

22-5031

No. _____

FILED

JUN 16 2022

OFFICE OF THE CLERK
SUPREME COURT OF TEXAS

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

THOMAS SAWYER — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN, ET. AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT COURT OF APPEALS / WESTERN DIST. OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

THOMAS SAWYER
(Your Name)

610 FM 624 COTULLA UNIT
(Address)

COTULLA, TX. 78014
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

WHETHER PETITIONER'S CONVICTION VIOLATES THE FIRST, FIFTH AND FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES IN THAT THE DISTRICT COURT HAS BEEN USING A RACIAL DESIGNATOR OR MONIKER IN THE CAPTION OF PETITIONER'S CASE NUMBERS OF "BL" TO REMIND ITSELF THAT PETITIONER IS A "BLACK" LITIGANT AND THAT BECAUSE OF HIS RACE THE DISTRICT COURT HAS ERRONEOUSLY DENIED HIS CASE IN WHICH THE FIFTH CIRCUIT HAS GONE ALONG, SIMPLY BY DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY.

WHETHER THE PETITIONER'S DENIAL TO CALL AND QUESTION WITNESSES, DENIAL TO PRESENT VIDEO TAPES SHOWING EVENTS AND DOCUMENTARY EVIDENCE, DENIAL OF DISCOVERY AND ALL SUBSEQUENT FOLLOWING AS MOOT, DENIAL OF PROCEDURAL DUE PROCESS AND ADEQUATE ACCESS TO COURT AND ADEQUATE SELF REPRESENTATION, DENIAL OF INALIENABLE RIGHT TO URINATE, MASTURBATE, DEFECATE, AND DISTRICT COURT'S ACTING AS COUNSEL FOR ~~AND~~ RESIDENTS, SUBJECTING PETITIONER TO GENDER DISCRIMINATION, AND HIS RIGHT TO BE SECURE IN ~~THE~~ HIS PERSONAL INTEGRITY BY NOT BEING VIEWED NUDITY BY FEMALE GUARDS, AND WHETHER THE EVIDENCE IS INSUFFICIENT. ALL THAT WOULD PROVE HIS INNOCENCE AND DENIAL OF HIS CONSTITUTIONAL RIGHTS BY SYSTEMATICALLY REFUSING TO ADDRESS THE CASE ON THE MERITS SIMPLY BY DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY.

WHETHER PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHTS TO ACCESS TO COURT AND DUE PROCESS IN VIOLATION OF THE FIRST, FIFTH AND FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES IN THAT AFTER HE FILED HIS NOTICE OF APPEAL IN CASE NO. 7-15-CV-92 ON 4-25-22, HE WAS IMMEDIATELY RETALIATED AGAINST BY BEING TRANSFERRED THE VERY NEXT DAY ON 4-26-22 TO THE COTULLA UNIT WHERE APPELLEES KNOW THERE IS NO FEDERAL SUPPLEMENTS, NOR FEDERAL REMOVERS, NOR ANY TITLE 28 VOLUMES

OF ANY TYPE, NOR UNITED STATES AGENT, ETC., KNOWING FULL WELL PETITIONER WOULD NOT HAVE ACCESS TO THE CORRECT TOOLS AND/OR ADEQUATE COURT CASES TO FILE A WRIT OF CERTIORARI IN CASE NO. 7-19-CV-050-0-BP AND APPEAL IN CASE NO. 7-15-CV-92-0, WHETHER APPELLEES CONFIRMING OR INTERFERING HIS 4-25-22 NOTICE OF APPEAL, ETC., VIOLATES HIS FIRST AMENDMENT RIGHT TO ACCESS TO COURT,

WHETHER PETITIONER HAS BEEN DENIED ACCESS TO COURT AND DUE PROCESS OF LAW IN VIOLATION OF THE FIRST, FIFTH AND FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES IN THAT ALTHOUGH IN HIS REQUEST FOR A CERTIFICATE OF APPEALABILITY (R-COA) THAT HE MAKES A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND ESTABLISHED THAT REASONABLE JURISTS WOULD FIND THE DECISION OF THE DISTRICT COURT TO DENY RELIEF DEBATABLE OR WRONG, OR THAT THE ISSUES THAT HE RAISED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER, HE WAS ERRONEOUSLY DENIED R-COA. WHETHER THE FIFTH CIRCUIT COURT OF APPEALS FEELS IT CAN OVERRULE THIS HONORABLE UNITED STATES SUPREME COURT'S DECISION IN BULK KNOWING THIS COURT HEARS ONLY 1% OF CASES SUBMITTED AND THAT THE LIKELIHOOD OF THIS COURT REVERSING THIS IS NIL.

WHETHER, SINCE: (1) FEMALE GUARDS HAVE THE RIGHT TO WORK IN MALE PRISONS; (2) MALE GUARDS HAVE A RIGHT TO WORK IN FEMALE PRISON; (3) FEMALE INMATES HAVE SEXUAL RIGHTS IN PRISON; (4) AND NOW DUE TO NEW LAWS EVEN THE LGBTQ COMMUNITY HAVE SEXUAL RIGHTS IN PRISON (AND OUT); HOWEVER, THERE IS NO CASE LAW THAT SPECIFICALLY ADDRESS AND PROTECT HETEROSEXUAL MALE PRISONER'S SEXUAL RIGHTS IN PRISON AND WHETHER PETITIONER AND OTHERS SO SIMILARLY SITUATED HAVE AN INALIENABLE RIGHT TO URINATE, DEFECATE AND MASTURBATE AND BE FREE FROM GENDER DISCRIMINATION, AND WHETHER THE DENIAL OF THESE RIGHTS VIOLATE THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE ~~FIFTH~~ FIFTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION,

WHETHER PRISON RULES AND REGULATIONS STILL CREATE AN INDE-
PENDANT ENTITLEMENT OR LIBERTY INTEREST PROTECTED BY THE 5TH
AND 14TH AMENDMENT OF THE U.S. CONSTITUTION, WHETHER PETITIONER'S 1ST,
5TH AND 14TH AMENDMENT RIGHTS WERE VIOLATED BY THE TRIAL COURT'S
FAILURE TO REVIEW INDEPENDENT GRIEVANCES CONCERNING THE CHARGING
OFFICER'S ACTS AND/OR OMISSIONS PERTAINING TO THE CHARGE, WHETHER
THE TRIAL COURT'S ORDERING RESPONDENT PRISON OFFICIALS TO PROVIDE
ALL EVIDENCE FAVORABLE ONLY TO RESPONDENT'S PROSECUTION AND DEFENSE
AND DISREGARD ANY AND EVERYTHING FAVORABLE TO PETITIONER'S
CLAIMS OF CONSTITUTIONAL VIOLATIONS OF THE 1ST, 5TH AND 14TH AMEND-
MENT, WHETHER TRIAL COURT ERRED IN FINDING PETITIONER FAILED TO
MENTION IN GRIEVANCE A DENIAL OF ACCESS TO COURT (WHEN IN FACT
THE TRIAL COURT FAILED TO ORDER THE VERY GRIEVANCE THROUGH
DISCOVERY REQUEST BY PETITIONER), WHETHER AFTER RESPONDENT HAD
FILED HIS ANSWER AND WHILE PETITIONER WAS EFFECTING HIS REPLY
THERE TO, AND AFTER THE TIME HAD EXPIRED FOR RESPONDENT TO FILE
HIS ANSWER, THE TRIAL COURT ERRED IN ORDERING RESPONDENT TO
FILE A SECOND ANSWER AND ADVISED HIM EXACTLY WHAT RESPONDENT
NEEDED TO CORRECT OR FILE AND WHAT HE WAS INCORRECT ABOUT
BECAUSE PETITIONER HAD PREVIOUSLY PREVAILED ON THE SAME ISSUE
BEFORE THE TRIAL COURT IN ANOTHER CASE, IN VIOLATION TO ADEQUATE
AND EQUAL ACCESS TO COURT, DUE PROCESS AND EQUAL PROTECTION OF THE
LAW.

LIST OF PARTIES

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

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

THOMAS SAWYER

BOBBY LUMKIN; GUARD FNU JOHNSON

RELATED CASES

[POSSIBLY: (SAWYER V DIE, ET AL, NO. 7-15-CV-92-0; 16-10238 (5TH CIR 2017); NORTHERN DISTRICT CWT, (MARCH 30, 2022))]

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	26

INDEX TO APPENDICES

APPENDIX A	DECISION OF THE UNITED STATES COURT OF APPEALS	A.1
APPENDIX B	ORDER OF THE UNITED STATES DISTRICT COURT	B.1
APPENDIX C	ORDER OF THE UNITED STATES MAGISTRATE	C.1
APPENDIX D		
APPENDIX E		
APPENDIX F		

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BANKERS LIFE & CASUALTY CO. V CRENSHAW, 486 US 71 (1988)	22, 23
BUCK V. DAVIS, 137 S.Ct 759 (2017)	7, 8, 9, 12, 14
CANERY V. BOARDMAN, 16 F.3d 183 (7TH CIR. 1994)	23
CUMBEY V. MEAREHUM, 684 F.2d 712 (10TH CIR. 1982)	17, 21
FORTNER V. THOMAS, 983 F.2d 1024 (11TH CIR. 1992)	17, 21
FORTS V. WARD, 621 F.2d 1210 (2ND CIR. 1980)	17, 21
GUATARDO V. ESTELLE, 580 F.2d 748 (5TH CIR. 1978)	15, 16
HAINES V. KERNER, 72 S.Ct 594 (1972)	2
HEWITT V. HELMS, 459 US 460 (1983)	25

STATUTES AND RULES

TITLE 28 USC § 2253	7, 8, 12
TITLE 28 USC § 2254	22

V.T.C.A., PENAL CODE § 107(a)(4)	21
V.T.C.A., PENAL CODE § 49.04	21
V.T.C.A., PENAL CODE § 43.21	15
V.T.C.A., PENAL CODE § 21.07	15

OTHER

(TABLE OF AUTHORITIES CONT'D)

	AGE
JACKSON V. THORNBURGH, 907 F.2d 194 (DC CIR. 1990)	22, 23
KENT V. JOHNSON, 821 F.2d 1220 (6TH CIR. 1987)	17, 21
LINCH V. MURPHY, 96 F.3d 856 (7TH CIR. 1996)	22
MILLER-EL V. COCKRELL, 537 US 322 (2003)	9
MONTANA V. PATTERSON, 894 SW.2d 812 (TEX-TYLER 3/1994)	15
ORDAZ V. MARTIN, NO. 93-4170, 1993 WL 373830 (5TH CIR. 1993)	17, 18, 19
SAWYER V. TWEET, ET. AL, NOS. 14-11164; 14-11165; 14-11174 (5TH CIR. 2016)	13
SAWYER V. DIE, ET. AL, NO. 7-15-CV-92-0; 16-10238 (5TH CIR. 2017); NORTHERN DISTRICT COURT (MARCH 30, 2022)	13
SAWYER V. STEPHEN, NO. 7-15-CV-091-0 (N.D. TEX. NOV 6, 2015)	24
SEPULVEDA V. RAMIREZ, 967 F.2d 1413 (9TH CIR. 1992)	17, 21
SCHEVER V. RHODES, 94 SC 1683 (1974)	9
THOMAS V. PATTERSON, 985 F.2d 202 (5TH CIR. 1993)	15, 16
THORNBURGH V. ABBOTT, 490 US 401 (1989)	15, 16
U.S. V. COLLAZO, 117 F.3d 793 (5TH CIR. 1997)	21
WOLFF V. MCKONALD, 418 U.S. 539 (1974)	5, 20, 21, 25

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 N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**: N/A

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

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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 MARCH 28, 2022.

[] No petition for rehearing was timely filed in my case. ONE WAS FILED HOWEVER, PRISON OFFICIALS INTERCEPTED SAME, BASED ON INFORMATION AND BELIEF.

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

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

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

[] For cases from **state courts**: N/A

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FIRST AMENDMENT'S CONSTITUTIONAL PROVISIONS TO ACCESS TO COURT,
THE FOUR AMENDMENT'S CONSTITUTIONAL PROVISIONS TO PERSONAL INTEGRITY,
THE FIFTH AMENDMENT'S CONSTITUTIONAL PROVISIONS TO DUE PROCESS OF LAW,
THE FOURTEENTH AMENDMENT'S CONSTITUTIONAL PROVISIONS TO DUE PROCESS OF LAW,
THE FOURTEENTH AMENDMENT'S CONSTITUTIONAL PROVISIONS TO EQUAL PROTECTION UNDER
THE LAW.

TITLE 28 USE § 2253

TITLE 28 USE § 2254

V.T.C.A., PENAL CODE § 107(a) (40)

V.T.C.A., PENAL CODE § 49.04

STATEMENT OF THE CASE

YOUR PETITIONER IS A LAYMAN AT LAW AND PROCEEDING PRO SE. THE MERITS OF THE INSTANT CASE MAY NOT BE IN DISPUTE AT PRESENT BECAUSE THE FIFTH CIRCUIT COURT OF APPEALS DID NOT REACH THE MERITS OF HIS HABEAS CORPUS, ALTHOUGH IT SHOULD HAVE, AS IT SYSTEMATICALLY DENIED PETITIONER'S CERTIFICATE OF APPEALABILITY (COA). PETITIONER PRESENTED IN HIS HABEAS CORPUS THAT HE WAS WRITTEN A FALSE DISCIPLINARY CASE, PETITIONER WAS CONVICTED FOR THE OFFENSE OF "MASTURBATING IN PUBLIC," YET THE EVIDENCE CLEARLY SHOWS HE WAS MASTURBATING IN HIS ASSIGNED CELL. ON MARCH 27, 2018, PETITIONER WAITED UNTIL AFTER BOTH PRISON GUARD JOHNSON (THE CHARGING OFFICER) AND THE PRISON GUARD HAD COMPLETED THEIR 12:30 AM, CELL COUNT. HE THEN SHIED OR COVERED HIS NOOK BY PLACING A TOWEL OVER SAME. THIS IS STANDARD CORRECTIONAL PROTOCOL TO SHOW RESPECT TO FELLOW CONVICTS AND GUARDS. GUARD JOHNSON RETURNED TO PETITIONER'S CELL AROUND 1:15 AM, TO SEE WHY HE HAD THE TOWEL UP AND ADMITTED DURING THE DISCIPLINARY HEARING THAT AFTER PETITIONER INFORMED HER THREE (3) TIMES THAT HE WAS ALRIGHT AND INSTRUCTED HER NOT TO KNOCK THE TOWEL DOWN, JOHNSON INSISTED SHE HAD TO SEE WHAT HE WAS DOING AND THEREAFTER KNOCKED THE TOWEL DOWN AND DISCOVERED THAT HE WAS MASTURBATING. IT WAS JOHNSON THAT EXPOSED HERSELF TO PETITIONER'S MASTURBATING AND NOT HIM. AFTER JOHNSON WAS QUESTIONED BY HER IMMEDIATE SUPERVISOR, 7 BLOC DEPT. SGT. FEWERS WHO FAILED OR REFUSED TO AUTHORIZE OR APPROVE THE CASE AND WHOM HAD THE SOLE AUTHORITY TO DO SO ONE WAY OR THE OTHER, AS TO HOW COULD JOHNSON WANT TO DISCIPLINE APPELLANT FOR MASTURBATING WHEN IN FACT IT WAS JOHNSON THAT KNOCKED THE TOWEL DOWN, GUARD JOHNSON THEN CALLED HER HUSBAND SGT. JOHNSON WHOM WAS NOT ASSIGNED TO 7 BLOC WHO CAME OUT OF PLACE — LEAVING HIS ASSIGNED DUTY POST — TO COME TO 7 BLOC TO GET THE I-210 FORM (DISCIPLINARY WRITE-UP) FROM HIS WIFE

AND ERRONEOUSLY HAD SGT. WANDELL SIGN-OFF ON SAME, FALSELY CLAIMING HE INVESTIGATED THE CASE BY INTERVIEWING PETITIONER.

THE DISCIPLINARY OFFICER (DHO) DENIED PETITIONER TO CALL WITNESSES THAT WOULD TESTIFY THAT IT WAS NOT 12:30 P.M. OR COUNT TIME AS GUARD MR. JOHNSON TESTIFIED, DENIED SGT. WANDELL WHO WOULD TESTIFY HE NEVER INVESTIGATE CASE, DENIED SGT. JOHNSON AND SGT. ~~FEEDERS~~ FEEDERS WHO WOULD HAVE STATED THAT BECAUSE SGT. FEEDERS REFUSED TO O-KAY OR ADVISE THE DISCIPLINARY CASE, SGT. JOHNSON DID SO FOR HIS WIFE; THE DHO REFUSED TO ALLOW THE VIDEO TAPES THAT WOULD PROVE IT WAS NOT COUNT TIME, THAT SGT. WANDELL NEVER INVESTIGATED, ETC., AND THAT PETITIONER WAS NEVER PROVIDED WITH A COPY OF THE DISPOSITION OF THE DISCIPLINARY CASE.

THE USM AND DISTRICT COURT HELD THAT PETITIONER HAD NO RIGHT TO CALL AND QUESTION WITNESSES, THAT HE HAD NO RIGHT TO VIDEO TAPES, ETC., AND ~~WIT~~ THAT "THE [DHO] CAPTAIN IS NOT RESPONSIBLE FOR GIVING [PETITIONER] THE DISPOSITION OF THE DISCIPLINARY CASE," THUS OVERRULING WOLFE SUPRA (SEE GRIEVANCE NO. 2018139604). DISTRICT COURT DENIED ALL DISCOVERY REQUEST BY PETITIONER THAT WOULD ASSIST IN PROVING HIS CASE AFTER THE COURT ORDERED RESPONSE TO PROVIDE ONLY EVIDENCE THAT SUBSTANTIATED RESPONSES' ANSWERS.

ALTHOUGH PETITIONER FILED ADEQUATE AND TIMELY REQUEST FOR CERTIFICATE OF APPEALABILITY, THE FIFTH CIRCUIT COURT OF APPEALS TACITLY WENT ALONG WITH THE DECISIONS OF THE DISTRICT COURT BY ERRONEOUSLY DENYING CERTIFICATE OF APPEALABILITY REQUEST OR REQUEST FOR CERTIFICATE OF APPEALABILITY (R-COA).

ALL IN ALL, PETITIONER WAS SEVERELY DISCIPLINED, REDUCE IN STATUS, LOST GOOD TIME WHICH EXTENDED HIS PRISON TERM. HIS STEP 1 AND STEP 2 GRIEVANCE APPEAL WERE DENIED.

AGAIN, THE FIFTH CIRCUIT DECLINED TO ADDRESS THIS CASE ON THE MERITS. NEITHER DID IT ADDRESS TO OWN PRESIDENT THAT A CASE COULD NOT BE ADMITTED WHEN DISCOVERY REQUEST IS DENIED (SEE PETITIONER'S "BRIEF IN SUPPORT OF CERTIFICATE OF APPEALABILITY AND BRIEF ON THE MERITS") ("BRIEF").

MOREOVER, THE DISTRICT COURT HAS BEEN USING A RACIAL DESIGNATOR OR MONIKER IN THE CAPTION OF PETITIONER'S CASE NUMBERS OF "BL" TO REMIND ITSELF THAT PETITIONER IS A "BLACK" LITIGANT AND THAT BECAUSE OF HIS RACE THE COURT HAS ERRONEOUSLY ADMITTED HIS CASE IN WHICH THE FIFTH CIRCUIT HAS GONE ALONG WITH BY REFUSING TO ADDRESS THE CASE ON THE MERITS.

ALTHOUGH THE RACIAL DESIGNATOR OR MONIKER WAS NOT USED IN THE PRIMARY CASE, THE FACT THAT THE DISTRICT COURT JUDGE IS ONE AND THE SAME WHO DID IN FACT USE SAME IN THE OTHER STATED CASES, AND IT CAN NOT BE SAID THAT HIS PREJUDICE AND/OR RACISM DID NOT INFLUENCE HIS DECISION HEREIN. NOT ONLY DID IT PRESENT INJUSTICE TO PETITIONER AND OTHERS SO SIMILARLY SITUATED, BUT IT ALSO UNDERMINED THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS.

REASONS FOR GRANTING THE PETITION

WHAT IS EXTRAORDINARY AND COMPELLING ABOUT THE INSTANT CASE IS THE HONORABLE FIFTH CIRCUIT COURT OF APPEALS FEELS IT CAN OVERRULE THIS HONORABLE UNITED STATES SUPREME COURT'S DECISION IN BUCK V. DAVIS, 137 S.Ct 759 (2017), WHERE THIS COURT EXPLICITLY ANNOUNISHED THE FIFTH CIRCUIT THAT IT WAS APPLYING THE "JURISTS OF REASON STANDARD" WAY TOO STRENUOUSLY WHEREBY THE FIFTH CIRCUIT WAS SYSTEMATICALLY DENYING ALL R-COA IN ERR. THE FIFTH CIRCUIT CONTINUES TO DO SO KNOWING THIS COURT HEARS ONLY 1% OF CASES SUBMITTED AND THUS KNOWINGLY AND INTENTIONALLY OVERRULING THIS COURT'S BUCK BECAUSE THE LIKELIHOOD OF THIS COURT REVIEWING OR RECONSIDERING THIS ISSUE, ESPECIALLY IN A NON-EXTRAORDINARY CASE, IS ONE (1) IN A MILLION AND THUS CORRECTING THE FIFTH CIRCUIT IS BASICALLY NIL, THE FIFTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN BUCK AND CONSIDERATION BY THIS COURT IS NECESSARY TO SECURE AND MAINTAIN UNIFORMITY OF THIS COURT'S DECISION.

PETITIONER FULLY AND FURTHER SET OUT FACTS IN HIS "BRIEF IN SUPPORT OF CERTIFICATE OF APPEALABILITY AND BRIEF ON THE MERITS" (BRIEF) FACTS AND LAW WHICH SUBSTANTIATES HIS RIGHT TO A COA OF WHICH IT APPEARS CLEAR THE COURT OF APPEALS MISTAKENLY FAIL TO READ, ALL OF WHICH HE HERE AND NOW INCORPORATES INTO THE INSTANT PLEADING, IN ITS ENTIRETY, FOR THE SAKE OF BREVITY AND JUST ADJUDICATION. THE FIFTH CIRCUIT ERRONEOUSLY ASSUMED ALL PETITIONER PRESENTED CONCERNING COA WAS IN HIS R-COA AND THEREFORE NEVER LOOKED AT HIS BRIEF.

PETITIONER SPECIFICALLY STATED IN THE BRIEF IN THE MOTION ENTITLED: "II APPELLANT'S BRIEF IN SUPPORT OF CERTIFICATE OF APPEALABILITY" :

"IN THIS COURT'S ORDER OF MARCH 18, 2021, THIS COURT ISSUED ORDER THAT APPELLANT FILE HIS BRIEF IN SUPPORT OF CERTIFICATE OF APPEALABILITY (COA) TO COMPLY WITH 28 USC § 2253, 28 USC § 2253(c)(1) PRESCRIBES, IN PERTINENT PART, THAT UNLESS

A CIRCUIT JUSTICE OR JUDGE ISSUES A COA, AN APPEAL MAY NOT BE TAKEN TO THE COURT OF APPEALS FROM THE FINAL ORDER IN A HABEAS CORPUS PROCEEDING IN WHICH THE DETENTION COMPAINED OF ARREST OUT OF PROCESS ISSUED BY A STATE COURT, TO OBTAIN A COA, APPELLANT IS REQUIRED TO MAKE A SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT. SEE BUCK V. DAVIS, 137 S. Ct. 759 (2017); 28 USC § 2253(c)(2). THE COA INQUIRY IS NOT COEXTENSIVE WITH A MERITS ANALYSIS. -Id. AT THE COA STAGE, THE ONLY QUESTION IS WHETHER THE APPELLANT HAS SHOWN THAT JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS.

"THE APPELLANT IN THE INSTANT CASE HAS CLEARLY SET OUT CONSTITUTIONAL VIOLATIONS THAT: (1) THE EVIDENCE IS INSUFFICIENT; (2) THAT APPELLANT HAS A CONSTITUTIONAL CREATED LIBERTY INTEREST THAT WERE VIOLATED; (3) THAT HE HAS A RIGHT TO FILE GRIEVANCES IN FURTHERANCE OF HIS DEFENSE; (4) THAT HE HAS A RIGHT TO HAVE ALL GRIEVANCES ADJESSED CONCERNING HIS DEFENSE; (5) THAT HE HAS A RIGHT TO HAVE ALL MOTIONS RULED ON; (6) THAT HE HAS A RIGHT TO DUE PROCESS, ACCESS TO COURT, RIGHT TO CALL AND QUESTION WITNESSES AND PRESENT EVIDENCE, AND THE RIGHT TO ADEQUATE SELF REPRESENTATION; (7) THAT HE HAS AN INALIENABLE RIGHT TO URINATE, DEFECATE, MASTURBATE, ETC.; (8) THAT HE HAS A RIGHT TO ADEQUATE ACCESS TO COURT; (9) THAT HE WAS DENIED ADEQUATE AND EQUAL ACCESS TO COURT; (10) THAT HE WAS SUBJECTED TO GENDER DISCRIMINATION; AND (11) THAT HE WAS DENIED TO BE SECURE IN HIS PERSONAL INTEGRITY AND NOT BE FORCED TO BE VIEWED NUDE BY GUARDS OF THE OPPOSITE SEX. ALL THESE CONSTITUTIONAL VIOLATIONS ARE SET OUT HEREIN IN HIS BRIEF ON THE MERITS.

"IN CONSIDERING THESE VIOLATIONS, THIS COURT SHOULD RESIDE WITHOUT FULL CONSIDERATION OF THE FACTUAL OR LEGAL BASES ADDUCED IN SUPPORT OF THE CLAIMS. -Id. APPELLANT HAS MADE A SUBSTANTIAL SHOWING OF A DENIAL OF HIS CONSTITUTIONAL RIGHTS, AS STATED ABOVE AND ALSO IN HIS BRIEF ON THE MERITS BELOW, THEREFORE THIS COURT SHOULD GRANT HIS COA. -Id. FURTHERMORE, JURISTS OF REASON COULD DISAGREE WITH THE TRIAL COURT'S RESOLUTIONS OF APPELLANT'S CONSTITUTIONAL CLAIMS OR THAT JURISTS COULD CONCLUDE THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER, THEREFORE THE GRANTING OF A COA IS APPROPRIATE. -Id." (BRIEF, P. 1-16).

PETITIONER'S STATING ALL THIS WAS AND IS SUFFICIENT FOR THE HONORABLE FIFTH CIRCUIT TO HAVE GRANTED HIS R-COA AND THAT HONORABLE UNITED STATES SUPREME COURT SHOULD DO SO NOW.

THE FIFTH CIRCUIT SHOULD HAVE CONSIDERED THIS STATED PORTION OF PETITIONER'S BRIEF. IT SHOULD HAVE FURTHER NOT HELD PETITIONER'S R-COA AND BRIEF TO THE STRINGENT STANDARDS OF A LAWYER (HAINES V. KERNER, 92 S.Ct 594 (1972)) BUT RATHER SHOULD HAVE LIBERALLY CONSTRUED THEM IN LIGHT MOST FAVORABLE (SCHERER V. RHODES, 94 S.Ct 1683 (1974)), AS PETITIONER IS A LAYMAN AT LAW AND HAS NO FORMAL TRAINING IN LEGAL MATTERS AND IS PROCEEDING PRO SE, AND THUS THIS COURT SHOULD HAVE CONCLUDED BASED ON EVERYTHING PETITIONER PRESENTED THAT HE IN FACT MADE THE REQUIRED SHOWING FOR A COA.

FURTHERMORE, AND MORE SPECIFICALLY, ^{IF} YOUR PETITIONER MAY REITERATE THE TOTALITY OF ALL OF THE ABOVE, IN MINUTE DETAIL, FOR A FULL ILLUSTRATION, IN PETITIONER'S R-COA HE STATED THAT HE HAD "FILED WITH THE DISTRICT COURT HIS: (1) PETITION FOR WRIT OF HABEAS CORPUS (WRT), (2) REPLY TO RESPONDENT'S ANSWER AND BRIEF (REPLY), AND (3) OBJECTION TO THE USM'S FINDINGS (OBJECTION), ALL OF WHICH HE HERE AND NOW INCORPORATES INTO THE INSTANT PLEADING, IN THEIR ENTIRETY, FOR THE SAKE OF BREVITY AND JUST ADJUDICATION," PUT EACH OF SAID PLEADINGS WITHIN THE FOUR (4) CORNERS OF THE R-COA, AND IN EACH OF THESE THREE (3) SAID PLEADINGS — HIS WRT, REPLY AND OBJECTION — HE SET OUT "A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT," SEE BUCK V. NAVIS, 137 S.Ct 759 (2017); MILLER-EL V. COCKRELL, 537 U.S. 322 (2003), AND "THAT THE ISSUES THAT HE RAISES ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER" (BUCK, SUPRA; MILLER-EL, SUPRA); AND HIS STATING "... JUST OF REASON WOULD FIND IT DEBATABLE WHETHER THE APPELLANT STATES A VALID CLAIM OF DENIAL OF A CONSTITUTIONAL RIGHT....", ALL CLEARLY MADE THE REQUIRED SHOWING FOR THE GRANTING OF A COA. THIS ALONG WAS SUFFICIENT TO GRANT R-COA.

THE FACT THAT PETITIONER FILED WITH THE FIFTH CIRCUIT ON 5-17-21, HIS "REQUEST THAT THE APPEAL BE HEARD ON THE FULL RECORD," WHEREBY HE STATES THEREIN: "APPELLANT REQUEST THAT THIS HONORABLE COURT HEARS THIS APPEAL ON THE FULL RECORD FROM THE TRIAL COURT BELOW FOR JUST ADVOCATION," ALL THREE (3) OF THESE PLEAINTS — HIS WRIT, REPLY AND OBJECTION — SHOULD BE AND SHOULD HAVE BEEN BEFORE THE FIFTH CIRCUIT COURT OF APPEALS (SEE WRIT, REPLY, OBJECTION, REQUEST THAT THE APPEAL BE HEARD ON THE FULL RECORD; BRIEF; REQUEST FOR A CERTIFICATE OF APPEALABILITY (R-COA)). PETITIONER ALSO PRESENTED THIS IN HIS "MOTION FOR REHEARING AND REHEARING EN BANC" (MOTION FOR REHEARING), HOWEVER, SINCE HE NEVER RECEIVED THE COPY OF ~~THIS~~ LETTER TO THE FIFTH CIRCUIT THAT HE ENCLOSED THEREWITH REQUESTING IT BE DATE-STAMPED AND RETURNED IN THE SAME HE ARRIVED, PETITIONER PERCEIVES PRISON OFFICIALS INTERFERED SAME AS THE ONLY ALTERNATIVE OF THE FIFTH CIRCUIT JUST REFUSING TO FILE IT IS PREPOSTEROUS, PETITIONER SET OUT IN HIS MOTION FOR REHEARING HOW HE SET OUT IN HIS: (A) WRIT; (B) REPLY; AND (C) OBJECTION, SPECIFICALLY HOW JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER PETITIONER STATES A VALID CLAIM OF DENIAL OF A CONSTITUTIONAL RIGHT AND THAT JURISTS OF REASON COULD DISAGREE WITH THE TRIAL COURT'S RESOLUTIONS OF PETITIONER'S CONSTITUTIONAL CLAIMS OR THAT JURISTS COULD CONCLUDE THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER, THEREFORE HE SHOULD HAVE BEEN GRANTED A COA.

EVEN IF PETITIONER DID NOT STATE IN HIS R-COA THE SPECIFIC LANGUAGE — PERTAINING TO (A)(B) AND (C) STATED ABOVE — OF: (1) "A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT" AND/OR; (2) "REASONABLE JURISTS WOULD FIND THE DENIAL TO DENY RELIEF DEBATABLE OR WRONG" AND/OR; (3) "ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER", PETITIONER'S SAID OBJECTION PRESENT: (1) SEVERAL SUBSTANTIAL SHOWINGS OF THE DENIAL OF A CONSTITUTIONAL RIGHT, (2) HE WAS REQUESTING THE DISTRICT JUDGE, WHO IS A REASONABLE

JURIST OR JURIST OF REASON (OR HE SHOULD BE), TO FIND THE DECISION OF THE USM'S DENYING PETITIONER RELIEF DEBATABLE OR WRONG, AND (3) BY HIS VERY ACT OF FILING THE OBJECTION — AND USING SAME AS PART OF HIS R-COA — PRESENTED HIS CLAIMS DESERVE ENCOURAGEMENT TO PROCEED FURTHER. THIS WAS AND IS HIS INTENT, THE WORKING NEED NOT BE SPECIFIC.

PETITIONER IMPLICITLY AND EXPLICITLY MADE THE FIFTH CIRCUIT AWARE THAT HE MAKES "A SUBSTANTIAL SHOWING OF HIS BEING DENIED CONSTITUTIONAL RIGHTS AND THAT REASONABLE JURISTS WOULD FIND THE DECISIONS TO DENY RELIEF DEBATABLE OR WRONG OR THAT THE ISSUES THAT HE RAISES ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER, AND THE FIFTH CIRCUIT SHOULD HAVE LIBERALLY CONSTRUED SUCH, IN FACT HE SPECIFICALLY STATES:

"[PETITIONER] IS NOT GUILTY AS CHARGED AND JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE [PETITIONER] STATES A VALID CLAIM OF DENIAL OF A CONSTITUTIONAL RIGHT...." (SEE R-COA).

AGAIN, LIBERALLY CONSTRUING HIS ~~AND~~ R-COA, THE FIFTH CIRCUIT SHOULD HAVE FOUND PETITIONER ADEQUATELY PRESENTS CAUSE FOR THE GRANTING OF COA. BUCK, SUPRA.

MOST IMPORTANTLY, NO MATTER HOW MUCH PETITIONER SPECIFICALLY ARGUES HOW JURISTS OF REASON WOULD HAVE OR COULD HAVE ~~DISAGREED~~ WITH THE TRIAL COURT'S RESOLUTION OR HOW THEY WOULD HAVE OR COULD HAVE "CONCLUDED THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER," THAT ARGUMENT WOULD BE SUBJECTIVE (UNLESS HE HAD A JURIST OF REASON WHO ACTUALLY STATES THAT HE "FINDS THE DECISION OF THE DISTRICT COURT DEBATABLE" [AND WHO IS A "JURIST OF REASON" AND WHO MAKES THAT DETERMINATION]) AND THEREFORE PETITIONER JUST MAKING THESE CLAIMS WITHOUT ARGUMENT WAS AND IS SUFFICIENT (SEE R-COA).

THIS MOST HONORABLE UNITED STATES SUPREME COURT HAS CLEARLY PRESENTED TO THE HONORABLE FIFTH CIRCUIT COURT OF APPEALS THAT ANY AND EVERY "CLAIM CAN BE DEBATABLE EVEN THOUGH EVERY JURIST OF REASON MIGHT

AGREE, AFTER THE CERTIFICATE OF APPEALABILITY (COA) HAS BEEN GRANTED AND THE CASE HAS RECEIVED FULL CONSIDERATION, THAT PETITIONER WILL NOT PREVAIL...". BUCK, SUPRA; 28 USC § 2253.

THE FACT PETITIONER SPECIFICALLY INCORPORATED INTO HIS R-COA HIS: (1) WRIT, (2) REPLY, AND (3) HIS OBJECTION, AND THEY ALL DEMONSTRATE AND PRESENT "A ~~QUANTITATIVE~~ SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT" AND PETITIONER SPECIFICALLY SET OUT IN HIS R-COA THAT [PETITIONER] IS NOT GUILTY AS CHARGED AND JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE [PETITIONER] STATES A VALID CLAIM OF DENIAL OF A CONSTITUTIONAL RIGHT, "PETITIONER CLEARLY MET THE REQUIREMENT TO BE GRANTED R-COA. THIS COURT IN BUCK HELD THAT: "A CLAIM CAN BE DEBATABLE EVEN THOUGH EVERY JURIST OF REASON MIGHT AGREE [WITH THE DISTRICT COURT'S DECISION], " CLEARLY POINTING OUT THAT THE FIFTH CIRCUIT COURT OF APPEALS HAVE BEEN WAY TOO STRENUOUS ON SYSTEMATICALLY DENYING COA.

THE FIFTH CIRCUIT'S DECISION IS NOT ONLY ERRONEOUS BUT THERE IS NATIONAL IMPORTANCE OF HAVING THE U.S. SUPREME COURT DECIDE THE QUESTIONS INVOLVED. FURTHER CLARIFICATION OF THIS POINT OF LAW WILL NOT ONLY ASSIST PETITIONER BUT WILL BE FAR REACHING NATIONWIDE TO ALL THOSE SO SIMILARLY SITUATED. MOREOVER, FURTHER CLARIFICATION IS OF GREAT IMPORTANCE TO THE FEDERAL JUDICIAL SYSTEM, AND THUS THIS CASE IS IMPORTANT ENOUGH TO JUSTIFY DEVOTING THIS COURT'S LIMITED AND VALUABLE TIME, BECAUSE WITHOUT REVIEW THE LOWER COURTS WILL CONTINUE TO BE CONFUSED AND WILL CONTINUE TO SYSTEMATICALLY DENY COA (SEE R-COA, P. 1-3).

II

MOREOVER, THE DISTRICT COURT HAS BEEN USING A RACIAL DESIGNATOR OR MONIKER IN THE CAPTION OF PETITIONER'S CASE NUMBER OF "BL" IN ALL HIS PREVIOUS CASES — IN CAUSE NO.(S) 7-12-CV-185-BL; 7-13-CV-038-BL; 7-13-CV-090-BL; 7-13-CV-243-BL — TO REMIND ITSELF THAT PETITIONER IS A "BLACK" LITIGANT. AFTER PETITIONER RAISED THE ISSUE, THE TRIAL COURT CEASED TO DO SO, (AND HE ATTEMPTED TO MAKE THIS U.S. SUPREME COURT AWARE

OF THIS MATTER IN SALVEYER V. TOLSON, ET AL., NOS. 14-11164, 14-11165, 14-11174, FILED 9-27-16; WRIT RETURNED), AND IN CAUSE NO. 7-15-CV-92-0 THE DISTRICT COURT ERRONEOUSLY CLAIMS HE, THE JUDGE, IS NOT DISCRIMINATING OR RACIST AND THAT THE "BL" REFERS TO A MAGISTRATE, YET HE FAILED AND REFUSED TO NAME HIM (SEE 7-15-CV-92-0, ORDER, 12-6-19). THE DISTRICT COURT LATER, BY AND THROUGH OTHER SUBORDINATE COURT OFFICIALS AND OTHERS ERRONEOUSLY CLAIMS THE "BL" REFERS TO MAGISTRATE JUDGE E. SCOTT FOST AND TO CHIEF JUDGE BARBARA LYNN (BL), HOWEVER, THE LEGAL DIRECTORY CLEARLY DESIGNATES JUDGE FOST WITH "BI" AND CHIEF JUDGE LYNN WITH "M" (SEE TEXAS LEGAL DIRECTORIES, 2012-2021). NEITHER OF THEM HAVE BEEN ASSIGNED TO THESE CASES. THE 2012 TEXAS LEGAL DIRECTORY DOES NOT DESIGNATE ANY JUDGE WITH "BL" AND THE DISTRICT JUDGE FAILS TO RESPOND TO PETITIONER'S 3-21-21 "MOTION TO SPECIFY WHAT OR WHOM DOES 'BL' REFER" (SEE 2012 LEGAL DIRECTORY WHICH SHOWS BK, BM AND BN, ETC., BUT NO "BL"), (SEE MOTION TO SPECIFY, 3-21-21).

IT WAS NOT UNTIL PETITIONER FILED IN CAUSE NO. 7-15-CV-92, HIS 12-23-21 SIXTH MOTION FOR TRO/PI (DISTRICT COURT CLAIMS IT RECEIVED 2-10-22) AND HIS BRIEF IN SUPPORT OF TRO/PI, THAT THE FIFTH CIRCUIT DENIED R-COA ON 3-28-22 IN THE INSTANT CASE AND AT THE SAME TIME THE DISTRICT COURT DISMISSED CAUSE NO. 7-15-CV-92-0 FOR THE SPECIFIC REASON SO THE DISTRICT COURT WOULD NOT HAVE TO ADDRESS NOR GRANT PETITIONER'S SIXTH MOTION FOR TRO/PI, AS MANDATED DUE TO DEFENDANTS' FAILURE AND REFUSAL TO RESPOND TO PETITIONER'S CROSS-MOVE FOR SUMMARY JUDGMENT. PETITIONER DOES NOT BELIEVE IN COINCIDENCE. NEITHER SHOULD THIS COURT. (SEE SIXTH AND SEVENTH MOTION FOR TRO/PI).

WHAT'S EXTRAORDINARY AND COMPELLING ABOUT THE INSTANT CASE IS THAT THE MOST HONORABLE U.S. SUPREME COURT AND EVERY SINGLE CIRCUIT COURT OF APPEALS. HAVE ALL HELD THAT NO CASE CAN BE DENIED AGAINST

A LITIGANT BASED ON THE COLOR OF THEIR SKIN.

THIS HONORABLE UNITED STATES SUPREME COURT IN BUCK HAS FOUND A DISTURBING TREND THAT IN TEXAS THE COURTS CONVICT PEOPLE, NOT FOR WHAT THEY DO, BUT FOR WHO THEY ARE AND THAT IS CONVICTING PEOPLE BECAUSE OF THE 'COLOR OF THEIR SKIN'. SEE BUCK, SUPRA. AND NOW THEY ARE AT IT AGAIN.

PETITIONER HAS MADE THE FIFTH CIRCUIT AWARE OF THIS FACT IN HIS TIMELY FILED MOTION FOR REHEARING AND REHEARING EN BANC, HOWEVER, THE DISTRICT COURT AND THE 5TH CIRCUIT HAVE TAG TEAMED BY SYSTEMATICALLY DENYING PETITIONER, AND ALL PRISONERS SO SIMILARLY SITUATED, A REQUEST FOR COA, OVERRULING BUCK, SO THAT THEY WILL NOT HAVE TO OVERTURN ALL THE COA CASES THIS MOST HONORABLE U.S. SUPREME COURT WOULD OTHERWISE DEMAND REVERSAL ON.

THE DISTRICT JUDGE'S USE OF THE RACIAL DESIGNATOR OR MONIKER OF "BL" TO SIGNAL "BLACK" LITIGANT CASES HE WISHED TO LATER DISMISS SOLELY BECAUSE OF THEIR RACE AND LATER DISMISSED SAID CASES SOLELY BASED ON RACE, AS IN THE INSTANT CASE, VIOLATES PETITIONER'S, AND OTHERS SO SIMILARLY SITUATED, CONSTITUTIONAL RIGHT TO DUE PROCESS AND THE EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE 1ST, 5TH AND 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. BASED ON INFORMATION AND BELIEF, THIS HONORABLE U.S. SUPREME COURT (AND/OR SOME OTHER CIRCUIT COURT OF APPEALS) HAS PREVIOUSLY HELD THAT THE USE OF THESE TYPES OF RACIAL DESIGNATORS AND MONIKERS ARE UNCONSTITUTIONAL AND WILL NOT BE TOLERATED IN THE JUDICIARY (PETITIONER CAN NOT RESEARCH THIS ISSUE BECAUSE THE DAY AFTER HE FILED NOTICE OF APPEAL, THE DEFENDANTS TRANSFERRED HIM TO A PRISON UNIT THAT HAS NO FEDERAL BOOK CITATIONS, AS STATED ELSEWHERE HEREIN). IF NOT, ITS TIME THIS COURT ADDRESSED THIS ISSUE.

THE QUESTIONS PRESENTED ARE OF GREAT PUBLIC IMPORTANCE BECAUSE THEY AFFECT THE OPERATIONS OF PRISON SYSTEMS IN ALL FIFTY

STATES, THE DISTRICT OF COLUMBIA, AND HUNDREDS OF CITY AND COUNTY JAILS. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER PRISON DISCIPLINARY PROCEEDINGS AND SYSTEMIC RACISM AND PREJUDICE WITHIN LAW ENFORCEMENT AND THE VERY FEW TIMES IN THE JUDICIARY, ESPECIALLY IN THE DEEP SOUTH, GUIDANCE ON THE QUESTIONS ARE ALSO OF GREAT IMPORTANCE TO THE JUDICIARY. IN ADDITION, THE QUESTIONS ARE OF GREAT IMPORTANCE TO PRISONERS BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDINGS THAT MAY RESULT IN MONTHS OR YEARS OF ADDED INCARCERATION OR HARSH PUNITIVE CONFINEMENT.

III

MOREOVER, AFTER PETITIONER FILED HIS SIXTH MOTION FOR TRO/PI ON 12-23-21 AND HIS SEVENTH MOTION FOR TRO/PI ON 2-9-22, POINTING OUT INCLUDING BUT NOT LIMITED TO, RESPONDENTS' INTENTION TO, NOT ONLY OVERTURN THIS COURT'S RULING IN THORNBURGH V. ABBOTT, 490 US 401 (1989) WHICH STABLATES THE STANDARD OF NUDE MATERIAL PRISONERS MAY HAVE (SUCH AS PLAYBOY, PENTHOUSE, HWYLER, ETC.), BUT HOW RESPONDENTS IMPLEMENTED RULES TO DENY TEXAS INMATES NON-NUDE MAGAZINES (SUCH AS CURVES, SHOWTIME, STRAIGHT STUNTING, SMOOTH, ETC.) IN VIOLATION OF TEXAS STATE LAW, FEDERAL LAW AND THE HOLDINGS OF THIS U.S. SUPREME COURT, FOR THE SOLE CAUSE THAT THEY WILL NOW BE ABLE TO SHOW THAT PETITIONER WAS IN VIOLATION BY CLAIMING HE WAS MASTURBATING ON A MAGAZINE WHEN SAID MAGAZINE WAS UNLAWFUL TO BEGIN WITH. SEE MONTANA V. PATTERSON, 894 SW.2D 812 (TEX - TYLER 1994); TEXAS PENAL CODE §§ 21.07 AND 43.21; GUJARDO V. ESTELLE, 580 F.2D 748 (5TH CIR. 1978); THORNBURGH V. ABBOTT, 490 US 401 (1989). SEE ALSO THOMAS V. PATTERSON, 985 F.2D 202, 206 (5TH CIR. 1993) (BEFORE PUBLICATION MAY BE REFUSED ARKON ADMINISTRATION MUST DETERMINE THAT THE PUBLICATION IS DETRIMENTAL TO PRISON REHABILITATION BECAUSE IT WOULD ENCOURAGE DEVIATE, CRIMINAL SEXUAL BEHAVIOR"). (SEE PETITIONER'S SIXTH MOTION FOR TRO/PI; PETITIONER'S SEVENTH MOTION FOR TRO/PI). RESPONDENTS RETALIATORY NEW POLICY HAS MADE IT ILLEGAL FOR PETITIONER AND OTHERS SO SIMILARLY SITUATED, TO HAVE OR RECEIVE PICTURES AND/OR MAGAZINES WHICH CONTAIN ADULT FEMMES IN BIKINIES, LINGERIE, PANTIES OR G-STRINGS.

ALTHOUGH RESPONDENTS BRIEFED THAT FEMALES HAVE A RIGHT TO WORK IN MALE PRISONS, TO SEARCH THEM AND EVEN VIEW THEM NUDE EVEN WHILE MALE INMATES MASTURBATE (SEE "RESPONDENT'S ANSWER AND OBJECTION" AND

AGAIN, AS STATED ABOVE, THE FACT THAT THE FIFTH CIRCUIT REFUSED TO ADDRESS PETITIONER'S CASE ON THE MERIT BY EAGERLY DENYING HIS K-COA HAS TACTICALLY ALLOWED THE DISTRICT COURT TO OVERTURN THE U.S. SUPREME COURT'S WELL ESTABLISHED LAW OF THURNBURG, SUPRA, AS WELL AS IGNORE ITS OWN RULING IN QUINTANA, SUPRA AND THOMSON, SUPRA; MAYBE FOR THE SOLE REASON THAT PETITIONER IS A "BL."

~~II~~

MOREOVER, YOUR PETITIONER IS A LAYMAN AT LAW AND PROCEEDING PRO SE. THE U.S. MAGISTRATE (USM) ENTERED HIS "FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE" ("FINDINGS") OF WHICH THE TRIAL COURT ACCEPTED AS ITS OWN, AND THEREFORE WILL BE SIMPLY REFER TO AS THE TRIAL COURT'S FINDINGS. PETITIONER FILED HIS "OBJECTION TO THE U.S. MAGISTRATE'S FINDINGS, CONCLUSIONS AND RECOMMENDATION" ("OBJECTION") AND HERE AND NOW INCORPORATE SAID OBJECTION INTO THE INSTANT PLEADING, IN ITS ENTIRETY FOR THE SAKE OF BREVITY AND JUST ADJUDICATION. HE ALSO FILED HIS "PETITIONER'S REPLY TO THE RESPONDENT'S ANSWER AND BRIEF" ("REPLY") AND HERE AND NOW INCORPORATE SAID REPLY INTO THE INSTANT PLEADING, IN ITS ENTIRETY, FOR THE SAKE OF BREVITY AND JUST ADJUDICATION, THE OBJECTION AND REPLY ARE TO BE ACCEPTED AND REFERENCED IN EACH AND EVERY ARGUMENT OR "REASON FOR GRANTING THE PETITION" IN THIS WRIT IN THEIR ENTIRETY.

FIRST OFF, PETITIONER WAS CONVICTED FOR THE OFFENSE OF "MASTURBATING IN PUBLIC," YET THE EVIDENCE CLEARLY SHOWS PETITIONER WAS MASTURBATING IN HIS ASSIGNED CELL AND THUS THE EVIDENCE WAS INSUFFICIENT TO FIND PETITIONER GUILTY. THE BLACK LAW DICTIONARY, IN PERTINENT PART, DEFINES "PUBLIC" AS: (1) "OPEN OR AVAILABLE FOR ALL TO USE, SHARE, OR ENJOY," (2) "A PLACE OPEN OR VISIBLE TO THE PUBLIC." STATE AND FEDERAL LAW DETERMINES WHAT CONSTITUTE "PUBLIC" NOT TOCS. ALTHOUGH TOCS POLICELY STIMULATED PETITIONER MAY BE FOUND GUILTY IF HE CALLS ATTENTION TO HIMSELF MASTURBATING, THE EVIDENCE CLEARLY SHOWS THIS NOT TO BE THE CASE IN THE INSTANT CASE.

AND MATURE CAN BE VIOLATED AND THEIR RIGHT TO BE FREE FROM GENDER DISCRIMINATION AND UNDER WHAT CIRCUMSTANCES PRISONERS' RIGHTS ARE VIOLATED UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION. AS STATED ABOVE, SEPULVEDA (9TH CIR. 1992), SUPRA; KENT (6TH CIR. 1987), SUPRA; CUMBEY (10TH CIR. 1982), SUPRA; FORTNER (11TH CIR. 1993), SUPRA; FORTS (2ND CIR. 1980), SUPRA; HAVE ALL DEALT WITH HETEROSEXUAL SEXUAL RIGHTS OF MALE (AND/OR FEMALE) PRISONERS, HOWEVER, THE FIFTH CIRCUIT AND THE HONORABLE U.S. SUPREME COURT HAVE NOT WEIGHED IN ON THIS SPECIFIC POINT OF LAW THAT PETITIONER WAS ABLE TO FIND.

MOREOVER, THIS CASE PRESENTS A FUNDAMENTAL QUESTION OF THE INTERPRETATION OF THIS COURT'S DECISION IN WOLFF V. MC DONNELL, 418 U.S. 539, 94 S.Ct. 2963 (1974). THE QUESTION PRESENTED IS OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS THE OPERATIONS OF PRISON SYSTEMS IN ALL FIFTY STATES, THE DISTRICT OF COLUMBIA, AND HUNDREDS OF CITY AND COUNTY JAILS. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER PRISON DISCIPLINARY PROCEEDINGS, GUIDANCE ON THE QUESTION IS ALSO OF GREAT IMPORTANCE TO THE JUDICIARY. IN ADDITION, THE QUESTIONS ARE OF GREAT IMPORTANCE TO PRISONERS, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDINGS THAT MAY RESULT IN MONTHS OR YEARS OF ADDED INCARCERATION OR HARSH PUNITIVE CONFINEMENT.

MOREOVER, STATE AND/OR FEDERAL LAW DEFINES WHAT CONSTITUTES A PUBLIC PLACE, NOT TORT. SEE V.T.C.A., PENAL CODE §§ 107(a) (40), 49.04; U.S. v. COLLADO, 117 F.3d 793 (5TH CIR. 1997). WHEN TORT OR STATE COURT'S DECISION IS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW — TORT AND STATE COURT MUST YIELD — FEDERAL COURTS ARE FREE TO EXPRESS INDEPENDENT OPINION ON LEGAL ISSUE IN CASE; WHEN TORT OR STATE COURT ADDRESS A LEGAL QUESTION, IT IS THE LAW AS DETERMINED

BY THE U.S. SUPREME COURT THAT PREVAILS. LINCH V. MURPHY, 96 F.3d 856 (7th Cir. 1996); 28 USC § 2254. ALTHOUGH THE FIFTH AND SEVENTH CIRCUITS HAVE SOMEWHAT TOUCHED ON THE ISSUE AT HAND, NEITHER HAVE SPECIFICALLY DEFINED WHAT CONSTITUTES "A PUBLIC PLACE" OR "IN PUBLIC" IN PRISON, AND REVIEW BY THIS COURT IS NEEDED TO PROTECT, NOT ONLY TEXAS PRISONERS FROM BEING FALSELY WRITTEN CRIMES FOR "DID MASTURBATE IN PUBLIC" ERRONEOUSLY, BUT ALSO CLARITY BY THIS COURT WOULD BENEFIT ALL FIFTY STATES, THE DISTRICT OF COLUMBIA AS WELL AS CITY AND COUNTY JAIL FACILITIES AS STATED ABOVE.

WHAT'S MOST IMPORTANT FOR THE COURT TO DECIDE, WHICH AFFECTS PRISONERS NATIONWIDE, IS THAT FEMALE INMATES HAVE BEEN ALLOWED TO COVER THEIR CELL WINDOWS OR DOORS FOR PERIODS OF TIME FOR PURPOSES OF MASTURBATION AND OTHER OF THESE TYPES OF THINGS SEE FORTS V. WARD, 621 F.2d 1210, 1216-77 (2nd Cir. 1980), YET PETITIONER AND OTHER MALE INMATES SIMILARLY SITUATED ARE NOT; PETITIONER SHOULD NOT HAVE BEEN SUBJECTED TO THIS INHUMANE TREATMENT AS IT VIOLATES GENDER DISCRIMINATION UNDER THE EQUAL PROTECTION CLAUSE OF THE 5TH AND 14TH AMENDMENT AS FEMALE INMATES ARE NOT HARASSED, HUMILIATED AND PUNISHED AS THEIR MALE COUNTER PARTS ARE SUCH AS PETITIONER HAS BEEN. THIS GENDER DISCRIMINATION DOES NOT BEAR A RATIONAL RELATIONSHIP TO A LEGITIMATE GOVERNMENTAL PURPOSE. SEE JACKSON V. THORNBURG, 907 F.2d 194 (D.C. Cir. 1990); BANKERS LIFE & CASUALTY CO. V. CRENSHAW, 486 US 718, 781 (1988). MALE AND FEMALE INMATES, IN THE INSTANT CASE, ARE SIMILARLY SITUATED AND THUS MALE INMATES, SUCH AS PETITIONER, SHOULD HAVE THE SAME RIGHTS TO BE FREE FROM DISCIPLINARY CASES WHEN CAUGHT MASTURBATING AS THEIR FEMALE COUNTER PARTS. SEE JACKSON, SUPRA; CRENSHAW, SUPRA. BOTH MALE AND FEMALE INMATES HAVE SEXUAL NEEDS AND THUS MAINTAIN THE PRACTICE OF MASTURBATION. MEN SHOULD NOT BE PUNISHED FOR MASTURBATION WHEN WOMEN

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

THOMAS SAWYER

Date: 6-12-22