23-5472

No. _____

FILED
JUL 19 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jorge Andrade Rico — PETITIONER
(Your Name)

vs.

James Robertson, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court Of Appeals.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jorge Andrade Rico
(Your Name)

Pelican Bay State Prison, P.O. Box 7500.
(Address)

Crescent City, California, 95532
(City, State, Zip Code)

(Phone Number)

FILED
JUL 19 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

THE CALIFORNIA DEPARTMENT OF CORRECTIONS (CDC) OPERATES TWO SOLITARY CONFINEMENT UNITS: ① ADMINISTRATIVE HOUSING UNIT (ASU) AND ② SECURITY HOUSING UNIT (SHU). PRISONERS ARE IN TOTAL CONTROL OF WHERE TO HOUSE BY "CDC". PRISONERS GET HOUSED IN THE ASU - HAVING NO STATE/FEDERAL DUE PROCESS TO CHALLENGE IT - FOR MANY REASONS DEEMED "ADMINISTRATIVE". PRISONERS GET HOUSED IN THE SHU ONLY AS PUNISHMENT, BUT ONLY AFTER GOING THROUGH AND RECEIVING A 'DISCIPLINARY HEARING' CONFORMING WITH MANDATED STATE/FEDERAL DUE PROCESS.

QUESTION.

① BEING "CHARGED" WITH VIOLATING A PRISON RULE AND BEING HOUSED IN THE A.S.U, UNDER ADMINISTRATIVE INVESTIGATION, IS THE SAME AS BEING GUILTY AND BEING HOUSE IN THE SHU? IN OTHER WORDS, IS BEING ACCUSED "UNDER MY CONTROL"? EVEN IF I HAVEN'T HAD THE OPPORTUNITY TO CHALLENG THE ACCUSATION?

QUESTION.

② TO AVOID/OVERCOME MOOTNESS ONE NEEDS TO DEMOSTRATE THAT A CONTROVERSY IS "CAPABLE OF REPETITION, YET EVADING REVIEW". U.S V. SANCHEZ-GOMEZ, 138 S.CT 1532 (2018). A DISPUTE QUALIFIES FOR THAT EXCEPTION ONLY "IF THE CHALLENGE ACTION IS IN ITS DURATION TOO

QUESTION(S) PRESENTED. CON.

SHORT TO BE FULLY LITIGATED PRIOR TO ITS CESSATION OR EXPIRATION, AND (2) THERE IS A REASONABLE EXPECTATION THAT THE SAME COMPLAINING PARTY WILL BE SUBJECTED TO THE SAME ACTION AGAIN" SANCHEZ-GOMEZ AT 1540. HOWEVER THIS COURT HAS "CONSISTENTLY REFUSE TO CONCLUDE THAT THE CASE-OR-CONTROVERSY REQUIREMENT IS SATISFIED BY THE 'POSSIBILITY THAT A PARTY WILL BE PROSECUTED FOR VIOLATING VALID CRIMINAL LAW" SANCHEZ-GOMEZ AT 1540.

THE QUESTION IS:

IF THE STATES/CDC CHALLENGE CONDUCT OCCURED UNDER A PRISON LABEL OF "DISCIPLINARY CONFINEMENT"... DOES THAT CLOSES THE DOOR ON THE COURT FROM ACCEPTING "OTHER" WAYS IN WHICH THE STATES/CDC CHALLENGE CONDUCT CAN OCCURRED AGAIN? IN OTHER WORDS, DOES THE HARM DONE BY THE STATE HAS TO BE DONE FOR "NON-DISCIPLINARY REASONS" FIRST, IN ORDER TO BE COUNTED AS THE HARM TO WHICH A PARTY CAN BE SUBJECTED AGAIN? SIMILARELY, IS THE CAPABLE OF REPETITION DOCTRINE IS A FORWARD LOOKING DOCTRINE?

LIST OF PARTIES

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

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

MICHAEL STAINER; CALIFORNIA DEPARTMENT OF CORRECTIONS (CDC)
HARRINGTON, ALLISON, DUCART, MARULLI,.

RELATED CASES

EARNEST HARRIS. V. BEARD ET AL. NO: 2:17-CV-01402-KJM-DB (E.D.CAL)
MAHER C. SUAREZ. V. BEARD ET AL. NO: 2:18-CV-00340-KJM-DB (E.D.CAL)
IVAN, L, MATTHEWS. V. HOLLAND ET AL. NO: 1:14-CV-01959-KJM-DB (E.D.CAL)
JASPER F. WILSON. V. BEARD, ET AL. NO: 1:15-CV-01424-KJM-DB (E.D.CAL)
CHRISTOPHER LIPSEY. V. DR. NORUM. ET AL. NO: 2:18-CV-00362-KJM-DB (E.D.CAL)
JORGE RICO V. C.E. DUCART ET. AL NO: 2:19-CV-01989 KJM-DB-P (E.D.CAL).
RICO V. DUCART 980 F3D 1292 (9TH CIR 2020).
COLEMAN V NEWSON. NO: 90-0520 KJM DB (E.D.CAL)
HEILMAN V. UISS NO. 1:19-CV-01654-DAD-SAB (N.D CAL)
ASHKER V. CATE 2018 WL 3108924 (N.D.CAL 2018)

RELATED CASES CONT.

ASHKER V. PEELIFFER 2021 WL 5937584 (E.D. CAL 2021)
MURILLO V. HOLLAND NO. 1:15-CV-00266-KMJ-DB
COLEMAN V. NEWSOM NO. 2:90-CV-00520-KMJ-DP (E.D. CAL)

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION .....

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....

STATEMENT OF THE CASE .....

REASONS FOR GRANTING THE WRIT .....

CONCLUSION .....

INDEX TO APPENDICES

APPENDIX A: NINTH CIRCUIT DENIAL OF REHEARING.

APPENDIX B: NINTH CIRCUIT MEMORANDUM APPEAL DENIAL.

APPENDIX C: DISTRICT COURT ORDER. (EASTERN CALIFORNIA)

APPENDIX D: SECOND (OPERATIVE) AMENDMENT COMPLAINT

APPENDIX E: SOME PROOF OF RELATED CASES.

APPENDIX F

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

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

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

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

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

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

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

The date on which the United States Court of Appeals decided my case was DECEMBER 06, 2022.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: APRIL 20, 2023., and a copy of the order denying rehearing appears at Appendix _____.

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

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

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

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

	PAGE #.
AUSTIN V. TERHUNE 367 F3D 1167 (9TH CIR 2004)	9
COLEMAN V. NEWSON NO. 2:90-CV-00520 (E.D. CAL)	2
HEWITT V. HELM 459 U.S. 460 (1982)	11
HINES V GOMEZ 108 F3D 265 (9TH CIR 1997)	9
HONING V DOE 484 U.S 305 (1988)	10
PONTE V REAL 471 U.S 491 (1985)	12
RESNICK V. HAYES 213 F3D 443 (9TH CIR 2000)	11
SANDIN V CONNER 515 US 472 (1995)	,12 ,13
WHERE DO WE GO BERKELY V. CAL. DEP'T OF TRANS	10
32 F4TH 852 (9TH CIR 2022)	10
WOLF V MCDONNELL 418 US 539 (1974)	12
UNITED STATES V. SANCHEZ-GOMEZ 138, S CT 1532 (2018).	6,14

STATEMENT OF THE CASE

I've always been label as a "General Population" (G.P) prisoner by CDC. This means that I'll not be housed in mentally ill units. The Solitary Confinement housing units, A.S.U and S.H.U, housed only "G.P" prisoners - mentally ill prisoners can not be housed there.

For atleast a decade (10-years) CDC has used a apparatus named the "Guard One" (G.1) system to record that a Correctional Officer (C.O) actually did do a welfare check on prisoners housed in the A.S.U and the S.H.U. The welfare checks happen every ~~hour~~ half hour, all day and days long.

The welfare checks are very disturbing, disrupting, and it is torture to be force to be under them. During day and night they sleep deprive you. The welfare check consist of a metal button attached to the middle or side of the metal cell-door, when a C.O does a welfare check walk, he/she has a small metal batum that has to be touch to the metal button on the door to 'record' their walk. When doing their walk C.O's loud ~~noise~~ mechanicals doors have to be opened, and many times the C.O's run and rush through metal stairs striking the batum against the metal button attached to the door, making unnecessary noise, and noise that is

LOUD ENOUGH TO BE DISRUPTIVE TO SLEEP. HUNDREDS OF BANGS A DAY WHILE BEING SLEEP DEPRIVE CREATES A BAD MENTAL AND PHYSICAL STATE OF MIND. IT IS TORTURE TO LIVE UNDER THE "CHECKS".

HUNDREDS OF PRISONERS COMPLAINED THROUGH INTERNAL GRIEVANCES WHILE OTHERS, LIKE ME, FILE CIVIL SUITS AGAINST THE TORTURE.

THE 6-1 SYSTEM WAS ORDERED BY THE EASTERN DISTRICT OF CALIFORNIA (WHERE ALL CIVIL SUITS AGAINST THE 6-1 WERE ROUTED TO) UNDER THE BEHEST OF THE ATTORNEYS IN CASE "COLEMAN V. NEWSOM, NO. 2:90-CV-00520-KMJ-DP (E.D.CAL)". THE COLEMAN ATTORNEYS REPRESENT MENTALLY ILL PRISONERS NOT GENERAL POPULATION PRISONERS. THE 6-1 WAS UNDER THE SUPERVISION OF A SPECIAL MASTER. ALTHOUGH HUNDREDS OF COMPLAINTS WERE FILE AGAINST THE GUARD ONE, FOR CAUSING EXTREME DAMAGE, AND ALTHOUGH MORE THAN 10 LAWSUITS WERE FILED IN COURT, AND ALTHOUGH THE SPECIAL MASTER KNEW OF THE SLEEP DEPRIVATION, AND ALTHOUGH I SEEKED HELP FROM THE COLEMAN ATTORNEYS, NO ONE INTERVENE. NO ONE HAS LISTENED.

ON MAY 2014 I WAS PLACED IN THE A.S.U. BEING ACCUSED OF ATTEMPTING TO MURDER ANOTHER PRISONER. ON SEPTEMBER 2014 AFTER RECEIVING A DISCIPLINARY HEARING I WAS HOUSED IN THE S.H.U. IN AUGUST 2016 AFTER WRITING NUMEROUS GRIEVANCES I FILE A CIVIL SUIT IN THE NORTHERN DISTRICT OF CALIFORNIA SEEKING DAMAGES AND INJUCTIVE RELIEF. I WAS RELEASE TO THE PRISON MAIN-LINE FROM THE SHU IN 2016. ON 2017 THE CASE WAS SENT TO THE EASTERN DISTRICT.

ON JULY 2017 I WAS CHARGE AND ACCUSED OF ASSAULT ON A C.O. ON OCTOBER 2017 I RECEIVE A PRISON DISCIPLINARY HEARING IN WHICH THE HEARING OFFICER VIOLATED MY STATE/FEDERAL DUE PROCESS AND IMMEDIATELY FOUND ME GUILTY OF SUCH ACCUSATION.

WHILE BEING ACCUSE I WAS HOUSED IN THE A-S-U AND ONLY "AFTER" I WAS GIVEN A DISCIPLINARY HEARING WAS I PLACED AS A S-H-U PRISONER. I WAS RELEASED FROM THE S-H-U ON APRIL 2018.

ON MARCH 04, 2019 THE EASTERN DISTRICT OF CALIFORNIA RULED THAT MY CLAIM COULD PROCEED FOR DAMAGES BUT FOUND MOOT MY INJUCTIVE AND DECLARATORY SEEK RELIEF. THIS WAS DONE ON A MOTION TO DISMISS. THE COURT REASONED THAT I WAS NO LONGER UNDER THE 6-1 AND THAT BECAUSE I HAD NOT BEEN IN SOLITARY CONFINEMENT FOR NON-DICIPLINARY REASONS.

DEFENDANTS APPEAL THE QUALIFY IMMUNITY TO THE NINTH CIRCUIT. THE DISTRICT COURT DID NOT LET ANY DISCOVERY TO HAPPEN.

A PANEL OF 3 JUDGES (ONE JUDGE DISSENTING) REVERSE THE DENIAL OF QUALIFY IMMUNITY BY THE DISTRICT COURT AND THE DISTRICT COURT ENTERED JUDGEMENT ON OCTOBER 04, 2021. 9TH CIRCUIT PUBLISHED THE CASE.

DURING THE COURSE OF DEFENDANTS QUALIFY IMMUNITY I WAS AGAIN HOUSED IN SOLITARY CONFINEMENT FROM OCTOBER 2020 TO JANUARY 2021. I WAS TAKEN TO THE "A-S-U" FOR RETALIATORY PURPOSES — SINCE I FILED THIS SUIT IN 2016, I'VE BEEN IN NON-STOP CONSTANT HARASSMENT BY PELICAN BAY PRISON'S C-O UNIT CALLED "INSTITUTION SECURITY UNIT" (I-S-U) IN FORM OF CONSTANT CELL SEARCHES, CONFISCATION OF LEGAL NOTES, DESTRUCTION OF PROPERTY AND DENIAL OF DUE PROCESS. ON OCTOBER I WAS GIVEN A FALSE REASON WHY I WAS SENT TO THE A-S-U. I RECEIVE A PRISON DICIPLINARY HEARING ON NOVEMBER 2020, IN THE A-S-U, AND THE LABEL UPON ME CHANGED TO A S-H-U INMATE. ON JANUARY 2021, WHILE I WAS HOUSED IN THE A-S-U MY DESIGNATION CHANGED AGAIN TO "NON-DISCIPLINARY SOLITARY CONFINEMENT". I WAS

RELEASE FROM PELICAN BAY'S A·S·U ON FEBRUARY 2021.

I APPEALED THE MOOTNESS ISSUE AND FILE A OPENING BRIEF IN THE NINTH CIRCUIT ON MARCH 04, 2022. THE COURT, AFTER BRIEFS WERE IN, ORDERED ORAL ARGUMENTS, WHICH HAPPENED ON NOVEMBER 14, 2022.

IN APPEAL I ARGUE THAT THE SLEEP DEPRIVATION IS CAPABLE OF REPETITION. FURTHER THAT I CAN BE HOUSED IN SOLITARY CONFINEMENT AT ANY TIME FOR REASONS BEYOND MY CONTROL. I ARGUED THAT BEING ACCUSED OF VIOLATING A PRISON REGULATION AND BEEN HOUSED IN THE A·S·U, HAS HAPPENED AND CAN HAPPEN AT ANY TIME, AND THAT IT IS NOT UNDER MY CONTROL. FURTHER, SINCE THE "CAPABLE OF REPETITION" IS A FOWARD LOOKING DOCTRONE, NOT BACKWARDS, I CAN BE HOUSED AGAIN IN SOLITARY FOR NON-DISCIPLINARY REASONS AND REASONS OUT OF MY CONTROL. SUCH AS COURT VISIT MOVEMENTS, DEBRIEFING TO CDCR OFFICIALS, SAFETY CONCERNS, FALSE WRITE UPS, RETALIATION FOR GRIEVING CDCR, LACK OF BED SPACE, AND EVEN DUE PROCESS VIOLATIONS.

DEFENDANTS ONLY DEFENSE WAS THAT I HAD ONLY BEEN IN SOLITARY CONFINEMENT FOR DISCIPLINARY REASONS AND THAT IF I WAS TO GO BACK TO SOLITARY IT WILL BE FOR MY OWN ACTION, THUS I SHOULD NOT QUALIFY FOR THE "CAPABLE OF REPETITION".

DEFENDANTS (CDCR) PRESSED THE COURT TO ONLY LOOK AT THE CAPABLE OF REPETITION ~~BACKWARD~~ DOCTRINE BACKWARDS, AND FOR THE COURT TO IGNORE REASONS NOT UNDER MY CONTROL - BUT DEFENDANTS - ~~CONTROL~~, OF HOW I CAN BE PLACED BACK UNDER TORTURE OF THE 6·1. DEFENDANTS CITED NO CASE THAT THE DOCTRONE IS BACKWARD LOOKING. DEFENDANT IGNORE ANY DIFFERENCE BETWEEN A·S·U AND S·H·U.

WHEN THE DISTRICT COURT DENIED QUALIFY IMMUNITY AND IN THE SAME ORDER FOUND MY CASE MOOT, IT STOPPED ANY AND ALL DISCOVERY. I NEVER HAD ANY OPPORTUNITY FOR DISCOVERY.
ON APPEAL I ALSO ASKED FOR DISCOVERY.

WITHOUT GIVING ME ANY OPPORTUNITY FOR DISCOVERY AND WITHOUT CONSIDERING ANY OF MY 2020-2021 SOLITARY CONFINEMENT THE NINTH CIRCUIT FOUND MY CLAIM MOOT (JUDGE FRIEDLAND DISSENTING).
THE MAJORITY RULED THAT SINCE;

: "RICO HAS BEEN SENT TO ADMINISTRATIVE SEGREGATION ONLY FOR DISCIPLINARY REASONS . . . NO EVIDENCE SUGGEST THAT RICO HAS BEEN OR WILL BE PLACED IN ADMINISTRATIVE (AND THEREFORE EXPOSED TO THE CHALLENGED WELFARE CHECKS) FOR NON-DISCIPLINARY REASON".

THE COURT FURTHER STATED:

: "IF RICO IS HELD IN ADMINISTRATIVE SEGREGATION IN THE FUTURE FOR A REASON OTHER THAN HIS OWN MISCONDUCT, HE IS OFCOURSE FREE TO BRING A NEW ACTION . . . . . ."

JUDGE FRIEDLAND DISSENTED, STATING:

: "I WOULD VACATE DISMISSAL AND REMAND TO THE DISTRICT WITH INSTRUCTIONS TO GRANT RICO'S REQUEST FOR JURISDICTIONAL DISCOVERY". . . "WITHOUT MORE INFORMATION ABOUT PRISON PRACTICES, IT IS IMPOSSIBLE TO ASSESS THE LIKELIHOOD THAT RICO WILL BE PLACED IN ADMINISTRATIVE SEGREGATION IN THE FUTURE FOR REASONS OTHER THAN HIS OWN MISCONDUCT - AND THUS IT IS IMPOSSIBLE TO ASSESS WHETHER THIS CASE FALLS WITHIN THE "CAPABLE OF REPETITION, YET EVADING REVIEW"

EXCEPTION TO MOOTNESS.

DURING ORAL ARGUMENTS ALL THREE JUDGES ASKED MY ATTORNEY AND DEFENDANTS ATTORNEYS FOR STATISTICS, OR EVIDENCE ON HOW FREQUENTLY DOES A PRISONER GETS PLACED IN ISOLATION FOR REASONS BEYOND THEIR CONTROL, AND NO ONE HAD A ANSWER BECAUSE DISCOVERY IS WITH DEFENDANTS ONLY.

FURTHER, JUDGE TAUMAN CLEARLY STATED "RICO IS A PROBLEM INMATE" STRICTLY BASING HIS BIAS ASSUMPTION ON LABELS PLACED UPON ME BY DEFENDANTS, EVEN AFTER DENIAL OF DISCOVERY, WHICH WILL PROVE ALL LABELS BY CDC ARE NOT ACCURATE.

THIS CASE IS ABOUT A HARM - "PHYSICAL, MENTALLY AND EMOTIONALLY" - IMPOSE UPON ME THROUGH BEING SLEEP DEPRIVED OR DISRUPTING MY SLEEP, IN THREE OCASIONS - "2014, 2015-2016", 2017-2018," AND "2020-2021" WHILE BEING HOUSED IN BOTH SOLITARY UNITS, THE A.S.U AND THE SHU. THIS CASE IS ABOUT WHETHER THIS TORTURE HAS EVADED REVIEW FROM THE COURT AND WHETHER IS CAPABLE OF REPETITION.

FROM MY SUIT ALONE (LET ALONE COUNTING ALL OTHER SUITS) IT IS CLEAR THIS KNOWN TORTURE HAS EVADED REVIEW. WHETHER IS CAPABLE OF REPETITION, IT IS ALSO TRUE, HOWEVER, I CAN ONLY SATISFY THE "CAPABLE OF REPETITION" PRONG IF I FALL UNDER THE CHALLENGE 6.1 FOR REASONS BEYOND MY CONTROL, AND NOT FOR VIOLATING "VALID CRIMINAL LAWS". UNITED STATES V. SANCHEZ-GOMEZ, 138. S.CT 1532 (2018) 1541. "WE HAVE CONSISTANTLY REFUSED TO FIND THE CASE OR CONTROVERSY REQUIREMENT SATISFY WHERE AS HERE, THE LITIGANTS SIMPLY "ANTICIPATE VIOLATING LAWFUL CRIMINAL STATUTES". 1542.

THE CAPABLE OF REPETITION REQUIRES A COURT TO LOOK

INTO THE FUTURE (REPETITION) TO SEE IF THE CHALLENGE OFFENSE CAN OCCUR AGAIN — IT IS NOT A BACKWARDS LOOKING DOCTRINE AND NOWHERE, IN NO CASE OR COURT IS IT STABLISHED THAT THE CHALLENGE VIOLATION HAS TO HAD HAPPENED — HAS TO BE MARRIED — NOT WHILE UNDER A LITIGANTS CONTROL.

REASONS FOR GRANTING THE PETITION

THE 6·1 CHECKS WERE ORDERED BY THE DISTRICT COURT AT THE BEHEST OF THE "COLEMAN" ATTORNEYS WHO REPRESENT MENTALLY ILL PRISIONERS, NOT ALL PRISONERS — A SPECIAL MASTER AND A SUICIDE PREVENTION EXPERT ENDORSE THE 6·1.

THOUDSANDS OF PRISONERS COMPLAINED ABOUT THE 6·1 AND MORE THAN TEN (10) SUITS HAVE BEEN FILED. THE DISTRICT COURT, THE SPECIAL MASTER, SUICIDE EXPERT AND THE COLEMAN ATTORNEYS, FOR ELEVEN (11) YEARS HAVE IGNORE THIS ISSUE, THEIR CONCERN IS MAKING SURE THE CHECKS GET DONE BY CDC, EVEN IF CDC IS IMPLEMENTING THEM IN A UNCONSTITUTIONAL WAY — CRUEL AND UNUSUAL.

THE NINTH CIRCUIT GRANTED CDCR QUALIFY IMMUNITY FOR WAKING PRISONERS UP HOUSED IN ITS A·S·U'S AND S·H·U'S (2 JUDGES, ONE OF THEM TALLMAN, ONE DISSENTING IN A PUBLISHED CASE). SINCE THEN, CDC HAS CONTINUED TO OPERATE THE 6·1 FREE OF WORRY, UNCONSTITUTIONALLY. IN INJUCTIVE RELIEF, NO CASE HAS BEEN HEARD ON THE MERITS BECAUSE CDC CLAIMS CASES GO MOOT, OR THAT THE ASU AND SHU HOUSES PRISONERS FOR THEIR OWN CONDUCT, UNDER A LABEL OF DISCIPLINARY, MAKING NO DISTINCTION BETWEEN THE ASU AND SHU IN COURT ARGUMENTS, EVEN WHEN CDC OWN POLICIES DO DO THE DISTINCTION.

PRISONERS CONTINUE TO GET TORTURE IN ISOLATION UNITS,

AND SINCE CDC, AT ALL COST REFUSES TO ACCEPT ITS CAUSING HARM, OR THAT IF ITS CAUSING IT, ITS THE DISTRICTS COURT FAULT, IT DOESN'T HELP US TO RECEIVE TREATMENT FOR DISORDERS AND SIDE EFFECTS THE TORTURE HAS CAUSED. CDC AND ITS ATTORNEYS ARE PERFECTLY FINE CREATING MENTAL ISSUES ON PRISONERS WHO HAVE NOT, AND LEAVING THEM TO DEAL WITH IT ALONE - AS I'VE BEEN LEFT.

CASE AFTER CASE, YEAR AFTER YEAR, A SUIT AGAINST THE 6-1 HAS BEEN FILED. MORE WILL COME. WHY SHOULDN'T THE COURT RESOLVE THIS ISSUE? MAYBE THE "S-H-U" IS A BLACK HOLE WHERE PRISONERS ARE GETTING TORTURE, AND BECAUSE PRISONERS "AFTER" RECEIVING A "DUE PROCESS HEARING" GET PLACED THERE FOR BEING GUILTY OF "VALID LAW", THE COURT CAN'T DO NOTHING ABOUT IT. BUT WHAT ABOUT THE A-S-U? ROUTINELY PRISONERS GET PLACED THERE TO INVESTIGATE IF A RULE VIOLATION IS TRUE OR NOT. WHAT OR HOW PRISONER GET ACCUSED OF, BY A PRISON GUARD HAS BEEN, WILL BE NOT UNDER MY CONTROL! EVEN THE NINTH CIRCUIT HAS RECOGNIZE THAT RETALIATION FOR GRIEVING C.O'S EXIST IN PRISONS AND THAT FALSE WRITE UPS ARE A COMMON PRACTICE. SEE AUSTIN V TERHUNE 367 F3D 1167 (9TH 2004): HINES V GOMEZ, 108 F3D 265 (9TH 1997) "THERE ARE NO PROCEDURAL SAFEGUARDS FROM FALSE RETALIATORY ACCUSATIONS" AT 268-269.

NOT ONLY DO PRISONERS GET HOUSED IN THE A-S-U, WITHOUT ANY DUE PROCESS PROTECTIONS BY STATE OR FEDERAL LAW FOR REASONS CDC DOES NOT ACCEPT SUCH AS "RETALIATION, FALSE WRITES, OR FIGHTING UNDER SELF DEFENSE", BUT THE A-S-U ALSO IS USE FOR THOSE WHO "DEBRIEF (TELL ON PRISON LIFE): SAFETY CONCERNS: INSTITUTION SAFETY: INVESTIGATION: PROTECTIVE CUSTODY: AND A NUMBER OF

OTHER REASONS THAT TURN OUT TO BE NON-VIOLENT, NON-DISCIPLINARY OR NON TRUE. THIS REASONS ARE OUT-LINED IN CDC OWN PRISON CODES OF REGULATIONS.

UNDER THE CAPABLE OF REPETITION A COURT MUST ASSES THIS STANDARD IN A FORWARD LOOKING VIEW (CAPABLE OF REPETITION), SEE WHERE DO WE GO BERKELEY V. CAL. DEP'T OF TRANSP. 32 F.4TH 852, 859 (9TH CIR 2022): HONING V. DOE, 484 U.S 305. 318 n.6 (1988) (EXPLAINING THAT CAPABLE OF REPETITION DOES NOT REQUIRE THAT THE RECURRENCE BE MORE PROBABLE THAN NOT BUT ONLY THAT IT BE REASONABLY LIKELY).

I DO NOT AGREE NOR ACCEPT THAT I WAS PLACED IN THE A.S.U OR S.H.U SOLELY FOR VIOLATING PRISON RULES, AS CDC CLAIMS WHILE CLOSING DOWN ANY DISCOVERY TO CONTRADICT THEM - BUT, ASSUMING I WAS PLACED IN THE A.S.U FOR INVESTIGATION AND IN THE SHU FOR PUNISHMENT OVER VIOLATIONS OF PRISON RULES.... THE QUESTION IS, DOES THAT PREVENTS THE COURT FROM LOOKING INTO THE CAPABLE OF REPETITION PRONG TO WHETHER THE SLEEP DEPRIVATION IS CAPABLE OF REPEATING AGAIN? DOES THE NUMEROUS WAYS AND INDEED, REGULATIONS, WHICH ARE NOT UNDER MY CONTROL, THAT CDC CAN PUT ME BACK IN SOLITARY BECOME NON-EXISTANT FOR ME? CDC HAS NOT SAID THAT I WILL NOT BE HOUSED IN THE A.S.U FOR NON-DISCIPLINARY REASONS, SO HOW CAN IT BE SAID I'LL NOT BE SENT TO THE A.S.U FOR DISCRETIONARY REASONS?

TO QUESTIONS PRESENTED TO THE COURT,

THE PRISON CLAIM I WAS PLACED IN THE A.S.U FOR DISCIPLINARY REASONS, IN 2014, IN 2017, AND 2020. BUT AT THE TIME I WASN'T GUILTY OF HAVING VIOLATED ANY RULE OR REGULATION - I WAS THERE ACCUSED AND CHARGED, AND UNDER INVESTIGATION, NOT FOR VIOLATING PRISON POLICIES. IF THE A.S.U WAS FOR PURE DISCIPLINARY REASONS AND

PUNISHMENT, THEN CDC WOULDN'T BE OPERATING THE ASU AND SHU IN DIFFERENT MANNER. NEITHER WOULD THE COURTS HAVE RECOGNIZE ITS DIFFERENCE. "AND" NOT ONLY HAS THE COURTS DIFFERENTATE BETWEEN ADMINISTRATIVE (ASU) UNITS AND SECURITY PUNISHMENTS (SHU) UNITS, BUT HAVE STRIPPED US OF ANY AND ALL DUE PROCESS CHALLENGING A PRISON DISCRETIONARY PLACEMENT IN THE A-S-U — "CDC HAS TOTAL CONTROL, AND IS FREE TO HOUSE ANY PRISONER, AT ANY TIME IN THE ASU", SOMETHING IT CAN NOT DO FOR THE SHU.

HOW IS IT, THAT IN RULES, REGULATIONS AND POLICY, AND IN STATE AND FEDERAL LAW THE ASU AND THE SHU IS DISTINGUISHED. BUT HERE IN THIS CASE MY PLACEMENT IN THE ASU AND THE SHU IS CONSIDERED, THE SAME? OR HOW IS, IT, THAT THE ASU IS AND WILL CONTINUE TO BE DISCRETIONARY, BUT NOW THE NINTH CIRCUIT (1) IMPLICITLY FINDS IT TO BE NOT, AND (2) IT DENIES THAT I CAN BE RE-HOUSED THERE — AS IF THE ASU IS NON-EXISTANCE FOR ME.

FIRST, LIKE THE NINTH CIRCUIT RECOGNIZE IN AUSTIN AND GOMEZ, RETALIATION FOR GRIEVING CORRECTIONAL OFFICERS HAPPENS HERE IN PRISON, (THIS IS REAL LIFE, NOT WRITINGS) AND "THERE ARE NO PROCEDURAL SAFEGUARDS FROM FALSE RETALIATORY ACCUSATIONS". BUT EVEN PUTTING ASIDE RETALIATION AND FALSE WRITEUPS, THIS COURT ITSELF IN HEWITT V HELM 459 US. 460. 468 (1982) SAID " ADMINISTRATIVE SEGREGATION IS THE SORT OF CONFINEMENT THAT INMATES SHOULD REASONABLY ANTICIPATE RECEIVING AT SOME POINT IN THEIR INCARCERATION". AND THE NINT CIRCUIT IN RESNICK V. HAYES 213 F30 443 (9TH 2000) STATED " SO FAR AS WE KNOW FROM HIS COMPLAINT, PLAINTIFF'S PLACEMENT AND RETENTION IN THE SHU WERE

THE RANGE OF CONFINEMENT TO BE NORMALLY EXPECTED BY PRISON INMATES, IN RELATION TO THE ORDINARY INCIDENTS OF PRISON LIFE" AT 448 (QUOTING SANDIN V CONNER 515 U.S 472, 484, 487, (1995)).

SECONDLY, TWO CASES, FROM THIS COURT CLEARLY DEMOSTRATE THE DIFFERENCE BETWEEN THE A.S.U AND THE S.H.U, BETWEEN A PRISONER BEING UNDER INVESTIGATION AND A PRISONER BEING GUILTY OF A PRISON RULE/REGULATION:

: WOLF V MCDONNELL, 418 U.S, 539, 566 (1974) AND PONTE V. REAL 471 U.S. 491, 506 (1985):

IN WOLF THIS COURT STATED "AN INMATE FACING DISCIPLINARY PROCEEDINGS SHOULD BE ALLOWED TO CALL WITNESSES AND PRESENT DOCUMENTARY EVIDENCE IN HIS DEFENSE WHEN PERMITING HIM TO DO SO WILL NOT BE UNDULY HAZARDOUS..." 556. THIS COURT, IN PONTE, AFFIRMED THAT THE FEDERAL CONSTITUTION'S FOURTEENTH AMENDMENT PROTECTS THE DUE PROCESS RIGHT OF A INMATE TO PRESENT FRIENDLY WITNESSES UNLESS HIS DISCIPLINARY BOARD HAD A LEGITIMATE BASIS FOR EXCLUDING THEM. 506.

HERE IS THE DIFFERENCE BETWEEN THE ASU AND THE SHU, BETWEEN BEING IN SOLITARY CONFINEMENT FOR REASONS BEYOND MY CONTROL (CAPABLE OF REPETITION) OR MY CONTROL. IN THE ASU I'M BEING PLACE FOR DISCRETIONARY OR INVESTIGATIVE REASONS, IN THE SHU FOR DISCIPLINARY REASONS AND ONLY AFTER RECEIVING ALL STATE AND FEDERAL DUE PROCESS, ~~[illegible]~~. "WHY WILL THIS COURT DEMAND A HEARING FROM THE PRISON IN COMFORMITY WITH MANDATED DUE PROCESS PROTECTIONS, BEFORE GETTING HOUSED IN THE SHU (NO DUE PROCESS EXIST FOR THE ASU), IF IT WASN'T BECAUSE MANY TIMES THE ACCUSATIONS, CHARGES, AND LABELS PLACED ON A PRISONER, BY THE CO'S ARE WRONG? AND IF I GET ACCUSED 2, 3, 4, TIMES, CAN I NOT GET ACCUSED

AGAIN? AND IS IT MY CONTROL HOW OR WHEN I GET ACCUSED OF VIOLATING A PRISON RULE? CAN IT HONESTLY BE SAID THAT ALL C.O'S AT ALL TIMES ARE ALWAYS CORRECT IN THEIR ACCUSATIONS?

ANOTHER CASE THAT DEMOSTRATES THE DIFFERENCE BETWEEN THE ASU AND SHU IS SANDIN V. CONNER 515 US 472 (1995). IN THAT CASE A PRISONER CHALLENGE THE CONDITIONS OF CONFINEMENT IN PUNITIVE SEGREGATION (AS CALIFORNIA SHU). THIS COURT STATED THE FOLLOWING:

> "WE HOLD THAT CONNERS DISCIPLINE IN SEGREGATED CONFINEMENT DID NOT PRESENT THE TYPE OF ATYPICAL, SIGNIFICANT DEPRIVATION IN WHICH A STATE MIGHT CONCEIVABLY CREATE A LIBERTY INTEREST. THE RECORD SHOWS, THAT, AT THE TIME OF CONNERS PUNISHMENT, "DISCIPLINARY" SEGREGATION, WITH INSIGNIFICANT EXCEPTIONS, MIRROW THOSE CONDITIONS IMPOSE UPON IMMATES IN "ADMINISTRATIVE" SEGREGATION AND PROTECTIVE CUSTODY." 485-486.

THE DISTINCTION BETWEEN THE SHU (PUNITIVE) VS. ASU (ADMINISTRATIVE) HAS BEEN CLEAR THROUGH OUT THIS COURT CASE LAW.

WHAT I WANT THE COURT TO UNDERSTAND IS THAT ① THE ASU WILL CONTINUE TO EXIST, AND, ME AS A LIFER PRISONER WILL CONTINUE TO BE HOUSED IN IT — JUST BECAUSE I GOT ACCUSE ONCE OR TWICE AND THEN GOT FOUND GUILTY OF SUCH ACCUSATIONS, DOESN'T MEAN THAT I'LL AGAIN BE ACCUSED OF MISCONDUCT AND BE FOUND GUILTY AGAIN — NO — THE OUTCOME

AFTER A "FAIR HEARING". CAN NEVER BE KNOWN.

② THE ASU WILL CONTINUE TO HOUSE PRISONERS FOR ADMINISTRATIVE REASONS AND ANY TIME, ANY DAY I CAN BE HOUSED THERE FOR NO FAULT OF MY OWN - THIS IS PRISON. EVERYDAY IS NEW, AND ISUES MAY ARISE, NOT FROM MY CONDUCT, BUT OTHERS OR EVEN C.O'S.

THE CAPABLE OF REPETITION IS A FORWARD LOOKING DOCTRINE AND DOES NOT IN ANY WAYS DISCOUNTS FUTURE WAYS IN WHICH I CAN GET TORTURE AGAIN.

FURTHER, THE "CAPABLE OF REPETITION" IS NOT CLOSE, SIMPLY, LIKE THE MAJORITY IN THE NINTH CIRCUIT CLAIMS, BECAUSE THE HARM THAT WAS DONE TO ME HAPPENED FOR PUNITIVE REASONS. IN UNITED STATES v SANCHEZ-GOMEZ 138. S.CT 1532 (2018) THIS COURT DIDN'T FIND THE CASE MOOT BECAUSE SANCHEZ-GOMEZ HAD CROSSED ILLEGALY TO THE U.S.A AND FOUND THEMSELVES IN SHACKLES BEFORE THE COURT (THE CHALLENGE ACTION). IT FOUND THE CASE MOOT BECAUSE SANCHEZ-GOMEZ ACTUALLY CLAIMED THEY WILL AGAIN VIOLATE THE LAW, AND FIND THEMSELVES IN SHACKLES. THIS COURT STATED "WE HAVE CONSISTANTLY REFUSED TO FIND THE CASE OR CONTROVERSY REQUIREMENT SATISFIED WHERE, AS HERE, THE LITIGANTS SIMPLY 'ANTICIPATE' VIOLATING CRIMINAL STATUTES" AT 1542.

IN THIS CASE, I'VE NEVER CLAIMED I'LL VIOLATE THE LAW - AND INDEED, I DO NEED TO VIOLATE THE LAW TO FALL UNDER THE "6.1 SLEEP DISRUPTION DEVISE."

THE NINTH CIRCUIT INSINUATED THAT, ONLY IF I GO "AGAIN" THROUGH A PERIOD OF SLEEP DEPRIVATION HARM FOR REASON OTHER THAN MY OWN MISCONDUCT. THE SLEEP DEPRIVATION HARM WILL COUNT AS HAVING HAPPENED. OTHERWISE THE HARM WILL NOT BE COUNTED AS HAPPENED, AND THUS, NOT "CAPABLE OF REPETITION".
THE COURT STATED:

"IF RICO IS HELD IN ADMINISTRATIVE SEGREGATION IN THE FUTURE FOR REASONS ~~[illegible]~~ OTHER THAN HIS OWN MISCONDUCT, HE IS OF COURSE, FREE TO BRING A NEW ACTION WHICH COULD VERY WELL FALL WITHIN THE EXEPTION TO MOOTNESS FOR CASES CAPABLE OF ~~REPETITIO~~ REPETITION YET EVADING REVIEW."

THAT IS WRONG. THERE IS NO LAW TO SUPPORT THAT VIEW. THE CAPABLE OF REPETION IS FORWARD LOOKING, UNMARRIED TO HOW IT HAPPENED AS LONG AS THE HARM DOESN'T HAPPEN AGAIN WHILE VIOLATING THE LAW.

THE WAY THE 9TH CIRCUIT ANALIZE THE LAW, I'LL BE EXCLUDE FROM THE CAPABLE OF REPETITION, JUST BECAUSE IT HAPPENED FOR PUNITIVE REASONS. NOT BECAUSE IS NOT CAPABLE OF HAPPENING AGAIN FOR NON-PUNITIVE REASONS.

11 YEARS TORTURING PRISONERS — THOUSANDS OF COMPLAINTS — 10 TO 12 LAWSUITS AND THE G.I CONTINUES. I WENT THROUGH HELL, AND I STILL GO THROUGH PAIN, PHISICALLY AND MENTALLY, AND NO HELP HAS BEEN AFFORDED TO ME, OR OTHERS.

I'VE ASK FOR DISCOVERY IN THE DISTRICT COURT AND IN THE NINTH CIRCUIT AND NONE WAS GIVEN. THIS CASE HAS BEEN

STIFLED. THE ONLY WAY I HAD TO RESPOND TO DEFENDANTS MOOTNESS ARGUMENT WAS WITH SHOWING THE COURT WHAT IS COMMON KNOWLEGE. ALL EVIDENCE IN REGARDS TO WHO, WHY, AND HOW COMMON PRISONERS ARE PLACED IN THE ASU FOR REASONS THE PRISONER IS NOT IN CONTROL OF IS IN DEFENDANTS HANDS. FURTHER, BEFORE THE LOWER COURT RULED, I WAS PLACED IN THE ASU AGAIN (2020-2021), A TIME THAT INCLUDED "WEEKS" OF ME BEING HOUSED IN THE ASU FOR WHAT CDC ITSELF DEEMED "NON-DISCIPLINARY," AND EVEN THOUGH I POINTED THAT OUT TO THE COURT, THE COULD DID NOT ACKNOWLEDGE IT.

THIS CASE IS ONE MONTH SHORT OF BEING 7 YEARS OLD, 9 YEARS FOR ME, AND I HAVEN'T GOT PASSED MOTION TO DISMISS OR GOTTEN ANY DISCOVERY. I'VE FOUGHT, ENDURED AND EXPERIENCE THE WORST OF A JUDICIAL SYSTEM THAT SEEMS BENT ON PROTECTING TORTURE. THIS IS THE LAST COURT I CAN GO TO. I'VE BEEN HARASSED AND TARGETED BY PELICAN BAY PRISON IN FORM OF TARGETED CELL SEARCHES, DENIAL OF LEGAL MAIL, FALSE WRITE-UP, VIOLATION OF DUE PROCESS AND MISREPRESENTATION OF FACTS IN MY FILE. YET, DESPITE THAT AND THE PHYSICAL AND MENTAL HEALTH ISSUES CREATED BY BEING SLEEP DEPRIVED, HERE I'M. YES, I'M A PRISONER, BUT NONETHELESS, WHAT HAS HAPPENED AND IS HAPPENING IS WRONG AND THIS IS A FIGHT IT SHOULD BE FOUGHT.

I'M ASKING THIS COURT TO TAKE UP THIS CASE AND ADDRESS THE ISSUES PRESENTED, OR AT THE VERY LEAST GIVE ME THE OPPORTUNITY FOR DISCOVERY.

THE NINTH CIRCUIT STATED:

> "IF RICO IS HELD IN ADMINISTRATIVE SEGREGATION IN THE FUTURE FOR REASONS ~~[illegible]~~ OTHER THAN HIS OWN MISCONDUCT..."

THIS STATEMENT IS A ACKNOWLEDGEMENT THAT I CAN BE HOUSE IN THE ASU AND BE SLEEP DEPRIVED ONCE AGAIN _____ WHY THEN THE TORTURE I EXPERIENCE IN 3 OCCASIONS IS NOT CAPABLE OF REPETITION? YOU CAN NOT ACKNOWDLEGE SOMETHING IS POSSIBLE, AND THEN SAY, ITS NOT POSSIBLE.

I DID ALL I COULD... THANK YOU.

JORGE ANDRADE RICO
JULY. 19. 2023

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JORGE ANDRADE RICO

Date: JULY. 19. 2023.