NO. 20-5047

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 2020

IN RE: DANIEL H. JONES,
Petitioner

PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI , OHIO No. 19-5209

APPLICATION FOR SINGLE JUSTICE REVIEW

BEFORE; ***Associate Justice Sonia Sotomayor*** *of the United State Supreme Court and Circuit Justice for the U.S.Sixth Circuit for the State of Ohio: [Date of denial in this Court, October 5, 2020]: Order attached. Appendix, [doc.1] Sup.Ct. R.26.1(4)*

Come the Petitioner, Daniel H. Jones, pro se, pursuant to the Rules of the United State Supreme Court, Rule 22.3, to state as follows;

1.] Petitioner submits for the Honorable Justice Sotomayor's consideration, amplified issue(s} of Constitutional-Laws, e.g. the 5th,8th and 14th Amendment where "this Court", See Appendix, [doc.1] as well as the lower Appellate Courts have instituted, as well as affirmed an unreasonable standard of law such as "adopted" in Martin v. District of Columbia Court of Appeals; See Appendix, [doc.2] and contrary to

*Congressional Legislation as enacted under Title 28 USC § 1915(a)(1)(2) &**(4)**; Appendix [doc.4], creating the **"Pauperis Act"**, formerly upheld in, **In Re:McDonald**; Appendix, [doc.3] in providing the petitioner thoroughfare to be heard in this forum, however, affirming the lower court's conclusions dismissing his [civil] matter under a [non] criminal pursuit: **See 42 USC § 1983,** by which distinguishes this petitioner's attempts from both the McDonald and Martin dispositions in having their/his (petitioner) issues heard "on the merit", and consistent with this forum's Rule 24.1(h)(i).*

*2.] Whereas, by other such Acts - State and U.S. - this petitioner is allowed to pursue "state-entities" for Injunctive, Declaratory and Monetary relief in [State] Courts, when, as here, having no other form - or courts - in which to do so. **See also 18 USC § 242, Tenn. Const. Art. I.** §17 with TCA §§ 29-20-102(2) and 29-20-313(a), as well as this Court's Rule 20.1. For as long practiced In the State of Tennessee, the wisdom of a Rule - or Statute - is a matter for determination by the General Assembly "alone" and not by the courts; See House v. Creveling, 147 Tenn. 589. 250 S.W.357 (1923); State v. Marise, 197 S.W.3d.762.[Tenn.2006]*

*3.] Where all U.S. Appellate Circuits are vested with **"unlimited power"** in restoring the criminally accused to their right to be properly judged under specific risk-factors governing their "characters," see {doc.5] **and** not, however, "their crimes" for purposes of parole-release---or, in fact, deferrals, being of itself an encroachment as previously indicated under Tenn. Constitution [Art. I & II, §§ 1 and 2.]. See also Petitioner's Original Appendices, [doc.1].with F.R.Civ.P. 62 (g) (1), all of which have need to be settled by "this Court", 28 USC §2101(e). Other such facts dispositive to this application may be found at p.8 [Petition for Extraordinary Writ of*

Prohibition/Mandamus] with supporting memorandum of authorities and attached appendices. Additionally, that this application is forwarded in good-faith and "not " for delay.

Respectfully submitted,

Daniel H. Jones, Petitioner, pro se
Turney Center Industrial Complex
1499 R.W. Moore Memorial Hwy.
Only, Tennessee. 37140-4050.

SWORN DECLARATION OF OATH

I declare under penalty of perjury that the foregoing is true and correct. And executed on this 13th day of October 2020.

Daniel H. Jones, Petitioner, pro se

CERTIFICATION

I do hereby certify, that, a true and correct copy of the petitioner's Application for Single Justice's Review was placed in this Institution's mail box on this 13th day of October, 2020, to the clerk of the United States Supreme Court, located at 1 First Street, N.E. Washington, D.C. 20543 by depositing it in the U.S.Mail, postage to the Clerk, Scott S. Harris, and to the Tennessee State Attorney General, Herbert H. Slatrery,III, located at the Office of the Attorney General, 301 6th Ave.North, P.O. Box 20207, Nashville, Tennessee. 37202-020.

Respectfully submitted

Daniel H. Jones, Petitioner, pro se
Turney Center Industrial Complex
1499 R.W.Moore Memorial Hwy.
Only, Tennessee. 37140-4050

APPENDIX: DOCUMENT-1

U.S. Clerk;
Order Dismissing Extraordinary
Writ for Prohibition/Mandamus

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 5, 2020

Mr. Daniel Henderson Jones
Prisoner ID 443638
Turney Center Industrial Complex
1499 R.W. Moore Memorial Highway
Only, TN 37140

Re: In Re Daniel H. Jones
No. 20-5047

Dear Mr. Jones:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus and/or prohibition is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

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APPENDIX: DOCUMENT-2

Court Order;
Martin v. District of Columbia Court of Appeals;

WESTLAW

Martin v. District of Columbia Court of Appeals
Supreme Court of the United States November 2, 1992 506 U.S. 1 113 S.Ct. 397 121 L.Ed.2d 305 61 USLW 3333 *(Approx. 4 pages)*

113 S.Ct. 397
Supreme Court of the United States

James L. MARTIN
v.
DISTRICT OF COLUMBIA COURT OF APPEALS et al.
James L. MARTIN
v.
Christine McDERMOTT et al.

Nos. 92–5584, 92–5618.
Nov. 2, 1992.
Reconsideration in No. 92–5618 Denied Dec. 7, 1992.
See 506 U.S. 1018, 113 S.Ct. 652.
Reconsideration in No. 92–5584 Denied Dec. 14, 1992.
See 506 U.S. 1032, 113 S.Ct. 809.

Synopsis

Pro se petitioner filed request to proceed in forma pauperis. The Supreme Court held that use of the writ warranted order directing the clerk not to accept further petitions for certiorari in noncriminal matters from the petitioner without payment of docketing fee and submission of the petition.

Ordered accordingly.

Justice Stevens dissented and filed an opinion which Justice Blackmun joined.

West Headnotes (1)

Change View

Federal Courts Proceedings in forma pauperis

Abuse of writ, including the filing of 45 petitions in the preceding ten years, 15 in the preceding two years, and nine within the last year, warrants order directing the clerk of the United States Supreme Court not to accept any further petition for certiorari in noncriminal matters without payment of the docketing fee and submission of the petition in compliance with Rule 33. U.S.Sup.Ct.Rules 33, 38, 39, subd. 8, 28 U.S.C.A.

825 Cases that cite this headnote

Opinion

***397 *1** PER CURIAM.

Pro se petitioner James L. Martin requests leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to our Rule 39.8. Martin is allowed *2 until November 23, 1992, within which to pay the docketing fees required by Rule 38 and to submit his petitions in compliance with this Court's Rule 33. We also direct the Clerk not to accept any further petitions for certiorari from Martin in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.

Martin is a notorious abuser of this Court's certiorari process. We first invoked Rule 39.8 to deny Martin *in forma pauperis* status last November. See *Zatko v. California*, 502 U.S. 16, 112 S.Ct. 355, 116 L.Ed.2d 293 (1991) *(per curiam)*. At that time, we noted that Martin had filed 45 petitions in the past 10 years, and 15 in the preceding 2 years alone. Although Martin was granted *in forma pauperis* status to file these petitions, all of these petitions were denied without recorded dissent. In invoking Rule 39.8, we observed that Martin is "unique—not merely among those who seek to file *in forma pauperis*, but also among those who have paid the required filing fees—because [he has] repeatedly made totally frivolous

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demands on the Court's limited resources." *Id.*, at 18, 112 S.Ct., at 356–357. Unfortunately, Martin has continued in his accustomed ways.

Since we first denied him *in forma pauperis* status last year, he has filed nine petitions for certiorari with this Court. We denied Martin leave to proceed *in forma pauperis* under Rule 39.8 of this Court with respect to four of these petitions, [1] and denied the remaining five petitions outright. [2] Two additional petitions for certiorari are ***398** before us today, bringing the total number of petitions Martin has filed in the *3 past year to 11. With the arguable exception of one of these petitions, see *Martin v. Knox*, 502 U.S. 999, 112 S.Ct. 620, 116 L.Ed.2d 642 (1991) (STEVENS, J., joined by BLACKMUN, J., respecting denial of certiorari), all of Martin's filings, including those before us today, have been demonstrably frivolous.

In *Zatko*, we warned that "[f]uture similar filings from [Martin] will merit additional measures." 502 U.S., at 18, 112 S.Ct. at 357. As we have recognized, "[e]very paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U.S. 180, 184, 109 S.Ct. 993, 996, 103 L.Ed.2d 158 (1989) *(per curiam)*. Consideration of Martin's repetitious and frivolous petitions for certiorari does not promote this end.

We have entered orders similar to the present one on two previous occasions to prevent *pro se* petitioners from filing repetitious and frivolous requests for extraordinary relief. See *In re Sindram*, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991) *(per curiam)*; *In re McDonald, supra*. Although this case does not involve abuse of an extraordinary writ, but rather the writ of certiorari, Martin's pattern of abuse has had a similarly deleterious effect on this Court's "fair allocation of judicial resources." See *In re Sindram, supra*, at 180, 111 S.Ct., at 597. As a result, the same concerns which led us to enter the orders barring prospective filings in *Sindram* and *McDonald* require such action here.

We regret the necessity of taking this step, but Martin's refusal to heed our earlier warning leaves us no choice. His abuse of the writ of certiorari has been in noncriminal cases, and so we limit our sanction accordingly. The order will therefore not prevent Martin from petitioning to challenge criminal sanctions which might be imposed on him. But it will free this Court's limited resources to consider the claims *4 of those petitioners who have not abused our certiorari process.

It is so ordered.

Justice STEVENS, with whom Justice BLACKMUN joins, dissenting.
In my opinion the judicial resources of the Court could be used more effectively by simply denying Martin's petitions than by drafting, entering, and policing the order the Court enters today. The theoretical administrative benefit the Court may derive from an order of this kind is far outweighed by the shadow it casts on the great tradition of open access that characterized the Court's history prior to its unprecedented decisions in *In re McDonald*, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989) *(per curiam)*, and *In re Sindram*, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991) *(per curiam)*. I continue to adhere to the views expressed in the dissenting opinions filed in those cases, and in the dissenting opinion I filed in *Zatko v. California*, 502 U.S. 16, 18, 112 S.Ct. 355, 357, 116 L.Ed.2d 293 (1991) *(per curiam)*. See also *Talamini v. Allstate Ins. Co.*, 470 U.S. 1067, 105 S.Ct. 1824, 85 L.Ed.2d 125 (1985), appeal dism'd (STEVENS, J., concurring).

All Citations

506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305, 61 USLW 3333

Footnotes

1 *Martin v. Smith*, 506 U.S. 810, 113 S.Ct. 49, 121 L.Ed.2d 16 (1992); *Martin v. Delaware*, 506 U.S. 810, 113 S.Ct. 45, 121 L.Ed.2d 15 (1992); *Martin v. Sparks*, 506 U.S. 810, 113 S.Ct. 47, 121 L.Ed.2d 16 (1992); *Martin v. Delaware*, 505 U.S. 1203, 112 S.Ct. 2989, 120 L.Ed.2d 867 (1992).

2 *Martin v. Delaware Law School of Widener Univ., Inc.*, 506 U.S. 841, 113 S.Ct. 403, 121 L.Ed.2d 329 (1992); *Martin v. Delaware*, 506 U.S. 886, 113 S.Ct. 45, 121 L.Ed.2d 15 (1992); *Martin v. Knox*, 502 U.S. 999, 112 S.Ct. 620, 116 L.Ed.2d 642 (1991); *Martin v. Knox*, 502 U.S. 1015, 112 S.Ct. 663, 116

L.Ed.2d 754 (1991); *Martin v. Medical Center of Delaware*, 502 U.S. 991, 112 S.Ct. 609, 116 L.Ed.2d 631 (1991).

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APPENDIX: DOCUMENT-3

Court Order;
In Re:McDonald;

WESTLAW

In re McDonald
Supreme Court of the United States . February 21, 1989 . 489 U.S. 180 } 109 S.Ct. 993 } 103 L.Ed.2d 158 *(Approx. 8 pages)*

Distinguished by Miller v. Donald, } 11th Cir.(Ga.), } August 29, 2008

109 S.Ct. 993
Supreme Court of the United States

In re Jessie McDONALD, Petitioner.

No. 88–5890.
Feb. 21, 1989.

Synopsis

Habeas petitioner moved for leave to proceed in forma pauperis. The Supreme Court held that habeas petitioner who allegedly earned only $300 per month and had less than $25 in checking and savings accounts would not be permitted to proceed in forma pauperis in filing petitions for extraordinary writs in United States Supreme Court, based on his history of filing frivolous petitions.

So ordered.

Justice Brennan dissented and filed opinion, in which Justices Marshall, Blackmun and Stevens joined.

West Headnotes (2)

Change View

1 **Federal Courts** Habeas corpus

Habeas petitioner who allegedly earned only $300 per month and had less than $25 in checking and savings accounts would not be permitted to proceed in forma pauperis in filing petitions for extraordinary writs in the United States Supreme Court, where petitioner had already filed 22 petitions for such writs, and allowing him to proceed in forma pauperis would only encourage him to file additional frivolous petitions. U.S.Sup.Ct.Rule 46, 28 U.S.C.A.; 28 U.S.C.A. § 2241(a).

434 Cases that cite this headnote

2 **Federal Courts** Supervisory jurisdiction; writs in aid of jurisdiction

Extraordinary writs are drastic and extraordinary remedies, to be reserved for really extraordinary causes, in which appeal is clearly inadequate remedy.

31 Cases that cite this headnote

Opinion

***993 *180** PER CURIAM.

Pro se petitioner Jessie McDonald requests that this Court issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241(a). He also requests that he be permitted to proceed *in forma pauperis* under this Court's Rule 46. We deny petitioner leave ***994** to proceed *in forma pauperis*. He is allowed until March 14, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with this Court's Rule 33. We also direct the Clerk not to accept any further petitions from petitioner for extraordinary writs pursuant to 28 U.S.C. §§ 1651(a), 2241, and 2254(a), unless he pays the docketing fee required by Rule 45(a) and submits his petition in compliance with this Court's Rule 33. We explain below our reasons for taking this step.

Petitioner is no stranger to us. Since 1971, he has made 73 separate filings with the Court, not including this petition, *181 which is his eighth so far this Term. These include 4 appeals,[1] 33 petitions for certiorari,[2] 99 petitions for extraordinary writs,[3] 7 applications for stays and other ***995** injunctive relief, *182 [4] and 10 petitions for rehearing.[5] Without recorded dissent, the Court has denied all of his appeals and denied all of his various

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petitions and motions. We have never previously denied him leave to proceed *in forma pauperis*.[5]

The instant petition for a writ of habeas corpus arises from petitioner's 1974 state conviction for obtaining title to a 1972 Ford LTD automobile under false pretenses, for which he was sentenced to three years' imprisonment. Petitioner appealed to the Tennessee Court of Criminal Appeals, which reversed his conviction on the ground that there was no evidence **183* that the alleged victim relied on petitioner's false statements. In January 1976, the Supreme Court of Tennessee reinstated his conviction. *State v. McDonald*, 534 S.W.2d 650. We denied certiorari, 425 U.S. 955, 96 S.Ct. 1733, 48 L.Ed.2d 200 (1976), and rehearing denied, 425 U.S. 1000, 96 S.Ct. 2219, 48 L.Ed.2d 826 (1976).

In the 13 years since his conviction became final, petitioner has filed numerous petitions and motions for relief in this Court and in the Tennessee courts, all of which have been rejected. In the instant petition, for example, he requests that the Court "set aside" his conviction and direct the State to "expunge" the conviction "from all public records." He is not presently incarcerated. He contends that his constitutional rights were violated by the State's failure to prove that the property to which he obtained title under false pretenses was valued at over $100, as required by the statute under which he was convicted. Petitioner has put forward this same argument—unsuccessfully—in at least four prior filings with the Court, including a petition for mandamus, which was filed 13 days before the instant petition and was not disposed of by the Court until more than a month after this petition was filed.[7]

***996* Title 28 U.S.C. § 1915 provides that "[a]ny court of the United States *may* authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor." (Emphasis added.) As permitted under this statute, we have adopted Rule 46.1, which provides that "[a] party desiring to proceed in this Court *in forma pauperis* shall file a motion for leave to so proceed, together with his affidavit in the form prescribed in Fed.Rules App.Proc., Form 4 ... setting forth with particularity facts **184* showing that he comes within the statutory requirements." Each year, we permit the vast majority of persons who wish to proceed *in forma pauperis* to do so; last Term, we afforded the privilege of proceeding *in forma pauperis* to about 2,300 persons. Paupers have been an important—and valued—part of the Court's docket, see, *e.g., Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), and remain so.

[1] [2] But paupers filing *pro se* petitions are not subject to the financial considerations—filing fees and attorney's fees—that deter other litigants from filing frivolous petitions. Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice. The continual processing of petitioner's frivolous requests for extraordinary writs does not promote that end. Although we have not done so previously, lower courts have issued orders intended to curb serious abuses by persons proceeding *in forma pauperis*.[8] Our order here prevents petitioner from proceeding *in forma pauperis* when seeking extraordinary writs from the Court.[9] It is perhaps worth noting that we have not granted the sort of extraordinary writ relentlessly sought by petitioner to any litigant—paid or *in forma pauperis*—for at least a decade. **185* We have emphasized that extraordinary writs are, not surprisingly, "drastic and extraordinary remedies," to be "reserved for really extraordinary causes," in which "appeal is clearly an inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 259, 260, 67 S.Ct. 1558, 1559, 91 L.Ed. 2041 (1947).

Petitioner remains free under the present order to file *in forma pauperis* requests for relief other than an extraordinary writ, if he qualifies under this Court's Rule 46 and does not similarly abuse that privilege.

It is so ordered.

Justice BRENNAN, with whom Justice MARSHALL, Justice BLACKMUN, and Justice STEVENS join, dissenting.

In the first such act in its almost 200-year history, the Court today bars its door to a litigant prospectively. Jessie McDonald may well have abused his right to file petitions in this Court without payment of the docketing fee; the Court's order documents that fact. I do not agree, however, that he poses such a threat to the orderly administration of justice that we should embark on the unprecedented and dangerous course the Court charts today.

The Court's denial not just of McDonald's present petition but also of his right to file for extraordinary writs *in forma* ***997** *pauperis* in the future is, first of all, of questionable legality. The federal courts are authorized by 28 U.S.C. § 1915 to permit filings *in forma pauperis*. The statute is written permissively, but it establishes a comprehensive scheme for the administration of *in forma pauperis* filings. Nothing in it suggests we have any authority to accept *in forma pauperis* pleadings from some litigants but not from others on the basis of how many times they have previously sought our review. Indeed, if anything, the statutory language forecloses the action the Court takes today. Section 1915(d) explains the circumstances in which an *in forma pauperis* pleading may be dismissed as follows: a court "may dismiss *the case* if ***186** the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." (Emphasis added.) This language suggests an individualized assessment of frivolousness or maliciousness that the Court's prospective order precludes. As one lower court has put it, a court's discretion to dismiss *in forma pauperis* cases summarily "is limited ... in every case by the language of the statute itself which restricts its application to complaints *found to be* frivolous or malicious." *Sills v. Bureau of Prisons*, 245 U.S.App.D.C. 389, 391, 761 F.2d 792, 794 (1985) (emphasis added). Needless to say, the future petitions McDonald is barred from filing have not been "found to be" frivolous. Even a very strong and well-founded belief that McDonald's future filings will be frivolous cannot render a before-the-fact disposition compatible with the individualized determination § 1915 contemplates.

This Court's Rule 46 governs our practice in cases filed *in forma pauperis*. No more than § 1915 does it grant us authority to disqualify a litigant from future use of *in forma pauperis* status. Indeed, Rule 46.4 would seem to forbid such a practice, for it specifies that when the filing requirements described by Rule 46 are complied with, the Clerk "will file" the litigant's papers "and place the case on the docket." Today we order the Clerk to refuse to do just that. Of course we are free to amend our own rules should we see the need to do so, but until we do we are bound by them.

Even if the legality of our action in ordering the Clerk to refuse future petitions for extraordinary writs *in forma pauperis* from this litigant were beyond doubt, I would still oppose it as unwise, potentially dangerous, and a departure from the traditional principle that the door to this courthouse is open to all.

The Court's order purports to be motivated by this litigant's disproportionate consumption of the Court's time and resources. Yet if his filings are truly as repetitious as it appears, it hardly takes much time to identify them as such. ***187** I find it difficult to see how the amount of time and resources required to deal properly with McDonald's petitions could be so great as to .. justify the step we now take. Indeed, the time that has been consumed in the preparation of the present order barring the door to Mr. McDonald far exceeds that which would have been necessary to process his petitions for the next several years at least. I continue to find puzzling the Court's fervor in ensuring that rights granted to the poor are not abused, even when so doing actually *increases* the drain on our limited resources. Cf. *Brown v. Herald Co.*, 464 U.S. 928, 104 S.Ct. 331, 78 L.Ed.2d 301 (1983) (BRENNAN, J., dissenting). Today's order makes sense as an efficiency measure only if it is merely the prelude to similar orders in regard to other litigants, or perhaps to a generalized rule limiting the number of petitions *in forma pauperis* an individual may file. Therein lies its danger.

The Court's order itself seems to indicate that further measures, at least in regard to this litigant, may be forthcoming. It notes that McDonald remains free to file *in forma pauperis* for relief other than extraordinary writs, if he "does not similarly abuse that privilege." *Ante*, at 996. But if we have found his 19 petitions for extraordinary ***998** writs abusive, how long will it be until we conclude that his *33* petitions for certiorari are similarly abusive and bar that door to him as well? I am at a loss to say why, logically, the Court's order is limited to extraordinary writs, and I can only conclude that this order will serve as precedent for similar actions in the future, both as to this litigant and to others.

I doubt—although I am not certain—that any of the petitions Jessie McDonald is now prevented from filing would ultimately have been found meritorious. I am most concerned, however, that if, as I fear, we continue on the course we chart today, we will end by closing our doors to a litigant with a meritorious claim. It is rare, but it does happen on occasion that we grant review and even decide in favor of a litigant who previously had presented multiple unsuccessful ***188** petitions on the same issue. See, *e.g.*, *Chessman v. Teets*, 354 U.S. 156, 77 S.Ct. 1127, 1 L.Ed.2d 1253 (1957); see *id.*, at 173–177, 77 S.Ct. at 1136–1138 (Douglas, J., dissenting).

This Court annually receives hundreds of petitions, most but not all of them filed *in forma pauperis*, which raise no colorable legal claim whatever, much less a question worthy of the Court's review. Many come from individuals whose mental or emotional stability appears questionable. It does not take us long to identify these petitions as frivolous and to reject them. A certain expenditure of resources is required, but it is not great in relation to our work as a whole. To rid itself of a small portion of this annoyance, the Court now needlessly departs from its generous tradition and improvidently sets sail on a journey whose landing point is uncertain. We have long boasted that our door is open to all. We can no longer.

For the reasons stated in *Brown v. Herald Co., supra*, I would deny the petition for a writ of habeas corpus without reaching the merits of the motion to proceed *in forma pauperis*. For the reasons stated above, I dissent from the Court's order directing the Clerk not to accept future petitions *in forma pauperis* for extraordinary writs from this petitioner.

All Citations

489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158

Footnotes

1 See *McDonald v. Alabama*, 479 U.S. 1061, 107 S.Ct. 943, 93 L.Ed.2d 993 (1987); *In re McDonald*, 466 U.S. 957, 104 S.Ct. 2182, 80 L.Ed.2d 564 (1984); *McDonald v. Tennessee*, 432 U.S. 901, 97 S.Ct. 2943, 53 L.Ed.2d 1074 (1977); *McDonald v. Purity Dairies Employees Federal Credit Union*, 431 U.S. 961, 97 S.Ct. 2914, 53 L.Ed.2d 1057 (1977).

2 See *McDonald v. Tobey*, 488 U.S. 971, 109 S.Ct. 505, 102 L.Ed.2d 540 (1988); *McDonald v. Metropolitan Government of Nashville and Davidson County*, 481 U.S. 1053, 107 S.Ct. 2190, 95 L.Ed.2d 846 (1987); *McDonald v. Tennessee*, 475 U.S. 1088, 106 S.Ct. 1474, 89 L.Ed.2d 729 (1986); *McDonald v. Tennessee*, 474 U.S. 951, 106 S.Ct. 318, 88 L.Ed.2d 301 (1985); *McDonald v. Leech*, 467 U.S. 1208, 104 S.Ct. 2394, 81 L.Ed.2d 351 (1984); *McDonald v. Humphries*, 461 U.S. 946, 103 S.Ct. 2125, 77 L.Ed.2d 1304 (1983); *McDonald v. Metropolitan Government of Nashville and Davidson County*, 461 U.S. 934, 103 S.Ct. 2102, 77 L.Ed.2d 309 (1983); *McDonald v. Draper*, 459 U.S. 1112, 103 S.Ct. 744, 74 L.Ed.2d 964 (1983); *McDonald v. Thompson*, 456 U.S. 981, 102 S.Ct. 2253, 72 L.Ed.2d 858 (1982); *McDonald v. Metropolitan Government of Nashville and Davidson County*, 455 U.S. 957, 102 S.Ct. 1468, 71 L.Ed.2d 675 (1982); *McDonald v. Tennessee*, 454 U.S. 1088, 102 S.Ct. 649, 70 L.Ed.2d 625 (1981); *McDonald v. Draper*, 452 U.S. 965, 101 S.Ct. 3117, 69 L.Ed.2d 977 (1981); *McDonald v. Tennessee*, 450 U.S. 983, 101 S.Ct. 1521, 67 L.Ed.2d 819 (1981); *McDonald v. Draper*, 450 U.S. 983, 101 S.Ct. 1521, 67 L.Ed.2d 819 (1981); *McDonald v. Metropolitan Airport Authority*, 450 U.S. 1002, 101 S.Ct. 1713, 68 L.Ed.2d 206 (1981); *McDonald v. Metropolitan Government of Nashville and Davidson County*, 450 U.S. 933, 101 S.Ct. 1396, 67 L.Ed.2d 367 (1981); *McDonald v. United States District Court*, 444 U.S. 900, 100 S.Ct. 211, 62 L.Ed.2d 137 (1979); *McDonald v. Birch*, 444 U.S. 875, 100 S.Ct. 158, 62 L.Ed.2d 103 (1979); *McDonald v. United States District Court* and *McDonald v. Yellow Freight Systems, Inc.*, 444 U.S. 875, 100 S.Ct. 159, 62 L.Ed.2d 103 (1979); *McDonald v. Thompson*, 436 U.S. 911, 98 S.Ct. 2249, 56 L.Ed.2d 411 (1978); *McDonald v. Tennessee*, 434 U.S. 866, 98 S.Ct. 203, 54 L.Ed.2d 143 (1977); *McDonald v. Davidson County Election Comm'n*, 431 U.S. 958, 97 S.Ct. 2684, 53 L.Ed.2d 276 (1977); *McDonald v. Tennessee*, 431 U.S. 933, 97 S.Ct. 2642, 53 L.Ed.2d 250 (1977); *McDonald v. Tennessee*, 429 U.S. 1064, 97 S.Ct. 792, 50 L.Ed.2d 781 (1977); *McDonald v. Tennessee*, 425 U.S. 955, 96 S.Ct. 1733, 48 L.Ed.2d 200 (1976); *McDonald v. Tennessee*, 423 U.S. 991, 96 S.Ct. 404, 46 L.Ed.2d 309 (1975); *McDonald v. Tennessee*, 416 U.S. 975, 94 S.Ct. 2004, 40 L.Ed.2d 565 (1974); *McDonald v. Tennessee*, 415 U.S. 961, 94 S.Ct. 1493, 39 L.Ed.2d 576 (1974); *McDonald v. Wellons*, 414 U.S. 1074, 94 S.Ct. 589, 38 L.Ed.2d 481 (1973); *McDonald v. Metro Traffic and Parking Comm'n*, 409 U.S. 1117, 93 S.Ct. 926, 34 L.Ed.2d 702 (1973); *McDonald v. Wellons*, 405 U.S. 928, 92 S.Ct. 978, 30 L.Ed.2d 801 (1972); *McDonald v. Metropolitan Traffic and Parking Comm'n*, 404 U.S. 843, 92 S.Ct. 141, 30 L.Ed.2d 79 (1971).

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In re McDonald, 488 U.S. 940, 109 S.Ct. 381, 102 L.Ed.2d 370 (1988) (mandamus and/or prohibition); *In re McDonald,* 488 U.S. 940, 109 S.Ct. 381, 102 L.Ed.2d 370 (1988) (mandamus and/or prohibition); *In re McDonald,* 488 U.S. 940, 109 S.Ct. 381, 102 L.Ed.2d 370 (1988) (mandamus and/or prohibition); *In re McDonald,* 488 U.S. 813, 109 S.Ct. 197, 102 L.Ed.2d 167 (1988) (common law certiorari); *In re McDonald,* 488 U.S. 813, 109 S.Ct. 197, 102 L.Ed.2d 167 (1988) (common law certiorari); *In re McDonald,* 488 U.S. 813, 109 S.Ct. 197, 102 L.Ed.2d 167 (1988) (common law certiorari); *In re McDonald,* 485 U.S. 986, 108 S.Ct. 1303, 99 L.Ed.2d 513 (1988) (mandamus); *In re McDonald,* 484 U.S. 812, 108 S.Ct. 213, 98 L.Ed.2d 178 (1987) (common law certiorari); *In re McDonald,* 484 U.S. 812, 108 S.Ct. 214, 98 L.Ed.2d 178 (1987) (habeas corpus); *In re McDonald,* 484 U.S. 812, 108 S.Ct. 214, 98 L.Ed.2d 178 (1987) (common law certiorari and habeas corpus); *In re McDonald,* 479 U.S. 809, 107 S.Ct. 252, 93 L.Ed.2d 178 (1986) (habeas corpus); *In re McDonald,* 470 U.S. 1082, 105 S.Ct. 1857, 85 L.Ed.2d 154 (1985) (habeas corpus); *In re McDonald,* 464 U.S. 811, 104 S.Ct. 208, 78 L.Ed.2d 184 (1983) (mandamus and/or prohibition); *McDonald v. Leathers,* 439 U.S. 815, 99 S.Ct. 225, 58 L.Ed.2d 197 (1978) (leave to file petition for writ of mandamus); *McDonald v. Thompson,* 434 U.S. 812, 98 S.Ct. 237, 54 L.Ed.2d 161 (1977) (leave to file petition for writ of habeas corpus); *McDonald v. Tennessee,* 430 U.S. 963, 97 S.Ct. 1667, 52 L.Ed.2d 370 (1977) (motion to consolidate and for leave to file petition for writ of habeas corpus); *McDonald v. Thompson,* 429 U.S. 1088, 97 S.Ct. 1161, 51 L.Ed.2d 574 (1977) (leave to file petition for writ of habeas corpus and other relief); *McDonald v. United States Court of Appeals,* 420 U.S. 922, 95 S.Ct. 1150, 43 L.Ed.2d 416 (1975) (leave to file petition for writ of mandamus); *McDonald v. Mott,* 410 U.S. 907, 93 S.Ct. 975, 35 L.Ed.2d 280 (1973) (leave to file petition for writ of mandamus and other relief).

4 See *McDonald v. Metropolitan Government,* 487 U.S. 1230, 108 S.Ct. 2892, 101 L.Ed.2d 927 (1988) (stay); *McDonald v. Metropolitan Government of Nashville and Davidson County,* 481 U.S. 1010, 107 S.Ct. 1885, 95 L.Ed.2d 493 (1987) (stay); *McDonald v. Alexander,* 458 U.S. 1124, 103 S.Ct. 5, 73 L.Ed.2d 1395 (1982) (injunction); *McDonald v. Draper,* 451 U.S. 978, 101 S.Ct. 2311, 68 L.Ed.2d 837 (1981) (stay); *McDonald v. Thompson,* 432 U.S. 903, 97 S.Ct. 2946, 53 L.Ed.2d 1075 (1977) (application for supersedeas bond); *McDonald v. Tennessee,* 429 U.S. 1012, 97 S.Ct. 638, 50 L.Ed.2d 623 (1976) (stay and other relief); *McDonald v. Tennessee,* 415 U.S. 971, 94 S.Ct. 1558, 39 L.Ed.2d 870 (1974) (stay).

5 See *McDonald v. Alabama,* 480 U.S. 912, 107 S.Ct. 1362, 94 L.Ed.2d 532 (1987); *In re McDonald,* 479 U.S. 956, 107 S.Ct. 449, 93 L.Ed.2d 396 (1986); *McDonald v. Tennessee,* 475 U.S. 1151, 106 S.Ct. 1807, 90 L.Ed.2d 351 (1986); *In re McDonald,* 471 U.S. 1062, 105 S.Ct. 2129, 85 L.Ed.2d 492 (1985); *McDonald v. Leech,* 467 U.S. 1257, 104 S.Ct. 3550, 82 L.Ed.2d 852 (1984); *McDonald v. Draper,* 459 U.S. 1229, 103 S.Ct. 1240, 75 L.Ed.2d 472 (1983); *McDonald v. Thompson,* 457 U.S. 1126, 102 S.Ct. 2950, 73 L.Ed.2d 1344 (1982); *McDonald v. Draper,* 451 U.S. 933, 101 S.Ct. 2010, 68 L.Ed.2d 320 (1981); *McDonald v. Tennessee,* 425 U.S. 1000, 96 S.Ct. 2219, 48 L.Ed.2d 826 (1976); *McDonald v. Tennessee,* 417 U.S. 927, 94 S.Ct. 2636, 41 L.Ed.2d 230 (1974).

6 In the affidavit in support of his present motion to proceed *in forma pauperis,* petitioner states that he earns approximately $300 per month, is self-employed, and has less than $25 in his checking or savings account. He states that he has no dependents.

7 See *In re McDonald,* 488 U.S. 940, 109 S.Ct. 381, 102 L.Ed.2d 370 (1988) (petition for mandamus and/or prohibition); *In re McDonald,* 484 U.S. 812, 108 S.Ct. 214, 98 L.Ed.2d 178 (1987) (petition for common law certiorari or habeas corpus); *McDonald v. Tennessee,* 475 U.S. 1088, 106 S.Ct. 1474, 89 L.Ed.2d 729 rehearing denied, 475 U.S. 1151, 106 S.Ct. 1807, 90 L.Ed.2d 351 (1986) (petition for certiorari); *In re McDonald,* 479 U.S. 809, 107 S.Ct. 252, 93 L.Ed.2d 178 (1986) (petition for habeas corpus).

8

See, *e.g.*, *Procup v. Strickland*, 792 F.2d 1069 (CA11 1986); *Peck v. Hoff*, 660 F.2d 371 (CA8 1981); *Green v. Carlson*, 649 F.2d 285 (CA5 1981); cf. *In re Martin–Trigona*, 737 F.2d 1254, 1261 (CA2 1984) ("Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions").

9 Petitioner has repeatedly ignored the letter and spirit of this Court's Rule 26, which provides in part that, "[t]o justify the granting of [an extraordinary writ], it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be had in any other form or from any other court."

End of Document

APPENDIX: DOCUMENT-4

Title 28 USC §1915;
Forma Pauperis Act.

§ 1915. Proceedings in forma pauperis
28 USCA § 1915 | United States Code Annotated Title 28. Judiciary and Judicial Procedure | Effective: April 26, 1996 *(Approx. 3 pages)*

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 123. Fees and Costs (Refs & Annos)

Unconstitutional or Preempted Validity Called into Doubt by Rolland v. Primesource Staffing, L.L.C. 10th Cir.(Colo.) Aug. 07, 2007

Proposed Legislation

Effective: April 26, 1996

28 U.S.C.A. § 1915

§ 1915. Proceedings in forma pauperis

Currentness

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

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

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

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of–

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal

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case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

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

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 954; May 24, 1949, c. 139, § 98, 63 Stat. 104; Oct. 31, 1951, c. 655, § 51(b), (c), 65 Stat. 727; Pub.L. 86-320, Sept. 21, 1959, 73 Stat. 590; Pub.L. 96-82, § 6, Oct. 10, 1979, 93 Stat. 645; Pub.L. 101-650, Title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub.L. 104-134, Title I, § 101[(a)] [Title VIII, § 804(a), (c) to (e)], Apr. 26, 1996, 110 Stat. 1321-73 to 1321-75; renumbered Title I, Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

HISTORICAL NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 28, U.S.C., 1940 ed., §§ 9a(c)(e), 832, 833, 834, 835, and 836 (July 20, 1892, c. 209, §§ 1-5, 27 Stat. 252; June 25, 1910, c. 435, 36 Stat. 866; Mar. 3, 1911, c. 231, § 5a, as added Jan. 20, 1944, c. 3, § 1, 58 Stat. 5; June 27, 1922, c. 246, 42 Stat. 666; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54).
Section consolidates a part of section 9a(c)(e) with sections 832-836 of Title 28, U.S.C., 1940 ed.

APPENDIX: DOCUMENT-5

Tenn. Board of Parole;
Risk Assessment Factors

ADMINISTRATIVE POLICIES AND PROCEDURES State of Tennessee Department of Correction	Index #: 513.09	Page 1 of 15
	Effective Date: March 15, 2020	
	Distribution: B	
	Supersedes: 513.09 (11/15/18) PCN 19-29 (3/20/19)	
Approved by: Tony Parker		
Subject: RISK NEEDS ASSESSMENTS (RNA) FOR INSTITUTIONS AND TRANSITION CENTERS		

I. AUTHORITY: TCA 4-3-603, TCA 4-3-606.

II. PURPOSE: To utilize the Tennessee Department of Correction (TDOC) risk needs assessment (RNA) tool to determine an inmate's programming needs.

III. APPLICATION: To all Tennessee Department of Correction (TDOC) Wardens/Superintendents, Assistant Commissioners, employees, and privately managed facilities.

IV. DEFINITIONS:

A. Certified User: An individual who has successfully completed the user certification course facilitated by a trainer who has been certified by the risk needs assessment (RNA) vendor, in the use of the RNA tool.

B. Clinical Need: A medical or behavioral health episode that requires intervention from a medical, behavioral health, or substance use professional.

C. Criminal Conviction Record (CCR) Unit: A unit within the Department that ensures each offender has an up-to-date, accurate criminal history in the offender management system (OMS) that populates the criminal history section of the risk/needs assessment tool.

D. Dedicated Assessment Team (DAT): A team of dedicated trained staff from facilities and Community Supervision offices who have been certified as risk needs assessment (RNA) users to conduct interviews of inmates and offenders for completion of the RNA.

E. GovQA: The software that is used to submit criminal conviction record requests on each inmate.

F. Offender Case Plan (OCP): A plan that is developed collaboratively between the offender and risk/needs assessment (RNA) certified user which is derived from the risk/needs assessment (RNA) score, identifies programmatic needs based on treatment pathways, and establishes meaningful goals that include action steps to address criminogenic needs of the offender.

G. Override Review Committee (ORC): A group of institutional personnel that should include but is not limited to the chief counselor, a mental health or behavioral health staff member, if applicable, and a medical staff member. This committee is responsible for the oversight of override requests at each institution/transition center.

DOC 5

H. Qualifying Event: Any significant special movement or behavioral, mental, medical, environmental, familial event experienced by an inmate/offender that may change the criminogenic needs and/or classification/supervision level of the offender.

I. Risk Needs Assessment (RNA) Tool: A validated risk/needs assessment instrument that utilizes motivational interaction and interview techniques to collect offender-specific information to more accurately identify crime-producing attributes of each inmate/offender/resident and to make more appropriate and productive recommendations for the inmate's level of programming.

J. RNA Needs Report: The RNA Needs Report is a report that is generated once the RNA is completed and reflects the inmate's overall risk level and a breakdown of the inmate's needs and protective factors.

K. RNA Quality Assurance (QA) Analyst: An RNA certified user and trainer responsible for reviewing assessments throughout the state.

L. Safekeeper: Defendants who have been court ordered to TDOC physical custody and who have not been adjudicated and/or formerly sentenced.

M. Treatment Pathway: A treatment plan that identifies which programs will be most effective for each offender by prioritizing criminogenic needs and matching the offender with available programming.

V. POLICY: All eligible TDOC inmates, offenders, or residents housed in state facilities or privately managed facilities shall have a documented risk needs assessment.

VI. PROCEDURES:

A. Dedicated assessment team members or certified users who are assigned to facilities shall be responsible for completing the risk needs assessment for all TDOC facility intakes, inmates who have scheduled parole hearings, and inmates requiring reassessments. The DAT members shall be required to assess a certain designated percentage of offenders as part of their individual performance plan (IPP) component. This percentage will be determined by the Associate Warden of Treatment.

B. As probation/parole officers and facility correctional counselors are certified on the risk needs assessment tool, they will complete annual reassessments of offenders/inmates who are on their particular caseloads.

C. During Initial Classification

1. Each new commitment shall be classified as required by Policy #401.04 and have an RNA completed by a certified user and documented as part of the initial classification process.

2. As a result of the initial classification and RNA process, the inmate's institutional assignment shall be made taking into consideration the results produced by the RNA and the generated treatment pathway.

3. Within 14 business days of the initial classification and RNA process, a session will be held with each inmate. The session shall be documented on OMS screen LCDG, using Contact Note, IRAC (Institution Risk Assessment Completed) prior to the inmate being assigned to a permanent institution. The RNA results shall be discussed with each inmate and include the following information:

   a. How the inmate's risk/needs assessment is developed and updated

   b. How the risk/needs assessment is used

   c. How the risk/needs assessment will assist the inmate in preparing for release into the community

   d. How the information obtained during the risk/needs assessment will be shared with involved departmental staff, the Board of Parole for his/her parole hearing, and other community resources.

   e. Date of interview, time the interview was held, location, risk level, and the treatment pathway generated.

4. A copy of the RNA needs report and RNA Interview Guide, CR-4179, shall be placed in the inmate's Unit File (green file), Section 6. A copy of the RNA needs report shall not be given to the inmate. The RNA Interview Guide, CR-4179, is a temporary document in the file that shall be replaced each time a more recent RNA interview is completed.

D. Orientation Process at Assigned Facility

1. The inmate's RNA is to be reviewed by an institutional counselor within 14 business days of the inmate's arrival at the assigned institution. INFOPAC report BI01MER will identify the inmates who are not currently placed on program registers and have RNA recommendations. The inmate jobs coordinator will use this to add inmates to program registers.

2. If the inmate refused to participate in the RNA an institutional counselor will review that refusal decision with the inmate and discuss their inability to participate in a case plan without a completed RNA. If the inmate decides he/she is willing to participate in the RNA then an institutional counselor will complete it.

E. During Reclassification

1. RNA certified users shall conduct an RNA on all inmates if one has not been completed within the past 12 months. In the event a Risk Needs Assessment Refusal, CR-4169, is on file, an RNA shall be attempted again.

2. An RNA certified user will update the RNA annually by first requesting an updated criminal history through the CCR Unit and then conducting an interview and entering the results in the RNA tool prior to the inmate's annual reassessment. The RNA assessment interview will be documented on OMS screen LCDG using Contact Code, IRAC – Institutional Risk Assessment Completed. It shall include the date of the interview, the time the interview was held, location of the interview, risk level, program completions, current program status, and treatment pathway recommendation.

3. The names of inmates who will be reviewed during annual reclassification shall be submitted by a Chief Counselor or Associate Warden of Treatment to the CCR unit through GovQA, thirty days prior to the annual reclassification. CCR requests shall be documented on OMS screen LCDG using Contact Code, CCRI-Criminal Conviction Record Unit-Initiated. The reference number from the GovQA request shall be documented in the comments section of the contact note.

4. Once the CCR unit verifies the criminal history, an RNA interview shall be conducted. The CCR shall be used as part of the interview in addition to any other collateral information.

5. The inmate jobs coordinator will use INFOPAC report BI01MER to identify inmates to be added to registers.

F. Prior to Parole Board Hearing

1. Inmates shall have an RNA documented within the previous 12 month period prior to any parole board hearing.

   a. Inmates with no RNA on record shall receive the entire RNA assessment completed by a trained and certified RNA user. Once the RNA assessment is complete and the results have been entered into the RNA tool, the RNA assessment interview will be documented on OMS screen LCDG using Contact Code, IRAC-Institution Risk Assessment Completed. It shall include the date of interview, the time the interview was held, the location of the interview, risk level, program completions, current program status, and treatment pathway recommendations.

   b. Inmates with an RNA completed within the last year shall be reviewed by the institutional chief counselor, AWT/designee, or RNA QA Analyst for quality and accuracy prior to an inmate's hearing. During the review the institutional chief counselor, AWT/designee, or RNA QA Analyst shall review the criminal history, collateral information, and notify the original assessor who completed the RNA of changes or updates necessary.

   c. The review will be documented on OMS screen LCDG using Contact Code, IRAV-Institution Risk Assessment Review and shall include the date the RNA was reviewed and note any domains that require revision. The assessor will complete revisions in accordance with Policy #513.10.

2. The RNA OCP shall be signed by the inmate and placed in the inmate's Unit File (green file), Section 6. In the event that the inmate refuses to sign the RNA OCP, the assessor shall document the refusal with the date and assessor's signature on the OCP and in the file.

3. A copy of the RNA needs report and signed OCP that includes the selected treatment pathway shall be forwarded to the institutional probation and parole specialist at least seven working days prior to the inmate's parole hearing date

G. Upon a qualifying event, as defined in Policy #513.11, an RNA shall be conducted.

H. The following inmates may be exempt from the RNA and will have their reason for exemption documented in the comments section of a contact note on OMS screen LCDG using contact code, XRIS, and in the vendor software by assigning an assessment then selecting "Cannot Complete" with reason "Offender qualifies for an exemption":

1. Inmates under a sentence of death. If the death sentence is overturned and a new sentence imposed, an RNA will be created within 30 days.

2. Inmates sentenced to life without parole. If the life without parole sentence is overturned and a new sentence imposed, an RNA will be created within 30 days.

3. Inmates on safekeeping status.

4. Inmates who will be expiring their sentence within three months.

I. Clinical Exemption: Inmates with intensive health and/or mental health needs, as documented by a licensed medical and/or behavioral health professional may be exempt from the RNA. The documentation must include an assessment of the inmate's physical and mental health and reflect that the inmate is not alert and oriented or has cognitive or mental impairment that impeded the inmate's ability to participate in the RNA. Risk Needs Assessment Exemption, CR-4148, shall be signed by a licensed medical and/or behavioral health professional and placed in the inmate's unit file and provided to the institutional probation/parole specialist prior to the inmate's parole hearing. An inmate's exemption for a medical reason will be documented on OMS screen LCDG CCMC-Cannot Complete-Medical Code. An inmate's exemption due to a mental health reason will be documented by the assigned counselor or assessor on OMS screen LCDG CCMH-Cannot Complete Mental Health. The exemption will also be documented in the vendor software by assigning an assessment then selecting "Cannot Complete" with reason "Offender qualifies for an exemption". Clinical exemptions will be documented at least annually.

J. Program Recommendation Overrides

1. An override for substance use or mental health treatment program placement shall be submitted during the classification or reclassification hearing by the assigned counselor. This does not include educational or vocational programs. If a program has previously been completed and is verified in the OMS, the override shall be completed by the assigned counselor. Any override request must be submitted on Request for Treatment Override, CR-4157, and must be based on the following criteria:

a. Inmates who have been granted parole with the requirement to complete a certain treatment pathway prior to release.

b. Inmates assigned to a treatment pathway program that, prior to completion of the program, were transferred to another facility that does not offer that program.

c. Inmates the Warden/Superintendent deem a security risk or incompatible with other inmates in the program.

d. Any time a new RNA is required.

2. The Program Facilitator/designee may submit a request for a treatment override for inmates with a documented clinical need. The request for a treatment override shall be submitted on a Request for Treatment Override, CR-4157, to the Override Review Committee within 30 days of the inmate's placement in the program.

3. The Override Review Committee shall review the request and make a recommendation within five working days of receipt of the request. If the decision is to deny the request, then no further action is necessary. If the decision is to modify or recommend another pathway, the Request for Treatment Override, CR-4157, shall be submitted to the Warden/Superintendent/designee for review and approval within five working days of the committee's decision.

4. If the decision of the Warden/Superintendent/designee is to deny the request, then no further action is necessary. If the decision is to approve the recommendation of the committee, the request shall be submitted to the Assistant Commissioner of Rehabilitative Services/designee for review and approval within five working days of the decision.

5. The Assistant Commissioner of Rehabilitative Services/designee shall review and approve or disapprove the request and return the signed form to the Warden/Superintendent within five working days of receipt.

6. Any approved override shall be documented by the Warden/Superintendent/ designee in the OMS. Overrides will be performed by the counselor supervisor, chief counselor or AWT in the vendor software.

K. RNA Refusals:

1. If an offender refuses to participate in the RNA process, the assessor who attempted the interview will have the offender sign Risk Needs Assessment Refusal, CR-4169, and place in the inmate's Unit File (green file), Section 6, then complete OMS LCDG Contact note, IRAR (Institution Risk Assessment Refused) with the date and time of the proposed interview along with comments. The assessor will also document the refusal in the contract vendor assessment software by assigning the proposed assessment and marking it unable to be completed due to the offender refusing to answer.

2. The institutional counselor will also document the refusal in the contract vendor assessment software by assigning the proposed assessment and marking it unable to complete due to subject refusing to answer.

3. At least annually, where a Risk Needs Assessment Refusal, CR-4169, is on file an RNA shall be attempted.

L. Only the inmate jobs coordinator, job tracking clerk, or other designee if there is no job tracking clerk, can place an inmate on a programmatic register and make programming assignments (jobs/classes/treatment). (See Policy #505.07)

M. Failure to comply with the RNA protocol set forth in this policy shall result in disciplinary action up to and including dismissal.

VII. ACA STANDARDS: 4-4295 through 4-4303.

VIII. EXPIRATION DATE: March 15, 2023.