No. 23-5268

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MARC AMOURI BAKAMBIA — PETITIONER
(Your Name)

vs.

PAUL, SCHNELL, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 8th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARC AMOURI BAKAMBIA # 248643
(Your Name)

MCF- STILLWATER, 970 PICKETT ST. N.
(Address)

BAYPORT, MINNESOTA 55003
(City, State, Zip Code)

651-779-2747 (Caseworker)
(Phone Number)

QUESTIONS PRESENTED

I. Whether the provision of the 28 U.S.C. 636 requires the district court judge to prevent the assigned magistrate judge from issuing a report and recommendation in order to avoid a de novo review of the case.

II. Whether Petitioner's Constitutional rights were clearly established under the general rule of U.S. Constitution to be better protected while in segregation from the mobs who had just violently attacked him the previous day, whether this right was violated.

III. Whether the 8th and 14th Amendments of the U.S. Constitution provide that a Person should be subjected to double jeopardy, cruelly punished twice for the Alleged prison rule violation.

IV. Whether the district court considered the law with a reasonable logic to the Question long addressed by the Supreme Court in Haines v. Kerner, 404 U.S. 519 for the violation of right while in segregation.

V. Whether the established law requires the district court judge to solve credibility issues on motion for summary judgment, disregarding defendants' credibility and perjury issues.

VI. Whether the district court considered the correct inquiry of defendants' state of mind due to the fact that Petitioner claimed he was being deprived of right and subjected to Cruel and Unusual Punishment.

VII. Whether the Petitioner was not a suspect class of equal protection similarly situated to another inmate who received better protection, separated from his attackers while in segregation after being attacked by a group of gang members.

VIII. Whether the decision of the district court and cases cited by the Appellate court to affirm conflicting with the prior decisions of same 8th Circuit and decisions from other circuits.

IX. Whether the district court abused its discretion by denying Petitioner appointment of Counsel under the facts of the case and Petitioner's Health Condition.

X. Whether the district court abused its discretion denying petitioner supplemental declaration of an Inmate who witnessed the attack in segregation and saw all lieutenants involved.

XI. Whether the district court abused its discretion in ruling on discovery motions.

XII. Whether the inclusion and referencing of Petitioner's prior conviction case number information is appropriate under Rule 403, Fed R. Evid. while petitioner's credibility is not at issue.

XIII. Whether under 28 U.S.C 609.06 Petitioner had a constitutional duty to retreat from the violent attack by 3 drunken Inmates of a group of mobs.

LIST OF PARTIES

[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

1. Bakambia v. Schnell, No. 20-cv-1434 (NEB/DTS), U.S. District Court for the Minnesota. Judgment entered and Case closed. No time to Appeal.

2. Bakambia v. Crane, N o. 22-cv-2922 (PSJ/ECW), U.S. District Court for the Minnesota. No judgment entered., proceeding ongoing

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IN THE

SUPREME COURT OH THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINION BELOW

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

The opinion of the United States court of appeals appears at Appendix A, Vol.1 to the petition and is

[X] is unpublished.

The opinion of the United States court of appeals appears at Appendix B, Vol.1 to the petition and is

[X] is unpublished .

JURISDICTION

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

The date on which the United States Court of Appeals decided my case Was April 20, 2023.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 06, 2023, and a copy of the order denying rehearing appears at Appendix A, Vol.1

JURISDICTIONAL STATEMENT

Petitioner Marc Amouri Bakambia commenced his action under 42 U.S.C. § 1983 (R. Docs. 1, 45). The United States district court had jurisdiction over the action pursuant to 42 U.S.C. § 1331(a) because the complaint raises question whether the respondents prison officials violated the Petitioner's rights under the United States Constitution. The Appellate Court for the Eighth Circuit had appellate jurisdiction under 28 U.S.C. § 1291 because judgment that disposes of all parties, claims, or information establishing the Court of Appeals' jurisdiction on some other basis.

Judgment from the United States district court of Minnesota was entered on September 29, 2022. Decision from the Eighth Circuit Court of Appeals was entered on April 20, 2023. A Petition for Rehearing and Rehearing en banc was entered on June 06, 2023 and a mandate was issued on June 14, 2023 and the Petitioner has filed a motion to stay mandate. This Court's Jurisdiction to consider this Writ of Certiorari is based on 28 U.S.C. § 1254(1). Also, at its option, however, this Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction, Supreme Ct. R. 24.1(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

1. U.S. Constitution Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (Appendix A Vol.4)

2. U.S. Constitution Amendment XIV Section 1 (See Appendix A Vol.4)

3. 42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subject, or causes to be subjected, any Citizen of the States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity...

4. 28 U.S.C.S. § 636(c) (See Appendix B Vol.4, pg.2)

5. Minn. Stat. § 609.06 (See Appendix E Vol.4, pg.1,2,5)

STATEMENT OF THE CASE

This is a Civil right action under 42 U.S.C. § 1983 brought by a state prisoner originated from the Republic Democratic of the Congo, alleges that the prison officials subjected him to cruel and unusual punishment to Failure-to-protect and unequal protection, deprived him of his federally protected Constitutional rights under the Eighth and fourteenth Amendments, which caused him to suffer serious personal (physical) and mental injuries, by allowing petitioner to be assaulted again in segregation on May 21, 2019 by the same group of gang that previously attacked him at general population (May 20, 2019).

Petitioner sought to recover $ 5,000,000 for actual physical damages (injuries) from the assault in segregation such as Traumatic Brain injury (T.B.I.), Chronic migraines, headaches syndrome, Posttraumatic head injury, acute fracture of his 9th and 10th Ribs, chronic pain on his left eye, lack of sleep and pain and suffering. And $ 5,000,000 for punitive damages and mental injury of PTSD, and any further relief this Court may deem just and proper, shall be Granted to Petitioner.

The district court granted them summary judgment on the ground that the respondents were insufficiently involved or liable and respondents' conducts were of such of a mere negligence or inadvertence, and that Petitioner did not face a substantial risk of harm, nor respondents were deliberate indifferent to his Safety and Health. And that petitioner did not establish his Constitutional rights under the 8th and 14th Amendments (Appendix B Vol.1, at 10, 13, 16, 18-19, 20, 21, and 22).

The district court denied petitioner's supplemental declaration of an Inmate James Thompson as moot, this inmate is a potential witness who can testify at trial observing the segregation Lt. Kenneth Peterson who lied on their response to original complaint that the second day when petitioner was again assaulted in his Unit the segregation, he said, ***he was not inside the facility*** (App. K Vol.1 ¶20), even though other record showed he was.

The district court supported its decision using conflicting and inapposite cases that was argued by respondents such as Vandevender v. Sass, *970 F.3d 972, 976 (8th Cir. 2020)* and Andrews v. Seigel, *929 F.2d 1326 (8th Cir. 1991)*; the district court said these cases are alike to the facts at hand.

The Appellate Court for the Eighth Circuit affirmed stated, "For the reasons stated by the district court," and based its judgment under Moyle v. Anderson, *571 F.3d 814, 817 (8th Cir. 2009)* which is another inapposite and conflicting case. The Court of Appeals affirmed that the district court did not abused its discretion by preventing the already assigned magistrate judge from issuing its Report and

Recommendation (R&R), or by denying him appointment of counsel, or leave to file a supplemental declaration. The Rehearing and Rehearing en banc was denied and mandate was issued in accordance with the Panel Conflicting decision.

REASON FOR GRANTING THE PETITION

I. FACTUAL ISSUES

On May 18, 2019 at 18:35pm at the general population of Minnesota Correctional Facility-Rush City (MCF-RC), inmates Joseph Bastedo (J.B.) and Zachary Nayquonabe (Z.N.) entered Petitioner's cell Unit 2-East Upper D-Wing/Tier extorting him to return their money for the tattoo work he had done on J.B.'s harm, then wanted him to do more free work. When Petitioner refused and told them he will return their money, Z.N. punched Petitioner in the face and both left.

On May 20, 2019 J.B., Z.N. and Corey Wuori (C.W.) were drinking alcohol at the recreation area on a tier where they lived (Upper C-Wing) (All three are Native Mobs) they sent C.W. to Petitioner's room to take his I.D. and swipe it to see how much money he had in his account. From where Petitioner sat and painting he could smell alcohol from C.W.'s breath. He told C.W. to wait for the receipt of their money that was sent out via mail. C.W. left and returned with J.B. and Z.N. and found Petitioner standing outside his cell against the wall. These mobs circled Petitioner, and Z.N. continued threatening him for his I.D. when he refused, Z.N. punched petitioner in the chest, and continued threatening (See Notice of violation, Appendix A Vol.2). At this point, Petitioner feared for his life and had an actual and honest belief that imminent death or great bodily harm would result, and he had no

means to retreat. He then punched Z.N. in his chin and Z.N. went to the ground. J.B. and C.W. then jumped him and assaulting him. Petitioner then tried to break out the fight and ran towards the railing as J.B. followed him and continued throwing punches, Petitioner then ducked down, picked J.B. up and pushed him over the railing (MCF-RC Units have only upper and lower tier) (See Appendix B Vol.1, at 2-3). J.B. then hung on the railing when C.W. tried to help him, he fell onto the lower tier, got up, and walked back to his cell where he continued to drink more alcohol (See Appendix B Vol.3 Peterson Decl., Ex.1).

The ICS (Incident Command System) was activated by Officer Tyler Nelson, and the chemical irritant was used, sprayed to petitioner's eyes and there the escort process to segregation[1] began taking place while petitioner was laying prone to the ground, in segregation he was given post exposure treatment with cool-it (See Appendix A Vol.3 Gammel Decl., Ex.2 pg.14).

Petitioner was escorted to segregation by at least three officers with eyes closed, during the escort or on his way to segregation he heard officer Nelson voice, and reported to all of them that these mobs had attacked him on May 18, 2019. Only one officer included this information on his incident report that was reviewed by the Watch Commander Gammel Paul (See Appendix A Vol.3 Gammel Decl. Ex.1, pg.12), but see Gammel Decl. Ex.1, pg.13, this officer admitted escorting petitioner to

[1] Segregation is referred to in this case as "Restricted Housing Management"; "Segregation"; "COMPLEX 1-West (CX1W)"; OR "CX1SGT"

segregation with the above officer but did not mention the incident of May 18, 2019 on his incident report and Lt. Gammel disregarded this incomplete report[2].

Lt. Gammel also reviewed the video surveillance with Ofc. Nelson at the Security Center and discovered that J.B., Z.N., and C.W. were the inmates involved in the fight, at this time these inmates had already switched in, in their cells, and they were escorted also to Segregation (See Appendix A Vol.3, ¶6-8).

The segregation Unit is split in four section, Upper A-Wing/Tier, Lower A-Wing, and Upper B-Wing, AND Lower B-Wing (See Appendix B Vol.1, pgs.3,4)

In segregation, Sergeant Maki who was in charge in the bubble/control center of the Unit, assigned cell 207 Upper A-Wing to Petitioner at approximately 3:45 p.m. and at approximately 4:17 p.m. following the review of video by Gammel and Nelson, Sergeant Maki assigned cell 201 Upper A-Wing to C.W. and placed J.B. and Z.N. on B-Wing (See Appendixes (A at 4) & (B at 18-19), Vol.3 and B Vol.1).

On May 21, 2019, at 12p.m. Sergeant Nelson Peterson to distribute the Notice of Violation (NOV)[3] to all inmates involved in the May 20, 2019 fight. Sergeant Nelson delivered this NOV to C.W. at and delivered the same NOV to Petitioner, and they still did not informed Petitioner that C.W. was also placed in that same tier as him,

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[2] See Appendix N Vol.4 MN DOC Policy 300.300 "Incident Reports" Procedures D.2. "If an incident report is needed, it must be reviewed, signed and dated, including the time received, by the watch commander/supervisor and submitted prior to the end of the staff member's work day. *The watch commander/supervisor must return incomplete or inaccurate incident reports to staff for revision.*

[3] [3] At this time the discipline Lt. Gary Peterson knew of the placement of all inmates involved in the May 20, 2019 fight. See particularly, App'x B, Vol. 1 at 6, the district court stated, *"When an [inmate] is transferred to segregation... the discipline Lieutenant reviews evidence, including incident reports and any video, along with a discipline Sergeant to determine whether disciplinary charges should be brought against a particular individual".*

or asked him anything about his safety concern to be with C.W. in that condition, (See NOV under Appendix A Vol.2 with only signature of Sgt. Nelson).

The NOV showed that Lt. Gary Peterson charged **Petitioner among others charges, with two counts** of Assault with bodily Harm, RCV (One count for punching Z.N. in the chin and one count for fighting with J.B.), **and two counts** OF Attempted Homicide, RCV (One count for punching Z.N. in the chin and one count for pushing J.B. over the tier) with penalties of 90 days in segregation. And Lt. G. Peterson treated these charges as **Minor.**

The disciplinary hearing did not occur on May 21, 2019, and while Sergeant Schmitt was in charge of segregation with Gammel the Watch Commander.

Anthony Bowker (A.B.) was already in segregation for assaulting his cellmate in the head and he was also convicted and sentenced to prison for Homicide (See App'x N Vol.2 at 6 ¶G), and Aaron Ellerman (A.E.) was already in segregation for fighting another inmate on May 18, 2019 with the help of his native mob (Williams Nayquonabe) (See App'x N Vol.2 at 4-5). A.E. was convicted to prison for Assault Weapons.

These three inmates came behind Petitioner in a single file line with C.W. hiding in the middle of that line. It was here that Petitioner became aware that Prison Officials (Respondents) had placed C.W. in the same tier in segregation as him. These mobs then jumped Petitioner, punching him with closed fists in the head and when Petitioner felt weak and went down

to the ground, C.W. and A.E. continued punching and kicking him in his head and ribs, then stumping on his head and ribs.

On May 22, 2019, Petitioner had a disciplinary hearing with Respondents Lt. Gary Peterson with Lt. Kenneth Peterson present as witness. But, the record showed that Lt. Gary Peterson maliciously signed the witness section as well (See NOV App'x A, Vol.1, pg.4) Petitioner received 90 days for his fight on May 20, 2019, despite petitioner self -defense plea; they did not discuss his second attack in segregation.

Then it was now appropriate for the prison officials to move Petitioner to different tier (Lower B-Wing).

Prior to Petitioner attacks, on May 15, 2019 another Inmate Tyler Wicklund was also attacked at the courtyard of his living Unit Complex 4N (CX4N), by two gang members. Wicklund had badly assaulted one of them and upon information and belief, that inmate was sent to the hospital. (See Appendix O, Vol.2.), Respondents redacted those injuries. Wicklund was better protected in segregation and was released under self-defense plea, and he left the segregation on the evening of May 20, 2019 the day Petitioner was brought to segregation (See App'x N, Vol 2, at 1 ¶B.6. "At 16:27 ONE Inmate out from Segregation to CX4N and One to CX4-South), on his way out Wicklund said bye to Petitioner

On June 06, Petitioner had and X-Ray of his ribs due to progressive and severe pain, It showed he had an acute to subacute fractures on his 9th and

19th Ribs; On July 03, 2019 he saw a prison medical provider and was diagnosed with Chronic Headaches, Post Traumatic head injury; On July 12, 2019 he was seen again and diagnosed with TBI and Posttraumatic headaches; On July 10 and 11, 20219 he was seen by mental health and diagnosed with P.T.S.D. (See App'x G Vol.2).

On June 07, 2019 plaintiff reported continue threats from these mobs to Defendant Jesse Pugh (The MCF-Rush City Associate Warden of Operations) and requested transfer. Mr. Pugh Stated:

> Inherent in the responsibilities of all Correctional employees is that every step necessary is taken to ensure the welfare and safety of the offenders housed within the State's Correctional facilities. Staff are trained professional and are expected to be courteous and respectful at all times. This is of paramount importance to me ... In closing, I would encourage you to work with facility staff during the remainder of your incarceration and hope you gain insight into how you can make positive adjustment in your life, your ability to do so will greatly enhance your success upon your return to the community and may lead you to a crime-free life style.
> And that plaintiff's placement in MCF-RC was appropriate.

On July 07, 2019 there was a fight in segregation on Upper B-Wing, one of the group of mobs assaulted another Inmate who's from Liberia. This mob had thrown 82 punches on the Liberian according to the Incident Reports. This resulted by moving this mob on Lower B-Wing across from Petitioner. On July 08, 2019 at 8 a.m. Respondent Officer Tatum came in with another officer to transport an inmate to his provider appointment, but Ofc. Tatum stopped at cell door of this mob began congratulating him for throwing 82 punches on the Liberian, he Stated, "I saw that, you did good," then pointed his finger at Petitioner stated, "That mother F***er right there can really throw you off the tier."

On July 16, 2019 Petitioner sent a complaint to the Minnesota Commissioner of Corrections, Mr. Paul P. Schnell, reported the violation of his Constitutional rights and requested him to look into the situation; Instead, Mr. Schnell had the Warden of the same Institution (MCF-RC) Respondent Vicki Janssen to respond (See App. M Vol.2).

The record is unclear as to why Respondent Paul Gammel was demoted to Sergeant following the Assaults on Petitioner.

Additional facts will be discussed on sections below.

II. NATIONAL IMPORTANCE

A. National Importance to Decide the Question involved.

The district court refused to embrace the law in a way as a matter of public policy, and ruled against him in a way that did not have good result for society. See e.g. "In deciding whether a right is clearly established, the Constitution, decisions of the United States Supreme Court, and decisions of lower courts may provide notice of established Constitutional rights." *Hope v. Pelzer, 536 U.S. 730, 741-42, 1223 S. Ct. 2508, 153 L. Ed. 2d 666 (2002)*. See also *Brosseau v. Haugen, 543 U.S. 194, 198, 125 S. Ct. 596, 160 L. Ed. 2d 583 (2004)* (per curium) (This Court has repeatedly held, nevertheless, that "a general Constitutional rule may apply with obvious clarity to the conduct in question even though the very action in question has not previously been held unlawful")

B. LOWER COURTS' MISCONSTRUCTION OF PETITIONER RIGHT VIOLATION, FAILED TO CONDUCT A de novo review.

1. The district court were undoubtedly aware of notice from the Supreme Court decision in *Haines v. Kerner*, which reversed the lower courts decisions for misconstruing *Haines's* claims and provided proper construction of the claim. In that case, the Supreme Court stated, "The inmate sought to recover damages for claimed injuries and deprivation of rights while he was confined under a previous judgment. prison officials placing him in solitary confinement after he had struck another inmate on the head with a shovel." In this case Petitioner Mr. Bakambia was placed in segregation after he was attacked and assaulted by 3 enraged inmates of a group of native mobs, and pushed one of them off the tier, while in segregation the prison officials deliberately exposed him to those mobs to allow them to retaliate against petitioner.

2. Whether a party is entitled to summary judgment is a question of law over which the appellate court exercises plenary review. Appellate Court "review the grant of summary judgment de novo to determine whether there are genuine issue of material facts and whether the district court erred in its application of the law," *Montemayor v. Sebright Pros., 898 N.W. 2d 623 (Minn. 2017)* (quotation omitted). See also Jackson v. Nixon, 747 F. 3d 537, 2014 U.S. App. Lexis 5721 (W. D. Mo. March 28, 2014), KELLY, Circuit Judge stated:

> When we say that a pro se complaint be given liberal construction, we mean that if the essence of an allegation is discernible, even though it is not pleaded with legal nicety, they district court should construe the complaint in a way that permits the layperson's claims to be considered within the proper legal framework. Id. at 915. Taking a similar approach to our de novo review, we find that Jackson's arguments on appeal are properly before us as they provide additional legal support for the claims he made at the district court as a pro se litigant.

In ***Moyle***, the inmate (decedent) was booked in the Sherburne County Jail following his arrest of the gross misdemeanor of no proof of insurance. The same morning, another inmate from Oak Park Heights prison the level 5 was also transported to that same County Jail for his Court Appearance in relation to the second-degree assault with a deadly weapon; He had also a violent prison discipline record of attacking other inmates with a knife at a different Correctional facility in St. Cloud; and he was placed together with *Moyle* in the Intake Unit (AIU). At night, this inmate walked into the cell when *Moyle* was asleep, using an aluminum handrail and bludgeoned *Moyle* to death.

In its place, *Moyle v. Anderson* **is not analogous to this case, nor** *Vandevender v. Sass* **OR** *Andrews v. Seigel* cited in the district court decisions; these cases only create conflict of Opinions.

C. Imperative Reversal Upon the District Court Failure to Conduct De Novo Review This Standard Should have been apply When the District Court Prevent the Assigned Magistrate Judge from issuing Its Report and Recommendation for Summary Judgment

1. Initially, Petitioner case was assigned to a Magistrate Judge from June 2020 through December 2021. The case was subsequently *re-assigned* to another Magistrate Judge due to elevation of the initial magistrate judge (See App'x G &H Vol.1 footnotes 1). The parties were made aware of the availability of the Magistrate Judge pursuant to *28 U.S.C. § 636(c)(2).* The new magistrate judge Leung stated, *"The Court will then issue its report and recommendation based on the papers, without a hearing. See ECF No. 64 at 4; see also D. Minn. LR 7.1(c)."* (App'x H, Vol.1

at2). Then, ultimately, the magistrate judge vanished from the case, and then the district court judge ruled on respondents' motion for summary judgment, granted the motion in a way that deprived Petitioner of his right to judicial procedures to be permitted to object to the R&R. The statute *28 U.S.C. § 636(b)(4)* states, "Each district court shall establish rules pursuant to which the magistrate [magistrate judge's] shall discharge their duties."

In this case, it remains unclear when and how the magistrate judge discharged its duties and no party were made aware of that.

As a result, the district court ruling left many questions of law and genuine issues of material fact unaddressed. Therefore, the judgment of the district court should be imperatively reversed on the same ground as for failing to conduct a we novo review of an R&R as stated in *Williams v. Manternach, 192 F. Supp. 2d 980, 985 (N. D. Iowa 2002)* ("The Eighth Circuit Court of Appeal has repeatedly held that it is reversible error for the district court to fail to conduct a we novo review of a magistrate judge's report where such review is required.") (and cases cited). The Appellate Court agreed with the respondents' manipulative argument made under *28 U.S.C. § 636(b)(1),* concluding that the district court did not err in ruling on the summary judgment motion "without first referring it to a 'magistrate judge.'" Respondents argued that this provision states, "providing that a judge '*may* also designate' a magistrate judge to submit findings of fact and recommendations for the disposition of certain motions including those of summary judgment." But, there was no need for "*may*" as the case had an assigned magistrate judge.

D. Failure-To-Protect Cases Recognized By the 8th, Second and Other Circuits

1. In *Vandevender*, the 8th Circuit's own word stated:

Most of our Failure-to-protect cases arising of an inmate-on-inmate assault have involved an attacker who was known to be volatile, dangerous man, see *Young v. Selk, 508 F. 3d 868, 873 (8th Cir. 2007)*; *Newman v. Holmes, 122 F. 3d 650, 651 (8th Cir. 1997)*; **or who previously threatened or fought with the victim**, see *Everett, 140 F. 3d at 1151*; *Prater v. Dahl, 89 F. 3d 538, 540 (8th Cir. 1996)*; *Jones v. Wallace, 641 F. App'x 665, 666 (8th Cir. 2016)*; **or a victim who should have been better protected because of known prior inmate threats,** see *Panels v. Morrison, 335 F. 3d 736, 739 (8th Cir. 2003).* **In these cases, because of the violent nature of inmate assaults, the substantial risk of serious harm was obvious, and defendants' liability turned on the subjective issue of deliberate indifference (unless the victim had denied or not disclosed prior threat or altercation to prison officials).**

In *Smith v. Seiter, 501 U.S. 294*, ("After granting certiorari, the Supreme Court stated that the lower courts were required to inquire into the prison officials' state of mind because the inmate claimed that he was subjected to cruel and unusual punishment.")

2. The district court erroneously concluded that "The evidence does not permit a reasonable inference that Nelson subjectively understood that Plaintiff was at a substantial risk of serious harm, and recklessly disregarded that risk, or that he was even exposed to facts revealing that Plaintiff was at Rik's." Nelson took the role of Incident Commander on May 20 which carries serious responsibility to make sure policy and protocol are followed to separate inmates involved in the fight and make sure that they are separated in segregation. All respondents had that same duties because they were watch Commander and worked in segregation for many years, and were familiar with the segregation rule, policy and protocol.

See specifically, *Stone v. Moser, 2021 Minn. App. Unpub. Lexis 91*:

Unlike in Prater, no evidence establishes that either Stone or M.B. told officials that "there would be no trouble." Prater, 89 F.3d at 542. And, according to Stone, M.B. did not assault him earlier because of the new protocol to protect him after the mediation session. Although several weeks had passed after M.B.'s July 25 threat without incident, there is no evidence that M.B.'s hostility toward Stone had ceased. Thus, there is sufficient evidence that M.B. posed an imminent harm to Stone to create a factual issue for the jury.

In this case Petitioner assault of May 20, 2019 (described the scene as very CHAOTIC), it did not take six weeks before he was again assaulted in segregation the following day (May 21, 2019) by the same mobs and there was no evidence that these mobs' hostilities toward Petitioner had ceased. But the district court stated, "Maki does not recall Plaintiff saying anything to [him] about being concerned for his safety or being concerned about his cell placement"; "According to Gammel and Peterson, MCF-Rush City staff did not foresee such a fight or know of any animosity between the men involved." (See App'x B, Vol. 1 at 15, 16, 18, 19, 20). Then the district erroneously likens this case to *Andrews v. Seigel. See opinion at 15*

3. See Appendix G, Vol. 4 for *Fischl v. Armitage, 128 F. 3d 50, 55 (2d Cir. 1997),* Fischl was assaulted by several inmates who retaliated against him for damaging their property with the flood of his toilet he caused by stuffing his toilet as a result of being cheated on his trade of item with another inmate. Prison officials retaliated against him for flooding his toilet and aided these inmates who properties were damaged to enter Fischl' s cell by unlocking his door from the control room to allow them to assault Fischl while he was asleep. In this case respondents (Prison officials) aided these native mobs to retaliate and attack Petitioner again in

segregation because petitioner had pushed one of them over the tier. This similar case was addressed in Minnesota in *Johnson v. Fabian, No. 08-cv-00234-PAM/JJG.*

See specifically Appendix I, Vol. 2, Petitioner's kite response from respondent Lt. K. Peterson stated, **"Sgt. Making is correct with limited options of placement that night you threw another offender off of the 2nd tier in CX2E. I have nothing to weigh in on in your kite."**

See also another incident of inmate Vincent Cotton that the district court had denied discovery (See: App'x E, Vol.1 at 2).

4. On appeal, Petitioner provided a theory using in *K.M.M.N., 2004, Minn. App. (Unpublished)* (See App'x E, Vol. 4) A teenage girl[4] who was attacked by a cheer number of mobs, she defended herself using a reasonable use of force under Minn. Stat. Section *609.06 subd.1(3)(2002)* she used a knife and stabbed one of these mods and in the process of defending herself she also stabbed one of the security officers who came to her aid. The Minnesota Appellate Court reversed that conviction stated:

Our review of the record establishes that this was a fast-moving, and frightening scene in which the violence of the mob perpetuated itself. Not only did the danger dissipate when the security staff arrived, the mob became more enraged. the sheer number of people attacking *K.M.M.N.*, and the security staff's inability to protect her, reinforced her belief that she continued to be in peril. Thus, her use of knife to defend herself was reasonable, even after the security staff came to her aid.

E. Placement in segregation on May 20, 2019 and Respondents

[4] Petitioner then stated a question to the 8th Circuit Panel, in *K.M.M.N.* situation, what could have happened if the authorities place this teenager back together with these mobs in the same Unit and then allow her same time of recreation with them. Would it be a violation of her federally protected rights? Respondents attempted to confuse and tried to take it out of focus, they stated that *K.M.M.N.* was a delinquency case and did not address Eighth Amendment.

conflicting testimonies and perjury committed and credibility issues were disregarded by the district court.

Respondents credibility issues did place them in a situation where it was hard to believe that they were tell the truth because of many lies, dishonesty and inconsistencies in their testimonies.

See *Anderson v. Liberty Lobby, 477 U.S. 242*:

Fed. R. Civ. P. 56 (c) provide that Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits or declarations, if any, show there is no genuine issue of material fact, and that the moving party is entitled to summary judgment as a matter of Law." Footnote: "Credibility assessments, choices between version of events, and the weighing of evidence are matter of the jury, not of the court on a motion for summary judgment." *Jenkins v. Winter, 540 F. 3d 742, 750 (8th Cir. 2008); Anderson v. Liberties Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505 (1985); Fischl v. Armitage, 128 F. 3d 50, 55 (2d Cir. 1997).*

1. Respondent Sgt. Making swore under penalty of perjury:

When offenders are brought to segregation after fighting, they are typically treated as they had all fought each other. Often times staff responding to a fight are not able to immediately discern who specifically fought with who. Offenders may already comply with directive and lay on the ground by the time responding staff can enter the area safely" (App'x D, Vol. 3, Making Decl. 4).

See also App'x B, Vol. 1, at 6, the district court only considered the first part of the paragraph because it showed that Maki was being dishonest because the undisputed evidentiary video (App'x D, Vol. 2) showed that only petitioner complied with the directives and lay on the ground while the video showed these mobs walking back to their cells, and Respondents' own declarations described how Gammel and Nelson reviewed the video and discovered them and brought them to segregation and placed C.W. in the same tier as petitioner, a tier lived also by C.W.'s other mobs.

And Maki is lying that he was not in charge of assigning cells but on his declaration, he stated that he was the officer in charge of segregation that day and then tried to deflect stated that usually, staff working in the bubble (control room) assign cells to offenders in the segregation unit, but Maki nor any other respondents were willing to say who was working in the bubble that day.

See *Beard v. Banks, 548 U.S. 521, 530-122 S. Ct. 2572 (2006)* (Holding that prison officials' explanation of the justification for their policies are evidence).

2. How Incident Report circulate to all staff and places them furthermore, in a subjective issue of the matter.

See *Stone v. Moser, 2021 Minn. App. Unpub. Lexis 91* (App'x K, Vol. 4) "Stone reported what happened to MSOP staff, who reviewed the security videos and confirmed that the incident occurred. MSOP staff recorded the incident reports to electronic communication system which circulate incident reports to all MSOP staff." This electronic system for the MCF - Rush City and other prison is called COMS (Correctional Operations Management System) which also circulates ICS and incident reports to all staff.

3. The district court stated:

Because Gammel was not involved in assigning cells in the segregation Unit, defendants contend Gammel did not know where Plaintiff and C.W. were housed in segregation Unit. However, the incident reports that Gammel reviewed included Plaintiff and C.W.' s cell numbers in the segregation Unit. Gammel also helped identify C.W. as one of the men involved in the May 20 fight. (App'x B, Vol.1 at 18-19).

The district court refused to acknowledge that these incident reports it referred to which circulate to all staff, also contained information of Petitioner report to the officers that few days ago he was attacked by the same group of mobs.

Then, the district court erroneously stated, "But with Maki, mere exposure to the information that Plaintiff and C.W. were placed in the same Segregation Unit, without any further indication of danger from Plaintiff or other MCF - Rush City officials, does not equate to a supervisor 'turn[ing] a blind eye for fear of what he...might see."

This conclusion is wrong for a simple fact that Maki was in charge of segregation and see Gammel Decl. App'x A, Vol. 3, 5 "An ICS alerts all staff in the facility that there is an ongoing incident and shuts down the facility until the incident is resolved." All listed respondents in this case were involved in this "ongoing incident until it was resolved."

Further, see the district court's own remark App'x B, Vol. 1 at 5:

The DOC's Directive entitled "Segregation Unit Management" requires correctional facilities to develop and maintain admission procedures for inmates, including, among other things, a "status review of incompatibility. (Pl. Ex. 15 (Docket No. 184-2) at 2 Defendants put forth no evidence that such a review occurred here.

See also App'x M, Vol. 4 DOC policy 301.035 " Evidence Management " Procedures A. 3. d) "Identify suspects and witnesses and keep these people separated from each other." This must be done by the "Incident Commander" as this procedure showed, and Officer Nelson assumed the role of the Incident commander (see App'x B, Vol. 3 Peterson Decl, Ex. 1).

In *Stone v. Moser*, the district court determined that defendants did not followed their protocol that set procedures for protection of the Plaintiff or any other inmate in his situation.

F. Cell placement in Segregation and substantial risk of harm to Petitioner's health and safety.

1. The district court cited with respondents on this issue, see App'x B, Vol. 1 at 14:

As to the objective prong, Defendants first assert that Plaintiff was not exposed to substantial risk of harm by placing C.W. in the same segregation Unit, because staff control when offenders may be out of their cells, and can control their movement when that is so. While it can be true that prison officials can exert more control in that context, as evidenced by the events of May 21, fighting can occur in segregation. This argument is unpersuasive.

2. Here the district court is sending a conflicting view of fact to the law, and the district court is wrong. What evidence of control prison officials had shown in the event of May 21, 2019. The only control they had was to open the cell doors of Petitioner and his attacker and deliberately exposed him to a substantial risk of harm. This argument from the respondent was clearly malicious and reckless.

3. See e.g. Gammel's own words, stated:

As watch commander, I was not involved with implementing recreation time in segregation Unit and was not aware that Bakambia and Wuori were given recreation time together. App'x A, Vol. 3.

4. Gammel also lied on his response to Petitioner's kite dated September 30, 2019 (See App'x K, Vol. 2) stated, "You were brought to the restricted housing after the altercation you were in. The offender you were involved in the fight with was secured in a different wing. I was not responsible for assigning any of the room assignment."

5. Contrary to Gammel, please see Maki's response to Petitioner's kite dated July 14, 2019 (App'x I, Vol. 2.) He stated:

The people you fought with on 5/20 were dispersed throughout the Unit very well. Out the 3 people you fought with only 1 had to be placed in the same wing as you. We can only use the bed space we have when guys come into seg. You and Wuori were at separate ends of the tier, also he was in 201 and you were in 207. *As far as the assault on 5/21 I was not working that day* and *had nothing to do w/it.*

On a different kite dated August 9, 2019 (App'x I, Vol. 2) stated:

As we have spoken many times on this, we have to use the available bed space in restricted housing. *The second time you fought in restricted housing I was not working in that Complex*. I suggest that you contact the staff that were working at that time.

The district court also adopted respondents lies about the availability of bed space in segregation on May 20, 2019 despite Petitioner evidence he submitted of note he took from the documents produced by respondents (See App'x N, Vol. 2).

See App'x N, Vol. 2 showed that on May 20, 2019:

- At 16:21, two inmates out from segregation to CX 1-East (SHU)
- At 16:27 One Inmate out from segregation to CX4N, and One out to CX 4-South;
- At 17:50 Three Inmates out from segregation to CX 1-East and placed on HIS status.

This is a total of seven more bed space available and respondents did not made moves in order to avoid any further incident. See also respondents' response to Petitioner's Amended Complaint (App'x L, Vol. 1 ¶ 24) they've admitted that "*Cell 208 and other cells became vacant after Plaintiff and Wuori were placed in their cells and other offenders were removed from the Unit.*"

See App'x B, Vol. 1 at 4, footnote 3, the district court erroneously concluded:

It is disputed whether four or five cells were open at the time the men were brought to the segregation Unit. Defendants assert that four cells were available (K. Peterson Decl. ¶7 (reviewed DOC records and found 4 open cells; Maki Decl. ¶¶5,7 (four available cells)), while Plaintiff contends that cell 208 next to him was empty (Pl. Ex. 22 (Docket No. 184-3) at 1). Regardless, whether another cell was empty does not have any material effect on Plaintiff's claims.

In *Smith v. Wade, 461 U.S. 30:*

At trial his evidence showed that he had placed himself in protective custody because of prior incidents of violence against him by other inmates. The third prisoner whom Smith added to the cell had been placed in administrative

segregation for fighting. Smith had made no efforts to find out whether another cell was available, in fact, there was another cell in the same dormitory with only one occupant.

In this case, respondent refused to produce record of cell activities of the entire segregation for only May 20, 2019 and May 21, 2019. They claimed that they do not keep those records of activities in individual cell, and as such no cell logs exist See App'x I, Vol. 3. And the district court denied Petitioner motion to compel this discovery stated that this request is of minimal relevance and significantly overbroad." (See App'x E, Vol. 1, at 5). Then now, the district considered K. Peterson and Maki assertions that they reviewed DOC records and found 4 open cells. This was after their response to discovery that these records did now exist then. See particularly, *Davidson v. Cannon, 474 U.S. 344*:

The Court has previously indicated that officials act recklessly when they disregard the potential for violence between a known violent inmate and a known likely victim. In *Smith v. Wade, 461 U.S. 30 (1983),* the Court recognized that a prison guard had acted recklessly in placing a known violent inmate in a cell shared by the previously victimized plaintiff and another inmate, without attempting to locate an empty cell nearby. The plaintiff, who recently been removed from protective custody, was assaulted by his cellmate.

Here, the district court erroneously stated, "In sum, Plaintiff provided no evidence demonstrating history of conflict with C.W. or any of the involved inmates. Similarly, Plaintiff fails to provide evidence that any of the inmates with whom he fought had a history of violent attacks in prison." (See App'x B, Vol. 1 at 21).

Petitioner did provide evidence of his attackers' discipline reports, See App'x N, Vol. 2.

G. The district court refused to address issue of Notice of Violation (NOV), How delivered.

See App'x B, Vol. 2 at 12, the district court stated, "The record is unclear as to who delivered the notice of violation to plaintiff on May 21, because the deliverer's signature is illegible (K. Peterson Decl. Ex. 5 at 1)." Then it stated, "Regardless, there is no material fact in dispute as to whether Gary Peterson violated Plaintiff's rights," But respondents never contested these allegations, it was Sergeant Nelson's signature and he delivered the NOV of violation started by C.W. then, Petitioner.

But, once again K. Peterson made false statement in his declaration stated, " The lieutenant then brings the NOV to the offender to inform him of the charges and get information from that offender's point of view." (App'x B, Vol. 3 at 6 13) There is no record that Gary Peterson the discipline Lieutenant had done what K. Peterson falsely stated. See e.g. *Fisher v. State, 2007 Minn. Unpublished Lexis 592,*. the Minnesota Court of appeals remanded the issue of retaliation to district court for further consideration because neither respondent in that case nor the district court directly addressed that issue.

This was petitioner's efforts to further establish respondents knowledge of the exposure to that substantial risk of harm, yet the district court stated again that, "Plaintiff produces no evidence that he was fearful for his safety before the May 21 incident, as evidenced by participating in the first section of recreation that day, either without knowing whether one of the inmates involved in the May 20 incident was in his wing or with full knowledge that C.W. was in the same tier." (App'x B, Vol. 1 at 21).

In *Farmer v. Brennan, 511 U.S. 825 (1994):*

In granting summary judgment to respondents on the ground that Petitioner had failed to satisfy the Eighth Amendment requirement, the district court may have place decisive weight on Petitioner's failure to notify respondents of risk of harm. That Petitioner "never expressed any concern for his safety to any of [respondents]," App. 124 was the only evidence the district court cited to its conclusion that there was no genuine dispute about respondents' assertion that they "had no knowledge of any potential danger to [petitioner's]," ibid. But with respect to each of petitioner's claims for damages and for injunctive relief, the failure to give advance notice is not dispositive. Petitioner may establish respondents' awareness by reliance on any relevant evidence see supra, at 16.

While the district court implied that petitioner did not inform respondents of express fear about his safety, but in the meantime the district court is justifying for the respondents in the event leading up to his placement in segregation, the court construing their argument stated that

Respondents Kenneth Peterson and David Schmitt perjuries and credibility issues

K. Peterson was the lieutenant in charge of the segregation and was involved on both incidents. He made false statement on their response to initial complaint that he was not inside the facility the second time Petitioner was assaulted again by the same gang members (See App'x K, Vol. 1 20); then on their response to Amended complaint they simply denied it (See App'x L, Vol. 1 26). It should also be noted that respondent have produced record of training, that simply showed that Peterson "completed" some trainings earlier that day of May 21, 2019 but did not have any details on the duration, because the assault on petitioner occurred at 17:33. The magistrate judge believed their counsel's attempt to justify that "any confusion has now been clarified" (See App'x G, Vol. 1 at 7). See e.g. Petitioner's

other case *Bakambia v. Craane, et all No. 22-CV-PJS/ECW, April 04, 2023 Order* (Docket No. 16 at 12) the magistrate judge cited Stated:

Kirr v. North Dakota Pub. Health, 651 F. App'x 567, 568 (8th Cir. 2016) (per curiam) (Concluding that pro se Plaintiff's amendments should have been read together as consisting of plaintiff's complaint); See also Cooper v. Shriro, 189 F. 3d 781, 783 (8th Cir. 1999) (pro se complaint must be liberally construed and plaintiff clearly intended for amended complaint to be read together with original complaint).

Declaration of Fellow Inmate James Charles Thompson

Mr. Thompson was seen in the security cameras that captured the incident of May 21, 2019 in segregation (See App'x D, Vol. 2). He produced a declaration (App'x C, Vol. 1) in which he can testify at trial about all the lieutenants he saw that day, this will include Lt. K. Peterson. The district court simply denied as moot stating that because he granted respondents summary judgment (See App'x B Vol. 1 at 1, 23, 24).

The magistrate judge Order Granting Discovery of shift logs for Sgt. Schmitt and Maki for the dates of May 20, and 21, 2019 due to Schmitt lying that on May 21, 2019 he did not work in segregation and that he worked in 1East Unit and refused to comply with discovery request and motion to compel.

Then, Respondents' counsel, Minnesota Assistant Attorney General Mr. Kevin Jonassen assisted Schmitt in committing perjury, see App'x E, Go. 3 at 11, the counsel stated:

Bakambia is not entitled to an order compelling the production of "logs" which showed which Unit Schmitt worked in on May 20, 2019, and May 21, 2019 *for the simple reason that Heather Sletten, the litigation coordinator at MCF-Rush City, declared under penalty of perjury, that no such record or log exist*. See Doc. 75-1. As

such, there is no production to compel. *Further, Defendants informed Bakambia that Schmitt did not work on May 20, 2019, and that Schmitt worked third watch in Unit 1E on May 21, 2019.*

See App'x E, Vol. 1 at 7 the court stated:

Mr. Schmitt objected as vague and ambiguous and asserted that no such log exists, but offered that he did not work on May 20, 2019, and worked in Unit 1E on May 21, 2019. Mr. Bakambia argues that "there is a permanent log that must be maintained withdrew the Unit." The Court finds that the request is sufficiently clear and relevant to this litigation, and therefore Grants Mr. Bakambia's motion to compel as to this request.

Then the court stated, "*Regardless of whether those records also contains other information, they shall produce them to Mr. Bakambia.*"

It was also noted that respondent Schmitt filed these lies with his declaration in support of their motion for summary judgment, he submitted his incident report of May 21, 2019 attached to his declaration which showed his lies that he worked in 1-East Unit (See App'x C Vol. 3, Schmitt Decl. Ex. 1) then see his declaration ¶3, he wrote that he worked in Segregation.

Then defendants produced these shift logs but redacted other information (See App'x F, Vol. 1) clearly disobeyed the magistrate judge's Order

Upon the reassignment of the new magistrate judge (See App'x G, Vol. 1 at 10-17) respondents were sanctioned and produced the underacted version of those shift log but again without portion that showed staff with last names beginning with A through K, and O through R. This is because they will show the Unit where Kenneth Peterson worked in on May 21, 2019 (K. Peterson lied that on May 21, he

was not inside the facility) and Officer Victor Archibong because respondents had him produce an incident report claiming that he was monitoring the segregation from the bubble (Control room) (See App'x A, Vol. 3, Gammel Decl, Ex. 3 pg. 12). Petitioner sent a letter with a declaration to the reassigned magistrate judge (See App'x F, Vol. 1) requested those logs with staff last names beginning with A - K and O – R, he also referred the judge to the Order that stated, *"Whether these records also contains other information, they shall produce them to Mr. Bakambia."* The magistrate judge denied the request, construed it as if Petitioner were seeking additional discovery. (See App'x E, Vol. 1). On reverse and remand, this Court should direct a production of these records.

H. Officer Branden Tatum's comments made to one of the group of mobs directing to Petitioner

See App'x B, Vol. 1 at 11, the district court stated:

Further, Plaintiff alleges that Tatum told another inmate after the May 2019 events that *"That mother f***er right there can really throw you off the tier,"* referring to Plaintiff. This comment, however distasteful, was not a violation of Plaintiff's Constitutionality rights... According to Plaintiff, Pugh's only involvement was that in June 2019, Pugh denied him transfer and ordered him to stop sending internal requests (see Am. Completed. 34-36, 57-58). Plaintiff alleges that in October 2019, Rasmussen responded to a complaint he made and instructed him to stop sending internal requests after he was transferred to a different facility (Id. 55-59). *These interactions which took place after May 2019, do not constitute violation of Plaintiff's rights.*

In *Fischl v. Armitage, 128 F. 3d 50, 55 (2d Cir. 1997),* the district court found this evidence insufficient to defeat summary judgment reasoning that "mere allegations of verbal abuse, threats or defamation by a correctional officer to a

prisoner, are not cognizable in a Section 1983 action"; "and there was no show that the alleged threats had been carried out."

In *Fischl*, the Appellate Court state:

This reasoning is flowed, *Fischl* does not seek to recover for the postattack threats, he seeks to recover for the assault. Armitage bringing two of the attacking inmates with him when he visited Fischl in the hospital, discussing the assault, and threatening Fischl with further harm are admissible to show Armitage's collaboration with *Fischl's* attackers. And Armitage's warning Fischl not to press charges against "us" is admissible to Armitage's own acknowledgement of his involvement. Accordingly, this testimony would be admissible at trial and, if credited by the jury, would suffice to permit a finding of the personal involvement of Armitage... *Fischl's* deposition testimony to those threats thus suffice to defeat the motion for summary dismissal of the claims against Armitage.

III. Petitioner's Equal Protection Claim

See App'x P, Vol. 2, incident report of fellow inmate Tyler Wicklund was similarly attacked by several inmates of gang members, he received better protection in segregation compared to Petitioner.

First, respondents stated that none of Wicklund were sent to the hospital, but they've redacted this information.

Second, Respondent falsely stated that Wicklund received penalty of 15 day in segregation suspended for 90 days (See App'x B, Vol. 3 16). Yet, they provided no evidence or proof. But he undisputed evidence showed that Wicklund had left the segregation on May 20, 2019 back to his Unit 4 North, see App'x N, Vol. 2 B. 6).). Respondents have also redacted the name of that inmate who left the segregation to CX4N. and the district court denied Petitioner's discovery request of these deducted information (See App'x G, Vol. 1 at 8).

In *Williams v. Monternach, 192 F. Supp. 2d 980, 985 (N. D. Iowa 2002),* upon de novo review the district court disagreed with the magistrate judge conclusion that Williams has failed to meet either of the necessary predicates to state a cognizable claim under the Equal Protection Clause, which are that he suffered treatment different from other prisoners in his circumstances and that such unequal treatment was a result of intentional or purposeful discrimination.

IV. The District Court did not Address Respondents' Immunity Defenses.

See App'x B, Vol. 1 at 10 footnote 7, the district court stated:

Because Plaintiff has not established his Constitutional claims, the Court need not determine whether any Defendants is entitled to qualified immunity on those claims. It is likely, however, that all Defendants are entitled to qualified immunity as to all of Plaintiff's Claims.

This Court should address this issue whether any Respondents are entitled to qualified immunity under *Harlow v. Fitzgerald, 457 U.S. 800, 817-18, 102 S. Ct. 2727 (1982)* "The question has been stated as 'whether a reasonable officer could have believed [her] action to be Lawful, in light of clearly established Law and the information the [Defendant] possessed.' *Anderson v. Creighton, 483 U.S. 635, 641, 108 S. Ct. 3034 (1987).* In Harlow,' The Defendants' state of mind is often relevant to the question whether require proof of malice, deliberate indifference, or other subjective elements." In *Harlow v. Atkenson, 887 F.2d 134, 140 (8th Cir. 1989)* ("Defendants acted in violation of prison policies were not immune.")

Request for Leave to File Additional Recent Neurology Report Dated June 21, 2023, and copy of MRI of Brain

Petitioner submits App'x O, Vol.2 for his request for leave for this Court to consider it as they are continued medical records on issue of his injury of Brain and the Chronic migraines, head injury and continue suffering from these chronic conditions and side effected of medication including the pain associated with administration of injections for those migraines.

CONCLUSION

For the foregoing reasons, the grant of summary judgment should be reversed and the case should be remanded to the district court for trial, and Petitioner prays for this Court appoint Counsel to represent him.

Respectfully, submitted,

Executed on July 21, 2023

S/ _____
Marc Amouri Bakambia