Docket No.: 2020-6395

SUPREME COURT OF THE UNITED STATES

Howard Griffith,

Pro Se,

Defendant/Petitioner

vs

New York,

People of the State of New York/County of Onondaga,

Plaintiff/Respondent

Supplement for Petition for Writ of Certiorari

Howard Griffith, pro se
2903 James Street, # 1R
Syracuse, NY 13206
315-741-7420

Affidavit of Service

STATE OF NEW YORK)
COUNTY OF ONONDAGA)ss.:

I, Rebecca Sklaney, duly depose and say, I served the original Supplement for Petition of Writ of Certiorari for the Defendant/Petitioner, Howard Griffith, for proceeding titled Howard Griffith v New York, 2020-6395, dated: Jan. 9, 2021, and ten copies of the same to the Clerk of the Supreme Court of the United States, with an exact copy of the same to: William J. Fitzpatrick, Esq., District Attorney of the State of New York/County of Onondaga, and a copy of the same to the Attorney General of the State of New York of the Syracuse Regional Offices, being the only known parties of the said proceeding, via certified mail, by depositing on the 11 day of Jan., 2021, the original petition and exact copies of the same in a post office box of the City of Syracuse, NY, to be handled with care in Post Offices in the cities of Washington, DC, and Syracuse, NY, to be received at the following known addresses:

1) Clerk of the United States Supreme Court
1 First Street, N. E., Washington, DC 20543
2) William J. Fitzpatrick, Esq., NYS District Attorney/County of Onondaga
505 South State Street, 4th Floor, Syracuse, NY 13202
3) Attorney General of New York State of the Syracuse Regional Offices
300 South State Street, Suite 300, Syracuse, NY 13202

Being the last known addresses for these parties, being the only known parties in these proceedings, that deponent is over 18 years of age, is not a veteran, is not a party in this proceeding, and resides in Syracuse, NY.

Rebecca Sklaney
Rebecca Sklaney
NY DL 863036639

Sworn to before me this 11 day of Jan, ~~2020~~ 2021

MELISSA SCHWARTZ
Notary Public - State of New York
NO. 04SC6162309
Qualified in Onondaga County
My Commission Expires 3-12-23

Questions Presented

Why does this Court need to authorize the Order and Report-Recommendation provided for Howard Griffith et al v New York, 5:20-cv-1312 (GLS/ML) to be reviewed with Petition for Writ of Certiorari?

Defendant provided in his Supplement for Petition for Writ of Certiorari dated November 30, 2020, that the United States District of the Northern District of New York would need to provide a declaratory judgment whether Defendant should proceed with his action to dismiss his underlying via habeas corpus or coram nobis.

Why does this Court need to review this [ ] ?

The Order and Report-Recommendation [ ] contains an error that this Court needs to correct.

Parties Listed

Howard Griffith, pro se

Defendant/Petitioner

District Attorney of the State of New York, County of Onondaga

Plaintiff/Respondent

New York State Attorney General

Assistant Representative of the Syracuse Regional Offices

52 USC Section 10303(a)(5) provides: "an action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court." Miroslav Lovric, United States Magistrate Judge of the United States District Court of the Northern District of New York provides the recommendation for the action Defendant intended to take as a Plaintiff pursuant to Howard Griffith, et al v New York, 5:20-cv-1312 (GLS/ML), on December 28, 2020. Judge Miroslav Lovric "**ORDERED** that the Clerk of the Court shall file a copy of this Order and Report-Recommendation on Plaintiffs, along with copies of the unpublished decisions cited herein in accordance with the Second Circuit's decision in Lebron v Sanders, 557 F.3d 76 (2d Cir. 2009) (per curiam)."

Via Supplement for Petition for Writ of Certiorari, (November 30, 2020) Defendant provided the cause why due process supports Howard Griffith v New York, 20-6395, and Howard Griffith, et al v New York, 5:20-cv-1312 (GLS/ML) need to be reviewed together. Conference date for Defendant's Petition for Writ of Certiorari is January 15, 2021. Judge Miroslav Lovric's Order is appealable with regard to how Defendant objects filing the Order and Report Recommendation with copies of unpublished decisions cited in accordance with the Second Circuit's decision in Lebron v Sanders, (id.) is an error of law as the nature of the cause to take action via Howard Griffith, et al v New York [ ] was to obtain declaration for

the suspension of the use of "tests or devices" pursuant to 52 USC 10303 as it applied to the use of absentee votes, mail-in votes. Court Reporters from any Circuit Courts of Appeals have absolutely no substance for any of the remedies with regard to actions taken for cause to obtain declaration pursuant to 52 USC 10303. Judge Miroslav Lovric provided Defendant had seventeen days to object the report as a Plaintiff or else appellate review would have been precluded. Defendant has prepared objections to this report as a Plaintiff. Defendant's intent to have the Court review Howard Griffith et al v New York [ ] with this action was to interpret the merits. The merits would need to be interpreted that with New York State dismissing Defendant's conviction, his civil rights would be violated. Therefore, this Court would have to interpret if the action provided merit that the remedies were satisfied to provide that there were civil rights that needed to be protected. With those merits satisfied, cause would be interpreted that it would need to be a federal court's duty to dismiss Defendant's conviction.

Defendant also provided, via his Supplement for Petition for Writ of Certiorari [ ], that because the United States District Court of the Northern District of New York identifies Defendant is a prisoner pursuant to 28 USC 1915(h), the District Court would need to provide a Declaration whether Defendant would have to proceed via habeas corpus or coram nobis with an action to attempt to overturn his underlying conviction. Judge Miroslav Lovric's report satisfies that remedy.

Due process provides that the seventeenth day to object Judge Miroslav Lovric's report is January 14, 2021. Therefore, procedure with regard to Howard Griffith et al v New York [ ] would resume on January 15, 2021. Cause is preserved to have Howard Griffith et al v New York [ ] reviewed with this action. 52 USC 10303(a)(5) provides that appeals from Howard Griffith, et al v New York [ ] shall lie to the Supreme Court. Judge Miroslav Lovric's report satisfies the remedy to provide the declaration that Defendant should not be entitled to Habeas Corpus relief to be provided for this Court with this action. However, error is provided with Judge Miroslav Lovric's report that Howard Griffith, et al v New York [ ] is to be filed in accordance with the Second Circuit's decision in Lebron v Sanders, 557 F.3d 76 (2d Cir. 2009). Because Defendant preserved the remedy that the Declaration would need to be provided whether or not Defendant may have been able to proceed to obtain Habeas Corpus relief, this report needs to be maintained with this action even though it contains an error. Nevertheless, due process provides Howard Griffith et al v New York, [ ] can be resumed to seek appellate review for that Order to this Court on January 15, 2021, just as this action is scheduled for conference on January 15, 2021. Therefore, due process provides this Court can review Defendant's Memorandum of Law he provides for objection to Judge Miroslav Lovric's report to enable this Court to provide the correct Court

Reporters to be filed with the report in the United States District Court of the Northern District of New York.

Respectfully submitted,

Howard Griffith

Dated: January 9, 2021

Howard Griffith, pro se
2903 James Street, # 1R
Syracuse, NY 13206
315-741-7420

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HOWARD GRIFFITH; and
REBECCA SKLANEY,

Plaintiffs,

v.

5:20-CV-1312
(GLS/ML)

NEW YORK STATE, Attorney General; and
JAN NASTRI, Lessor, Realtor,

Defendants.

APPEARANCES: OF COUNSEL:

HOWARD GRIFFITH
Plaintiff, *Pro Se*
2903 James Street, #1R
Syracuse, New York 13206

REBECCA SKLANEY
Plaintiff, *Pro Se*
2903 James Street, #1R
Syracuse, New York 13206

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER and REPORT-RECOMMENDATION

I. INTRODUCTION

The Clerk has sent this *pro se* complaint (Dkt. No. 4) together with an amended application to proceed *in forma pauperis* (Dkt. No. 5) and a petition for writ of habeas corpus (Dkt. No. 13) filed by Howard Griffith and Rebecca Sklaney ("Plaintiffs") to the Court for review. For the reasons discussed below, I grant Plaintiffs' amended *in forma pauperis* application (Dkt. No. 5) and recommend that Plaintiffs' (1) Complaint (Dkt. No. 4) be dismissed

with leave to amend, and (2) petition for writ of habeas corpus (Dkt. No. 13) be dismissed without prejudice.

II. BACKGROUND

On October 22, 2020, Plaintiffs (who are roommates) attempted to commence this action by filing a motion for a temporary restraining order (Dkt. No. 1) and a motion for leave to proceed *in forma pauperis* (Dkt. No. 2). On October 27, 2020, Senior United States District Judge Gary L. Sharpe issued an order directing that the case be administratively closed for failure to comply with Fed. R. Civ. P. 3. (Dkt. No. 3.)

On November 9, 2020, Plaintiffs filed the Complaint (Dkt. No. 4) and an amended motion to proceed *in forma pauperis* (Dkt. No. 5). The Complaint asserts causes of action against the New York State Attorney General and Jan Nastri, Lessor, Realtor (collectively "Defendants"). (*See generally* Dkt. No. 4.)

While the Complaint is extraordinarily difficult to decipher, Plaintiffs appear to allege that, because of Plaintiff Griffith's sex offender status, incorrect census information will somehow impinge upon their voting and housing rights. (*Id.*) The Complaint appears to assert causes of action pursuant to: (1) 52 U.S.C. § 10303, (2) 13 U.S.C. § 223, (3) 34 U.S.C. § 30505, (4) the Fifth Amendment and 42 U.S.C. § 1983, (5) the Ninth Amendment and 42 U.S.C. § 1983, (6) the Tenth Amendment and 42 U.S.C. § 1983, and (7) the Fourteenth Amendment and 42 U.S.C. § 1983. (Dkt. No. 4 at 3.) As relief, Plaintiffs seek "injunctive relief for a restraining order . . . against Jan Nastri[,] [i]njunctive relief with [d]eclaratory [j]udgment, providing this to the United States Attorney General is this is substantive to the unprecedented procedures to complete the 2020 election." (Dkt. No. 4 at 4.)

On December 15, 2020, Plaintiffs filed a petition for a writ of habeas corpus (Dkt. No. 13, Attach. 1), along with a memorandum of law in support (Dkt. No. 13). This filing seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254 and challenges Plaintiff Griffith's 2002 conviction, upon a guilty plea, in Onondaga County for first degree rape. (Dkt. No. 13, Attach. 1 at 1-2.) Plaintiff Griffith appears to argue that his plea was invalid and that his counsel was constitutionally ineffective during his plea and subsequent sex offender registration modification hearings. (Dkt. No. 8 at 49-61.)

III. PLAINTIFFS' AMENDED APPLICATION TO PROCEED *IN FORMA PAUPERIS*

When a civil action is commenced in a federal district court, the statutory filing fee, currently set at $402, must ordinarily be paid. 28 U.S.C. § 1914(a). A court is authorized, however, to permit a litigant to proceed *in forma pauperis* status if a party "is unable to pay" the standard fee for commencing an action. 28 U.S.C. § 1915(a)(1).[1] After reviewing Plaintiffs'

[1] The language of that section is ambiguous because it suggests an intent to limit availability of IFP status to prison inmates. *See* 28 U.S.C. § 1915(a)(1) (authorizing the commencement of an action without prepayment of fees "by a person who submits an affidavit that includes a statement of all assets such prisoner possesses"). The courts have construed that section, however, as making IFP status available to any litigant who can meet the governing financial criteria. *Hayes v. United States*, 71 Fed. Cl. 366, 367 (Fed. Cl. 2006); *Fridman v. City of N.Y.*, 195 F. Supp. 2d 534, 536 n.1 (S.D.N.Y. 2002).

amended *in forma pauperis* application (Dkt. No. 5), the Court finds that Plaintiffs meet this standard.[2] Therefore, Plaintiffs' amended application to proceed *in forma pauperis* is granted.[3]

IV. LEGAL STANDARD FOR INITIAL REVIEW OF COMPLAINT

"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 . . . the action . . . (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." 28 U.S.C. § 1915(e)(2).

In order to state a claim upon which relief can be granted, a complaint must contain, *inter alia*, "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The requirement that a plaintiff "show" that he or she is entitled to relief means that a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is *plausible* on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Determining whether a complaint states a plausible claim for relief . . . requires the . . . court to draw on its judicial experience and common sense. . . . [W]here the well-pleaded facts do not permit the court to

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[2] The United States Department of Health and Human Services publishes yearly Poverty Guidelines. Those guidelines reflect that, for 2020, the poverty threshold for a family/household of one is $12,760. *See* United States Dep't of Health & Human Servs., https://aspe.hhs.gov/poverty-guidelines (last visited December 22, 2020). Individually, Plaintiffs are below this threshold amount. (Dkt. No. 5 at 2-3.) The guidelines also reflect that the poverty threshold for a family/household of two is $17,240. When the incomes of Plaintiffs are combined and considered as one household—because they live together—Plaintiffs are above the threshold for a household of two. However, because it is not clear whether Plaintiffs are financially co-dependent or independent, the Court grants their motion for to proceed *in forma pauperis*.

[3] Plaintiffs are reminded that, although the amended application to proceed *in forma pauperis* has been granted, they will still be required to pay fees that they may incur in this action, including copying and/or witness fees.

infer more than the mere possibility of misconduct, the complaint has alleged–but it has not shown–that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (internal citation and punctuation omitted).

"In reviewing a complaint . . . the court must accept the material facts alleged in the complaint as true and construe all reasonable inferences in the plaintiff's favor." *Hernandez v. Coughlin*, 18 F.3d 133, 136 (2d Cir. 1994) (citation omitted). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

Courts are "obligated to construe a pro se complaint liberally." *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009); *see also Nance v. Kelly*, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam) (reading the plaintiff's *pro se* complaint "broadly, as we must" and holding that the complaint sufficiently raised a cognizable claim). "[E]xtreme caution should be exercised in ordering sua sponte dismissal of a pro se complaint before the adverse party has been served and [the] parties . . . have had an opportunity to respond." *Anderson v. Coughlin*, 700 F.2d 37, 41 (2d Cir. 1983). The Court, however, also has an overarching obligation to determine that a claim is not legally frivolous before permitting a *pro se* plaintiff's complaint to proceed. *See, e.g., Fitzgerald v. First East Seventh St. Tenants Corp.*, 221 F.3d 362, 363 (2d Cir. 2000) (holding that a district court may *sua sponte* dismiss a frivolous complaint, notwithstanding the fact that the plaintiff paid the statutory filing fee). "Legal frivolity . . . occurs where 'the claim is based on an indisputably meritless legal theory [such as] when either the claim lacks an arguable basis in law, or a dispositive defense clearly exists on the face of the complaint." *Aguilar v. United States*, 99-MC-0304, 99-MC-0408, 1999 WL 1067841, at *2 (D. Conn. Nov. 8, 1999) (quoting *Livingston*

v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998)); *see also Neitzke v. Williams*, 490 U.S. 319, 325 (1989) ("[D]ismissal is proper only if the legal theory . . . or factual contentions lack an arguable basis."); *Pino v. Ryan*, 49 F.3d 51, 53 (2d Cir. 1995) ("[T]he decision that a complaint is based on an indisputably meritless legal theory for purposes of dismissal under section 1915(d), may be based upon a defense that appears on the face of the complaint.").

V. ANALYSIS

In addressing the sufficiency of a plaintiff's complaint, the court must construe his pleadings liberally. *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 191 (2d Cir. 2008). Having reviewed Plaintiffs' Complaint with this principle in mind, I recommend that all causes of action be dismissed.

Plaintiffs' Complaint is comprised of twelve pages of incoherent text, written on a form-complaint from the Clerk's office with orders from this Court and New York State Supreme Court, attached to it. (*See generally* Dkt. No. 4.) By way of example, in the "Statement of Claim" portion of the Complaint, Plaintiffs allege as follows:

> The People of the State of New York (10/01/19) and the mayor of Syracuse (04/13/2020) authorized Plaintiff to contact authorities. Governor Cuomo's signed bill, (06/12/2020) interferes as was the remedy provided on 07/27/2020, when the Onondaga County Sheriff ignored the complaint of dangerous activity on the premises of his landlord, Jan Nastri. Plaintiff addressed this to lessor with documents to provide behavior of Perpetrators would be enforced. (08/24/2020)

(Dkt. No. 4 at 4.) Plaintiffs further allege that:

> Lessor's negligence or willfulness to improperly handle the Census construed additional perpetration developing errors with regard to identifying a proper address or household, (09/16/2020) Plaintiff attempted to address all necessary causes or concerns with regard to failure to enforce the law on the property of his proprietor (via state, special proceeding) with regard to both New York State's and Lessor's

> failure to enforce this, as Plaintiff's latest concern was that the census could interfere with his sex offender registry, causing him to be punished.

(Dkt. No. 4 at 5.)

As the Complaint is currently drafted, the Court is unable to meaningfully analyze, whether, and to what extent, Plaintiffs have pleaded any colorable claim against Defendants. (*See generally* Dkt. No. 4.)[4] Plaintiffs' Complaint places an unjustified burden on the Court and, ultimately, on Defendants "'to select the relevant material from a mass of verbiage.'" *Salahuddin v. Cuomo*, 861 F.2d 40, 41-42 (2d Cir. 1988) (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1281, at 365 (1969)).

As a result, I recommend the Complaint be dismissed as frivolous. *See, e.g., Gillich v. Shields*, 18-CV-0486, 2018 WL 2926299 (N.D.N.Y. Apr. 30, 2018) (Peebles, M.J.), *report and recommendation adopted by* 2018 WL 2926302, at *3 (N.D.N.Y. Jun. 8, 2018) (D'Agostino, J.); *Canning v. Hofmann*, 15-CV-0493, 2015 WL 6690170, at *5 (N.D.N.Y. Nov. 2, 2015) (Hurd, J.) ("Under these circumstances, having found that none of the allegations in Plaintiff's meandering and indecipherable Complaint raise a cognizable cause of action, the Court concludes that the Complaint fails to state a claim upon which relief may be granted and is subject to dismissal."); *see also Salahuddin*, 861 F.2d at 42 ("Dismissal [for failure to comply with the requirements of Rule 8 of the Federal Rules of Civil Procedure] . . . is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised."). [5]

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[4] The Court also notes that, despite there being two Plaintiffs in this action, the statement of claims portion of the Complaint repeatedly refers to a single Plaintiff. It is unclear whether Plaintiffs' singular use of the word "Plaintiff" was an oversight, and intended to refer to both Plaintiffs, or whether the alleged facts relate only to one of the two Plaintiffs.

[5] In the alternative, the Court recommends that to the extent Plaintiffs seek to assert any causes of action pursuant to 13 U.S.C. § 223, those causes of action be dismissed for failure to

VI. OPPORTUNITY TO AMEND

Generally, a court should not dismiss claims contained in a complaint filed by a *pro se* litigant without granting leave to amend at least once "when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Branum v. Clark*, 927 F.2d 698, 704-05 (2d Cir. 1991); *see also* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."). An opportunity to amend is not required, however, where "the problem with [the plaintiff's] causes of action is substantive" such that "better pleading will not cure it." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000); *see also Cortec Indus. Inc. v. Sum Holding L.P.*, 949 F.2d 42, 48 (2d Cir. 1991) ("Of course, where a plaintiff is unable to allege any fact sufficient to support its claim, a complaint should be dismissed with prejudice."). Stated differently, "[w]here it appears that granting leave to amend is unlikely to be productive, . . . it is not an abuse of discretion to deny leave to amend." *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 (2d Cir. 1993); *accord, Brown v. Peters*, 95-CV-1641, 1997 WL 599355, at *1 (N.D.N.Y. Sept. 22, 1997) (Pooler, J.).[6]

In this case, it is not clear whether better pleading would permit Plaintiffs to assert a cognizable cause of action against Defendants. Out of deference to Plaintiffs' *pro se* status, however, I recommend that they be granted leave to amend the Complaint.

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state a claim. "There is no private right of action to enforce either state or federal criminal statutes." *George v. Progressive Ins. Agency, Inc.*, 18-CV-1138, 2018 WL 4660379, at *3 (N.D.N.Y. Sept. 28, 2018) (Baxter, M.J) (citing *Carvel v. Ross*, 09-CV-0722, 2011 WL 856285, at *11-12 (S.D.N.Y. Feb. 6, 2011)).

6 *See also Carris v. First Student, Inc.*, 132 F. Supp. 3d 321, 340-41 n.1 (N.D.N.Y. 2015) (Suddaby, C.J.) (explaining that the standard set forth in *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 796 (2d Cir. 1999)—that the Court should grant leave to amend "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would be successful in stating a claim"—is likely not an accurate recitation of the governing law after *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)), *rev'd on other grounds*, 682 F. App'x 30.

If Plaintiffs choose to avail themselves of an opportunity to amend, such amended pleading must set forth a short and plain statement of the facts on which they rely to support any legal claims asserted. Fed. R. Civ. P. 8(a). In addition, the amended complaint must include allegations reflecting how the individuals named as Defendants are involved in the allegedly unlawful activity. Finally, Plaintiffs are informed that any such amended complaint will replace the existing Complaint, and must be a wholly integrated and complete pleading that does not rely upon or incorporate by reference any pleading or document previously filed with the Court. *See Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1128 (2d Cir. 1994) ("It is well established that an amended complaint ordinarily supersedes the original, and renders it of no legal effect." (internal quotation marks omitted)).

VII. PLAINTIFFS' PETITION FOR HABEAS CORPUS

Whether an individual can seek habeas relief as an additional method of recovery after a civil complaint has been filed need not be answered because, even assuming that was possible, there are too many deficiencies in Plaintiff Griffith's habeas petition for it to continue in this action.

An individual may only challenge the fact or duration of his confinement through a habeas corpus petition. *Wilkinson v. Dotson*, 544 U.S. 74, 78-83 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973) (explaining that "the traditional purpose of habeas corpus" is to "attack[] . . . the fact or length of . . . confinement," and if an individual is "seeking something other than immediate or more speedy release," the remedy lies in a different type of action)). A habeas petition requires that "a person [be] in custody pursuant to the judgment of a State Court[.]" 28 U.S.C. § 2254(a).

Further, an application for a writ of habeas corpus may not be granted until a petitioner has exhausted all remedies available in state court unless "there is an absence of available State corrective process" or "circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(A), (B)(i), (ii). "A [petitioner] may not circumvent the exhaustion requirement for habeas corpus relief by [attacking a conviction] in a civil action." *Crocker v. Bedford Hills Corr. Facility*, 19-CV-11401, 2020 WL 626374, at *4 (S.D.N.Y. Oct. 23, 2020) (citing *Preiser*, 411 U.S. at 489-90).

Here, there are several problems with Plaintiff Griffith's attempt to seek habeas relief during the course of his civil action. First, federal law provides that a habeas corpus petition "shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf." 28 U.S.C. § 2242. "When the motion is brought by a person other than the prisoner, that 'next friend' must demonstrate that he or she has standing to act on the prisoner's behalf." *Nelson v. Thompson*, 14-CV-3414, 2014 WL 3882322, at *2 (E.D.N.Y. Aug. 7, 2014). Here, the civil action includes two plaintiffs and the habeas petition was signed by Plaintiff Sklaney, despite purporting to challenge Plaintiff Griffith's conviction. (*See* Dkt. No. 13, Attach. 1 at 1, 15.) However, the habeas petition can only concern one individual unless it is being brought by a "next friend" on the petitioner's behalf. Nothing in the pleading indicates that Plaintiff Griffith is incapable of asserting his own rights or advocating for himself. Therefore, there is no reason that Plaintiff Sklaney should have signed the petition on his behalf since it is clear Plaintiff Griffith is the individual who is seeking relief through the petition. Thus, I recommend that the habeas petition be dismissed as deficient.

Second, the habeas statute requires an individual to meet the "in custody" requirement for this Court to have jurisdiction over the petition. *See Hurdle v. Sheehan*, 13-CV-6837, 2016 WL

4773130, at *2 (S.D.N.Y. Sept. 12, 2016) (quoting 28 U.S.C. § 2254(a)) ("A district court has subject matter jurisdiction to consider a state prisoner's petition for habeas relief 'only on the ground that he is *in custody* in violation of the Constitution or laws or treaties of the United States' at the time he files the petition."). It is not clear whether Plaintiff Griffith meets this threshold requirement from these submissions.[7]

Third, Plaintiff Griffith has failed to exhaust his state court remedies with respect to his conviction. To satisfy the exhaustion requirement, a petitioner must do so both procedurally and substantively. Procedural exhaustion requires that a petitioner raise all claims in state court prior to raising them in a federal habeas corpus petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). Substantive exhaustion requires that a petitioner "fairly present" each claim for habeas relief in "each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim." *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (citations omitted). In other words, petitioner "must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *O'Sullivan*, 526 U.S. at 845.

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[7] The Court notes that on February 13, 2015, Plaintiff Griffith commenced a *pro se* civil rights action in the Northern District of New York, Civil Action No. 5:15-CV-0168 (MAD/ATB) ("*Griffith I*") against New York State Court/Onondaga County and New York State Division of Criminal Justice Services. (*Griffith I*, Dkt. No. 1.) On February 23, 2015, United States Magistrate Judge Andrew T. Baxter issued an order and report-recommendation, that granted Plaintiff Griffith's amended motion to proceed IFP and recommended that the action be dismissed with prejudice for failure to state a claim. (*Griffith I*, Dkt. No. 6.) Judge Baxter concluded that "the plaintiff is requesting relief available only in a habeas corpus application" and "such application is unavailable to him" because his "sentence expired in 2011, so he is not in custody for purposes of a petition for habeas corpus." (*Id.* at 6.) On March 13, 2015, Plaintiff Griffith filed a letter motion requesting that *Griffith I* be dismissed. (*Griffith I*, Dkt. No. 7.) On August 7, 2015, United States District Judge Mae A. D'Agostino granted Plaintiff's notice to withdraw the complaint without ruling on Judge Baxter's report and recommendation. (*Griffith I*, Dkt. No. 8.)

While Plaintiff Griffith includes an Appellate Division decision in support of his filings, it concerns a "modification of his previously-imposed classification as a level three risk pursuant to the Sex Offender Registration Act [("SORA")]." *People v. Griffith*, 166 A.D.3d 1518 (4th Dep't 2018).[8] This decision affirmed Plaintiff Griffith's argument that "he was denied effective assistance of counsel [during his SORA hearing] . . . and . . . reinstate[d] the petition, and remit[ted] the matter to County Court for a new hearing on the [modification] petition." *Griffith*, 166 A.D.3d at 1519. However, the Fourth Department was careful to point out to Plaintiff Griffith that he was not able "to challenge his plea or other aspects of his underlying conviction [because i]t is well settled that a SORA hearing may not be used to challenge the underlying conviction." *Id.* at 1520 (citing cases).

It appears that Plaintiff Griffith mistakenly believes he has exhausted his state law remedies, (Dkt. No. 13, Attach. 1 at 2-3); however, Plaintiff Griffith never raised the issue of the validness of his plea nor the quality of his representation during his underlying criminal proceedings to the state courts. As explained to Plaintiff Griffith in correspondence from Onondaga County Court Judge Thomas J. Miller,

> [T]here is no legal basis for [the court] to order the expungement of any records because the Appellate Division, Fourth Department has not reversed [Plaintiff Griffith's] conviction . . . . Rather, the Fourth Department held that [Plaintiff Griffith] had been deprived of the effective assistance of counsel with regard to [his] prior application for a downward modification of [his] classification as a level three risk under the Sex Offender Registration Act[.]

(Dkt. No. 8 at 70; *accord id.* at 72.) Accordingly, his claims challenging his plea and conviction remain unexhausted.

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[8] Plaintiffs include a copy of the Fourth Department's Decision. (Dkt. No. 8 at 64-66.)

Finally, the petition appears untimely. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") established a one-year statute of limitations for prisoners to seek federal review of their state court criminal convictions. 28 U.S.C. § 2244(d)(1). The one-year period generally begins to run from the date on which the state criminal conviction became final by the conclusion of direct review or by the expiration of the time to seek direct review. 28 U.S.C. § 2244(d)(1)(A); *Gonzalez v. Thaler*, 565 U.S. 134, 149-50 & n.9 (2012).[9]

The one-year limitation period under AEDPA is tolled while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2); *Saunders v. Senkowski*, 587 F.3d 543, 548 (2d Cir. 2009). The tolling provision "excludes time during which properly filed state relief applications are pending, but does not reset the date from which the one-year statute of limitations begins to run." *Smith v. McGinnis*, 208 F.3d 13, 17 (2d Cir. 2000) (per curiam). The tolling provision excludes from the limitations period only the time that the state relief application remained undecided, including the time during which an appeal from the denial of the motion was taken. *Saunders*, 587 F.3d at 548; *Smith*, 208 F.2d at 16.

Here, it does not appear that Plaintiff Griffith filed a direct appeal challenging his conviction. Therefore, because Plaintiff Griffith failed to file a notice of appeal, his conviction became final thirty days after he was sentenced. *See Bethea v. Girdich*, 293 F.3d 577, 578 (2d

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[9] Other dates from which the limitations period may start running are the date on which an unconstitutional, state-created impediment to filing a habeas petition is removed, the date on which the constitutional right on which the petitioner bases his habeas application was initially recognized by the Supreme Court, if the right was newly recognized and made retroactively applicable, or the date on which the factual predicate for the claim or claims presented could have been discovered through the exercise of due diligence (newly discovered evidence). 28 U.S.C. § 2244(d)(1)(B)-(D). None of the bases for a later date upon which the statute of limitations could have begun to run appear to apply in this case.

Cir. 2002) (per curiam) (explaining that the one-year statute of limitations began to run when the petitioner's time for filing a notice of appeal from the judgment of conviction expired); *Vaughan v. Lape*, 05-CV-1323, 2007 WL 2042471, *4 (N.D.N.Y. July 12, 2007) (Hurd, J.) (quoting CPL § 460.10(1)(a)) ("In New York, a defendant has thirty days after the 'imposition of the sentence' to notify the court that he will appeal."); *Gonzalez*, 565 U.S. at 150; *Saunders v. Senkowski*, 587 F.3d 543, 547-49 (2d Cir. 2009). Accordingly, Plaintiff Griffith's conviction became final on February 28, 2002. Therefore, Plaintiff Griffith had until February 28, 2003, to timely file his habeas petition. 28 U.S.C. § 2244(d)(1). The present petition, signed December 14, 2020, is over seventeen years past the termination of the statute of limitations.

Further, based on the information presented in the petition, it does not appear that the statute of limitations should be statutorily or equitably tolled. First, it does not appear that any of Plaintiff Griffith's state-court challenges regarding his SORA modification are properly filed collateral challenges to his underlying conviction. *See Griffith*, 166 A.D.3d at 1520 (citing cases). Second, Plaintiff Griffith's Article 78 petition, assuming it was a proper collateral challenge, was not filed until 2020. This is seventeen and a half years after the statute of limitations expired. Therefore, the Article 78 motion would have no bearing on the present analysis because an application for collateral relief cannot serve to "revive [an] expired statute of limitations." *Gillard v. Sticht*, 16-CV-0513, 2017 WL 318848, at *3 (N.D.N.Y. Jan. 23, 2017) (D'Agostino, J.) (citations omitted); *accord, Roberts v. Artus*, 16-CV-2055, 2016 WL 2727112, at *2 (E.D.N.Y. May 5, 2016) ("If the 440 motion was filed after the one-year statute of limitations period expired, it cannot be counted for purposes of statutory tolling."). Moreover, nothing in Plaintiff Griffith's filings indicate equitable tolling applies to excuse any delays.

Accordingly, at a minimum, I recommend that the habeas petition be dismissed because it is unexhausted. To the extent that this recommendation is accepted by the Court, Plaintiff Griffith may individually file a petition for a writ of habeas corpus; however, any such motion must be filed after all available state remedies have been exhausted, or should explain why such remedies were unavailable to Plaintiff Griffith, as well as address why any such petition should not be dismissed as untimely.

ACCORDINGLY, it is

ORDERED that Plaintiffs' amended IFP application (Dkt. No. 5) is **GRANTED**; and it is further respectfully

RECOMMENDED that the Court **DISMISS WITH LEAVE TO REPLEAD** Plaintiffs' Complaint (Dkt. No. 4) for frivolousness, pursuant to 28 U.S.C. § 1915(e)(2)(B); and it is further respectfully

RECOMMENDED that the Court **DISMISS WITHOUT PREJUDICE** Plaintiffs' petition for habeas corpus (Dkt. No. 13), for failure to exhaust available state court remedies; and it is further

ORDERED that the Clerk of the Court shall file a copy of this Order and Report-Recommendation on Plaintiffs, along with copies of the unpublished decisions cited herein in accordance with the Second Circuit's decision in *Lebron v. Sanders*, 557 F.3d 76 (2d Cir. 2009) (per curiam).

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen days within which to file written objections to the foregoing report.[10] Such objections shall be filed with the

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[10] If you are proceeding *pro se* and served with this report, recommendation, and order by mail, three additional days will be added to the fourteen-day period, meaning that you have seventeen days from the date that the report, recommendation, and order was mailed to you to

Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW**. 28 U.S.C. § 636(b)(1) (Supp. 2013); Fed. R. Civ. P. 6(a), 6(d), 72; *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)).

Dated: December 28, 2020
Binghamton, New York

Miroslav Lovric
U.S. Magistrate Judge

serve and file objections. Fed. R. Civ. P. 6(d). If the last day of that prescribed period falls on a Saturday, Sunday, or legal holiday, then the deadline is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. Fed. R. Civ. P. 6(a)(1)(C).

In the United States District Court
For the Northern District of New York State

Howard Griffith (& Rebecca Sklaney), et al Plaintiffs, -against- New York State, et al Respondent.	Memorandum of Law Objections for Court Report [ ] for Document 17 28 U.S.C. 636(b)(1) 5:20-cv-1312 (GLS/ML)

STATE OF NEW YORK)
COUNTY OF ONONDAGA)ss.:

"Plaintiff" referred to in a singular format, by itself, refers to Howard Griffith. References to Rebecca Sklaney referred to by herself, are cited as "Plaintiff, Rebecca Sklaney". "Plaintiffs" referred to in a plural format refer to both Howard Griffith and Rebecca Sklaney, together.

The action taken via 42 USC 1983, requesting declaration that Plaintiff's voting rights were being violated was substantive with errors regarding the census. This was consequential to the remedy with regard to the omission being provided for Plaintiff's sex offender registry to take action via special proceeding pursuant to NY Civil Practice Law and Rules Article 78. The omission was to develop the process to preserve the cause that Order could be provided, via the court, to have the authorities take action to correct the address with regard to Plaintiff's sex offender registry. This was necessary for Plaintiff to be protected from penalties pursuant to Correction Law Section 168-t, (NY Correction Law Article 168, Sex Offender Registration Act [SORA]) as these were also substantive with errors with regard to the census, and because New York State did not correct the errors addressed pursuant to CPLR Article 78, those remedies were preserved to have been taken via 42 USC Section 1983. The CPLR Article 78 petition, Howard Griffith v Onondaga County, ~~SU-2020-1312 (GLS/ML)~~ SU-2020-005851 was initially drafted and

provided for Plaintiff's landlord, Jan Nastri, as an Arbitration he had prepared as an Arbiter providing he could take the action to the court if there were any errors with regard to the policy for his home address, substantive to NY Real Property Law Section 235-B, Warranty for Habitability, to provide substance that Plaintiff would not be subject to any conditions which would be dangerous, hazardous, or detrimental to his life, health or safety upon the liabilities of his landlord. (This being substantive to a fundamental remedy provided with regard to a conviction prosecuted by the Onondaga County District Attorney, preserving Plaintiff could contact the police instead of defending himself.) Errors with regard to the census developed the full cause precedent was established that he could amend the draft to take the action to court, as he presented it with the action, with the omission provided for his sex offender registry; the nature of the proceeding fundamental to the "information [ ]" with regard to the Arbitration. With the State's error with regard to the failure to correct this, character had been preserved in the nature of the cause to develop a strategy to have it provided for a procedure in the federal court as Plaintiff would have to address it with regard to a federal issue involving violation of voter rights. This was necessary to maintain the remedy regarding Plaintiff's requirements to have properly handled the Arbitration as an Arbiter for his own personal safety along with the safety of his roommate.

Plaintiff served a copy of his Civil Practice Law and Rules Article 78 Petition, Howard Griffith v Onondaga County, **SU-2020-005851**, on the District Attorney of Onondaga County in New York State on September 17, 2020, at 11:07 am. This may provide that the Onondaga County District Attorney can now be deemed subject to being a party to both actions as a fundamental procedure has been satisfied to join these actions on account that the United States District Court of the Northern District of New York has confirmed Plaintiff is a "Prisoner" as

defined in 28 USC Section 1915(h), substantive to prosecution by the district attorney of Onondaga County in New York State, with regard to penalties pursuant to NY Correction Law Section 168-t, precedented on the most fundamental remedy with regard to People of the State of New York v Howard Griffith, 2001-0883-1. It can be determined Plaintiff was defined as a prisoner via Howard Griffith, et al. v New York, No. 5:20-cv-1312 (GLS/ML) because his motion was placed on the docket with regard to being screened pursuant to 28 U.S. Code § 1915A, to provide it can be deemed the United States District Court of the Northern District of New York has reviewed Plaintiff's 42 US Code Section 1983 motion to determine it was feasible. This was provided to the Onondaga County District Attorney in the case that it may have been necessary for the District Attorney to have served as a "Confidential Secretary" pursuant to NY County Law Section 700(5), for Onondaga County, with regard to the action taken with Order to Show Cause for "Howard Griffith v Onondaga County". This was because any or all issues involving his SORA registry may be deemed as confidential pursuant to NY Civil Rights Law Section 50-b. This could have established precedent that Onondaga County and New York State would have been afforded Immunity from Liabilities pursuant to NY Correction Law Section 168-r, with regard to the remedies in each of these two cases as the Onondaga County District Attorney should have been well aware that it was necessary for himself to have addressed this. Nevertheless, failure to address this would have most likely resulted in Plaintiff being prosecuted for penalties pursuant to NY Correction Law Section 168-t, after "Howard Griffith v Onondaga County, SU-2020-005851" was denied Order to Show Cause on October 30, 2020, if Plaintiff had not preserved the cause via 42 U.S. Code Section 1983. (*see* NY Correction Law Section 168-r[2]: "Nothing in this section shall be deemed to impose any civil or criminal liability upon or to give rise to a cause of action against an official, employee or agency, whether

public or private, for failing to release information as authorized in this section unless it is shown that such official, employee or agency acted with gross negligence or in bad faith.") The United States District Court of the Northern District of New York should be well aware that Plaintiff had served a copy of this because Plaintiff had provided a stamped copy of "Howard Griffith v Onondaga County, SU-2020-005851" to be filed with "Howard Griffith, et al. v New York, 5:20-cv-1312 (GLS/ML)" confirming that it was received by the District Attorney of New York State, County of Onondaga, at that setting.

New York was liable for remedies providing it was necessary for Plaintiff to have reported, for the government, information concerning his address which applied to both "Penalties" pursuant to NY Correction Law Section 168-t (Sex Offender Registration Act [SORA]) and 13 U.S. Code Section 141 (Population and Other Census Information). These both involved errors with regard to the census which affected reporting his address. Also, these were both substantive to the elements that Plaintiff's landlord was liable to protect with regard to 13 USC Section 223. Plaintiff provided when he demonstrated his initial remedy to satisfy the cause to take his action pursuant to CPLR Article 78: "The provision of a census with the posting for 2903 James Street Apt. 5, with the Census ID: 9CKV-VYX5-89KP, was provided at his mailbox as there wasn't a previous address of 2903 James Street, Apt. 5, upon information and belief. There was also a letter with regard to a request for address correction provided without being addressed to any individual or individuals on the enclosed package of the letter, required to be corrected by Jan Nastri, as there was reason to believe this provided a cause for a grounds for the amendment of Petitioner's address. (see attachments) Petitioner did not know if this had substance for error of law as he attempted to provide it for his Sex Offender Registry with the Syracuse City Police Department on September 14, 2020. However, the Syracuse City Police would not accept the

provision and amended his address without providing an apartment number with objecion (see attachment). Therefore, Petitioner provided this for a cause that he intended to amend his address to 2903 James Street, Apt. 5, Syracuse, NY 13206, to provide the remedy for further declaration that the conditions of the property provided by Jan Nastri may be deemed [dangerous] to his [life] regarding any lack of liberty or provision of prejudice with regard to the liberty and justice the premises provided by Jan Nastri may interfere with regarding his sex offender registry pursuant to 'People v Griffith, 2001-0883-1'. **[13 USC 223]** It needs to be deemed Jan Nastri had violated the settlement with regard to Warranty for Habitability, NY Real Property Law Section 235-B, as these proceedings are necessary to establish precedent for any remedy that may need to be provided for the defense of any possible errors regarding a provision of an invalid address for the purpose of sex offender registry. **[emphasis added]"** (*see* Howard Griffith, et al v New York, 5:20-cv-1312 [GLS/ML], memorandum: October 21, 2020, id. at 8-9) This developed the remedy that Plaintiff could take his action against his landlord as his intent was to provide this for his sex offender registry to develop the procedure to have it corrected, via what can be interpreted as law enforcement by Onondaga County which would include any administrative agency in Onondaga County as the duty of the administrative branch of government is to enforce the law. Those were his intentions to be taken via CPLR Article 78, Howard Griffith v Onondaga County, SU 2020-005851. The law had to be enforced as it applied to the Arbitration Plaintiff was proceeding as the arbiter to ensure the landlord would comply with perpetrators/perpetration on his property to not be subject to conditions which would be deemed dangerous, hazardous, or detrimental to his life, health, or safety. (*see* NY Real Property Law Section 235-b) Plaintiff could not take his action based on Arbitration because he was not a party to that action. However, more causes needed to be preserved for him not to have been punished for arbitrary

misconduct which would once again develop the remedy to place him in conditions which would be dangerous, hazardous, or detrimental to his life, health, or safety pursuant to Warranty for Habitability, NY Real Property Law Section 235-b. If law enforcement would have just been provided via Howard Griffith v Onondaga County, SU 2020-005851, Plaintiff would not have had to extend to such extraordinary measures just to have himself protected but now it is too [late].

13 USC § 223: Refusal, by owners, proprietors, etc., to assist census employees provides: "Whoever, being the owner, proprietor, manager, superintendent, or agent of any hotel, apartment house, boarding or lodging house, tenement, or other building, refuses or willfully neglects, when requested by the Secretary or by any other officer or employee of the Department of Commerce or bureau or agency thereof, acting under the instructions of the Secretary, to furnish the names of the occupants of such premises, or to give free ingress thereto and egress therefrom to any duly accredited representative of such Department or bureau or agency thereof, so as to permit the collection of statistics with respect to any census provided for in subchapters I and II of chapter 5 of this title, or any survey authorized by subchapter IV or V of such chapter insofar as such survey relates to any of the subjects for which censuses are provided by such subchapters I and II, including, when relevant to the census or survey being taken or made, the proper and correct enumeration of all persons having their usual place of abode in such premises, shall be fined not more than $500." Although this may have been able to satisfy a cause for Plaintiff's landlord to have been fined, it would not have provided any remedy upon which it could have provided monetary damages could be sought by Plaintiff. (28 U.S.C 1915[e][2]) Nevertheless, a declaration establishing precedent in the case the cause would be satisfied for another party to seek that action would provide the interpretation to satisfy the remedy, providing

the interpretation of Jan Nastri "negligently or willfully" providing a census with the posting for 2903 James Street Apt. 5, with the Census ID: 9CKV-VYX5-89KP, which would provide Plaintiff to have been subject to penalties pursuant to NY Correction Law Section 168-t, violating warranty of habitability, NY Real Property Law Section 235-b. With the request to order "this 'information [ ]' be taken by Onondaga County with this verification to be provided for the purposes of enforcement of the law," recognize how, with regard to the "information [ ]" having been provided with the "verification", it would have also satisfied the cause to take the error with regard to the census to have been provided for law enforcement because it was provided when the Petition was verified. However, Plaintiff did not intend to provide this for a frivolous cause pursuant to 28 U.S.C. 1915(e)(2).

The CPLR Article 78 Petition (Howard Griffith v Onondaga County, SU 2020-005851) was initially developed on the draft Plaintiff had provided for his landlord as an arbiter, signed on August 14, 2020 by Plaintiff, deemed to have been settled on August 24, 2020 to satisfy Warranty for Habitability, NY Real Property Law Section 235-b. This was precedented when he initially provided this for a defense being prosecuted for Criminal Mischief in the Fourth Degree, NY Penal Law 145.00(1) in the City of Syracuse substantive to what he was arrested for on the property of the shared policy with his landlord. (*see attachment* "People v Howard Griffith, 19-CR-10842-19, DR # 19-338537," Motion to Dismiss Charges: June 27, 2019) Plaintiff obtained remedies for his defense that his landlord had not enforced the law on his policy with regard to "Warranty for Habitability, NY Real Property Law Section 235-b" with regard to a previous complaint provided for his landlord and for his defense with regard to the how the previous complaint had also been provided for the police. The conviction of disorderly conduct [ ] satisfied the cause Plaintiff could contact the police on July 27, 2020, to refer to the

"information [ ]" provided with 42 USC 1983, CPLR Article 78, and the Arbitration (CPLR Article 78 draft). However, when the police failed to satisfy that remedy provided by the City of Syracuse Court and the Onondaga County District Attorney, there was still a remedy that was not completely developed with regard to People v Howard Griffith [City of Syracuse]. That was with regard to Warranty for Habitability [ ], as that remedy would still need to be satisfied before legal action could have been taken substantive to People v Howard Griffith [id.]. With the settlement for the Arbitration that Plaintiff had construed for his [landlord], settled for [himself] and the perpetrators on [his] property not to threaten him, it would not have been necessary to address it to authorities or court if Plaintiff's landlord had just satisfied Warranty for Habitability. That meant that Plaintiff was going to have to contact him if he had trouble with the perpetrators he referenced in the "information [ ]" provided with his CPLR Article 78 draft as he stated with the settlement dated August 22, 2020, signed on August 24, 2020: "The Civil Action I was prepared to take currently has no merit unless new precedent is established, and if I were to presently amend the Civil Action, it might get me into trouble." (*see* Attachment) Plaintiff became concerned with evidence of his landlord's arbitrary misconduct (whether negligent or willful [13 USC 223]), so he decided he could provide it for the police with regard to his sex offender registry. The cause was preserved to take the civil action to once again to feel safe from arbitrary misconduct to make sure the "information [ ]" would still have merit with regard to any possibilities his landlord or the perpetrators intended to provide him harm. This needed to be construed to satisfy the draft to maintain that it would satisfy merit to protect himself "severably" with regard to what he provided as the settlement as an arbiter: "The Civil Action I was prepared to take currently has no merit unless new precedent is established, and if I were to presently amend the Civil Action, it might get me into trouble." This satisfied the cause to

protect Howard Griffith, as a Plaintiff, substantive to an address provided for his sex offender registry. The remedy was necessary to satisfy the order to coincide with a request for an order with regard to the "information [ ]" [to] "be taken by Onondaga County with this verification to be provided for the purposes of enforcement of the law," to maintain the merits for the remedies preserved to have validly and correctly taken the action. It was necessary to satisfy the procedure for the order to initially coincide with the request for an order [ ] because the remedy was originally construed with a draft which had to maintain the merit for the fundamental remedies itself to protect this process from being a total error of law. Remedies with regard to Plaintiff's, Howard Griffith's, sex offender registry protected himself. However, it did not protect Plaintiff, Rebecca Sklaney, and with growing concern, new strategy was going to have to be developed to protect [us] while providing the elements to maintain the "information [ ]" would still have merit. Numerous remedies had been preserved as Plaintiff knew how these would be important to protect himself.

Plaintiff's strategy to develop the procedure to take a new action was going to have to satisfy the remedy that the "information [ ]" would still have merit to coincide with the draft along with the remedies that were necessary to take a court action via 42 USC 1983, to make sure that he would be safe, "separabally" with regard to not being a victim of being guilty of arbitrary misconduct just to maintain the merit with regard to the Arbitration which he had developed as an arbiter to keep himself and his roommate, from harm that may have been intended by the perpetrators and his landlord as described in "information [ ]". This meant that the new action would need to coincide with the Arbitration he provided for his landlord and the perpetrators, as an arbiter, while coinciding with the settlement: "The Civil Action I was prepared to take

currently has no merit unless new precedent is established, and if I were to presently amend the Civil Action, it might get me into trouble."

With the "settlement" Plaintiff provided for his landlord to present what he intended to take to court because of the failure of the police to satisfy the remedy to enforce the law at his address, as was provided by the City of Syracuse Court and the Onondaga County District Attorney (the "settlement" referring to the CPLR Article 78 draft), Plaintiff provided these would have been some of his intentions regarding the Nature of the Cause he was prepared to take his action to the Court for without settlement:

"**A)** Recent bills passed by the New York State Legislature and signed by Governor Cuomo on June 12, 2020, made it difficult for Petitioner to attempt to describe his complaint DR 20-368307 because the procedure was established with a 911 emergency call and he did not know if describing the perpetrators as African-American males could have him punished for a hate crime. Ignorance cannot be used as a defense.

"**B)** It is too hard to presently study the bills to determine if there have been any statutory codes that have gone into effect, how it may affect any present proceedings and if there is a possibility for any retroactivity because the executive orders of Governor Cuomo with regard to the COVID-19 pandemic have resulted in the law library being closed in Onondaga County. Nevertheless, ignorance cannot be used as a defense.

"**C)** It is important for Petitioner to address this via a special proceeding as due process has helped him obtain this right, and with this present in the court, scrutiny can be obtained to provide the court the opportunity to understand why he believed it was necessary to address this complaint because with more and more laws being established to determine a broader range of what can be interpreted as an abuse of freedom of speech, Petitioner feels that he has safely

addressed this complaint in court to be provided for law enforcement. Contacting authorities has repeatedly seemed extremely confusing and difficult. Syracuse City Police: DR 20-16385 (*Officer Goode accused Petitioner that it was his own fault for being held up atop of the steps at the entrance of his apartment with a knife by an intruder, making his own personal assumption of what actually happened, while insulting Petitioner.*); DR 20-222496 (*JHY 1651, Chevy Altima: An African American male was parked in the car next to the steps of the Petitioner's residence smoking marijuana and counting hundreds of dollars. He left before the police could respond and no report was taken.*)"

Because these were presented with the CPLR Article 78 petition "draft", these provided the remedies to develop the nature of the procedure to have taken his 42 USC 1983 action with. Cause had been preserved to provide remedies would have been exhausted when Governor Cuomo closed law libraries in New York State with his Executive Orders pursuant to Section 29-a of article 2-b of the Executive Law: Orders 202.67 and 202.8. This remedy was necessarily provided to have been meant to have exhausted a state remedy, substantive as to whether or not Plaintiff could have been convicted for a hate crime out of concern that the new bill Governor Cuomo authorized to become a law when signed on June 12, 2020, could have in no way been interpreted. "Ignorance cannot be used as a defense." Therefore, this would provide the cause to interpret that Plaintiff, "Separabally" would be the victim of the hate crime, coinciding with what Governor Cuomo provided what was determined to have been a hate crime, because Plaintiff was not even authorized to interpret that with regard to his executive orders. (34 USC 30505, HATE CRIMES, "Severability") Nevertheless, Plaintiff is defined as a "prisoner", pursuant to 28 USC Section 1915(h), when taking a federal action because he is defined as a sex offender under state law. Therefore, with regard to actions Plaintiff takes in federal court, Plaintiff has the right

to the law library (*see* Bounds v Smith, 430 U.S. 817 [1977] and Lewis v Casey, 518 U.S. 343 [1996]) because he is identified as a prisoner. Therefore, it needs to be recognized that with the remedy being satisfied, Governor Cuomo takes jurisdiction over the federal courts with regard to Plaintiff's case[s], with his executive orders. Still, however, these remedies would not satisfy the procedure alone. It needed to satisfy procedure to take the action via 42 USC 1983 to maintain the cause Plaintiff would not have been placed in conditions which would have been dangerous, hazardous, or detrimental to his life, health, or safety, "separabally", with regard to being guilty of arbitrary misconduct, as the procedure was meant to have the "information [ ]" in the CPLR Article 78 draft to be provided for a new cause. If not, being guilty would provide the "information [ ]" to no longer have merit as it would help authorize any intentions of his landlord or perpetrators on the property with regard to how they may want to provide harm.

Being provided what was meant to be interpreted as an exhaustion of state remedies, with regard to the cause only referring to Governor Cuomo not authorizing Plaintiff to contact authorities, with regard to how "ignorance cannot be used as a defense," it was necessary that more remedies would have to have been satisfied to provide this for the initiation of the process. The initiation of the process would have to apply to initial intentions that a remedy existed that he could contact the police if he was placed under conditions which would have been deemed to have been dangerous, hazardous, or detrimental to his life, health, or safety. Moreso, it was going to have to apply to a remedy that he was authorized to call the police on an "African-American" to satisfy the cause that Governor Cuomo provided Plaintiff was "separabally" a victim of a hate crime, pursuant to 34 USC 30505. Nevertheless, Plaintiff provided with the arbitration: "Contacting authorities has repeatedly seemed extremely confusing and difficult, Syracuse City Police: ... DR 20-222496 (*JHY 1651, Chevy Altima: An African American male was parked in*

the car next to the steps of the Petitioner's residence smoking marijuana and counting hundreds of dollars. He left before the police could respond and no report was taken.)" This presents the condition for the initiation of the process Plaintiff could have contacted authorities with regard to conditions which were to have been deemed to have been dangerous, hazardous, or detrimental to his life, health, or safety as it applied to social distancing as this authorization was provided by City and County leaders to contact authorities if they were ignorantly, negligently, or willfully being disobeyed. Plaintiff provided this communication via email:

"I tried to make a complaint to the police about a guy who has been loitering on my doorstep as I feel like I am a victim of a negligent response to social distancing. The police said there could not be a response with regard to the person being there as I could not prove he was there. Therefore, the police said that they could not respond. I don't want to have the risk of being a victim of COVID-19. Whether I can prove he was there or not, why can't the police just suggest to him that if he was there, don't go there anymore? He has no cause to be there as he does not live here. I live here. If the police address him, he'll most likely conclude he had better not come back here, and everybody will ['Be Safe'] with regard to the situation I am addressing. The County Executive said that people can address authorities for concerns with regard to being victims to negligence with regard to social distancing. I tried to give the police the information: He was a young black male with a short-faded, box-cut haircut. He appeared to be about eighteen years of age. He drove away in a silver Chevy Altima with a license plate number: JHY 1651. My name is Howard Griffith. I reside at 2903 James St, Apt. 1R, Syracuse, NY 13206. I contacted the Syracuse City Police Department at about 4:30 pm on this date (April 06, 2020) and the DR No. was DR 20-222496."

The deputy administrator of Syracuse City Hall brought this to the attention of the Syracuse City Police Department, and a deputy police chief responded on April 13, 2020, via email,

"Hi,

"My name is Deputy Chief Trudell and I work for the Syracuse Police Department. You recently sent an email (below) to the Mayor of Syracuse with your concern about the lack of social distancing.
"I wanted to let you know that we are taking this issue very seriously. In the future, I encourage you to continue to call 911 and report this type of activity when you are experiencing it. This will allow our officers to respond and handle the call accordingly."

Therefore, because this response (generally) was brought from the mayor of the City of Syracuse that Plaintiff could contact 911 on "[black]" perpetrators ([African American] perpetrators) violating conditions on the property referenced to his policy, [ ] because of the perpetration developing conditions that would be deemed to have been dangerous, hazardous, or detrimental to his life, health, or safety; this provides how the remedies were exhausted with regard to being authorized to call the police by the Mayor of the City of Syracuse and then by the Governor of the State of New York negligently taking that authorization away, while negligently taking jurisdiction over federal courts, violating Plaintiff's 5th, 9th, 10th, and 14th Amendment Rights of the Constitution of the United States. With regard to social distancing, the State of New York, the County of Onondaga, and the City of Syracuse all deemed that failure to social distance was to have been dangerous, hazardous, or detrimental to people's life, health, or safety.

Still however, a remedy had to be provided to maintain the settlement would be satisfied with regard to the Arbitration Plaintiff provided to his landlord as the arbiter: "The Civil Action I was prepared to take currently has no merit unless new precedent is established, and if I were to presently amend the Civil Action, it might get me into trouble." This was necessary to provide Plaintiff would not be a victim "separably" to being guilty of arbitrary misconduct. The 42 USC 1983 would still need to fundamentally comply with "Warranty for Habitability", as it would need to apply to the precedent Plaintiff decided to take his court action with, because of

his landlord's negligence or willingness to mishandle the census, in the case that New York did not satisfy the cause provided with Howard Griffith v Onondaga County, SU-2020-005851, just to maintain Plaintiff would not be a victim "separabally" of being guilty of arbitrary misconduct. However, cause could not have been taken to amend the process with regard to errors involving mishandling unless new precedent had been established, with regard to mishandling of the census, substantive to an error of law with regard to how the census was mishandled by his landlord. However, with regard to the "information [ ]" provided with the Arbitration as it applied to Warranty for Habitability, with regard to Plaintiff's policy, this also applied to Plaintiff's roommate as she was also part of the policy. Therefore, errors regarding mishandling of the census should be deemed to have been a "hazard" to Plaintiffs' "lives" with regard to the violation of the [liberty] they were meant to have been provided with regard to the violation of their rights to vote. The remedies were satisfied for this procedure as was provided [ ]:

"**(3)** Petitioner provided supplement for his action pursuant to NY CPLR Article 78 **(SU-2020-005851)** on September 17, 2020, (the day after he obtained the index number) with the mail he found in his mailbox that previous evening attached: (**[1]** Onondaga County Board of Elections: "Absentee Vote" to the voter at 2903 James St., 1R, Syracuse, NY 13206 [the traditional address on Petitioner's policy.] **[2]** Coupons addressed to Laura Nassar, 2903 James St., Apt 1R, Syracuse, NY 13206-2127 [an unknown person whom has never resided with Petitioner] **[3]** United States Postal Service to Postal Customer at 2903 James St, Apt 5, Syracuse, NY 13206 [notice with regard to voting by mail] **[4]** United States Postal Service to Postal Customer at 2903 James St, Apt 1, Syracuse, NY 13206 [notice with regard to voting by mail]) claiming these were substantive to the issues he addressed with his action. This provided

merit that there were more errors with regard to Petitioner's address, regarding his traditional address including an additional, unknown person in his household. This provided further cause for the census for 2903 James St., Apt. 5, being improperly provided [for his sex offender registry] and [for] the commencement of the special proceeding to have to have been taken to have this corrected, via law enforcement, by Onondaga County. It could have been deemed necessary to have taken this action, via special proceeding, in improper form, because without creating this procedure to have this error corrected, it could have resulted in Petitioner being subject to Penalties pursuant to NY Correction Law Section 168-t. (Correction Law Article 168, Sex Offender Registration Act [SORA]) This was made to have been taken because Jan Nastri was supposed to preserve Warranty for Habitability in connection with the Arbitration. However, with what Petitioner concluded with the Arbitration, with regard to any additional, existing remedies that applied to the policy, new perpetration violating any of these remedies would once again be deemed to have violated Warranty for Habitability, to complete the process that this would have to be corrected via special proceeding. The address provided by Jan Nastri is the most important part of the policy. It was now to have been deemed important to take this action, via special proceeding, because the errors with regard to the address provided may have put Petitioner in jeopardy of being subject to legal prejudice or injustice. Petitioner's action also was necessary to protect himself from the court.

"**(4)** With the described action taken pursuant to NY CPLR Article 78, **(SU-2020-005851)**, Petitioner proves how he was able to preserve his right to provide the contest with regard to the [described] signatures of bills and the [described] executive orders of [Governor Cuomo] to be taken as the 'nature of the proceeding' for this action. Still however, Petitioner concluded his statement on August 24, 2020, as an Arbiter: 'The Civil Action I was prepared to take currently

has no merit unless new precedent is established, and if I were to presently amend the Civil Action, it might get me into trouble.' Therefore, this supports that with Petitioner improperly providing the census referring to 2903 James St., Apt. 5, for his Sex Offender Registry, this can no longer be deemed as a new precedent to have developed the procedure to take action via special proceeding. This is now because taking this action on a new fundamental remedy is consequential to the improper provision of the 2903 James St., Apt. 5 census, improperly being provided for Petitioner's Sex Offender Registration.

"**(5)** Nevertheless, with the action taken based on concerns provided with regard to errors of his address and household, Petitioner supports that the evidence presents broad circumstances which could provide the development of both his right to vote and his roommate's, Rebecca Sklaney's, right to vote being thwarted."

Just as much as Plaintiffs provided how mishandling of the census by the landlord (13 USC 223) coincided with the violation of their rights to vote, applying to the several fake addresses coinciding with their address and people who did not even live there, with regard to new mail being provided for [it] to have been deemed that these characters had actually lived there, this would apply to any errors with regard to the census [generally, 13 USC 141] regarding what had been provided for the government. With regard to how this applies to: "**Suspension of the use of tests or devices in determining eligibility to vote 52 USC 10303(d), Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices**: 'For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of

the guarantees set forth in subsection (f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future,'" Plaintiffs preserved the cause prior to the election, with regard to errors involving the census providing authorization for votes which applied to these errors, whether provided for mail-in ballots or absentee ballots, to declare these could have ambiguously been recognized as "tests or devices" (52 USC 10303). Plaintiffs objected that these "tests or devices" denied their rights to vote on account of being white, Caucasian Americans and because these contravened with the votes of what were deemed to have been for "language minority groups" (52 USC 10303[f][2]), on account that these tests or devices were meant to have been provided for "language minority groups" whom were supposed to have been [guaranteed] that right, these denied Plaintiffs rights because these characters who were deemed to have been part of a "language minority group" were not even supposed to have been [guaranteed] that right. They were not supposed to have been [guaranteed] that right because they were not deemed to have been citizens, whether it was a person who had the same address as Plaintiffs but was not provided for the same address for Plaintiffs when they provided their household for their address with regard to the census (This providing people who did not live there should not have had authorization to obtain absentee ballots for their address as citizenship should refer to only one address.) or whether they were characters that could have the mail-in ballots obtained for in compliance with a fake address. Being substantive to how they were provided at Plaintiffs' address with regard to errors involving the census, and with regard the decision with Department of Commerce v New York 588 U.S. ___ (2019), upon which New York succeeded in not authorizing the United States Department of Commerce to bring back the citizenship question,

Plaintiffs assumed this might have been numerous. Plaintiff provided this would have been promptly corrected if corrections were to have been made with regard to Defendant's sex offender registry, as was necessary to have been corrected, pursuant to NY Correction Law Section 168-t, as it applied to Howard Griffith v Onondaga County, SU-2020-005851 as these concerns were presented in the memorandum of law in Nature of Certiorari for Mandamus to Compel. If errors with regard to the census had been corrected to satisfy the cause that errors with regard to Plaintiff's address were corrected to have been appropriately provided for SORA, along with enforcement of law with regard to the "information [ ]", it would be satisfied that the merit for this action would not stand and the merit would have been maintained that the arbitration was appropriately handled to provide plaintiff would not have had to take this action to not being a victim "separabally" of being guilty of arbitrary misconduct.

This court must understand that Plaintiff is not taking these actions to be frivolous. Plaintiff is just trying to maintain the remedy for the safety of his roommate (of almost nine years ["(common law of marriage)" generally]) and his own safety. Correcting the address provided for Plaintiff's sex offender registry would now violate his Constitutional Rights to due process pursuant to the 5th and 14th Amendments of the United States Constitution if he is not provided the relief requested for the nature of the cause of this action because the remedies developed to have taken this action with would be null and void. This action applied to errors in the census affecting Plaintiffs' address to have been taken with regard to how it would affect their voting rights, based on a fundamental remedy presented in the draft [ ] that Plaintiff should have been able to call the police directly authorized [from] the Mayor of the City of Syracuse [directed] specifically to Plaintiff, before Governor Cuomo's changes in law took that remedy away to provide the remedies were exhausted to take it as a federal action. The action taken pursuant to

NY Civil Practice Law and Rules Article 78 applied to errors in the census affecting Plaintiff's address to preserve the cause that law needed to be enforced to correct these errors to not affect his sex offender registry, based on the fundamental remedy presented in the draft [ ] that Plaintiff could have called the police with the remedies directly authorized by the Syracuse City Court and the Onondaga County District Attorney. New York not satisfying the remedy preserved the cause that law enforcement would have to be obtained via the Court after the police stubbornly failed to enforce it after the remedy was authorized by the Onondaga County District Attorney. Then this further applied to the enforcement Plaintiffs' landlord had not provided after Plaintiff gave him a chance to provide it. This remedy is maintained in the United States District Court of the Northern District of New York, substantive to the same conditions but not for the same reasons. The conditions being provided to have legal issues to have taken this action have more than one legal issue applied to each one except for the "information [ ]" and more recently, there have been even more new laws passed to make the remedies extremely outrageous. Nevertheless, there are still enough remedies to provide a great cause for legal declarations and orders to be made to provide that there will be no substantive errors of law that would cause Plaintiffs to become victims [separabally] of being guilty of arbitrary misconduct.

On election night, when Plaintiff was concerned with what may have been evidence with regard to what was being presented on the news, substantive to the evidence and cause he preserved before the election, Plaintiff wanted to contact somebody. Plaintiff contacted John Katko, House Representative of the 24th Congressional District, via email, informed him and identified his case. The following day, a big story was provided, in "the media", how John Katko took action to sue the Onondaga County Board of Elections. "The media" provided how state legislature, Rachael May also sued the Onondaga County Board of Elections. Syracuse.com,

November 5, 2020: "An unusual maneuver, the Democratic and Republican lawyers are working on a joint deal that they hope would provide both sides unprecedented access to the absentee counts." Later, the media provided how Dustin M. Czarny, Commissioner of the Onondaga County Board of Elections, had spoken with the media referring to how the votes would be inspected. On November 13, 2020, the day after Plaintiff had this case reopened, he received a telephone call from the Office of John Katko in Washington, DC, and was told how they would not be able to assist him with this case. This provides evidence that the legal actions were taken after the election in an attempt to satisfy the cause for New York State to not have been liable for the engagement of the use of tests or devices pursuant to 52 USC 10303(d), after being informed about Howard Griffith v New York, 5:20-cv-1312 (GLS/ML). Nevertheless, this would not have satisfied the cause because the procedure Plaintiff provided to preserve the cause for New York to have been liable for the use of tests or devices was via providing his evidence with his Memorandum for Nature of Certiorari for Mandamus to Compel, for Howard Griffith v Onondaga County, SU-2020-005851, after satisfying the cause to have taken the action via omission with regard to error of the census being provided for his sex offender registry. With this, as explained, he provided a copy to the Onondaga County District Attorney, and with the District Attorney's failure to provide it for administration in Onondaga County, the precedent was established that New York could not have been immune from liabilities, pursuant to NY Correction Law Section 168-r(2). This further developed the remedy to provide Plaintiff could take this with a Civil Action with regard to how errors involving the census for his address needed to be provided to obtain a judgment via court action to provide Plaintiff could not be a victim "separably" to be guilty of arbitrary misconduct. 52 USC 10303(d) provides that New York could not be liable to have engaged in the use of tests or devices if incidents of such use

have been few in number and have been promptly and effectively corrected by State or local action. However, Plaintiff provided how with his one case to have been deemed to have been a case, few in number, and to not have been promptly and effectively corrected, the merit provided that if the cases were to have been numerous, they could not have been corrected. Evidence provides that the "unusual maneuver, the Democratic and Republican lawyers are working on a joint deal that they hope would provide both sides unprecedented access to the absentee counts," would have applied to the cause that numerous tests or devices were being promptly and effectively corrected. Logically, with the cause Plaintiff preserved, the Court actions provide the use of tests or devices were numerous and not promptly and effectively corrected by State or local officials. The Court actions taken by the legislature and other members of the government was the government's error, ironically, providing the merit for Plaintiffs' cause to completely satisfy the first remedy provided pursuant to 52 USC 10303(d) to hold New York liable for the use of tests or devices. However, additional remedies would have needed to have been satisfied with regard to how the continuing effect of such incidents were not eliminated by the State, and the State's errors were to provide that there was a reasonable probability of their recurrence in the future. Nevertheless, Trump v New York, 592 U.S. ____ (2020), now provides that remedy.

In the Jurisdictional Statement taken for Trump v New York, 592 US ____ on September, 2020, Appellant[s] (Donald Trump, President of the United States) demonstrated that the district court's theory of Article III Jurisdiction ... rested on a multi-step sequence of events. However, the Appellant[s] demonstrated how the sequence of events should have just been deemed as hypothetical to contest how the Appellee[s] (New York) failed to satisfy Article III's requirements for jurisdiction. As provided for the "Reasons for Noting Probable Jurisdiction", notice at page 13 (id.) what the Appellant[s] demonstrated was just a hypothesis in Paragraph B

of Point I as provided with the second cause. Notice how the Appellant[s] provided that the Appellee[s] failed to demonstrate how the "chilling effect" did not include the possibility of the involvement of landlords and neighbors to offer any appropriate information necessary to be provided regarding correctness of the census, suggesting how this involvement may not [be] so "chilling". On December 18, 2020, the United States Supreme Court ruled with regard to New York failing to satisfy any of the cause for jurisdiction, because New York had just simply provided a hypothesis that a "chilling effect" provided a good enough cause for non-citizens (which includes "language minority groups") to not have to provide answers with regard to the citizenship question, non-citizens were not to have been provided for the census. Therefore, with the cause Plaintiff preserved with regard to errors involving the census, with regard to the remedy being provided how it was to demonstrate these were provided for absentee ballots (mail-in ballots are also referred to [be]ing "absentee ballots"), merit provides that because of New York's failure to demonstrate how the "chilling effect" did not include the possibility of the involvement of landlords and neighbors to offer any appropriate information necessary to be provided regarding correctness of the census, (generally failing to provide a cause to how this involvement may have [been] "chilling") it can now be deemed these failures to demonstrate an actual cause why the citizenship question could not have been provided, provides the merit for New York's intentions were to have been for these "tests or devices" to be used across the country. Merit satisfies substantive cause for an individual case why New York would not want neighbors or landlord's to provide information for a census. Merit provides this case established the fundamental remedy for the elimination of mail-in votes. It also needs to be recognized how Pennsylvania, Michigan, Wisconsin, Nevada and North Carolina all joined in with New York in Trump v New York, 592 US ____ (2020). Therefore, merit would be provided that a declaration

needs to be provided that all of these absentee [ ] ballots to have been used in the 2020 general elections need to be eliminated, as substantive due process provides evidence and cause were preserved before the election and the latest "court reporters" can now be deemed to satisfy that cause.

Remedies provide members of the government who took actions against the Onondaga County Board of Elections, after the election, will have to testify. If not, the court actions that the government has taken against the Onondaga County Board of Elections will provide the remedies for Plaintiffs to be victims "separably" of being guilty of arbitrary misconduct.

Further merit provides this will immediately have to be reviewed with "Howard Griffith v New York, No. 20-6395" via Petition for Writ of Certiorari. This Court needs to recognize how cause been developed to interpret how Plaintiff's sex offender registry is invalid in two completely different manners, in two completely different matters. This Court needs to recognize how adjudication was provided with "People of the State of New York v Howard Griffith, 166 AD3d 1518 (4th Dept 2018)" that Plaintiff's conviction for Rape 1st, NY Penal Law Section 130.35(1) is invalid. Reasons Plaintiff attempted to address this via habeas corpus with this action was because this Court provided Plaintiff is a "prisoner" pursuant to 28 USC Section 1915(h). Therefore, cause may have been preserved that it would need to be decided whether Plaintiff was to be provided habeas corpus or coram nobis relief. It was a state action which decided Plaintiff's conviction [ ] was invalid. State law does not provide a sex offender is a "prisoner". This Court does not recognize Plaintiff's remedies were exhausted for "People v Griffith, 166 AD3d 1518", on October 22, 2020, when the New York State Court of Appeals dismissed Plaintiff's Motion for Leave to Appeal. The order was provided one day after this action was taken on October 21, 2020. Plaintiff had his Petition for Writ of Certiorari prepared,

taken from the order of the New York State Court of Appeals, on October 29, 2020, the same day he received the decision from this Court. The Decision from this Court was dated October 27, 2020, and it provided how screening, pursuant to 28 USC 1915A, along with the action provided for in forma pauperis, satisfied the cause for Plaintiffs' memorandum dated October 21, 2020, to have been "feasible" because it was provided a case number: Howard Griffith et al v New York, 5:20-cv-1312 (GLS//ML). However, the procedure for filing fees was not satisfied because the memorandum did not include a "complaint". Therefore, this case was closed on October 27, 2020. Nevertheless, this Court authorized Plaintiffs to reopen the action on account of providing a complaint for the action within 30 days, and the case was reopened on November 13, 2020.

On November 30, 2020, Plaintiff provided a Supplement for "Howard Griffith v New York, 20-6395" providing how "Howard Griffith, et al v New York, 5:20-cv-1312 (GLS/ML)" would have to be reviewed with Plaintiff's Petition for Writ of Certiorari in the United States Supreme Court because cause had been preserved that it could not be New York State who was to dismiss Plaintiff's conviction of Rape 1st, NY Penal Law Section 130.35(1). With New York State dismissing Plaintiff's conviction pursuant to People v Griffith, 2001-0883-1, it would develop substance for an ex parte order with regard to the special proceeding taken via CPLR Article 78, Howard Griffith v Onondaga County, SU-2020-005851, because both cases are substantive to the causes New York State was liable to correct with regard to Plaintiff's sex offender registry. Therefore, the Nature of the Cause in Howard Griffith v Onondaga County, SU-2020-005851 would be null and void, providing the remedy for the Nature of the Proceeding in Howard Griffith, et al. v New York, 5:20-cv-1312 (GLS/ML) to be null and void. With this, the substance would be developed for Howard Griffith, et al. v New York, 5:20-cv-1312 (GLS/ML) to be an

error of the most fundamental character. Nevertheless, with the United States Supreme Court providing that relief, that process would still be preserved to obtain the declaration as New York State would not have satisfied any of its liabilities. This would be necessary to preserve Plaintiff's civil rights. It would be important for the United States Supreme Court to decide if Howard Griffith et al v New York, 5:20-cv-1312 (GLS/ML) has merit to provide how good "cause" would provide that New York State Court could not dismiss Plaintiff's underlying conviction. If that were so, Howard Griffith et al v New York, 5:20-cv-1312 (GLS/ML) would be an error of the most fundamental character and the remedy providing any determinations to provide New York was to have been liable for the use of "tests or devices" in the 2020 general election would be null and void. This would help New York satisfy a remedy that any declaration providing that the State was liable for, with regard to how mail-in ballots for the 2020 election needed to have been eliminated, would be retroactively diminished. Nevertheless, it would be important for New York to no longer have the chance to dismiss Plaintiff's conviction of Rape 1st because if New York were to provide that dismissal, "prejudice" would be provided for Plaintiffs to be victims "separabally" for being guilty of arbitrary misconduct. This would satisfy the remedies to have demonstrated "cause" and "prejudice" to support a procedurally defaulted claim. The rule of procedurally default provides that a federal court will not hear a procedurally defaulted case if the proper state appellate procedures have not been followed unless a defendant demonstrates cause for the failure and how prejudice results from the failure or how a miscarriage of justice results from the failure. Under rare circumstances, a Court may consider how a defendant is "actually innocent" in a procedurally defaulted claim. Plaintiff has access to evidence via police reports and statements from a person in a completely

separate case at a completely different setting proving how he is "actually innocent" verifying allegations he made when he was arrested in 2001.

Plaintiff attempted to take action for habeas corpus with this action because it has been interpreted Plaintiff was a prisoner. Also because Plaintiff's right to the law library was violated, Plaintiff believed good cause may have been provided to have taken the habeas corpus via an erroneous process. Plaintiff objects the interpretation this Court provides for the Memorandum and Order provided with "People of the State of New York v Howard Griffith, 166 AD3d 1518 (4th Dept 2018)" because it is clear that this Court took no time to review the "court reporters" posted in the memorandum. This Court refers to how the memorandum states that it is well settled that a SORA proceeding may not be used to challenge the underlying conviction. Nevertheless, this Court failed to consider how a direct appeal, pursuant to NY Criminal Procedure Law Section 450.10(1), may be used to challenge the underlying conviction. People v Griffith, id. at 1519 provides: "As a preliminary matter, we note that defendant's pro se notice of appeal states that he is appealing pursuant to CPL 450.10 (1) 'as it applies' to Correction Law § 168-n. CPL 450.10 (1), however, does not grant defendant the right to appeal from an order denying his petition for a downward modification of his risk level; instead, that right is conferred by CPLR 5701 (see generally People v Charles, 162 A.D.3d 125, 126, 137-140 [2d Dept 2018], lv denied 32 N.Y.3d 904 [2018]). Nevertheless, we deem the appeal to have been taken pursuant to the proper statute, and we therefore reach the merits of the issues raised on appeal (see CPLR 2001)" Therefore, this provides the Supreme Court of the State of New York, Appellate Division/Fourth Department disregarded the omission (CPLR 2001) that was provided to have [im]properly taken the appeal, via direct appeal, with an appeal from an initial SORA registration proceeding (NY Correction Law Section 168-n) to provide the appeal to have been properly

taken. The "cause" was demonstrated that admission to the instant offense did exist at the time of the conviction, with regard to having been deceived, to contest how Plaintiff should not have been "prejudicially" penalized for his initial SORA registration with regard to being deemed to have not admitted to the instant offense. This was to demonstrate merit existed for modification with regard to differences between the conditions during the conviction and the initial SORA registration, via NY Correction Law Section 168-o(2). It is provided with regard to sex offender registry, pursuant to NY Correction Law Article 168 (SORA), it is to be decided by the court of facts to conclude the recommended sex offender registry by the New York State Board of Examiners of Sex Offenders. The intermediate appellate court is to decide if issues have merit with regard as to whether or not they satisfy cause, (see People v Charles, 162 A.D.3d 125, 126, 137-140 [2d Dept 2018], id. at People v Griffith, 1519) and where the hearing court's findings, expressly made under the proper evidentiary standard, are affirmed by the Appellate Division, the New York State Court of Appeals review is limited to whether the decisions below are affected by an error of law or are otherwise not supported by the record. (*see* People v Lashway, 25 N.Y.3d 478, 483 [2015], id. at People v Griffith, 1519-1520) "Defense counsel 'essentially [ ] became a witness against [defendant] and took a position adverse to him,' which denied defendant effective assistance of counsel (People v Caccavale, 305 A.D.2d 695, 695 [2d Dept 2003], id. at People v Griffith, 1519)" is interpreted to have been decided via direct appeal, (People v Caccavale, id.) which applies to the ineffectiveness of Plaintiff's counsel before he was convicted, and provides the reversal of the decision/order, ordering the case be remanded "while the appeal is held in abeyance in the interim." *see* People v Caccavale, id. at 695. Therefore, via the proceedings in People v Griffith, 166 AD3d 1518, with the exhaustion of the remedies, due process provided that the New York State Court of Appeals may have reviewed how the

decisions below were affected by an error of law or otherwise not supported by the record to dismiss Plaintiff's underlying conviction of Rape 1st. "A defendant may commence a Correction Law § 168-o (2) proceeding no more than once annually," People v Griffith, id. at 1519-1520, is the actual "prejudice" Plaintiff is subject to for failing to properly appeal his judgment pursuant to CPL 450.10(1). However, this does not invalidate, as to have been expected, "Defendant's assigned counsel, however... advised defendant to withdraw the petition so that defendant would not needlessly delay his right to file a new modification petition in two years," People v Griffith, id. at 1519, as two years does not fall within the range of one year. Therefore, it is not excessive. "Defense counsel's advice was incorrect as well as adverse to defendant's position," provides the "cause" for Plaintiff's failure to properly appeal pursuant to CPL 450.10(1), because Plaintiff's defense counsel advised him that he no longer had the right to appeal at the conclusion of the judgment. This procedure was to satisfy a procedurally defaulted claim as the memorandum/ order demonstrated there was cause and prejudice with regard to [im]properly appealing via direct appeal from a SORA modification proceeding and cause and prejudice with regard to failing to properly appeal from the judgment via direct appeal as adjudication providing ineffectiveness assistance of counsel demonstrates Petitioner's conviction was a result of a violation of his 4th, 5th, 6th, and 14th Amendment Rights of the Constitution of the United States.

This Court interprets Plaintiff cannot be provided habeas corpus relief. Most likely, the Court did not review Plaintiff's memorandum signed and notarized on December 14, 2020, with his petition for habeas corpus relief. Nevertheless, Plaintiff supports he presents good cause to be provided coram nobis relief as he hopes to address this entire memorandum with the United States Supreme Court via Howard Griffith v New York, 20-6395. Plaintiff also refers to how he

needed his "closest friend" to sign his petition because the "notary" who signed Plaintiff's memorandum, Keith Mitchell at the Key bank in East Syracuse, NY, decided Plaintiff would be committing perjury when he asked him to provide his signature to notarize, as he decided Plaintiff was not a "prisoner".

The Onondaga County District Attorney is the representative for New York for Howard Griffith v New York, 20-6395, contesting Plaintiff's objection with regard to remedies providing the invalidity of his sex offender registry regarding the invalidity of his conviction, just as it was the Onondaga County District Attorney's failure to provide the information to county administration with regard to separate remedies involving separate invalidity of Plaintiff's sex offender registry established precedent for the merits in Howard Griffith, et al v New York, 5:20-cv-1312 (GLS/ML), and remedy for this action to be taken.

This action may seem quite frivolous. Nevertheless, Plaintiffs have demonstrated how laws and legal procedures by the government violate an outstandingly numerous amount of civil rights. These all demonstrate violations of civil rights which Plaintiffs profoundly object. These remedies all had to be provided just to maintain Plaintiffs would not be subject to conditions which would have been dangerous, hazardous, or detrimental to their life, health or safety which they object should have been provided by proper authorities as numerous other people, likely, have similar concerns for themselves. Nevertheless, there are three branches of government as Plaintiffs believe this proceeding will be substantive to help numerous other people, via stare decisis, to obtain law and order. It still needs to be recognized that even if arrests are made with regard to the "information [ ]", a judgment will need to be provided that New York is liable for what Plaintiff's refer to as "tests or devices", and absentee [ ] ballots need to be eliminated to provide they don't have any effect, or else any merits provided with regard to the "information

[ ]" will be null and void, and it will once again authorize any intentions Plaintiffs' landlord or perpetrators wished to provide them any harm to be much easier, as it would once again be dangerous, hazardous, or detrimental to their life, health or safety.

Verification

Plaintiff, Howard Griffith, duly swears under the penalty of perjury that what is provided is true to the best of his knowledge.

Howard Griffith

Howard Griffith

Sworn to before me this 4th day of January, 2021.

EDEN CARR
Notary Public-State of New York
No. 04CA6393815
Qualified in Onondaga County
Commission Expires 06/24/2023

Plaintiff, Rebecca Sklaney, duly swears under the penalty of perjury that what is provided is true to the best of her knowledge.

Rebecca Sklaney

Rebecca Sklaney

Sworn to before me this 4th day of January, 2021.

EDEN CARR
Notary Public-State of New York
No. 04CA6393815
Qualified in Onondaga County
Commission Expires 06/24/2023