

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

JOSEF CADWELL — PETITIONER  
(Your Name)

VS.

Broderick Flescher, et al. RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States District Court, Eastern District, Michigan.

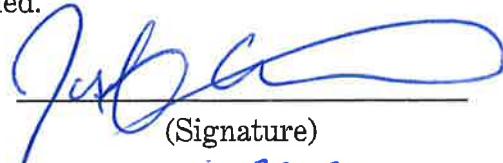
Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: \_\_\_\_\_  
\_\_\_\_\_, or

a copy of the order of appointment is appended.

  
(Signature)

6-23-22



**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, JOSEF CADWELL, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

<b>Income source</b>	<b>Average monthly amount during the past 12 months</b>		<b>Amount expected next month</b>	
	<b>You</b>	<b>Spouse</b>	<b>You</b>	<b>Spouse</b>
Employment	\$ <u>9.50</u>	\$ <u>NA</u>	\$ <u>9.50</u>	\$ <u>NA</u>
Self-employment	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Interest and dividends	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Gifts	\$ <u>40</u>	\$ <u>NA</u>	\$ <u>40</u>	\$ <u>NA</u>
Alimony	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Child Support	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Unemployment payments	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
<b>Total monthly income:</b>	<b>\$ <u>49.50</u></b>	<b>\$ <u>NA</u></b>	<b>\$ <u>49.50</u></b>	<b>\$ <u>NA</u></b>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Michigan Department of Corrections	9625 Pierceland Freeland MI 48623	10/21 to present	\$ 9.50
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA	NA	NA	\$ NA
			\$
			\$

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
NA	\$ 0	\$ NA
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home  
Value \_\_\_\_\_ NA

Other real estate  
Value \_\_\_\_\_ NA

Motor Vehicle #1  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_ NA

Motor Vehicle #2  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_ NA

Other assets  
Description \_\_\_\_\_  
Value \_\_\_\_\_ NA

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NA	\$ 0	\$ 0
	\$ _____	\$ _____
	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
JOSEPH CADWELL	SELF	43
A.C.	SON	8
N.C.	DAUGHTER	7

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ NA	\$ NA
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ NA	\$ NA
Home maintenance (repairs and upkeep)	\$ NA	\$ NA
Food	\$ 20.00	\$ NA
Clothing	\$ 5.00	\$ NA
Laundry and dry-cleaning	\$ 5.00	\$ NA
Medical and dental expenses	\$ 10.00	\$ NA

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>NA</u>	\$ <u>NA</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>NA</u>	\$ <u>NA</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>NA</u>	\$ <u>NA</u>
Life	\$ <u>NA</u>	\$ <u>NA</u>
Health	\$ <u>NA</u>	\$ <u>NA</u>
Motor Vehicle	\$ <u>NA</u>	\$ <u>NA</u>
Other: _____	\$ <u>NA</u>	\$ <u>NA</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>Sales tax</u>	\$ <u>4.00</u>	\$ <u>NA</u>
Installment payments		
Motor Vehicle	\$ <u>NA</u>	\$ <u>NA</u>
Credit card(s)	\$ <u>NA</u>	\$ <u>NA</u>
Department store(s)	\$ <u>NA</u>	\$ <u>NA</u>
Other: <u>Federal Filing Fee</u>	\$ <u>10.00</u>	\$ <u>NA</u>
Alimony, maintenance, and support paid to others	\$ _____	\$ <u>NA</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>NA</u>	\$ <u>NA</u>
Other (specify): <u>Personal Hygiene</u> <u>(Deodorant, Toothpaste, So&amp;P)</u>	\$ <u>20.00</u>	\$ <u>NA</u>
<b>Total monthly expenses:</b>	<b>\$ <u>74.00</u></b>	<b>\$ <u>NA</u></b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?  Yes  No

If yes, how much? \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes  No

If yes, how much? \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

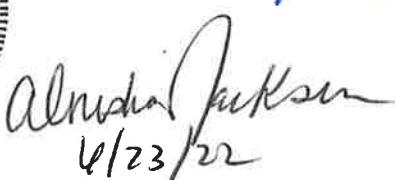
I must pay for all costs of reproduction of documents in addition to postage for all legal filings.  
As I am in pecuniary I cannot pay the costs of this case

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 23rd, 2022



  
(Signature)

  
6/23/22

6-7-22

## REQUEST FOR ACCOUNT AFFIDAVIT FOR COURT FILINGS

Please fill in the blanks below. Use one form for each request. ALL blanks must be filled in and legible or your request will be returned to you for completion. Once received, an affidavit will be completed and returned to you within five (5) business days.

INMATE NAME (Print): JOSEPH T. CADWELL

NUMBER: 339620

LOCK: 600-42  
United States

NAME OF COURT: Supreme Court

CAPTION:

CASE NUMBER: Writ of Certiorari from  
the U.S. Sixth Circuit Court of Appeals

FEDERAL (6 mo.):

(check one) Or

STATE (12 mo.):

PLAINTIFF: JOSEPH CADWELL

DEFENDANT: Broderick Flescher, FOA et. al.

Send all requests to the Business Office. We do not require any papers from the courts. The courts will accept the paperwork we complete and return to you as official documents. You will receive one original document. If you need more copies, you will need to go to the Library and have the copies made.

FEDERAL COURT

Prisoner-Plaintiff/Petitioner/Appellant name and number  
Joseph Cadwell #339620

Defendant's/Respondent's/Appellee's name  
Broderick Flescher, FOA et.al.

v

**CERTIFICATE OF PRISONER INSTITUTIONAL/TRUST FUND ACCOUNT ACTIVITY**

I am employed by the Michigan Department of Corrections at the facility identified below, at which the prisoner identified as Plaintiff/Petitioner/Appellant is currently incarcerated.

Attached is a computer printout which accurately reflects the current spendable balance and all activity within this prisoner's account during the preceding six months or, if the prisoner has been incarcerated for less than six months, for the period of incarceration. Code "C" on the printout represents a withdrawal from the account and code "D" represents a deposit to the account. The attached printout reflects, for the reported period, an average monthly account deposit (i.e., total deposits divided by number of months) of \$74.71, an average monthly account balance (i.e., total deposits minus total withdrawals divided by number of months) of \$0.00. There is a current spendable account balance of \$30.29.

Date: 6-13-22

  
Signature of Custodian of Prisoner Institutional/Trust Fund Account

SAGINAW CORRECTIONAL FACILITY  
Correctional Facility

**Daily Transaction Summary: December 13, 2021 - June 13, 2022**

Primary Balance:

\$30.29

Available Balance:

\$30.29

**Offender Information**Offender Number: 0339620  
Offender Name: Cadwell, Josef  
Account Status: OpenInstitution: SRF  
Housing Facility: SRF  
Tier: ALiving Unit: 600  
Cell: 042  
Bed: Bot**Offender Code**

\$65.59

SRF

\$74.47

SRF

\$72.91

SRF

\$72.38

SRF

\$71.45

SRF

\$67.65

SRF

\$63.65

COF

\$113.65

COF

\$163.65

COF

\$138.65

COF

\$128.65

COF

\$138.27

SRF

\$127.27

SRF

\$126.13

COF

\$122.94

COF

\$172.94

COF

\$162.94

COF

\$148.07

SRF

\$170.07

SRF

\$179.69

SRF

\$177.08

COF

\$161.88

COF

\$161.37

COF

\$160.37

COF

\$154.69

COF

\$204.69

COF

\$194.69

COF

\$175.38

SRF

\$195.38

SRF

6/13/2022 09:00 AM

Primary Trust Transactions		Voucher Number	Deposit	Expense	Balance	Loc Code
Date	Payer / Paid To					
<b>Transaction Type</b>						
12/13/2021	SRF-Institutional Services	500 - Institutional Services	\$8.88	(\$1.56)	\$65.59	
12/14/2021 07:29:28 AM	Legal Stamps	SRF Institutional Services			\$74.47	SRF
12/14/2021 09:09:59 AM	Legal Stamps	SRF Institutional Services			\$72.91	SRF
12/14/2021 09:15:13 AM	Legal Stamps	Keefe Commissary			\$72.38	SRF
12/14/2021 09:15:25 AM	Legal Stamps	SRF INSTITUTIONAL SERVICES			\$71.45	SRF
12/14/2021 01:31:15 AM	Commissioner Sale	Keefe Commissary			\$67.65	
12/17/2021 01:31:15 AM	LEGAL COPIES	Keefe Commissary			\$63.80	
12/31/2021 04:00:02 AM	LEGAL COPIES	Keefe Commissary			\$64.00	
12/31/2022 05:10:08 AM	GTL	Maya Stovall			\$64.00	
01/01/2022 05:10:09 AM	GTL	30TH CIRCUIT COURT EAST			\$9.62	
01/03/2022 05:10:09 AM	Court Filing Fee (Federal)	U.S. DISTRICT COURT EAST			(\$11.00)	
01/10/2022 04:00:02 AM	Court Filing Fee (Federal)	U.S. DISTRICT COURT EAST			(\$1.14)	
01/10/2022 04:00:02 AM	Court Filing Fee (Federal)	MICHIGAN			(\$3.19)	
01/13/2022 11:43:43 AM	SRF-Institutional Services	500 - Institutional Services			\$50.00	
01/14/2022 01:36:20 AM	Commissioner Sale	SRF INSTITUTIONAL SERVICES			(\$10.00)	
01/13/2022 04:00:01 AM	LEGAL COPIES	Keefe Commissary			(\$14.87)	
01/13/2022 04:00:01 AM	LEGAL COPIES	Keefe Commissary			(\$2.61)	
01/13/2022 04:00:01 AM	GTL	U.S. DISTRICT COURT EAST			(\$2.61)	
02/02/2022 05:10:14 AM	Court Filing Fee (Federal)	C 104309178			\$22.00	
02/10/2022 04:00:01 AM	Court Filing Fee (Federal)	Keefe Commissary			\$9.62	
02/11/2022 01:30:59 AM	Commissioner Sale	Keefe Commissary			(\$2.61)	
02/11/2022 01:30:59 AM	Commissioner Sale	500 - Institutional Services			(\$15.20)	
02/14/2022 07:33:47 AM	SRF-Institutional Services	500 - Institutional Services			(\$16.37)	
02/14/2022 07:33:47 AM	SRF-Institutional Services	SRF INSTITUTIONAL SERVICES			(\$16.37)	
02/28/2022 04:00:02 AM	LEGAL COPIES	SRF INSTITUTIONAL SERVICES			(\$1.00)	
02/28/2022 04:00:02 AM	LEGAL COPIES	SRF PBF Postage			(\$5.68)	
02/28/2022 04:00:02 AM	LEGAL COPIES	SRF PBF Notary			(\$50.00)	
02/28/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Notary			(\$10.00)	
02/28/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage			(\$19.31)	
02/28/2022 04:00:02 AM	NOTARY	Maya Stovall			(\$19.31)	
03/04/2022 05:10:11 AM	GTL	U.S. DISTRICT COURT EAST			\$20.00	
03/10/2022 04:00:02 AM	Court Filing Fee (Federal)	MICHIGAN			\$195.38	SRF
03/10/2022 04:00:02 AM	Court Filing Fee (Federal)	Keefe Commissary			\$195.38	SRF
03/11/2022 01:31:00 AM	Commissioner Sale	500 - Institutional Services				
03/14/2022 07:49:19 AM	Commissioner Sale	SRF -Institutional Services				

## Daily Transaction Summary (0339620 - Josef Cadwell cont.): December 13, 2021 - June 13, 2022

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Primary Trust Transactions		Transaction Type	Payer / Paid To	Voucher Number	Deposit	Expense	Balance	Loc Code
03/14/2022 07:49:19 AM	SRF-Institutional Services	500 - Institutional Services			\$8.88		\$204.26	SRF
03/15/2022 01:36:39 AM	Commissary Sale	Keefe Commissary	C104355814			\$4.14	\$208.40	SRF
03/15/2022 08:59:52 AM	Legal Supplies Disbursement	SRF Institutional Services				(\$0.53)	\$207.87	SRF
03/18/2022 12:47:16 PM	Legal Copies Disbursement	SRF PBF Copies				(\$0.30)	\$207.57	SRF
03/25/2022 01:31:00 AM	Commissary Sale	Keefe Commissary	C104379068			(\$3.39)	\$204.18	SRF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$6.32)	\$197.86	COF
03/31/2022 04:00:02 AM	LEGAL COPIES	SRF INSTITUTIONAL SERVICES				(\$4.20)	\$193.66	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.26)	\$193.40	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$192.87	COF
03/31/2022 04:00:02 AM	LEGAL COPIES	SRF INSTITUTIONAL SERVICES				(\$0.30)	\$192.57	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$1.56)	\$191.01	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$1.56)	\$189.45	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$188.92	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$188.39	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$187.86	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$187.33	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$186.80	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.73)	\$186.07	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$1.00)	\$185.07	COF
03/31/2022 04:00:02 AM	NOTARY	SRF PBF Notary				(\$0.53)	\$184.54	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$184.01	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$183.48	COF
03/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.50)	\$233.48	COF
04/03/2022 05:10:09 AM	GTL	Kay Cadwell			\$50.00			
04/08/2022 01:31:00 AM	Commissary Sale	Keefe Commissary	C104401123			(\$23.66)	\$209.82	SRF
04/10/2022 04:00:02 AM	Court Filing Fee (Federal)	U.S. DISTRICT COURT EAST MICHIGAN				(\$10.00)	\$199.82	COF
04/11/2022 09:13:54 AM	Legal Copies Disbursement	SRF PBF Copies				(\$16.30)	\$183.52	SRF
04/14/2022 07:13:28 AM	SRF-Institutional Services	500 - Institutional Services				(\$8.88)	\$192.40	SRF
04/30/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.08)	\$192.32	COF
05/07/2022 05:10:10 AM	GTL	Maya Stovall				(\$50.00)	\$242.32	COF
05/10/2022 04:00:02 AM	Court Filing Fee (Federal)	U.S. DISTRICT COURT EAST MICHIGAN				(\$10.00)	\$232.32	COF
05/11/2022 12:56:19 PM	Legal Stamps	SRF Institutional Services				(\$0.93)	\$231.39	SRF
05/11/2022 12:56:32 PM	Legal Stamps	SRF Institutional Services				(\$0.53)	\$230.86	SRF
05/16/2022 07:16:26 AM	SRF-Institutional Services	500 - Institutional Services				(\$10.36)	\$241.22	SRF
05/17/2022 08:54:04 AM	Legal Copies Disbursement	SRF PBF Copies				(\$2.90)	\$238.32	SRF
05/19/2022 03:01:50 PM	Stamps	SRF Institutional Services				(\$1.13)	\$237.19	SRF

## Daily Transaction Summary (0339620 - Josef Cadwell cont.): December 13, 2021 - June 13, 2022

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Primary Trust Transactions		Transaction Type	Payer / Paid To	Voucher Number	Deposit	Expense	Balance	Loc Code
Date								
05/20/2022 01:30:57 AM	Commissary Sale	Keefe Commissary	C104468125			(\$20.10)	\$217.09	SRF
05/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$9.16)	\$207.93	COF
05/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$1.96)	\$205.97	COF
05/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$1.96)	\$204.01	COF
05/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.53)	\$203.48	COF
05/31/2022 04:00:02 AM	LEGAL POSTAGE - PBF	SRF PBF Postage				(\$0.73)	\$202.75	COF
06/07/2022 05:10:08 AM	GTL	Kay Cadwell			\$50.00		\$252.75	COF
06/09/2022 03:41:54 PM	Legal Stamps	SRF Institutional Services				(\$0.53)	\$252.22	SRF
06/09/2022 03:42:21 PM	Legal Stamps	SRF Institutional Services				(\$9.25)	\$242.97	SRF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$25.00)	\$217.97	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$25.00)	\$192.97	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$2.22)	\$190.75	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$2.22)	\$188.53	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.44)	\$184.09	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.44)	\$179.65	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$25.00)	\$154.65	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$25.00)	\$129.65	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.81)	\$124.84	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.81)	\$120.03	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$11.00)	\$109.03	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$11.00)	\$98.03	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.81)	\$93.22	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.81)	\$88.41	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$10.00)	\$78.41	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$10.00)	\$68.41	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.44)	\$63.97	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.44)	\$59.53	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.44)	\$55.09	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$4.44)	\$50.65	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$5.18)	\$45.47	COF
06/10/2022 04:00:01 AM	Court Charges	3RD CIRCUIT COURT WAYNE				(\$5.18)	\$40.29	COF
06/10/2022 04:00:01 AM	Court Filing Fee (Federal)	U.S. DISTRICT COURT EAST MICHIGAN				(\$10.00)	\$30.29	COF
06/13/2022						\$448.24	(\$483.54)	\$30.29
Savings	Date					Deposit	Expense	Balance

**Daily Transaction Summary (0339620 - Josef Cadwell cont.): December 13, 2021 - June 13, 2022**

Page 4

12/13/2021				\$0.00
No Activity				\$0.00
06/13/2022				\$0.00

<b>Holds - Current as of Date and Time of Report</b>			<b>Notes</b>	<b>Amount</b>					
<b>Date Held</b>	<b>Hold Type</b>	<b>Max Per Period</b>	<b>Ordered</b>	<b>Transfer</b>	<b>Outside Source</b>	<b>Held</b>	<b>Paid</b>	<b>Written Off</b>	<b>Total Remaining</b>
<b>Remaining Obligations - Current as of Date and Time of Report</b>									
<b>Description</b>	<b>Paid To</b>	<b>Max Per Period</b>	<b>Ordered</b>	<b>Transfer</b>	<b>Outside Source</b>	<b>Held</b>	<b>Paid</b>	<b>Written Off</b>	<b>Total Remaining</b>
Court Filing Fee - Court Filing Fee (Federal) - 2:21-cv-11182	U.S. DISTRICT COURT EAST MICHIGAN	N/A	\$350.00	\$0.00	\$0.00	N/A	\$120.00	N/A	\$230.00
Restitution - Court Charges -17-006172-01-FH AMENDED	3RD CIRCUIT COURT WAYNE	N/A	\$2,366.00	\$0.00	\$0.00	N/A	\$101.34	N/A	\$2,264.66
Restitution - Court Charges -18-000879-01-FH AMENDED	3RD CIRCUIT COURT WAYNE	N/A	\$2,306.00	\$302.18	\$0.00	N/A	\$101.34	N/A	\$1,902.48
Restitution - Court Charges -18-000880-01-FH AMENDED	3RD CIRCUIT COURT WAYNE	N/A	\$2,238.00	\$302.20	\$0.00	N/A	\$0.00	N/A	\$1,935.80
<b>Total:</b>									<b>\$6,332.94</b>

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEF CADWELL — PETITIONER  
(Your Name)

vs.

Broderick Flesner et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOSEF CADWELL  
(Your Name)

9625 Pierce Road  
(Address)

Freeland, MI 48623  
(City, State, Zip Code)

NA  
(Phone Number)

IN Addition to the following 8 substantive questions, Is in Fact the Plaintiff entitled to relief and to proceed I.F.P based on the following: "A certification that an appeal is not taken in good faith does not affect an indigent prisoner plaintiff's ability to take advantage of the installment procedures contained in 28 U.S.C. §1415(b)" McGore v. Wrigglesworth, 114 F.3d 601, 610-611 (6th Cir. 1997)

QUESTION(S) PRESENTED

1. Does 42 U.S.C 1983 provide protection of civil rights promulgated by Federal Statute, and ability to sue for the same?
2. Through the 14th Amendment of the United States Constitution are Rights and Federal regulations that result in enactment of State laws, state regulations and state work rules again enforceable under 42 U.S.C. 1983? OR - Are state laws, regulations and work rules Federally enforceable under 14th amendment?
3. Does 34 USCS 30301 Prison Rape Elimination Act. (PREA) and resulting 28 CFR 115.5 et. seq. Create protections from specific conducts thus enumerating and expanding Federal civil rights such as must be respected by state agents?
4. Does a prima facie showing of violation of state agency work rules, protections and laws [enacted by that state and state agency to be in compliance with 28 CFR 115.5 et. seq. / 30301 USCS 30301 (PREA)] in fact equate to a prima facie showing that <sup>plaintiff</sup> appellants Federal civil rights have been violated?
5. If a claim for civil rights violations under PREA and specifically stating claims under due process and equal protection is only analyzed under the standard for 8th Amendment (cruel / unusual punishment) violations must this analysis fail and the case be remanded?
6. Would a personal / sexual relationship between a parole agent and the head of household at parolee's residence, (also parolee's the same being parolee's spouse) necessarily be such an unsafe arrangement on its face as to violate parolee's constitutional rights? And statutory rights under PREA?
7. Is the sexual abuse (by exposure) of the minor child of a parolee by a state agent sufficient to shock the conscience and be a clearly unintended consequence of sentence?
8. Can a Father bring civil rights suit on behalf of his minor children and/or his spouse?

## 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:

JOSEPH CADWELL	Plaintiff
A. C.	Minor Child of Plaintiff
N. C.	Minor Child of Plaintiff
Broderick Fletcher	Defendant
Unknown Clayton	Defendant
Carolyn Wilson	Defendant
Heather Stevens	Defendant
Unknown Wright	Defendant

## RELATED CASES

Cadwell v. Flescher	2022 U.S. App. Lexis 4051
Cadwell v. Flescher	2021 U.S. Dist. Lexis 122385
Cadwell v. Flescher	2022 U.S. App. Lexis 10248
Cadwell v. Flescher	2021 U.S. Dist. Lexis 136450

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### STATUTES AND RULES

42 USC § 1983

34 USC § 30301 (Prison Rape Elimination Act) or (PREA)

28 CFR 115.5 et.seq.

28 USC § 1915 (b)

Prison Litigation Reform Act of 1977

Michigan Department of Corrections PREA Policy

" " Critical Incident Reporting Policy

### OTHER

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 \_\_\_\_\_ to the petition and is

[] reported at 2022 U.S. App. Lexis 4051; 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 \_\_\_\_\_ to the petition and is

[] reported at 2021 U.S. Dist. Lexis 122385; 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 2-14-22.

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: 4-14-22, 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

42 U.S.C. 1983

34 U.S.C. 30301 Prison Rape Elimination Act (PREA)

28 CFR 115.5 et. seq.

8th Amendment U.S. Constitution

14th Amendment U.S. Constitution

1st Amendment U.S. Constitution

4th Amendment U.S. Constitution

5th Amendment U.S. Constitution

Prison Litigation Reform Act

MDOC PREA Regulations & Work Rules

## STATEMENT OF THE CASE

Plaintiff Cadwell after exhausting administrative remedies filed a complaint against Broderick Fletcher et al. for sexual harassment, sexual abuse and various civil rights violations under U.S. Constitution and PREA. Conduct included Broderick Fletcher performing a sex act on Ms. Naegele in front of Plaintiff Cadwell's minor son A.C.

Plaintiff reported the abuse and harassment to defendants Clayton, Wilson Stevens and Wright who showed deliberate indifference to Cadwell's safety and violations of his constitutional rights/rights under PREA.

In 21-CV-11182, or the decision of 6-30-21 the case was dismissed by Judge Friedman - sua sponte.

This dismissal only analyzed the 8th amendment claims and no others. The ruling fails to consider Cadwell's claims under the PREA Statute and the resulting CFR 115.5 et seq and the state laws, work rules and regulations promulgated in compliance. No analysis of Cadwell's claim under the 14th amendment was made. On 7/22/21 Cadwell's motion for reconsideration, Leave to Amend and Leave to Proceed In Forma Paupris were denied. Appeal to the United States Court of Appeals followed.

In 21-2817 U.S. Court, 6th circuit Judge Straub denied Plaintiff Cadwell's motion to proceed in Forma paupris.

The decision references failure to state and 8th amendment claim and claims appeal would be frivolous.

This analysis fails to consider Cadwell's claims of civil rights violations under the PREA Statute, CFR 115.5 et seq and the resulting state laws which are enforceable under the 14th amendment. The PREA claim, due process claim PL and equal protection claims are all unexamined.

Cadwell's timely motion for reconsideration was

denied 4-14-22 in 2022 U.S. App. Lexis 102498  
(Plaintiff believes plenary relief is appropriate to proceed IFF per McGore v. Wigglesworth)

These rulings are contrary to decided

Supreme Court precedent. Plaintiff begs relief, to be allowed to proceed in forma paupris and the appeal be heard on its merits.

## REASONS FOR GRANTING THE PETITION

"42 USC § 1983 is available to redress deprivations [of civil rights] under color of state law [and] of rights, privileges and immunity secured by Federal statutes as well as by U.S. Constitution" La Reza Unida v. Volpe 440 F. Supp. 904. Further: "42 USC § 1983 encompasses [es] claims based on purely statutory violations of Federal law, without limitation to Federal laws dealing with civil rights or equal protection" Maine v. Thiboutot 100 S. Ct. 2582 (1980). And again: "42 USC § 1983 Authorizes redress for violations of constitutional and statutory rights" (emphasis added) Baker v. McCollan 443 U.S. 137. Therefore Plaintiff Cadwell's claim must be analyzed under standards and protections of 34 USC 30301 Prison Rape Elimination Act and the resulting and connected 28 CFR 115.5 et. seq. The analysis of the District Court and Court of Appeals limited to the question of an 8th Amendment violation and basing sua sponte dismissal and denying procedure in forma pauperis on appeal is on its face deficient and cannot stand. Further 42 USC § 1983 was specifically promulgated because constitutional rights may arise out of substantive laws and regulations of the state and be protected by the due process clause of the 14th Amendment. 42 USC § 1983 was enacted to protect the rights of unpopular citizens and populations such as Freed slaves, African Americans, and Prisoners. Cadwell's rights secured under PREA and 28 CFR 115.5 et. seq and the state laws and work rules under the State of Michigan and Michigan Department of Corrections PREA policy are enforceable under the 14th Amendment and 42 USC § 1983. In fact Plaintiff Cadwell's prima facie showing of violation of the state and state agency's work rules and policies is a prima facie showing of civil rights violations by Flescher et al. Those in a supervisory role in the suit must remain as defendants but based on inaction and actions. Each supervisor when notified of the allegations had affirmative duties under PREA and 28 CFR 115 et. seq. In addition: "Knowledge by superior of sexual contact and failing to act was sufficient to show superior's 'personal involvement'" Morris v. Eversley 205 F. Supp. 2d. 234.

At this stage "...the complaint is viewed in light most favorable to the [Plaintiff]. The allegations are accepted as true and all reasonable inferences are drawn in [the plaintiff's] favor." Gavitt v. Born 835 F.3d 623 (6th Cir. 2016). The District Court (and Sixth Circuit Court of Appeals by adopting the reasoning in denying Plaintiff ability to proceed in forma pauperis) instead of following aforementioned Gavitt v. Born holds Plaintiff to a unconstitutional standard and offers a defense of consent for Defendant Flescher. In light of the plain errors of law contradicting U.S. Supreme Court precedent Cadwell must be allowed to appeal the District Court ruling in forma pauperis.

In fact Plaintiff Caldwell is deserving of peremptory relief, remand to District Court and reinstatement of his claim. The sua sponte dismissal of the district court is clearly in error as is the 6th Circuit court of appeals decision, calling challenging the ruling frivolous of lacking an arguable basis. In fact the lower courts failed to apply the statutory protections of 42 USC § 1983 (The parolee plaintiff also has a right) 34 USC § 30301 (PREA) and 28 CFR 115.5 et. seq. to a safe place of confinement. There are numerous other errors by the lower courts in this case. Under Fed. Rules Cr. Pro. 17(a)(1)(C) and 17(c)(2) the parent or guardian may sue on behalf of his minor children. Fleischel's sexact in front of a minor is a crime and certainly a civil rights violation that shames the conscience. It should be noted that sexual abuse is also in fact an 8th amendment violation. Rafferty v. Trumbull City. 915 F.3d. 1087. In Farmer v. Brennan it was affirmed that even a substantial risk of sexual assault and deliberate indifference to that risk is an 8th amendment violation. A state agent willing to sexually abuse a parolee's child is clearly a risk for further sexual assault and aggression. In light of Helling and other rulings, the plaintiff asserts an 8th amendment violation - however this issue is not dispositive or fundamental. The 8th amendment arguments are well briefed in the contested appellate brief.

(not) The District Court and 6th Circuit Court of Appeals have erred in applying 42 USC § 1983, 34 USC § 30301 (PREA), 28 CFR 115.5 et. seq. and related state/agency laws, court rules and policies. Clarifying the reach and scope of the aforementioned statutes/regs is of utmost importance. The petition for a writ of certiorari should be granted.

Plaintiff Caldwell must be allowed to appeal 21-2817 E.P.P and take advantage of the installment procedures contained in 28 USC § 115(b). This procedural relief is due regardless of rulings on substantive matters per McGore & Wryskoswki 114 F.3d 601.

Respectfully submitted,



JOSEPH CALDWELL  
in Prose

Date: 6-23-22

MOC # 33962 D

## Cadwell v. Flescher

United States Court of Appeals for the Sixth Circuit

February 14, 2022, Filed

No. 21-2817

### **Reporter**

2022 U.S. App. LEXIS 4051 \*

JOSEF CADWELL, Plaintiff-Appellant, v. PAROLE OFFICER BRODERICK FLESCHER, Field Operations Agent, et al., Defendants-Appellees.

**Subsequent History:** Reconsideration denied by *Cadwell v. Flescher, 2022 U.S. App. LEXIS 10248 (6th Cir., Apr. 14, 2022)*

**Prior History:** *Cadwell v. Flescher, 2021 U.S. Dist. LEXIS 122385, 2021 WL 2682718 (E.D. Mich., June 30, 2021)*

### **Core Terms**

district court, in forma pauperis, parole, cruel and unusual punishment, inlaw, frivolous, rights, moves, sex

**Counsel:** [\*1] JOSEF CADWELL, Plaintiff - Appellant, Pro se, Freeland, MI.

**Judges:** Before: STRANCH, Circuit Judge.

### **Opinion**

#### ORDER

Josef Cadwell, a pro se Michigan prisoner, appeals the district court's judgment dismissing his civil rights action brought pursuant to 42 U.S.C. § 1983. Cadwell now moves to proceed in forma pauperis on appeal. See Fed. R. App. P. 24(a)(5).

In May 2021, Cadwell filed his complaint against Parole Officer Broderick Flescher, Field Operations Supervisors [Unknown] Clayton and Carolynn Wilson, Field Operations Administrative Specialist Heather Stevens, and Administrative Law Judge [Unknown] Wright, listing himself and two of his children as plaintiffs. He claimed that, both before and during his

time on parole, Flescher, his parole agent, had an "overfamiliar personal relationship" with Cadwell's wife, Iman Nasser, which included asking her personal questions about their sex life and visiting her outside of regular work hours. Cadwell further alleged that his son informed him that he saw Flescher perform a sex act on Nasser. He claimed that Flescher's acts, and the other defendants' failure to stop or discipline Flescher, caused him "significant mental and emotional injury," interfered with his ability to successfully complete parole, [\*2] and violated the Prison Rape Elimination Act and his rights to be free from cruel and unusual punishment, to due process, and to equal protection of the laws.

The district court dismissed the case, determining that Cadwell's allegations did not rise to the level of cruel and unusual punishment and that he could not bring claims on behalf of other people. Cadwell moved to amend the complaint and for reconsideration, which the district court denied. Cadwell moves for leave to proceed in forma pauperis on appeal, arguing that the district court should have addressed more than just his Eighth Amendment claim.

A party who makes the requisite showing of poverty will be granted leave to proceed in forma pauperis if his appeal is being taken in good faith, i.e., is not frivolous. See 28 U.S.C. § 1915(a); Callihan v. Schneider, 178 F.3d 800, 804 (6th Cir. 1999). An appeal is frivolous "where it lacks an arguable basis either in law or in fact," Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989), meaning that "it is based on legal theories that are indisputably meritless." Brown v. Bargery, 207 F.3d 863, 866 (6th Cir. 2000). Although pro se litigants are entitled to a liberal construction of their pleadings and filings, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)).

For the reasons discussed by the district court, [\*3] the appeal appears to lack an arguable basis in law. See Neitzke, 490 U.S. at 325. Accordingly, the court **DENIES** the motion to proceed in forma pauperis. Unless Cadwell pays the \$505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

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Appendix A



Neutral  
As of: June 13, 2022 9:28 PM Z

## Cadwell v. Flescher

United States District Court for the Eastern District of Michigan, Southern Division

June 30, 2021, Decided; June 30, 2021, Filed

Civil Action No. 21-CV-11182

### **Reporter**

2021 U.S. Dist. LEXIS 122385 \*; 2021 WL 2682718

JOSEF CADWELL, #339620, Plaintiff, vs. BRODERICK FLESCHER, et al., Defendants.

**Subsequent History:** Reconsideration denied by, Motion denied by Cadwell v. Flescher, 2021 U.S. Dist. LEXIS 136540 (E.D. Mich., July 22, 2021)

Motion denied by Cadwell v. Flescher, 2022 U.S. App. LEXIS 4051 (6th Cir., Feb. 14, 2022)

### **Core Terms**

cruel and unusual punishment, fail to state a claim, parole agent, deprivation, supervisory, alleges, incarcerated, acquiesced, knowingly, parole

**Counsel:** [\*1] Josef Cadwell, Plaintiff, Pro se, FREELAND, MI.

**Judges:** BERNARD A. FRIEDMAN, SENIOR UNITED STATES DISTRICT JUDGE.

**Opinion by:** BERNARD A. FRIEDMAN

### **Opinion**

#### OPINION AND ORDER OF DISMISSAL

This is a pro se prisoner civil rights case. Plaintiff, who is presently incarcerated at the Saginaw Correctional Facility in Freeland, Michigan, claims that his Eighth Amendment right to be free from cruel and unusual punishment was violated "by the actions of Broderick Flescher and his over familiar personal relationship with my wife Iman Nasser, while Flescher was my parole agent." ECF No. 1 (PageID.4). Flescher allegedly contacted and visited Nasser prior to plaintiff's release. Plaintiff alleges that Flescher "used his position as a parole agent to pursue a personal, over familiar,

sexualized relationship with Nasser." *Id.* (PageID.5). On one such visit on March 7, 2020, Flescher allegedly engaged in "some sort of inappropriate conduct" with Nasser. *Id.* (PageID.6). Plaintiff asserts that his son told him that he saw Flescher engage in a sex act with Nasser. Plaintiff alleges that he complained to the other four defendants, Field Supervisor Clayton, Field Supervisor Wilson, Field Administrative Specialist Stevens, and Administrative Law Judge Wright, [\*2] but that they failed to take any action to stop Flescher's conduct. Plaintiff claims that this relationship had a "tremendous, negative impact" on his chances of "successfully completing parole." *Id.* (PageID.8). Plaintiff parole was revoked and he was returned to prison. See *id.* (PageID.8). Plaintiff seeks compensatory and punitive damages.

Due to his indigence, plaintiff has been granted leave to proceed without prepayment of the filing fee. Under the Prison Litigation Reform Act, the Court is required to dismiss an in forma pauperis complaint before service on a defendant if it determines that the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. See 42 U.S.C. § 1997e(c); 28 U.S.C. § 1915(e)(2)(B). "A complaint fails to state a claim if it does not 'contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" Schluter v. Encore Rehab. Servs. LLC, No. 21-CV-10874, 2021 U.S. Dist. LEXIS 80256, 2021 WL 1641585, at \*1 (E.D. Mich. Apr. 27, 2021) (quoting Ctr. for Bio-Ethical Reform, Inc. v. Napolitano, 648 F.3d 365, 369 (6th Cir. 2011)).

Plaintiff contends that Flescher's actions amounted to cruel and unusual punishment in violation of the Eighth Amendment. The Eighth Amendment imposes a constitutional limitation on the power of the states to punish those convicted of crimes. Punishment may not be "barbarous," nor may it contravene society's [\*3]

"evolving standards of decency." *Rhodes v. Chapman*, 452 U.S. 337, 345-46, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981). The Eighth Amendment prohibits conduct by prison officials that involves the "unnecessary and wanton infliction of pain." *Ivey v. Wilson*, 832 F.2d 950, 954 (6th Cir. 1987). The deprivation alleged must result in the denial of the "minimal civilized measure of life's necessities." *Rhodes*, 452 U.S. at 347. The Eighth Amendment is concerned only with "deprivations of essential food, medical care, or sanitation" or "other conditions intolerable for prison confinement." *Id.* at 348. Further, "[n]ot every unpleasant experience a prisoner might endure while incarcerated constitutes cruel and unusual punishment within the meaning of the Eighth Amendment." *Ivey*, 832 F.2d at 954. To prevail on an Eighth Amendment claim, plaintiff must also show that the defendant acted with "deliberate indifference" to [his] health or safety." *Mingus v. Butler*, 591 F.3d 474, 479-80 (6th Cir. 2010) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)).

Accepting Cadwell's allegations as true, the conduct of the parole agent in forming or attempting to form a romantic relationship with his wife is certainly troubling. However, the Court is unaware of any precedent holding that such conduct amounts to cruel and unusual punishment in violation of the Eighth Amendment under the standards outlined above. Apart from the Eighth Amendment, plaintiff does not allege that he personally sustained the deprivation of any other Constitutional right, and he lacks standing to assert [\*4] a claim on behalf of someone else. Plaintiff has therefore failed to state a claim against Flescher.

Nor has plaintiff stated a claim against the other defendants, who allegedly failed to respond to his complaints about Flescher. Government officials may not be held liable for the conduct of their subordinates under theories of respondeat superior or vicarious liability. See *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); *Everson v. Leis*, 556 F.3d 484, 495 (6th Cir. 2009). Nor can supervisory liability be based upon an alleged failure to act. See *Summers v. Leis*, 368 F.3d 881, 888 (6th Cir. 2004). To be personally liable, the supervisory defendants must have authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officer. See *Peatross v. City of Memphis*, 818 F.3d 233, 242 (6th Cir. 2016). Plaintiff makes no allegation in this case that the supervisory defendants authorized, approved, or knowingly acquiesced in the alleged misconduct of Flescher.

For these reasons, the Court concludes that plaintiff has failed to state a claim against any of the defendants. Accordingly,

IT IS ORDERED that the complaint is dismissed pursuant to 42 U.S.C. § 1997e and 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim.

/s/ Bernard A. Friedman

BERNARD A. FRIEDMAN

SENIOR UNITED STATES DISTRICT JUDGE

Dated: June 30, 2021

Detroit, Michigan

#### **JUDGMENT**

The Court has issued an order in this matter dismissing the complaint. [\*5] Accordingly,

IT IS ORDERED AND ADJUDGED that judgment be and is hereby granted for defendants and against plaintiff.

Approved: /s/ Bernard A. Friedman

BERNARD A. FRIEDMAN

SENIOR U.S. DISTRICT JUDGE

Dated: June 30, 2021

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Appendix B



Neutral  
As of: June 13, 2022 9:29 PM Z

## *Cadwell v. Flescher*

United States Court of Appeals for the Sixth Circuit

April 14, 2022, Filed

No. 21-2817

### **Reporter**

2022 U.S. App. LEXIS 10248 \*

JOSEF CADWELL, Plaintiff-Appellant, v. PAROLE  
OFFICER BRODERICK FLESCHER, Field Operations  
Agent, et al., Defendants-Appellees.

### **Core Terms**

---

in forma pauperis

**Counsel:** [\*1] JOSEF CADWELL, Plaintiff - Appellant,  
Pro se, Freeland, MI.

**Judges:** Before: SUTTON, Chief Judge; MOORE and  
COLE, Circuit Judges.

### **Opinion**

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#### ORDER

Josef Cadwell, a pro se Michigan prisoner, moves this court to reconsider its February 14, 2022, order denying his motion to proceed in forma pauperis on appeal.

Cadwell has not shown that the court overlooked or misapprehended any point of law or fact in denying him leave to proceed in forma pauperis. See *Fed. R. App. P.* 40(a)(2).

Accordingly, we **DENY** the motion for reconsideration.

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Appendix C

## Cadwell v. Flescher

United States District Court for the Eastern District of Michigan, Southern Division

July 22, 2021, Decided; July 22, 2021, Filed

Civil Action No. 21-CV-11182

### **Reporter**

2021 U.S. Dist. LEXIS 136540 \*

JOSEF CADWELL, #339620, Plaintiff, vs. BRODERICK FLESCHER, et al., Defendants.

**Prior History:** Cadwell v. Flescher, 2021 U.S. Dist. LEXIS 122385, 2021 WL 2682718 (E.D. Mich., June 30, 2021)

### **Core Terms**

motion for leave, reconsideration motion, in forma pauperis, amend, leave to amend

**Counsel:** [\*1] Josef Cadwell, Plaintiff, Pro se, FREELAND, MI.

**Judges:** BERNARD A. FRIEDMAN, SENIOR UNITED STATES DISTRICT JUDGE.

**Opinion by:** BERNARD A. FRIEDMAN

### **Opinion**

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**OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION, DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT, AND DENYING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**

This matter is presently before the Court on plaintiff's motions for reconsideration, for leave to amend the complaint, and for leave to proceed on appeal in forma pauperis (ECF Nos. 6, 7, and 8). Pursuant to E.D. Mich. LR 7.1(f)(2) and 7.1(h)(2), the Court shall decide these motions without a hearing.

The motion for reconsideration is denied because plaintiff has shown no error in the Court's opinion and order dismissing his complaint for failing to state an

Eighth Amendment claim. See Cadwell v. Flescher, No. 21-CV-11182, 2021 U.S. Dist. LEXIS 122385, 2021 WL 2682718, at \*2 (E.D. Mich. June 30, 2021). The motion for leave to amend is denied because plaintiff has not met "the requirements for reopening a case established by Rules 59 or 60," Pond v. Haas, 674 F. App'x 466, 472 (6th Cir. 2016), he has failed to offer "a compelling explanation for failing to seek leave to amend prior to the entry of judgment," id. at 473 (internal quotation marks and citation omitted), and he has failed to explain how, precisely, he proposes to amend his complaint. Finally, plaintiff's motion for leave proceed [\*2] on appeal in forma pauperis is denied because no appeal in this matter could be "taken good faith." 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated: July 22, 2021

Detroit, Michigan

/s/ Bernard A. Friedman

BERNARD A. FRIEDMAN

SENIOR UNITED STATES DISTRICT JUDGE

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MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>	EFFECTIVE DATE 04/24/2017	NUMBER 03.03.140
SUBJECT PRISON RAPE ELIMINATION ACT (PREA) AND PROHIBITED SEXUAL CONDUCT INVOLVING PRISONERS	SUPERSEDES 03.03.140 (09/15/2015); DOM 2017-23	AUTHORITY MCL 750.145m; MCL 750.520c; MCL 791.203; MCL 791.204; 42 USCA 15601 et. seq.; Prison Rape Elimination Act (PREA) of 2003
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**POLICY STATEMENT:**

The Department has a zero tolerance standard for sexual abuse between or among prisoners. The Department also has a zero tolerance for staff sexual misconduct, staff sexual harassment, and staff overfamiliarity with prisoners.

**RELATED POLICIES:**

- 01.01.140 Internal Affairs
- 02.03.100 Employee Discipline
- 03.03.105 Prisoner Discipline
- 03.03.110 Special Problem Offender Notice
- 03.03.130 Humane Treatment and Living Conditions for Prisoners
- 04.05.120 Segregation Standards

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**POLICY:**

**DEFINITIONS**

- A. The definitions in Paragraphs B - H only apply to this policy.
- B. Employee - For purposes of this policy only, Employee refers to Michigan Department of Corrections (MDOC) employees, contractors, and volunteers.
- C. Prisoner - For purposes of this policy, "prisoner" includes probationers in the Special Alternative Incarceration Program (SAI) and parolees residing in a Reentry facility unless otherwise stated.
- D. Prisoner-on-Prisoner Sexual Abuse - Sexual abuse of a prisoner by another prisoner includes any of the following acts if the victim is not a willing participant, or is coerced into such act(s) by overt or implied threats of violence.

1. Non-consensual sexual acts:

- a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- b. Contact between the mouth and the penis, vulva or anus;
- c. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and

2. Abusive sexual contact:

- a. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person, excluding contact incidental to a physical altercation.

- E. Prisoner-on-Prisoner Sexual Harassment - Includes repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by

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one prisoner directed toward another prisoner.

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- F. Staff Overfamiliarity - Conduct between an employee and a prisoner which has resulted in or is likely to result in intimacy, including but not limited to a kiss or a hug, or a close personal or non-work related association.
- G. Staff-on-Prisoner Sexual Harassment - Includes repeated verbal comments, written statements, or gestures of a sexual nature to a prisoner by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing and profane or obscene language or gestures.
- H. Staff-on-Prisoner Sexual Misconduct (Under Prison Rape Elimination Act [PREA] guidelines this is also referred to as staff-on-prisoner sexual abuse) - Sexual Abuse of a prisoner by an employee, including any of the following acts, willing or unwilling on the part of the prisoner:
  - 1. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a sexual act. This does not include acts related to official duties (e.g., strip searches, pat down searches, chest compressions during CPR, etc.).
  - 2. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
  - 3. Contact between the mouth and the penis, vulva or anus.
  - ✓ 4. Contact between the mouth and any body part where the employee has the intent to abuse, arouse or gratify sexual desire.
  - ✓ 5. Penetration of the anal or genital opening, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the employee has the intent to abuse, arouse or gratify sexual desire.
  - ✓ 6. Any other intentional contact, either directly or through clothing, of or with the genitals, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify the sexual desire of any person.
  - ✓ 7. Any attempt, threat or request by an employee to engage in the activities described above.
  - ✓ 8. Any display by an employee of his or her uncovered genitalia, buttocks or breast in the presence of a prisoner. *(child victim)*
  - 9. Invasion of privacy for sexual gratification or voyeurism.

GENERAL INFORMATION

- I. The Department has a zero tolerance standard for sexual abuse between or among prisoners. The Prison Rape Elimination Act (PREA) addresses prisoner-on-prisoner sexual abuse, staff sexual misconduct, and staff sexual harassment in correctional facilities. PREA specifically provides for the analysis of the incident and effects of such conduct and requires the issuance of national standards to address sexual abuse in a correctional setting. The PREA Manager, Budget and Operations Administration (BOA), shall be responsible for reporting statistical information and other data as required under the Act and for oversight of the Department's compliance with the national standards when issued. The PREA Manager also is responsible for monitoring compliance with this policy.
- J. The PREA Manager oversees and coordinates the efforts of the MDOC to comply with Federal PREA standards including development and implementation of policy, and maintains a PREA Manual which shall be reviewed and updated as needed. The manual shall be consistent with PREA standards and outline methods consistent with maintaining PREA compliance.

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*Are parolees prisoners? The box could say yes.*

2. K. This policy does not apply to probationers and parolees who are being supervised in the community except as set forth in Paragraph U. However, staff sexual misconduct/sexual harassment and staff overfamiliarity involving these offenders also is prohibited and shall be reported and investigated as set forth in PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline."

L. Allegations of prisoner sexual assaults against staff shall be reported to the Michigan State Police (MSP) or other appropriate law enforcement agency for investigation. A prisoner in a Correctional Facilities Administration (CFA) facility also shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline," and as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards."

M. Wardens shall designate a PREA Coordinator at each facility under his/her supervision. The PREA Coordinator shall have sufficient time and authority to coordinate the facility's efforts to comply with the standards outlined in the PREA Manual. The PREA Coordinator shall be responsible for monitoring, and providing assistance regarding all aspects of PREA compliance in areas such as training, education, reporting, documentation and investigation of PREA-related allegations.

N. To ensure compliance with standards developed by the National Prison Rape Elimination Commission, audits will be conducted by approved auditors in accordance with the Department of Justice (DOJ) PREA Audit Instrument.

O. For facilities housing male offenders, female staff must announce their presence each time they enter a prisoner housing unit. Staff must knock on the most interior door and announce in a loud clear voice, "female(s) in the area" and wait 10 seconds before entering.

P. For facilities housing female offenders, male staff must announce their presence each time they enter a prisoner housing unit. Staff must knock on the most interior door and announce in a loud clear voice, "male(s) in the area" and wait 10 seconds before entering. Also, at facilities housing female offenders, staff shall follow procedures outlined in WHV OP 03.03.140 "Prohibited Sexual Conduct Involving Prisoners" and SAI OP 03.03.140 "Prohibited Sexual Conduct Involving Trainees (PREA)."

#### RISK ASSESSMENTS

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Q. All prisoners shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other prisoners or being sexually abusive toward other prisoners. The OMNI-based risk assessment tools will be used to determine a prisoner's risk. The results of the risk assessment shall be considered when making housing, bed, work, education, and program assignments with the goal of keeping separate those prisoners at high risk of being sexually victimized from those at high risk of being sexually abusive. Staff shall complete a PREA-Aggressor Risk Assessment-Prison and a PREA-Victim Risk Assessment-Prison in accordance with the PREA Risk Assessment Manual. Staff designated by the Warden shall complete both PREA Risk Assessments if any of the following occur:

1. Within 72 hours of a prisoner's arrival at a correctional facility, including intake.
2. Whenever warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that may increase the prisoner's risk of being sexually abused by other prisoners or being sexually abusive toward other prisoners.

R. In addition to the PREA Risk Assessments required in Paragraph Q, staff designated by the Warden shall complete a PREA-Risk Assessment Review-Prison if any of the following occur:

1. Within 30 calendar days of a prisoner's arrival at a correctional facility, including intake.
2. It has been 12 months since the last review.

#### PROHIBITED CONDUCT

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S. Prisoners are prohibited from having any sexual contact with another prisoner. A prisoner in a CFA facility

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who willingly engages in such behavior is subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline" and, as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards." A Special Problem Offender Notice (SPON) shall be issued, as appropriate, as set forth in PD 03.03.110 "Special Problem Offender Notice." Parolees residing in a Reentry facility are subject to parole revocation in accordance with PD 06.06.100 "Parole Violation Process." Probationers in SAI are subject to termination from that program and may be returned to the jurisdiction of the sentencing court.

- T. Staff sexual harassment/sexual misconduct and staff overfamiliarity are violations of Department work rules. Staff that engage in such conduct are subject to disciplinary action pursuant to PD 02.03.100 "Employee Discipline." It also is a felony for staff to engage in sexual contact with a prisoner, as defined in MCL 750.520c.
- U. It is a felony for a contractual employee or a volunteer to engage in sexual contact with an offender, as defined in MCL 750.520c. A contractual employee or volunteer who engages in such behavior shall be prohibited from providing services within any Department correctional facility. In addition, a parolee or a probationer shall not be required to receive services from a contractual employee or volunteer in the community known to have engaged in such conduct. If such contact is reported by a parolee or probationer, the supervising agent shall ensure that the parolee or probationer is not required to have any further contact with the individual pending investigation of the matter. The supervising agent also shall immediately notify the Deputy Director of Field Operations Administration (FOA) or designee of the matter through the appropriate chain of command. The FOA Deputy Director or designee shall ensure a prompt investigation is conducted to verify whether the contractual employee or volunteer was found to have engaged in such conduct and, if verified, take appropriate action to ensure the individual no longer provides services to probationers or parolees.
- V. All prisoners and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations are protected from retaliation for reporting the incident or participating in the investigation.

#### CONFIDENTIALITY OF REPORTS AND INVESTIGATIONS

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- W. Reasonable steps shall be taken to ensure the confidentiality of information obtained during the risk assessment process and from reports of conduct prohibited by this policy and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others. Staff that intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 02.03.100 "Employee Discipline." Prisoners in a CFA facility who intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline." This does not preclude staff from discussing such matters with their attorneys or in accordance with this or any other policy directive, Civil Service Commission rules and regulations, or applicable collective bargaining unit agreements. This also does not preclude prisoners from discussing such matters with their attorneys, to seek treatment, or to ensure their own safety. The PREA Manager shall share with the facility head and his/her supervisors, as appropriate, allegations of conduct prohibited by this policy, which are received directly by the PREA Section.

#### REPORTING PROHIBITED CONDUCT

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- X. Employees shall immediately report any knowledge, suspicion or information regarding allegations of conduct prohibited by this policy to appropriate supervisory staff. Reports shall be taken regardless of when the incident was alleged to have occurred. Reports may be made privately to appropriate supervisory staff, through the MDOC Sexual Abuse Hotline, by completing a Department Sexual Abuse/Sexual Harassment Complaint form on the MDOC website, by contacting the PREA Manager or by contacting the Department's Internal Affairs Division. If the allegations pertain to conduct at another facility (including county jails, another state prison, federal prison or substance abuse program facility), the Warden shall provide email notification within 72 hours as follows:

1. For allegations of sexual abuse within the MDOC - To the appropriate facility head. The Inter-Administration Investigation Protocol issued by the CFA and FOA Deputy Directors shall be followed if the allegation is regarding the conduct of an employee from another Administration.

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2. For allegations of sexual abuse which occurred outside the MDOC - To the third party facility or local law enforcement where the incident was alleged to have occurred.

Y. Prisoners may report allegations of conduct prohibited by this policy, including threats of such conduct and retaliation for reporting such conduct, verbally or in writing to any Department employee, through the MDOC Sexual Abuse Hotline, through the PREA grievance process as outlined in this policy, through the Legislative Corrections Ombudsman, or through a third party. If reported verbally to an employee, the employee shall document it in writing as soon as possible and report it to appropriate supervisory staff. When receiving any report of sexual abuse or sexual harassment, regardless of the source, staff shall promptly document and forward the complaint to the appropriate supervisory staff for investigation.

Z. Prisoners in a CFA facility who report that they have been the victim of a prisoner-on-prisoner sexual abuse or staff sexual misconduct shall be referred to the Bureau of Health Care Services (BHCS) for examination, evidence collection, and treatment. They also shall be referred to BHCS mental health services staff for assessment, counseling, and other necessary mental health services consistent with the requirements set forth in PD 04.06.180 "Mental Health Services." Parolees in a Reentry facility who report that they have been the victim of a prisoner-on-prisoner non-consensual sexual act or staff sexual misconduct shall be permitted to speak with a counselor available in the local community, if requested.

AA. Prisoners in a CFA facility who make accusations of misconduct against employees, including for staff sexual misconduct/sexual harassment or staff overfamiliarity, which after investigation are determined to be unfounded may be charged with the misconduct of "Interference with the Administration of Rules," with approval of the Warden or designee. The misconduct may be elevated to Class I with the approval of the CFA Deputy Director or designee. Hearings shall be conducted in accordance with PD 03.03.105 "Prisoner Discipline."

BB. Medical and mental health staff shall obtain informed consent from prisoners before reporting information about prior sexual victimization that did not occur in an institutional setting. A PREA Authorization for Release of Information Form (CAJ-1028) shall be used for this purpose. A copy of the CAJ-1028 shall be retained for auditing purposes.

CC. Employees who are Health Care and Mental Health practitioners are required to report allegations of sexual abuse that occurred in an institutional setting, whether or not the institution is part of the Department. The practitioner shall inform the prisoner of the practitioner's duty to report and that confidentiality is limited.

DD. The facility shall report any allegations of alleged victims under the age of 18 or who are considered a vulnerable adult under a state or local vulnerable persons statute to the PREA Manager. After the PREA Manager receives the reported allegations, s/he will forward the allegations to the appropriate agencies, to the extent the law requires such reporting.

#### PREA GRIEVANCES

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EE. The PREA Grievance process is a two-step process allowing prisoners to grieve regarding allegations of sexual abuse. A prisoner may file a PREA Grievance at Step I, and may appeal the Step I decision to Step II. The Step II decision shall serve as the Department's final decision on the merits of the PREA Grievance. Issues filed by prisoners regarding sexual abuse, as defined in this policy, serve to exhaust the prisoner's administrative remedies only when filed through both steps of the PREA grievance process. PREA Grievances alleging sexual abuse shall not be denied or rejected.

FF. Prisoners shall use the PREA Prisoner Grievance Form (Step I) (CAJ-1038A) to file a PREA Grievance. The form may be completed by hand or typewritten. However, handwriting must be legible. The issues should be stated briefly but concisely. Information provided should be limited to the facts involving the issues being grieved (i.e., who, what, when, where, why and how). Dates, times, places and names of all