populations").

However, Petitioner relies on the pervasive nature of the prison conditions that the Respondents are in full command and control of to assert that these actions trigger physically harmful thoughts and urges against himself and staff. The evils that the prevailing cases have disfavoring self-inflicted injury assertions as an end-run around the three-strikes provision is not existent here. Petitioner clarifies that the nexus between the current conditions of confinement and the imminent danger of serious physical injury isn't predicated on a failure to treat PTSD, rather, it is the prison conditions triggering such actions without reprieve that properly the subject of the present threat.

The subject of suicides for prison officials is as much about triggers as it is about treatment. *Eng v. Smith*, 849 F.2d 80, (2nd Cir. 1988)(abuses of authority in the form of harassment that trigger suicides is actionable). Suicides are about as palpable a serious physical injury a human being can be exposed to. *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001)(it goes without saying that suicide is a serious harm).

Without question, the force behind triggering these harmful urges and impulses is inexorably intertwined with BVCC staff's ongoing, incessant, and unapologetic aversion to impose administrative punishment and achieve the goals of racial discrimination in violation of the lawfully adopted rules and regulations of the Department of Corrections. The heart of the policies and practices at issue is the objective of depriving Petitioner of meaningful opportunities to attest to his innocence and proper compliance with prison rules and subject exercises of authority that are abusive to appropriate rules and regulations that address misconduct or abuses and obtain administrative relief.

When an abuse occurs pursuant to policy, a cover-up will ensue, thus triggering violent urges and impulses from the lack of meaningful remedial action. It is this lack of meaningful remedial action and keeping out of reach any meaningful and effective remedy that is the focal point of this suit. There is no question that the message in these abuses *is* unfairness. The United Nations has an instructive view on how the abuses of power can impact those in custody. It defines torture as:

> Severe pain or suffering intentionally inflicted on a person for such purposes as discrimination of any kind at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...and does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Icongraphy of Torture: Going Beyond the Tortuous Torture Debate, 43 Denv. J. Int'l L. & Pol'y.

Court should take care to recognize that penal authority is a system unlike any found in American society. They are masters of their craft, once decision is made, handed over to courts where the only means of overcoming abuse lies in proper application or interpretation of the rules used to administer punishment. *See e.g. Trans Shuttle Inc. v. Pub. Util. Comm'n*, 89 P.3d 398, 405 (Colo. 2004)(technical questions of trade uniquely within an agency's expertise and experience are left to professional). The only means of expelling repeated abuses is court order specifying change and this avenue is achieved by injunction.

Petitioner's Affidavit presents a troubling account on the grasp the Respondents have on his psychological condition. He suffers from PTSD. *See* Motion to Show Cause to Proceed *In Forma* Pauperis Pursuant to 28 U.S.C. §1915(g), Exhibit A, Mental Health Evaluations, (District Court Record). Hypervigilance is a condition that will detect abuse and anticipate its occurrence without need for external confirmation. Imposing penalties without offering relief triggers anxiety and harmful responses such as suicidal thoughts are real and substantial. *Id.* Petitioner's history of abuses without relief at the hands of authority is long and complex and has swelled under the authority of the Respondents' practices and customs. Petitioner is particularly vulnerable because he is in the custody

of the Respondents. *See e.g. Chandler v. D.C. Dep't of Corr.*, 145 F.3d 1355 (D.C. Circuit 1998)(finding sufficient pleading that failure to transfer due to abuses of prison staff left prisoner "vulnerable" and created an ongoing risk of harm and if left unaddressed, could amount to risk of serious damage).

Whether this meets the "imminent danger of serious physical injury" is easily shown as Petitioner was charged for a disciplinary violation while the Motion to Show Cause was pending. Bogus disciplinary charges isn't the exception here under the Respondent's discretion, it is the rule. This is shown or further substantiated as a policy and custom by Warden Lengerich's own signature noting the Petitioner "shot a police officer" during the commission of the crime that Brooks is currently incarcerated for. *See* Motion to Show Cause to Proceed *In Forma* Pauperis Pursuant to 28 U.S.C. §1915(g), Exhibit B, Clemency Application, (District Court Record). This pattern is not only ongoing but serves as a nexus between the claimed dangers of physical harm in the form of triggering suicidal thoughts. *See Gibbs v. Cross*, 160 F.3d 962, 967 (3rd Cir. 1998)(finding "conditions" that poses an imminent danger of serious physical injury sufficient to meet the statutory exception to the "three strikes" provision); *See also Andrews v. Cervantes*, 2007 U.S. App. LEXIS 15187,*23-25 (9th Cir., Cal. June 26, 2007)(rejecting narrow reading of "imminent danger" and permitting an ongoing pattern interpretation of the imminency requirement to suffice for three strikes exception).

2. Mr. Brooks has experienced physical symptoms of the psychological trauma that stems from the conditions that have triggered intense suicidal and violent urges and impulses

Since filing the Prisoner's Complaint, Petitioner has suffered severe bouts of hives over the entire surface of his body including extraordinary places such as his scrotum, anus, and upper-lip. Medical treatment failed to prevent or relieve the physical symptoms from the mental stress imposed upon him from the conditions of confinement raised in the Prisoner's Complaint.

Petitioner cannot highlight enough that the conditions of confinement in bringing acute

psychological stress from the constant harassment, retaliation, discrimination, and racism was not trivial or benign. These factual occurrences produced a level of trauma that triggered real and substantial episodes of violent urges and impulses and aggravated Petitioner's PTSD condition. The Respondents were well aware of this impact and sought to continue the calculated harassment and racial discrimination. Although Petitioner was able to seek community assistance to produce a facility transfer, the Prisoner Complaint seeks punitive damages and declatory and injunctive relief. The ongoing nature and persistent condition of the policy, practices, and customs of the Respondents that triggered the violent physiological disorder is easily proven by the hives that were experienced and direct result of the facts alleged in the Prisoner's Complaint and supporting Declaration.

3. Petitioner is entitled to proceed under the exception to the three strikes provision

Petitioner is aware that there is little legal support for the claim that suicidal thoughts warrants a finding of an exception to the three strikes provision and even less so of physical trauma in the form of hives. However, this Court is uniquely situated to understand his condition of helplessness and hopelessness as it has presided over all of his federal claims seeking relief. From excessive force to the serial disposition of prison staff to convict him falsely of rules violations and even leave him without remedy to the monetary interests he possesses in his account to finance the expungement of disciplinary convictions. Petitioner does not allege PTSD out of nowhere and does not raise this issue to benefit from the exception, rather this remedy is needed in order to evade the customs and practices that are an abuse of authority and protect him from the practice of calculated harassment, racism, discrimination, and arbitrary action for no legitimate penological objective.

Federal courts are love striken with the prison staff's reputation and too lenient. Inaction is just as telling as a blatant admission of wrongdoing. JUSTICE DOUGLAS observes that administrative and regulatory actions may be motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. *Wolff*, U.S. 418 at 596. To say that distrust generates conflicts between prisoner and staff is an

understatement. Under this policy or custom, there is no possible means of ensuring that Petitioner is not subjected to torture at the hands of prison staff following practices that thrives on diminishing the value of prisoners which is unfortunately measured by the fairness of treatment short of federal involvement. *See Palmigiamo v. Baxter,* 487 F.2d 1280, 1283 (1st Cir. 1973)("Time has proven...blind deference to correctional officials does no real service to them...There is nothing more corrosive to the fabric of a public institution than a feeling among those whom it contains that they are being treated unfairly").

What Petitioner's case lacks in precedence, he makes up for in overwhelming facts. Petitioner requests that this Honorable Court take this issue seriously and publish an opinion on whether this Circuit recognizes conditions of confinement that drastically trigger suicidal and violent urges and impulses as an exception to the pleading requirement of 28 U.S.C. §1915 (g) and will permit a prisoner who suffers at the hands of constant abuse to proceed without prepayment of fees. The cases Petitioner raises herein set the table for this analysis.

Only injunctive relief in the form request pursuant to 42 U.S.C. §1983 will suffice to protect Petitioner from more egregious and provoking actions by the Respondents or from prison officials to continue this practice Department wide. *Gibbs v. Roman*, 116 F.3d 83, 85 (3rd Cir. 1997)(court must allow suit to proceed where requested relief would remedy conditions of imminent danger of harm). Only the services of counsel and purposes of discovery can fully and fairly determine whether the abuses alleged caused the hives condition and whether more life-threatening health conditions may exists. It cannot be denied that Petitioner's condition worsened and that had he been allowed to proceed, an Amended Prisoner's Complaint reflecting the change in health conditions would have been filed.

All in all, Petitioner believes this Court has expressively announced it's position on human decency and the value of life the Constitution accords. *Washington v. Glucksberg*, 521 U.S. 702 (1997)(No Due

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Process Right exists in the Fourteenth Amendment to voluntary euthanasia where state prohibits assisted suicide); *Vacco v. Quill*, 521 U.S. 793 (1997)(Citizens have no right under Equal Protection Clause of Fourteenth Amendment to assist in suicide). Petitioner asks this Court to grant a writ of Certiorari and decide whether a pattern of abuse tantamount to increasing a risk of suicide by virtue of a prisoner particularly vulnerable to abuses by authority merits proceeding under the three strikes provision as this is a clearly established law. *See e.g. Barkes v. First Corr. Med., Inc.*, 766 F.3d 307, 328-29 (3rd Cir. 2014).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: