

Case Name: In re Lawrence Christopher Smith

Case #: 5850

Case No. 23

FILED

AUG 29 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Supreme Court of The United States

In re Lawrence Christopher Smith,

Petitioner-Appellant,

ORIGINAL

v

U.S. Court of Appeals For The 9th Circuit

Respondent-Appellee

Kathleen Allison, Secretary of CDCR

Real Party In Interest

Petitioners Request For Mandamus Relief 9th Circuit Case No. 23-15537

United States District Court (E.D. Cal Fresno) 1:21-cv-01346

United States District Judge Jennifer L Thurston

"All Writs Act"

Lawrence Christopher Smith

Pelican Bay State Prison

P.O. Box 7500

Crescent City, California 95532

CDCR # F-29502

October 5th, 2023

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Question Presented

Are public officials actively conspiring to violate and/or deny me Federally afforded rights?

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Parties

1. Lawrence Christopher Smith the petitioner in this matter appears before the Court as an incarcerated pro se litigant. The Respondent(s) is the United States Court of Appeals For The Ninth Circuit and for The United States District Court for The Eastern District of California. Additionally the Real Party In Interest is Kathleen Allison Secretary California Department of Corrections and Rehabilitation.

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Decisions Below

Relevant decisions by the U.S. Court of Appeals for the Ninth Circuit are attached as Appendix A (1-4) to this petition. Whereas the orders of the United States District Court for the Eastern District of California are attached as Appendix B (1-6) to this petition.

The Citations of The Official and Unofficial Reports of Opinions/Orders

1. Smith v. Clark 2023 US App LEXIS 19287 (9th Cir. Cal. July 26th, 2023) (Ex/A-3)
2. In re Smith 2023 US App LEXIS 19036 (9th Cir. Cal. July 23rd, 2023) (Ex/A-4)
3. Smith v. Clark 2022 US Dist LEXIS 224440, 2022 WL 17628286 (E.D. Cal. December 13th, 2022) (Ex/B-1)
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5. Smith v. Clark 2023 US Dist LEXIS 93462, 2023 WL 3427423 (E.D. Cal. May 26th, 2023) (Ex/B-4)
6. Smith v. Clark 2023 US Dist LEXIS 91813, 2023 WL 3647924 (E.D. Cal. May 25th, 2023) (Ex/B-5)

The Basis for Federal Jurisdiction

Title 28 United States Code § 1651(a) which holds "The Supreme Court and all Courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Constitutional and Statutory Provisions Involved

This case involves Amendment Fourteen to the United States Constitution which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of the law nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

The Amendment is enforced by Title 42 United States Code § 1983

Every person who under color of any statute, ordinance, regulation, custom or usage of any State or

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Territory or the District of Columbia, subjects or causes to be subjected any citizen of the United 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 injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

See also Title 28 United States Code § 2254

Section a. The Supreme Court, a justice thereof, a circuit judge or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States

Section b. An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted unless it appears that -

(A) the applicant has exhausted the remedies available in the Courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Section d. An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim -

(1) resulted in a decision that was contrary to or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding

Section e. (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court, a determination of a factual issue made by a State Court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing

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evidence (2) If the applicant has failed to develop the factual basis of a claim in State Court proceedings the Court shall not hold an evidentiary hearing on the claim unless the applicant shows that -

(a) the claim relies on -

(i) a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court that was previously unavailable

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error no reasonable fact finder would have found the applicant guilty of the underlying offense

Section f. If the applicant challenges the sufficiency of the evidence adduced in such State Court proceeding to support the State Court's determination of a factual issue made therein, the applicant if able shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant because of indigency or other reason is unable to produce such part of the record then the State shall produce such part of the record and the Federal Court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record then the Court shall determine under the existing facts and circumstances what weight shall be given to the State Court's factual determination.

Statement of The Case

A. Statement of The Proceedings

Pursuant to the provisions of 28 USC § 2254 this is a habeas corpus action a petition which asserts that the 2014 convictions secured against me before the Kern County Superior Court are findings apart of the United States Constitution

B. Procedural Posture (abridged)

The original petition was deemed filed before the E.D California Court system on September 1st, 2021 [prison mailbox rule] a petition in which I averred that the convictions challenged were obtained by: (a) my being subjected to an unreasonable search and seizure; (b) the procurement of false evidence; (c) Judicial bias; and (d) the prosecution being discriminative (ECF No. 1) Respondent filed an answer and so lodged was a traverse and supplemental traverse (ECF Nos. 11, 21 and 22) On October 12th, 2022 the assigned Magistrate Judge issued findings and Recommendations

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(F&R) suggesting that the petition be denied (ECF no. 23) On October 24th, 2022 lodged were objections to the F&R in addition to pleadings seeking to amend the petition a brief which included a proposed amended petition (ECF nos. 24 and 25) On December 13th, 2022 the court denied the motion to amend and adopted the assigned Magistrate Judges F&R in full ergo the petition being denied (ECF no. 24) Judgment was entered the same day.

The Reasons for Granting The Writ

A. Lower Courts Findings Are In Conflict With Well Established Federal Law

1. Background

With the birth of my eldest daughter I decided to join the military (Army) and thus in the summer of 2000 I began basic training in Great Lakes, Illinois. Basic Training was difficult not due to the tasks asked of me to perform per se but more because of the attitude adjustment that was required of me hence several setbacks in my training one's which pushed my graduation date back by several weeks [Boot Camp]. However I did complete basic training and admittedly it was a wonderful moment indeed an event witnessed by my mother, sister, her husband, my daughter, her mother and several friends. With completion of boot camp I was granted liberty and so from Great Lakes, Illinois I rode with family and friends back towards the east coast where I was dropped off at the apartment of my daughter's mother where I stayed for several days before then heading towards my hometown of Washington D.C.

While in liberty in D.C for whatever reasons Metropolitan Police Department [MPD] officers converged on the home of my mother reportedly due to my being a robbery suspect I was not at her home at this time but once notified of this development I immediately turned myself in to the proper authorities. Although a thorough interrogation clearly established that there was no way that I could have committed the crime(s) in question as I had a rock solid alibi [Basic Training]. Nevertheless relative to an unpaid fine I was still detained by the MPD based on an outstanding warrant and so I was booked and then transported to the city's central cell block detention facility to await arraignment before a Magistrate Judge. Following arraignment I basically had to pay a fine for my release and so my uncle who was then a Sergeant with the MPD secured my release by paying the fine whereupon I returned to my mother's home where I remained for several days before I reported for duty in Pensacola, Florida.

My training at ATC Pensacola was a brief affair as I entered the service as an unrated aviator so several weeks later I reported for duty aboard the U.S.S John C Stennis a nuclear aircraft carrier.

"

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1 while aboard the Stennis my duties entailed various tasks as again I was an unrated airman so
2 essentially I could be found in various posts throughout the ship though my primary assigned duty post was to be in
3 V-4 (aviation fuel department) Yet my time on the Stennis was short lived as I severely injured my elbow during
4 training exercises and so I was transferred from NAS Coronado to the 32nd Street Naval Base also located in San
5 Diego California where I was to report for duty at the Naval Justice School Detachment - San Diego

6 At the time of my reporting to the Naval Justice School Detachment in San Diego there was much
7 turmoil in my life for the communication between my eldest daughter mother and I had become strained, the lady that
8 I was seeing later became pregnant, my finances were tight and I absolutely hated my assigned duty post as I then
9 found it to be beneath me considering I had much grander plans I am positive such sentiments were shown in my
10 personal life as I was involved in multiple altercations on base and off but I honestly could not tell you if this
11 also showed in my work performance though it is worth note that my superiors* on several of occasions found it
12 worth talking to me about the Navy and life in general discussions which included both explicit and tacit orders

13 9/11 [Sept 11, 2001] occurred while I was assigned to the NJSD-SD and was a crazy time indeed as I
14 recall straight bedlam in the BAQ I was housed in on the dry side of the base screaming, crying all kinds of worries
15 as no one knew for sure what was going on or what to expect we only knew that several planes had been hijacked
16 in order to attack the World Trade Center, the Pentagon and that passengers aboard another plane had foiled an
17 planned attack thus tensions were high as the base was in a complete lockdown and for several days thereafter I was
18 not required to report for duty at the NJSD-SD but when finally required to return to work things had drastically changed.

19 Inasmuch to be expected once information started to become available there was deep patriotic
20 sentiments throughout the base energy which spilled over into all kinds of misguided thoughts and acts towards muslims
21 and other ethnicities and groups and while I had never witnessed anything violent others had and the spark was
22 there. Regardless I thought not of the winds current then my focus centered squarely on my personal life because at that
23 time I knew that I would not be in the front lines of any war a truly huge gaffe by me.

24 Shortly after 9/11 and the vibe in the office had changed dramatically I assumed it centered
25 around the terrorist attacks but in hindsight I realize that the focus had become me the catalyst for such beliefs
26 stems from a discussion Senior Chief Pulver had with me relative to my personal life and how it was going a
27 discussion I did not delve into with him on any deep level though I did sense that something was amiss.

28 "

*Note: At my time of attachment to the NJSD-SD the post consisted of Sr level officials to include VCOE Kern Onell, COE Emma Turner, a Marine Captain Kevin Armstrong and a Senior Chief Scott Pulver

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Several weeks after this talk one morning I was called before the post commanding officer Captain [select] Kevin O'Neill where I was accused of misappropriation of government property to wit reviewing pornographic material on the computer assigned to my desk a charge initiated by Ms Gayla King [civilian]² who averred to my superiors that she had heard me laughing while on the computer and she had felt it odd for me to be laughing in such a manner while on post wherefore the minute that I was off post the computer was reviewed where it was purportedly shown that over 80 pornographic websites had been viewed during my time on post a charge I vehemently denied. Nonetheless Captain O'Neill informed me that the matter was to be referred for Captains Mast where I would face up to a dishonorable discharge but I was also provided with an alternative resolution on the matter which was I could relieve the service of its contract with me by signing off on a discharge of "General under Honorable Conditions" a discharge which would allow for me to retain all benefits accrued while in the service an offer I ultimately accepted.

As I prepared for separation from the service I still carried out my assigned duties however this changed one morning after I went to retrieve the posts mail. Now mind you I in conjunction with Ms King had been retrieving the mail for about 4-5 months at this point but this day the Yeoman says to me hey Armer Smith I didn't realize that you worked there [assigned post] (this despite the rockers on my shoulders and the nameplate on my chest) man for the last several months I have been receiving these certified letters earmarked for your attention by the State of Pennsylvania³ but I have been returning them not realizing that they were for you I believe these are in concern to child support and at this point I became enraged because I started to realize that there was much more to my separation than what was being said so that same day from a position on base I faxed a scathing letter to Captain O'Neill basically telling him that I wasn't showing up to work anymore and no sooner than I had stepped outside of the building I had faxed the letter from did

"

2. Please do not quote me on the name but I do believe this is her name.

3. As aforementioned prior to entering the service I sired a daughter and at the time of my entering the service her mother and I were at odds over the care of our daughter a dispute that turned ugly once both parties sought Court intervention via restraining orders however I let my proposed petition lapse after a discussion with my nana while my daughter's mother did not thus despite stating that she would bring that I had just moved and her being unaware of my address I was not served with a formal summons to challenge her contentions that I was violent and had destroyed all of her clothing by setting them afire in her home so not only did she gain sole custody a restraining order was in effect until sometime in 2002 this despite her record and evidence which showed that I had a vast amount of property still in her home I was ordered to stay clear of her.

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1 Captain Armstrong pull up and command me to return to work this while asking me if I had a firearm inside of the tolebag
2 I was carrying [which I did not] he then informed me that my quarters had been searched for a firearm legally registered
3 in my name and I told him the weapon was secured off base since personal firearms were not allowed in any barracks they
4 were to be secured in the armory. Captain Armstrong then tried talking to me but I shut down ditto with Captain Dreill
5 when he later tried to talk with me and thus Captain Dreill okayed my absence from the office I was only required to check
6 in/out for about a week before officially separating from the Navy.

7 I separated from the Navy in January of 2002 and I had a general idea of what I wanted to do but I did
8 not have the means [capital] to do so. At this time I had settled in L.A (California) so after a bit of research I
9 decided to head to the local Veterans Affairs office in order to ascertain as to what benefits I was eligible for. Now
10 despite the averments of Captain Dreill whom had told me that I would qualify for V.A benefits as if I had completed my
11 contract the V.A informed me that given the short period of time I had served the programs I qualified for were very
12 small but it is during this query and review of records when the full breadth of why officials sought for me to separate
13 from the service came to bear it was because I had denominated Islam as my religious faith⁴ with this realization I
14 headed home where I had several discussions with family and friends then we renewed my discharge packet records which
15 included the "evidence" relied on to charge me with misconduct in such a slanderous manner and it was then when I was
16 shown that the "wokies" evidence officials relied on to falsely charge me with misconduct did indeed back up my assertions
17 that all I did was move to remove pornographic spam that had repeatedly appeared within my personal email
18 account by clicking on an x to close the ad's window since it was impossible for me to have reviewed over 800
19 pornographic websites at various intervals which encompassed no more than 1 minute of time. So based on this evidence
20 I initiated an equal opportunity complaint in order to exhaust administrative remedies relative to a possible suit
21 against the Department of the Navy however I ultimately dropped the complaint as my resources were thin plus I had
22 pressing needs.

23 "

24 "

25 "

26 4. At the time of the query concerning faith I only stated Islam because my stepfather was Islamic and I had studied it
27 last moreover for whatever reasons officials at the time of my enlistment did not offer me the option of no designation
28 despite the brief discussion held on the topic. All the same I had forgotten about this.

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Finding that Los Angeles was not for me and there being a great rift⁵ between I and immediate family members located back east I coordinated with extended family and friends in Los Angeles (District of Columbia in order to resettle back in San Diego coordination which included my connecting with Mr. Hugh Muhammed lead minister for the local Nation of Islam Mosque located on 31st and Imperial Streets in San Diego as he was running an outstanding program for the young men and women of that area. Yet his program, a decent incentive based job and housing was not enough for me, we needed more money beliefs leading to my being arrested on the suspicion of having committed murder an arrest which occurred on November 29th, 2004.

2. Conspiracy

A conspiracy claim brought under section 81983 requires proof of an agreement or meeting of the minds to violate Constitutional rights. Franklin v. Fox 312 F.3d 423, 441 (9th Cir. 2001) (quoting United Steel Workers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1540-41 (9th Cir. 1989) (citation omitted)) and an actual deprivation of constitutional right. Hart v. Parks 450 F.3d 1059, 1071 (9th Cir. 2006) (quoting Woodrum v. Woodward County, Oklahoma 866 F.2d 1121, 1126 (9th Cir. 1989)). To be liable, each participant in the conspiracy need not know the exact details of the plan but each participant must at least share the common objective of the conspiracy. Franklin 312 F.3d at 441 (quoting United Steel Workers 865 F.2d at 1541).

A civil conspiracy is a combination of two or more persons to accomplish by concerted action a criminal or unlawful purpose or a lawful purpose by criminal or unlawful means. Perkin v. Squires (1957) 156 Cal. App. 2d 240, 246, 319 P.2d 405. Civil conspiracy in and of itself is not a tort. Thus the labeling of an action as one of conspiracy to commit some tort is misleading since the cause of action for damages arises out of the commission of some wrongful act by one or more of the conspirator with damage resulting from it. Hendry v. Hosse (1991) 54 Cal.3d 423, 432. There is no separate tort of civil conspiracy and no action for conspiracy to commit a tort unless the underlying tort is committed and damage results therefrom. Shan v. Mission Community Hospital (2017) 11 Cal. App. 5th 360, 390, 216 Cal. Rptr. 3d 30. Accordingly in such an action it must be determined whether the pleaded facts show that something was done that without the conspiracy would give rise

11

5. This rift occurred when my eldest daughter's mother decided that immediate family members were not an appropriate conduit to speak on my behalf or to assist her while legal proceedings were afoot [restraining order] this despite past manipulative behaviors in such a manner by her which suited an agenda regardless in a rant to my mother stated was that the child was not mine and then everyone was cut off on my side of the family (the Department also retained this info from correspondences)

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to a right of action Harrell v. 20th Century Ins Co, 924 F.2d 203, 208 (9th Cir. 1991) (civil conspiracy claim fails because underlying cause of action for fraud barred by statute of limitations)

The advantage gained in alleging a conspiracy is that the act of one during the conspiracy is the act of all if done in furtherance of the conspiracy Devries v. Brumbeck (1960) 53 Cal. 2d 643, 2 Cal. Rptr 764, 349 P.2d 532. The liability of the defendants is thus joint and several Kesmodel v. Pand (2004) 119 Cal. App. 4th 1128, 1143 15 Cal. Rptr. 3d 118. If the conspiracy is sufficiently pleaded each participant in the conspiracy may be responsible as a joint tortfeasor for all damages ensuing from the underlying wrong regardless of whether he or she was a direct actor or of the degree of his or her activity Bank of Cal. v. Pan Am Tire Corp (1982) 132 Cal. App. 3d 843, 847-48 183 Cal. Rptr. 470. Such liability may be imposed even if the defendant committed no overt act whatsoever and gained no benefit therefrom Weatherford v. Growers Farmer-Labor Ass'n (1969) 275 Cal. App. 2d 168, 176 79 Cal. Rptr. 543

Colloquy

As aforementioned above on November 29th, 2004 I was arrested on the suspicion of participating in a murder which had occurred on the streets of San Diego less than three(3) days prior on November 26th, 2004 but due to insufficient evidence the San Diego Police Department could not arrest me on that matter however officials felt that they had probable cause to detain me on a collateral matter precisely for a charge of Attempted Murder based on a incident occurring on the streets of San Diego on September 12th, 2004 ergo my being detained.

Now prior to my arrest SDPD officers had already arrested a suspect by the name of John White⁶ as he had been identified by several witnesses as being involved in the matter which was described as a drive by shooting and he quite possibly having been the shooter himself moreover a car somewhat resembling the description given of the offending vehicle

6. White and his brother were loosely associated with Min Muhammad's project due to their association with me, a young man by the name of Jerome Patten and because of their participation in a recreational program for at risk youths called the Yo-Spot which was being operated from a building located on the corner of 41st and Market streets in San Diego. Many members of Min Muhammad's program also appeared at the Yo-Spot since events for both programs would basically intertwine at times. Nevertheless both programs were known to be under surveillance by SDPD surveillance that was active/passive (to include a former SDPD officer working at the Yo-Spot) as both entities roster included a host of individuals names who were current/former gang members (or associates) a surveillance program often leading to young men/women being harassed, assaulted, unlawfully detained, falsely convicted or even killed by SDPD officers over the years to include men such as Jonathan Ray and Jerome Patten dear friends of mine.

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1 was found parked in the driveway of his mother's home. It appeared that while had a solid alibi relative to the incident in
2 question and so SDPD officers ultimately let him go yet before his release while informed detectives that the car belonged to
3 me and that his brother Jimmy Lopez had informed him that I had parked the car there. While also informed officers as to
4 the residence of a lady that I was seeing by directing them there while an passenger in an unmarked squad car. Following
5 my arrest while who had been in constant contact with members of the SDPD then earnestly negotiated with officers in
6 concern to his brother's surrender as multiple witnesses had all of a sudden begun to identify him as a suspect Lopez then
7 he made a series of contacts with SDPD officers via a cellular phone contacts in which he falsely alleged that I had
8 committed the murder. All the same Lopez was eventually taken into custody after officers had successfully triangulated
9 his position based on the cellphone he was utilizing to contact them.

10 Upon arrest and subsequent interrogation Lopez then again blamed the entire fiasco on me supplying
11 detectives with a statement that was so replete with lies you could literally read the transcript and feel detectives
12 essentially telling him to shut up it was that bad. Regardless Lopez was subsequently booked into juvenile hall
13 on the suspicion of having committed murder

14 With Lopez's cooperation San Diego's District Attorney elected to pursue the charge of murder against me
15 as well and so nearly a year after the fact he and I were now co-defendants and a trial date was formally set some
16 months later.

17 Before trial both defense teams moved for in-limine proceedings for a variety of reasons proceedings
18 where counsel on my behalf Mr Jeff Larrimore chiefly argued that separate trials ought to be held for each defendant
19 Since it was highly prejudicial for me to have to defend against the charge of attempted murder based on a so-called drug
20 debt while winking Lopez's accusations that I had committed the murder in question as there was strong evidence that
21 I had committed not either crime. The Superior Court found Mr Larrimore's pleadings fell below the objective standard for
22 relief and accordingly a joint trial was held.

23 At the trial the People elected to adopt Mr Lopez's position thus even though the evidence clearly
24 implied his guilt evidence which included his being directly implicated for the murder and collateral witnesses
25 allegations of his having previously shot at or even wounding people. Anyway the People presented their entire case
26 against me one which consisted of flimsy circumstantial evidence bolstered by the false testimony of the victim of the
27 purported attempted murder Mr Darrell Hutchinson. After deliberating for some time I was found guilty on all counts while
28 Lopez had a hung jury. I timely appealed the jury's findings.

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On direct appeal the jury's findings were upheld thus my seeking habeas relief first before the courts of California and then the Federal Courts as well petitions which were routinely denied. However such litigation efforts by me were consistently met with obstructive conduct by State law Enforcement personnel hence my seeking §1983 relief.

Case No. 1:10-CV-01814-DAD-JLT(PC)

With the complaint of Smith v Allison 1:10-CV-01814-DAD-JLT (PC) one which I initiated before the District Court on October 1st, 2010 I sought to articulate the reprehensible exploits implemented by public officials once I pursued before various entities redress for State Law Enforcement Personnel transgressions against me entities to include the Federal Courts, Courts of California and the Departments [COCE] administrative grievance system and/or which is supposed to be protected. Crawford v Britton 523 US 574, 588 n.10 118 S.Ct 1584 (1998) Yet upon my initiation of the action a §1983 suit in which amongst other claims I asserted the facts of: 1) denied due process rights during a prison disciplinary hearing on the basis of race, 2) being the subject of sexual harassment by a male correctional officer and 3) officials impermissibly denying me access to the Courts by obstructing my litigation efforts while on appeal [habeas] State Law Enforcement officials began to systematically retaliate against me by various means to include

- A Deputy Attorney General falsely claiming that I had sexually harassed her; and
- State prosecutors initiating malicious actions against me before the Kern County Superior Court following my attempts to amend Allison to include retaliatory acts Correctional staff were committing against me based on entries made on the actions docket etc.,

See People v Smith Case no. MFO11761A (consolidated)

Ultimately Allison was subject to terminating sanctions based on the defendants counsel [Deputy atty Gen] claiming that my conduct was demeaning towards all of the women involved in the actions adjudication a judgment rendered by the District Court [E.D. Cal.] sometime in January of 2017. Whereas Case no. MFO11761A was still before the Kern County Superior Court as a trial was not held for said action until May 14th, 2017 which is the same day the People chose to initiate a malicious action against me before the Kings County Superior Court based on an event occurring at CSP-Corcoran on December 5th, 2016 see People v Smith Case no. 17CM-1266

Upon Allison's termination from the courts calendar my focus then turned to the adjudication of the action Smith v Charelo 1:16-CV-01356-DAD-TSAM also a §1983 complaint a complaint which I filed with the Court on September 14th, 2016 this after its ruling in Allison denying me leave to file a supplemental complaint see ECF no. 211. On June 14th, 2017 which was the third day for a trial being held in Case no. MFO11761A Charelo was screened (ECF no. 11). On

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August 14th, 2017 Case No 18CM-1246 was dismissed from the Kings County Superior Courts criminal calendar. The assigned Magistrate Judge Findings and Recommendations in Charelo were adopted in full on June 20th, 2018 as the Court then found cause for the action to proceed forth in concern to a claim of "Excessive Force" against the defendants named (select) while also finding that an additional three (3) actions were to be opened for claims of "Excessive Force" against several defendants misjoined with those in Charelo these actions were then captioned Smith v Knowlton 1:18-CV-00851-WO-BAM; Smith v Weiss 1:18-CV-00852-WO-BAM and Smith v Gibbs 1:18-CV-00854-WO-BAM (ECF no. 18). On the heels of the Charelo Courts findings the People initiated yet another malicious action against me before the Kings County Superior Court based on an event occurring at CSP-Corcoran on November 30th, 2017 see People v Smith Case No. 18CM-3727. In January of 2019 Case No 18CM-3727 was dismissed from the Kings County Superior Courts criminal calendar. Based on the Charelo Courts findings in addition to my failing at several attempts to amend into one action the aforementioned complaints with additional claim(s) and defendants I then opened the actions Smith v Campbell 1:19-CV-00291-AWI-BAM; Smith v Parrot 1:19-CV-00286-DWO-BAM and Smith v Becerra 1:19-CV-01358-DWO-BAM all on February 14th, 2019. On March 26th, 2019 the Charelo Court denied miscellaneous relief (ECF no. 27) and nine (9) days later or on April 5th, 2019 ordered me to submit completed service documents on the defendants or face sanctions (ECF no. 28). Finally on April 9th, 2019 the People initiated a two (2) count criminal complaint against me before the Kings County Superior Court based on events occurring at CSP-Corcoran on November 10th, 2018 see People v Smith Case No. 19CM-1934.

3. Denials of Due Process / Equal Protection

a. Due Process

The Due Process Clause prohibit governments, including prison officials from depriving you of "life, liberty or property without due process of law" There are two kinds of due process issues: procedural and substantive. Procedural due process means the procedures that the Constitution requires before government can deprive you of life, liberty or property. Substantive due process "bars certain arbitrary wrongful government actions regardless of the fairness of the procedures used to implement them." Zimmerman v Burch 494 US 113, 125 110 S.Ct 975 (1990) (citation omitted); accord County of Sacramento v Lewis 523 US 833, 840 118 S.Ct 1708 (1998).

The basic requirement of due process is the right to notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." Hamm v Dunsfield 542 US 507, 533 124 S.Ct 2633 (2004); Loser v Zimmerman Brush Co., 455 US 422, 437 102 S.Ct 1148 (1992) (citation omitted); See Goss v Lopez 419 US 565, 579 95 S.Ct 729 (1975) and cases cited. The "process that is due" can take different forms in different kinds of cases. For example some cases

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require a face-to-face hearing but in others it is enough for the prisoner to be "heard" in writing Mendoza v Blodgett 860 F.2d 1425, 1431 (9th Cir. 1992) (referring to placement in "feces watch")

The requirements of due process in a given type of case are determined by balancing three factors: (1) how serious the deprivation is, (2) how much good additional procedures are likely to do, and (3) how expensive or difficult additional procedures would be for the officials who just carry them out. Matthews v Eldridge 424 U.S. 319, 335-36 S.Ct. 843 (1976); accord Hughes v Dumsfeld 592 U.S. at 529. This "balancing test" determines what due process requires even if State law or prison regulations call for something different. Cleveland Bd of Educ. v. Loudermill 470 U.S. 532, 541 105 S.Ct. 1487 (1985); Vitek v Jones 445 U.S. 480, 491, 100 S.Ct. 1254 (1980)

In the past, some courts have held that when official discretion is limited by substantive criteria or "predicates" due process requires that decisions actually be made based on those criteria. Bauman v Arizona Dept of Corrections 754 F.2d 841, 844-45 (9th Cir. 1985). Nowadays for prisoners, that principle appears to be limited to cases where there is a liberty interest under the principles of Sandin v Conner 515 U.S. 472, 115 S.Ct. 2293 (1995) (prisoners should only be found to have liberty interests in three circumstances: (1) when the right at issue is independently protected by the Constitution, (2) when the challenged action causes the prisoner to spend more time in prison, or (3) when the action imposes "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. Sandin 515 U.S. at 484)

b. Equal Protection

"[T]he Government retains 'broad discretion' as to whom to prosecute," Wayte v United States, 470 U.S. 598, 607 (1985) (quoting United States v Goodson, 457 U.S. 368, 380 n.11 (1982)), and "so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion," Bordenkircher v Hughes 434 U.S. 357, 364 (1978) (footnote omitted). "This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review." Wayte 470 U.S. at 607

[A]lthough prosecutorial discretion is broad, it is not "unfettered,"

Selectivity in the enforcement of criminal laws is... subject to

Constitutional constraints." United States v Butchelder, 442 U.S. 114

125, 99 S.Ct. 2198, 2205 60 L.Ed.2d 755 (1979) (footnote omitted)

In particular, the decision to prosecute may not be "deliberately

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based upon an unjustifiable standard such as race, religion

or other arbitrary classification, "Bordenkircher v. Hayes, supra

434 U.S. at 364, 98 S.Ct., at 668, quoting Dyler v. Bales, 368

U.S. 448, 456, 82 S.Ct. 501, 505 & L.Ed.2d 446 (1962)

including the exercise of protected statutory and constitutional

rights, see United States v. Bowdoin, supra 457 U.S. at 372, 102 S.Ct.

at 2488

Wayte 470 U.S. at 608. Selective prosecution claims are governed by ordinary equal protection standards which require a Petitioner to show that the prosecution had a discriminatory effect and was motivated by a discriminatory purpose

Armstrong, 517 U.S. at 465; Wayte 470 U.S. at 608. Petitioner "must demonstrate that (1) other similarly situated individuals have not been prosecuted and (2) his prosecution was based on an impermissible motive," United States v.

Sutcliffe 505 F.3d 944, 954 (9th Cir. 2007) (citing United States v. Williton, 328 F.3d 1074, 1087 (9th Cir. 2003) (per curiam)).

"In order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present

'clear evidence to the contrary.'" Armstrong 517 U.S. at 465 (quoting United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926))

Relevant Events⁷

On September 9th, 2013 I was the subject of an excessive use of force. Concisely while incarcerated at California Correctional Institution at Tehachapi (CCI) following an cessation of the time allotted to prisoners for eating state provided meals in cell Correctional officer D. Knowlton for no viable penological reasons whatsoever then dispersed an entire canister of O.C [Pepper spray] within the cell I was assigned to after having retrieved the Departments meal trays this while also denying me adequate medical attention or the opportunity to properly decontaminate from said exposure. Moreover in an effort at justifying his behavior directly after this event officer Knowlton leveled an false disciplinary infraction charge against me claiming that I had assaulted him. For a greater discussion on this topic please see the action Smith v. Knowlton

1:18-cv-00851-SCT. BAM (PC)

"

"

7. This is a conclusive version of events relative to officer's use of force against me for a greater discussion on the denial of due process rights please also see the action Smith v. Secretary et al, 1:23-cv-00526-OWA-SAB (ECF no. 33)

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On November 15th, 2013 I was the subject of an excessive use of force. Concisely while incarcerated at California Correctional Institution at Tehachapi (CCI). Correctional officers F. Zaveleta, E. Weiss and O. Hurtado for no viable psychological reasons whatsoever entered my assigned cell whereupon I was beaten and then dragged to the facilities Dining Hall #4 where I was placed in a holding cell in order to be rehoused in the mental health wing located within the Outpatient Housing Unit (Otu) an on site medical facility. In an effort at justifying their behaviors officers falsely alleged that I had boarded up in the cell that I was assigned to and was unresponsive to commands or attempts at communication therefore an emergency medical extraction was warranted and when implemented I assaulted officer Hurtado thereby warranting their use of force. For a greater discussion on this topic please see the action Smith v Weiss 1:18-cv-00852-DAD-BAM (PC) 9th Cir Case No. 21-

On February 6th, 2019 I was the subject of an excessive use of force, concisely while incarcerated at California Correctional Institution at Tehachapi (CCI) under the ruse of a cell search Correctional officers D. Gibbs and D. Hardy had me exit the cell that I was assigned to whereupon I was promptly assaulted and further beaten still by multiple Correctional staff members. Upon the cessation of force being utilized I was first placed in a holding cell located in a section of assigned housing unit and shortly thereafter then taken to the facilities Dining Hall #4 where I was assaulted further still once Correctional officers M. Marker and R. Morales cut off all of my clothes with a pair of shears and subsequently escorted me back to my assigned cell stark naked. Relative to this event officers falsely alleged that I had assaulted officer Gibbs thereby warranting their use of force. For a greater discussion on this topic please see the action Smith v Gibbs 1:18-cv-00854-DAD-BAM (PC) 9th Cir Case No. 21-16080

4. Malicious Prosecutions.

The elements of the tort of malicious prosecution are (1) a criminal proceeding (2) instituted by the defendant without probable cause (3) with malice or other improper purpose that (4) terminates in favor of the accused. W. Page Keeton, Prosser and Keeton On the Law of Torts § 119 (5th ed 1994) The proper defendant in a malicious prosecution case is the complainant not the Court that hears the case Id.

Nevertheless this very Court has held that a plaintiff is required to show a "lack of probable cause" in a claim of retaliatory prosecution Hartman v Moore 541 US 250, 265 126 S.Ct 1695 (2006)

Colloquy

Relief by way of a petition for writ of habeas corpus extends to a person in custody pursuant to the judgment of a State Court if the custody is in violation of the Constitution or laws or treaties of the United States 28 USC § 2254(a); 28 USC § 2241 (c)(3); Williams v Taylor 529 US 362, 395 (2000)

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On April 24th, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which applies to all petitions for writ of habeas corpus filed after its enactment Smith v. Murphy 521 US 320 (1997); Jeffries v. Wood 114 F.3d 1489, 1499 (9th Cir. 1997) (en banc)

Under the AEDPA, litigation of any claim adjudicated on the merits in State Court is barred unless a Petitioner can show that the State Courts adjudication of his claim:

(1) resulted in a decision that was contrary to or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding.

28 USC § 2254(d); Dennis v. Ayala 516 US 257, 269-69 (2015); Harrington v. Richter 562 US 86, 97-98 (2011); Williams 529 US at 413. Thus if a petitioner's claim has been "adjudicated on the merits" in State Court, "AEDPA's highly deferential standards" apply. Ayala 516 US at 269. However, if the State Court did not reach the merits of the claim, the claim is renewed de novo Cone v. Bell 536 US 449, 472

In ascertaining what is "clearly established Federal law," the Court must look to the holdings, as opposed to the dicta, of [the Supreme Court's] decisions as of the time of the relevant State Court decision." Williams 529 US at 412. In addition, the Supreme Court decision must "squarely address [] the issue in [the] case or establish a legal principle that 'clearly extend[s]' to a new context to the extent required by the Supreme Court in ... recent decisions"; otherwise, there is no clearly established Federal law for purposes of review under AEDPA and the Court must defer to the State Courts decision Moses v. Payne 865 F.3d 742, 757 (9th Cir. 2008) (alterations in original) (quoting Wright v. Van Patten 522 US 120, 125, 123 (2008)).

If the Court determines there is clearly established Federal law governing the issue, the Court then must consider whether the State Courts decision was "contrary to, or involved an unreasonable application of, [the] clearly established Federal law." 28 USC § 2254(d)(1). A State Court decision is "contrary to" clearly established Supreme Court precedent if it "arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or, if the State Court decides a case differently than [the Supreme Court] has on a set of materially indistinguishable facts." Williams 529 US at 413. A State Court decision "involves" an unreasonable application of [] clearly established Federal law "if 'there is no possibility fair-minded jurists could disagree that the State Courts decision conflicts with [the Supreme Courts] precedents.'" Richter, 562 US at 102. That is, a petitioner "must show that the State Courts ruling on the claim being presented in Federal Court was so lacking in justification

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1 that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded
2 disagreement." Id. at 103

3 If the Court determines that the State Court decision was "contrary to, or involved an unreasonable application of
4 clearly established Federal law," and the error is not structural habeas relief is nonetheless unavailable unless it is
5 established that the error "had substantial and injurious effect or influence" on the verdict. Brecht v. Abrahamson 507 US
6 619, 637 (1993) (internal quotation mark omitted) (quoting Kotteakos v. United States 328 US 750, 776 (1946))

7 AEDPA requires considerable deference to the State Courts. Generally Federal Courts "look through"
8 unexplained decisions and review "the last related State Court decision that does provide a relevant rationale" employing a
9 rebuttable presumption "that the unexplained decision adopted the same reasoning." Wilson v. Sellers 138 S.Ct. 1188, 1192 (2018)
10 This presumption may be rebutted "by showing that the unexplained affirmance relied or most likely did rely on different
11 grounds than the lower State Courts decision, such as alternative grounds for affirmance that were briefed or argued to
12 the State Supreme Court or obvious in the record it reviewed." Id.

13 "When a Federal claim has been presented to a State Court [...] the State Court has denied relief," and there
14 is no reasoned lower-Court opinion to look through to, "it may be presumed that the State Court adjudicated the claim on the
15 merits in the absence of any indication or State law procedural principles to the contrary." Richter 566 US at 99, where the
16 State Court reaches a decision on the merits and there is no reasoned lower-Court opinion a Federal Court independently
17 reviews the record to determine whether habeas relief is available under § 2254 (d) Walker v. Martel 769 F.3d 925, 939
18 (9th Cir. 2013) "Independent review of the record is not de novo review of the constitutional issue but rather the only
19 method by which we can determine whether a silent State Court decision is objectively unreasonable." Himes v. Thompson
20 376 F.3d 848, 853 (9th Cir. 2005) The Federal Court must review the State Court record and must determine what argument or
21 theories ... could have supported the State Courts decision, and then it must ask whether it is possible fair-minded jurists
22 could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the Supreme]
23 Court." Richter 562 US at 102

24 a. Case no. MFO11761A (instant action)

25 Ground One- Unreasonable Search and Seizure [Count 1]

26 This very Court has held that "where the State has provided an opportunity for full and fair litigation of
27 a Fourth Amendment claim, a state prisoner may not be granted Federal Habeas Corpus relief on the ground that evidence
28 obtained in an unconstitutional search or seizure was introduced at his trial." Stone 428 US at 494. See Newman v. Wenger

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1 790 F.3d 876, 881 (9th Cir. 2015) (holding Stone survived enactment of AEDPA) "The relevant inquiry is whether
2 Petitioner had the opportunity to litigate his claim, not whether he did in fact do so, or even whether the claim was
3 correctly decided." Ortiz-Sandoval v Gomez 81 F.3d 891, 899 (9th Cir. 1996) (citations omitted)

4 Argument

5 The Federal exclusionary rule requires that evidence obtained through a search and seizure which is
6 violative of the Fourth Amendment must generally be excluded in a subsequent criminal prosecution Mapp v Ohio 367 U.S. 643
7 655 81 S.Ct. 1604 6 L.Ed.2d 1801 see also United States v Camou (9th Cir. 2014) 773 F.3d 932, 943. The exclusionary rule
8 is a judicially created remedy designed to protect Fourth Amendment rights by deterring law enforcement authorities from
9 conducting unlawful searches and seizures Arizona v Evans 514 U.S. 1, 10-11 (1995) (the question whether the exclusionary
10 rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether
11 the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct. The exclusionary rule
12 operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights
13 as with any remedial device the rule's application has been restricted to those instances where its remedial
14 objectives are thought most efficaciously served" (quoting Illinois v Gates 462 U.S. 213, 223 (1983); other citations
15 omitted)).

16 Historically California has had its own judicially created exclusionary rule independent of any federally
17 mandated exclusionary rule see Cal Const Art I § 29; People v Johans (1955) 44 Cal.2d 434, 445-46 282 P.2d 905. This
18 independent state rule was used to mandate the exclusion of some evidence that the Federal exclusionary rule would have
19 permitted People v Chapman (1984) 36 Cal.3d 98, 108 207 Cal. Rptr 628, 679 P.2d 62 overruled on other grounds in People v
20 Palmer (2001) 24 Cal.4th 856, 103 Cal. Rptr 2d 13, 15 P.3d 234. However, the 1992 passage of Proposition 8 which provides
21 that "relevant evidence shall not be excluded in any criminal proceeding Cal Const Art I § 28 (f)(2) abrogated the
22 California exclusionary rule as a basis for the exclusion of unlawfully seized evidence In re Lance W (1985) 37 Cal.3d 873
23 886-87 210 Cal. Rptr 631, 694 P.2d 744.

24 Under Proposition 8 only a violation of the Fourth Amendment and not a violation of state law may result
25 in suppression of evidence. Thus for example, the fruit of an arrest when valid under the Fourth Amendment is not
26 suppressible in California even if the officer violated state law in effectuating the arrest Virginia v Moore 553 U.S. 164 128
27 S.Ct. 1598 (2008) see also 140 L.Ed.2d 559 (when officer makes arrest that is in violation only of state law, so long
28 as arrest is supported by probable cause the Fourth Amendment is not violated and suppression is not constitutional

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remedy)

In the typical case in which an illegal arrest is followed by a search, no fruits problem of any magnitude is presented where the search of the person or the surrounding area has its only justification as being "incident to" the arrest then unquestionably the evidence found in the search must be suppressed if the antecedent arrest was unlawful Chimel v. California 395 US 752 89 S.Ct 2034 23 L.Ed 2d 685 (1969) This is direct rather than derivative evidence and there is no occasion to be concerned about the limits of the fruit of the poisonous tree doctrine.

Under California Penal Code §1538.5 evidence that is the indirect product of an unlawful search is subject to suppression if the defense can show that the "secondary" or "derivative" evidence has been "tainted" by the initial illegality. The defense meets this burden by making a prima facie showing of a causal connection between the illegal search and the indirectly obtained evidence Wong Sun v. U.S. 371 US 441, 83 S.Ct 407 (1963)

Here when moving on April 1st, 2016 for the suppression as evidence the weapon Sergeant Mello alleged to have found on me distinctly argued were two facts: 1. That Correctional Officer G. Wilbey the officer effecting the arrest which led to the subsequent illegal search of me initiated this sequence of events once assaulting me and 2. Besides the weapon being "staked" Sergeant Mello's actions before an in session recreational yard in conducting an undetached body search of me was an unreasonable search and seizure in violation of the 4th Amendment see Clerk's Transcript On Appeal Volume 1 pg 2416 (ECF no. 12*16)*

In support of my position I attempted to articulate with viable evidence the fact that Officer Wilbey's assault in conjunction with Sergeant Mello's unlawful strip search of me was an blatant reprisal based on my pleadings before the District Court in the action Callison and for a complaint I had lodged on August 31st, 2015 with the Warden of California Correctional Institution at Tehachapi (CCI) Kim Holland in a complaint in which its contents could be viewed as disparaging Correctional Staff. However my efforts were thwarted by several factors beginning with the People's lead attorney Dora L. Gordon (ser's pery) at the very suppression hearing in question concisely his denying that I had enacted reciprocal discovery rights or that I had submitted any other formal demands for discovery from the People the trial court then under the direction of Judicial Officer Colette M. Humphrey findings this same day in denying my motion to compel the People to turn over such evidence [complaint] and more this in addition to the People's proffer of false evidence in support of their position at said hearing which was that based on my having assaulted Officer Wilbey the strip search of me was a necessity based on security.

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* On November 3rd 2021 as ordered by the Magistrate Judge assigned to the case the Respondent lodged a copy of the entire proceedings before the Kern Co Super Ct (ECF no. 12)

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"The knowing use of false evidence by the State, or the failure to correct false evidence may violate due process." Towery v Schiro 641 F.3d 300, 308 (9th Cir. 2010) citing Napue v Illinois, 360 U.S. 264, 269 (1959)). Under this clearly established precedent by the Court the petitioner must show that (1) the testimony (or evidence) was actually false, (2) the prosecution knew or should have known that the testimony was actually false, and (3) that the false testimony was material." Soto v Ryan 760 F.3d 947, 958 (9th Cir. 2014). In assessing materiality, the Court must determine whether "there is 'any reasonable likelihood that the false testimony could have affected the judgment of the jury.'" Id. (quoting Hayes v Brown, 349 F.3d 972, 978 (9th Cir. 2005)).⁸ A Court need not review all three Napue prongs if a petitioner's argument fails at any one of the prongs. See Parah v Chappell 935 F.3d 657, 664 (9th Cir. 2019); Towery, 641 F.3d at 308. The Ninth Circuit has also concluded that a [petitioner's] due process rights were violated and accordingly granted habeas relief, when it was revealed that false evidence brought about a [petitioner's] conviction "even in cases where the prosecutor neither knew nor should have known that the evidence was actually false." Maxwell v Doe, 628 F.3d 486, 499 (9th Cir. 2010) (citing Killian v Poole, 282 F.3d 1204 (9th Cir. 2002); Hall v Director of Corrections, 343 F.3d 976, 978 (9th Cir. 2003)).

The testimony challenged centers around DOA 1ser soliciting from Sergeant Mello claims that where the search of me occurred was beyond the view of others and that he had walked me back into housing unit #4 completely naked directly after the search questioned conduct by DOA 1ser which violates California Penal Code § 127 as these assertions were told face lies that the trial Court should have very well known considering my pleadings with the suppression motion itself, those in support of the relief requested [reply] and the trial Court having reviewed my motion for perusal of select Peace Officer Personnel files i.e., Pitchess motion which I moved to have heard on this day as well though this was a request which was denied. Hearings in which relevant portions of the Crime Report [CD02 form 837-C] generated for this incident on September 2nd, 2015 was attached generally see Clerks Transcript On Appeal vol 2 pg 391 (ECF no. 12 # 17) Yet the trial Court found the People's argument sound an egregious act of obstruction. Moreover directly after the suppression hearing the Correctional officers from CCI who transported me to and fro the Kern County Superior Court back to (SC) Couran to include officer R. Morales who is the very same officer who performed the illegal strip search of me on February 6th, 2014 (see subsection 3 above) are officers with those

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"

8. There is nothing in Napue its predecessors or its progeny, to suggest that the Constitution protects defendants only against the knowing use of perjured testimony. Due process protects defendants against the knowing use of any false evidence by the State whether it be by document, testimony or any other form of admissible evidence." Hayes, 349 F.3d at 481

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1 from CSP-Corcoran beat me once I was back on said institutions grounds.

2 Secondly, I repeatedly boached with the trial Court rather orally or via written proffers the ineptness of
3 the private investigator assigned to assist me in defense of the People's false charges an investigator whom I had asked
4 on several of occasions to go to CCI in order to gather photographic evidence of the site where the incident in question
5 occurred this never happened an denial of effective assistance of counsel Ake v Oklahoma 470 US 68, 77 105 S.Ct 1087 (1985)
6 also Mason v State of Arizona 504 F.2d 1345, 1351 (9th Cir 1974) (Supreme Court decisions mandate that effective
7 assistance of counsel "... requires, when necessary, the allowance of investigative expenses or appointment of
8 investigative assistance for indigent defendants in order to insure effective preparation of their defense by their
9 attorneys.") which alone requires a complete reversal of the judgment of guilt on all counts comprising of this case on the
10 basis of structural errors Arizona v Fulminate 499 US 279, 300-09 (1991) see also Brobiesca v Bulaza, 215 F.3d 1015,
11 1020 (9th Cir 2000) (dictum); accord, Taylor v Ist, 980 F.2d 1040, 1047 (9th Cir 1992) ("An incarcerated defendant may not
12 meaningfully exercise his right to represent himself without access to law books, witnesses or other tools to prepare a defense.")
13 as I asked of the trial Court not only for said investigators removal from service but for the assignment of a new investigator
14 requests which were repeatedly denied by Judge Humphrey ex Clerks Transcript On Appeal Vol 2 pg 491

15 Nevertheless the conspiratorial conduct cited above was borne on the basis of Allison and again the People's action
16 was being adjudicated simultaneous of Allison and a month prior to the suppression hearing the District Court discharged
17 an order to show cause asking me as to why the action should not be subject to termination sanctions on the basis of
18 accusations by the defendants counsel that I had sexually harassed her (ECF no. 106) All of the defendants in Allison were
19 Correctional officials and staff members represented by deputies for the Chief Law Enforcement officer for the State of
20 California whom is California's Attorney General (Kamala D. Harris)

21 The Court has found disqualifying bias may exist due to a judge's "direct, personal, substantial, pecuniary
22 interest in a case." Capehart v A.T. Massey Coal Co., 556 US 860, 876 (2009) Or if "under a realistic appraisal of
23 psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice
24 must be forbidden if the guarantee of due process is to be adequately implemented." Id at 883-84. But while the test is
25 "objective," there is markedly an absence of "precision" as to what suffices. Capehart, 556 US at 879 (citing In re Murchison
26 349 U.S. 133, 138 (1955)) and (2) when a judge is "cruelly slandered" such that contempt proceedings are warranted, Capehart
27 556 US at 881 (citing Mayberry v Pennsylvania 400 US 455, 466 (1971)) The Court listed these examples to show it is "an
28 extraordinary situation where the Constitution requires recusal." Capehart 556 US 887.

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The substantive standard for removal under 28 USC § 1444 and 28 USC § 455 is the same: "[W]hether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." United States v Hernandez, 109 F.3d 1450, 1453 (9th Cir. 1997) (alteration in original) (quoting United States v Stulley, 783 F.2d 934, 939 (9th Cir. 1986)) "Importantly, '[E]ach case cannot attack a judge's impartiality on the basis of information and beliefs acquired while in his or her judicial capacity.'" United States v McTiernan, 695 F.3d 882, 891 (9th Cir. 2012) (alteration in original) (quoting United States v Frias-Ramirez, 670 F.2d 849, 853 n. 6 (9th Cir. 1982)). As the Supreme Court has recognized, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Litky v United States, 510 U.S. 540, 555 (1994) And "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." Id. "Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties or their cases ordinarily do not support a bias or partiality challenge." Id.; accord United States v Wilkerson, 208 F.3d 794, 799 (9th Cir. 2000) ("To disqualify a judge the alleged bias must constitute animus more active and deep-rooted than an attitude of disapproval toward certain persons because of their known conduct." (internal quotation marks and citation omitted)).

Prior to the suppression hearing before the trial court in Allison besides the defendants having moved for court intervention [harassment] (ECF No. 164) I had moved for leave to file an amended complaint (ECF No. 174) pleadings where I sought to ameliorate the complaint to include Correctional Staff's misconduct on the dates which comprised of each count of the People's information here a request which ultimately was denied as it was found that I needed to file a separate complaint previous attempts to amend the complaint included pleadings where I broached a variety of topics such as my being denied meals, mail etc. Following the trial court denying the suppression motion I moved for several forms of relief such as: Appointment of qualified psychotherapist, Renew of Peace Officer Personnel files this while also moving to enter a not guilty by reason of insanity (164) plea relative to Count 2 of the information motions which were to be adjudicated on August 9th, 2016. On August 5th, 2016* I was removed from the custody of Department officials at CSP Corcoran and placed in the care of officials at Wasco State Prison (WSP) and at WSP I was assaulted by Correctional Sergeant T. Reynolds thereby leading to my use of force. On August 5th, 2016 I was removed from the custody of officials at WSP and placed in the care of the Kern County Sheriff's Department in order to appear before the Kern County Superior Court relative to motions scheduled for hearing on August 9th, 2016. I appeared before the trial court on August 9th, 2016 however Judge Humphrey was on vacation so the matter was tabled until August 15th, 2016

* Correction August 3rd, 2016

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1 Come August 15th, 2016 I appeared before the trial Court where the motions aforementioned above were
2 adjudicated moreover although then prepared to again broach the subject of my being inappropriately placed into the custody
3 of the Kern County Sheriff's Department on August 5th, 2016 a subject first brought to the attention of the Court on August 9th, 2016
4 this day there was no need for me to do so as several Correctional Staff members attached to CCI's transportation unit stood by
5 in the Courtroom awaiting Judge Humphrey's remand order placing me back into the Department's custody. With Judge Humphrey's
6 remand order Correctional Sergeant M. Peters and Correctional Officer J. Andrade immediately took me into their custody where we
7 proceeded to a garage located just below the Courthouse entered a van and then the procession proceeded to the Lendo Detention
8 Facility operated by the Kern County Sheriff's Department in order for me to dress out of county blues and officially placed back into
9 the Department's custody. Once at the Lendo Detention Facility the party headed towards the facilities dressout room where once
10 restraints were removed from my wrists I was promptly assaulted by these two Correctional Staff members an event which was digitally
11 recorded.

12 The significance of these facts centers around several factors to include my previous attempts in Allison to
13 amend the complaint and my act of self-defense at WSP on August 3rd, 2016. For in a previous attempt to amend the complaint I
14 discussed Correctional Staff's actions at Kern Valley State Prison on March 13th, 2013 to wit their utilizing "excessive force" against me
15 and thereafter this incident their denying me any meals for a period of nearly ten (10) days leading to medical staff having me
16 involuntarily housed within a mental health ward located within the facilities out patient housing unit (OHU) as a precaution. The
17 deprivation of meals later identified as a tactic known as weight dosing is a measure of torture⁹ in which Correctional Staff's aim
18 was to deny me adequate nutrition for such a measure in conjunction with an overactive thyroid and my being a vegetarian
19 a diet in which many individuals need to take dietary supplements [vitamins] in order to compensate for nutrients lost by
20 not eating meat is the cause leading to my becoming a full blown anemic an disorder which is known to severely affect cognitive
21 abilities when left untreated ergo my woeful pleadings before the trial Court hence its staff "mocking" my intellectual
22 capabilities beginning on August 15th, 2016 when then making errant entries in the Courts docket to include a blanket NBT plea.

23 "

24 9. Such vicious acts did not stop there for the Department's staff weaponized an affliction known as gastroesophageal reflux disease
25 (GERD) against me a disorder in which stress and an improper diet to include one high in fat or fatty by products inflicts a variety of
26 symptoms within its hosts to include asthma hence Correctional Staff's actions in utilizing D.C against me on September 9th, 2013
27 ; February 4th, 2015 and again on September 2nd, 2015 I did not learn that I suffered from GERD until after being hospitalized on
28 October 8th, 2019 but I like Correctional Staff knew well before then that I suffered from GERD

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1 when placed within the custody of the Kern County Sheriff's Department on August 8th, 2016 and when Correctional
2 Staff later took me back into their custody from Department #2 at the Kern County Superior Court on August 15th, 2016 both acts
3 violated state law felonies witnessed by Judge Murphy whose inactions only compounded the situation and led to her liability
4 for participating in a conspiracy to deny me due process / equal protection rights once I was subjected to an assault by
5 Correctional staff at the Lerdo Detention facility on August 15th, 2016.

6 These facts and more to include my being denied either access to or adequate access to a law library prior to
7 the hearing in question were facts available to the Court of Appeal for the Fifth Appellate District and it chose not to act as
8 its opinion adequately reflects for when discussing the sufficiency of the Pitchess pleadings relevant declarations were omitted
9 from the discussion. (ECF no. 12 #1 LD) Instead said Court issued a conditional reversal of the conviction a result for which
10 centered on an purported blunder during the Pitchess proceedings held by Judicial Officer Michael V. Brush relative to the
11 record of Correctional Sergeant T. Reynolds the very same officer who I had a quarrel with at WSP on August 3rd, 2016 proceedings
12 in which the trial Court then attempted to wipe the slate here clean via obstructions aimed at having the CEOPA counter
13 lapse hence my moving to have the conviction reinstated sometime in April of 2021.

14 Accordingly I was not provided with an opportunity for full and fair litigation of my claims as the conduct
15 cited above is exploits which violate 18 USC §§ 241-242

16 Ground Four- Selective Prosecution

17 Tom Bane Civil Rights Act ¹⁰ - (b) If a person or persons, whether or not acting under color of law, interferes
18 by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment
19 by any individual or individuals of rights secured by the Constitution or laws of the United States or of the rights secured by
20 the Constitution or laws of this State, the Attorney General, or any district attorney or city attorney may bring a civil action
21 for injunctive and other appropriate equitable relief in the name of the People of the State of California, in order to protect the
22 peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney
23 or any city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). If this civil penalty is requested
24 it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be
25 awarded to each individual whose rights under this section are determined to have been violated.

26 "

27 10. see also § 52.3 Law enforcement officers; prohibitions against conduct depriving persons of Constitutional rights,
28 privileges or immunities; civil actions

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Argument

Murga Motion - Discriminatory prosecution denies the defendant equal protection of the law guaranteed by the Fourteenth Amendment. See Buluyut v Superior Court (1996) 12 C4th 826, 832. A criminal defendant may obtain dismissal of the criminal charges brought by the government on the ground that the prosecution is being conducted in an arbitrary or discriminatory manner.

Known as a Murga motion (see Murga v Municipal Court (1975) 15 C.3d 286, 291), the procedure usually involves two motions:

First the defense moves to obtain discovery, typically records relating to other arrests or prosecutions for the same offense that would prove that the government is acting in an impermissibly discriminatory manner see e.g. Griffin v Municipal Court (1977) 20 C3d 302, 306 (defendants prosecuted for mistreating prisoner sought discovery of all police department records of investigations into alleged police brutality over 10-year period); Burton v Superior Court (1976) 64 CA3d 873, 876 (defendant sought to support his claim that no other persons were prosecuted for offense with which he was charged).

Second assuming that the discovery establishes that the prosecution is discriminatory the defendant moves to have the charges dismissed. A dismissal based on discriminatory prosecution is a final dismissal. Tickwo v Hopkins (1986) 118 US 356, 374 6 S.Ct 1064.

To obtain dismissal based on discriminatory prosecution the defendant must show that he or she was deliberately singled out for prosecution on the basis of an individual criterion typically the defendant's membership in a particular group and that the prosecution would not have occurred but for the discriminatory design of the prosecution. People v Superior Court (Hartway) (1977) 19 C3d 338, 348 see also Wayte v US (1985) 470 US 510, 607 105 S.Ct 1524. The defendant is not required to show that the police or prosecutors had the specific intent to punish the defendants for his membership in the group. The intent that must be shown is simply intent to single out the group or a member of the group on the basis of that membership for prosecution that would not otherwise have taken place. Buluyut v Superior Court (1996) 12 C4th 826, 835.

Evidence of prosecutorial discrimination may be shown in two ways: (1) direct proof of a plan to discriminate or (2) statistical data on prosecutorial conduct showing that certain offenses are prosecuted against a particular group. Murga v Municipal Court (1975) 15 C3d 286, 305. However under current law a prisoner need not be a member of a group or class that is discriminated against in order to state an equal protection claim contrary to some earlier decisions. The Court has held that an individual who claims he has been treated differently from others similarly situated intentionally and without rational basis states an equal protection claim as a "class of one." Village of Willowbrook v Olech 528 US 562, 569-65 120 S.Ct 1073 (2000).

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see also Hanes v Zurick 578 F.3d 491 (4th Cir. 2009) (valid equal protection claim under class of one stated because arrests motivated by personal animus are unconstitutional)

a. Conspiracy

The Ninth Circuit requires a plaintiff alleging a conspiracy to violate civil rights to "state specific facts to support the existence of the claimed conspiracy." Olser v Idaho State Bd of Med 363 F.3d 906, 929 (9th Cir. 2004) (citation and internal quotation marks omitted) (discussing conspiracy claim under § 1985); Burns v County of King 883 F.2d 819, 821 (9th Cir. 1989) (To state a claim for conspiracy to violate one's constitutional rights under section § 1983 the plaintiff must state specific facts to support the existence of the claimed conspiracy." (citation omitted))

When specifically moving for discovery under the Murphy standards admittedly there was much ambiguity in the pleadings that I submitted to the trial court on November 29th, 2016 in that there is no question on my part. Yet records which would have supported my position that the prosecution was indeed discriminatory such as Crime Reports alleging assaultive conduct on my part towards Correctional Officers on March 13th, 2013, September 9th, 2013, November 15th, 2013 and February 6th, 2014 reports by Correctional Officials which were later forwarded to the People for possible criminal prosecution of me, the Department's disciplinary hearing results and any subsequent appeal decisions relative to the findings made for the above mentioned Crime Reports (CRs) in addition to the same type of reports generated for each inmate comprising of the information courts [?] were records the People were required to turn over to me pursuant to the provisions of California Penal Code § 1054.1 (e) as this discovery was exculpatory material as they very well knew and yet the People steadfastly refused to provide me with this material obstructing conduct in violation of Federal/State law In re Brown (1996) 14 Cal.4th 873, 879. (The prosecutor should find out at an early stage in the proceedings what information is in the possession of the investigating agency involved in the case; in any event the prosecutor is presumed to have knowledge of all information gathered by the investigating agency. The prosecutor needs this information to prepare effectively for trial and to comply with Pen C § 1054.1 and any other relevant statutory or constitutional discovery requirements particularly the obligation to give the defense exculpatory evidence) Kyles v Whitley (1995) 514 U.S. 419, 421 115 S.Ct. 1535 (prosecutor has responsibility of gauging "likely net effect" of evidence and must make disclosure when there is "reasonable probability" that outcome will be changed by disclosure) see also Barnett Superior Court (2010) 50 Cal.4th 890, 901 (the language of Pen C § 1054.1 (e) stating that the defendant is entitled to "any exculpatory evidence" means that the defendant is entitled to all exculpatory evidence before trial not just exculpatory evidence that is material) exhibits which the trial court itself submitted.¹¹

11. In support of judicial economy/efficiency I will not delve into a long dialogue on the subject here but the conduct complained of has been previously discussed in a writ of Habeas Corpus filed before the Courts of California see lodged documents # 8 and 14 in ECF 10.12

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Nevertheless I have repeatedly contended before the trial court that the informations now convictions here challenged were acts of retaliation which stemmed from my protected conduct in initiating before the District Court the action Smith v Allison 1:10-CV-01814-DAB-SLT (PC) and that factual support for my claim lied with the civil docket for Allison itself as the events comprising of each count of the People's information are incidents which centered around the same time entries of judgments adverse to my position were made in the action therefore the People's information was prohibited as prisoners actively enforcing constitutional rights have been recognized as a class under 42 USC § 1985(3) In re Jackson lockdown / MCO Cases 528 F.Supp. 869 (E.D. Mich 1983) and Correctional staff's conduct during the events in question being illegal I Excessive Force I also see Allison ECF nos. 126, 135 and 154 (adverse rulings cited above)

Officials may not retaliate against prisoners for using the courts or trying to do so, whatever the form of the retaliation. The Supreme Court has explained: "The reason why such retaliation offends the constitution is that it threatens to inhibit exercise of the protected right... Retaliation is thus akin to an unconstitutional condition demanded for the receipt of a government-provided benefit." Crawford-El v Britton 523 US 574 n.10 118 S.Ct 1584 (1998) Filing a grievance is a protected action under the First Amendment Bruce v Hest 351 F.3d 1283, 1288 (9th Cir 2003)

To support a retaliation claim adverse action must be sufficient to deter or "chill" a person of "ordinary firmness" in the exercise of constitutional rights a threat of physical harm may effectively inhibit access to the courts Bradley v Hall 64 F.3d 1246 (9th Cir 1995) as may the leveling of false disciplinary infraction charges Austin v Terhune 367 F.3d 1167, 1170-71 (9th Cir 2004) However, prisoners do not have to show that they were actually deterred from exercising their rights. If that were the law, the fact that a prisoner kept complaining or filed suit about the retaliation would defeat the claim Espinal v Gourd 558 F.3d 119, 128 n.7 (2d Cir 2009)

*a. Allegation of Violating Pen C § 69 (c1) On February 4th 2015 - Even if the scenario described by officers Cantu and Young being found as plausible [Crime Report] there was no need for Officer Cantu to disperse an entire canister of D.C in my face while officer Young knelt on my diaphragm with all of his weight and multiple officers were responding to the scene since the escort in question was being supervised an excessive use of force which is prohibited. It should also be noted that the harassing strip searches that I endured before the incident and thereafter were searches which were in violation of the 8th Amendment Gron v Corrections Corp of America 191 F.3d 1281, 1290 (10th Cir 1999)

"

"

* the events cited here and subsections b-d occurred while in the situ thus all escorts/movement occurred while I was in handcuffs

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b. Allegation of Violating Pen Codes § 4501.1 and § 69 (cts 2/3) On February 25th, 2015. The testimony of Correctional Lieutenant B.L. Parrot and Correctional officer A. Cantu [Crime Report] relative to the allegation of my having committed an aggravated battery by gassing was insufficient for an Department tribunal to find me guilty for this offense as 1. Lt Parrot's observations were subject to suppression pursuant to the provisions of Pen (§ 1538.5(a)(1)) as he was then illegally holding a disciplinary hearing against me relative to the charge that I had assaulted officer Cantu on February 4th, 2015 and 2) state law required officials to secure a sample of my saliva from officer Cantu's face D.O.M § 54110.6. While the testimony of Correctional officers Gutierrez and Matthias [Crime Report] are averments that even if being found plausible still did not excuse the force that these two officers used to take me to the ground as I was in full restraints to include leg irons.

c. Allegation of Violating Pen Codes §§ 4502(a) and 4502(b) (cts 4/5) On April 16th, 2015. The testimony of Correctional Sergeant Doser along with Correctional officer P. Jensen and Psychiatric Technician J. Boger [Crime Report] established that the examinations I had to endure after the illegal search of my assigned cell were examinations in violation of the Eighth Amendment Gron v. Corrections Corp of America 191 F3d 1281, 1290 (10th Cir 1999)

d. Allegation of Violating Pen Codes § 69 and § 4502(a) (cts 6/7) On September 2nd, 2015. Even if the scenario described by officers Pearce and Wilkey were to be found as plausible [Crime] there was no need for officer Pearce to disperse an entire canister of O.C. on my face while officer Wilkey layed on top of me (bearing his weight) and multiple officers responding to the scene an excessive use of force which is prohibited moreover the strip search that Correctional Sergeant B. Melio conducted on me thereafter this event is an search in violation of the 8th Amendment Gron v. Corrections Corp of America 191 F3d 1281, 1290 (10th Cir 1999)

To constitute cruel and unusual punishment in violation of the Eighth Amendment prison conditions must involve "the wanton and unnecessary infliction of pain" Phodes v. Chapman 452 US 331, 347 101 S.Ct 2392, 7399 69 L.Ed 2d 59 (1981) The inquiry as to whether a prison officials use of force constitutes cruel and unusual punishment is whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically to cause harm. "Hudson v. McMillian 503 US 1, 6-7 112 S.Ct 995, 998 117 L.Ed 2d 156 (1992); Whitley v. Albers 413 US 312, 320 106 S.Ct 1078, 1085 (1986)

The objective component of an Eighth Amendment claim is ... contextual and responsive to contemporary standards of decency" Hudson 503 U.S. at 8, 112 S.Ct. at 1100 (internal quotation marks and citations omitted) A prison officials use of force to maliciously and sadistically cause harm violates the contemporary standards of decency Wilkins v. Gaddy 559 US 34, 37 130 S.Ct 1175, 1178 175 L.Ed 2d 995 (2010). However, "[n]ot every malevolent touch by a prison guard gives rise to a Federal cause of action." Wilkins 559 US at 37 (quoting Hudson 503 US at 9 112 S.Ct. at 1000) Factors that can be considered are "

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the need for the application of force, the relationship between the need and the amount of force that was used [and] the extent of injury inflicted." Whitney 475 US at 321 106 S.Ct at 1085; Marquez, Gutierrez 322 F3d 689, 692 (9th Cir 2003)

Under California law, the definition of assault is "[a]n unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." Cal P.C. § 240. An assault does not require either an intent to physically injure or an actual physical injury but only the reasonable apprehension of imminent harmful touching. Kiseskey v Carpenters Trust for So. California 144 Cal. App 3d 222, 232 192 Cal. Rptr 492 (1983)

Assault is attempted battery, while battery is a completed assault. People v Colantuono, 7 Cal. 4th 206, 276-277 26 Cal. Rptr 2d 908, 865 P.2d 304 (1994) ("[I]t is impossible to commit battery without assaulting the victim.")

"A battery is any willful and unlawful use of force or violence upon the person of another." Cal P.C. § 242. Tekle ex rel Tekle v U.S., 454 F3d 1088, 1102 (9th Cir 2006) Under California civil law the elements of a battery are as follows: (1) defendant intentionally did an act that resulted in harmful or offensive contact with the plaintiff's person (2) plaintiff did not consent to the contact, and (3) the contact caused injury, damage, loss or harm to the plaintiff. Tekle 454 F3d at 1102 (citing Cole v Doe 1 thru 2 officers of Emeryville Police Dept 387 F Supp 2d 1084, 1101 (N.D. Cal 2005)). To establish a claim of battery by a peace officer the plaintiff must prove that (1) the defendant intentionally touched the plaintiff (2) the defendant used unreasonable force (3) the plaintiff did not consent to the use of that force (4) the plaintiff was harmed, and (5) the use of unreasonable force was a substantial factor in causing the plaintiff's harm. Edson v City of Anaheim 63 Cal. App 4th 1269, 1272 74 Cal. Rptr 2d 614 (1998) (holding that where a police officer is a defendant, a plaintiff must prove unreasonable force as an additional element of a traditional battery claim).... Physical injury need not be present for a claim of battery. Kiseskey 144 Cal. App 3d at 232, 192 Cal. Rptr 492

Plaintiff bears the burden of proving the officer used unreasonable force. Edson v City of Anaheim 63 Cal. App 4th at 1272, 74 Cal. Rptr 2d 614. Federal civil rights claims of excessive force are the federal counterpart of state battery claims. Id. at 1274 74 Cal. Rptr 2d 614; Munoz v City of Union City 120 Cal. App 4th 1077, 1102 n.6 16 Cal. Rptr 3d 521 (2004)

The facts above alone supported my claims of an conspiracy by public officials to deny me due process / equal protection rights through the use of violence. U.S. v Donnelly 370 F3d 87 (1st Cir 2004) (affirming sentence of officer for conspiracy and violation of civil rights for unwritten agreement to use excessive force on prisoners who "disrespected" staff to teach the inmates a lesson") as Correctional Staffs perverted allegations of assaultive conduct on my part towards them essentially amounted to false disciplinary infraction charges see 15CCR § 3084.1; 15CCR § 3316(c) also Cal P.C. § 995 and

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People v Superior Court (1967) 67 Cal 2d 441, 444 62 Cal.2d 501 432 P.2d 197 ergo a discriminative prosecution a premise Judge Humphrey was well aware of as I had repeatedly raised such a position prior to the Murga hearing in relevant pleadings for discovery to include:

- Motion for Peace Officer Personnel Records on April 29th, 2016 - Clerks Transcript On Appeal Volume 2 pg 320 (ECF No. 12 #14)

- Motion for Peace Officer Personnel Records on July 29th, 2016 - Clerks Transcript On Appeal Volume 2 pg 510 (ECF No. 12 #17)

- Motion for Subpoena Duces Tecum on August 3rd, 2016 - Clerks Transcript On Appeal Volume 3 pg 633 (ECF No. 12 #18) please also see Minute Order generated on August 15th, 2016 Clerks Transcript On Appeal Volume 3 pgs 681-684

So regardless of any ambiguity in the pleadings I submitted as an incarcerated pro se defendant Erickson v Pardus 551 U.S. 89, 94 124 S.Ct 2197 (2007) see also People v Odom (1990) 3 Cal.App.3d 559, 565 [83 Cal.Rptr. 520] (while procedural exactness is to be admired it is no longer considered an indispensable ingredient to effective judicial administration and a Court may look through form to substance if necessary to attain justice) the question then as it should be now is whether there was sufficient evidence before the Court to grant the relief requested and the answer is yes there was.

b. Discovery Violations

California Penal Code §1181.1 Judgment of acquittal in jury case

In a case tried before a jury the Court on motion of the defendant or on its own motion at the close of the evidence on either side and before the case is submitted to the jury for decision shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the Court is insufficient to sustain a conviction of such offense or offenses on appeal. If such a motion for judgment of acquittal at the close of the evidence offered by the prosecution is not granted the defendant may offer evidence without first having reserved that right.

I initially came before the trial Judge Judicial Officer Kenneth C Twisselman II on May 11th, 2017 however prior to my appearance before his department it appears that Judge Twisselman had scheduled for some time off therefore the parties were informed that come May 17th, 2017 the matter was to be trailed until June 12th, 2017 but before the matter being trailed for several days mundane matters related to the trial were heard to include my motion for sanctions being

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1 against the People for egregious discovery violations on hearing for which occurred on May 16th, 2017 see Clerk's Transcript
2 On Appeal [sanctions] Volume 6 pg 1531 (ECF no. 12#22) also Reporter's Transcript of Proceedings Volume 4 pgs 404-430
3 (ECF no. 12#24)

4 The sanctions hearing occurred during in-limine proceedings and while a great portion of this discussion was
5 held off the record which I vie was done to conceal the fact that the Court was indeed actively participating in a conspiracy
6 to deny me rights afforded under the 14th Amendment. All the same the evidence necessary to support my position here that
7 the prosecution was indeed discriminative was still captured once back on the record as the Court then acknowledged that
8 Judge Humphrey had indeed found cause for me to have the records requested from so-called "3rd parties" via the subpoena
9 duces tecum scheme see also Clerk's Transcript On Appeal Volume 3 pg 691 [M. rule Order] (ECF no. 12#18) and on this fact
10 alone the case should have been dismissed see Electronics Funds Solutions LLC v Murphy (2005) 134 Cal. App 4th 1161, 1183
11 (in this case Court ruled that terminating sanctions were appropriate when the defendants "persistent failure to comply
12 with discovery orders resulted in a discovery stalling and continuance of the trial") see also Doppes v Bently Motors Inc. (2004)
13 174 Cal. App 4th 967, 994 (Court ruled that the trial Court abused its discretion by not ordering terminating sanctions during
14 trial when it learned that defendant still had failed to comply with discovery orders and had failed to produce documents
15 that should have been produced months earlier.)

16 //

17 //

18 Note: Although I vie that my pleadings before the lower Courts sufficiently stated a cause for habeas rel. etc, all the
19 same I exhaust or rather exhaustively replead relevant facts and cite relevant laws here for thoroughness. Hebbe v Pliler
20 627 F.3d 338, 341-42 (9th Cir 2010) (explaining that although pro se pleadings are construed liberally, a plaintiff must
21 allege facts sufficient to state a plausible claim)

22 **B. Abuse of Process (Defined)**

23 The essence of the tort of abuse of process is the misuse of the power of the Court; it is an act done in the
24 name of the Court and under its authority for the purpose of perpetrating an injustice Rushen v Cohen 34 Cal 411 1048, 39
25 Cal Rptr 3d 516 120 P.3d (2006). An abuse of process is defined as the use of legal process either criminal or civil against
26 another to accomplish a purpose for which it is not designed Spellens v Spellens 49 Cal 2d 210, 317 P.2d 613 (1957) it has
27 also been defined as a willful misuse of process to accomplish a purpose for which it was not designed S.O. v Maider 279 Cal.
28 App 4th 27, 116 Cal. Rptr 3d 567 (4th Dist 2014) as modified on other grounds on denial of reh'g (Sept 11, 2014)

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A person injured by the misuse of legal process is entitled to damages for abuse of process, and injunctive relief for abuse of process may also be had in an action brought for that purpose. Burgis v. Merchants Collection Ass'n, 1 Cal.3d 94, 101 Cal. Rptr. 745, 496 P.2d 817.

For purposes of the tort of abuse of process the process that is abused must be judicial process. Estate of Tucker ex rel. Tucker, Interscope Records Inc., 515 F.3d 1019 (9th Cir. 2008) (misuse of an administrative proceeding even one that is quasi-judicial does not support a claim for abuse of process). Mendoza v. Garcia, 165 F.Supp.3d 861 (1.D. Cal. 2016) (applying California law). Wood Court II Limited, McDonald Co., 119 Cal. App. 3d 245, 113 Cal. Rptr. 836 (2d Dist. 1981) that is a process which is pursuant to the authority of a court since the essence of the tort lies in the misuse of the power of the court, the cause of action is based on an act done in the name of the court and under its authority for the purpose of perpetrating an injustice. Rushen v. Cohen, 31 Cal. 4th 1048, 39 Cal. Rptr. 3d 516, 128 P.3d 113 (2006). In order to incur liability some action must be taken pursuant to the authority of the court either directly or by ancillary proceedings. Wood Court II Limited v. McDonald Co., 119 Cal. App. 3d 245, 113 Cal. Rptr. 836 (2d Dist. 1981).

In a proper case a notice of taking a deposition may constitute the basis for an action for abuse of process although the giving of such notice is not process in the strictest sense of the word. Thornton v. Rhoden, 245 Cal. App. 2d 80, 53 Cal. Rptr. 206, 23 A.L.R. 3d 1152 (2d Dist. 1966). Written interrogatories submitted to a party to a civil action and enforced with sanctions by the trial court constitute the use of process. Younge v. Solomon, 30 Cal. App. 3d 289, 113 Cal. Rptr. 113 (5th Dist. 1974). A request for admissions is capable of being abused and can form the basis for an abuse of process action. Twyford v. Twyford, 103 Cal. App. 3d 916, 134 Cal. Rptr. 145 (3d Dist. 1976). An order to show cause respecting contempt constitutes process within the meaning of the tort of abuse of process. Clark Equipment Co. v. Wheat, 92 Cal. App. 3d 503, 154 Cal. Rptr. 874 (1st Dist. 1979).

"

"

Observation: The California Code of Civil Procedure expressly prohibits a person from filing or recording or directing another to file or record a lawsuit, lien, or other encumbrance against any person or entity knowing that it is false with the intent to harass the person or entity or to influence or hinder the person in discharging his or her official duties if the person is a public officer or employee. Civ. Proc. Code § 465.010.

As to the remedies available for filing or recording a prohibited lien or encumbrance see Civ. Proc. Codes § 465.030 § 465.040, § 465.060.

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To succeed in an action for abuse of process, a litigant must establish that the defendant contemplated an ulterior motive in using the process. Dusheen v. When (supra) The improper purpose required to state a cause of action in abuse of process usually takes the form of coercion to obtain a collateral advantage not properly involved in the proceeding itself. Spellens v. Spellens (supra) (there may be a form of extortion pursuant to what is done in the course of negotiation rather than the issuance of any formal use of the process itself which may constitute the tort) The ulterior motive to prove is that the party employing the process did so for an end not germane thereto but for an improper purpose which may consist in the achievement of a benefit totally extraneous to or a result not within its legitimate scope. Lon Equipment Corp. v. Nelson 110 Cal. App. 3d 868, 168 Cal. Rptr. 361 (1st Dist. 1980)

However mere ill against the adverse party in a proceeding does not constitute an ulterior or improper motive. Lon Equipment Corp. (supra) Mere vexation or harassment are not recognized as objectives sufficient to give rise to the tort. Tanger v. Solomon 38 Cal. App. 3d 289, 113 Cal. Rptr. 113 (5th Dist. 1974) Collateral advantage may exist where property is seized by the defendant for the purpose of coercing the plaintiff to drop his or her claims against the defendant in the main action. Spellens v. Spellens (supra) or to force the plaintiff to discharge a debtors obligation to the defendant. Templeton Feed and Grain v. Palstan Packing Co. 69 Cal. 2d 461, 72 Cal. Rptr. 399, 446 P.2d 152 (1968) or to coerce plaintiff to pay a third party's obligation to defendant. Templeton Feed and Grain (supra) The ulterior motive or purpose may be inferred from the improper willful act but such an act may not be inferred from an ulterior motive. Tellefsen v. Key System Transit Lines 198 Cal. App. 2d 611, 17 Cal. Rptr. 919 (1st Dist. 1967)

The mere filing of a complaint or maintenance of a lawsuit even for an improper purpose does not constitute an abuse of process. Oren Royal Oaks Venture v. Greenberg, Bernhard Weiss & Karma Inc. 42 Cal. 3d 1151, 232 Cal. Rptr. 567, 728 P.2d 1202 (1986) Similarly even if the motive is improper taking a frivolous appeal does not constitute an abuse of process provided that the process was used for a proper purpose. Coleman v. Gulf Ins. Group 41 Cal. 3d 182, 226 Cal. Rptr. 50, 718 P.2d 71, 62 A.L.R. 4th 1083 (1986) However knowingly filing actions in an improper sense with intent to impair rights to defend suits and in effect to coerce inequitable settlements and default judgments by making it inconvenient for defendants to defend suits states a cause of action in abuse of process. Barquis v. Merchants Collection Ass'n 7 Cal. 3d 94, 101 Cal. Rptr. 745, 496 P.2d 814 (1972)

C. Importance of The Question Presented

The question imposed centers in the courts finding in DeShaney v. Winnebago County Dept. of Social Servs 489 U.S. 189 S.Ct. 998 (1989) a question of great importance as the findings made here will undoubtedly direct for years to come

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the course of conduct law enforcement officials undertake in the operations of Judicial / Prison systems in all 50 states the District of Columbia territories and hundreds of City and County jails. Further a more definitive parameter as to what protections prisoners may expect shall be set thereby ending excessive litigation on the subject.

Here the lower courts have seriously misinterpreted DeShaney v DeShaney the Court essentially held the affirmative duty to protect arises not from the States knowledge of the individuals predicament or from its expressions of intent to help him but from the limitation which it had imposed on his freedom to act on his own behalf a point it has repeatedly expressed ex Lewis v Casey 518 US 343, 351-53 116 S.Ct 2174 (1996); Graham v Connor 490 US 386, 395 109 S.Ct 1065 (1989); Wilson v Serfer 501 US 294, 298 111 S.Ct 2321 (1991); Hudson v McMillan 503 US 1, 6-7 112 S.Ct 995 (1992); Grierson v Pardus 551 US 89, 94 124 S.Ct 2197 (2007) (per curiam); and Pennsylvania Dept of Corrections v Yeskey 524 US 206, 118 S.Ct 1952 (1996) (ADA)

With the current petition [habeas] asserted has been the fact that on the basis of my litigation efforts before the E.D California Court system to wit my initiation of the action Smith v Allison 1:10-cv-01814-DAD-SJT (PC) I have become the subject of retaliation in the form of unlawful criminal proceedings before the Unified Superior Courts of California a point I have repeatedly broached in various actions before the lower courts see generally Smith v Chanele 1:16-cv-01346-DAD-BAM (PC) 9th Cir Case No. 21-15827; Smith v Weiss 1:18-cv-00852-DAD-BAM (PC) 9th Cir Case No. 21-15516; Smith v Parrot 1:19-cv-00286-SJT-BSA (PC); Smith v Diaz 1:20-cv-00349-SJT-ABK (PC) and Smith v Secretary 1:23-cv-00526-ADA-SAB (PC) 9th Cir Case No. 23-70107

The conduct complained of above violates 18 USC § 1505, 18 USC § 1509, 18 USC § 1512 (a)(2) (b)(1)(2) (d)(2) and 18 USC § 1513 (a)(1)(B) (b)(2) as state officials actions are measure(s) of intimidation aimed at suppressing my voice before the Federal Court system. Moreover in the face of my continued litigation efforts state officials have doubled down on their offensive exploits against me including by having me housed at CSP-Corcoran during the adjudication of the information(s) in question thus in order to subject me to illegal uses of force theft / destruction of personal property and further prohibited conduct which has been recently displayed before the lower court here and its sister petition i.e. Smith v Clark 1:21-cv-01554-SJT-906 hence my moving for sanctions in the sister petition (ECF no. 30) see also 9th Cir Case No. 23-15877

"

For a general discussion on this matter please see motions for protective orders filed in Smith v Chanele 1:16-cv-01346 (ECF nos. 39/41); Smith v Weiss 1:18-cv-00852 (ECF nos. 23/49) Additionally please see motions for injunctive relief filed in Smith v Diaz 1:20-cv-00349 (ECF no. 3) and Smith v Secretary 1:23-cv-00526-ADA-SAB (PC) (ECF nos. 3/17)

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1 Rather if the measures consisted of my immediate removal from the Department's custody see Cal P.C. §
2 2911. injunctive rel. of Winter v. Natural Res. Def. Council Inc., 535 US 7 (2008) see also 18 USC § 1514 or even in the interim
3 compelling Department [COCA] officials to provide me with adequate medical care to include a prescribed diet thus in
4 order for me to present valid pleadings before the Courts Twyford v. Shoop 11 F.4th 518, 2021 Fed App 196 P (6th Cir. 2021)
5 cert granted 142 S.Ct. 857, 211 L.Ed.2d 533 (2022) reid remanded 142 S.Ct. 2034, 213 L.Ed.2d 318, 29 Fla. L. Weekly
6 Fed S. 390 (2022) (District Court had authority under All Writs Act to issue order to transport death-row inmate to medical
7 center for neurological imaging in support of his habeas petition in aid of its jurisdiction over inmates petition) the
8 District Court had an affirmative duty to act it has consistently failed to do so inaction that the 9th Circuit has repeatedly
9 supported thereby firmly establishing the US and its judicial officers liability for the harm that I have suffered from while in
10 the hands of State officials see § 1986 thus if not being outright symbiotic evidence that Federal officials are actively
11 conspiring with State actors to deny and violate Federally afforded rights Cabrera v. Martin 973 F.2d 735, 741 (9th Cir. 1992)
12 ; Kali v. Bowes 854 F.2d 329, 331 (9th Cir. 1988) see also Kl Klux Klan v. East Baton Rouge Parish Sch Bd., 135 F.2d 895, 899-900
13 (5th Cir. 1984) ("Ordinarily when Federal officials conspire or act jointly with State officials to deny constitutional rights,"
14 the State officials provide the requisite State action to make the entire conspiracy actionable under section.")

SUMMATION

15
16 The term "All Writs" includes the common law writs of certiorari, injunction, prohibition and mandamus
17 as well as all other writs that aid in a Courts jurisdiction. The writ most commonly used is the writ of mandamus by
18 which a Superior Court may direct an inferior Court to proceed in accordance with the former's instructions. However the
19 writ of mandamus is a limited remedy that may not be used to undermine the final judgment rule nor when there is a
20 statutory method of appeal or an appealable decision will. United States 389 US 90, 106-107 88 S.Ct. 269, 19 L.Ed.2d 305
21 (1967) (writ should not be used to thwart policy against piecemeal appeals); Roche v. Evaporated Milk Ass'n 319 US
22 21, 24, 28 63 S.Ct. 938, 67 L.Ed. 1185 (1943) (no mandamus review when appellate review available) A party may not
23 use a writ of mandamus to correct ordinary error by the District Court, rather a party seeking mandamus relief must
24 show the lack of an adequate alternative means of relief as well as a clear and indisputable right to relief Mallard
25 United States District Court for S. Dist of Iowa 490 US 296, 309 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989) (To ensure that
26 mandamus remains an extraordinary remedy petitioners must show that they lack adequate alternative means to obtain
27 the relief they seek and carry the burden of showing that their right to issuance of the writ is clear and indisputable." C
28 citations, internal quotation marks and brackets omitted)) In addition to acting as a check on judicial behavior mandamus

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may be used to promote the administration of justice within the Circuit. La Bay v. Homes Leather Co., 352 US 249, 259-260 11 S.Ct 309 1 L.Ed 2d 240 (1954) ("we believe that supervisory control of the District Courts by the Court of Appeals is necessary to proper judicial administration in the Federal System. The all writs act confers on the Courts of Appeals the discretionary power to issue writs of mandamus in the exceptional circumstances existing here.")

To obtain a writ of mandate the petitioner must generally show a duty on the part of the Respondent, the Petitioner's beneficial interest in compelling the performance of that duty and the inadequacy of other legal remedies

Appropriate application of writ of Mandate include:

- writ to compel action by Court
- writ to compel action by Public Agency
- writ to compel action by Public official; and
- writ to compel exercise of Discretion

Accordingly the following relief is warranted

1. The convictions, sentences and fines challenged here and the sister petition Smith v. Clark 1:21-cv-01537-JWT-EPB to include those obtained against me before the Kings County Superior Court in 2022 i.e., People v. Smith Case nos 21CM-3184 and 21CM-4366 as well as the Departments [COCE] findings of guilt relative to the disciplinary infraction charges which underlined each and every one of the convictions in question be findings which are vacated.
2. With the convictions cited above at 15 vacated an evidentiary hearing held in order to assess the damages incurred as a result of each malicious action
3. Based on an egregious violation of discovery principles I be awarded damages as mandated by law in the amount of \$348,750 dollars this in addition to the Real Party in Interest being compelled to provide me with relevant discovery as previously moved for in the sister petition Clark (ECF nos. 26 and 38) see also 9th Cir. case no. 23-15877 (ECF no. 7)
4. The Respondent being compelled to provide me with an copy of the writ of mandamus filed in the action Smith v. Secretary 1:23-cv-00526 9th Cir. case no. 23-70107 (ECF no. 1)
5. If retained in the Departments custody an decree commanding officials to release me from the confines of administrative segregation immediately whereupon I am then housed in a general population facility commensurate with appropriately made classifications

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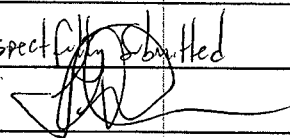
6. The Departments [CCHS] medical staff being compelled to provide me with adequate medical care to include: a) a diet commensurate with those who suffer from gastroesophageal reflux disease and b.) the enactment of an comprehensive plan aimed at restoring / maintaining me at an healthy body mass index an plan which includes the ability for me to utilize outside resources in order to retain meals with civility adequate.

7. Further proceedings below do include those for the related suit of Smith v Secretary 1:23-cv-00526-ADA-SAB (PC) the hearings held before a neutral venue to wit the District of Columbia Court, and

B. Any other relief that the Court sees fit

Date: October 5th, 2023

Respectfully Submitted



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Declaration of Lawrence C Smith

The undersigned declares the following

1. On July 23rd, 2023 I was accused of removing from the confines of a razor a razor blade and based on this false allegation of misconduct I received an disciplinary infraction charge of violating 15CCRS 3006(c)(3) "Att Manufacture of a Deadly Weapon" an abuse of process which is prohibited. see exhibit 1

2. A copy of the Physician order directing officials to provide me with a diet commensurate with those who suffer from gastroesophageal reflux disease an order made by Physicians at Adventist Health Medical Center is attached as exhibit 2

3. A copy of the orders of Dr Lam an gastrointestinal specialist who has directed officials to provide me with nutritional supplements is attached as exhibit 3

Pursuant to 28 USC § 1346 I declare under penalty of perjury that the foregoing is true and correct

Date: October 5th, 2023

