

JAN 29 2021

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No. _____

22-5954

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID FLORENCE

— PETITIONER

(Your Name)

vs.

S. FRAUENHEIM AND R. RESER

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS NINTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID FLORENCE

(Your Name)

PELICAN BAY STATE PRISON P.O. BOX 7500

(Address)

CRESCENT CITY, Ca. 95532

(City, State, Zip Code)

(Phone Number)

ORIGINAL

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QUESTION(S) PRESENTED

CAN RESPONDENT INTENTIONALLY FALSIFY THEIR REPORT TO THE COURT TO OBTAIN QUALIFY IMMUNITY.

CAN PETITIONER BE RETALIATE AGAINST FOR FILING GRIVANCES BY DENYING HIM ACCESS TO THE COURT.

CAN PETITIONER BE DENIED TO AMEND HIS COMPLAINT IF HE WAS ORDERED BY ANOTHER COURT TO APPEAR

LIST OF PARTIES

^x
[X] 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:

RELATED CASES

PROCUNIER v. MARTINEZ 416 U.S. 396, 94 S.Ct. 1800, 40 L. Ed.2d 224 (1974), LYONS v. BISBEE No. 3:07 CV-0460-IRH RAM. 2011 WL. 2313652 AT 15-16 D. NEV. APR. 7, 2011. REPORT AND-RECOMMENDATION ADOPTED No. 3:07 CV-000460-LRH, 2011 WL. 2293333 D. NEV. JUNE 9, 2011 DENYING SUMMARY JUDGMENT ON CLAIM BASED ON EXPLICIT LYRICS. CATO v. CDCR. WL. 395338 AT 6. E.D.-CAL. JUNE 29, 2015. GOLDEN v. MCCAUGHTRY, 915 F. SUPP. 77-79 E.D. WIS. 1995, ALLOWING CLAIM-BASED ON EXPLICIT LYRICS TO PROCEED THROUGH SCREENING. HENSLEY v. VERHAGEN, No. 01-C-0495-C, 2002 WL. 32344440 AT 9. W.D. WIS. MAY 23, 2002 GRANTING SUMMARY JUDGMENT ON CLAIM BASED-ON EXPLICIT LYRICS. BUT SEE HERLEIN v. HIGGINGS, 172 F.3d 1089, 1090. 8TH CIR. 1999-HOLDING BAN ON CASSETTES CONTAINING EXPLICIT LYRICSWAS REASONABLE RELATED TO LEGITIMATE PENOLOGICAL INTEREST.

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PAGE NUMBER 11

AMENDED COMPLAINT

THE COURT HAS HELD UNDER F.R.C.P. 15.(a, LEAVE TO AMEND SHALL
BE FREELY GIVEN WHEN JUSTICE SO REQUIRE, UNLESS THERE IS SOME
LIKE "UNDUE DELAY, BAD FAITH, OR DILATORY MOTIVE ON THE PART
OF THE MOVANT, REPEATED FAILURE TO CURE DEFICIENCIES BY
PREVIOUSLY ALLOWED, UNDUE PREJUDICE TO OPPOSING PARTY BY VIRTUE
OF ALLOWING OF THE AMENDMENT, FUTILE OF AMENDMENT, WE THEREFORE
PREVIEW SUCH DENIAL STRICTLY IN THE LIGHT OF THE STRONG POLICY
PERMITTING AMENDMENT. FORMAN v. DAVID, 371 U.S. 178, 82-83, 83-
S.CT. 227 (1962); ACCORD, RAMIREZ v. GALAZA, 334 F.3d 850-860
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24	HARLOW v. FITZGERALD 457 U.S. 800, 102 S.CT. 2227, 73 L. Ed.2d 396-	18
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26	HENSLEY v. VERHAGEN WL. 32344440 AT *9 [W.D. WIS. MAY 23, 2002]	17
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15	PAC & ARTIC RY, AND NAIGATION Co. v. UNITED TRANSF UNION 952 F.2d-	23
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☒ reported at FLORENCE v. FRAUENHEIM Et. al. FED. APP. 229, JULY 14, 2020, 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 D to the petition and is

☐ reported at _____; 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 JULY 22, 2020.

☐ 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: OCTOBER 14, 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 THE UNITED STATES SUPREME COURT

☐ 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

28 U.S.C. 1254[I]

28 U.S.C. 1915.[e][2][B][ii]

FEDERAL RULES OF CIVIL PROCEDURE RULE 15[a] AMENDED COMPLAINT

28 U.S.C. 1291

28 U.S.C. 1331

FEDERAL RULES OF CIVIL PROCEDURE 60[b][2]

CALIFORNIA CODE OF REGULATIONS TITLE 15. SEE APPENDIX V. PETITIONER OPEN BRIEF.

3006.[c][1]

3090.[b]

3190.[f]

3191.[c][1][2][3]

3358.[a][b]

CALIFORNIA DEPARTMENT OF CORRECTIONS OPEARATIONS MANUAL DOM. SEE APPENDIX V.

Ex. E.1.2.3

54030.1

54030.2

54030.5

54030.10.2

54100.4

STATEMENT OF THE CASE

- 1.) PETITIONER MAINTAIN THAT RESPONDENT S. FARUENHEIN WARDEN OF PLEASANT-VALLEY STATE PRISON PVSP. IMPLEMENTED AND ENFORCED AN UNDERGROUND POLICY OF PROHIBITING INMATE'S FROM HAVING COMPACT DISC CD'S WITH EXPLICIT LYRICS ON THEM.
- 2.) ON DECEMBER 5, 2012 PETITIONER WAS TRANSFERRED FROM CALIFORNIA STATE-PRISON LOS ANGELES COUNTY CSP/LAC TO PVSP. WHILE IN PVSP. RECEIVING AND RELEASING R-R RESPONDENT CORRECTIONAL OFFICER C/O R. RESER SAW THAT PETITIONER HAD NINE BOXES OF PROPERTY AND BECAME INSTANTLY UPSET STATING, NINE BOXES OF PROPERTY, THIS IS SOME BULL SHIT AND PETITIONER WAS NOT GETTING ALL THAT SHIT.
- 3.) UNDER CALIFORNIA CODE OF REGULATIONS CCR. TITLE 15. 3090(b), WHICH READS IN PART: THE MAXIMUM MONTHLY CANTEEN DRAW AUTHORIZED BY THE SECRETARY IS \$220.00 SEE APPENDIX V Ex. S. ATTACHED TO PETITIONER PET. OPENING OP. BRIEF
- 4.) PETITIONER STATED TO R. RESER UNDER CCR. TITLE 15. 3190(f) PERSONAL PROPERTY, WHICH READS IN PART: UPON AN INMATE TRANSFER BETWEEN INSTITUTIONS OF THE DEPARTMENT, THE SENDING INSTITUTION SHALL INVENTORY THE INMATE PROPERTY PURSUANT TO CCR. TITLE 15. 3191(c)(1)(2)(3). SEE APPENDIX V EX. G.2 ATTACHED TO PET. OP. BRIEF.
- 5.) PETITIONER STATED TO R. RESER UNDER DEPARTMENT OPERATION MANUAL DOM. 54030.10.2 LEGAL MATERIALS, IN ADDITIONAL TO THE SIX CUBIT FEET OF PROPERTY, PETITIONER WAS COULD HAVE, HE WAS ALLOWED TO HAVE AN ADDITIONAL ONE CUBIT FOOT OF LEGAL MATERIALS IN HIS CELL AND THE BOXES WERE NOT ALL THE WAY FULL AND CANTEEN DID NOT COUNT. SEE APPENDIX V EX. E.2 ATTACHED TO PET. OP. BRIEF.
- 6.) RESPONDENT R. RESER STATED TO PETITIONER HE WAS ONLY GETTING FOUR BOXES OF PROPERTY AND THAT'S ALL HE WAS GIVING HIM, PETITIONER STATED TO R. RESER HE WAS FILING A GRIEVANCE ALSO KNOWN AS A CDCR-602 INMATE/APPEAL REGARDING THE MATTER BECAUSE WITHIN THE COMBINE BOXES HE ONLY HAD SIX CUBIT FEET OF PROPERTY ALONG WITH THE ONE CUBIT FOOT OF LEGAL MATERIAL. SEE APPENDIX V

CONTINUE STATEMENT OF THE CASE

Ex. DF.17.1 DOM. SECTION 54100.4 RIGHT TO APPEAL ATTACHED TO PET. OP. BRIEF.

7., PETITIONER ASKED RESPONDENT R. RESER HOW DOES HE SPELL HIS NAME, R. RESER BECAME VISIBLY ANGRY AND STATED OH! YOU WANT TO FILE AN APPEAL AGAINST ME, I DO NOT GIVE A FUCK, CRY ALL YOU WANT, THEN SPELLED HIS NAME, R. RESER THEN OPENED ONE OF THE BOXES CONTAINING PETITIONER'S CD'S STATING, YOU CAN NOT HAVE CD'S WITH EXPLICIT LYRICS

8., PETITIONER STATED TO R. RESER THAT HE WAS FILING AN APPEAL ABOUT THE CD'S AND TO HOLD THEM UNTIL HE FILED THE APPEAL, R. RESER REFUSED STATING, SEND THEM HOME OR DONATE THEM, IN VIOLATION OF CDCR. TITLE 15. 3191[c]. SEE APPENDIX V.- Ex's G.2 & DF.A.1.2 ATTACHED TO PET. OP. BRIEF.

9., WHILE CONTINUING TO INSPECT PETITIONER PROPERTY THAT WAS IN THE BOX, R.- RESER REMOVED PETITIONER 42 U.S.C. 1983 CIVIL RIGHTS COMPLAINT, FLORENCE v.- NANGALAMA, CASE No. 2:11-cv-03119 WITH APPEALS ATTACHED REGARDING CDCR. OFFICIALS RETALIATING AGAINST HIM FOR FILING APPEALS AND STATED TO PETITIONER YOU SURE DO NOT HAVE A PROBLEM FILING 602'S.

10., RESPONDENT R. RESER STATED TO PETITIONER, I'M GOING TO GIVE YOU SOMETHING TO FILE AN APPEAL ABOUT AND CONFISCATED HIS ORTHOPEDIC SHOES THE DOCTOR PRESCRIBED FOR HIS MEDICAL CONDITION OF THE FEET. HOT POT, EXTENSION CARD, AND OTHER PERSONAL ITEM'S IN VIOLATION OF DOM. 54100.4 & 3358[a][b], SEE APPENDIX-V. Ex's DF.17.1, J. N. & H. ATTACHED TO PET. OP. BRIEF.

11., ON DECEMBER 6, 2012 PETITIONER SENT RESPONDENT S. FRAUENHEIM A CDCR. 22.- INMATE REQUEST FOR INTERVIEW REGARDING THE POLICY OF PROHIBITING INMATE'S FROM HAVING CD'S WITH EXPLICIT LYRICS. SEE APPENDIX V. Ex. DF.A.1.1. & 1.2 ATTACHED TO PET. OP. BRIEF

12., PETITIONER STATED, YOU MISAPPREHEND THE POLICY YOU ARE RELYING ON, CCR.- TITLE 15. THIS POLICY IS FAR REACHING AND OVER EXAGGERATED, IF THIS IS THE CASE, YOU SHOULD COME GET PETITIONER HOLY BIBLE AND T.v. SEE APPENDIX V. & Ex. DF.-



1 A.1.1. ATTACHED TO PET. OPENING BRIEF.

2 13., PETITIONER RECEIVED A RESPONSE BACK ON THE CDCR-22 DATED DECEMBER 10,-
3 2012 FROM A.J. HERRETTA WITH A COPY OF A MEMORANDUM DATED SEPTEMBER 18, 2007
4 SIGNED BY FORMER WARDEN J.A. YATE'S STATING, UNDER CCR. 3006(c)[1] THE CD'S
5 ARE CONSIDERED CONTRABAND. SEE APPENDIX V. Ex'S DF. A.1.1 & 1.2 ATTACHED TO
6 PET. OP. BRIEF.

7 14., CCR. TITLE 15. 3006(c)[1] READS IN PART: EXCEPT AS AUTHORIZED BY THE
8 INSTITUTIONAL HEAD, INMATES SHALL NOT PROCESS OR HAVE UNDER THEIR CONTROL ANY
9 MATTER WHICH CONTAINS OR CONCERNS ANY OF THE FOLLOWING: ANY MATTER OF A CHARACTER
10 TENDING TO INCITE MURDER ARSON, RIGHT, OR ANY FORM OF VIOLENCE OR PHYSICAL HARM
11 TO ANY PERSON, OR ANY ETHNIC, GENDER, RACIAL, RELIGIOUS GROUP. SEE Ex. Y.-
12 ATTACHED TO APPENDIX S. PETITIONER OPPOSITION TO SUMMARY JUDGMENT.

13 15., ON AUGUST 20, 2013 WHILE PETITIONER WAS AT PALPH J. DONNOVAN RJD. HE WAS
14 CALLED TO R-R Id. TO PICK UP FOUR BOXES OF HIS PERSONAL PROPERTY THAT WAS LEFT
15 IN HIS CELL AT FVSP. Id. SOME OF HIS PROPERTY WAS BROKEN AND HE NEVER RECEIVED
16 THE FOUR BOXES OF HIS LEGAL MATERIALS BACK FROM RESPONDENT R. RESER.

17 16., PETITIONER STATED, RESPONDENT R. RESER INTENTIONALLY CONFISCATED HIS LEGAL
18 MATERIALS PURSUANT TO POLICY CONCERNING HIS CRIMINAL CASE No. A651940 POLICE-
19 REPORT, PRELIMINARY HEARING TRANSCRIPTS, TRIAL TRANSCRIPTS, OPENING BRIEF,
20 ATTORNEY WORK PRODUCT, ATTORNEY GENERAL OPENING BRIEF, RESPONSE BRIEF, WITNESSES
21 DECLARATION STATING PETITIONER WAS INNOCENT OF HIS CRIME, HABEAS CORPUS HE WAS
22 PREPARING FOR COURT IN HIS CRIMINAL CASE. SEE Ex. K.1.2 ATTACHED TO APPENDIX-
23 V. PET. OP. BRIEF

24 I. RESPONDENT S. FRAUENHEIM DECLARATION

25 17., RESPONDENT S. FARUENHEIM STATED IN HIS DECLARATION IN SUPPORT OF SUMMARY
26 JUDGMENT WHICH READS IN PART: IN 2013 WHEN I BECAME ACTING WARDEN AT FVSP. Id.
27 I RATIFIED A 2007 POLICY FROM FORMER WARDEN YATE'S, THIS INSTITUTION POLICY
28 PRESCRIBED CD'S WHICH CONTAINED EXPLICIT LYRICS THAT MET ANY OF THE

1 FOLLOWING CRITERIA (1, PROMOTING GANG ACTIVITY (2, DESCRIBING UNLAWFUL
2 ACTIVITY OR (3, INCITING MURDER, ARSON, RIOT OR OTHER FORM OF PHYSICAL
3 VIOLENCE. SEE APPENDIX P.

4 II. RESPONDENT S. FRAUENHEIM ADMISSIONS.

5 18., RESPONDENT S. FRAUENHEIM ADMIT IN HIS SEVENTH SET. OF ADMISSIONS P.5
6 REQUEST No.15 AS A WARDEN IN THE STATE OF CALIFORNIA PRISON, HE WAS TO KNOW
7 ALL APPLICABLE STATE AND FEDERAL LAWS AS THEY IMPACT HIS JOB.

8 19., RESPONDENT S. FRAUENHEIM ADMIT IN HIS SEVENTH SET. OF ADMISSIONS P.6
9 REQUEST NO.17 THE POLICY OF BANNING COMPACT DISC CD'S WITH EXPLICIT LYRICS
10 ON THEM IN PVSP. WENT THROUGH THE ADMINISTRATIVE PROCEDURE ACT. APA.

11 20., RESPONDENT S. FRAUENHEIM ADMIT IN HIS SEVENTH SET. OF ADMISSIONS P.6
12 REQUEST No.18 THE POLICY AND PROCEDURE OF BANNING CD'S WITH EXPLICIT LYRICS
13 ON THEM IS NOT SPECIFICALLY IN CCR. TITLE 15. 3006(c)(1). Id.

14 21., RESPONDENT S. FRAUENHEIM DENIED IN HIS SEVENTH SET. OF ADMISSIONS P.7
15 REQUEST No.25 HE HAD THE AUTHORITY WHILE BEING WARDEN AT PVSP. TO TAKE ADVERSE
16 PERSONNEL ACTION AGAINST A C/O Id. IF HE HEARD THEM USING EXPLICIT PROFANITY
17 IN THE PERFORMANCE OF THEIR DUTIES.

18 III. RESPONDENT R RESER DECLARATION.

19 22., RESPONDENT R. RESER STATED IN HIS DECLARATION IN SUPPORT OF SUMMARY
20 JUDGMENT WHICH READS IN PART: AS R-R Id. OFFICER, I WAS IN CHARGE OF
21 PROCESSING INMATES WHO ARRIVED AT PVSP. I WAS REQUIRED TO IDENTIFY THE
22 INMATE'S PROPERTY, MAKE SURE THAT IT WAS COMPLIANT WITH INSTITUTIONAL POLICY
23 AND STORE OR SHIP ANY PROPERTY THAT EXCEEDED PROPERTY LIMITS, IN 2012 PVSP.
24 ALSO HAD A POLICY EXCLUDING EXPLICIT LYRICS CD'S AND I WAS REQUIRED TO INSPECT
25 AN INMATE'S PROPERTY TO MAKE SURE THAT CONTRABAND WAS NOT ENTERING THE
26 INSTITUTION. SEE APPENDIX P.

27 IV. RESPONDENT R. RESER ADMISSIONS.

28 23., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS. P.2 REQUEST

1 No.1 CDCR. DOM. 54030.6 STATES, CORRECTIONAL STAFF SHALL ASSUME RESPONSIBILITY
2 FOR INMATES PROPERTY UPON NOTICE THAT AN INMATE IS BEING RETAINED ELSEWHERE.

3 24., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS P.2 REQUEST
4 NO.3 UNDER CCR. TITLE 15. 3190\j\I,, HEALTH CARE APPLIANCE SUBJECT TO
5 PRESCRIPTION BY HEALTH CARE STAFF AND APPROVE BY DESIGNED CUSTODY STAFF SHALL
6 BE EXCLUDED FROM THE SIX CUBIT FOOT LIMITATION OF PROPERTY. SEE APPENDIX-
7 V. Ex'S 18 & 19.

8 25., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS P.3 REQUEST
9 NO.5 CCR. TITLE 15. 3358\B, POSSESSION OF APPLIANCE, NO INMATES SHALL BE
10 DEPRIVED OF A PRESCRIBED ORTHOPEDIC APPLIANCE IN THE INMATES POSSESSION UPON
11 ARRIVING INTO THE DEPARTMENT'S CUSTODY OR PROPERTY OBTAINED WHILE IN THE
12 DEPARTMENT CUSTODY.

13 26., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS P.3 REQUEST
14 NO.6 WHEN PETITIONER ARRIVED A PVSP. ON DECEMBER 5, 2012 HE HAD A CURRENT
15 CDCR-7410 COMPREHENSIVE ACCOMMODATION CHRONO FOR ORTHOPEDIC TENNIS SHOES,
16 AND HE MADE PETITIONER SEND THEM HOME.

17 27., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS P.3 REQUEST
18 NO.8 HE WAS RESPONSIBLE FOR THE FOUR BOXES OF LEGAL MATERIALS THAT HE TOOK
19 FROM PETITIONER IN R-R AND RETAINED ON DECEMBER 5, 2012.

20 28., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS P.4 REQUEST
21 NO.11 ON DECEMBER 5, 2012 WHILE IN R-R HE STATED TO PETITIONER HE WAS ONLY
22 GETTING FOUR BOXES OUT OF THE NINE HE ARRIVED WITH, AND PETITIONER TOLD HIM,
23 HE WAS FILING A CDCR-602 INMATE/APPEAL.

24 29., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS P.5 REQUEST
25 NO.13 PETITIONER ASKED HIM ON DECEMBER 5. 2012 HOW DO YOU SPELL YOUR NAME,
26 BECAUSE PETITIONER WAS FILING A CDCR-602 FOR CONFISCATING HIS LEGAL MATERIALS.

27 30., RESPONDENT R. RESER ADMIT IN HIS SECOND SET. OF ADMISSIONS P.4 REQUEST
28 NO.10 HE VIOLATED CCR. TITLE 15. 3191\c, WHEN HE REFUSED TO HOLD PETITIONER

1 PERSONAL PROPERTY TO BE INVESTIGATED. SEE APPENDIX B. RESPONDENT ADMISSIONS
2 AND Ex. G.2 ATTACHED TO APPENDIX V.

3 V. PETITIONER HOLLY BIBLE

4 31., GENESIS SPEAKS ABOUT INCEST. NUMBERS VERSE 20-22 AND 31-36 TALKS ABOUT
5 KILLING ALL TRIBES WHO ARE AGAINST ISRAEL AND ALL MAN AND WOMEN WHO SLEP WITH
6 MEN'S AND WOMEN FROM OTHER TRIBES, TAKING THEIR LAND, KIDNAPPING WOMEN AND
7 CHILDREN. IN DEUTERONOMY VERSE 17. THEY TALK ABOUT STONING A MAN OR WOMEN WHO
8 SERVED OTHER GODS, BUT PETITIONER CAN HAVE THIS KIND OF MATERIALS.

9 VI. 42 U.S.C. 1983 CIVIL RIGHTS COMPLAINT

10 32., PETITIONER FILED HIS COMPLAINT ON AUGUST 26, 2015, ON NOVEMBER 23, 2015
11 THE COURT DISMISSED THE COMPLAINT UNDER 28 U.S.C. 1915[e][2][B][ii] FOR FAILURE
12 TO STATE A CLAIM WITH LEAVE TO AMEND. ON DECEMBER 29, 2015 PETITIONER FILED
13 HIS FIRST AMENDED COMPLAINT. ON JULY 25, 2016 THE COURT RECOMMENDED THE COMPLAINT
14 BE DISMISSED WITH PREJUDICE AND THE DISMISSAL COUNT AS A STRIKE. SEE APPENDIX-
15 E.F.G.

16 VII. PETITIONER OBJECTION TO MAGISTRATE JUDGE

17 33., ON SEPTEMBER 8, 2016 PETITIONER FILED AN OBJECTION MOTION TO THE MAGISTRATE
18 JUDGE F.R. ON AUGUST 11, 2017 THE COURT VACATED (EFC. No.10, FINDING A COGNIZABLE
19 FIRST AMENDMENT FREEDOM OF SPEECH CLAIM AND DISMISSED ALL OTHER CLAIMS WITH
20 PREJUDICE (EFC. No.9, SEE APPENDIX. H & I.

21 VIII. OUT TO COURT

22 34., WHILE PETITIONER WAS AT NORTH KERN STATE PRISON NKSP. THE COURT ORDERED
23 HIM TO APPEAR IN THE EASTERN DISTRICT COURT IN CASE No. 2:11-cv-03119 ON JULY-
24 13, 2017. ON JULY 10, 2017 NKSP. TRANSFERRED PETITIONER TO CALIFORNIA STATE-
25 PRISON SACRAMENTO CSP/SAC TO GO TO COURT, WHILE AT CSP/SAC PETITIONER WAS ON
26 ORIENTATION/CONFINED TO QUARTERS CTQ. FOR 18-DAYS.

27 35., WHEN PETITIONER WAS TRANSFERRED TO NKSP. HE WAS PLACED ON ORIENTATION/CTQ
28 FOR 13-DAYS. SEE APPENDIX J.



1 36., WHEN PETITIONER WAS RELEASED FROM ORIENTATION BACK TO HIS HOUSING-UNIT.
2 HE WAS TOLD, HE HAD TO APPEAR AT COURT AS A WITNESS IN SAN DIEGO, NKSP. SENT
3 PETITIONER IMMEDIATELY, HE STAYED IN SAN DIEGO COUNTY JAIL FOR TWO WEEKS AND
4 WAS RETURNED TO NKSP. AND PLACED BACK ON ORIENTATION FOR 13-DAYS AND RELEASED
5 BACK TO HIS CELL. SEE APPENDIX K.

6 37., PETITIONER DID NOT GET HIS PROPERTY FOR A WEEK, BY THEN IT WAS TOO LATE
7 FOR HIM TO OBJECT TO THE COURT F.R Id. DATED AUGUST 11, 2017 SEE APPENDIX I.

8 IX THE COURT'S SCHEDULING ORDER

9 38., THE COURT SENT PETITIONER A SCHEDULING ORDER DATED JANUARY 2, 2018 STATING,
10 THE DEADLINE TO AMEND THE PLEADING WAS JULY 2, 2018. SEE APPENDIX L.

11 X. PETITIONER'S MOTION TO AMEND HIS COMPLAINT

12 39., ON JUNE 20, 2018 PETITIONER FILED A MOTION TO AMEND HIS COMPLAINT. SEE
13 APPENDIX M.

14 XI. RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

15 40., ON NOVEMBER 13, 2018 RESPONDENT'S FILED A MOTION FOR SUMMARY JUDGMENT
16 CLAIMING THEY WERE ENTITLED TO QUALIFIED IMMUNITY. SEE APPENDIX P.

17 XII. COURT ORDER DENYING LEAVE TO AMEND

18 41., ON NOVEMBER 29, 2018 THE MAGISTRATE JUDGE DENIED PETITIONER LEAVE TO AMEND
19 HIS COMPLAINT TO BRING HIS RETALIATION CLAIM BACK UP. SEE APPENDIX Q.

20 XIII. PETITIONER OPPOSITION TO SUMMARY JUDGMENT

21 42., ON JANUARY 8, 2019 PETITIONER FILED AN OPPOSITION MOTION TO RESPONDENTS
22 MOTION FOR SUMMARY JUDGMENT. SEE APPENDIX S.

23 XIV. MAGISTRATE JUDGE RECOMMEND GRANT OF SUMMARY JUDGMENT

24 43., ON FEBRUARY 13, 2019 THE MAGISTRATE JUDGE FILED HIS F.R. Id. WITH THE
25 COURT RECOMMENDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BE GRANTED IN FULL.
26 SEE APPENDIX C.

27 XV. GRANT OF SUMMARY JUDGMENT

28 44., ON MARCH 19, 2019 THE DISTRICT JUDGE GRANTED RESPONDENTS MOTION FOR SUMMARY

1 JUDGMENT IN FULL. SEE APPENDIX D.

2 XVI. AMENDED COMPLAINT

3 45., THE COURT HELD UNDER FED. R. CIV. P. 15[a] THAT LEAVE TO AMEND SHALL BE
4 FREELY GIVEN WHEN JUSTICE SO REQUIRE, UNLESS THERE IS SOME REASON LIKE "UNDUE
5 DELAY, BAD FAITH, OR DILATORY MOTIVE ON THE PART OF THE MOVANT, REPEATED FAILURE
6 TO CURE DEFICIENCIES BY PREVIOUSLY ALLOWED, UNDUE PREJUDICE TO OPPOSING PARTY
7 BY VIRTUE OF ALLOWING OF THE AMENDMENT, FUTILE OR AMENDMENT, WE THEREFORE REVIEW
8 SUCH DENIAL IN LIGHT OF THE STRONG POLICY PERMITTING AMENDMENT FORMAN v. DAVID,
9 371 U.S. 178, 82-83, 83 S.CT. 227 [1962]: ACCORD. INTERROYAL CORP v. SPONELLER,
10 889 F.2d 112 [6TH CIR. 1990], RAMIREZ v. GALAZA, 334 F.3d 850-860 [9TH CIR.-
11 2003].

12 XVII. LETTER FROM CDCR. ASSOCIATE DIRECTOR YING SUN

13 46., PETITIONER RECEIVED A LETTER DATED JUNE 26, 2021 FROM ASSOCIATE DIRECTOR
14 YING SUN, REGULATION AND POLICY MANAGEMENT BRANCH, WHO IS RESPONSIBLE FOR
15 SUBMITTING ALL POLICIES AND REGULATIONS FOR CDCR. TO THE CALIFORNIA OFFICE OF
16 ADMINISTRATIVE LAW OAL. AS PART OF THE ADMINISTRATIVE PROCEDURE ACT. APA.

17 47., TO BE PROMULGATED, THE LETTER READS IN PART: YOU WRITE ASKING HAVE CDCR.
18 IMPLEMENTED A POLICY OF BANNING INMATES FROM HAVING CD'S WITH EXPLICIT LYRICS
19 AND WERE THESE CHANGES FILED WITH THE OAL. Id. SHE STATED, I'M UNAWARE OF ANY
20 REGULATION CONCERNING THE SUBJECT. SEE EX. DF.1 ATTACHED TO APPENDIX X.

21 XVIII. LETTER FROM CAPTAIN MARK TILLOTSON

22 48., ON AUGUST 24, 2021 PETITIONER RECEIVED A LETTER DATED JULY 20, 2021 FROM
23 CDCR. CAPTAIN MARK TILLOTSON OF THE OFFICE OF POLICY STANDARDIZATION WHICH READS
24 IN PART: THIS IS IN RESPONSE TO YOUR LETTER DATED JUNE 6, 2021 IN WHICH YOU
25 REQUEST THE OFFICE TO CLARIFY IF THERE ARE ANY PENDING POLICY CHANGES PERTAINING
26 TO RESTRICTING INMATES FROM POSSESSING COMPACT DISC CD'S WHICH CONTAIN EXPLICIT
27 LYRIC, THE OFFICE HAS NOT SUBMITTED ANY POLICY OR REGULATION CHANGE THAT WOULD
28 PROHIBIT INMATE FROM PURCHASING OR POSSESSING CD'S WITH EXPLICIT LYRICS. SEE



1 Ex. D.D. ATTACHED TO APPENDIX X.

2 XIX. DENIAL OF ACCESS TO THE COURT

3 THE HOLDING OF THE COURT CONFLICTS WITH DECISIONS OF OTHER COURT'S, THE SUPREME
4 COURT IN CHRISTOPHER v. HABBURY, 536 U.S. 403, 414, 416, n.13, 122 S.CT. 2179
5 [2002] STATED, CASES INADEQUATELY TRIED OR SETTLED, OR WHERE A PARTICULAR KIND
6 OF RELIEF COULD NOT BE SOUGHT, AS A RESULT OF OFFICIALS ACTIONS COULD SUPPORT
7 A CLAIM OF DENIAL OF COURT ACCESS, IN ADDITION TO THOSE THAT WERE DISMISSED
8 OR NEVER TRIED. IN LEWIS v. CASEY, 518 U.S. 343, 351, 55. 116 S.CT. 2174 [1996],
9 THE SUPREME COURT IMPOSED SEVERAL RESTRICTIONS ON PRISONERS ABILITY TO ENFORCE
10 THE BOUNDS v. SMITH, 430 U.S. 817, 828, OBLIGATION LEWIS, STATED A PRISONER
11 COMPLAINING OF A BOUNDS, VIOLATION MUST SHOW THAT [1] HE WAS OR IS SUFFERING
12 AN ACTUAL INJURY BY BEING IMPEDED [2] IN BRINGING A NON FRIVOLOUS CLAIM [3]
13 ABOUT HIS CRIMINAL CONVICTION. IN SIMKINS v. BRUCE, 406 F.3d 1239, 1243-44 [10TH-
14 CIR. 2005], PLAINTIFF WAS ACTUALLY INJURED WHERE FAILURE TO FORWARD HIS LEGAL
15 MAIL, PREVENTED HIM FROM RECEIVING NOTICE OF SUMMARY JUDGMENT MOTION RESULTING
16 IN THE DISMISSAL OF HIS CASE AND LOST OF RIGHTS TO APPEAL. GOFF v. NIX, 113-
17 F.3d 887, 890-92 [8TH CIR. 1997] HOLDING THAT PLAINTIFF WHO LOST LEGAL PAPERS
18 CRITICAL TO HIS CONVICTION PROCEEDING WAS ACTUALLY INJURED, PURKEY v. CCA.-
19 DETENTION CENTER, 339 F. SUPP. 2d 1145, 1152 [D. KAN. 2004] HOLDING THAT
20 DEFENDANTS ALLEGED DISCARDING OF NOTES INTERROGATION ESSENTIAL FOR THE PLAINTIFF
21 CHALLENGED CONVICTION SUFFICIENTLY PLED ACTUAL INJURY. KING v. BARONE, 1997-
22 WL. 337032 *4 [E.D. Pa. 1997] DECLINING TO DISMISSED CLAIM BASED ON CONFISCATION
23 OF ALLEGED EXCULPATORY DOCUMENTATION SINCE IT IS CONCEIVABLE THIS MAY HAVE
24 IMPEDED PLAINTIFF PETITION FOR POST CONVICTION RELIEF.

25 LUECK v. WATHEN, 262 F. SUPP 2d. 690-695 [N.D. TEX. 2003] HOLDING, THAT
26 CONFISCATION OF AFFIDAVIT OF A KEY WITNESS THAT PLAINTIFF DEFENSE LAYER NEVER
27 INTERVIEWED WHICH WAS NECESSARY IN HIS POST-CONVICTION PROCEEDING TO SHOW THE
28 WITNESS HAD EVIDENCE MATERIALS TO HIS CLAIM OF INEFFECTIVENESS OF COUNSEL,

1 CONSTITUTED ACTUAL INJURY, IN FRANCO v. KELLY, 854 F.2d 588 [2d CIR. 1987]
2 A PRISON INMATE ALLEGED IN A PRO 'SE COMPLAINT THAT STATE OFFICIALS HAD
3 INTENTIONALLY CONFISCATED A LEGAL BRIEF THAT HE HAD BEEN PREPARING FOR
4 AN APPEAL AND SOME ACCOMPANY LEGAL RESEARCHED MATERIALS. SEE Id. AT 345-
5 46, THE DISTRICT COURT DISMISSED THE COMPLAINT FOR FAILURE TO STATE A
6 CLAIM UNDER FED. R. CIV. P. RULE 12[b][6], HOWEVER THE APPELLANT COURT
7 REVERSED THE DISMISSAL OF THE 1983 COMPLAINT HOLDING, THE DISTRICT COURT
8 IMPROPERLY RELIED ON PARRATE, AND LOVE, STATING, WE NOTED THAT MORRELLO,
9 ALLEGED THAT A PRISON OFFICIALS HAD INTENTIONALLY STOLE HIS LEGAL PAPERS,
10 DESCRIBING AN UNCONSTITUTIONAL DENIAL OF MORRELLO, ACCESS TO THE COURT.
11 THE COURT HELD INTENTIONALLY OBSTRUCTION OF A PRISONERS ACCESS TO THE
12 COURT IS PRECISELY THE SORT OF OPPRESSION THAT THE FOURTEENTH AMENDMENT
13 AND SECTION 1983 ARE INTENDED TO REMEDY. SEE COPY OF PETITIONER'S 1983
14 COMPLAINT AT P.15-16 ATTACHED TO APPENDIX E.

15 XX. FREEDOM OF SPEECH

16 THE FIRST AMENDMENT STATE IN RELEVANT PART: "CONGRESS SHALL MAKE NO
17 LAW ABRIDGING THE FREEDOM OF SPEECH U.S. CONST. AMEND. I. THE SUPREME
18 COURT RECOGNIZED THAT, CONVICTED PRISONERS DO NOT FORFEIT ALL
19 CONSTITUTIONAL PROTECTIONS BY REASON OF THEIR CONVICTION," O. LONG v.-
20 STATE OF SHABAZZ, 482 U.S. 342 [1987]. ALTHOUGH PRISONERS RETAIN FIRST-
21 AMENDMENT RIGHTS WHILE INCARCERATED, THE EXERCISE OF SUCH RIGHT IS LIMITED
22 BY THE FACT OF CONFINEMENT AND THE NEED OF THE PENAL INSTITUTION. BELL-
23 V. WOLFISH, 441 U.S. 520-545 (1979); PRISON LEGAL NEWS v. COOK, 238 F.3d-
24 1145-1149 [9TH CIR. 2001]. TURNER v. SAFELY, 482 U.S. 78 [1987]. SET FORTH
25 THE GENERAL TEST TO DETERMINE WHETHER A PRISON REGULATION THAT INFRINGE
26 ON A CONSTITUTIONAL RIGH MAY BE ENFORCED.

27 THE RESPONDENT'S, DISTRICT COURT, OR APPELLANT COURT HAVE NOT ADDRESSED
28

1 THE TURNER, Id. ISSUE.

2 THE COURT HELD IN PROCUINER v. MARTINEZ, 416 U.S. 396, 94 S.CT. 1800,
3 40 L. Ed.2d 224 [1974], THIS CASE CONCERN THE CONSTITUTIONALITY OF CERTAIN
4 REGULATIONS PROMULGATED BY THE DIRECTOR OF CALIFORNIA DEPARTMENT OF
5 CORRECTIONS CDC. THE APPELLEES BROUGHT A CLAIM RELATING TO THE CENSORSHIP
6 OF MAIL, THE DETAILED REGULATION IMPLEMENTED BY THE DEFENADNT'S POLICY
7 DIRECT INMATES NOT TO WRITE LETTER IN WHICH THEY UNDULY COMPLAIN OR MAGNIFY
8 GRIEVANCES, DEFINED AS CONTRABAND, WRITING EXPRESSING IMFLAMMATORY
9 POLITICAL, RACIAL, RELIGIOUS OR OTHER VIEWS OR BELIEFS, FINALLY THE RULES
10 PROVIDE THE INMATES MAY NOT SEND OR RECEIVE LETTERS THAT PERTAIN TO
11 CRIMINAL ACTIVITY AND LEWD, OBSCENE, OR DEFAMATORY OR CONTAIN FOREIGN
12 MATTER, OR ARE OTHERWISE INAPPROPRIATE. SEE AT 94 S.CT. 1804

13 THE COURT STATED, THE DISTRICT COURT HELD THE REGULATION RELATING TO
14 PRISONER MAIL AUTHORIZE CENSORSHIP OF PROTECTED EXPRESSION WITHOUT ADEQUATE
15 JUSTIFICATION IN VIOLATION OF THE FIRST AMENDMENT AND THAT THEY WERE VOID
16 FOR VAGUENESS, THE COURT ALSO NOTED THAT THE REGULATIONS FAILED TO PROVIDE
17 MINIMUM PROCEDURE SAFEGUARDS AGAINST ERROR AND ARBITRARINESS IN THE
18 CENSORSHIP OF INMATES CORRESPONDENCE. SEE AT 94 S.CT. 1808.

19 THE U.S. SUPREME COURT STATED, APPLYING THE TEACHING OF OUR PRIOR
20 DECISION TO THE INSTANT CONTEXT, WE HOLD THAT CENSORSHIP OF PRISONERS
21 MAIL IS JUSTIFIED IF THE FOLLOWING CRITERIA ARE MET, FIRST THE REGULATION
22 OR PRACTICE IN QUESTION MUST FURTHER AN GOVERNMENT INTEREST UNRELATED
23 TO THE POSSESSION OF EXPRESSION, PRISON OFFICIALS MAY NOT SENSOR INMATES
24 CORRESPONDS SIMPLY TO ELIMINATE UNFLATTERING OR UNWELCOME OPTION OR
25 FACTUALLY INACCURATE STATEMENTS, RATHER THEY MUST SHOW THAT A REGULATION
26 AUTHORIZED MAIL CENSORSHIP FURTHER ONE OR MOR OF THE SUBSTANTIAL GOVERNMENT
27 INTEREST SECURITY, ORDER, REHABILITATION, SECOND THE LIMITATION OF THE
28 FIRST AMENDMENT FREEDOM OF SPEECH MUST BE NO GRATER THEN NECESSARY.

XXI. QUALIFIED IMMUNITY

RESPONDENT'S ARGUE IN THEIR MOTION FOR SUMMARY JUDGMENT THEY ARE ENTITLED TO QUALIFIED IMMUNITY AND THAT QUALIFIED IMMUNITY ANALYST CONSIDER TWO QUESTIONS, WHETHER A CONSTITUTIONAL VIOLATION OCCURRED AND WHETHER THE RIGHT AT ISSUE WAS "CLEARLY ESTABLISHED IN LIGHT OF THE SPECIFIC CONTENT OF THE CASE AT THE TIME OF THE EVENT IN QUESTION. CITY & CITY OF SAN-FRANCISCO CALF. v. SHEEHAN, 135 S.Ct. 1776 [2015] CAUTIONING AGAINST DEFINING CLEARLY ESTABLISHED LAW AT HIGH LEVEL OR GENERALITY, COURT'S CONSIDER THESE TWO QUESTIONS IN EITHER ORDER. PEARSON v. CALLAHAN, 555-U.S. 223-238 [2009].

RESPONDENT'S STATE, OFFICIALS ARE NOT LIABLE FOR BAD GUESSES IN GRAY AREAS THEY ARE LIABLE FOR TRANSGRESSING BRIGHT LINES, THERE MUST BE A CONTROLLING PRECEDENT FROM THE NINTH CIRCUIT OR SUPREME COURT. OR THE CASE LAW ON THE ISSUES MUST HAVE BEEN EMBRACED BY A CONSENSUS OF THE COURT'S OUTSIDE OF THE RELEVANT JURISDICTION. SHAPP v. CITY OF ORANGE, -871 F.3d 901, 911, [9TH CIR. 2017]. QUALIFIED IMMUNITY SHIED OFFICIALS WHEN THEIR DECISION, EVEN IF CONSTITUTIONALLY DEFICIENT REASONABLE MISTAKES THE FACTS OR MISAPPREHEND THE LAW COVERING THE CIRCUMSTANCES COMFORTED. SAUCIER v. KATZ, 533 U.S. 194, 205-06 [2001].

THE NINTH CIRCUIT HAS AFFIRMED THE DISTRICT COURT GRANTING OF SUMMARY-JUDGMENT WHERE PLAINTIFF FAILED TO IDENTIFY A SIMILAR CASE THAT CHALLENGE DEFENDANTS ASSERTION OF QUALIFIED IMMUNITY. SEE PEARSON v. KLATH COUNTY, -692 FED. APP. 473, 474 ,9TH CIR. 2017,.

RESPONDENT'S STATES, AN EXAMINATION OF THE LAW IN 2012 REVEALS THAT NO SUCH PRECEDENT OR CONSENSUS WAS IN PLACE, WHILE THE NINTH CIRCUIT HAS REFRAIN FROM DISMISSING FIRST AMENDMENT CLAIMS PREMISED ON EXPLICIT LYRICS BAN, IT WAS NOT CLEARLY ESTABLISHED IN 2012 THAT PROHIBITING EXPLICIT CD'S WAS UNLAWFUL. SEE LYONS v. BISBEE, No. 3:02 CV-0460-IRH RAM. WL.-

1 d2313653 AT 16. [D. NEV. APR. 7, 2011]. REPORT AND RECOMMENDATION ADOPTED.
2 No, 3.07 CV-0460 WL. 2293333 [D. NEV. JUNE 9, 2011] DENYING SUMMARY-
3 JUDGMENT BASED ON EXPLICIT LYRICS. SEE ALSO CATO v. CDCR, WL. 395338AT-
4 6. [E.D. CAL. JUNE 29, 2015] SEE CASES EXCERPTS ATTACHED TO APPENDIX P.

5 RESPONDENT'S STATE, IN CATO, PVSP. Id WAS SUED IN 2012 FROM THE SAME
6 CD. PROHIBITION HERE, AND THE EASTERN DISTRICT COURT DECLINED TO AWARD
7 DEFENDANTS SUMMARY JUDGMENT ON THE CD.'S CLAIM, BECAUSE DEFENDANTS FAILED
8 TO PROVIDE EVIDENCE SUPPORTING A LEGITIMATE PENOLOGICAL INTEREST TO BOLSTER
9 THE POLICY, NOTABLY SUMMARY JUDGMENT WAS ONLY DENIED, BECAUSE OF A LACK
10 OF EVIDENTIARY SUPPORT Id. AND NO DECISION REGARDING THE CONSTITUTIONALITY
11 OF THE POLICY WAS MADE IN CATO, BY THE TIME THIS LAWSUIT ORIGINATED, CATO,
12 WAS NOT SUFFICIENT TO SHOW THAT THE LAW WAS SO CLEAR THAT A REASONABLE
13 OFFICER WOULD KNOW THE CONFISCATION OF EXPLICIT LYRICS CD'S UNDER THE
14 CHALLENGE POLICY VIOLATED THE FIRST AMENDMENT. SEE RESPONDENT SUMMARY-
15 JUDGMENT MOTION. AT P.4.

16 RESPONDENT'S STATED, OTHER COURT'S HAVE DETERMINED THAT A CLAIM
17 CHALLENGING A POLICY OF BANNING CD'S WITH EXPLICIT LYRICS IS SUFFICIENT
18 TO STATE A CONIZABLE CLAIM GOLDEN v. MCCAUGHTRY, 915 F. SUPP. 77-79 [E.D.-
19 WIS. 1995, ALLOWING CLAIM BASED ON EXPLICIT LYRICS, TO PROCEED THROUGH
20 SCREENING. HENSLEY v. VERHAGEN, No. 01-C-0495-C, 2002 WL. 32344440 AT-
21 9. [W.D. WIS. MAY 23, 2002 [GRANTING SUMMARY JUDGMENT ON CLAIM BASED ON
22 EXPLICIT LYRICS, BUT SEE HERLEIN v. HIGGINS, 172 F.3d 1089, 1090 ,8TH-
23 CIR. 1999] [HOLING BAN ON CASSETTES CONTAINING EXPLICIT LYRICS WAS
24 REASONABLE RELATED TO LEGITIMATE PENOLOGICAL INTEREST].

25 XXII. PETITIONER RESPONSE

26 THE NINTH CIRCUIT COURT OF APPEAL HELD IN FOSTER v. HELLAWELL, 908 F.3d-
27 2010 [2018] IN DECIDING SUCH LEGAL CALIMS, WE APPLY THE SUPREME COURT
28 QUALIFIED IMMUNITY STANDARD, QUALIFIED IMMUNITY ATTACH WHEN AN OFFICIAL'S

1 CONDUCT DOES NOT VIOLATE CLEARLY ESTABLISHED STATUTORY OR CONSTITUTIONAL
2 RIGHTS OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN. KISELA v. HUGHES-
3 138 S.CT. 1148, 1152 [2018. [QUOTING WHITE v. PAULY, 137 S.CT. 548, 551-
4 [2017] [PER CURIAM] BECAUSE THE FOCUS IS ON WHETHER THE OFFICIALS HAD
5 FAIR NOTICE THAT HER CONDUCT WAS UNLAWFUL, REASONABLENESS IS JUDGE AGAINST
6 THE BACKDROP OF THE LAW AT THE TIME OF CONDUCT Id. [QUOTING BROSSEAU v.-
7 HAUGEN, 543 U.S. 194, 125 S.CT. 596, 106 L. Ed.2d 583 [2004] PER CURIAN.

8 ALTHOUGH WE NO DO NOT REQUIRE A CASE DIRECTLY ON POINT FOR A RIGHT TO
9 BE CLEARLY ESTABLISHED, EXISTING PRECEDENT MUST HAVE PLACED THE STATUTORY
10 OR CONSTITUTIONAL QUESTIONED BEYOND DEBATE [QUOTING PAULY, 137 S.CT. AT
11 551.

12 THE SUPREME COURT HELD IN HARLOW v. FITZGERALD, 457 U.S. 800, 102 S.CT.-
13 2727, 73 L. Ed.2d 396 [1982], QUALIFIED IMMUNITY PROTECT ALL, BUT THE
14 PLAINLY INCOMPETENT OR THOSE WHO KNOWINGLY VIOLATE THE LAW, THIS IS NOT
15 TO SAY THAT THE FORMATION OF GENERAL RULES IS BESIDES THE POINT, NOR IS
16 IT TO INSIST THE COURT MUST HAVE AGREED UPON THE PRECISE FORMULATION OF
17 STANDARD.

18 THE COURT STATED, ASSUMING FOR INSTANCE, THAT VARIOUS COURT'S HAVE AGREED
19 THAT CERTAIN CONDUCT IS A CONSTITUTION VIOLATION UNDER FACTS NOT
20 DISTINGUISHED IN A FAIR WAY FROM THE FACTS PRESENTED IN THIS CASE AT HAND.
21 THE OFFICERS WOULD NOT BE ENTITLED TO QUALIFIED IMMUNITY BASED SIMPLY
22 ON THE ARGUMENT THAT COURT'S HAD NOT AGREED ON ONE VERBAL FORMATION OF
23 THE CONTROLLING STANDARD. "IT WOULD BE INCONSISTENT TO CONCLUDED THAT
24 AN OFFICER WHO ACTED UNREASONABLE UNDER THE CONSTITUTIONAL STANDARD
25 NEVERTHELESS WAS ENTITLED TO IMMUNITY, BECAUSE HE REASONABLY ACTED
26 UNREASONABLE."

27 XXIII. RETALIATION

28 THE NINE CIRCUIT HELD IN BRODHEIM v. CRY, 584 F.3d 1269, PRISON WALLS

1 DO NOT FORM BARRIERS SEPARATING PRISON INMATES FROM THE PROTECTION OF
2 THE CONSTITUTION, TURNER v. SAFLAY, Id. SEE ALSO BELL v. WOLFISH, Id.

3 IT IS WELL ESTABLISHED THAT AMONG THE RIGHTS THEY RETAIN, PRISONERS HAVE
4 A FIRST AMENDMENT RIGHT TO FILE PRISON GRIEVANCES. RHODES v. ROBINSON,
5 380 F.3d 1123 [9TH CIR. 2005] RETALIATION AGAINST A PRISONER FOR THEIR
6 EXERCISE OF THEIR RIGHTS IS IT SELF A CONSTITUTIONAL VIOLATION AND
7 PROHIBITED AS A MATTER OF ESTABLISHED LAW. SEE RHODES, AT 380 F.3d 1123.-
8 [9TH CIR. 2004] SUPERSEDED AT 408 F.3d 559 [9TH CIR. 2005]. PRATT v.-
9 ROWLAND, 66 F.3d 802-806 & 4. [9TH CIR. 1994]. THE COURT STATED IN RHODES,
10 Id. WE HAVE SET FORTH THE FIVE BASIC ELEMENTS OF A VIABLE CLAIM OF FIRST
11 AMENDMENT RETALIATION IN THE PRISON CONTEXT: [1] AN ASSERTION THAT A STATE
12 ACTOR TOOK SOME ADVERSE ACTION AGAINST AN INMATE [2] BECAUSE OF [3] THAT
13 THE PRISONER'S PROTECTED CONDUCT AND THAT ACTIONS [4] CHILLED THE INMATE'S
14 EXERCISE OF HIS FIRST AMENDMENT RIGHTS [5] DID NOT REASONABLY ADVANCE
15 A LEGITIMATE CORRECTIONAL GOAL, THE COURT STATED, RHODES, Id. COMPLAINT
16 PRECISELY SATISFIED THESE PLEADING REQUIREMENTS, HE ALLEGED THAT OFFICERS
17 [1] ARBITRILY CONFISCATED WITHHELD, AND EVENTUALLY DESTROYED HIS PROPERTY
18 [2] THREATEN TO TRANSFER HIM TO ANOTHER PRISON AND ULTIMATELY ASSAULTED
19 HIM, BECAUSE HE EXERCISE HIS FIRST AMENDMENT RIGHTS TO FILE PRISON
20 GRIEVANCES AND OTHERWISE SEEK ACES TO THE LEGAL PROCESS, AND THAT BEYOND
21 IMPOSING THOSE TANGIBLE HARMS, THE GUARDS ACTIONS CHILLED HIS FIRST
22 AMENDMENT AND WERE NOT UNDERTAKEN IN NARROWLY TAILORED FURTHERANCE OF
23 PENONLOGICAL PURPOSE. SEE RHODES, AT 1123.

24 THE COURT STATED "THE PROHIBITION AGAINST RETALIATORY PUNISHMENT IS
25 CLEARLY ESTABLISHED LAW IN THE NINTH CIRCUIT, FOR QUALIFIED IMMUNITY
26 PURPOSES THAT RETALIATORY ACTIONS BY PRISON OFFICIALS ARE COGNIZABLE UNDER
27 1983 HAS ALSO BEEN WIDELY ACCEPTED IN OTHER CIRCUITS." FRAZIER v. DUBOIS, -
28 922 F.2d 560, 561-62 [10TH CIR. 1990], MADEWELL v. ROBERTS, 909 F.2d 1203-

1 [8TH CIR. 1990]: GILL v. MOONEY, 824 F.2d 192, 194 [2d. CIR. 1987]: BRIDGES
2 v. RUSSELL, 757 F.2d 1155 [11TH CIR. 1985]: BUISE v. HUDKINS, 584 F.2d-
3 223 [7TH CIR. 1978]. SEE RHODES, AT 1123.

4 PETITIONER HAS ESTABLISHED THAT HE ENGAGED IN A CONSTITUTIONAL PROTECTED
5 CONDUCTED ACTIVITY, AND SECOND THAT HIS CONDUCT WAS A SUBSTANTIAL OR
6 MOTIVATING FACTOR BEHIND RESPONDENT'S RETALIATION. MT. HEALTHY CITY SCHOOL.
7 DIST. Bd. OF Ed...DOYLE, 429 U.S. 274, 97 S.CT. 568, 50 L. Ed.2d 471 [1977]

8 XXIV. CALIFORNIA GOVERNMENT CODE

9 CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION CDCR. STATUTORY
10 SCHEME UNDER CALIFORNIA PENAL CODE P.C. 5050 GIVES THE SECRETARY OF CDCR.
11 AUTHORITY OVER ALL OPERATIONS OF ALL DIVISION OF THE DEPARTMENT, P.C.-
12 5058 GIVES THE DIRECTOR THE AUTHORITY TO PROMULGATE RULES AND REGULATIONS
13 FOR CDCR. BUT BEFORE THE RULES AND REGULATIONS CAN BE ADOPTED THEY HAVE
14 TO BE ADOPTED THROUGH THE CALIFORNIA STATE OFFICE OF ADMINISTRATIVE LAW
15 OAL. AS PART OF THE ADMINISTRATIVE PROCEDURE ACT APA.

16 UNDER CALIFORNIA GOVERNMENT CODE, CAL. GOV. CODE. SECTION 11340.
17 LEGISLATURE FINDINGS[a][b], THERE HAS BEEN AN UNPRECEDENTED GROWTH IN
18 THE NUMBER OF ADMINISTRATIVE REGULATION IN RECENT YEARS, THE LANGUAGE
19 OF MANY REGULATIONS IS FREQUENTLY UNCLEAR AND UNNECESSARY, COMPLEX, EVEN
20 WHEN THE COMPLICATION AND TECHNICAL NATURE OF THE SUBJECT MATTER IS TAKEN
21 INTO ACCOUNT.

22 SECTION 11340.1 LEGISLATURE INTENT[a], THE LEGISLATURE THEREFOR DECLARE
23 THAT IT IS IN THE INTEREST TO ESTABLISH AN OAL Id. WHO SHALL BE CHARGED
24 WITH THE ORDERLY REVIEW OF ADOPTING REGULATIONS.

25 SECTION 11340.5 AGENCY GUIDELINES[a][c][1][2][3]. NO AGENCY SHALL ISSUE,
26 UTILIZE, ENFORCE OR ATTEMPT TO ENFORCE OR ATTEMPT TO ENFORCE ANY
27 GUIDELINES, CRITERIA, OR OTHER RULES WHICH IS A REGULATION AS DEFINED
28 IN SECTION 11342.600 UNLESS THE REGULATION HAS BEEN ADOPTED AS A REGULATION

1 AND FILED WITH THE SECRETARY OF CALIFORNIA.

2 IN HILLERY v. RUSHEN, 720 F.3d 1134 [9TH CIR. 1982] THE COURT STATED
3 ON JANUARY 18, 1982 APPELLANT DEPUTY DIRECTOR OF CDC. Id. ACTING ON BEHALF
4 OF DIRECTOR RUSHEN, REVIEWED 4600 WITHOUT FOLLOWING THE NOTICE COMMENT
5 AND HEARING PROCEDURE OF THE CALIFORNIA APA. Id. REVIEWED CHAPTER 4600
6 WAS TO BE IMPLEMENTED AT ALL CALIFORNIA PRISON ON JANUARY 31, 1982.

7 IN ANTICIPATION OF CHAPTER 4600'S IMPLEMENTATION, APPELLESS, FOUR INMATE
8 AT SAN QUENTIN BROUGHT THIS ACTION ON BEHALF OF THE CLASS OF ALL SAN-
9 QUENTIN INMATES, SEEKING TO ENJOIN APPELLANT FROM ENFORCING REVIEWED
10 CHAPTER 4600 AND SAN QUENTIN'S CONFORMING RULES.

11 THE COURT HELD, REVIEWED CHAPTER 4600 WAS INVALID, BECAUSE CONTRARY
12 TO THE REQUIREMENTS OF SECTION 5058[a] Id. OF THE CALIFORNIA P.C. Id.
13 APPELLANTS PROMULGATED IT WITHOUT FOLLOWING THE PROCEDURE MANDATED BY
14 THE APA. Id. FINDING THAT APPELLESS WOULD SUFFER IRREPARABLE INJURY, THE
15 COURT CONCLUDED THAT THEY WERE ENTITLED TO A PRELIMINARY INJUNCTION,
16 BECAUSE NO TRIABLE ISSUES REMAIN IT ISSUED A PERMANENT INJUNCTION AND
17 FINAL DECLARATION INJECTION. SEE AT 1134.

18 THE COURT STATED, ANY ARGUMENT THAT REVISED CHAPTER 4600 IS NOT A
19 REGULATION, OR THAT IT FALL WITHIN ONE OF THE TWO EXCEPTIONS PROVIDED
20 FOR IN THE APA. Id. IS FORECLOSED BY THE CALIFORNIA COURT OF APPEALS RECENT
21 DECISION IN STONEMEN v. RUSHEN, 137 CAL. APP.3d 729, 188 CAL. RPTR. 130-
22 [1982]. IN THAT CASE, PRISON INMATES CHALLENGE THE STANDARDIZATION OF
23 THE SYSTEM USED BY CDC. Id. TO CLARIFY FOR PURPOSE OF DETERMINATION WHICH
24 PRISON THEY SHOULD BE ASSIGNED TO. SEE AT 1136.

25 THE COURT FOUND THAT THE DEPARTMENT WAS REQUIRED TO FOLLOW THE PROCEDURE
26 SET FOURTH IN THE APA. Id. BECAUSE THE NEW SCHEME EMBODIED A RULE OF
27 GENERAL APPLICATION SIGNIFICANTLY AFFECTING THE PRISON POPULATION Id.
28 AT 736, 188 CAL. RPRT. 180. BECAUSE REVISED CHAPTER 4600 FIT THAT

1 DESCRIPTION PRECISELY STONEMAN, LEAVES APPELLANTS NO ROOM TO ARGUE THAT
2 THESE RULES ARE BEYOND THE SCOPE OF THE APA. AS IT HAS BEEN INTERPRETED
3 BY THE CALIFORNIA COURT. AT 1135. Id.

4 THE COURT STATED, MORE IMPORTANTLY, THE VERY TERM OF DEFINITION OF
5 REGULATION INCLUDING AS THEY DO "THE AMENDMENT, SUPPLEMENT, OR REVISIONS
6 OF RULES, REGULATION, ORDER, OR STANDARDS TO IMPLEMENT, INTERPRET OR MAKE
7 SPECIFIC THE LAW ENFORCED OR ADMINISTERED. SEE AT 1136. Id.

8 THE COURT HELD IN ARMISTEAD v. STATE PERSONNEL BORAD, 22 CAL.3d 198-
9 200, 149 CAL. RPTR. 1. 583 P.2d 744 [1978]. FURTHER DEMONSTRATE THE
10 INCORRECTNESS OF APPELLANT'S VIEW OF CALIFORNIA LAW, IN ARMISTEAD Id.
11 THE CALIFORNIA SUPREME COURT REFUSED TO GIVE ANY DEFERENCE TO ANY
12 ADMINISTRATIVE INTERPRETATION OF ANY AGENCY RULES WHEN THAT INTERPRETATION
13 WAS NOT PROMULGATED IN ACCORDANCE WITH THE PROCEDURE REQUIREMENT OF THE
14 APA.

15 SUCH A HOLDING WAS NECESSARY THE COURT SAID, IN ORDER TO PREVENT AGENCIES
16 FROM AVOIDING THE STRICTURES OF THE APA. BY DENOMIATING RULES AS "POLICIES"
17 "INTERPRETATIONS" "INSTRUCTION" "GUIDES" "STANDARDS" AND THE LIKE. AND
18 BY PLACING RULES IN "INTERNAL ORGANS OF THE AGENCY SUCH AS MANUALS,
19 MEMORANDUM, BULLETINS, OR DIRECTING THEM TO THE PUBLIC IN THE FORM OF
20 CIRCULARS OR BULLETINS. SEE AT 1136.

21 XXVI. FED R. CIV. P. RULE[b][2][3]

22 NEWLY DISCOVERED EVIDENCE

23 FRAUD MISREPRESENTATION OR MISCONDUCT.

24 ON OCTOBER 11, 2021 PETITIONER FILED A MOTION UNDER FED. R. CIV. P.-
25 RULE 60[b][2] WITH THE NINTH CIRCUIT COURT OF APPEALS BASED ON NEWLY
26 DISCOVERED EVIDENCE. IN ORDER TO QUALIFY UNDER FED. R. CIV. P. 60[b][2]
27 THE PARTY MUST PRESENT NEWLY DISCOVERED EVIDENCE THAT EXISTED AT THE TIME
28 OF TRIAL, COULD NOT HAVE BEEN DISCOVERED THROUGH DUE DILIGENCE, AND WAS

1 SUCH MAGNITUDE THAT PRODUCTION OF IT EARLIER IN THE LITIGATION WOULD HAVE
2 LIKELY CHANGE THE OUTCOME OF THE CASE. SEE JONES v. AFRO/CORP, 921 F.2d 875,-
3 876 [9TH CIR. 1990]

4 FED R. CIV. P. 60[b][3], PROVIDES FOR RELIEF FROM JUDGMENT THAT IS TAINTED
5 BY FRUD, MISREPRESENTATION, OR MISCONDUCT BY AN OPPOSING PARTY. TO PREVAIL
6 UNDER 60[b][3], THE MOVING PARTY MUST PROVIDE BY CLEAR AND CONVINCING EVIDENCE
7 THAT THE VERDICT WAS OBTAINED THROUGH FRAUD, MISREPRESENTATION, OR OTHER
8 MISCONDUCT AND THE CONDUCT COMPLAINED OF PREVENTED THE LOSING PARTY FROM
9 FAIRLY PRESENTING HIS CLAIM. CASEY v. ALBERTSON'S INC. 362 F.3d 1254, 1260-
10 [9TH CIR. 2004]. QUOTING DE SARACHO v. CUSTOM FOOD MACHINERY. INC. 206 F.3d-
11 872, 880, [9TH CIR. 2002], FED. R. CIV. P. 60[b][3]. REQUIRES THAT FRAUD
12 NOT BE DISCOVERED BY DUE DILIGENCE BEFORE OR DURING THE PROCEEDING Id. QUOTING
13 FAC & ARCTIC RY. AND MAIGATION Co. v. UNITED TRANSF UNION. 952 F.2d 1144,-
14 1148 [9TH CIR. 1991].

15 RESPONDENT'S NEVER ADVISED THE COURT THAT THEY WERE AWARE BEFORE AND DURING
16 SUMMARY JUDGMENT THAT CDCR. SECRETARY OR DIRECTOR DID NOT CHANGE CDCR. POLICY
17 OF TO PREVENT INMATES FROM POSSESSING OR PURCHASING CD'S WITH EXPLICIT LYRICS.
18 [2] RESPONDENT'S WAS FULLY AWARE THAT AN INSTITUTIONAL POLICY AT PVSP. COULD
19 NOT OVERRULE CCR. TITLE 15. Id. OR WHAT CDCR. SECRETARY OR DIRECTOR SAY.
20 [3] RESPONDENT S. FRAUENHEIM FALSIFIED HIS ADMISSIONS Id. WHEN HE STATED
21 THE POLICY PROHIBITING INMATES FROM HAVING CD'S WITH EXPLICIT LYRICS WENT
22 THROUGH THE APA. Id. [4] RESPONDENT'S WERE AWARE THAT AN INSTITUTIONAL POLICY
23 AT PVSP. Id. HAD TO BE PROMULGATED THROUGH THE OAL. Id BEFORE IT COULD BE
24 ENFORCED [5] RESPONDENT S. FRAUENHEIM ADMITTED IN HIS ADMISSIONS Id. HE DID
25 NOT HAVE THE AUTHORITY TO TAKE ADVERSE PERSONNEL ACTION AGAINST C/O'S Id.
26 IF HE HEARD THEM USING EXPLICIT PROFANITY IN THE PERFORMANCES OF THEIR DUTIES
27 [6] RESPONDENT S. FRAUENHEIM ADMITTED IN HIS ADMISSIONS Id. DURING THE TIME
28 OF THESE EVENTS IN 2012 HE WAS NOT THE WARDEN AT PVSP. Id. [7] RESPONDENT

REASONS FOR GRANTING THE PETITION

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DECISION ON ON QUALIFIED IMMUNITY, RETALIATION, AND DENIAL OF ACCESS TO THE COURT CONFLICT WITH OTHER APPELLANT COURT'S DECISION, AND CONFLICT WITH ALL OF THE UNITED STATES SUPREME COURT DECISIONS REGARDING THESE ABOVE ISSUES.

RESPONDENT'S COULD NOT HAVE THOUGHT THAT THE DECISION IN PROHIBITING INMATES FROM HAVING COMPACT DISC CD'S WITH EXPLICIT LYRICS WAS A MISTAKE, RESPONDENT'S WAS FULLY AWARE PRIOR TO ENFORCING THE POLICY OF PROHIBITING INMATES FROM HAVING CD'S WITH EXPLICIT LYRICS, THE POLICY HAD TO BE PROMULGATED THROUGH THE CALIFORNIA OFFICE OF ADMINISTRATIVE LAW. OAL. AS PART OF THE ADMINISTRATIVE PROCEDURE ACT. APA. AND IF ANY POLICY DID NOT GO THROUGH THE APA. IT WOULD BE AN UNDERGROUND POLICY.

IN ADDITION RESPONDENT'S SUPERVIORS STATED IN THEIR LETTER'S, THEY NEVER IMPLEMENTED ANY POLICY THAT WOULD PROHIBIT INMATES FROM HAVING CD'S CONTAINING EXPLICIT LYRIC.S AND THEY ARE THE ONES WHO ARE RESPONSIBLE FOR IMPLEMENTING MAJOR POLICIES FOR ALL INSTITUTIONS. ULTIMATELY RESPONDENTS WERE AWARE OF THE UNITED STATES SUPREME COURT DECISION IN PROCUINER V. MARTINEZ, 416 U.S. 396 [1974].

RESPONDENT R. RESER ADMITTED IN HIS ADMISSIONS THAT HE RETALIATED AGAINST PETITIONER AFTER PETITIONER TOLD HIM THAT HE WAS FILING A GRIEVANCES AGAINST HIM AND THAT HE CONFISCATED PETITIONER'S LEGAL MATERIALS PURSUANT TO POLICY AND NEVER GAVE IT BACK CAUSING PETITIONER, PETITION TO BE DENIED BY THE COURT.

THIS DECISION IS SO IMPORTANT FOR THIS COURT TO REVIEW, BECAUSE IF THIS DECISION IS CONFIRMED IT WOULD ALLOW PRISON OFFICIALS AROUND THE COUNTRY TO IMPLEMENT UNDERGROUND PRISON POLICIES AGAINST INMATES AND INTENTIONALLY FALSIFY THEIR REPORTS, AND WHEN THEY ARE CHALLENGED IN COURT REGARDING THE ISSUES, THEY WOULD CLAIM THEY WERE ENTITLED TO QUALIFIED IMMUNITY FOR VIOLATING THEIR OWN PRISON POLICIES AND BE GRANT IMMUNITY BY THE COURT.

R. RESER ADMITTED IN HIS ADMISSIONS THAT HE RETALIATED AGAINST PETITIONER BY FOR-
HIM TO SEND HIS ORTHOPEDIC SHOES THE DOCTOR PRESCRIBED FOR HIS MEDICAL CONDITION OF THE
FEET AND OTHER PERSONAL PROPERTY HOME AND REFUSED TO HOME THE PROPERTY FOR INVESTIGATION
PER POLICY, AND CONFISCATED HIS LEGAL MATERIALS PURSUANT TO POLICY AND NEVER RETURNED
IT. [8] RESPONDENT S. FRAUENHEIM NEVER STATED IN HIS DECLARATION OR MOTION FOR SUMMARY
JUDGMENT THE POLICY OF PROHIBITING INMATES FROM POSSESSING CD'S WITH EXPLICIT LYRICS
SERVED A LEGITIMATE PENOLOGICAL INTEREST, AND INTENTIONALLY MISREPRESENTED THE FACTS
IN HIS DECLARATION OF WHAT CCR. TITLE 15. 3006(c)(1) STATED TO JUSTIFY HIM ACTIONS. SEE
Ex. DF. A.1.1 & 1.2 MEMORANDUM ATTACHED TO APPENDIX P. RESPONDENT MOTION FOR SUMMARY
JUDGMENT AND Ex. Y. ATTACHED TO PETITIONER OPPOSITION MOTION TO SUMMARY JUDGMENT.

RESPONDENT'S FRAUENHEIM AND R. RESER THEN FILED A MOTION FOR SUMMARY JUDGMENT ALLEGING
THEY WERE ENTITLED TO QUALIFIED IMMUNITY, AND ILLEGALLY OBTAINED SUMMARY JUDGMENT BASED
ON THEIR FALSE STATEMENTS. QUALIFIED IMMUNITY PROTECT ALL, BUT THE PLAINLY INCOMPETENT
OR THOSE WHO KNOWINGLY VIOLATE THE LAW.

CONCLUSION

THAT THIS CASE BE REMANDED BACK TO THE DISTRICT COURT TO ADDRESS PETITIONER'S FIRST
AMENDMENT FREEDOM OF SPEECH, RETALIATION, AND DENIAL OF ACCESS TO THE COURT.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David Florence

10-20
Date: 9-29-2022