

No. 9-8225 ORAL ARGUMENT
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CLERK, U.S. SUPREME COURT

IN THE
SUPREME COURT OF THE UNITED STATES

Honorable Justice, Sonia Sotomayor
(for the Tenth Circuit)

FARAMARZ MEHDIPOUR

Petitioner,

v.

LISA DENWALT-HAMMOND,
C. WESLEY LAND,
DAVID PRATER,

Respondents.

**MOTION TO CIRCUIT JUSTICE
TO FILE AN
EXTRAORDINARY WRIT
(per Rule 20)
WITH ATTACHED APPLICATION FOR WRIT**

Petitioner moves this Honorable Court, by and through the Honorable, Sonia Sotomayro, Circuit Justice for the Tenth Circuit Court of Appeals, to grant him opportunity to file his Application for Writ of Certiorari Out of Time due to Extraordinary Circumstances beyond his control. Rule 20

Rule 20.1 requires Petitioner to show: 1) the writ will be in aid of the Court's appellate jurisdiction, 2) that exceptional circumstances warrant the exercise of the Court's discretionary powers, and 3) that adequate relief cannot be obtained in any other form or from any other court.

1) the writ will be in aid of the Court's appellate jurisdiction

This Court retains equitable powers to ensure faith in the Federal Courts of the United States. Citizens must trust that, when no other means of relief can be obtained by normal means, and exceptional circumstances dictate exceptional intervention, this Court retains jurisdiction under the All Writs Act. 28 U.S.C. § 1651

The Court, Petitioner, and Social Interests demand a reliable means or reaching the courthouse doors in any number of demanding situations. In the instant case, Petitioner diligently attempted to bring the matter at hand to this Court, but was impeded by circumstances beyond Petitioner's control.

2) exceptional circumstances warrant the exercise of the Court's discretionary powers

Prison gang violence, among other things, has caused the facility where Petitioner is incarcerated to suffer numerous facility lock-downs. Add to that, two Oklahoma state-wide lockdowns were widely reported in the news media. All of this occurred across the time when the certiorari in this matter became due, and continued throughout Petitioner's attempts to get the certiorari filed with the court.

Attached are letters to the Clerk, particularly a November 14, 2016 Declaration Under Penalty of Perjury (sic) which explained the circumstances. (Exhibits A and D) The Clerk was not helpful in advising Petitioner, *pro se*, how to proceed. (It might have been deemed improper for the Clerk to do more.) Even in the best of situations, the facility's legal mail and law library access is wanting. After receiving the Clerk's most recent letter returning Petitioner's Application for Writ of Certiorari, more delays incurred.

ONEROUS TIMELINE

May 14, 2019 ORDER, Tenth Circuit Court of Appeals

Jul 30, 2019 Letter from Plaintiff to U.S. Supreme Court

Aug 12, 2019 Cert deadline (90 days from May 14, 2019 ORDER)

Sep 23, 2019 Letter from Plaintiff to U.S. Supreme Court Clerk (Rec. by Clerk Nov. 5)
titled: "Motion for Extension of Time"

Oct 25, 2019 Application for cert. mailed

Oct 28, 2019 Application for cert postmarked (per Clerks Nov. 5 letter)

Nov 5, 2019 Application for cert Received by S.Ct Clerk

Nov 5, 2019 Letter from S.Ct Clerk stating Application for cert out-of-time as of Aug 12

Nov 14, 2019 Letter from Plaintiff to U.S. Supreme Court (rec. by Clerk Nov. 26)
titled: "Declaration under Penalty of Perjury" (sic) including four(4) copies of
"Application" for cert

Nov 26, 2019 S.Ct. Received Nov. 14 Letter/Declaration/Application

Nov 27 2019 Letter from S.Ct. Clerk returning Nov. 14 Letter/Declaration/Application for
"fail to comply with the Rules"

3) adequate relief cannot be obtained in any other form or from any other court.

The Tenth Circuit lost jurisdiction to retain the case, and no means remains to bring this case before any tribunal in the United States or State of Oklahoma, other than this Court.

Therefore, Petitioner prays that Her Honorable Justice will permit Petitioner to file his certiorari in this matter, out of time.

Helen, # 43741
 216 N. Murray St.
 JCC 5-N # 121335
 Fairimarrs Mechanical, Inc. do
 James M. Muller 3-22-2020
 Respectfully,

and to file, the attached Petition for writ of habeas corpus
 the Clerk, for cause shown, to waive the deadline for filing,
 Circuit Justice, to issue an extraordinary mandamus certiori
 Therefore, Petitioner moves this Court, by and through the

Releif

facility to restore lawful access. (Exhibit F)
 the same cause) succeeds in obtaining a mandate to the
 Improvement unit Petitioner (or one of the other inmates pursuing
 demands for access). It has gotten ugly, and does not promise

demands for access) and Administrative Grievances (making
 Administrative Disciplinary action (for Petitioner's repeated
 access to the facility's law library; which has now triggered
 Petitioner continues to suffer deliberate impediments to

THEREFORE, Petitioner moves this Honorable Circuit Court Justice to allow his appeal/certiorari from the Tenth Circuit in this case. The Extraordinary Writ is attached to this motion.

Faramarz Mehdipour
Faramarz Mehdipour, plaintiff, pro se
DOC Num.: 121335
216 N. Murray St.
Helena, OK 73741

Certificate of mailing

I, Faramarz Mehdipour, swear under penalty of perjury that I mailed a true and correct copy of the foregoing, along with Exhibit F, to the following:

Stefanie F. Lawson
Asst. Attn. General
313 N.E. 21st St.
Oklahoma City, OK 73105

On this the ____ day of March, 2020

Faramarz Mehdipour
Faramarz Mehdipour

Clerk,
U.S. Supreme Court
Washington, D.C. 20543

Sept. 23, 2019

In Re: Tenth Circuit No.: 18-6161

Order and Judgment

May 14, 2019

Briscoe, McKay, Lucero, Judges

Motion For Extension of Time

Dear Clerk,

I need instructions for seeking extension of time to file certiorari from the above captioned Order and Judgment.

I am a pre-se prisoner in Oklahoma Doc. The facility where I am housed, and the Oklahoma Doc state-wide, has experienced several back-to-back security events¹ that has restricted Law Library access almost entirely.²

Will you please send me forms, rules, and instructions for filing Dextension of time, and 2) certiorari? If possible, convert this letter into the motion.

Thank You.

Faramarz Mehdizadeh

Faramarz Mehdizadeh

Doc 121335

216 N. Murray St.

Helena, OR 97341

(much media reported)

1. Most recently, Oklahoma is under state-wide lockdown due to ^{wide spanning, well coordinated} gang war that spanned six facilities, resulting in many hospitalizations and at least one death so far. Before that, the JCC facility experienced

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

November 14, 2019

DECLARATION UNDER PENALTY OF PURJURY

Dear Clerk,

I hope you can help me. Is there a process or remedy for extraordinary circumstances infringing upon the filing deadline for filing a writ for certiorari?

State-wide prison violence, resulting in various lock-downs, including one state-wide lockdown, caused me to miss the deadline for filing a certiorari. The violence and most¹ of the lock-downs were widely reported in the local media. There was virtually no law library access during these times.

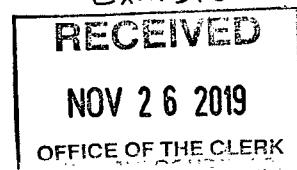
During the mix of lock-downs, on July 30, 2019, I mailed a letter requesting an extension of time, for which I never received a response. The letter was not sent through the legal mail process (which would have required presentation to the shuddered law library) so, other than my personal calendar entry, I have no proof of the fact. I do not know whether the letter ever left the JCCC facility.²

My brother called your office several times, and was told that my letter had not been received. After not hearing anything from your office, I mailed your office an edited version of

¹ In addition to the state-wide problems, the facility where I am housed experienced three security lock-downs just prior to the state-wide lockdown; one due to gang violence, another for contraband being thrown over the fence, and the third for reasons that were not published.

² JCCC is notorious for losing mail. Although I have witnessed various issues with prison mail over the years, this facility is the worst I have ever witness, and the only facility where I have personally had such issues in the prison system. They just do not care. And if a grievance is initiated, they immediately have the prisoner shipped to another facility making, in their minds (or at least their assertion) the issue moot.

Exhibit D



the attached letter on September 23, 2019.³ I likewise never received a response, and suspect the issue is local to the facility rather than U.S. Postal Service or your office.

By October 25, 2019, the law library was somewhat accessible, and I was able to mail my Application for Certiorari, which was postmarked October 28, 2019, and received at your office on November 5, 2019. By then, my Application was grossly out of time.

Is there anything I can do?

I, Faramarz Mehdipour, swear under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief. 28 U.S.C. § 1746

On this the 14th day of November 14, 2019.

Respectfully,



Faramarz Mehdipour
Faramarz Mehdipour, pro se
DOC 121335
James Crabtree Correctional Center (JCCC)
216 N. Murray St.
Helena, OK 73741

attached: • November 5, 2019 letter from U.S. S.Ct. Clerk
• copy of October 25, 2019 "Application"
• copy of September 23, 2019 letter to S.Ct. Clerk

³ All I have is a draft of the letter, because I mailed the original. I had no way of obtaining a copy and was in a rush to get it into the mail. For some insane reason, I was confident enough that I would not need a copy that I did not make a handwritten copy. (Will never make that mistake again!)

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

FARAMARZ MEHDIPOUT,
PETITIONER,

VS.

LISA DENWALT-HAMMOND; C.
WESLEY LANE; DAVID PRATER,
RESPONDENT.

CASE NO. _____

APPLICATION

28 U.S.C. § 2101 (c) and Rule 13 of the Rules of the Supreme Court of the United States application is made for extension of time within which to file a petition for writ of certiorari from June 20th 2019, to and including. September 18th 2019.

1. The ORDER AND JUDGMENT sought to be reviewed is that of the

Tenth U.S. Court of Appeals: Case Number: 18-6161

May 14, 2019

Briscoe, McKay, Lucero, Judges.

2. The ORDER sought to be reviewed was entered on May 14.2019. The mandate issued pursuant to Federal Rule of Appellate Procedure on June 28.2019. A Petition for En Banc Rehearing was filed May 23, 2019, and was denied June 20th 2019. The time allowed by law for filing a petition for writ of certiorari will expire September 18th. 2019.

3. The ORDER AND JUDGMENT of the Tenth Circuit involved prosecutorial misconduct.

A copy of the ORDER of the Court below is appended and was NOT reported.

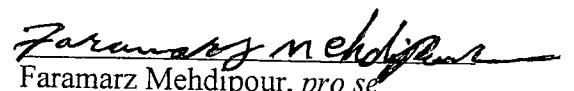
4. The jurisdiction of this court is invoked under the provisions of the United States Code.

Exhibit E
Rec Nov 5, 2019
U.S. S. Ct. Clerk

5. The case involves prosecutorial misconduct.
6. This extension is requested because the facility which Petitioner is incarcerated has over the past eight (8) months experienced several facility wide lock-downs for various security reasons, making law library access limited to the law library supervisor visiting the housing units once per week (sometimes) for sending and receiving mail. No research or typing was allowed. Then, most recently, the Oklahoma State Department of Corrections was placed on (much media reported) state-wide lockdown due to wide spanning, well coordinated gang-war that spanned six facilities statewide, resulting in many hospitalizations and at least one death so far.

Attached is a handwritten copy of a letter Petitioner mailed to this court on September 23, 2019 explaining the current legal access restrictions he is being subject to, and requesting information on how to proceed. Petitioner has never received a response, and Petitioner's brother called the court today and was told the letter never arrived there (which is not surprising or uncommon from this facility).

Respectfully Submitted,


Faramarz Mehdipour, *pro se*
DOC # 121335
James Crabtree Correctional Center (JCCC)
216 N. Murray St.
Helena, OK 73741

CERTIFICATE OF MAILING

I, Faramarz Mehdipour, certify that a true and correct copy of the foregoing Application of Extension of Time was mailed, postage prepaid to the following:

Stefanie E. Lawson
Asst. Attn. General
313 N.E. 21st St.
Oklahoma City, OK 73105

Date: October - 25th, 2019

Faramarz Mehdipour
Faramarz Mehdipour

1) The facility where I have been housed for the past several years, James Earhart Correctional Center (JCCC) has experienced numerous difficulties over the past year, including staff shortages and supervisor position changes at the Law Library supervisor position.

2) The JCCC Law Library has experienced numerous difficulties ever the past year due to staffing issues; but has also experienced several prolonged closings due to facility and staff-wide lock-downs caused by everything from minor disorders (giganteas) to wide-spread (inter-facility) gang violence (causing multiple injuries and at least one death).

3) I (as well as other inmates) have recently (several months) experienced increasing escalation of conflicts with staff (as well as other inmates) have recently (several months) experienced increasing escalation of conflicts with staff where I complained about the most recent Law Library request-to-staff (step one (informal) of the grievance process) my ability to gain assistance with my legal work from supervisor, (in my capacity ("ms. Mcerthy") blocking/denying another inmate of my choosing. Wardens Assistant, Charles Mayfield, answered the request to staff wherein he accused me of "harassment" simply I want help from an inmate I know to be competent and with available time to be meaningful.

Declarative methods

(b) Just days later, Lew Library supervisor, Ms. McCarrathy, issued the another misconduct, this time for doing exactly what

Lieutenant found me NOT GUILTY.
 not stay, and I complied by leaving. The Disciplinary with a line drawn through it because told me I could name, Doc number, and log-in time remained clearly legible, name off the sheet as if he was never there." But my she accuses me of "lying." She stated that I "crossed his Incident Report Ms. McCarrathy filed with the misconduct. Continuing from paragraphs 5-4, above, EXHIBIT F, pg. 3 is the

(c) Continuing from paragraphs 5 and 6, above, I entered the Lew Lieutenant was serving me with a misconduct.
 sign-in time and left. Next thing, the Disciplinary to stay that day, I drew a line through my name and that, due to her policy change, I would not be allowed Library and signed-in. Immediately, Ms. McCarrathy told me continuing from paragraphs 5 and 6, above, I entered the Lew

(d) Just to be clear, I had never been told, or ordered, to library closes before getting a turn (a 30 minute session).
 computer or word processor) if, after writing, the law draw a line through our names on either logs (i.e. washrooming to sign-out. But it is common practice, still, to been told to not leave the law library without remember that draw a line through my name on the log. I had not drawn a line through my name on the log, I had been told to not leave the law library without remember

(e) Just to be clear, I had never been told, or ordered, to law library sign-in/sign-out log.
 Direct order by drawing a line through my name on the supervisor, Ms. McCarrathy, accusing me of Disciplinary (offense Report) brought against me by law library

(5) EXHIBIT F, pg. 2, attached, is a DOC Disciplinary Report

she told me to do. Exhibit F, pg. 4, attached is a Request to Staff (also used for non-grievance requests in some circumstances) Ms. McCarthy told me to submit to her. Since she was disallowing the inmate helping me to come along with me on her new "Deadline Day" (monday), she instructed me to submit a Request to Staff to her requesting her to change my Law Library day from Monday to Thursday (my unit's normal day). The inmate helping me is on my unit, so he would be able to go to Law Library on that day.

- 10) Exhibit "F", pg. 5, attached, is a second Disciplinary action brought against me by ms. McCarthy. She took offense to the way I worded the Request to Staff discussed in the previous paragraph (#9).
- 11) When ms. McCarthy took over as law library supervisor she immediately began making policy changes (some contrary to Doc policy and law) from the old system which worked for everyone. Her changes are deliberately designed to discourage and impede law library access.
- 12) I continue to suffer extreme and unnecessary impediments and harassment concerning my legal endeavors. Above is just a couple of the many. Under the current plan I get two(2) hours per week in the law library (even with deadlines), and must, within that two hours, compete with multiple other inmates for thirty(30) minute sessions for the Westlaw research computer and word processors. In essence, I get thirty(30) minutes per week on each, the Westlaw and word processor, or one-hour productive time.

Faramarz Mehdipour 3-22-2020
Faramarz Mehdipour Date.

COPY

Must Be Submitted Through the Law Library or Designee

RECEIVED

Inmate/Offender Grievance Process

REQUEST TO STAFF

MAR 16 2020

TO: LAW LIBRARY

(NAME AND TITLE OF STAFF MEMBER)

FACILITY/UNIT: JCCCDATE: 3-16-20**JCCC LAW LIBRARY**I have have not already submitted a "Request to Staff" or grievance on this same issue.

If yes, what date: _____ facility: _____ grievance #: _____

I affirm that I do do not have a grievance pending on this issue.I affirm that I do do not have a lawsuit of any type pending that relates in any way to this issue.

If a lawsuit is pending, indicate case number and court: _____

This request does does not relate to a pending misconduct report. If it does, this request may only be answered by the disciplinary coordinator assigned to the misconduct.**SUBJECT:** State completely, but briefly, the problem on which you desire assistance. This statement must be specific as to the complaint, dates, places, personnel involved, and how you were affected. One issue or incident per "Request to Staff." Your failure to specifically state your problem may result in this being returned unanswered.SINCE I AM NOT BEING ALLOWED TO USE OF LAW LIBRARY
6 HOURS PER WEEK IN MONDAY.

(USE OTHER SIDE IF MORE SPACE IS NEEDED. DO NOT ATTACH ADDITIONAL PAGES.)

ACTION REQUESTED: State exactly how you believe your request may be handled; that is, what exactly should be done and how.I AM SUSPEND MY DEADLINE DAY SO I CAN CAME IN
THURSDAY WITH MY HELPER.NAME: MEHDIPOUR, FARAH DOC NUMBER: 121335 UNIT & CELL NUMBER: 9
(PRINT)SIGNATURE: Faranaz Mehdipour WORK ASSIGNMENT: N/A

DO NOT WRITE BELOW THIS LINE

DISPOSITION:you have been advised multiple times you may use the law
library on your day (mondays) for 6 hours you stated that you
wanted your friend who does not have a deadline to help →
Krisay McLaughlin 3-16-2020

STAFF MEMBER

DATE

RECEIVED

Date response sent to inmate/offender: _____

1. Original to file
2. Copy to inmate/offender

MAR 16 2020

DOC 090124D (R 4/19)

JCCC LAW LIBRARY

Exhibit F, pg. 4

behavior before further action is necessary. ~~will~~

misconduct for harassing staff. Please cease your accusations in your request you will be receiving a

your last PTS to quit harassing staff, due to your

hour weekly limit. Additionally - you were advised on

day is Thursdays (with your wife) and you have a 2

from the deadline, which I will do. Be advised your new

of 3.10.2020. For this PTS you are requesting removal

without a deadline), we had this discussion the morning

you, and this day is Thursday (which would be your day

3-20-02

DEPARTMENT OF CORRECTIONS OFFENSE REPORT

Name of Facility JCCC

Facility Computer Code 22-A

Section I

Inmate Name: Mehdipour, Faramarz DOC#: 121335 Date of Offense: 03/02 2020 Time: 0825

Place of Offense: Law Library Housing Assignment: 5N

Offense: (4-4233, b# 1, 2) Disobeying Verbal Orders Offense Computer Code: 22

Class of Offense: A

Description of Incident (to include any unusual inmate behavior): (4-4233, b#3)

On the above date and approximate time inmate Mehdipour (DOC# 121335) came into the law library to ask questions *(X)*

Inmate was previously counseled about lying on the law library check in/out log, in which he did it again today.

Inmate is receiving A-22 for disobeying verbal orders. *(X)*

Staff or Inmate Witness (if any) (4-4233, b#4)

Disposition of Physical Evidence (if any) (4-4233, b#5) Logged in law library check in logs

Immediate Action Taken (to include the use of force and prehearing detention) (4-4233, b#6)

Printed Name and Title of Reporting Employee (4-4233, b#7)

Signature of Reporting Employee

Name Krisy McCarthy

Title AAI

Date 3/2/2020 Time 1446

Section II

To be referred within 24 hours from the time the violation is reported.

Informal Resolution
Dismissed
<input checked="" type="checkbox"/> Referred for investigation
Name <i>Kris McCarthy</i>
Title <i>ASST. MGR.</i>
Date <i>3/13/20</i> Time: <i>0800</i>

Section III Inmate should initial appropriate response

I have received a copy of the written charge against me. I realize that I have a right to remain silent.

I plead guilty and waive my right to an appeal.

I plead not guilty.

I plead not guilty and waive my right to 24 hours preparation time.

Inmate's Signature *Faramarz Mehdipour* DOC # 121335 Date 3/3/2020 Time 1450

Inmate chose not to sign for a copy of the Offense Report at this time.

A. Park *Austh Park*
Offense Report Delivered to above inmate by (Print and Sign)
(4-4236, 4-4238)

3-3-2020

Date Delivered

1450

Time Delivered

ORIGINAL: Commitment Document Folder

FIRST COPY: Field File

SECOND COPY: Inmate

DOC 060125A (R 4/17)

Exhibit F, pg. 2

INCIDENT/STAFF REPORT

<u>ACCIDENT/INJURY (STAFF OR INMATE/OFFENDER)</u>	<u>DRUGS/SYRINGE</u>	<u>SHAKEDOWN</u>
<u>ASSAULT</u>	<u>FOODS/KITCHEN</u>	<u>VISITING PROBLEM</u>
<u>CONTRABAND</u>	<u>ALCOHOL/BEER</u>	<u>WEAPON</u>
<u>USE OF FORCE/RESTRAINTS</u>	<u>X INFORMATION</u>	<u>MAINTENANCE PROBLEM</u>
<u>DESTRUCTION OF PROPERTY</u>	<u>KEYS/LOCKS</u>	<u>SECURITY THREAT GROUP</u>
<u>COMMUNICATION DEVICES</u>	<u>OTHER</u>	

* * * * *

INMATE/OFFENDER INVOLVED: Mehdipour, Faramarz 121335 HOUSING ASSIGNMENT: 5N
(NAME) (DOC NUMBER)

03 / 02, 2020

0825 AM/PM Krisy McCarthy
(TIME OF INCIDENT) (SIGNATURE OF REPORTING EMPLOYEE)

LOCATION OF INCIDENT: Law Library

AAI Krisy McCarthy
(PRINTED NAME AND TITLE OF REPORTING EMPLOYEE)

3 / 2 ,2020 1446
(DATE AND TIME SUBMITTED TO SHIFT/DEPARTMENT SUPERVISOR)

WITNESS: _____

SECURITY THREAT GROUP

- Admitted gang member
- Has tattoos, wears or possesses clothing and/or other paraphernalia or other indications of gang associations
- Has been participating in delinquent/criminal activity with known gang member(s)
- Observation confirms the individual's close association with known gang member(s)
- Information from reliable information source identifies the individual as a gang member

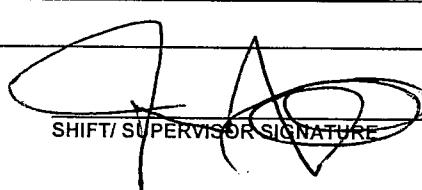
INMATE/OFFENDER ASSOCIATES: _____

DETAILED DESCRIPTION OF INCIDENT: (Print or Type – Include what happened, who, where, when, how, and why)

On the above date and approximate time inmate Mehdipour (DOC# 121335) came into the law library to ask questions
Inmate Mehdipour was counseled the week prior in regards to lying on the check in sheet and that if he did it again he
would be receiving a misconduct. Upon reviewing the check in sheet I noticed Mehdipour did not sign out and attempted
to cross his name of the sheet as if he was never there. Inmate is receiving a misconduct for A-22, disobeying verbal
orders. EOR.

SUPERVISOR'S COMMENTS AND ACTION TAKEN: Misconduct / Work

DISTRIBUTION:
Original – Chief of Security
1st Copy – Facility/Unit Head
2nd Copy – Assistant Facility/Unit Head
3rd Copy – Unit Manager (If applicable)


SHIFT/ SUPERVISOR SIGNATURE DATE

(R 8/19)

Exhibit F, pg. 3-A

DISCIPLINARY DISPOSITION REPORT
(CLASS A & B OFFENSES AND CLASS X GUILTY PLEAS)

I. Name of Facility JUL Facility Code 22A Date of Violation 3/2/2020
 Name of Inmate Mehdi Pour Last Name Farzamoliz
 Violation Disobeying Verbal Order First Name M.I.
 Disposition Date 3/10/2020 DOC # 121335 Time 1050 Place Down stairs Old Admin

II. I understand that I waive the opportunity of this case being appealed if I plead guilty to this offense.

* Farzam M. Pour

X 121335
 Number

PLEA: 1. Guilty _____ Inmate's Initials _____ 2. Not Guilty X Inmate's Initials =

Confidential Statements: I have independently reviewed the reliability statement and have found that it sufficiently supports the reliability of the confidential witness statement(s).

Disciplinary Coordinator's Signature

III. Finding

1. Guilty _____ 2. Not Guilty X

Evidence relied on for finding of Guilty (include a brief description of the offending behavior)

The misconduct is (not guilty) to missing the set hearing date.
Due to the hearing officer.

IV. Discipline Imposed:

Sanction	Code	Suspension for _____ days
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Basis for discipline imposed:

Disciplinary Coordinator Printed Name and Signature A. Parks Austin Parks

V. As a result of conviction for subsequent offense prior to expiration of the suspended punishment, the previous suspended punishment is hereby revoked: to run consecutive to the new punishment.

Previous Violation:

Previous Punishment 1. _____ 2. _____ 3. _____

Date of Imposition: 3/11/2020

Facility Head Review / Affirm / Dismissed / Modified / Remanded /

Date 3/11/2020 Signature R. J. O. S.

VI. I have received a copy of the disposition. Date 3/10/2020

Inmate's Signature and Number Farzam M. Pour

Inmates pleading not guilty may appeal to the facility head/district supervisor within 15 days.

ORIGINAL: Commitment Document Folder

FIRST COPY: Field File

SECOND COPY: Inmate

THIRD COPY: Records

DOC 060125C-1 (R 4/17)

COPY

Must Be Submitted Through the Law Library or Designee

RECEIVED

Inmate/Offender Grievance Process

REQUEST TO STAFF

MAR 16 2020

TO: LAW LIBRARYFACILITY/UNIT: JCCCDATE: 3-16-20

(NAME AND TITLE OF STAFF MEMBER)

JCCC LAW LIBRARYI have have not already submitted a "Request to Staff" or grievance on this same issue.

If yes, what date: _____ facility: _____ grievance #: _____

I affirm that I do do not have a grievance pending on this issue.I affirm that I do do not have a lawsuit of any type pending that relates in any way to this issue.

If a lawsuit is pending, indicate case number and court: _____

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6 HOURS PER WEEK IN MONDAY.

(USE OTHER SIDE IF MORE SPACE IS NEEDED. DO NOT ATTACH ADDITIONAL PAGES.)

ACTION REQUESTED: State exactly how you believe your request may be handled; that is, what exactly should be done and how.I AM SUSPEND MY DEADLINE DAY SO I CAN CAME IN
THURSDAY WITH MY HELPER.NAME: MEHDI POUR, FARAH DOC NUMBER: 121335 UNIT & CELL NUMBER: 9
(PRINT)SIGNATURE: Zamang Molanji WORK ASSIGNMENT: N/A

DO NOT WRITE BELOW THIS LINE

DISPOSITION:you have been advised multiple times you may use the law
library on your day (mondays) for 6 hours you stated that you
wanted your friend who does not have a deadline to help →3-16-2020

STAFF MEMBER

DATE

RECEIVED

Date response sent to inmate/offender: _____

MAR 16 2020

1. Original to file
2. Copy to inmate/offender

DOC 090124D (R 4/19)

JCCC LAW LIBRARY

Exhibit F, pg. 4

you, and his day is Thursday. (which would be your day without a deadline). We had this discussion the morning of 3-16-2020. Per this RTS you are requesting removal from the deadline, which I will do. Be advised your new day is Thursdays (with your unit) and you have a 2 hour weekly limit. Additionally- you were advised on your last RTS to quit harassing staff, due to your accusations in your request you will be receiving a misconduct for harassing staff. Please cease your behavior before further action is necessary. KSM

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

FARAMARZ MEHDIPOUR

Petitioner

v.

Lisa Denwalt-Hammond,
C. Wesley Lane II,
David Prater,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENTH CIRCUIT COURT OF APPEALS**

PETITION FOR WRIT OF CERTIORARI

Petitioner, pro se

Faramarz Mehdipour
JCCC Doc No. 121335
216 N. Murray St.
Helena, OK 73741

Attorney for Respondents in Tenth Circuit

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QUESTION(S) PRESENTED

- 1) Did the District Court for the Western District of Oklahoma err in dismissing all the Defendants in Case Number 5:15-CV-268 SLP based upon *Heck v. Humphrey*, 512 U.S. 479 (1994)?
- 2) Did the Tenth Circuit Court of Appeals err in denying jurisdiction alleging Plaintiff's notice of appeal was untimely?
- 3) Did the District Court err in denying Plaintiff's Rule 60 Motion?
- 4) Did the Tenth Circuit Court of Appeals err in affirming the District Court's denial of Plaintiff's Rule 60 Motion?
- 5) Is *Heck v. Humphrey*, 512 U.S. 479 (1994) unnecessarily too restrictive and far reaching in that a non-binding Declaratory Judgment is possible without nullifying a conviction?

LIST OF PARTIES

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

RELATED CASES

- **U.S. Court of Appeals for the Tenth Circuit** (Appendix "A")

Case Number: **18-6161**

Order and Judgment: **May 14, 2016**

Faramarz Mehdipour, Plaintiff – Appellant,

v.

Lisa Denwalt-Hammond; C. Wesley Pane, II; David Prater, Defendants – Appellees.

- **U.S. District Court for the Western District of Oklahoma** (Appendix "B")

Case Number: **CIV-18-268-SLP**

Order and Judgment of Dismissal: **June 21, 2018**

Order Denying Rule 60 Motion: **August 16, 2018**

Faramarz Mehdipour, Plaintiff,

v.

Lisa Denwalt-Hammond; C. Wesley Pane, II; David Prater, Defendants.

- **Oklahoma County District Court, State of Oklahoma**

Case Number: **CF-1991-3221**

Judgment & Sentence: **November 19, 1996**

State of Oklahoma, Plaintiff,

v.

Faramarz Mehdipour, Defendant.

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APPENDIX C	March 29, 2018 Report and Recommendation
APPENDIX D	ORDER, Tenth Circuit, Denying Petition for En Banc Rehearing
APPENDIX E	May 25, 2009, Petition for En Banc Rehearing
APPENDIX F	Sept. 14, 2018, Notice of Appeal (mailed Sept 11, 2018)
APPENDIX G	Aug 16, 2018, ORDER, U.S. Dist. Ct. Denying Plaintiff's Rule 60 Motion.
APPENDIX H	Aug 9, 2018, Plaintiff's Rule 60 Motion and Brief
APPENDIX I	June 21, 2018, U.S. Dist Court, Judgment of Dismissal
APPENDIX J	May 17, 2018, Plaintiff's Objection to Report and Recommendation

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINION BELOW

This Petition arises from federal courts:

The opinion of the United States Court of Appeals for the Tenth Circuit ("Tenth Circuit") and appears at **Appendix "A"** to the petition and is **UNPUBLISHED**.

The opinion of the United States District Court for the Western District of Oklahoma ("District Court") appears at **Appendix "B"** to the petition and is **UNPUBLISHED**.

JURISDICTION

- 1) The Tenth Circuit DECIDED the case below on May 14, 2019. (Appendix "A")
- 2) The Tenth Circuit DENIED a timely petition for rehearing on June 20, 2019.
(Appendix "D")
- 3) A Motion for Extension of Time was filed contemporaneously with this Petition for Writ of Certiorari.

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

CONSTITUTIONAL AND STATUTORY PRIVISIONS INVOLVED

U.S. Constitution

U.S. Const. Amnd. VI (court access provisions)

U.S. Const. Amnd. VIII (equal protection)

U.S. Const. Amnd. XIV (equal protection and due process)

Federal Statute

28 U.S.C. § 1254 (Supreme Court Jurisdiction)

42 U.S.C. § 1983 (civil rights action against state agent)

Federal Rules of Civil Procedure

FRCP Rule 60 (reconsideration of Order and Judgment)

Oklahoma Constitution

Okl. Const., Art. 2, § 6 (court access)

Okl. Const., Art. 2, § 7 (due process)

Okl. Const., Art. 2, § 17 (right to preliminary hearing)

Oklahoma Statute

21 Okla.St § 463 (district attorney forged preliminary hearing waiver form, court record and information form.)

22 Okla.St § 258. 259 (preliminary hearing)

STATEMENT OF THE CASE

This matter involves a criminal matter for which Petitioner has no legal recourse for recompense but civil action. It is not the criminal conviction being challenged here, but the corruption, stoked with equal protection and due *process* violations, for which Petitioner seeks redress. It is the *process* violation Petitioner seeks to redress.

This case is about violations of *process* which caused the deprivation of Petitioner's Constitutional right of Due Process. It is that due process, and the denial thereof, that Petitioner seeks damages for in this action. *Jackson v. Loftis*, 189 Fed.Appx. 775 (10th Cir. 2006), citing *Dible v. Scholl*, 410 F.Supp.2d 807 (N.D. Iowa Div. 2006)

In 1991 Petitioner was arrested for allegedly threatening a person in a courthouse corridor, for which Petitioner was twice brought to trial absent probable cause. The person allegedly threatened turned out to be a witness in a narcotics matter unrelated to Petitioner. Petitioner was tried in 1993, and on remand, again in 1996. Probable cause was never established either 1) prior to arrest, nor 2) prior to trial. The prosecutor filed a felony information based upon his own personal involvement in the alleged crime. Thereafter, despite Petitioner's continued objections throughout the first and second trial, the Felony Information was never brought before a grand jury or preliminary hearing.

Petitioner began raising objections early on in the process about the fact that he had not received a preliminary hearing, as Oklahoma Constitution and Statute require. The District Attorney then produced a forged/fraudulent waiver form, alleging Petitioner had received a hearing before a particular District Court Judge. The Judge later signed an affidavit that the signature on the form was not his. It also turns out the judge had retired a year prior to the date

on the fraudulent waiver form. Petitioner hired an attorney to bring the matter to the attention of the State Attorney General, who refused to get involved.

The District Attorney who filed the Felony Information was Respondent C. Wesley Lane, II. The District Attorney who tried the matter (twice) and who submitted the fraudulent waiver form was Respondent Lisa Denwalt-Hammond. Respondent David Prater was Oklahoma County District Attorney.

The 1990 was a turbulent time for Oklahoma and Tulsa County District Attorney Offices which, it has come to notorious light in the years since, were rampant with unbridled corruption. Petitioner found himself ensnared in the cesspool when he arrived in the Oklahoma County Courthouse to arrange for the return of some of his business property, which had been mistakenly seized during a search of his salvage yard for stolen property. As Petitioner arrived on the fourth floor, he immediately witnessed a notorious rat standing nearby. The rat became nervous because Petitioner knew who he was and what he was about. A drug addict turn informant.

Again, Petitioner does not seek to overturn his conviction, and understands how that would run afoul of *Heck v. Humphrey*, 512 U.S. 477 (1994). Petitioner clearly stated below: "Just to be clear, [Petitioner] is not attempting to overcome his conviction in this action." (Appendix J : Plaintiffs Objection to Report and Recommendation) But Petitioner's due process claims, alone, should be subject to attack; immunity does not extend to violation of the law. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Once Respondents engaged in law violations, they lost their immunity.

REASON FOR GRANTING THE PETITION

This Court should determine whether *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 373 (1994) is unnecessarily far-reaching and restrictive; particularly given the fact that *Heck* fails to consider that there is a remedy that was not considered by the *Heck* Court. What if the *process* employed to gain a conviction violates some right exclusive of the conviction? Perhaps some property right, or some relationship right? Where is the remedy.

The Constitution does not guarantee that a person will not "be convicted" of a charged offense. The Constitution guarantees a "*process*" equal to that of all similarly situated people. It is that *process* which requires review. A party must have opportunity to demonstrate that the *process* (due prior to conviction) employed to gain a conviction (or not) is wanting and enforceable.

A federal court may issue three types of relief: damages, injunctions, and declarations. Certainly, *Heck* rationally applies to damages and/or injunctions. However, a non-binding declaration is a remedy that will meet the comity and separate sovereign interests the *Heck* court means to address, while leaving a party whose state court due *process* and/or equal protection rights have been violated with a remedy which may, or may not, lead to a state court review. A non-binding declaration will permit a State to then conclude whether the proper application of rights would be enough to have produced a different outcome at trial, and if not, no relief would be necessary.

Under the current application of *Heck* an injured party must have their criminal conviction successfully terminated in his/her favor prior to bringing a civil rights action under 42 U.S.C. § 1983. Even if the party's due *process* rights have been violated, there is no remedy absent *successful termination* in his/her favor. This is an all or nothing approach to a

circumstance that could be remedied with a declaration that a state court may, or may not, grant relief under. Not all due *process* remedies will involve a conviction being overturned; some, absent actual injury, will involve even no remedy at all; but all should be reviewed for actual injury — whether the convicting alone is the injury, or some other injury, not including the underlying conviction, was inflicted.

No other constitutional provision is held to be enforceable only if some ancillary precursor is proven in some secondary respect. In criminal proceedings, the *process* is due *prior to* the conviction, but the current scheme under *Heck* requires curing the bad fruit of the violation before reviewing the cause. To hold that the possibility of a *future* conviction alters the *process* due — equal to the *process* due all others — is as ludicrous in all respects as to say that a possible *future* conviction restricts the right against self-incrimination, the right of confrontation, the right to counsel, among other things. If that were so, a mere indictment would trigger restrictions of these rights.

If poor safety inspections on the part of government causes a person to lose a limb, must that person restore the limb before suing the government? If government negligence causes the death of an unborn child, must the bereaved parents prove that the pregnancy would have, absent the government's neglect, terminated in a successful live birth? Not may, but must; where the only legal process available would require first producing a resurrected child.

Heck is understood to force a party to produce his resurrected freedom before enforcing his freedom rights of due *process* and equal protection — which were due *prior to conviction*. Even if a party is seeking to enforce a non-conviction right, they must produce their resurrected freedom.

Petitioners are prohibited from bringing a § 1983 *process* violation claim prior to conviction, even if the process violation has already occurred. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1991) *overruled in part by Wallace V. Kato*, 547 U.S. 384, 391 (2007) (no cognizable § 1983 claim for alleged unconstitutional conviction or imprisonment unless plaintiff can prove conviction has already been obtained or is outstanding). A petitioner is locked-out of the courts until he has completed serving a sentence. In the process, Due Process and Equal Rights violations may go stale, particularly as informed individuals age, die, and/or memories fade.

Put another way: For fear of offending comity and separate sovereign, *Heck* forces federal courts to refuse to reach the truth regarding process violations, even when the mere truth of a matter should be reviewed and recorded. If comity and separate sovereign necessitates restraint, then the *least restrictive* doctrine — which this Court typically applies — should be applied. *Holt v. Hobbs*, 574 U.S. 352, 135 S.Ct. 853, 190 L.Ed.2d 747 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 134 S.Ct. 2751, 189 L.Ed.2d (2014). A non-binding Declaration is an available remedy that does not necessarily require invalidation of a conviction. With respect to the process rights of the accused (right(s) to *process* which begins prior to, and is separate from, a *possible* future conviction), *Heck* unnecessarily throws out the baby with the bathwater . . . unnecessarily throws out truth when a Declaration of the truth can be had as a lesser *restriction* than blind disregard. Such a declaration would then permit the state to conclude whether the proper application of rights would be enough to warrant non-conviction remedies. Even where the conviction itself is implicated, a declaration used in support of an action in state court may still be insufficient to overturn a conviction and/or sentence. A state court may determine whether proper application of a party's rights might have, or not, produced

a different result at trial. State appellate courts make this type of determination every day in habeas or post conviction matters.

The federal court (or subsequent state action) might then move to other types of relief that might be equitable. There may be damages and/or injunctive relief (short of invalidation of the sentence) due to process violation(s). What if a *process violation*, which reaches a correct conviction and/or sentence, otherwise causes impermissible injury, loss of property, or significant other loss? If the outcome of the trial would not be affected, a court could then determine whether the party is entitled to other relief for the process rights violation; which could conceivably be the case, but absent the review leading to the Declaration, would never have been reached.

A case requesting only a *declaration*, or some other *non-conviction affect remedy*, should be permitted actions to proceed. *Muhammad v. Close*, 540 U.S. 749, 754-55 (2004) (per curium) (*Heck* requirement to exhaust state litigation and habeas relief before bringing § 1983 action does not apply when prisoner's challenge will have no bearing on convict or duration of sentence.) In addition, if a prisoner is challenging the constitutionality of the *process and procedure(s)* used in reaching his or her conviction, but may not otherwise overrule the conviction and/or sentence, *Heck* does not apply. *Edwards v. Balisok*, 520 U.S. 641, 645 (1997); *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). Petitioners may then return to state court with the declaration, but the state court may still disagree. If so, case regarding other, conviction/sentence, affect remedies would ripen only in respect to the *Heck* standard.

For the reasons stated, Petitioner believes this Honorable Court should determine whether *Heck* is unnecessarily restrictive of a party's due process rights remedies. To do otherwise risks a hole in certain avenues to practicable enforcement of process rights.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be granted.

Respectfully Submitted,

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