No. 21-7336 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Karsten D. Allen — PETITIONER
(Your Name)

vs.

J. Mayo, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Karsten D. Allen
(Your Name)

Keen Mountain Correctional Center
P. O. Box 860
(Address)

Oakwood, VA 24631
(City, State, Zip Code)

(804) 674-3000
(Phone Number)

QUESTION(S) PRESENTED

Question #1: Does the language of Virginia's statues and Department of Corrections' Operating Procedures establish a state-created liberty interest in good time earning levels and good time credits for Virginia prisoners?

Question #2: To what extent of leniency must a court hold the drafting of a civil rights complaint drafted by a pro se prison litigant.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner: Karsten D. Allen

Respondents: J. Mayo
J. Smith
T.D. Johnson
J. Feltner
T.S. Foreman
Israel Hamilton
L. Fields

RELATED CASES

- Allen v. Mayo, 1:20cv780. U.S. District Court for the Eastern District of Virginia. Judgement entered May 4, 2021.

- Allen v. Mayo, No. 21-6822 U.S. Court of Appeals for the Fourth Circuit. Judgement entered November 30, 2021.

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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.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[X] reported at Allen v. Mayo, 2021 U.S. Dist. LEXIS 85703; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was November 30, 2021.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 28, 2021, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- UNITED STATES CONSTITUTION Amendment ~~XIV~~ XIV (Due process clause)

- "...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any states deprive any person of life, liberty, or property, without due process of law..."

Appendix N/A

- Code of Virginia 53.1-202.2

Appendix K

- Code of Virginia 53.1-25

Appendix L

- Code of Virginia 53.1-202.3

Appendix M

- ~~Code of~~ VIRGINIA Dept. of Corr. Operating Procedure 830.3(V)(C)

Appendix N

- VIRGINIA Dept. of Corr. Operating Procedure 830.3(V)(F)(2)

Appendix O

• Virginia Dept. of Corr. Operating Procedure Operating Procedure 830.3(V)(F)(3)

Appendix O

• Virginia Dept. of Corrections Operating Procedure 830.3 (V)(F)(7)

Appendix O

• Virginia Dept. of Corrections Operating Procedure 830.3(V)(F)(10)

Appendix O

• Virginia Dept. of Corrections Operating Procedure 830.3(V)(F)(12)

Appendix P

• Virginia Dept. of Correction Operating Procedure 830.1(IV)(E)(3)

Appendix Q

STATEMENT OF THE CASE

On September 20, 2019. Petitioner was housed in pod 4A at Sussex I State Prison in the state of Virginia. As normal procedure in-pod recreation was conducted one tier at a time whereas one tier is locked down while the other is out and vice versa. As Petitioner was assigned as a "housekeeper" via prison employment he was authorized by officer NJoku, the floor officer, to remain in the pod during both recreation periods to perform cleaning duties.

At approximately 8:30Am Petitioner was released from his cell for bottom tier recreation as he was housed in cell 116, a bottom tier cell. Recreation lasted until approximately 10:30am at which time ofc. NJoku instructed Petitioner to stand at the front of the pod while the tiers were changed out. The top tier was then let out for recreation which lasted until approximately 12:00pm.

At the conclusion of top tier recreation, ofc. Johnson, the booth officer, announced lockdown. Officer NJoku found Petitioner at a table playing cards and instructed him to prepare for work call once the pod was locked down. After both tiers were locked down, Petitioner, along with the other pod workers conducted the work call and locked down before the 1:00pm count.

On September 21, 2019 Petitioner was served with a disciplinary offense report written by officer T. Johnson, the booth officer from the prior day. According to the report, officer Johnson stated that she made an announcement to lock down at 12:09 pm. She then cycled the top tier doors open and closed and Petitioner did not lock down. She stated she saw Petitioner playing cards when lockdown was called so she wrote the charge for disobeying an order. (Appendix D).

When writing the charge officer Johnson disregarded the fact that Petitioner had been ordered by ofc. NJoku to stay out for work call or that Petitioner was housed in 4A116, a bottom tier cell, so it was impossible for him to obey an order to lockdown by the officer cycling the top tier cell doors.

Pursuant to Virginia disciplinary procedure Petitioner submitted a "Reporting Officer Response Form" to question ofc. Johnson about the charge. Petitioner asked which tier was out for recreation at the time of the charge alleged. Johnson responded that the top tier was out for recreation which would confirm that Petitioner, being a bottom tier inmate, was out for work call.

On September 29, 2021 Petitioner spoke directly to ofc. T. Johnson and explained that he should not have been written a charge because he was a worker and ofc. NJoku instructed him to remain in the pod for work call.

Officer Johnson responded, "Well, I can't take it back now." She went on to say, "You might have just got caught up in everything else that was going on." She asked Petitioner what he wanted her to do now that the charge had already been submitted. Petitioner asked her to answer the questions on the Officer Response Form truthfully.

On October 15, ~~2019~~ 2019 Petitioner was scheduled for the disciplinary hearing. At approximately 10:30 AM Petitioner was present in pod 4A awaiting officer J. Mayo to escort him to his hearing. Officer J. Mayo arrived and called another inmate, J. Harding, and advised that he would return for additional hearings when he was finished with Harding. Officer Mayo never returned for the remainder of the day.

On October 18, 2019 officer Mayo came to Plaintiffs' cell with an "appeal package" which included a "Refusal to Appear" form (Appendix E) which stated that officer Mayo asked Petitioner if he wanted to attend his hearing and that Petitioner refused. Petitioner was thus found guilty in his absence for refusing to appear. The form was signed as verified by officer J. Smith whom was the booth officer at the time of Petitioners' hearing, also by ofc. T. Mayo, and Cpt. T. D. Johnson. Included on the "Refusal to Appear" form were the underlined words "outside rec". Petitioner immediately

questioned ofc. Mayo. Mayo responded, "I told them you wanted to go to your hearing but they asked me where you were and you were outside." ~~Plaintiff~~ Petitioner explained that it was impossible that he was outside because his pod did not have outside rec on the day of the hearing. Ofc. Mayo stated, "That's between you and [officer] J. Smith."

The appeal package included the disposition which per procedure was reviewed by Unit Manager T.S. Foreman. UM Foreman approved the decision including the falsified refusal to appear form. (appendix F).

On October 20, 2019 Petitioner wrote an informal complaint concerning officer Smith falsifying Petitioners refusal to appear. Previously, Petitioner had questioned Smith about the situation to which Smith responded that ofc. Mayo had come to her with the form requesting that she sign it. She stated that since she didn't know whether Petitioner had been outside or not and since Mayo worked with the disciplinary hearings she "Just signed it". Hearings officer J. Feltner responded to the complaint stating that it was an improper challenge to a disciplinary offense. She additionally verified that when a refusal to appear form is recieved, it is institutional practice to have it verified by ofc. Mayo and another staff/hearings officer. (appendix G.)

About two weeks later Petitioner spoke with Mayo asking about the

discrepency between which officer, Mayo or Smith, alleged that Petitioner was outside during his hearing. Mayo became belligerant yelling, "I told you to appeal it! If you got a problem with it then you can write whoever you want about it. the ~~asswipe~~ warden. the governor. my first name is John!"

Consequently, Petitioner appealed the decision by the HHD challenging the validity of the "refusal to appear" form. The basis stemmed from the use of the falsified allegation as reason for finding guilt. HHD J. Fellner stated in her "reason for decision." "... based upon the reporting officer stating that she gave the accused several direct orders to lock down however the accused refused and continued to play cards. based upon the accused refusal to appear by attending outside rec instead of his having the accused was found guilty in his absence." The refusal was verified by CO Mayo. CO T. Smith who was booth officer and Cpt. T. D. Johnson who was also present..." (appendix F).

Pursuant to the Operating Proredure Petitioner appealed the conviction to Warden Israel Hamilton challenging the "refusal to appear". Hamilton denied the appeal stating he could find no serious proredural error. (appendix H).

On January 7, 2020 Petitioner met with counselor Thorne to conduct his annual review. a hearing conducted to review a prisoner's conduct during the previous annual cycle. The review includes a determination of the

prisoners good time earning level for the following cycle. Since the abolishment of parole in Virginia in 1995 Virginia inmates may recieve a maximum of 4.5 days of good time credit per every 30 days served. The credits are administered according to the inmates class level which ranges from 1 to 4. At level 1 the inmates recieves 4.5 days and at level 4 recieves zero days. Factors for assignment to a specific class level include remaining infraction free during the previous cycle. During the Jan. 7, 2020 reviews counselor Thorne assigned Petitioner at class level 2 as a result of his failure to remain infraction free due to the infraction in question. (appendix I). At class level 2 Petitioner would only recieve 3 days per 30 days served, 1.5 days less than the maximum. As the current Virginia law stands, recouperating any loss of good time credit is not possible through any normal administrative process. Accordingly, Petitioner lost the additional 1.5 days per 30 days for the entire annual cycle.

Although an appeal of a category 2 offense was final with the warden, Petitioner wrote to the Va. DOC Offender Discipline Unit and explained the violation of due process. On February 13, 2020 the ODU, after an investigation revealing that Petitioner did not attend outside rec on the date of the hearing, overturned

the conviction: (appendix J).

On February 21. 2020 Petitioner was transferred to the Keen Mountain Correctional Center for an unrelated administrative matter. Once there. Petitioner requested Counselor Booth to conduct an "interim review". a hearing to correct any errors from the previous annual review. Per policy Counselor Booth told Petitioner that he would have to first seek approval of the Unit Manager.

On February 25. 2020 Petitioner spoke with UM Fields. the UM of the housing unit he was assigned to and requested the interim review. Petitioner explained the refusal to appear allegation and how after the conviction was overturned the results were still depriving him of good time credits as the conviction was counted at the annual review. The interim review was the only process that could redo the error of the annual review. UM Fields responded to Petitioner. "Just because it was overturned. doesn't mean your innocent." UM Fields accordingly refused to conduct the interim review. Over the course of the next few months Petitioner continued to requeste the interim review but was continuosly denied. Petitioner filed a complaint against Fields for the refusal to conduct the interim review which was denied through each level of the grievance process.

On July 13. 2020 Petitioner filed a civil rights complaint in the U.S.

REASONS FOR GRANTING THE PETITION

III. STATE CREATED LIBERTY INTEREST

This court held in Hewitt v. Helms 459 U.S. 460, that due process may be triggered via state created liberty or property interests. Petitioner here, asserted throughout the case and appeal that the state of Virginia within its laws and administrative procedures has used explicitly mandatory language creating a constitutionally protected property interest in its prisoners good time and good time earning levels. (references appear in appendix). Petitioner demonstrates the created interest as follows:

To state a procedural due process violation, a Plaintiff must (1) identify a protected liberty or property interest: and (2) demonstrate deprivation of that interest without due process of law. Petitioner asserts the denial of the disciplinary hearing by respondents submitting a falsified refusal to appear form satisfies the second prong. This court has held that the right to be heard is inherent in the right to due process. Mathews v. Eldridge 424 U.S. 319. Petitioner, thus turns to the first prong in identifying a property interest which would trigger due process.

This court held in Wolff v. McDonnell 418 U.S. 539 that inmates have no constitutional right to good time credits derived from the constitution its

itself. Therefore, the question is whether the state has created an expectation or interest in Petitioners's good time level and credits. This Court created a two step analysis to reveal if a state has created an interest: Sandin v. Conner 515 U.S. 472 held (1) The nature of the interest; and (2) mandatory language and substantive limits on official discretion. establishes a state created interest. Here, the nature of the interest is Petitioners's release from confinement at an earlier date. The nature thus being liberty. Second the relevant statues and administrative procedures use unmistakably mandatory language prohibiting prison officials discretion as described below:

Code of Virginia ("COV") 53.1-202.2 provides. "Every person who is convicted of a felony... on or after January 1, 1995... shall be eligible to earn sentence credits [ESC] in the manner prescribed by this article." Petitioner is currently serving a term of incarceration for a felony conviction of a felony conviction from 2009. Next, COV 53.1-25 authorizes the Director of the VDOC to promulgate rules regulating an inmates's class level in relation to ESC. Then COV 53.1-202.3 authorizes the rate at which an inmate may recieve ESC. These statues taken together create a liberty interest that a Virginia inmate be be placed into a class level if convicted of a felony after January 1, 1995 and earn

sentence credits accordingly. The next evaluation demonstrates that an inmate, according to the VDOC Operating Procedures, maintains a liberty interest in being assigned to a specific class level according to his performance.

VDOC Operating Procedure ("OP") 830.3(V)(C) states: "Each good time award evaluation must be based on the offenders performance during the entire preceding year in the areas of offender performance and responsibility as follows." First to note, this subsection does not pertain to a "change" in class level; rather, "assignment" to a class level. This mandatory language sets forth in express detail the only consideration that can be taken to determine an inmates class level. The OP then goes on to divide the evaluation into three seperate areas (1) infractions, worth 40 pts; (2) annual goals, worth 40 pts; and (3) work, worth 20 pts. Each area has specific criteria in place to reach the maximum points alloted. At each annual review an inmate is evaluated from the previous year and scores accordingly. The scores thus, start at zero and are tallied upward in the evaluation. An inmates previous score and class level would have no bearings on the current review. After all scores are totaled OP 830.3(V)(F)(2) authorizes the inmates counselor to determine the appropriate class level: L1: 85-100 pts; L2: 65-84 pts; L3: 45-64 pts; L4: 0-44 pts.

as prescribed by OP 830.3(V)(F)(3). These levels correspond with the four ESL rates prescribed in OP 830.3(VIII)(B).

Next, OP 830.3(V)(F)(7) provides that the Institutional Classification Authority ("ICA") may review the point score and determine if an override is needed. OP 830.3(V)(F)(10) then states: "Any Offender's class level point score and subsequent class level can be rejected on the basis of one or more approved overrides below. All overrides must be justified with override numbers and supporting comments noted on VACORIS." The mandatory language here being "must be justified". The ICA may not use an override without meeting the criteria of the override used. The lower court in the present case seemed to rely on it's long time holdings that the sheer availability of overrides negated all the mandatory language in respects to point totals and subsequent class level and leaves the assignment to the sole discretion of the ICA or Warden. Petitioner addresses the Operating Procedure below and demonstrates the state created interest.

It appears the determination of whether Virginia has created a liberty interest in prisoner good time rests on the interpretation of the Operating Procedure's override uses. Discretionary or non-discretionary. OP 830.3(V)(F)(10) provides seven overrides. Taken alone may cause confusion into the manner in which they're used

However. taken in context with the entirety of the Operating Procedure. it's revealed that these overrides are used in a non-discretionary manner with prerequisites. which if not met. leave the overrides unavailable for use. It would stand to reason that if the Procedures were intended to give the ICA or Warden absolute discretion over an inmates class level and good time credits. there would be little to no need for seven distinct overrides versus one undefined override used at sheer discretion. Ignoring that revealing factor. Petitioner discusses each override in turn asserting that not one override is used in any discretionary manner whatsoever.

Override #2: OP 830.3 (V)(F)(10)#2 "Seriousness or number of institutional infractions warrants a lower class level." This override explicitly requires that an inmate be convicted of the necessary infractions which is governed by (V)(C)(1). The ICA or Wardens use of the override would not be "justified" if used in absolote discretion.

Override #4: OP 830.3 (V)(F)(10)#4 " Extraordinary improvement in one or more areas of evaluation warrants a higher class level". Without the inmate improving in the area of evalisation the override is not justified. The override is governed by (V)(F)(6). Likewise override #3 fits this same criteria.

Override #5 : OP 830.3 (V)(F)(10)#5 "Lack of program availability inordinately affects Class Level." When programs are unavailable inmates who make reasonable efforts, such as being placed on the waiting list, to achieve their annual goals should recieve the credit. Without the lack of programs the use of the override would not be "justified." The override is governed by (V)(D)(3)(a).

Override #6: OP 830.3 (V)(F)(10)#6 "More information needed [i.e. under investigation, longer period of adjustment need.]" If the counselor does not have the required information to complete the review this usually occurs when the inmate has not been at the institution for a full annual cycle, then a longer period of adjustment may be needed. However, when the inmate has been available through out the full annual cycle and makes available the full information, the use of the override by absolute discretion would not be justified.

Override #7 : OP 830.3 (V)(F)(10)#7 "Refusal of or removal from any required educational, program, vocational, or work assignment must result in an in an automatic override to Level III. See Instructions below." The prerequisite is clear in the language of the override. The use of the override by absolute discretion is too obviously unjustified. Likewise, override #P is clearly associated with

Override #7. These overrides are governed by (V)(F)(11).

It is hard to imagine, with the Operating Procedure's clear and concise language of the necessary predicates to the use of the overrides, that a conclusion could be made that the prison officials were given absolute discretion over an inmate's assignment to a class level and subsequent good time award. Petitioner looks to Override #1 as the only option for confusion whereas the determination of the counselor may be changed by the ICA or Warden. Petitioner demonstrates that the use is for non-discretionary purpose:

Override #1: DP 830.3(V)(F)(10)#1 "A point score in one area of evaluation is inordinately high affecting Class Level. Looking to DP 830.3(V)(C)(2). This area of evaluation is set at 40 pts. (annual goals). It then lists 4 goals to be achieved; education; programs; vocational; and other (offender's choice). The four goals average 10 pts. each. In the event that the counselor during the evaluation were to award an inmate 40 pts. for annual goals when he's met only 2 of the 4, the inmate would have then been rewarded an additional 20 pts. incorrectly. DP 830.3 (V)(F)(3) defines Class Level 1 as 85-100 pts. If the inmate has met the maximum point allocation in each of the other two areas (infractions/work) he would then be determined at Class Level 1 as he would be scoring 100 pts. However, that score would be "inordinately high" due to the additional 20 pts. that were scored incorrectly

Class Level 2 (65-84pts) would be the correct Class Level as the inmate should be scoring 80 pts. The inordinately high point score would thus be "affecting the class level". In this situation the #1 override would be justified to place the inmate in Class Level 2. In reverse an inmates point score may be inordinctely low by recieving only 20 pts. when he's met all 4 goals. Finally, if the inmate has met 3 of the 4 goals but the counselor has scored 100 pts, although the score is inordinctely high. at 90 pts the inmate would still be Class Level 1 and the score would not be affecting the Class Level. This use of the override would not be justified.

The assessment of Override #1 is relevant to all overrides. It demonstrates that they are not to be used for absolute discretion, rather, they are used to correct an inmate's Class Level when it has been incorrectly determined by the counselor. OP. 830.3.(U)(F)(7) states: "The ICA should review the point score and any supporting documentation for proper scoring and to determine if an override is needed to place the offender in the appropriate Class Level." This language clearly does not permit the ICA to use personal discretion to determine an inmates Class Level. The use of the terms "proper scoring" and "appropriate Class Level" directs the ICA to the mandatory provisions to determine what in fact is proper and appropriate. The ICA is simply a review stage of the counselors determination

and the overrides are simply tools in guiding the ICA to make the proper corrections. The facility Unit Head (Warden) is the second stage of review. OP 830.3(V)(F)(12) states: "VACORIS will generate a notification to the Facility Unit Head for review the ICA's action and approve or disapprove it. An offenders' Class Level will only be changed on Facility Unit Heads approval of the ICA action." This mandatory language shows that the Warden could not use his discretion to change an inmate's Class Level. ("it will only be changed ... [on] approval of the ICA action." id. In essence, the only authority to override the counselor's determination is the ICA, which as shown above is governed by specific mandatory language. If the Warden disapproves the ICA action, the counselor's determination cannot be changed.

It is clear that the Procedures give no discretion, let alone absolute discretion, in inmates' Class Level or good time awards. To the contrary, the language used gives Virginia inmates an expectation that when they meet the requirements set in OP 830.3(V)(C) they will be placed in the appropriate Class Level and awarded the proper good time credits. Petitioner therefore maintained a liberty interest in his Class Level and good time credits that were deprived

when Petitioner was denied his right to be heard at his hearing.

Furthermore, in respects to Respondent Fields, OP 830.1(IV)(E)(3) lists the criteria for the interim review which ~~Fields~~ Fields denied. Two of the three apply here: "(b)" An erroneous calculation of the offenders security level and/or good time awards scores" and "(c)" status change resulting from an expunged institutional infraction, detainer or other administrative action."

Petitioner's charge was overturned and expunged (appendix I) leaving the results of the January 2019 annual review that cites the infraction erroneous. Petitioner's security level and good time award scores were both affected by the erroneous calculation. Fields' denial of the review violated procedure as well as denying Petitioner's liberty interest. Any contention that Petitioner was removed from Fields' housing unit fails, where let alone the fact that Petitioner was removed and placed in segregation by Fields himself via filing a false disciplinary report, the idea that Fields could deny the review for two months then later claim that he was not responsible for the review because Petitioner was removed from the housing unit is at least to say irrational. Fields is personally liable for his denial for the period Petitioner was housed in Building B.

Lower Courts' Decision was erroneous

The lower courts decision that Petitioner had no liberty interest in his Class Level is based simply on a misinterpretation of Virginia's Operating Procedures. This Court explicitly stated in Sandin 515 U.S 472. 481-484 its desire to stray from the undesirable effects of Hewitt which encouraged prisoners to comb through prison regulations to find mandatory language which creates liberty interests by inadvertent means. The Sandin Court stressed the importance of the nature of the interest at stake. What was not discussed but of importance to the present case was whether. in reverse. the state itself could look to the technicalities of language found by combing through regulations to demonstrate that the prisoners' claimed interest is a discretionary privilege. Whether prisoner or official Sandin does not discriminate in its holding the Hewitt decision as overruled and requiring that the determination of a state created interest protected by the 14th amendment as one of nature. It is unquestioningly clear in the present case that the nature of the regulations intends to create an interest in prisoners good time earning levels and associated good time credits when prisoners adhere to the provisions set forth.

The District Court as well as the adoption by the 4th circuit clearly ignores

the Sandin holdings.

Significantly, the Virginia Courts have expressly held that this is "well settled law." Petitioner asserts that this issue is in need of the Courts opinion as due to the District Courts' holding Virginia inmates are being deprived of their 14th ammdment rights to due process from this long standing erroneous holding in the state of Virginia. Additionally, a holding on this issue may clarify the states' use of the overruled process of combing through regulations to deny interests versus what stands now as a bar to only finding interests.

II. Leniency in construing Pro Se Litigant Civil Rights Complaints

The District Court, via a footnote, cited several prior decisions holding that a plaintiff may not amend his complaint via briefing. The District Court then refused to address Petitioners' substantive due process claim. The appeals court in adopting the district courts holdings contradicts virtually every other circuit whove consistently held that pro se litigants' civil rights complaints should be held to less stringent standards than those drafted by attorneys. The rationale is to allow indigents who cannot afford the costs of legal expenses to present valid constitutional violations. Otherwise, prisoners could be abused and violated by prison officials without recourse contingent upon the prisoners financial ability

education, intelligence, or legal training. The District Court dismissed Petitioner's due process claim on the basis that Petitioner did not artfully seperate the procedural due process statement of the claim from the substantive due process claim when he stated that his due process rights were violated. This is highlighted where the complaint did not cite either "procedural" or "substantive" yet the court suasponte interpreted the complaint to address procedoral. This was in error as the facts contained in the complaint clearly established a substantive due process claim. The question presented to this Court by Petitioner seeks to establish the necessity of civil rights complaints drafted by indigent, untrained pro se litigants, to be construed on the facts contained therein versus, the construction and format of the complaint.

CONCLUSION

Petitioner, Knarsten O. Allen, hereby submits this petitions on March 3, 2022 and respectfully requests the Court to give due consideration to the questions presented herein.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Karsten O. Allen

Date: March 3, 2022