No. 19-8447

IN THE

SUPREME COURT OF THE UNITED STATES

Jeannette D. Davis # 847988 — PETITIONER
(Your Name)

vs.

M.D.O.C. (See List of Parties) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For The Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeannette D. Davis # 847988
(Your Name)

3201 Bemis Rd
(Address)

Ypsilanti, MI 48197 W.H.V.
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Attached Herewith

1.Defendant Officer Renee Thomas inflicted crule an unusal punishment when she excessively sprayed me with Chemical Agent directly in the eyes while I posed no threat my hands where in the air I had already surrendered.Which has caused permenant damage to my eyes/health then placed in non-contact segragation/visiting cage without providing a solution to rinse my eyes nor skin even though I complained of irritation,burning,pain and temporary blindness.

A. Defendant violated my 14th Amendment right to due process of law during the ticket writing process when she falsified documents;she (Officer Thomas)stated she saw/ was their during the altercation video footage was requested during investigation)Officer Thomas also changed the time of the incedent on the ticket.

2.Defendant Hammon (nurse) inflicted 8th Amendment violation of crule an unusal punishment when she(nurse Hammon)did not treat me although I asked for medical assistance.I stated to nurse Hammon "I can not see im burning" my eyes and face where burning. Nurse Hammon stated"theirs nothing she could do, It'll go away" Thus for I was not allowed any opportunity for decontamination which is delibrate indiffrance.

3.Defendant Millicent Warren was respondant to grievance Id# WHV/2013/12/5223-28E an WHV/2014/01/49 -28E had opportunity to correct these injustices through review and investigation of Step II.grievances.

4.Defendant Alan Greason had opportunity to correct these injustices through review an investigation of Step I. grievances.

5.Defendant V.Gauzi after filing a grievance for the excessive classificati to segragation in retaliation.Plantiff again classified to ADM seg. without notice is due process violated after prisoner Flournoy was released,causing 14th Amendment Equal Protection violation.

6.Defendant C.White had opportunity to address an resolve grievances.

7.Defendant Daniel Heyns had opportunity to oversee all grievances and issues.

8.Defendant Bragg/Boa interferance with processing and resolving StepI,II grievances violated Plantiffs right to resolve grievance. 1st amendment Right to Redress grievances violation.

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption 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: Attached Herewith

RELATED CASES - N/A

PARTIES

The appellant/petitioner/affiant, Jeannette Dominique Davis, is currently incarcerated at Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan. The appellee/respondent, R. Thomas, is a corrections officer at Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan. The appellee/respondent, M. Warren, is the former warden of Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan. The appellee/respondent, A. Greason, is the Residential Unit Manager at Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan.

The appellee/respondent, V. Gauci, is a lieutenant at Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan. The appellee/respondent, C. White, is a sergeant at Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC), located in Ypsilanti, Michigan. The appellee/respondent, K. Hammons, is a former nurse of Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan.

The appellee/respondent, D. Heyns, is the former director of the MDOC Legal Affairs department located in Ypsilanti, Michigan. The appellee/respondent, S. Bragg, is a former grievance coordinator of Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan. The appellee/respondent, L. Boa, is a grievance coordinator at Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan. Each respective appellee/respondent is being sued in his/her official and individual capacities.

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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.

[X] For cases from **state courts:** N/A

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.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was January 6, 2020.

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

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

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

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

[X] For cases from **state courts**: N/A

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).

JURISDICTION

The United States Supreme Court has jurisdiction to consider the petitioner's Affidavit: Writ of Certiorari- Complaint for Equitable Relief Pursuant to Title 42 USC Section 1983, pursuant to Supreme Court Rule 13 and the applicable rules of court and/or procedure.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VIII., Pages, 10, 12, 14, 16, 21

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Attached Herewith

STATEMENT OF FACTS

On 3 December 2013, at approximately 1745, while incarcerated at Women's Huron Valley Correctional Facility, Michigan Department of Corrections (MDOC) located in Ypsilanti, Michigan and housed in Housing Unit 4, the appellant/petitioner/affiant was engaged in an physical altercation with another prisoner. When the appellant/petitioner/affiant was alerted that officers were approaching, the appellant and the other prisoner separated. The appellant/petitioner/affiant then raised her hands in a surrendering position.

While having her hands in the surrendering position, the other prisoner grabbed the appellant/petitioner/affiant then grabbed ahold of a chair. The other prisoner continued to hold on to the appellant/petitioner/affiant. The appellee/respondent, R. Thomas, then entered the room where the altercation was taking place and the appellant/petitioner/affiant placed her hands in the surrendering posi tion again.

As appellee/respondent, R. Thomas, approached, the appe llant/petitioner/affiant stated, "(d)on't shoot. She (the other prison er) got my legs." As the appellee/respondent, R. Thomas, became clos er to both prisoners, the appellant/petitioner/affiant turned and looke d directly at R. Thomas and was then sprayed in the eyes with a chemica l agent, although the altercation ceased. The appellant/petitioner/af fiant was then handcuffed while in distress due to her eyes burning fr om said chemical agent and transported to segregation.

Although the appellant/petitioner/affiant repeatedly informed staff that her eyes were still burning, her distress was ignored and she was then placed in a non-contact cage. The appellant/petitioner/affiant asked for a nurse, medical staff, and/or some type of medical attention several times due to the extreme burning of her eyes. Corrections Officer Oakley then provided papertowel, wet from the waterfountain, until the appellee/respondent, K. Hammons, arrived over an hour later and told the appellant/petitioner/affiant that there was nothing she could do and she then refused to provide the appropriate medical treatment.

While in segregation, the appellant/petitioner/affiant sent several health care kites regarding the constant burning of her eyes. Following each examination, medical staff informed the appellant/petitioner/affiant that there was nothing wrong. The appellant/petitioner/affiant was then released from segregation to general population in January 2014. After being released from segregation, not only did the appellant/petitioner/ continue to experience burning of the eyes, she also experienced blurred vision, dryness and itching of the eyes, and constant strain, all of which the appellant/petitioner/affiant had not experienced until the appellee/respondent, R. Thomas, sprayed a chemical agent in the appellant's eyes.

While experiencing the aforementioned symptoms, with no resolution, the appellant/petitioner/affiant continued to exercise her right to grieve the issue, as the Step I Grievance was filed on 3 December 2013. In said grievance, WHV-13-12-5223-28e, the appellant/petitioner/affiant documents the aforementioned incident and the treatment performed by the appellee/respondent, R. Thomas, which was clearly excessive force. Although there were some administrative deficiencies, the appellant/petitioner/affiant exhausted her administrative remedies prior to filing the instant civil action.

On 22 August 2017, the appellant/petitioner/affiant was diagnosed with glaucoma, which was caused by being sprayed with the chemical agent by the appellee/respondent, R. Thomas, as the appellant/petitioner/affiant had not been diagnosed with said disease prior to said incident and presented her with a cause of action. On 8 January 2018, the appellant/petitioner/affiant filed Case Number; 5:18-cv-10075 with the United States District Court, Eastern District of Michigan, documenting constitutional and statutory violations performed by the appellee(s)/respondent(s), collectively and respectively, against the appellant/petitioner/affiant relative to the incident and her consequential medical diagnosis.(Exhibit 1).

On 31 January 2018, Judge Judith E. Levy entered an Opinion and Order Dismissing Plaintiff's Complaint in Part and Denying Plaintiff's Motion to Appoint an Attorney (Exhibit 2) concluding that the appellant/petitioner/affiant's claims of cruel and unusual punishment, lack of medical care, and retaliation against appelle(s)/respondent(s), R.

Thomas, K. Hammons, and V. Gauci are not subject to summary dismissal, among other conclusions cited in said opinion and order.

On 5 June 2018, the court issued an Opinion and Order dismissing the appellant's claims and the appellee(s)/respondent(s) in said complaint except for claims against the appellee(s)/respondent(s), R. Thomas, K. Hammons, and V. Gauci for violating the appellant's Eighth Amendment right to be free from cruel and unusual punishment, as well as her claims based on lack of medical care and retaliation related thereto (Exhibit 3). On 27 August 2018, the appellee(s)/respondent(s), R. Thomas and V. Gauci, filed a motion for summary judgment claiming that the appellant/petitioner/affiant failed to file her claims within the time period set forth in the statute of limitations, not disputing said claims documented in said complaint.

On 25 September 2018, the appellant/petitioner/affiant filed a Response to Defendants' Motion for Summary Judgment (Exhibit 4) with the court pursuant to E.D. Mich. LR 7.1(f)(2) and the applicable rules of court and/or procedure disputing the appellee(s)/respondent(s) reliance on the appellant's failure to properly exhaust administrative remedies with factual support. Furthermore, the appellant/petitioner/affiant provides facts and circumstances that support and affirm the claims documented in her complaint that should have moved the court to deny the appellees' motion for summary judgment.

On 18 December 2018, the appellee/respondent, K. Hammons, filed a motion for summary judgment claiming a similar reliance on the appellant's alleged failure to file her claims within the applicable statute of limitations. On 28 December 2018, the appellee(s)/respondent(s), R. Thomas and V. Gauci, filed a motion to supplement to correct clerical

error due to the appellee(s)/respondent(s) omission of exhibits to a previous filing.

On 7 January 2019, the appellant/petitioner/affiant filed a Response to MDOC Defendant Hammons' Motion for Summary Judgment providing facts and circumstances that support said claims documented in the appellant's complaint and should have moved the court to deny the appellee's motion for summary judgment (Exhibit 5). On 20 February 2019, United States Magistrate Judge Stephanie Dawkins entered a Report and Recommendation Defendant's Motion for Summary Judgment (Dkts. 17,23) recommending that the motion for summary judgment for appellee(s)/respondent(s), R. Thomas, V. Gauci, and K. Hammons, be granted and that the case be dismissed.

On 6 March 2019, the appellant/petitioner/affiant filed Objections to Magistrate's Report and Recommendation and Request for Review (Exhibit 6) pursuant to Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d), and the applicable rules of court and/or procedure. The appellant/petitioner/affiant documented her dissent with the findings in said report and recommendation and cited support of facts thereto. On 26 March 2019, the appellee(s)/respondent(s), R. Thomas, V. Gauci, and K. Hammons, by and through counsel, filed MDOC Defendants' Response to Plaintiff's Objections (R. 29) to Magistrate Judge Dawkins Davis' Report and Recommendation (R. 28) relying solely on unfounded statute of limitations grounds.

On 26 March 2019, United States District Judge Judith E. Levy then entered an Order Adopting Report and Recommendation (28) adopting the report and recommendation and granting the appellees' motion for summary judgment. On said date, it was ordered and adjudged that the

case be dismissed with prejudice. On 9 April 2019, the appellant/petitioner/affiant filed a Motion for Reconsideration (Exhibit 7) pursuant to E. D. Mich. LR 7.1(h) and the applicable rules of court and/or procedure. On 29 April 2019, an Order Denying Motion for Reconsideration was entered by the court (Exhibit 8).

On 13 August 2019, the appellant/petitioner/affiant appealed said judgment and order and filed Case Number: 19-1558, Affidavit: Complaint for Equitable Relief Pursuant to Title 42 USC Section 1983, with the United States Court of Appeals for the Sixth Circuit (Exhibit 9). On 6 January 2020, an Order affirming the district court's judgment was entered (Exhibit 10).

The appellant/petitioner/affiant hereby exercises her right to appeal said order of the United States Court of Appeals for the Sixth Circuit pursuant to the applicable rules of court and/or procedure. Based on the following facts, circumstances, and consequential claims, the appellant/petitioner/affiant has experienced and/or been subjected to cruel and unusual punishment; lack of medical care; retaliation; and deliberate indifference performed by the appellee(s)/respondent(s), respectively and/or collectively.

REASONS FOR GRANTING THE PETITION

Attached Herewith

COMES NOW, the appellant/petitioner/affiant, Jeannette Dominique Davis, in proper person, pursuant to Title 42 USC Section 1983 and the applicable rules of court and/or procedure, hereby moves this honorable court to grant the petitioner's request due to violations of the constitution and laws of the United States and other grounds listed below, as this court will discover as the parties read on. As grounds for this pleading, the petitioner invokes the doctrine of stare decisis and states as follows:

The affiant is not a lawyer and her pleadings cannot be treated as such. In fact, according to Haines v. Kerner, a complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his (her) claim which would entitle him (her) to relief. 404 US 519-521, 92 SCt 594, 30 LEd2d 652 (1972), quoting Conley v. Gibson, 355 US 41, 45-46 (1957). "Indeed, no more than affidavits is necessary to make a prima facie case." United States v. Kis, 658 F2d 526, 536 (7th Cir. 1981): Cert Denied, 50 USLW 2169; SCt March 22, 1982.

Title 42 USC Section 1983 is a federal law that allows lawsuits for violations of constitutional rights. According to Section 1983, there is a cause of action established for any person who has been deprived of rights secured by the constitution or laws of the United States by a person acting under color of state law. The appellant/petitioner/affiant will prove that the conduct, or the lack thereof, was committed by persons acting under color of state law. As a result, the appellant has been deprived of rights, privileges and/or immunities secured by the constitution or laws of the United States.

STATEMENT OF CLAIMS

Cruel and Unusual Punishment

The Eighth Amendment to the US Constitution forbids cruel and unusual punishment, and also governs the treatment of convicted prisoners. Furthermore, the malicious and sadistic use of force, even without significant injury, is an Eighth Amendment violation, as is other treatment that unjustifiably inflicts pain or injury or is humiliating or "anithetical to human dignity." Hudson v. McMillan, 502 US 1, 7–9, 112 SCt 995 (1992); Hope v. Pelzer, 536 US 730, 738, 745, 122 SCt 2508 (2002). The appellee/respondent, R. Thomas, inflicted cruel and unusual punishment when she used excessive and unnecessary force by spraying the appellant/petitioner/affiant with a chemical agent directly in the eyes.

Prison officials are not justified in using far greater force than necessary to accomplish a lawful purpose. National Sheriffs' Assn, Inmates' Legal Rights 21 (1987) ("the force used must be only the smallest degree or amount required to accomplish (legitimate) ends under the circumstnaces"). See also American Correctional Assn., Standards for Adult Correctional Institutions Standard 3-4198 (2002). Nevertheless, force should only be used as a last resort. Even when force is used to compel compliance with a lawful order, the force employed must not be excessive. Bozeman v. Orum, 422 F3d 1265 (11th Cir. 2005). Triplett v. District of Columbia, 108 F3d 1450 (D.C. Cir. 1997).

Prisoners have the constitutional right to be free from excessive force, pursuant to the Eight Amendment to the US Constitution. See Johnson v. Howard, 24 Fed. Appx. 480 (6th Cir. 2001). The appellant/petitioner/affiant was denied said constitutional right when excessive force was used against her as she was sprayed with a chemical agent.

When the appellant/petitioner/affiant was sprayed with the chemical agent, she posed no threat to herself nor anyone else, as her hands were raised in the surrendering position. Not only are convicted prisoners protected from misuse of force by the Cruel and Unusual Punishments Clause of the Eighth Amendment, but the Supreme Court has also held that "whenever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is... whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillan, 503 US 1, 6-7, 112 SCt 995 (1992); accord, Wilkins v. Gaddy, 559 US 34, 130 SCt 1175, 1178 (2010) (per curiam).

The appellant/petitioner/affiant has documented facts and circumstances that clearly constitute cruel and unusual punishment, and specifically malicious and sadistic use of force, relative to being sprayed with a chemical agent by the appellee/respondent, R. Thomas, as well as the treatment imposed thereafter. The "malicious and sadistic" standard applies to the actions of staff who are directly using force. Hudson, 503 US at 7-8. The actions of appellee/respondent, R. Thomas, clearly meet said standard.

The use of chemical agents is governed by the same standards as other uses of force. Champion v. Outlook Nashville, Inc., 380 F3d 893, 901 (6th Cir. 2004); Clement v. Gomez, 298 F3d 898, 903-904 (9th Cir. 2002); Colon v. Schneider, 899 F2d 660, 666-669 (7th Cir. 1990). Furthermore, officers may not use chemical agents against a person who poses no risk, or continue to use chemical agents on a person who has been secured or has stopped resisting. Treats v. Morgan, 308 F3d 868, 873 (8th Cir. 2002); Johnson v. Blaukat, 453 F3d 1108, 1113 (8th Cir.

2006); Norton v. City of Marietta, 432 F3d 1145, 1153-1154 (10th Cir. 2005) (per curiam).

As stated, the appellant/petitioner/affiant informed the appellee/respondent, R. Thomas, that the other prisoner had her legs after stating, "(d)on't shoot." Video and audio coverage of the incident will confirm that the appellant/petitioner/affiant posed no threat as the altercation had already ceased and her hands were in the surrendering position. Therefore, being sprayed with a chemical agent by the appellee/respondent, R. Thomas, was not only excessive but also unnecessary. Additionally, excessive force directed at one prisoner can establish a cause of action for harm that befalls other prisoners. See Robins v. Meecham, 60 F3d 1436, 1441-1442 (9th Cir. 1995).

Based on the facts and circumstances, the nature and manner of force used by the appellee/respondent, R. Thomas, was excessive and unnecessary, which resulted in a violation of the appellant's constitutional rights. There was no objective need for the excessive and unnecessary force used because the appellant/petitioner/affiant was not posing a threat to herself nor anyone else, was not jeopardizing anyone's safety; or threatening prison security. The Eighth Amendment prohibits punishments that involve unnecessary and wanton infliction of pain, are grossly disproportionate to severity of crime for which inmate was imprisoned, or are totally without penological justification. Caldwell v. Miller, 790 F2d 589 (7th Cir. 1986).

The appellee/respondent, R. Thomas, violated said constitutional right when she inflicted cruel and unusual punishment by spraying a chemical agent in the appellant's eyes without justification. Moreover, the legal basis for the appellant's complaint includes, but is

not limited to incidents related to the appellant/petitioner /affiant being sprayed with a chemical agent by the appellee/respondent, R. Thomas, without justification. The appellant/petitioner/affiant has met the standard of proving the "malicious and sadistic" standard in relation to said cruel and unusual punishment inflicted against her that clearly supports her claim of cruel and unusual punishment.

Lack of Medical Care

Once chemical agents have been used, prisoners (including bystanders who have been exposed) must be allowed a reasonable opportunity for decontamination. Walker v. Bowersox, 526 F3d 11k86, 1189 (8th Cir. 2008); Clement v. Gomez, 298 F3d 898, 904-905 (9th Cir. 2002); Williams v. Benjamin, 77 F3d 756, 764-766 (4th Cir. 1996). As stated, the appellant/petitioner/affiant repeatedly informed staff that her eyes were burning. However, her concerns were ignored and she was then placed in a non-contact cage for segregation. When the appellee/respondent, K. Hammons, a former nurse, finally arrived to see about the appellant's medical concerns she concluded that there was nothing she could do and refused to provide the appropriate medical treatment, which was decontamination from the chemical agent.

The deliberate denial of medical care is cruel and unusual punishment because, in the worst case, it can result in physical torture, and even in less serious cases, it can result in pain without any penological purpose. Something less than the deliberate denial of medical care, however, such as a prolonged restriction on exercise that threaten an inmate's physical health, might also violate US Constitution, Amendment VIII. Caldwell v. Miller, 790 F2d 589 (7th Cir. 1986). The appellee/

respondent, K. Hammons, inflicted cruel and unusual punishment when she failed and/or refused to provide adequate medical treatment, although the appellant/petitioner/affiant repeatedly requested medical assistance.

The appellant/petitioner/affiant informed the appellee/respondent, K. Hammons, that she could not see and that her eyes and face were burning. Not only did she state that there was nothing she could do, but she also told the appellant/petitioner/affiant that the burning would "go away". While incarcerated, a prisoner has the right to medical care and treatment. Miller v. Mich. Dep't of Corrections Health Care Providers, 986 F. Supp. 1078 (W. D. Mich. 1997), aff'd, without op., 173 F3d 429 (6th Cir. Mich. 1999). Although the appellant's medical needs were sufficiently serious after being sprayed with the chemical agent, the appellee/respondent, K. Hammons, failed and/or refused to provide adequate medical treatment. Miller v. Calhoun County, 408 F3d 803 (6th Cir. Mich. 2005); Blackmore v. Kalamazoo County, 390 F3d 890, 895 (6th Cir. Mich. 2004).

Said failure and/or refusal to provide adequate medical treatment clearly violates the Cruel and Unusual Punishments Clause of the Eighth Amendment to the US Constitution. The appellee/respondent, K. Hammons, knew of the substantial risk of serious harm to the appellant's eyes and overall health, but disregarded such. It is evident that her deliberate failure and/or refusal to provide adequate medical treatment was an intent to punish, which resulted in said punishment being beyond cruel. When the need for treatment is obvious, medical care which is so cursory as to amount to no treatment at all may amount to deliberate indifference. Most importantly, a known risk for failing and/or refu-

sing to provide medical treatment was clearly disregarded by the appellee/respondent, K. Hammons. Consequently, the appellant/petitioner/affiant has been diagnosed with glaucoma.

The Supreme Court has noted that "(a)n inmate must rely on prison authorities to treat his (her) medical needs; if the authorities fail to do so, those needs will not be met." Estelle v. Gamble, 429 US 97, 103, 97 SCt 285, 50 LEd2d 251 (1976); West v. Atkins, 487 US 42, 54-55, 108 SCt 2250, 101 LEd2d 40 (1988). Because inmates cannot go to the emergency room of a local hospital, inmates have medical needs that must be met on an emergency basis at any given time. The appellee/respondent, K. Hammons, failed and/or refused to attend and/or treat the apellant's serious needs. Her subsequent intentional denial of adequate medical care is a clear violation of the Eighth Amendment's protection against cruel and unusual punishments.

A condition need not be life threatening to be deemed serious. Washington v. Dugger, 860 F2d 1018 (11th Cir. 1988); Laaman v. Helgemoe, 437 F. Supp. 269, 311 (D.N.H 1977). Five factors have been held to indicate a serious medical need:

1) If it is "one that has been diagnosed by a physician as mandating treatment." Hill v. Dekalb Regional Youth Detention Center, 40 F3d 1176, 1187 (11th Cir. 1994); Gaudreault v. Municipality of Salem, Mass., 923 F2d 203, 208 (1st Cir. 1990).

2) If it is "one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Alsina-Ortiz v. Laboy, 400 F3d 77 (1st. Cir. 2005). Layman ex rel. Layman v. Alexander, 343 F. Supp.

2d 483 (W.D. N.C. 2004).

3) If it causes pain. Cooper v. Casey, 97 F3d 914, 916-917 (7th Cir. 1996); Farino v. Coughlin, 642 F. Supp. 276, 279 (S.D. N.Y. 1986).

4) If the medical condition "significantly affects an individual's daily acts," it may be deemed serious. Long v. Nix, 86 F3d 761 (8th Cir. 1996); Koehl v. Dalsheim, 85 F3d 86, 88 (2d Cir. 1996).

5) If the condition offers the possibility of a life-long handicap or permanent loss, it may be considered serious. Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F2d 326, 347, 90 ALR Fed 631 (3d Cir. 1987); Layman ex rel. Layman v. Alexander, 343 F. Supp. 2d 483 (W.D. N.C. 2004).

The seriousness of being diagnosed with glaucoma, which is a direct result of being sprayed with the chemical agent by the appellee/respondent, R. Thomas, and not treated by the appellee/respondent, K. Hammons, clearly mirrors the aforementioned factors, respectively and collectively.

The appellee(s)/respondent(s), R. Thomas and K. Hammons, should be held liable for said infliction of cruel and unusual punishment for the appellant's current permanent condition that not only appeared to be serious at the time of the incident, but also turned out to be as serious as it appeared to be. Helling v. McKinney, 509 US 25, 113 SCt 2475, 125 LEd2d 22 (1993); Laaman v. Helgemoe, 437 F. Supp. 269, 312 (D.N.H. 1977); Harris v. O'Grady, 803 F. Supp. 1361, 1366 (N.D. Ill. 1992).

Retaliation

The appellant/petitioner/affiant experienced and was subjected to retaliation by the appellee/respondent, V. Gauci, when he repeatedly classified the appellant/petitioner/affiant to segregation, after she filed a grievance regarding the incident, although the other prisoner involved in the altercation had been released. The right to be free from retaliation for a prisoner's exercise of his (her) First Amendment riths was "clearly established" by the 1980s. According to Hart v. Hariston, 343 F3d 762 (5th Cir. 2003) and Title 42 USC Section 1997e, "No person reporting conditions which may constitute a violation under this Act shall be subjected to retaliation in any manner for so reporting." Furthermore, the prohibition against retaliatory punishment was clearly established law in the Ninth Circuit. Bruce v. Ylst, 351 F3d 1283 (9th Cir. 2003).

The appellant/petitioner/affiant has documented facts and circumstances that clearly constitute retaliation against her for exercising her constitutionally protected right through the grievance procedure. Bridges v. Gilbert, 557 F3d 541 (7th Cir. 2009). An act in retaliation for the exercise of a constitutionally protected right is actionable under Title 42 USC Section 1983 even if the act, when taken for different reasons, would have been proper. Bridges at 541. See also Cornell v. Woods, 69 F3d 1383 (1995). Prison officials may not permissably retaliate against a prisoner based on the inmate's exercise of constitutional rights. See Garland v. Polly, 594 F2d 1220, 1222-1223 (8th Cir. 1979).

There was no other reason for the repeated classification to segregation than the covert retaliation by the appellee/respondent, V. Gauci,

all stemming from the appellant/petitioner/affiant exercising her constitutional right to utilize the grievance procedure regarding the incident, specifically being the victim of the malicious and sadistic use of force by the appellee/respondent, R. Thomas, as well as the failure and/or refusal to provide medical treatment by the appellee/respondent, K. Hammons. The appellant/petitioner/affiant clearly provides a direct relationship between the appellant exercising her constitutional right of freedom of speech and the adverse actions imposed by the appellee/respondent, V. Gauci. Cain v. Lane, 857 F2d 1139, 1143 n.6 (7th Cir. 1988); Allen v. Thomas, 388 F3d 147, 149 (5th Cir. 2004).

Among actions that courts have found sufficiently adverse to support a retaliation claim are the filing of false disciplinary charges, denial of or interference with medical care, termination from or denial of jobs or programs, actions affecting parole prospects, and others. Austine v. Terhune, 367 F3d 1167, 1170-1171 (9th Cir. 2004); Hart v. Hairston, 343 F3d 762, 764 (5th Cir. 2003) (per curiam); Brown v. Crowley, 312 F3d 782, 789 (6th Cir. 2002); Milhouse v. Carlson, 652 F2d 371, 373 (3d Cir. 1981); Lashley v. Wakefield, 367 F. Supp. 2d 461, 466-467 (W.D. N.Y. 2005); Davis v. Goord, 320 F3d 346, 353 (2d Cir. 2003); Bell v. Johnson, 308 F3d 594, 604-605 (6th Cir. 2002); Thomas v. Evans, 880 F2d 1235, 1241-1242 (11th Cir. 1989); Ferranti v. Moran, 618 F2d 888, 892 (1st Cir. 1980); Siggers-El v. Barlow, 412 F3d 693, 701-702 (6th Cir. 2005); Williams v. Meese, 926 F2d 994, 998 (10th Cir. 1991); Harris v. Fleming, 839 F2d 1232, 1236-1237 (7th Cir. 1988); McDaniel v. Rhodes, 512 F. Supp. 117, 120 (S.D. Ohio 1981); Purkey v. CCA Detention Center, 339 F. Supp. 2d 1145, 1154-1155 (D.Kan. 2004).

As stated, there was no other reason for the repeated classifica-

tion to segregation than the covert retaliation by the appellee/respondent, V. Gauci, than the appellant/petitioner/affiant exercising her constitutional right to utilize the grievance procedure. Furthermore, the appellant/petitioner/affiant has indeed provided facts and circumstances that support her claims of the denial and/or interference with medical care being done for retaliatory reasons. Richardson v. McDonnell, 841 F2d 120, 122-123 (5th Cir. 1988); Jones. V. Coughlin, 696 F. Supp. 916, 920-922 (S.D. N.Y. 1988).

To state a claim of retaliation, a prisoner must allege a violation of a specific constitutional right and be prepared to establish that, but for the retaliatory motive, the incident would not have occurred. See McDonald v. Hall, 610 F2d 16 (1st Cir. 1979). The appellant/petitioner/affiant has clearly established facts and circumstances that not only support her claim of retaliation, but also her claims of cruel and unusual punishment and lack of medical care. Departures from the usual prison procedures in acting against the prisoner is a clear indication of retaliation and is clearly unconstitutional. Segretti v. Gillen, 259 F. Supp. 2d 733, 736 (N.D.Ill. 2003).

Deliberate Indifference

The deliberate indifference standard requires that the plaintiff show that the defendants acted "maliciously and sadistically." Hudson v. McMillan, 503 US 1, 7, 112 SCt 995 (1992); Whitley v. Albers, 475 US 312, 320, 106 SCt 1078 (1978), cited in Wilson v. Seiter, 501 US at 302-303. The appellant/petitioner/affiant has met said standard as the facts and circumstances provided support and affirm her claims against the appellee(s)/respondent(s), K. Hammons, M. Warren, A. Greason, V. Gauci,

C. White, D. Heyns, S. Bragg, and L. Boa.

The Supreme Court has held that a prison official can be found reckless or deliberately indifferent if "the official knows of and disregards an excessive risk to inmate health or safety..." Farmer v. Brennan, 511 US 835, 114 SCt 1970, 128 LEd2d 811 (1994). The facts and circumstances clearly show that the appellee(s)/respondent(s), respectively and collectively, disregarded a risk that was obvious and failed to remedy the result from said risk. The deliberate indifference standard applies to staff members who stand by and do not intervene in an illegal beating, and to claims of inadequate policy, supervision, training, or control by supervisors or local governments.

The appellee(s)/respondent(s), M. Warren, A. Greason, V. Gauci, C. White, D. Heyns, S. Bragg, and L. Boa had ample opportunity to address and/or remedy the injustices imposed against the appellant/petitioner/affiant, but failed and/or refused to do so. Said appelle(s)/respondent(s) culpable actions not only exemplify negligence, carelessness, and actual malice, but also deliberate indifference. Farmer v. Brennan, 511 US 835-836, 114 SCt 1970, 128 LEd2d 811 (1994); Wilson v. Seiter, 501 US 294, 111 SCt 2321, 115 LEd2d 271 (1991). The facts and circumstances provided support and affirm such.

Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by US Constitution, Amendment VIII. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a pri-

soner's serious illness or injury states a cause of action under Title 42 USC Section 1983. Estelle v. Gamble, 429 US 97, 97 SCt 285, 50 LEd2d 251 (1976). The appelle(s)/respondent(s), respectively and collectively, intentionally denied and delayed the appellant's access to medical care, which resulted in the appellant/petitioner/affiant being diagnosed with glaucoma, and should be held liable.

So long as the medical need to which the corrections officials are deliberately indifferent is "serious," the standard of the US Constitution, Amendment VIII, is violated. Koehl v. Dalsheim, 85 F3d 86 (1996). When the appellant/petitioner/affiant was sprayed with a chemical agent by the appellee/respondent, R. Thomas, it resulted in a serious medical need that said corrections officials failed to address and/or remedy, and are liable for violating said constitutional protections. In examining the deliberate indifference standard, it is important to consider the leval and type of care to which prisoners are entitled, the cost of such care, and the societal concern that prisoners may in some way be receiving rewards for their crimes. However, the appellant/petitioner/affiant had a legal right to medical treatment that was caused by the malicious and sadistic use of force imposed by the appellee/respondent, R. Thomas.

As stated, the appellee(s)/respondent(s), R. Thomas, V. Gauci, and K. Hammons, moved the court to enter summary judgment relying solely on the appellant/petitioner/affiant failing to file her claims within the time period set forth in the statute of limitations, not disputing said claims documented in said complaint. The appellant/petitioner/affiant made every every to dispute such, as said reliance is inaccurate. Exhaustion under the Prisoner Litigation Reform Act (PLRA) means "proper

exhaustion," i.e., "compliance with an agency's deadlines and other critical procedural rules." Woodford v. Ngo, 548 US 81, 90-91, 126 SCt 2378 (2006). The appellant/petitioner/affiant has provided facts and circumstances that support and affirm proper exhaustion.

Exhaustion also means taking every appeal that is available and finishing the process before bringing suit. Wright v. Hollingsworth, 260 F3d 357, 358 (5th Cir. 2001); Johnson v. Jones, 340 F3d 624, 627-628 (8th Cir. 2003); Neal v. Goord, 267 F3d 116, 122 (2d Cir. 2001). Once the deadline for final decision of the last appeal has passed, a prisoner can file a civil suit. Whitington v. Ortiz, 472 F3d 804, 807-808 (10th Cir. 2007); Powe v. Ennis, 177 F3d 393, 394 (5th Cir. 1999); Williams v. Cornell Corrections of Georgia, 2007 WL 2317633, *3 (S.D.Ga., Aug. 10, 2007). The appellant/petitioner/affiant has adhered to said requirements.

As stated, the legal basis for the appellant's complaint includes, but is not limited to incidents relative to the appellant/petitioner/affiant being diagnosed with glaucoma resulting from being sprayed with a chemical agent, being denied adequate medical treatment, and being retaliated against for grieving the incident. The appellant/petitioner/affiant completed all three (3) steps of the grievance process, with no resolve. The appellee(s)/respondent(s), respectively and/or collectively, are the subject of said grievance(s) or of a supervisory capacity and were fully aware of said constitutional and/or statutory violations, but refused to resolve said issues. Consequently, said violations were intensified against the appellant/petitioner/affiant.

Furthermore, the appellee(s)/respondent(s), by and through counsel, have failed to meet the burden of proof to show the appellant's failure

to exhaust. Additionally, the court has erred in acknowledgi ng such. The appellant/petitioner/affiant has clearly documented each respective appellee's liability as it relates to each respective claim. The PLRA requires exhaustion of "such administrative remedies as are available," pursuant to Title 42 USC Section 1997e(a), but nothing in th e statute imposes a "name all defendants" requirement along the lines of the Sixth Circuit's judicially created rule. Jones v. Bock, 549 US 199 (2007). The facts support the appellant/petitioner/affiant b eing in full compliance with the applicable policy directive and operatin g procedure regarding the completed grievance process that initiated sai d civil action.

In the Sixth Circuit, the statute of limitations period begins to run when the plaintiff knows or has reason to know that the act providing the basis of his or her injury has occurred. Collyer v. Darling, 98 F3d 211, 220 (6th Cir. 1996). According to the correspond ence between the appellant/petitioner/affiant and MDOC Office of Le gal Affairs, initiated by the appellant/petitioner/affiant on May 17, 201 5, documents the appellant/petitioner/affiant becoming aware of a S tep III response and/or decision on the aforementioned grievance(s). H owever, she has yet to receive the appropriate copy of said grievance(s) . Therefore, said time period should be considered in regards to the appl icable statute of limitations.

Despite such, the court has failed to consider such in ruling against the appellant/petitioner/affiant. The provided evidence, said medical records, grievances, and related correspondence not only confirms the appellant's diligence in exhausting her administrative remedies, but also the appellees' failure to effectively and efficiently

process grievance(s), as well as grievance related correspondence. Said evidence clearly supports the appellant's claims of cruel and unusual punishment of being sprayed by the purported chemical agent, as well as the after effects of said action, initiated by the appellee/respondent, R. Thomas, which is rendered excessive and unnecessary force and is unconstitutional. The action or inaction of the remaining appellee(s)/respondent(s) related to the excessive and unnecessary force used by the appellee/respondent, R. Thomas, not only supports the appellant's claims regarding such, but also the appellee's liability.

Furthermore, according to the provided medical records, the appellant/petitioner/affiant did not have official documentation of said injury, glaucoma diagnosis, until August 22, 2017, which is clearly within the statutory requirements for initiating a civil complaint. The statute of limitations commences to run when the plaintiff knows or has reason to know of the injury which is the basis of his (her) action. A plaintiff has reason to know of his injury when he (she) should have discovered it through the exercise of reasonable diligence. Servier v. Turner, 742 F2d 262, 273 (6th Cir. 1984). The court has failed to consider documentation provided that supports and affirms the appellant's claims of becoming aware of Step III grievance decisions on June 23, 2015. Therefore, the appellant's complaint was filed approximately six (6) months prior to the statutory requirements expiring.

The fact remains that the appellant/petitioner/affiant has done everything possible to comply with the exhaustion requirement and should be able to proceed with said civil action, the documented claims, and subsequent merits of such. Nevertheless, this honorable court has the authority to consider the merits of said civil action. Porter v. Nussle,

534 US 516, 524, 122 SCt 983 (2002). Woodford v. Ngo, 548 US 81, 101, 126 SCt 2378 (2006). Furthermore, courts have generally held that the statute of limitations is tolled pending exhaustion of administrative remedies.

CONCLUSION

If the merits are reviewed objectively and completely, this honorable court will discover that the appellee(s)/respondent(s), respectively and collectively, have personal involvement in either directly participating or encouraging the documented claims of violating the appellant's constitutional right to be free from cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference. Officials or employees who know, or reasonably should know, that a prisoner is being treated unconstitutionally may be held liable if they fail to do anything about it. Greason v. Kemp, 891 F2d 829, 839-840 (11th Cir. 1990); Johnson v. Pearson, 316 F. Supp. 2d 307, 317-318 (E.D. Va. 2004). Subsequently, said appellee(s)/respondent(s) are undoubtedly liable.

The factual allegations documented are constitutional claims that have yet to be considered. According to Conley v. Gibson, a complaint can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his (her) claim which would entitle him (her) to relief." 355 US 41, 45-46 (1957). The facts and circumstances documented in the appellant's complaint support said claims. Therefore, the appellant/petitioner/affiant is entitled to judgment as a matter of law. For the foregoing reasons, the appellant/petitioner/affiant moves this honorable court to grant the relief sought.

RELIEF SOUGHT

WHEREFORE, based on the foregoing grounds and the authorities cited therein, the appellant/petitioner/affiant respectfully requests this honorable court do the following:

* Find the appellee/respondent, R. Thomas, guilty of inflicting cruel and unusual punishment in violation of the Eighth Amendment to the US Constitution.

* Find the appellee/respondent, M. Warren, guilty of failing to appropriately remedy the cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Find the appellee/respondent, A. Greason, guilty of failing to appropriately remedy the cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Find the appellee/respondent, V. Gauci, guilty of failing to appropriately remedy the cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Find the appellee/respondent, C. White, guilty of failing to appropriately remedy the cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Find the appellee/respondent, K. Hammons, guilty of inflicting cruel and unusual punishment and lack of medical care.

* Find the appellee/respondent, D. Heyns, guilty of failing to appropriately remedy the cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Find the appellee/respondent, S. Bragg, guilty of failing to appropriately remedy the cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Find the appellee/respondent, L. Boa, guilty of failing to appropriately remedy the cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

RELIEF SOUGHT (continued)

* Award the appellant/petitioner/affiant compensatory damages in the sum of $100,000.00 jointly and severally for relief for cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Award the appellant/petitioner/affiant punitive damages in the sum of $250,000.00 jointly and severally for cruel and unusual punishment, lack of medical care, retaliation, and deliberate indifference.

* Grant such other relief as this honorable court deems the appellant/petitioner/affiant is appropriately entitled to.

* Order the appellee(s)/respondent(s) to remit payment for filing fee(s), on behalf of the appellant/petitioner/affiant, along with anyt other fees associated with said civil action.

Respectfully submitted

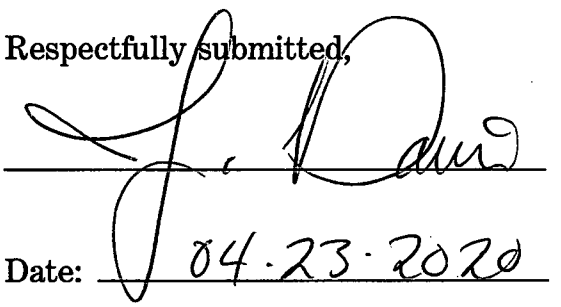
by: _____
Affiant, Jeannette Dominique Davis

Date: March 30, 2020

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 04-23-2020