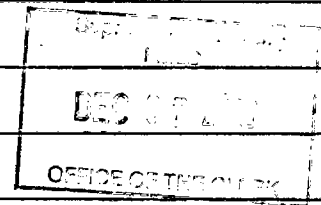


20-6623

IN THE



SUPREME COURT OF THE UNITED STATES

RAYMOND KA-LUN PIN — PETITIONER

V.S.

HAROLD. W. CHARKE — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

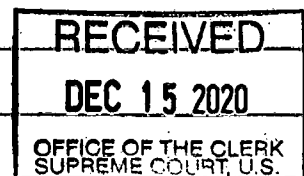
RAYMOND KA-LUN PIN

1095819 B-129

RIVER NORTH CORRECTIONAL CENTER

329 DELLBROOK LANE

INDEPENDENCE, VA, 24348



QUESTIONS PRESENTED

1. WHETHER THE DISMISSAL OF A MERITORIOUS 14TH AMENDMENT DUE PROCESS VIOLATION COMPLAINT AND AFFIRMED BY THE COURT OF APPEALS FOR THE FOURTH CIRCUIT IS IN CONFLICT WITH DECISION(S) OF THE UNITED STATES SUPREME COURT WHEN THE DISTRICT COURT FAILED TO PERFORM A 14TH AMENDMENT DUE PROCESS ANALYSIS WITHOUT JUSTIFICATION AND DISMISSED THE COMPLAINT FOR FAILURE TO STATE A DUE PROCESS CLAIM UNDER PINNE V BAKER STANDARD?

LIST OF PARTIES

THE PETITIONER IS RAYMOND KA-LUN PIN, A PRISONER IN RIVER NORTH
CORRECTIONAL CENTER OF STATE OF VIRGINIA

THE RESPONDENT IS HAROLD W. CLARKE, THE DIRECTOR OF THE VIRGINIA DEPARTMENT
OF CORRECTIONS.

RELATED CASES

RAYMOND KA-LUN PIN VS. HAROLD W. CLARKE, NO. 7:19 CV00011,
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, ROANOKE DIVISION.
JUDGMENT ENTERED FEB. 19, 2020.

RAYMOND KA-LUN PIN VS. HAROLD W. CLARKE, NO. 20-6332,
COURT OF APPEALS FOR THE FOURTH CIRCUIT. JUDGMENT ENTERED ON AUG. 3, 2020.
REHEARING DENIED ON OCT. 6, 2020.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE
TO REVIEW THE JUDGMENT BELOW.

OPINION BELOW

FOR CASES FROM FEDERAL COURTS :

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT APPEARS AT APPENDIX A. TO THE PETITION IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT APPENDIX
B TO THE PETITION IS REPORTED AT 7:19-CV-00011-GEC-PMS

JURISDICTION

FOR CASES FROM FEDERAL COURTS :

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY
CASE WAS ON AUGUST 3, 2020.

A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES
COURT OF APPEALS ON OCTOBER 6, 2020 AND A COPY OF THE ORDER
DENYING REHEARING APPEARS AT APPENDIX C.

THE JURISDICTION ON THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS CASE INVOLVES AMENDMENT XIV TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:

SECTION 1. ALL PERSON BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE THEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

THE AMENDMENT IS ENFORCED BY TITLE 42, SECTION 1983, UNITED STATES CODE: EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSED TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS, EXCEPT THAT IN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN SUCH OFFICER'S JUDICIAL CAPACITY, INJUNCTIVE RELIEF SHALL NOT BE GRANTED UNLESS A DECLARATORY DECREE WAS VIOLATED, OR DECLARATORY RELIEF WAS UNAVAILABLE FOR THE PURPOSE OF THIS SECTION, ANY ACT OF CONGRESS APPLICABLE EXCLUSIVELY TO THE DISTRICT OF COLUMBIA SHALL BE CONSIDERED TO BE A STATUTE OF THE DISTRICT OF COLUMBIA.

STATEMENT OF THE CASE

THIS IS A 42 U.S.C. § 1983 ACTION FILED BY THE PETITIONER (PIN) ALLEGED THAT THE DIRECTOR OF THE VIRGINIA DEPARTMENT OF CORRECTIONS (D.O.C.'S), HAROLD W. CLARKE (DEFENDANT) VIOLATED HIS 14TH AMENDMENT DUE PROCESS RIGHTS BY THE APPROVAL OF THE CONTINUAL ENFORCEMENT OF A "VOID" DISCRETIONARY PAROLE ELIGIBILITY DATE (DPED) RECORD UPON HIM. PIN FURTHER ALLEGED THAT THE DEFENDANT VIOLATED HIS DUE PROCESS RIGHTS UNDER PAINE VS. BAKER STANDARD BY THE REFUSAL TO CORRECT THE FALSE INFORMATION IN HIS INSTITUTIONAL FILE. (SEE APPENDIX (APP) Q. 1), AND (PAINE VS. BAKER (APP) B. 5-6).

THE DISPUTE BEGINS WHEN A D.O.C.'S EMPLOYEE NOTICED THE INDICTMENT LISTED IN THE SENTENCING ORDER THAT PIN'S CRIME WAS COMMITTED BACK AT YEAR 1989, (SEE APP) H. 1), AUTOMATICALLY ATTACHED A DISCRETIONARY PAROLE ELIGIBILITY DATE (DPED) RECORD IN PIN'S INSTITUTIONAL FILE WHICH INDICATED THAT PIN WAS ELIGIBLE FOR DISCRETIONARY PAROLE ON JULY 30, 2026, (SEE APP) B. 2). BECAUSE OF THE EXISTENCE OF THE (DPED) RECORD, PIN'S SENTENCE HAS BEEN MODIFIED FROM "IMPRISONMENT FOR LIFE" INTO ELIGIBLE FOR DISCRETIONARY PAROLE, (SEE APP) H. 2), AND 10% OF PIN'S INCOMING FUND HAS BEEN WITHHELD BY D.O.C.'S EMPLOYEE EVERY MONTH PURSUANT TO VIRGINIA CODE § 53.1-43.1. (SEE APP) D. 1).

DURING ADMINISTRATIVE GRIEVANCE PROCESS, PIN PROVIDED THE ADMINISTRATION WITH "EVIDENCE" AND INFORMATION OF THREE AVAILABLE WITNESSES FOR THE ADMINISTRATION TO INVESTIGATE, (SEE APP) Q. 1-5 AND (APP) E. 1-6). THE DEFENDANT, BASED ON THE OPERATION OF STATE LAW, DENIED TO PROVIDE ANY REMEDY. (SEE APP) I. 1-2)

PIN SUED THE DEFENDANT IN BOTH HIS INDIVIDUAL AND OFFICIAL CAPACITY. IN HIS COMPLAINT, PIN ASSERTED THAT HE WAS SENTENCED BY THE JUDGE TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE AND PROFFERED EVIDENCE TO INFER THAT HE IS "MORE LIKELY THAN NOT" SENTENCED BY THE JUDGE TO THE ASSERTED SENTENCE. THE EVIDENCES AND INFERENCES

ARE: (1) VIRGINIA ABOLISHED ITS PAROLE SYSTEM IN YEAR 1995. HIS SENTENCING TRIAL WAS IN YEAR 2001. THE PUNISHMENT FOR CAPITAL MURDER CONVICTION IN YEAR 2001 HAS BEEN RESTRICTED TO EITHER DEATH (MAXIMUM SENTENCE) OR IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE (MINIMUM SENTENCE). VA. CODE § 18.2-10 (a); (SEE APP) D. 2); (2) THE JUDGE INTENDED TO SENTENCE PIN TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE BY AN INSTRUCTION AND SAID, "INSTRUCTION 3A. THE WORDS IMPRISONMENT FOR LIFE MEANS IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE." (SEE APP) G. 6). THE JUDGE THEN INTENTIONALLY REPEATED A TOTAL OF "THREE" TIME THAT, "INSTRUCTION 3A APPLIES TO THE THREE CAPITAL MURDER CONVICTIONS"; (SEE APP) G. 4, 7, AND 10); (3) EVERYBODY INSIDE THE COURTROOM UNDERSTOOD THE TRUE TERM OF PIN'S CAPITAL MURDER PUNISHMENT IN THIS PARTICULAR CASE. THE JUDGE BY SAYING IT, (SEE APP) G. 4, 6, 7 AND 10), THE PROSECUTOR BY MENTIONED IT, (SEE APP) G. 8 AND 9), AND THE DEFENSE COUNSEL ALSO MENTIONED IT IN AN OBJECTION. (SEE APP) G. 11). EVERYBODY ELSE IN THE COURTROOM UNDERSTOOD BY LISTENING TO WHAT HAS BEEN SAID DURING THE TRIAL; (4) THE SENTENCING ORDER DOES NOT SHOW THAT THE JUDGE HAS MADE ANY SENTENCE - REDUCTION BY SENTENCING PIN FROM LIFE WITHOUT PAROLE (MINIMUM SENTENCE) TO ELIGIBLE FOR PAROLE (BELOW MINIMUM SENTENCE). (SEE APP) H. 2).

TO LEGALLY CONFIRM THAT THE DEFENDANT VIOLATED HIS 14TH AMENDMENT DUE PROCESS RIGHTS, PIN RAISED "EIGHT" DUE PROCESS QUESTIONS IN HIS COMPLAINT AND SEEK DECLARATION ON EVERY ONE OF THEM AS THE PREDICATE ACT " FOR HIS DAMAGE AWARDS AND INJUNCTIVE RELIEFS. (SEE APP) Q. 3, 4, 9, AND 10 AND APP) F. 4 FOOTNOTE (1) AND (2)

THE DEFENDANT FILED A MOTION FOR SUMMARY JUDGMENT, BUT PROVIDED NO RELEVANT MATERIAL EVIDENCE THAT PIN WAS NOT SENTENCED BY THE JUDGE TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE. THE ONLY EVIDENCE PROVIDED BY THE DEFENDANT IS

THE INFORMATION IN THE INDICTMENT THAT PIN'S CRIME WAS COMMITTED BACK AT YEAR 1989 AND HIS LEGAL CONCLUSION THAT "IN 1989, VIRGINIA LAW MADE PIN ELIGIBLE FOR DISCRETIONARY PAROLE". (SEE APP) E. 4 AND 5). THE DISTRICT COURT DENIED THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. (SEE APP) B. 8)

BY TRANSFORMING A 14TH AMENDMENT DUE PROCESS VIOLATION COMPLAINT INTO A PAINÉ VS BAKER DUE PROCESS CLAIM, THE DISTRICT COURT FAILED TO FIRSTLY DETERMINE WHETHER PIN'S ALLEGED PROTECTED INTEREST EXIST. INSTEAD, THE DISTRICT COURT ANALYZED THE COMPLAINT WITH A PAINÉ VS BAKER DUE PROCESS STANDARD. BY DISBELIEVING PIN'S ALLEGATIONS OF FACTS AND BY DRAWING ADVERSE INFERENCE FROM THE EVIDENCE, THE DISTRICT COURT REACHED A CONCLUSION THAT "PIN FAILS TO ALLEGE FACTS NECESSARY TO STATE AN ACTIONABLE DUE PROCESS CLAIM UNDER PAINÉ VS BAKER STANDARD BECAUSE HE HAS NOT SHOWN THAT HIS FILE CONTAINS FALSE INFORMATION ABOUT THE NATURE OF HIS LIFE SENTENCE." THE COURT DISMISSED THE COMPLAINT. (SEE APP) B. 6-8). THE COURT OF APPEALS FOR THE FOURTH CIRCUIT FOUND NO REVERSIBLE ERROR AND AFFIRMED THE DISTRICT COURT'S REASONING AND DECISION. (SEE APP) A. 1-3). THE COURT OF APPEALS ALSO DENIED REHEARING AND REHEARING EN BANC. (SEE APP) C.).

BASIS FOR FEDERAL JURISDICTION

THIS CASE RAISES A QUESTION OF INTERPRETATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ITS CONNECTION WITH THE CIVIL RIGHTS STATUTE 42 U.S.C § 1983. THE DISTRICT COURT HAS JURISDICTION UNDER THE GENERAL FEDERAL QUESTION JURISDICTION CONFERRED BY 28 U.S.C § 1331.

REASONS FOR GRANTING THE WRIT

A. IN CONFLICT WITH RELEVANT DECISION(S) OF U.S. SUPREME COURT

POINT (1)

THE COMPLAINANT RAISED A MERITORIOUS 14th AMENDMENT DUE PROCESS CLAIM

THE SUPREME COURT HELD THAT "THERE ARE FOUR REQUIREMENTS FOR A VALID DUE PROCESS CLAIM: FIRST, THE DEFENDANT ACTS UNDER COLOR OF STATE LAW; SECOND, LIBERTY AND PROPERTY; THIRD, DEPRIVATION; FOURTH, WITHOUT DUE PROCESS OF LAW", AND "TO DETERMINE WHETHER DUE PROCESS REQUIREMENT APPLY IN THE FIRST PLACE, COURT MUST LOOK TO SEE NOT TO "WEIGHT", BUT TO THE NATURE OF THE INTEREST AT STAKE AND MUST LOOK TO SEE IF THE INTEREST IS WITHIN THE 14th AMENDMENT'S PROTECTION OF LIBERTY OR PROPERTY". PARRATT VS. TAYLOR 451 US 527, 536 (1981).

IN HIS VERIFIED COMPLAINT AND HIS SWORN AFFIDAVIT, PIN ASSERTED THAT HE WAS SENTENCED BY THE JUDGE TO "IMPRISONMENT FOR LIFE", AND WITH HIS PROFFERED EVIDENCES, ARGUING THAT "IMPRISONMENT FOR LIFE" IN HIS YEAR 2001 TRIAL MEANS IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE (MINIMUM SENTENCE) AND THAT, ELIGIBLE FOR DISCRETIONARY PAROLE IS NOT PART OF THE SENTENCE IMPOSED BY THE JUDGE. PIN CLAIMED THAT HE HAS A DUE PROCESS RIGHTS TO SERVE ONLY THE SENTENCE IMPOSED BY THE JUDGE; (ALLEGED PROTECTED LIBERTY OR PROPERTY INTEREST) SEE HILL VS. US EX REL WAMBER 298 US 460, 464-465 (1936) ("THE ONLY SENTENCE KNOWN TO THE LAW IS THE SENTENCING OR JUDGMENT ENTERED UPON THE RECORD OF THE COURT... UNTIL CORRECTED IN A DIRECT PROCEEDING, IT SAYS WHAT IT WAS MEANT TO SAY AND THIS BY AN IRREBUTTABLE PRESUMPTION", AND "WARRANT OF COMMITMENT DEPARTING IN MATTER OF SUBSTANCE FROM

JUDGMENT BACK OF IT IS VOID"); PIN THEN ALLEGED THAT THE DEFENDANT, DIRECTOR OF VIRGINIA DEPARTMENT OF CORRECTIONS, ABUSED THE POWER GIVEN TO HIM BY THE STATE, ACTED WITHOUT AUTHORITY OR UNCONSTITUTIONALLY; (STATE ACTION / ACT UNDER COLOR OF STATE LAW); BY (I) THE APPROVAL OF THE MAKING AND FURTHER ENFORCEMENT OF THE "VOID" (DPED) RECORD UPON HIM; (II) THE REFUSAL TO CORRECT THE FALSE INFORMATION IN HIS INSTITUTIONAL FILE; (III) ACTED WITHOUT AUTHORITY AND UNCONSTITUTIONALLY BY APPLYING A PAROLE ON PIN WHEN VIRGINIA NO LONGER HAS PAROLE IN YEAR 2001; (IV) ACTED WITHOUT AUTHORITY OR UNCONSTITUTIONALLY AGAINST THE STATE OF VIRGINIA'S INTEREST WHEN VIRGINIA, THROUGH ITS PROSECUTOR AND THE JUDGE OBTAINED A VERDICT FROM JURY, RECOMMENDED TO SENTENCE PIN TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE; (V) VIOLATED THE SEPARATION OF THE POWER CLAUSE OF THE UNITED STATE CONSTITUTION BY MODIFYING PIN'S SENTENCE FROM "NO PAROLE" TO "ELIGIBLE FOR PAROLE" WITHOUT JUDICIAL PROCESS; (VI) VIOLATED PIN'S 14th AMENDMENT DUE PROCESS RIGHTS TO SERVE ONLY THE SENTENCE IMPOSED BY THE JUDGE; (VII) VIOLATED PIN'S LIBERTY AND PROPERTY INTEREST BY ILLEGALLY WITHHELD PIN'S "MONEY" WHEN PIN IS SERVING A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE AND IS "ENTITLED TO EXEMPT FROM WITHHOLDING" UNDER VA CODE § 53.1-43-1; (DEPRIVATION); PIN HAS EXHAUSTED THE ADMINISTRATIVE GRIEVANCE PROCEDURAL AND THERE IS NO OTHER STATE REMEDY AVAILABLE. (WITHOUT DUE PROCESS OF LAW). PIN'S FACTUAL ALLEGATIONS SUPPORTS EVERY ELEMENT REQUIRED BY THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT; THEREFORE, PIN ADEQUATELY STATED A 14th AMENDMENT DUE PROCESS CLAIM.

POINT II

THE DISTRICT COURT FAILED TO PERFORM A 14th AMENDMENT DUE PROCESS ANALYSIS

THE SUPREME COURT HELD THAT "BECAUSE THE RIGHT TO DUE PROCESS IS "ABSOLUTE" IN

THE SENSE THAT IT DOES NOT DEPEND UPON THE MERITS OF A CLAIMANT'S SUBSTANTIVE ASSERTION, AND BECAUSE OF THE IMPORTANCE TO ORGANIZE SOCIETY THAT PROCEDURAL DUE PROCESS BE OBSERVED, THE DENIAL OF DUE PROCESS SHOULD BE ACTIONABLE FOR NOMINAL DAMAGE WITHOUT PROOF OF ACTUAL INJURY." CAREY VS. PIPHUS 435 US 247, 258-259 (1978). THE SUPREME COURT IN A SUBSEQUENT CASE HELD THAT "A PLAINTIFF WHO WINS ~~NORM~~ NOMINAL DAMAGE IS A PREVAILING PARTY UNDER § 1983. A PLAINTIFF PREVAILS " WHEN ACTUAL RELIEF ON THE MERITS OF HIS CLAIM MATERIALLY ALTERS THE LEGAL RELATIONSHIP BETWEEN THE PARTIES BY MODIFYING THE DEFENDANT'S BEHAVIOR IN A WAY THAT DIRECTLY BENEFIT THE PLAINTIFF". SEE FARRAR VS. HOBBS 506 US 103 (U.S. TEX. 1992)

IN THIS 42 U.S.C. § 1983 ACTION, PIN RAISED A VALID 14TH AMENDMENT DUE PROCESS CLAIM AS THE PREDICATE ACT " FOR HIS DAMAGE AWARDS (COMPENSATORY, NOMINAL, AND PUNITIVE) AND INJUNCTIVE RELIEFS. THE "NOMINAL" DAMAGE AWARD OF CAREY VS. PIPHUS, THE "PREVAILING PARTY" STATUS OF FARRAR VS. HOBBS, AND THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT ISSUES "TOGETHER" IN THIS CASE DEMAND THE LOWER COURTS TO PERFORM A 14TH AMENDMENT DUE PROCESS ANALYSIS TO SEE WHETHER ANY KIND OF RELIEF CAN BE GRANTED BEFORE DISMISSAL.

POINT III

FAILURE TO PERFORM A 14TH AMENDMENT DUE PROCESS ANALYSIS BY THE DISTRICT COURT IS UNJUSTIFIED

THE DISTRICT COURT IN THIS CASE IMPLIED THAT PIN'S SENTENCING JUDGMENT ISSUE WAS BARRED FOR CONSIDERATION BY PREWER VS. RODRIGUEZ 411 US 475 (1973) (IF THE CORE OF LITIGANT'S CLAIM CONCERNS THE FACT OR DURATION OF HIS CONFINEMENT,

THEN CLAIM MUST BE RAISED IN HABEAS CORPUS, NOT UNDER 1983). THE DISTRICT COURT'S LEGAL EXCUSE FOR NOT TO ADDRESS PIN'S 14TH AMENDMENT DUE PROCESS VIOLATION ISSUES, IS UNSOUND.

THE PRELIER RULE HAS BEEN CAREFULLY EXAMINED BY THE SUPREME COURT IN A SERIES OF CASES. THE SUPREME COURT MAKES CLEAR THAT § 1983 REMAINS AVAILABLE FOR PROCEDURAL CHALLENGES WHERE SUCCESS IN THE ACTION WOULD NOT NECESSARILY SPELL IMMEDIATE OR SPEEDIER RELEASE FOR THE PRISONER; SEE WOLFF VS. MCDONNELL 418 US 539, 549-550 (US. NEB. 1974); HECK VS. HUMPHREY SPECIFIES THAT A PRISONER CANNOT USE § 1983 TO OBTAIN DAMAGE WHERE SUCCESS WOULD NECESSARILY IMPLY THE UNLAWFULNESS OF A (NOT PREVIOUSLY INVALIDATED) CONVICTION OR SENTENCE; SEE HECK VS. HUMPHREY 513 US 477, 486-487 (1994); EDWARDS VS. BALISOK, LIKE WOLFF, DEMONSTRATES THAT HABEAS REMEDIES DO NOT DISPLACE § 1983 ACTION WHERE SUCCESS IN THE CIVIL RIGHTS SUIT WOULD NOT NECESSARILY VITIATE THE LEGALITY OF (NOT PREVIOUSLY INVALIDATED) STATE CONFINEMENT; SEE EDWARDS VS. BALISOK 520 US 641, 648 (1997); WILKINSON V DOTSON CLARIFIED THE SCOPE OF PRELIER / HECK RULES BY EMPHASIZING THAT THEY APPLY ONLY IN CASES WHERE SUCCESS IN THE FEDERAL ACTION WOULD NECESSARILY DEMONSTRATE THE INVALIDITY OF THE CONFINEMENT OR ITS DURATION. SEE WILKINSON VS. DOTSON 544 US 74, 82 (2004) (EMPHASIS SUPPLIED).

IN HIS COMPLAINT, PIN ASKED THE DISTRICT COURT TO VERIFY HIS SENTENCING JUDGMENT (PROTECTED LIBERTY OR PROPERTY INTEREST) WHICH WOULD HELP DISTRICT COURT TO DETERMINE WHETHER THE COMPLAINT STATED A VALID 14TH AMENDMENT DUE PROCESS CLAIM. WITHOUT FIRST TO DECIDE PIN'S SENTENCING JUDGMENT ISSUE, THE DISTRICT COURT CANNOT PERFORM A COMPLETE 14TH AMENDMENT DUE PROCESS ANALYSIS AND IS UNABLE TO MAKE A SOUND DECISION.

TO VERIFY PIN'S SENTENCING JUDGMENT DOES NOT NECESSARILY IMPLY THE UNLAWFULNESS
(9)

OF A (NOT PREVIOUSLY INVALIDATED) CONVICTION OR SENTENCE; PIN'S INJUNCTIVE RELIEFS DO NOT SEEK IMMEDIATE OR SPEEDIER RELEASE; BY ASKING NO PAROLE INSTEAD OF ELIGIBLE FOR PAROLE (MORE SENTENCE); PIN IS MORE DISTANT FROM THE CORE OF HABEAS CORPUS. THEREFORE, PIN'S SENTENCING JUDGMENT ISSUE IS COGNIZABLE UNDER § 1983, AND THE DISTRICT COURT'S LEGAL ERROR NOT TO ADDRESS THE ISSUE AND NOT PERFORMING A 14th AMENDMENT DUE PROCESS ANALYSIS IS UNJUSTIFIED.

POINT IV

IT IS A PLAIN ERROR TO DISMISS A 14th AMENDMENT DUE PROCESS COMPLAINT BY A PAINE VS BAKER STANDARD.

THE SUPREME COURT HAS ESTABLISHED A GENERAL STANDARD IN GOVERNING DISMISSAL OF THE COMPLAINT FOR FAILURE TO STATE A CLAIM BY STATING THAT THE DECISION ON SUCH MOTION TO DISMISS REST "ON THE ASSUMPTION THAT ALL THE ALLEGATIONS IN THE COMPLAINT ARE TRUE", BELL ATLANTIC CORP. VS. TWOMBLY 550 US 544, 555 (2007) AND "RULE 1 PERMITTING DISMISSAL FOR FAILURE TO STATE A CLAIM DOES NOT COUNTENANCE... DISMISSAL BASED ON JUDGE'S DISBELIEF OF COMPLAINT'S FACTUAL ALLEGATION"; BELL ATLANTIC CORP. VS. TWOMBLY 550 US AT 577 (QUOTING NETERKE VS. WILLIAMS 490 US 319, 327 (1989)); THE SUPREME COURT WENT ON AND HELD THAT "FED. R. CIV. P. 8 (a)(2) REQUIRES ONLY A SHORT AND PLAIN STATEMENT OF A CLAIM SHOWING THAT THE PLADEFER IS ENTITLED TO RELIEF IN ORDER TO GIVE A DEFENDANT FAIR NOTICE OF WHAT THE CLAIM IS AND THE GROUNDS UPON WHICH IT REST", AND "... FACTUAL ALLEGATION MUST BE ENOUGH TO RAISE A RIGHT TO RELIEF ABOVE THE SPECULATIVE LEVEL"; 18. AT 556; "ONCE A CLAIM HAS BEEN STATED ADEQUATELY, IT MAY BE SUPPORTED BY SHOWING ANY SET OF FACTS CONSISTENT WITH

THE ALLEGATIONS IN THE COMPLAINT", AND "WHEN A COMPLAINT ADEQUATELY STATES A CLAIM, IT MAY NOT BE DISMISSED BASED ON A DISTRICT COURT'S ASSESSMENT THAT THE PLAINTIFF WILL FAIL TO FIND EVIDENTIARY SUPPORT FOR HIS ALLEGATIONS OR PROVE HIS CLAIM TO THE SATISFACTION OF THE FACTFINDER," H. AT 564.

WITHOUT FIRST TO DETERMINE WHETHER PIN'S ALLEGED PROTECTED LIBERTY OR PROPERTY INTEREST EXIST, THE DISTRICT COURT IN THIS CASE CONCLUDED THAT "PIN FAILS TO ALLEGE FACTS NECESSARY TO STATE AN ACTIONABLE DUE PROCESS CLAIM UNDER PAINE, BECAUSE HE HAS NOT SHOWN THAT HIS FILE CONTAINS FALSE INFORMATION ABOUT THE NATURE OF HIS LIFE SENTENCES."

IT IS ESSENTIAL TO RECOGNIZE THE EFFECT OF WITHOUT FIRST TO DETERMINE WHAT PIN'S TRUE SENTENCING JUDGMENT IS, (ALLEGED PROTECTED INTEREST). PIN'S PROFFERED EVIDENCES SUPPORTED TWO PROBABILITIES OF 14th AMENDMENT DUE PROCESS VIOLATIONS THE FIRST SET OF EVIDENCES ARE FROM PIN'S ALLEGED FACTS THAT "VIRGINIA NO LONGER HAS PAROLE SYSTEM IN HIS YEAR 2001 TRIAL AND THE MINIMUM SENTENCE FOR HIS CAPITAL MURDER CONVICTION IS LIFE WITHOUT THE POSSIBILITY OF PAROLE; THE JUDGE INTENDED TO SENTENCE PIN TO LIFE WITHOUT PAROLE AND DO IT WISELY AND DELIBERATELY BY REPEATED THREES TIMES THAT "INSTRUCTION 3A APPLIES TO THE THREE CAPITAL MURDER CONVICTIONS," THE SENTENCING ORDER OR TRIAL RECORD SHOW NO EVIDENCE TO THE CONTRARY THIS SET OF EVIDENCE SHOWS THAT PIN IS "MORE LIKELY THAN NOT" SENTENCED BY THE JUDGE TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE. THE SECOND SET OF EVIDENCE COMES FROM THE SENTENCING ORDER WHICH INDICATED THAT PIN WAS SENTENCED TO "IMPRISONMENT FOR LIFE" AND THE CONDITION OF ELIGIBLE FOR DISCRETIONARY PAROLE IS NOT PART OF THE SENTENCE IMPOSED BY THE JUDGE. (SEE HILL VS. US EX REL. WAMMER 298 US 460, 464-465 (1936) (THE ONLY SENTENCE KNOWN TO THE LAW) IS THE SENTENCING OR JUDGMENT ENTERED UPON THE RECORD OF THE

COURT). THE FIRST SET OF EVIDENCE PROVED THAT THE (DPED) RECORD IS "VOID" BECAUSE "NO PAROLE" AND ELIGIBLE FOR DISCRETIONARY PAROLE" CANNOT CO-EXIST; THE SECOND SET OF EVIDENCE PROVED THAT THE INFORMATION THAT PIN WAS ELIGIBLE FOR DISCRETIONARY PAROLE ON 7-30-2026 IS FALSE. THESE EVIDENCES ARE CONSISTENT WITH PIN'S ALLEGATION THAT THE DEFENDANT VIOLATED HIS 14TH AMENDMENT DUE PROCESS RIGHTS BY BOTH USING "VOID" (DPED) RECORD UPON HIM, AND REFUSED TO CORRECT THE FALSE INFORMATION IN HIS INSTITUTIONAL FILE.

IT IS ALSO ESSENTIAL TO ACKNOWLEDGE IN THIS CASE THAT "NO MATTER WHAT PIN'S SENTENCING JUDGMENT IS," HE HAS ESTABLISHED A "PROTECTED INTEREST" FOR A 14TH AMENDMENT DUE PROCESS CLAIM.

PIN HAS ADEQUATELY STATED A VALID 14TH AMENDMENT DUE PROCESS CLAIM AND THE DISMISSAL OF THE COMPLAINT BY THE DISTRICT COURT'S ASSESSMENT THAT PIN FAILED TO STATE A DUE PROCESS CLAIM UNDER PAINÉ IS INCONSISTENT WITH THE DECISIONS ARTICULATED BY THE SUPREME COURT IN BELL ATLANTIC CORP. V TWOMBLY. THE TRANSFORMATION OF A 14TH AMENDMENT CLAIM INTO A PAINÉ VS. BAKER DUE PROCESS CLAIM IN ORDER TO AVOID A 14TH AMENDMENT DUE PROCESS ANALYSIS ON A DUE PROCESS VIOLATION COMPLAINT IS STRICTLY "PLAIN ERROR".

B. IMPORTANCE OF THE QUESTION(S) PRESENTED

THIS CASE PRESENTED A QUESTION OF THE INTERPRETATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION. THE QUESTION PRESENTED IS OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS THE OPERATIONS OF THE PRISON SYSTEMS IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, AND HUNDREDS CITY OR COUNTY JAILS. IN VIEW OF THE LARGE AMOUNT OF LITIGATIONS WERE FILED UNDER 42

U.S.C. §1983, FUNDANCE OF THE QUESTION IS ALSO OF GREAT IMPORTANCE TO PRISONER BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR ADJUDICATION TO THE MERITS OF THEIR CLAIMS.

THE ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT THE DISTRICT COURT TRANSFORMED A 14TH AMENDMENT DUE PROCESS CLAIM INTO A FOURTH CIRCUIT PAINE VS BAKER DUE PROCESS CLAIM AND REPLACED A 14TH AMENDMENT DUE PROCESS ANALYSIS WITH A PAINE VS. BAKER ANALYSIS. THE SUPREME COURT HAS HELD THAT, "THERE ARE FOUR REQUIREMENTS FOR A VALID DUE PROCESS CLAIM: FIRST, THE DEFENDANT ACTS UNDER COLOR OF THE STATE LAW; SECOND, LIBERTY AND PROPERTY; THIRD, DEPRIVATION; AND FOURTH, WITHOUT DUE PROCESS OF LAW". PARRATT VS. TAYLOR 451 US 527, 536 (1981), AND WE "EXAMINE PROXEDURAL DUE PROCESS QUESTIONS IN TWO STEPS: THE FIRST ASK WHETHER THERE EXIST A LIBERTY OR PROPERTY INTEREST WHICH HAS BEEN INTERFERED WITH BY THE STATE; THE SECOND EXAMINE THE PROCEDURE ATTENDANT UPON THAT DEPRIVATION WERE CONSTITUTIONALLY SUFFICIENT". KENTUCKY DEPT OF CORRECTIONS VS THOMPSON 490 US 454, 458-461 (US KY 1989). THE "FALSE INFORMATION REQUIREMENT" IN PAINE VS. BAKER IS NEITHER A "NECESSARY REQUIREMENT" UNDER PARRATT VS. TAYLOR, NOR A PROPER STEP UNDER KENTUCKY DEPT OF CORRECTIONS VS. THOMPSON. IT IS REASONABLE FOR THE COURT OF APPEALS AFFIRMED THE DISTRICT COURT'S FINDING THAT PIN FAILED TO STATE A DUE PROCESS CLAIM UNDER PAINE VS. BAKER STANDARD BECAUSE PAINE VS. BAKER IS PART OF THE COMPLAINT, BUT IT IS COMPLETELY "PLAIN ERROR" FOR THE COURT OF APPEALS FOUND "NO REVERSIBLE ERROR" WHEN THIS ACTION IS A 14TH AMENDMENT DUE PROCESS CLAIM AND THE DISTRICT COURT ONLY ADDRESSED "ONE" DUE PROCESS VIOLATION OUT OF "EIGHT" DUE PROCESS VIOLATION QUESTIONS.

IT IS PIN'S FUNDAMENTAL RIGHTS TO SERVE ONLY THE SENTENCE IMPOSED BY THE JUDGE, AND HE HAS INTEREST TO HAVE HIS 14TH AMENDMENT DUE PROCESS CLAIM FAIRLY ADJUDICATED BY THE FEDERAL COURT AND SET HIS "RECORD AND MONEY" STRAIGHT. THE STATE OF VIRGINIA,

SAME AS PIN, IS ALSO BOUND BY THE STATE COURT'S SENTENCING JUDGMENT. STATE OF VIRGINIA CANNOT AND WOULD NOT AUTHORIZE THE DEFENDANT TO BREAK THE LAW BY THE APPROVAL OF THE MAKING AND ENFORCEMENT OF A "VOID" (PED) RECORD UPON PIN. MOST IMPORTANTLY, THE STATE OF VIRGINIA DO NOT WANT PIN TO HAVE PAROLE BY SEEKING A "NO PAROLE" SENTENCING JUDGMENT EVEN THOUGH THE CRIME WAS COMMITTED BACK AT YEAR 1989. THE PUBLIC WOULD LIKE TO SEE THAT "ANY PERSON WHO DOES WRONG MUST FACE THE CONSEQUENCES OF HIS OWN ACT" AND AT THE END, JUSTICE IS BEING SERVED.

THE COURTS BELOW SERIOUS MISHANDLED THE 14th AMENDMENT DUE PROCESS ISSUES AND ABUSED THE PLRA SCREENING PROCEDURE BY DEPARTING FROM THE HOLDINGS THE SUPREME COURT ARTICULATED IN BELL ATLANTIC CORP. VS TWOMBLY.

THE UNITED STATES SUPREME COURT SHOULD CORRECT THE ERRORS AND MAKES CLEAR THAT THERE IS NO SUBSTITUTION FOR A DUE PROCESS CLAUSE 14th AMENDMENT ANALYSIS; AND THE PLRA SCREENING PROCEDURE IS NOT A DEVICE FOR LOWER COURTS TO REMOVE "MERITORIOUS" CLAIMS FOR THE PURPOSE OF 42 U.S.C. § 1983.

CONCLUSION

FOR THE FOREGOING REASONS, CERTIORARI SHOULD BE GRANTED IN THIS CASE.

Respectfully SUBMITTED,

RAYMOND PIN 1095819 B-106

RIVER NORTH CORRECTIONAL CENTER

329 DILLBROOK LANE

INDEPENDENCE, VA, 24348.

DATE: DECEMBER 7, 2020.

I DECLARE UNDER PENALTY OF PERJURY

THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: DECEMBER 7, 2020

SIGNATURE: RAYMOND PIN