

21-6381

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term 2022  
No. \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
FILED

OCT 28 2021

OFFICE OF THE CLERK

RUSSELL TINSLEY,  
Petitioner

v.

MERRILL MAIN, et. al  
Respondents

**PETITION FOR A WRIT OF CERTIORARI TO THE**

**United States Court of Appeals**

**For the Third Circuit**

**Case Number 20-2846**

**United States District Court**

**For the District New Jersey**

**District Case Number No. 2-15-cv-07319**

**District Judge: Honorable Madeline C. Arleo**

**PETITION FOR A WRIT OF CERTIORARI**

**RUSSELL TINSLEY, Attorney for Petitioner in pro se**

Petitioner Russell Tinsley, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, rendered in their judgment decision, denied Petitioner Russell Tinsley's appeal, his motion for appointment of counsel, and sur petition for rehearing entered August 31, 2021. Appendix A.

Russell Tinsley, Pro Se  
Petitioner  
Special Treatment Unit  
8 Production Way  
Avenel, New Jersey 07001  
702-850-2393 ext. 101

## QUESTIONS PRESENTED

### POINT 1

WHEATHER THE NEW JERSEY UNITED STATES DISTRICT COURT DENIED MR. TINSLEY'S HIS FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION (RETALIATION CLAIM AGAINST MERRILL MAIN), WHO PUNISHED MR. TINSLEY FOR HIS PUBLISHED BOOK "CIVILLY COMMITTED" AND DENIED HIS TREATMENT..... 3

### POINT 2

WHETHER THE LOWER COURTS ERRED AND ABUSED ITS DISCRETION FOR DENYING MR. TINSLEY'S OF HIS FIRST AMENDMENT CLAIM OF FREEDOM OF SPEECH, BASED ON HIS PUBLISHED BOOK AND TO DENIED HIM HIS CONSTITUTIONAL RIGHTS TO TREATMENT AS PUNISHMENT..... 22

### LEGAL ARGUMENT

The lower courts erred and failed to show that the defendant Main did prove by clear and convincing evidence that Petitioner failed to state a claim upon which relief can be granted.....16

THE UNITED STATE COURT OF APPEAL FOR THE THIRD CIRCUIT'S OPINION AND JUDGMENT SHOULD HAD UPHELD THE DISTRICT COURT'S ORDER OF OCTOBER 31, 2019, SHALL STAND THAT PETITIONER HAD ESTABLISHED A PRIMA FACIE CASE OF RETALIATION AGAINST DEFENDANT MAIN IN CONNECTION WITH HIS FILING OF GRIEVANCES AND COMPLAINTS, DEFENDANT MAIN IS NOT ENTITLED TO QUALIFIED IMMUNITY BASED ON THE FACTS IN THIS CASE.....23

## TABLE OF CONTENTS

OPINIONS BELOW.....	i.
JURISDICTION.....	iii.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED...iii.	
STATEMENT OF THE CASE.....	1.
CONCLUSION.....	31.

### INDEX TO APPENDICES

APPENDIX A	United States Court of Appeals for the Third Circuit Decisions.....
APPENDIX B	United States District Court for the District of New Jersey Decision in this case.....
APPENDIX C	Petitioner's Petition for a Rehearing

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page, as follows:

Administrator Adult Diagnostic and Special Treatment Unit PO Box 905 Avenel, New Jersey 07001

New Jersey Attorney General, 25 Market Street, PO Box 112 Trenton, NJ 08625.

Solicitor General, in Washington, DC of the United States Room 5614, Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

## **JURISDICTION**

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 31, 2021.

Yes! A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August, 2021, and a copy of the order denying rehearing appears at Appendix A.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The state of New Jersey's SVP-Act, is unconstitutional and is in Violations of the civilly committed residents' First Amendment Retaliation Clause of the United States Constitution, (Due Process, and Equal Protection under the Law), As well as an Fifth Amendment Violation case.....

## TABLE OF AUTHORITIES CITED

CASES	PAGES NUMBER
<b>Alves v. Main</b> , Civ. Act., No. 01-789.....	(6)
<b>Anderson v. liberty Lobby, Inc.</b> , 477 U.S. 242, 256-57, 106 S.Ct. 2505, 2514, 91 L.Ed. 2d 202, 217 (1986);.....	(22)
<b>Anderson, supra.</b> , 477 U.S. 242, 255 (1986).....	(23)
<b>Banda v. Adams</b> , No. 16-1582 2017 WL 76943, at *2 (3d Cir. Jan. 9, 2017).....	(29)
<b>Beaulieu v. Ludeman</b> , 690 F.3d 1017, 1039 (8 <sup>th</sup> Cir. 2012).....	(20)
<b>Bell Atl. Corp. v. Twombly</b> , 550 U.S. 544, 570, 127 S.Ct 1955, 167 L. Ed.2d 929 (2007).....	(17)
<b>Celotex Corp. v. Catrett</b> , 477 U.S. at 323, 106 S.Ct. at 2552, 91 L.Ed. 2d at 273;.....	(22)
<b>Celorex, supra.</b> 477 U.S. at 322, 106 S. Ct. at 2552, 91 L.Ed. 2d at 273.....	(23)
<b>Cooper v. Sharp</b> , No. CIV.A.10-5245 FSH, 2011 WL 1045234, at* 15 (D.N.J. Mar. 23, 2011).....	(28)
<b>Hanten v. Sch. Dist. Of Riverview Gardens</b> , 183 F.3d 799, 805 (8 <sup>th</sup> Cir. 1999), .....	(16)
<b>Ivey v. Mooney</b> , Civ. No. 05-2666, 2008 U.S. Dist. LEXIS 75975, 2008 WL 4527792, at *10 (D. Minn. Sept. 30, 2008).....	(18)
<b>Ivey</b> , 2008 U.S. Dist. LEXIS 75975, 2008 WL 4527792,.....	(16)(19)
42 U.S.C. 1983	
<b>Morton v. Becker</b> , 793 F.2d 185, 187 (8 <sup>th</sup> Cir. 1986).....	(24)(30)
<b>Oliver v. Roquet</b> , 858 F.3d 180 (3rd Cir. 2017). U.S. Const(24-30	
<b>Porous Media Corp. v. Pall Corp.</b> , 186 F.3d 1077, 1079 (8 <sup>th</sup> Cir. 1999).....	(16)
<b>Revels v. Vincenz</b> , 382 F.3d 870, 874 (8 <sup>th</sup> Cir. 2004).....	(16)
<b>Russo v. Voorhees Twp.</b> , 403 F. Supp. 2d 352, 354 (D.N.J. 2005).	
<b>Russo, supra</b> , 403 F. Supp. 2d at 354.....	(22)
<b>Senty-Haugen" Senty-Haugen v. Goodno</b> , 462 F.3d 876, 886 (8 <sup>th</sup> Cir. 2006).....	(19)
<b>Serna v. Goodno</b> , 567 F.3d 944, 953 (8 <sup>th</sup> Cir. 2009), cert. denied, 558 U.S. 972, 130 S. Ct.465, 175L.Ed.2d 312 (2009).....	(19)
<b>Thomas v. Adams</b> , 55 F.Supp.3d. 552, 576 (D.N.J. 2014).....	(28)
<b>Thomas v. Christie</b> , 655 F. App'x 82 (3 <sup>rd</sup> Cir. 2016),.....	(29)
<b>Twombly, Ashcroft v. Iqbal</b> , 556 U.S. 662, 678, 129 S.Ct 1937, 173 L.Ed.2d 868 (2009) citing <b>Twombly</b> , 550 U.S. at 555).....	(17)
<b>Twombly</b> , 550 U.S. at 556.	
<b>Turner test</b> .....	(17)
<b>Westcott v. City of Omaha</b> , 901 F.2d 1486, 1488 (8 <sup>th</sup> Cir. 1990)	(16)

## STATUTES AND RULES

<b>N.J.S.A. 10:5-1 to - 49.....</b>	.. (8)
<b>Fed.R.Evid. 803(8)(c), .....</b>	(9)
SENATE, No. 895, L. 1998, c. 71, Title 30:4-27.24. <b>Fed.R.Civ.P.</b>	
12(b)Constitutionality Liberty, freedom <u>and</u> Due Process, Equal Protection and Civil Rights in the Interests of Justice...(10)(13)	
<b>Fed.R.Civ.P. 26(a)(1).....</b>	(15)
<b>Federal Rule Evidence 702, 703, or 705.....</b>	(1)(13)
<b>Fed.R.Civ.P. 12(b)(6),</b>	
Rule 12(b)(6), In doing so, however, the Court need not accept as true wholly conclusory allegations, or legal conclusions drawn by the pleader from facts alleged.	
<b>Rule 12(b)(6).....</b>	(16)
at *4-5 ,	
First Amendment claims;.....	(17)(18)(21)(22)
First Amendment violation ( <b>citing ("[T]he plain of Rule 56(c)</b>	
amend XIV <b>Also See</b> and point to the court's denial of qualified immunity.	
First Amendment Oliver:.....	(26)
New Jersey's SVP-Act Fed. R. Civ. P. 56	
<b>Pursuant to New Jersey Rules of Evidence 401 and 404(b).....</b>	(8)
<b>N.J.S.A. 30:4-27,29 and Rule 4:74-7(f)(2).....</b>	

## OTHER

## STATEMENT OF THE CASE

Here, Petitioner relies upon his First Amended Complaint, Order by the New Jersey District Court entered December 5, 2016, in a detailed Opinion filed December 8, 2016 (ECM#72), and Petitioner points to the few facts in the record that support his views. He states that he pursue his First Amendment and Fourteenth Amendment claims arising from restrictions on his access to treatment and in connection with the publication of his book "Civilly Committed" in the New Jersey's ("STU") Special Treatment Unit.

A retaliation claim was pursued based on Petitioner's claims that these restrictions were put in place in order to retaliate against him for his many filed grievances, and published book. See Petitioner's First Amended Complaint id. at 9-12 (ECM#77).

He also points to the diagnosis by his psychologist hire by him, through the Office of the Public Defender to examine him in April 2015, who stated: "Mr. Tinsley do not suffer from a mental abnormality or personality disorder [.]" (Id. at p.2 of his First Amended Complaint and citing his professional expert evaluation report, that had been attached to Petitioner's Original Complaint a Confidential Expert Report ("for the Court's consideration"). (Id. 36.) And see (ECM#71 at 3.)

Petitioner has also filed a habeas petition challenged his civil commitment which was also brought and denied before the District Court and as Petitioner sought to be released from the ("STU") and return to Philadelphia, Pennsylvania..

The lower Courts held back in addressing the many abuses that exist at the ("STU"), in their opinions as noted in Petitioner's Complaint, and appeal and they had ignored all the sufficient evidence, his Statement of Material Fact and how Petitioner has provided in his First Amended Complaint, to support he did indeed record his disputes claims that his civil rights was violated arising from his confinement at the ("STU"). The defendants' motion for summary judgment and the lower the Courts again with their same argument, opinions and judgments against Petitioner's original Complaint to have Petitioner's Complaint dismiss, with their motion for summary judgment, was an error, based on their verbatim, inaccurate information for failure to dispute the statement of an material fact upon which relief can be granted. The Petitioner relied on his First Amended Complaint, all his lower courts' documents and his exhibits attached to his Original Complaint.

## POINT 1

**WHEATHER THE NEW JERSEY UNITED STATES DISTRICT COURT DENIED MR. TINSLEY'S HIS FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION (RETALIATION CLAIM AGAINST MERRILL MAIN), WHO PUNISHED MR. TINSLEY FOR HIS PUBLISHED BOOK "CIVILLY COMMITTED" AND DENIED HIS TREATMENT**

To begin with, Russell Tinsley is being kept illegally confined and punished at the East Jersey State Prison, Administrated Segregated Special Treatment Unit ("STU"), Main South Unit Building, 8 Production Way, Avenel, New Jersey 07001. And he has filed a lawsuit against defendants Merrill Main, Ph.D., pursuant to 42 U.S.C. 1983, to pursue First Amendment Retaliation claims arising from them punishing him for the wording of his written book, entitled "**Civilly Committed**".

This book is about his progress he has been attempting to make at the ("STU") and being punish for the name of the website the books are sold on and for his written grievances against defendants Main, and his therapists ("**the-rapists**") for refusing to advance him to the next stage in treatment for his filing of grievances against them and about his claims of inadequacies in his treatment; or for not giving him the credit he deserve, for the good progress he has made in his treatment.

Petitioner further dispute that in response to the defendants Merrill Main's motion for summary judgment and certifications by him, that was appealed to the United States

Court of Appeals, for the Third Circuit was and had been presented because of the fraudulently documents in which it was intended to fabricate about Petitioner's submitting his Request/Remedy Grievances about his treatment issues and of the incident executed from the on or about October 11, 2014, date, especially in which detailing what happened that leads Petitioner to believe he is the target of his protected activities and being punished for exercising his constitutional rights for the filing of numerous grievances and for lawsuits. See Grievance of Russell Tinsley about Merrill Main's, Ph.D statements keeping Mr. Tinsley on the South Unit.

In October 29, 2014, Petitioner had submitted his grievances when defendant Main told Petitioner "**No matter how much treatment you make progress in, because of your complaints and lawsuits, it would only hurt any and all chances for you to ever get discharge, and that you will never get off the South Unit**". In this same grievance, that makes it crystal clear defendant Main threatened or intimidated Petitioner that he would not advance in treatment or be discharged from the ("STU") if he continue to file complaints and lawsuits, was because of his obvious anger or frustration with the Petitioner's protected activities and continued to target him.

In Petitioner's October 29, 2014, grievance defendant Main acknowledged in his staff response November 7, 2014, by his own communication with Mr. Tinsley's complaint, he was well aware of this grievance regarding his own statements he made verbally to Petitioner and will continue to violate Petitioner's First Amendment and for his petition the government for redress of grievances and right to speak; or be free of retaliation for protected speech.

At this time defendant Main answered to an incident that occurred in October 2014, on the day of the South Unit's community meeting, yet lied about his verbally threatened or intimidation was out right retaliatory.

On that day in question, during that community group meeting on the South Unit, Petitioner submitted his complaint and defendant Main gave his response.

Further, Petitioner maintains that there is a genuine dispute as to this incident that occurred on or about October 11, 2014. And it is also crystal clear that Petitioner remained on a.) Treatment Refusal Status, b.) On the restricted South Unit and c.) Had been denied any adequate treatment to get discharged from the ("STU"), as a result of those statements defendant Main made to Petitioner, **"That you would not be advanced in treatment; or get off the restricted South Unit**

and/or be discharged from the ("STU"), if you continue to file complaints and lawsuits".

With due respect to an investigations of all activity involving the areas of defendant Main, ("STU") Clinical Director non-compliance with therapeutic programming involving the conspiracy of Dr. Main and his therapists ("the-rapists") to denied Petitioner his movement to adequate treatment in retaliation for his filing of grievances, lawsuit and because of a book Mr. Tinsley published about his being civilly committed at the ("STU"), or name of the website the books are sold on to keep him illegally confined and punished like a criminal / prisoner on the state of New Jersey's **FRAUD** and **NEGLIGENCE** or **FAKE** diagnosis for civil commitment were inconsistent on legitimate clinical considerations, as defendant Main alleged concerning Mr. Tinsley's filing grievances.

Defendant Main contends that, "with respect to investigations alleged by Mr. Tinsley, Dr. Main was never investigated by the New Jersey Department of Human Services".

But, as to the District Court's and the United States Court of Appeals, for the Third Circuit's records in previous and pending lawsuits against Dr. Merrill Main, of being sued by other residents at the ("STU"), in the thousands, like in the **Alves v. Main**, Civ.Act., No. 01-789, case etc., and/or by anyone

who worked with him, such as being sued for sexual harassment by a therapist Dr. Vivian Shnaidman and what about Dr. Natali Barone's cases against ("STU"), where they worked with defendant Main, testified in the courts concerning the many civil abuses that exist at the ("STU") and substantial risk of serious harm posed by the retaliation and discrimination and created a very "hostile" "abusive" or punitive treatment facility, and in violation of the United States Constitution.

Dr. Vivian Shnaidman, testified that when she worked with Dr. Merrill Main (M.M.), she describes the atmosphere at the ("STU") as "**a big free-for-all where anybody could say anything they wanted at any time to anyone**", and "**[t]he majority of what was said, if it did not directly concern work, was something sexually inappropriate**". She testified that "**the entire atmosphere there was very harassing**".

The records in this case demonstrates that Petitioner has been targeted at the hands of defendants Main and his therapists ("**the-rapists**") who expressed anger or frustration with petitioner's protected activities themselves and has continue to target petitioner's protected activities, as the results of petitioner being threaten by defendant's Main own statements to him, in the October 29, 2014, grievance to which Petitioner has

contacted - the media, state and federal agencies for an investigation into defendant's Main misconduct activities.

In Dr. Shnaidman's case it is also stated by her that "**Dr. Main failed to promote her, retaliated against her and created a hostile work environment, all in violation of the Law Against Discrimination (L.A.D.) N.J.S.A. 10:5-1 to - 49**", all of this is relevant to establish defendant Main, has an established pattern of conduct, which supports Petitioner's claims that there is a custom of retaliations, that may be used as admissible for the jury trial **Pursuant to New Jersey Rules of Evidence** 401 and 404(b).

The other agencies contacted by Petitioner for an investigation report, of the complaint filed by him, surrounding the possibility of Dr. Main's official Misconduct / Corruption on the part of his concern in these letters, and reports about the grievances or state and federal lawsuits was exclusively on legitimate clinical considerations or not and as to his therapists ("**the-rapists**") who expressed anger or frustration with petitioner's protected activities themselves and has continue to target petitioner's protected activities, and to investigate the ongoing Human Rights abuses, at and within, both the ("STU") Main and Annex Facilities. All the reports shall be

admitted under **Fed.R.Evid.** 803(8)(c), the Public Records hearsay exception.

Accordingly to the other agencies contacted by Mr. Tinsley, such as to the State Board of Psychological Examiners, Mr. J. Michael Walker, who is the Executive Director of the Board, and who was also subpoenaed as a witness whom Mr. Tinsley listed to attend at his civil commitment hearing to give testimony on Mr. Tinsley's behalf; or about the Board's investigation of a complaint filed by Mr. Tinsley in May 16, 2016, regarding the case Merrill Main, Ph.D., File Number 113685, as well as to Mr. Tinsley's opposition to the Board closing the matter without initiating disciplinary action while unprofessional conduct or crimes are being committed by Dr. Main and other psychiatrists at the Special Treatment Unit.

The Subpoenas call for witnesses to appear and give testimony in the Special Treatment Unit at Avenel on October 23, 2017 at 9:00 am. According to the Subpoenas Mr. Tinsley was seeking any and all relevant factual testimony and/or information in response to the Subpoenas with a valid Court Order directing it to do so from the herein named witnesses, because of their investigation of a complaint filed by Mr. Tinsley. According, the District Court should had issued its Order directing these witnesses to appear at a hearing, in

Federal Court to whom further discovery was sought to give testimony on their investigation..

Also, into the investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies. Please see Chris Christie, former Governor's Subpoena information to give testimony on Mr. Tinsley's behalf as a witness and for his office to comply with his request to the New Jersey Department of Corrections to investigate into Mr. Tinsley's complaint regarding Dr. Main and other psychiatrists at the Special Treatment Unit.

Also, into the investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies. Please see Senator Stephen M. Sweeney's Subpoena information to give his testimony on Mr. Tinsley's behalf as a witness and for his familiarity and involvement with the case of Mr. Tinsley's complaint regarding Dr. Main and other psychiatrists at the Special Treatment Unit, as well as to his knowledge of the Assemble Appropriations Committee Statement. See SENATE, No. 895, L. 1998, c. 71, also see Title 30:4-27.24. His testimony is relevant material to the case.

Also, into the investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies. Please see ACLU's Director and/or Mr. Edward Barocas., Esq., Subpoena information to give testimony on Mr. Tinsley's behalf as a witness for his office to comply with Mr. Tinsley's complaint regarding Dr. Main and other psychiatrists at the Special Treatment Unit.

For other agencies' pending investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies. Please see the Department of the Treasury, Division of Risk Management's Tort Claim.

For other agencies' pending investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies. Please see the U. S. Department of Health and Human Services' claim, in response to Mr. Tinsley's complaint regarding the violations of sexual misconduct, retaliations and discrimination by employees involvement of The Department of Human Services ("DHS"), at the Special Treatment Unit ("STU"), in Avenel, New Jersey and how Dr. Merrill Main, was still working there after his: a.) Being sued for sexual harassment by

a female psychiatrist at the ("STU"), as well as b.) Fraud, and c.) Civil Commitment abuse affecting ("DHS") programs and operations.

For other agencies' pending investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies.

For other agencies' pending investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies.

For other agencies' pending investigations involving more information against the ("STU") Clinical Director Dr. Merrill Main and from Mr. Tinsley complaints filed directly to other agencies.

In the lower courts' judgment or opinion to denied Petitioner's First Amended Complaint they had failed to address any or all of the claims raised by the Petitioner has he sought relief for? The lower courts erred, and failure was their reluctance to address the constitutionality of the claims that Petitioner seeks for relief involved in this case. The lower courts' indicated that their judgment and opinion to dismiss

Petitioner's First Amended Complaint pursuant to **Fed.R.Civ.P.** 12(b) was for failure to state a claim upon which relief can be granted. Their judgment and opinion should be rejected and their decision to denied petitioner's appeal was not based upon to ensure protection of Russell Tinsley's Constitutionality Liberty, freedom and Due Process, Equal Protection and Civil Rights in the Interests of Justice.

Specifically, the lower courts ignored the following: (1) "that Count One now also seeks injunctive relief" Id. at p.4. (2) "The only significant factual allegations added to Petitioner's First Amended Complaint appear in paragraphs 19, 40, 41, 41-54, 56, 63, 64, and 66". Although, the lower courts' judgment and opinion were inaccurate and taken out of context the fact that the Petitioner did try to comply with the lower Courts' Order to provide all the sufficient facts to allow the lower Courts to determine whether (1) his treatment opportunities were so inadequate as to violate due process; (2) alleged sufficient facts to allow the lower Courts to determine whether the security policies of the Department of Correction render treatment opportunities so inadequate as to violate due process; (3) sufficient facts in his First Amended Complaint to state a conditions of confinement claim against the Department of Human Service; (4) the details of the Petitioner's First Amended Complaint are facts supporting his claim of retaliatory

conduct, to the extent he tried in good faith and to his best ability to cure the deficiencies noted in the lower Court's Opinion, to comply with the pleading in his Petitioner's First Amended Complain should be accepted, and as he tried to confined himself to the facts that form the basic for his claims for relief.

Further, for the lower courts to ignored and address that: "The majorities of the new allegations are not relevant to Petitioner's claims and instead recount Petitioner's interpretation of prior suits filed by different petitioners. (ECM#77 at 19-23 (paragraphs 41-53))". This argument is lacking merits and also must be rejected, because as Petitioner maintains that Defendant Merrill Main, "has an established patter of conduct, which supports Petitioner's claims that there is a custom of retaliations, discriminations, threats, that makes it unlawful [f]or him to take reprisals against Petitioner, because he has filed grievances and lawsuits to opposed the evil practices or acts forbidden under the Constitution; at the STU or to coerce, intimidate, threaten or interfere with Petitioner in the exercise of his constitutional rights or due process and equal protection under the law. Therefore, Petitioner should be permitted to proceed with his petition for a writ of certiorari, to be issued to review the judgment of the United States Court of Appeals for the Third

Circuit, rendered in their judgment decision, denied Petitioner Russell Tinsley's appeal, his motion for appointment of counsel, and sur petition for rehearing entered August 31, 2021, and on Petitioner's claim and because how its relevant evidence may be used as admissible for a jury trial, in the lower court' **United States District Court For the District New Jersey District Case Number No. 2-15-cv-07319 District Judge: Honorable Madeline C. Arleo** pursuant to **Fed.R.Civ.P. 26(a)(1)** and see **Federal Rule Evidence** 702, 703, or 705.

Moreover, for support Petitioner pray that this Supreme Court will reverse and / or remand this matter back to the lower courts, under **Fed.R.Civ.P. 12(b)(6)**, to "accept all factual allegations as true, and construe the complaint in light most favorable to the Petitioner'. He also pray that he Supreme Court forgive him in his preparation, as the issues are very complex for him to explain in just simple terms as a layman at law, but he have done his best he could do to confine himself to the facts that form the basis for his claims for relief and without the assistance of counsel.

**The lower courts erred and failed to show that the defendant Main did prove by clear and convincing evidence that Petitioner failed to state a claim upon which relief can be granted**

In the lower courts decision, they erred and failed and denied Petitioner's relief, of Petitioner's First Amended Complaint, the defendants accuses Petitioner of failure to state a claim upon which relief can be granted. Must be rejected.

The lower Court did not decide their motion to dismiss pursuant to **Rule 12(b)(6)**, as Petitioner stated above, the lower Court must assumes all facts in the complaint to be true and construes all reasonable inferences from those facts in the light most favorable to the complainant. **Morton v. Becker**, 793 F.2d 185, 187 (8<sup>th</sup> Cir. 1986). In doing so, however, the Court need not accept as true wholly conclusory allegations, **Hanten v. Sch. Dist. Of Riverview Gardens**, 183 F.3d 799, 805 (8<sup>th</sup> Cir. 1999), or legal conclusions drawn by the pleader from facts alledged. **Westcott v. City of Omaha**, 901 F.2d 1486, 1488 (8<sup>th</sup> Cir. 1990). The Court may consider the complaint, matters of public record, orders, materials embraced by the complaint, and exhibits attached to the complaint in deciding a motion to dismiss under **Rule 12(b)(6)**. **Porous Media Corp. v. Pall Corp.**, 186 F.3d 1077, 1079 (8<sup>th</sup> Cir. 1999).

To survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on

its face." **Bell Atl. Corp. v. Twombly**, 550 U.S. 544, 570, 127 S.Ct 1955, 167 L. Ed.2d 929 (2007). Although a complaint need not contain "detailed factual allegations," it must contain facts with enough specificity "to raise a right to relief above the speculative level." Id. at 555. As the United States Supreme Court recently reiterated, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," will not pass muster under **Twombly**, **Ashcroft v. Iqbal**, 556 U.S. 662, 678, 129 S.Ct 1937, 173 L.Ed.2d 868 (2009) citing **Twombly**, 550 U.S. at 555). In sum, this standard "calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [the claim]." **Twombly**, 550 U.S. at 556.

**A. Petitioner's Claims this Supreme Court must evaluate Count I, Count II and Count III, that the United Court of Appeals, failed to do.**

**1. His First Amendment Claim**

As respectively, Petitioner assert that Defendants have retaliated against him, as he stated sufficient facts to suggest that all named DHS Defendants at the STU retaliated against him for his filing of grievances, lawsuit and for publishing a book about his civil commitment, in his First Amended Complaint p. 1, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38. And this

Court must view the evidence "in the light most favorable" to Plaintiff, "accept as true all the evidence which supports" Plaintiff, and give him 'the benefit of all legitimate inferences which constitutes constitutionally protected activity allows.

Under this First Amendment claim of such retaliatory conduct by the defendants, this Court dismissing all counts in Petitioner's Original Complaint, except Court Three as to Defendants Main, Van Pelt, and Beaumont, should had not been dismissed, on Petitioner's claim that all the DHS Defendants made threats of punishing him for his published book, entitled "Civilly Committed".

Accordingly, Petitioner disputes the defendants (which argue "Plaintiff's First Amended Claim of Retaliation is barred as a Matter of Law, because the Alleged Conduct is not an 'Adverse Action'".) Id. at p. 13. Defendants further stated this Court: "In its December 5, 2016 Opinion, the court explained that only Petitioner's First Amendment Claim of retaliation may proceed, and only against Defendants Main. (ECM#71 at 15-17)".

Petitioner not only dispute the defendants' argument to address whether this allegation states a claim for First Amendment retaliation, but their argument must be rejected as follows: that any First Amendment restrictions on civilly committed individuals "must be reasonably related to 'legitimate

therapeutic or institutional interest.'" See **Ivey v. Mooney**, Civ. No. 05-2666, 2008 U.S. Dist. LEXIS 75975, 2008 WL 4527792, at \*10 (D. Minn. Sept. 30, 2008).

While the Lower Courts needed not to conclusively resolves the issue of the precise, applicable standard of review today, the Supreme Court of the United States must considers each of Petitioner's First Amendment claims in light of appropriate therapeutic interests as well as relevant safety and security concerns, as in the case of **Ivey**, 2008 U.S. Dist. LEXIS 75975, 2008 WL 4527792, at \*4-5 (applying "a version of the **Turner test**, moderated to account for the principles stated in **Senty-Haugen**" in order to determine whether an STU policy "is reasonably related to legitimate institutional and therapeutic interests"); see **Senty-Haugen v. Goodno**, 462 F.3d 876, 886 (8<sup>th</sup> Cir. 2006) (acknowledging that the liberty interests of individuals committed to state custody as dangerous persons "are considerably less than those held by members of free society," but that such individuals are "entitled to more considerate treatment and conditions of confinement" than prison inmates) (internal citations omitted); **Revels v. Vincenz**, 382 F.3d 870, 874 (8<sup>th</sup> Cir. 2004) ("Although an involuntarily committed patient of a state hospital is not a prisoner per se, his confinement is subject to the same safety and security concerns as that of a prisoner."); **Serna v. Goodno**, 567 F.3d

944, 953 (8<sup>th</sup> Cir. 2009), cert. denied, 558 U.S. 972, 130 S. Ct. 465, 175L.Ed.2d 312 (2009) (finding that "governmental interests in running a state mental hospital are similar in material aspects to that of running a prison" because "[a]dministrators have a vital interest in ensuring the safety of their staff, other patients, and of course in ensuring the patients' own safety" and concluding, therefore, that "the government may take steps to maintain security at its institutions where sexually violent persons are confined"). But see **Beaulieu v. Ludeman**, 690 F.3d 1017, 1039 (8<sup>th</sup> Cir. 2012) (applying the four-factor test to a First Amendment claim asserted by civilly committed sex offender where the parties agreed to its application).

Petitioner asserts by him being on September 22, 2015, placed on Program MAP and Treatment Refusal status after self-publishing a book that contained "Public Record" details of his criminal history, and that he in his process group on September 8, 2015, said that he had written consent from names of persons in his book. The defendants' threats of placing Petitioner on Program MAP and Treatment Refusal for Book Publication, was not done by 'legitimate therapeutic or institutional interest concerns. Nor was it done as to maintain security, but was an "adverse action" denial of treatment and of a First Amendment claim for retaliation. As with his retaliation claim, Plaintiff

maintain that such restrictions "are not related to a legitimate institutional or therapeutic interest.

As stated in the Petitioner's First Amended Complaint, "his communication are being censored, and being threatened with the loss of income if he failed to abide to his treatment team's DHS Defendants' demands. In particular, Petitioner's alleged that DHS Defendants placing him on MAP and Treatment Refusal status for publishing a book is a misuse of the MAP program's policies, procedures, and practices cause Petitioner to be threatening with the loss of income for not abiding by his treatment team's DHS Defendants' demand to 'redact' or 'pull the book' is nothing more than coercion and further, that the STU's responses are in violation of what constitutes constitutionally protected activity, denying Plaintiff from exercising his constitutional rights under the Free Exercise Clause of the First Amendment.

In addition to this argument, the lower courts erred for their maintaining that Petitioner's First Amendment rights have not been curtailed, as a matter of law, must be rejected. In addition, because the DHS Defendants have committed an "adverse action" as demonstrated from the evidence description of the Petitioner's First Amended Complaint, giving rise to a First Amendment claim of retaliation. Accordingly, the defendants' motion to dismiss Petitioner's First Amendment claims should had

been denied. And, because Petitioner had put Defendants on notice of an 'Adverse Action' plausible Free Exercise Clause claim, Defendants' motion to dismiss in this respect should be denied and Petitioner's claims based on a First Amendment violation of his rights to freedom of speech. . .and of his Retaliation claim. . .should remain.

## POINT 2

### **WHETHER THE LOWER COURTS ERRED AND ABUSED ITS DISCRETION IN VIOLATION OF THE SUPREME COURT CASE KANSAS V. HENDRICKS, FOR DENYING MR. TINSLEY'S OF HIS FIRST AMENDMENT CLAIM OF FREEDOM OF SPEECH, BASED ON HIS PUBLISHED BOOK AND TO DENIED HIM HIS CONSTITUTIONAL RIGHTS TO TREATMENT AS PUNISHMENT**

That Petitioner Russell Tinsley has shown to the lower courts, it was abundantly clear that New Jersey's civil commitment of petitioner was meant to punish him and in other similar situation committed men. The petitioner had also shown that their act was punitive and the treatment was so inadequate as to amount to a second criminal sentence. The petitioner went as far as to have established a disputed issue as to a genuine issue of the material facts for trial. **See Celotex Corp. v. Catrett**, 477 U.S. at 323, 106 S.Ct. at 2552, 91 L.Ed. 2d at 273; **Russo v. Voorhees Twp.**, 403 F. Supp. 2d 352, 354 (D.N.J. 2005). That is, "the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party". **Russo, supra**, 403 F. Supp. 2d at 354 (citing **Anderson v.**

**liberty Lobby, Inc.**, 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L.Ed. 2d 202, 217 (1986); **see also Celorex, supra.** 477 U.S. at 322, 106 S. Ct. at 2552, 91 L.Ed. 2d at 273 ("[T]he plain of Rule 56(c) mandates when reviewing a motion for summary judgment, 'the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor'") **Anderson, supra.**, 477 U.S. 242, 255 (1986).

#### **LEGAL ARGUMENT**

**THE UNITED STATE COURT OF APPEAL FOR THE THIRD CIRCUIT'S OPINION AND JUDGMENT SHOULD HAD UPHELD THE DISTRICT COURT'S ORDER OF OCTOBER 31, 2019, SHALL STAND THAT PETITIONER HAD ESTABLISHED A PRIMA FACIE CASE OF RETALIATION AGAINST DEFENDANT MAIN IN CONNECTION WITH HIS FILING OF GRIEVANCES AND COMPLAINTS, DEFENDANT MAIN IS NOT ENTITLED TO QUALIFIED IMMUNITY BASED ON THE FACTS IN THIS CASE**

Here in this case, petitioner challenge that the Supreme Court must view this case favorably, for the petitioner, and as the United States District Court's Judge **Honorable Madeline C. Arleo**, already had recognized and found not only did Petitioner engaged in constitutionally protected activities and established a prima facie case of retaliation against defendant Main but Petitioner had established a disputed showing sufficient to establish the existence of an element essential to his case, and on which he has the preponderance of evidence of proof to present at trial.

Second, Defendant briefly argue the "same decision" defense "to address the issues of qualified immunity" to try to support

his previous argument "that Petitioner failed to interpose any factual disputes that would preclude entry of summary judgment". Nevertheless, the Court has already determined what constitute a *prima facie* case, of Petitioner's First Amendment retaliation claims against defendant Main; therefore, the Court has recognized not only the defendant Main's violation of law, rule, regulation or clear policy, but also that there was shown "an constitutionally protected activities" in connection with Petitioner filing of grievances, complaint and lawsuits. **Oliver v. Roquet**, 858 F.3d 180 (3rd Cir. 2017).

As previously Ordered, the Honorable Judge Arleo, Opinion and Order entered October 31, 2019, (ECF#205) therefore denied summary judgment on the First Amendment retaliation claim against Defendant Main in connection with Petitioner's filing of grievances, complaints, and/or lawsuits, was unconstitutional-such that qualified immunity would be inappropriate.

However, defendant Main repeated his same arguments as he previously indicated in his first motion for summary judgment regarding Petitioner's First Amendment retaliation claims against defendant Main, where he told Petitioner on or about October 11, 2014, that Petitioner would stay on the restricted South Unit of the STU-facility, never advance in treatment if he continue to file grievances, and never get out the STU. (See ECF No. 77, Amended Complaint at ¶ 40.)

Previously decided by the District Court as to defendant Main retaliated against Petitioner by failing to advance Petitioner in treatment due to his filing of numerous grievances. The parties appear to agree that throughout his civil commitment at the STU, Petitioner frequently filed internal grievances regarding his treatment and other aspects of his conditions of confinement at the STU. (DSMF at ¶ 7 (citing ECF No. 1-5 PageID: 62-98).) Petitioner attached to his original Complaint numerous grievances he has filed in connection with his treatment.<sup>11</sup> (See ECF No. 1-5, Ex. C to Complaint.) According to the complaints, Petitioner's grievances led to an investigation of the therapists by DHS and the Division of Mental Health {2019 U.S. Dist. LEXIS 26} and Newark Board of Psychologists. (See ECF No. 138-16, Plaintiff's Opposition Br. at Ex. N.)

In an October 7, 2014 letter response to Petitioner's September 4, 2014 letter, Defendant Main acknowledges that Petitioner has "every right to complain", but suggests that "putting additional energy into your treatment may be wiser." (Id.) Petitioner appears to assert in his Complaint and Amended Complaint, however, that Defendant Main told him on or about October 11, 2014 that Petitioner would never advance in treatment if he continued to file grievances. (See ECF No. 77, Amended Complaint at ¶ 40.)

The United States Court of Appeals, for the Third Circuit, should had also acknowledged, because of the application of defendant Main's violations to Petitioner's written grievances since 2010 to present impacted Petitioner being punished of his constitutionally protected rights under U.S. Const. amend XIV and I because Petitioner risked punishment for exercising the right to complain. The lower Courts should had also find that the defendant Main denied making such statement and asserted his concerns about Petitioner's grievances were motivated by treatment concerns, is pure absurdity, because the District Court's recent October 31, 2019, Opinion and Order totally disputes and contradict this argument and reject such a notion.

Petitioner rejected and disputed defendant Main's statement of material facts about "First Petitioner, actually denied that he committed any sexual offenses;" "Second, because of Petitioner's being very disruptive in group sessions, were clearly erroneous that he will only discuss legal matters, he is verbally combative, and he is volatile." "Third, he essentially refuses to comply with any significant aspects of treatment. See Defendant's Certification of Merrill Main's Ph.D., [2].

It's a known fact, because of Petitioner's numerous filed inmate remedy forms and was informed by defendant Main concerning the inadequacy of his sex offender treatment issues and the restrictive nature of his confinement at the STU, he is

targeted by staff to have a conduct behavior problem during his entire nearly ten years of civil commitment, he has denied treatment.

Here the lower courts ignored that defendant Main misstated the facts regarding Petitioner's MAP and Treatment Refusal status was based on Petitioner's conduct, alone, which is totally disputed and contradicted in this case, and Petitioner is the one suffering physical and verbal abuse, and the indignity of being denied adequate treatment to be discharged from the STU for long periods, by defendant Main and STU's staff.

Apparently, every time Petitioner filed his grievances against STU's staff, he is retaliated against by defendant Main and Staff. No matter if he reported to the courts, state and federal agencies, and requested an investigation, as Petitioner had done on numerous occasions, a burden is placed on him, and it was a decision in the hands of Defendant Main, a hypocritical Clinical psychologist and the Clinical Director at the STU and who supervised Petitioner's treatment, that just used the civil commitment law to take advantage of the ignorant people and/or residents.

The oral sworn deposition of RUSSELL TINSLEY, taken at the SPECIAL TREATMENT UNIT, on Thursday, June 28, 2018, testified at deposition that he never refused treatment, and how he end up on

treatment refusal based on his litigation and filing grievances, attached as Exhibit A pages 22-25 and 38, 44-47, and 54 were accurate depictions of the "TREATMENT ISSUES" where Petitioner fully engaged in treatment respectively. See Deposition of Petitioner Russell Tinsley, his Russell Tinsley Certification And his (original STU Request System & Remedy Form, against defendant Main's statements made to keep Petitioner on the restricted South Unit in 2014).

Also see Dr. Silikovitz's expert report, and the many grievances leading to retaliation against Petitioner's treatment progress issues, that contradict the defendants Merrill Main's Statement of Material Facts and Certification, by which unequivocally confirmed that defendant Main not only have engaged in arbitrary discriminatory and retaliatory conduct, but that Petitioner's sex offender treatment was denied altogether, and had been reduced or changed for non-medical reasons. **See e.g., Thomas v. Adams, 55 F.Supp.3d. 552, 576 (D.N.J. 2014)** ("when a prescribed medical treatment is denied, reduced, or changed for non-medical reasons, including financial, administrative or logistical, the [denied or reduced] treatment suggests an act of deliberate indifference and amounts to a violation of...substantive due process with regard to those mental patients whose sole hope for release hinges on obtaining their prescribed treatment"); **Cooper v. Sharp, No. CIV.A.10-5245 FSH,**

2011 WL 1045234, at\* 15 (D.N.J. Mar. 23, 2011) ("on a categorical denial of therapy and treatment sessions claim"), see also **Banda v. Adams**, No. 16-1582 2017 WL 76943, at \*2 (3d Cir. Jan. 9, 2017). Also See **Thomas v. Christie**, 655 F. App'x 82 (3<sup>rd</sup> Cir. 2016, and point to the court's denial of qualified immunity.

Furthermore, in this case Petitioner clearly argued that a dispute exists regarding why his expert report dated September 9, 2015, prepared by Dr. Ronald G. Silikovitz, Ph.D contradict the (STU TPRC Annual Review Report, November 22, 2019), attached as Exhibit to the certifications of defendant Main, was only with respect to clinical significance of his having filed Petitioner's grievances and published book. On its face, the September 9, 2015, "**Confidential Expert Report**" has bearing on Petitioner's complaints, book, website, treatment issues and his First Amendment retaliation claims against defendant Main.

The September 9, 2015, expert report does proportionate to address ("**There is no evidence that Mr. Tinsley was motivated to portray himself in a more negative light than the clinical picture would warrant**".) Other words, petitioner's expert Dr. Ronald G. Silikovitz, Ph.D, contradicted the state of New Jersey's authorities, to prove that the petitioner was dangerous and likely to commit more crimes; or that he has a "serious difficulty in controlling behavior".

"Overall, the clinical profile reveals no elevations that should be considered to indicate the presence of identifiable or diagnosable clinical psychopathology. His clinical scores are entirely within normal limits. No diagnosis or condition is evident on Axis I or Axis II." i.d. at page 7 of the "Confidential Report" dated September 9, 2015 and prepared by Dr. Ronald G. Silikovitz, Ph.D, which recommends Petitioner's release from the STU, does with relevant evidence of Petitioner's positive character, that contradict and dispute the defendant Main's alleged clinical significance of his having been tagged or target, and to be punish; or retaliated against in his treatment for exercising his right under the First Amendment to write grievances of the treatment deficiencies that led to the published of a book and/or website. Accordingly, this Court should deny defendants' motion for summary judgment, with respect to Plaintiff's sworn statement, his contemporaneous Remedy Form dated October 29, 2014, and his deposition testimony, suggest that defendant Main targeted the protected activity itself, i.e., the grievances, complaints, and/or lawsuits, Dr. Silikovitz's report and the attached Russell Tinsley's Certification.

Petitioner's claims thus provide the consideration plus, as required by Oliver, and, if proven could allow a jury to find that Plaintiff satisfied the causal connection between his

filling of grievances and/or lawsuits and the failure to progress in treatment and/or his continued confinement in the restrictive South Unit.

#### **CONCLUSION**

The Petition for writ of certiorari should be granted, as a challenge that the Supreme Court might view favorably, based on the un-constitutionality of the state of New Jersey's SVP-Act was punitive in practice.

For these reasons set forth above and those advance in Petitioner's appeal to the United States Court of Appeals, for the Third Circuit's moving briefs, Tinsley submit that, because the specific facts and affirmative evidence that contradict and disputes those offered by the lower courts and the moving party, as well as to the significantly different from those presented by the defendant Main, because of Petitioner's has establish a disputed issue as to a genuine issue of the material facts for trial, the defendants' motion for summary judgment under Fed. R. Civ. P. 56 should have been denied.

Dated September 21, 2021

By Russell Tinsley, in pro se