No. 20-6014

IN THE

SUPREME COURT OF THE UNITED STATES

JASPER LEE VICK,

Petitioner/Plaintiff,

vs.

R. Smith, et al.,

Respondent/Defendants.

Petition for a Writ of Certiorari

to the United States Court of Appeals

for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Jasper Lee Vick,

Tennessee Department of Correction

(TDOC Number 139471)

2520 Union Springs Road

Whiteville, Tennessee 38075-0549

By Jasper Lee Vick for Jasper Lee Vick

X.c.: Fl. #20-82

QUESTION PRESENTED

Jasper Lee Vick (Petitioner) filed grievances and pro se Complaint in April of 2015, asserting violations of civil rights pursuant to 42 U.S.C. §1983, for damages seeking injunctive relief, declaratory relief, compensatory damages and special damages which amount is unspecified due to any future diabetic complications against a number of prison officials at the Tennessee's Northeast Correction Complex ("NECX").

The District Court screened the complaint to determine whether any portion of it should be dismissed because it "is frivolous, malicious, or fail to state a claim under 42 U.S.C. §1983 upon which relief may be granted." The District Court concluded that "Vick fail to state a claim for relief and dismissed the complaint, Petitioner timely filed his notice of appeal in the United States Court of Appeals for the Sixth Circuit.

On REMAND, the Sixth Circuit Court of Appeals concluded that "Plaintiff's fifth cause of action, liberally construed, plausibly pleads a §1983 claim that Dr Bernard, Nurse Combs, Nurse B. Jennings, Nurse Riegal, Nurse Linkous, and Medical Officer Pardue retaliated against Plaintiff for filing grievance about his medical care, by placing him in medical segregation." [See Sixth Circuit Case No. 16-5037].

In the fifth cause of action Petitioner alleges that the undersigned Respondents, A. Combs, L. Pardue, N. Riegal, C. Bernard, Beth Jennings-Morley, S. Carmody, and N. Linkins (collective "Respondents"), retaliated against Petitioner, a (Type II diabetic) for exercising his First Amendment right August 12, 2014. Petitioner alleges that because he utilized the grievances system, August 12, 2014 regarding the medical care he received, the Respondents in retaliation, acted in concert with one another and placed Petitioner in medical segregation August 18, 2014, without food, or a means to call for or get help in the event of an emergency, and without first following "TN CVORRECTION TDOC INFIRMARY PROTOCOL-POLICY", denied Petitioner blood sugar checks, and all insulin, insisting

Petitioner take the deadly drug "*metformin*", and confiscated all Keep On Person ("KOP") medication(s), that was prescribed in September of 2010. These actions were taken against Petitioner while Respondents were acting under color of state law, with deliberate indifference for using the grievances system.

January 15, 2020, the District Court again in err, dismissed the Complaint granting Respondents summary judgment. The Petitioner timely filed notice of appeal, on February 24, 2020, and the appeal has been docketed in the Sixth Circuit Court of appeals, as case number 20-5259, the case at bar.

I.

Did the Sixth Circuit err in denying Petitioner review of the district court's judgment in favor of Respondents on Whether there is a temporal proximity between Petitioner's protected conduct and the Sixth Amendment retaliation act of placement in medical segregation.

II.

Did the Sixth Circuit err denying Petitioner appellate review as to Whether Petitioner satisfied the Sixth Circuit third element of causation in his First Amendment retaliation claim.

III.

Did the Sixth Circuit err denying Petitioner appellate review as to Whether Petitioner is entitled to default judgment against Respondents Bernard, Combs, Jennings, and Linkous where the district court abused its discretion in dismissing petitioner's motion to reconsider the order Doc. 77 overruling petitioner's motion for default judgment.

IV.

Did the Sixth Circuit err in denying Petitioner appellate review as to Whether the District Court improperly dismissed Respondent Riegal, and manipulated the Federal Rules of Civil Procedure to favor the Respondents

[The Sixth Circuit Court of Appeals decline to entertain Question presented See, Appendix A].

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 follow:

JASPER LEE VICK,

Plaintiff - Appellant - Petitioner,

v.

R. SMITH, et al, in their Individual and Official Capacities

Defendant

and

CLEMENT F. BERNARD, Individual and Official Capacity; ANGELA COMBS, Individual and Official Capacity; BETH JENNINGS MORLEY, Individual and Official Capacity; N. RIEGAL, Individual and Official Capacity; LESLIE PARDUE, Individual and Official Capacity; STEPHANIE CARMODY, Individual and Official Capacity; NATALIE LINKOUS, Individual and Official Capacity,

Defendants - Appellees - Respondents.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner-Plaintiff, Jasper Lee Vick, respectfully prays that a writ of certiorari issue to review the Order/Opinion/Judgment of the United States Court of Appeals for the Sixth Circuit, filed in this cause August 26, 2020 and August 28, 2020, Case Number 20-5259, Jasper Lee Vick v. R. Smith, et al.,Originating Case Number 2:15-cv-00116.

OPINIONS BELOW

Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit DENYING Petitioner's motion to proceed in forma pauperis, and appellate review is not reported, and reproduced in the Appendicies at Appendixes - A, and B.

JURISDICTION

Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit became final August 26, 2020, from the court's ORDER denying his motion to proceed in forma pauperis on appeal.

A timely petition for rehearing was denied by the United States Court of Appeals for the Sixth Circuit June 25, 2020 and a copy of the Order appears at Appendix - A

Petitioner would submit that his Petition for Writ of Certiorari is timely filed within the ninety (90) day time period permitted by Supreme Court **Rule 13.1**. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Considerations Governing Review on Certiorari

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion, indicate the character of reasons the Court considers:

(a). a U.S. court of appeals has entered a decision in conflict with the decision of another U.S. court of appeals on the same important matter and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's Supervisory Power.

(b). The United States Court of Appeals has decided an important Federal question in a way that conflicts with relevant decisions of this Honorable Court.

The Jurisdiction of the Court is invoked under **28 U.S.C.§1257**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution Amendment I:

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

U.S. Constitution, Amendment VIII:

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

U.S. Constitution, Amendment XIV:

> Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. ***No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of***

life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions:

42 U.S.C. §1983:

Every person who, under color of any statute, ordiance, regulation, custom, or usage of any State ..., subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges or immunities secured by the constitution and the laws shall be liable to the injured in an action at law, suite in equity, or other proper proceedings for a redress.

STATEMENT OF THE CASE

On April 24, 2015, pro se, [unlearned in law, pauper] Petitioner Jasper Lee Vick, a Tennessee state prisoner, filed a 42 U.S.C. section 1983 Civil Rights Complaint against R. Smith, Georgia Crowell, J. Buck, Steven Wheller, C. Bernard, A. Combs, B. Jennings, N. Riegal, L. Faret, S, Carmady, A. Anderson, N. Linkous, S. Hamm, all in their official and individual capacities, Gerald McAllister and the Tennessee Department of Corrections. [Doc. 1].

After the court denied Petitioner's motion for leave to proceed in forma pauperis, Petitioner paid the $400.00 filing fee on May 20, 2015 [the court refers to this as unnumbered docket entry dated May 20, 2015]. On December14, 2015, the court entered an Order dismissing Petitioner's Complaint for failure to state a claim and entered a judgment for dismissal. [Docs 9 and 10].

Petitioner filed notice of appeal and motion for leave to proceed on appeal in forma pauperis [Docs 11-12]. Although the District Court Court had previously certified that any appeal from its decision would not be taken in good faith, the United States Court of Appeals for the Sixth Circuit granted Petitioner's motion for leave to proceed on appeal in forma pauperis, finding that Petitioner

lacked the financial resources to pay the appellate filing fee [Doc. 13; see Docs. 9-10]. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed the dismissal of the first four claims but reversed and remanded the fifth claim. Vick v. Smith, No. 16-5037, at*4 (6th Cir. Jan. 19, 2017) finding that Petitioner had sufficiently stated claims against Respondents C. Bernard, A. Combs, B. Jennings N. Riegal, S. Carmody, N. Linkous, and L. Faret for First Amendment retaliation [Doc. 14].

In light of the pretrial remand, the District Court directed the Clerk to send Petitioner service packets - each including a blank summons and USM 285 forms - for the remaining seven Respondents, and order Petitioner to return the completed forms so that the summonses could "be signed and sealed by the Clerk and forwarded to the United States Marshal for service upon the Defendants" [Doc. 15].

Petitioner complied with the Court's Order, and in February of 2017, the Marshal executed service upon Linkous, Comls, Bernard and Jennings [Docs. 19-22; see the court's unnumbered docket entry dates February 3, 2017]. These Defendants did not file answers or otherwise appear in this action.

Subsequently, however, Petitioner applied for and obtained entry of default against these Defendants due to their failure to answer and or appear in this action [Docs. 40-43]. The district court set aside the default judgment stating "Upon review of the record, it does not appear that any of these Defendants' defaults were willful. These are employees of Tennessee Department of Correction ... ."[Doc. 68]. In Doc. 77, the Order of the court further states: (In part): "The magistrate judge noted that setting aside default was further supported by Defendants' allegations of a meritorious defense to Plaintiff's complaint." [Doc. 77].

The summonses as to Carmody, Riegal and Faret, however, were returned unexecuted [Docs. 18, 23, 32] After service of Process upon Respondent Riegal, Respondent **Riegal** made appearance by and through counsel of record, she responded by filing Doc. 65 and requesting the court to strike the "executed" summons from the record. [Doc. 95].

In a July 10, 2017 Motion, Petitioner requested that the Court exercise its "inherent power" and

"remedial authority" to "provide Plaintiff a means of executing service of process" on the remaining Defendants [Docs. 33 at 2-3]. Specifically, Petitioner notes that, although he paid the filing fee for this action, this Court subsequently granted his request for in forma pauperis status on appeal. [Doc 51]. Accordingly, Petitioner sought entry of default as to these Defendants, and on September 12, 2017, the Clerk entered default against Linkins, Jennings, Combs and Bernard, [Docs. 25-43], see [Doc 51, 77].

On remand, the parties participated in discovery, including a deposition of Petitioner and written discovery.[Docs.103,104]. The District Court granted Respondents summary judgment, dismissing the complaint, alleging that "Plaintiff cannot establish the third element "causation" of the Sixth Circuit's retaliation claim. [Docs. 159, 166, 167]. The Petitioner filed motion to the district court to "Reconsider" dismissal, granting Defendants summary judgment [Doc. 163].

On February 24, 2020 Petitioner timely submitted his "Notice of Appeal" in the United States Court of Appeals for the Sixth Circuit Case No. 20-5259, and motion, "MOTION FOR PAUPER STATUS" and "AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS" Jasper Vick v. R. Smith, et al. originating Case No. 2:15-cv-00116. On June 25, 2020, the United States Court of Appeals for the Sixth Circuit DENIES Vick's motion to proceed in forma pauperis. "Unless Vick pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution." [App. - A].

Petitioner, Vick respectfully presents this petition for a writ of certiorari to this Honorable Court, because Petitioner's life is in imminent danger, and is timely filed within the ninety (90) day period required by Supreme court Rule 13.1. Pursuant to Supreme Court Rule 14.1(g)(1) the Federal questions sought to be raised in this Court were, first raised in the Court below, and can be reviewed below at [Appendixes - A, B, C, D, E. and, F ("App.")].

These issues have been properly preserved and litigated below and are ripe for review by this Honorable Court. [App - B].

REASONS FOR GRANTING THE PETITION

I. THERE ARE CONFLICTS IN THE COURT OF APPEALS ON THE QUESTIONS PRESENTED

A. The Court Of Appeals Have Reached Conflicting Decisions Regarding Whether There Is A Temporal Proximity Between Petitioner's Protected Conduct Under The First Amendment And The Sixth Circuit's Third Element (Causation) Retaliation Act Of Petitioner's Placement In Medical Segregation .

On August 12, 2014, Petitioner filed a "TDOC INMATE INQUIRY INFORMATION REQUEST (CR-3118) for a redress of Respondent Dr. Bernard's lack of sensitivity for Petitioner's medical needs and his desire to punish Petitioner for speaking out against medical segregation for those diabetics who's blood sugar went over 350 points or (as Respondent Perdue would have it 250 points), and save money. August 13, 2014, at or about 12:46pm, the Petitioner was issued a inmate movement pass to the prison infirmary. When the Petitioner arrived at the prison infirmary, Petitioner was escorted into a Triage room by Respondent Dr. Bernard, who presented a copy of the CR-3118 filed August 12, 2014, and stated to Petitioner, "I got your little smart remark" and made threats of medical segregation, which was carried out by Respondent Nurse Combs August 18, 2014, per Respondent Dr. Bernard.

Respondent Bernard entered a false medical report August 13, 2014, at 1:00pm, alleging "Discussed the need to adjust meds to better control I/Ms BS, He agrees to be admitted to the infirmary Friday Morning for glycemia control."[1] August 19, 2014, Respondents Riegal and Pardue removed food from Petitioner's food tray and made postings "Vick, Jasper I/M is not to have any Juice!!!!" August 19, 2014, Respondents Riegal and Pardue made a second posting "E-63 per Doctor's orders do not give inmate Vick, Jasper TDOC #139471 the following no carton drinks water only food trays to be removed after 30 minutes! (1) Milk allowed per day!"

Respondent Bernard with deliberate indifference cause Petitioner actual physical and mental harm in response to Petitioner's grievance filed August 12, 2014, by Petitioner's placement in medical

1 Petitioner was an advocate against segregation placement of diabetics whose blood glucose readings exceeded 250-350 points, and has never agreeded to medical segregation placement, Friday Morning, or at any other time.

segregation without first following TN CORRECTION-TDOC-INFIRMARY PROTOCOL-POLICY AND PROCEDURE VI. A, B, C, & D,[2] prior to Petitioner's placement in medical segregation, without food or a way to call for or get help in the event of an emergency, and giving Petitioner the deadly drug metformin and discontinuing all form of insulin, with deliberate indifference, Respondents were with, and or had advance knowledge, notice, or warning, or information sufficient that Petitioner was allergic to the drug metformin, and that Petitioner a Type II diabetic, can not survive without some form of insulin that do not contain metformin. The drug METFORMIN and GLIMPIRIDE is prescribed to be taken by mouth with food. August 18, 2014, Respondents placement of Petitioner in medical segregation served no legitimate governmental objective, were with deliberate indifference, intended to caused actual physical and mental harm or possible death.

In the sixth Circuit case of SCOZZARI v. MIEDZIANOWSKI, this Court held: (In part):

> "The Due Process Clause of the Fourteenth Amendment requires government officials to provide adequate medical care to individuals injured while being apprehended ... "[T]he due process rights of a [pre-trial detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner."); Phillips v. Roane Cnty., 534 F.3d 531, 5 39 (6th Cir 2008). ... To establish a violation of the right to adequate medical care under 42 U.S.C. §1983, a plaintiff must show that the defendant acted with deliberate indifference to serious medical needs." Watkins v. City of Battle Creek, 273 F.3d 682, 685 (6th Cir. 2001) (quoting Estell v. Gamble, 429 U.S. 97, 104 S.Ct. 285, 50 L.Ed2d 251 (1976)."

The Petitioner has a Constitutional right to file grievance for a redress, to adequate medical care and to due process of law. However, the Sixth Circuit Court of Appeals have conflicting decision regarding these issues. In the United States Supreme Court decision in Smith v. Bennett, U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961) and its own decision in Clifton v. Carpenter, 775 F.3d 760 (6th Cir. 2014): They held: (In part): "to bar plaintiff from initiating an application for leave to appeal from the original complaint ... filed in the court would violate the Equal Protection Clause of the Fourteenth

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2 In a report by prison's Health Administrator, the Petitioner was seen by the Health Care Provider July 14, 2014, for chronic care and was classified as a class - "A" medical.and would warrant no further medical attention. for the next 90 days.

Amendment." [See Apps. - A, and B].

B. The Court Of Appeals Have Reached Conflicting Decision Regarding Whether Petitioner Satisfied The Sixth Circuit Third Element Of Causation In His First Amendment Retaliation Claim.

While acting under color of law, with deliberate indifference, Respondent, et al., caused Petitioner actual physical and mental harm in response to Petitioner's grievance filed August 12, 2014, by Petitioner's placement in medical segregation August 18, 2014, without first following the TN CORRECTION-TDOC-INFIRMARY PROTOCOL-POLICY AND PROCEDURE VI. A, B, C, & D, prior to Petitioner's placement in medical segregation, without food, or a way to call for or get help in the event of an emergency, and giving Petitioner the deadly drug metformin, and discontinuing all form of insulin, Respondents were with, and or had advance knowledge, notice, or warning, or information sufficient that Petitioner was allergic to the drug metformin, because metformin was not controlling Petitioner's blood sugar, and that Petitioner is a Type II diabetic, and can not survive without some form of insulin, that do not contain metformin. The drug METFORMIN and GLIMPIRIDE is prescribed to be taken by mouth with food. August 18, 2014, Respondents placement of Petitioner in medical segregation served no legitimate governmental objective .

Explanation of Events Submitted by Respondents Dr. Clement F. Bernard, Nurse Practitioner Beth Jennings Morley, Nurse Natalie Linkous, and Nurse Carmody.

> The Respondents, "for purposes of the motion for summary judgment, do not dispute the events that took place on August 18, 2014. In fact Dr. Bernard does not even dispute that he had a conversation with Plaintiff about the smart remark and threaten time in medical segregation. But Dr. Bernard and other Centurion Defendants give their own reasons for the events that took place in their Motion, Dr. Bernard's affidavit, and Reply. [Document 159 at page 7] ... The Centurion Defendants, for the purpose if this motion, concede that Plaintiff satisfied the first two elements. [Doc. 131, Page ID 1059]. But they argue that Plaintiff cannot establish the third element when viewing the evidence in light most favorable to Plaintiff, entitling them to summary judgment. [Doc. 159 page ID# 1358].
>
> The district court and the Respondents relying on Maben v. Thelen, 887 F.3d 252, 266

(6th Cir. 2018), reh'g denied (Apr. 19, 2018) (quoting Thaddeus - X, 175 F3d @ 394). The Petitioner will also rely on Maben v. Thelen.

In the Maben v. Thelen Court, this Court also held: (In part):

> "Under the third element "[u]sually, the question of causation is a factual issue to be resolved by a jury, and may be satisfied by circumstantial evidence." Harris v. Bornhorst, 513 F.3d 503, 519 - 20 (6th Cir. 2008) (citing Hartsel v. Keys, 87 F.3d 795, 803 (6th Cir. 1996)). " Nonetheless, a court may grant summary judgment even in a causation inquiry, where it is warranted." Hartsel, 87 F.3d at 803 (citing Langford v. Lane, 921 F.2d 677, 683-84 (6th Cir. 1991)). "Once the Plaintiff has met his burden establishing that his protected conduct was a motivation factor behind any harm, the burden of production shift shifts to the Defendants." Thaddeus - X, 175 F.3d at 399 (citing Mount Healthy , 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471)."If the Defendants can show that he would have taken the same action in the absence of the protected activity, he is entitled to prevail on summary judgment." Id. **Maben v Thelen**

The district court and the Criterion Respondents, "for purposes of the motion for summary judgment, do not dispute the events that took place on August 18, 2014. In fact, Dr. Bernard does not dispute he had a conversation with Plaintiff about the smart remark and threaten time in segregation." [Doc. 159 Page Id # 1356], and concede that Petitioner satisfied the first two elements of the retaliation claim [Doc. 131, Page ID 1059]. Unless the claimed retaliatory action is truly 'inconsequential', the Petitioner's claim should go to the jury, only de minus violations should be dismissed as a matter of law. See Bell, 308 at 603, (citing Thaddeus - X, 175 F.3d at 398); Kennedy v. Boneville, 413 F.2d App's 836, 840 (6th Cir. 2011)).

In this case Respondents can not prevail on summary judgment because Petitioner have demonstrated causation. There were no legitimate governmental objective for Petitioner's placement in medical segregation August 18 2014, because the Petitioner "most recent chronic care appointment was July 14, 2014, at which time he received his annual physical exam." [Doc. 163].

Pursuant to Federal Rules of Civil Procedure, Rule 56, Summary Judgment must be granted if there is no genuine issue of material fact. Pertaining to the Respondents medical treatment of Petitioner must prevail. The district court in Doc. 159 Page ID#1357 states: (In part): "The parties disagree about

two occurrences in the infirmary." In 2010, Petitioner, who was an inmate at Northeast Correctional Complex, ("NECX") was diagnoses with Type II Diabetes. [Dos. 149, page ID# 1230, 1237]. A physician prescribed Metformin and aspirin to control Petitioner's health issues. [Id.]. Petitioner's aspirin was a "keep-on-person" prescription. [Id.]. Two years later, Petitioner was treated at the Johnson County Community Hospital Emergency Room because of an "allergy to the drug metformin, [id.], and because the drug metformin was no longer controlling the Petitioner's blood sugar. The physician at NECX entered in Petitioner's medical file to quit metformin. The Respondents used medical segregation and the deadly drug metformin to discipline Petitioner following the filing of his grievance for a redress on August 12, 2014. Petitioner have satisfied all three parts of the Sixth Circuit's retaliation claim, entitling Petitioner to Summary Judgment as a matter of law, and a trial in this cause.

Respondents while action under color of state law, with deliberate indifference retaliated against Petitioner, and discontinuing all "meds","blood sugar checks and all insulin" that were previously prescribed, ignoring all Petitioner's medical files and medical facts consistent with Type II Diabetes.

C. The Court Of Appeals Have Reached Conflicting Decision Regarding Whether Appellant Is Entitled To Default Judgment Against Respondents Linkous, Combs, Bernard, and Jennings.

It appearing that the complaint was filed in this case April 24, 2015; that the summons and complaint were duly served upon the Respondents, N. Linkous, et al.,[Doc. 40]; B. Jennings, et al., [Doc. 41]; A. Combs, et al., [Doc. 42]; and C. Bernard, et al., Doc. [43] on February 13, 2017, and no answer or other pleading were filed by said Respondents as required by law. Therefore, upon request of the Petitioner, default was entered against these Respondents September 12, 2017, as provided in Rule 55(a), of the Federal Rules of Civil Procedure. [App. - C].

In the Courts' ORDER Doc. 77, reads: (In part): "This civil action is before the Court on Magistrate Judge Clifton Corker' Report and Recommendation ("R&R"), issued on June 7, 2018 [Doc.

68]. In the R&R, Magistrate Judge Corker has recommended that the Court deny Plaintiff's Motion for Default Judgment [see Doc. 48, grant the Motions to Set Aside Default filed by Defendants Combs, Bernard, Jennings, and Linkous [see Doc. 52, 57], and terminate Plaintiff's motions to dismiss Defendants' motions [see Docs. 54, 63]. Specifically, Magistrate Judge Corker found that these Defendants appear to have meritorious defenses to the Complaint and did not willfully default, and that setting aside default would not prejudice Plaintiff [Docs. 72, 74]." [See App. D, @ Doc. 77].

D. Whether The District Court Improperly Dismissed Respondent Riegal, And Manipulated The Federal Rules Of Civil Procedure To Favor The Respondents.

In light of the pretrial remand, the district court directed the Clerk to send Plaintiff service packets - each including a blank summons and USM 285 forms - for the remaining seven defendants, and order Plaintiff to return the completed forms so that the summons could "be signed and sealed by the Clerk and forwarded to the Unites States Marshal for service upon Defendants."

The summonses as to Carmody, Riegal, and Faret, however, were returned unexecuted [Docs. 18, 23, 24]. On June 15, 2017, the district court entered an Order directing the Warden of the NECX and the TDOC to provide the Court with the last known addresses and any additional information necessary to effectuate service upon the remaining Defendants [Doc 28], this order was vacated. In Petitioner's July 10, 2017 Motion Petitioner requested that the district court exercise its "inherent power" and "remedial authority" to provide Petitioner a means of executing service of process on the remaining Defendants [Doc. 33 at 2 - 3], Specifically, the Petitioner notes that, although he paid the filing fee for this action, the Appellate Court granted his request for in forma pauperis status on appeal. [Doc 51, at Page ID#451].

May 21, 2018, Respondent Riegel by and through counsel, on Motion to Dismiss, stating "Counsel had been retained to represent the interest of Ms. Riegel, but has been unable to make contact with or locate her ... Counsel for Ms. Riegel files this motion out of an abundance of caution to prevent

a default judgment from being entered against Ms. Riegel." [See App. - E]. Respondent Riegel further states: (In Part): " In this case, a copy of the summons and complaint was mailed to the Defendant's last known address, which was provided by either the Warden of NEXC or the Commissioner of the TDOC pursuant to the Court's Order's. [Doc. 51 p.5]. The return service filed with the Court indicates that the package containing the summons and complaint was "left at side door". [Doc. 59 p.4], see App. - E, page 3 @ ¶8]. Petitioner prays that this Honorable Court will conclude that the Respondents have been properly server, by the U.S. District Court and the U.S. mail service and Petitioner should be granted just and appropriate relief.

To further the mindset, the defense counsel for Respondent Riegel is in admission of the fact that they are acting as "Agent" for their client. Therefore, since they had a contractual obligation as well as an ethical and fiduciary relation with their client, The Respondent Riegel has been served. It is the duty of the agent to locate their client after the agent receives "NOTICE." August 26, 2019 Petitioner timely submitted his response "IN OPPOSITION TO DEFENDANT N. RIEGAL MOTION TO DISMISS", pursuant to Doc. 135, also see, Docs. 161 and 164. [App. - F].

The district court has further manipulated the Federal Rules to favor the Respondents. Concerning the 'Pretrial Narrative Statement" the district court Ordered: (In part): "3. On or before **November 5, 2019**, Plaintiff shall file with the Clerk of the Court a statement entitled "Pretrial Narrative Statement." 4. On or before **November 12, 2019**, Defendants shall file with the Clerk of the Court and serve upon Plaintiff, a "Pretrial Narrative Statement' entitled as such, which shall contain the information set out in paragraph 3(a) through (e) above. 5. Failure of the parties to disclose fully in the Pretrial Narrative Statement the substance of the evidence to be offered at trial will result in the exclusion of that evidence at trial." [Doc. 126].

However , the Respondents did NOT file a "Pretrial Narrative Statement" on or before November 12, 2019 as Ordered by the Court and states: (In part): "Despite this error, Defendants assert

they acted in good faith at all times and did not intentionally disobey the Court's order [Doc 171, p.1]"; [Doc. 174 at Page ID #1460]; [App - E].

II. THE SITHH CIRCUIT DECISION IS ERRONEOUS

Under the Federal system, the federal system is bound to guard and protect the rights secured by the constitution, congress has enacted within its constitutional authority to interpose the federal courts between people acting under color of law and the people, as guardians of the people's federal rights to protect the people from unconstitutional actions such as the petitioner is faced in this cause.

Similarly, the Sixth Circuit Court of Appeals has a duty that cannot be disregarded without neglecting a jurisdiction conferred by the law and designed to protect and maintain the supremacy of the consideration and the laws made in pursuance thereof. [Apps – A, & B].

"The Supreme Court has long held that procedures which limit an indigent defendant's access to courts, which that limitation could result in a deprivation of liberty, are constitutionally deficient ... Destitute defendants must be afforded as adequate appellate review as defendants who have money ... Access to the courts cannot be contingent on wealth. Griffin and its progeny clearly provide that indigent defendants, whose liberty is on the line, cannot receive less process because of their pauper status. Smith makes it clear that these protections even apply in collateral proceedings. The Supremacy Clause forbids ... a rule to trump the fundamental requirement of the United States Const. Art. VI, cl.2. Doan, 237 F.3d at 728" See **Clifton v. Carpenter**, 775 F.3d 760 (6th Cir. 2014), see [App. - A, & B].

In this case the Petitioner presented his motion, "MOTION FOR PAUPER STATUS" and "AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS" to the Sixth Circuit Court of Appeals March 23, 2020, as requested by the Court, see [Apps - A and B]. The Sixth Circuit Court of Appeals has effectively denied Petition Due Process.

III. THE QUESTIONS PRESENTED ARE RECURRING ISSUES OF NATIONAL IMPORTANCE THAT WARRANT THIS COURT'S IMMEDIATE RESOLUTION

The Sixth Circuit's holding in this case raises issues of great practical importance and constitutional significance meriting this Supreme Court's intervention.

Access to the courts cannot be contingent on wealth. Griffin and its progeny clearly provide that indigent defendants, whose liberty is on the line, cannot receive less process because of their pauper status. Smith makes it clear that these protections even apply in collateral proceedings. The Supremacy Clause forbids ... a rule to trump the fundamental requirement of the United States Const. Art. VI, cl.2. Doan, 237 F.3d at 728" See **Clifton v. Carpenter**, 775 F.3d 760 (6th Cir. 2014), see [Apps. - A, and B].

CONCLUSION

For the foregoing reasons, Petitioner respectfully request that the petition for a writ of certiorari be granted.

Respectfully submitted, this September 19, 2020.

Jasper Lee Vick
Pro se, prisoner (TDOC #139471)
2520 Union Springs Road
Whiteville, TN 38075-0549
X.c.: Fl. #20-082