24A137

24-6311 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES



SHARIFF BUILER and JEREMEY MELVIN
Petitioners

V.

JOHN WEIZEL, Secretary of Department; SHIRLY MOORE SMEAL, Executive Deputy of Department of Corrections; MELISSA ROBERTS, Former DOC Policy Coordinator, DIANE KASHMERE, Current DOC POLICY Coordinator; TABB BICKELL, Executive Deputy Secretary for Institutional Operations; MICHAEL WENEROWICZ, Regional Deputy Secretary; DORINIA VARNER, Chief Grievance Coordinator; KERI MOORE, Assistant Chief Grievance Coordinator; KEVIN KAUFFMAN, Former Superintendent at SCI-Huntingdon; LONNIE OLIVER, Former Deputy Superintendent For Centralized Services at SCI-Huntingdon; JOHN THOMAS, Former Deputy Superintendent For Centralized Services at SCI Hintingdon; BYRON BRUMBAUGH, Former Deputy Superintendent For Facilities Management at SCI-Huntingdon; WILLIAM SCOTT WALTERS, Former Deputy Superintendent at SCI-Huntingdon; BRIAN HARRIS, Caption/Shift Commander at SCI-Huntingdon; MANDY SIPPLE, Former Major of Unit Management at SCI-Huntingdon; ANTHONY EBERLING, Security Lieutenant at SCI-Huntingdon; CONSTANCE GREEN, Former Superintendent's Assistant/Grievance Coordinator at SCI-Huntingdon; ROBERT BILGER, Former Safety Manager at SCI-Huntingdon; PAULA PRICE, Health Care Administrator at SCI-Huntingdon; MICHELL HARKER, Nurse Supervisor at SCI-Huntingdon; ANDREA WAKEFIELD, Records Supervisor at SCI-Huntingdon; JOSHUA REED, Correctional Officer at SCI-Huntingdon; GEORGE RALSTON, Former Unit Manager at SCI-Huntingdon; ALLAN STRATTON, Unit Counselor at SCI-Huntingdon; JOHN BARR, Correctional Officer at SCI-Huntingdon; JOSHUA REED, Correctional Officer at SCI-Huntingdon; TREVOR EMIGH, Correctional Officer at SCI-Huntingdon, Respondents In their Individual and in their official capacities.

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ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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SHARIFF BUILER &
JEREMEY MELVIN
1100 Pike Street
Huntindon, PA 16654-1112

## QUESTIONS PRESENTED

Whether A Judicial Bias has Occurred By Way of Court Appeals Panel Recieving Favors and/or Bribes From Parties With Cases Before Said Judges of Which Departs From Accepted and Usual Courses of Judicial Proceedings Violating Substantive Due Process Calling For U.S. Supreme Court Supervisory Power?

Whether The Court of Appeals Panel Decision Conflicts With Precedential Decisions Within Their Circuit, Our Sister Circuits and The United States Supreme Court Resulting In An Abuse of Discretion?

Whether The Court of Appeals Panel Decision Failed To Adhere To Applying The Applicable Law To Pro Se Litigants Requirement Irrespective of Whether They've Mentioned It By Name?

Whether The Court of Appeals Panel Decision Conflicts With Stipulations Defining the Continuing Violation Doctrine's Last Omission In The Face of A Duty to Act And The Applicable Time Between Post-Injury And Pre-Grievance Being Tolled By Statutory Prohibition And Equitable Tolling?

Whether The Court of Appeals Panel Decision Conflicts With The Facts Documented on Record Permitting A Standing Claim To Proceed and Establishments For Standing Acceptance via U.S. Supreme Court Precedent Cases?

Whether The Court of Appeals Panel Decision Ignored and Conflicts With Precedential Decisions Establishing What Constitutes An Eight Amendment Violation And What Establishes Sufficient Evidence To Support Said Violations?

Whether The Court of Appeals Panel Decision Conflicts With Precedential Decisions Establishing Sufficient Grounds To Sustain A Retaliation Claim Showing Adverse Action And Causation?

Whether The Court of Appeals Panel Decision Conflicts With Precedential Decisions Establishing A Justice-Required Amendment Given To Imprisoned Pro Se Litigants Under Extraordinary Circumstances?

Whether The Court of Appeals Panel Decision Conflicts With Precedential Decisions Establishing Sufficient Grounds For Seeking A Breach of Contract Claim?

Whether The Court of Appeals Panel Decision Overlooks Precedential Decisions Establishing Penalties For Failure To Comply With Discovery Requested And The Court's Discovery Orders?

Whether This Court Should Grant Certiorari For Reasons of The Application of Applicable Law Concerning Pro Se Litigants Warranting Rights of Equal Protection of All Laws?

Whether This Court Should Grant Certiorari To Apply The Applicable Law of A Stare Decisis Standard To Pro Se Litigants Concerning All Laws Presented In Conflict With The COA Panel Decisions?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page

## RELATED CASES

Shariff Butler, et al. v. Kevin Kauffman, et al., No. 4:19-CV-02171 U.S. District Court for the Middle District of Pennsylvania, Judgment entered July 27, 2022, March 22, 2023 & May 5, 2023

Shariff Butler, et al. v. John E. Wetzel, et al., No. 23-1761, U.S. Court of Appeals for the Third Circuit. Judgment Entered March 8, 2024

## TABLE OF CONTENTS



## INDEX APPENDICES

TABLE OF AUTHORITY

**Federal Cases:** **Page**

**State Cases:**



**Statutes:**

Others :

## OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported at Butler v. Wetzel, 2024 U.S. App. LEXIS 5640 (3d Cir. 2024)

The opinion of the United States district court appears at Appendix B-D to the petition and is reported at Butler v. Kauffman, 2022 U.S. Dist. LEXIS 133743 (M.D.Pa. July 27, 2022); 2023 U.S. Dist. LEXIS 48970 (M.D.Pa.Mar.22, 2023); 2023 U.S.Dist. LEXIS 79423 (M.D.Pa.May.5, 2023)

## JURISDICTION

The date on which the United States Court of Appeals decided Petitioners case was March 8, 2024

A timely petition for rehearing was denied by the United States Court of Appeals on May 14, 2024 and a copy of the order denying rehearing appears at Appendix E.

An extension of time to file the petition for a writ of certiorari was granted to and including September 26, 2024 on August 7, 2024 in Application No. 24A137

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

## CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The First Amendment of the United States Constitution (U.S.C.A.1), as incorporated in the Fourteenth Amendment, Prohibits the states and their agents from "abridging freedom of speech,...and to petition the Government for a redress of grievances."

The Eighth Amendment of the United States Constitution (U.S.C.A.8), as incorporated in the Fourteenth Amendment, prohibits the state and their agents from "inflicting cruel and unusual punishment."

The Fourteenth Amendment of the United States Constitution (U.S.C.A.14) prohibits the states and their agents from "depriving any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Federal Rules of Civil Procedure ("Fed.R.Civ.P." hereinafter) Rule 16(f) Sanctions, subdivision "(1) On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney: (C) fails to obey a scheduling or other pretrial order."

Fed.R.Civ.P.33 "Interrogatories to Parties," subdivision (b) Answers and objections (5) Signature., states; "The person who makes the answers must sign them, and the attorney who objects must sign any objections."

Fed.R.Civ.P.37(a)(4), states; "For purposes of this subdivision (a), an evasive or incomplete discovery, answer, or response must be treated as failure to disclose, answer, or respond."

Fed.R.Civ.P., Rule 37(c)(1)(C), states; "Failure to Disclose to Supplement an Earlier Response, or to admit. (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi)." (37(b)(2)(A) at (vi), asserts; "rendering a default judgment against the disobedient party.")

Fed.R.Civ.P., Rule 26(e)(1)(A), states; "A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect."

Fed.R.Civ.P., Rule 30(c)(2), states; "An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualification, to the manner of taking the depositioin, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection."

Fed.R.Civ.P., Rule 30(d)(2), states; "The Court may impose an appropriate sanction—on a person who impedes, delays, or frustrates the fair examination of the deponent." (Underline emphasis added).

Fed.R.Civ.P., Rule 56(c)(1)(A), states; "Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents electronically stores information, affidavits or declarations, stipulations (including those made for the purpose of the motion only), admissions, interrogatory answers or other materials." See Fed.R.Civ.P.56(c)(4) Declarations."

Pennsylvania Consolidated Statutes, Title 18. Crimes and Offense defines §4104 **Forgery.** (a) Offense defined.—A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor: (1) alters any writing of another without his authority, (2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act."

## STATEMENT OF THE CASE

**Factual History:**

Appellants Shariff Butler and Jeremey Melvin facts are as follows to identify each Appellaees' involvement within the prison conditions sought by said Appellants. Those facts are:

**Single Cell Claim:**

On August 6, 2017 Appellant Butler requested a single cell from his Counselor Appellee Allan Stratton based on DOC policy DC-ADM 11.2.1., Section ("Sec." hereinafter) 5(C)(1)(f) that permitted a criteria based status request. Butler was denied without reason. Butler wrote to Appellees George Ralston, Kevin Kauffman, William Scott Walters, John C. Thomas and Lonnie Oliver to inquire why he was denied. See District Court Docket ("Dist.Ct.Doc." hereinafter) #1, paragraph ("prgh.") 35-57.

Appellant Butler filed grievance No.698749 completing all administrative exhaustions raising claims of being double-celled in overcrowded, dilapidated and unsanitary prison environments at SCI-Huntingdon. Grievance responders were Appellees Constance Green, K. Kauffman and Dorina Varner. See Doc.10, at Exhibit ("Ex.") II. Appellants original complaint naming the above Appellees as Defendants followed. See Dist.Ct.Doc.1, prgh.244.

On January 26, 2018, Appellant Melvin requested a single cell based on DOC policy DC-ADM 11.2.1. Sec.5(C)(1)(f) from his counselor Appellee Stratton. Appellee Ralston, however, responded to Melvin's request denying him said single cell by said repeal of DC-ADM 11.2.1. Melvin wrote Appellee Ralston and Kauffman for proof of the reasons given and was given responses all from Ralston denying Melvin the for same reason. See Dist.Ct.Doc.1, prgh.64-69. & Dist.Doc.10, at Ex.P-Q. Appellant Melvin filed grievance no.721950 completing all adminstrative exhaustions raising claims of being forced to double-cell in an overcrowded, dilapidated and unsanitary state prison envoronment at SCI-Huntingdon. Dist.Doc.1, prgh.70. Grievance responders were Appellees Byron Brumbaugh, K. Kauffman, D. Varner. Appellant Melvin sought permanent single

cell status in his claim. See Dist.Ct.Doc.1, prgh.245, Appellants original complaint naming the above Appellees as Defendants followed. See Dist.Ct.Doc.1, prgh.245.

**Ventilation Claims:**

On November 18, 2017 Appellant Butler was housed inside his cell while awaiting the announcement of afternoon "half-time" break for yard recreation for inmates to attend yard, yet when the said announcement was given, no prison official opened the main security bar that must be unlocked and pulled manually as it secures and locks the entire tier that Butler was housed on. Butler called out onto the tier to alert any officer working the unit that the tier was not open. No officer responded nor opened the tier causing Butler to miss yard. Butler wrote to Appellees William Scott Walters, Bruce Ewell and the Security Office (no particular name) concerning the antiquated design of the cell, including no ventilation system (and other deplorable conditions) and how having inadequate staff can be a dangerous situation if unable to get out of cell in case of an emergency and to request corrections to all conditions. See Dist.Ct.Doc.1, prgh.78-81 & Dist.Doc.10, at Ex.R-T. No corrections were made so Butler filed grievance no.710611 completing all administrative exhaustions raising claims of inadequate ventilation amongst other fire safety hazard claims. Grievance responders were Appellees C. Green, K. Kauffman and D. Varner. See Dist.Ct.Doc.1, prgh.82 & Dist.Doc.10, at Ex.KK. Butler argued an additional inadequate ventilation system claim based on a kitchen fire incident occurring on February 28, 2019 in which Butler was forced to be locked in his cell during said fire presented in grievance no.790024. Dist.Ct.Doc.1, prgh.83-88 & Dist.Doc.10, at Ex.MM. Greivance responders were Appellee B. Brumbaugh, K. Kauffman and Keri Moore. Appellants original complaint naming the above Appellees as Defendants followed. See Dist.Doc.1, prgh.260.

On February 18, 2018 Appellant Melvin was moved from tier 2, (cell 2020) to tier 3 (cell 3013) to which the higher level exposed Melvin to an excessive amount of cigarette smoke and other repugnant smells. See Dist.Ct.Doc.1, prgh 100. Melvin wrote to Appellee Paula Price and Kauffman. See Dist.Ct.Doc.1, prgh.101-102 & 104-105; Dist.Doc.10, at Ex.W-X. Melvin initially received no

response and filed grievance no.725870 completing all administrative exhaustions raising inadequate ventilation (among other conditions) claims. Grievance responders were Mandy Sipple, K. Kauffman, K. Moore and D. Varner. See Dist.Ct.Doc.1, prgh.103 & Dist.Doc.10, at Ex.OO. After filing the initial grievance Melvin received responses from Appellees Michelle Harker and G. Ralston. Appelllants' original complaint naming the above Appellees as Defendants followed. See Dist.Ct.Doc.1, prgh.261.

**Fire Safety Hazard Claims:**

As expressed above, Appellant Butler's fire safety hazard claims are based on the events, supra, taking place on November 18, 2017 (failure to open cell for yard) & February 28, 2019 (kitchen fire incident). Butler filed grievance no.710611 & 790024 raising in both grievance the fire safety hazards of failure to follow fire drill/evacuation protocol, no sounding of a fire alarm, no master locking system for the individual cells, no operational ventilation system, no smoke exhaust fans, no proper fire equipment and understaffing. See Dist.Ct.Doc.1, prgh.82 & 87, Dist.Doc.10, at Ex.KK & MM (Grievance responders were Appellees B.Brumbaugh, C. Green, K. Kauffman). Request slip forms were addressed to Appellees W.S. Walters and B. Ewell concerning these claims See Dist.Ct.Doc.1, prgh.78-81; Dist.Doc.10, at Ex.R-T. Appellants' original complaint naming the above Appellees as Defendants followed. See Dist.Ct.Doc.1, prgh.255.

On March 5, 2018, Appellant Melvin had returned to his unit after attending chow when he looked to signal a tier officer to get into his cell to use the bathroom. Due to seeing no officers on any tier (there being 4 tiers on his unit) and waiting for an excessive amount of time, Melvin was forced to defecate on himself while standing in front of his cell. See Dist.Ct.Doc.1, prgh.89-91. Melvin wrote to Appellee Kauffman about the matter to which Appellee B. Brumbaugh responded stating; "staff levels are appropriate." See Dist.Doc.1, prgh.92; Dist.Doc.10, at Ex.U. Melvin filed grievance no.728527 raising understaffing, no master locking system being fire safety hazards and the injury of being forced to self-defecate. Grievance responders were Appellees C. Green, K. Kauffman and D. Varner. See Dist.Ct.Doc.1, prgh.93 & Dist.Doc.10, at Ex.LL. Melvin presented additional claims of fire safety

hazards due to a kitchen fire on February 28, 2019 raising, again, no master locking system for the cells, failure to follow evacuation procedures, no fire alarm sounding, non-functioning fire exit doors and citing all fire hazards raised in his previous grievance no.728527 all within grievance no.789935. See Dist.Ct.Doc.1, prgh.95-96 & Dist.Doc.10, at Ex.NN. Grievance responders were Appellees B. Brumbaugh and K. Kauffman. Appellants' original complaint naming the above Appellees as Defendants followed. See Dist.Ct.Doc.1, prgh.256.

Overcrowding and Understaffing Claims:

Appellant Butler's overcrowding claim is based on the facts presented within his "single cell claim" presented, supra, along with him presenting the additional facts of there being constant shortages of T-shirts, boxers, socks, washcloths, towels and bedding and Butler's irritation with being double-celled with other prisoners in cell space below 50 square feet was causing him mental degeneration and conflict with his cellmate. Butler expressed other causes due to overcrowding including meals being served late causing yard and other line movements to be announced extremely late. See Dist.Ct.Doc.1, prgh.107-109. Butler filed grievance no.698749 raising overcrowding in dilapidated and unsanitary prison environments. See Dist.Ct.Doc.10, at Ex.II. Appellants' orignial complaint naming Appellees John E. Wetzel, K. Kauffman, C. Green and W.S. Walters as Defendants followed. See Dist.Ct.Doc.1, prgh.47-50 & 265.

Appellant Butler's understaffing claim is based on the same facts raised on Nov. 18, 2017 & Feb. 28, 2019 within his fire safety hazard and ventilation claims described, supra, (See Dist.Ct.Doc.1, prgh.72-82, 87) along with asserting officials tending the tiers having short fuses and intolerance by being overtaxed with the duty of one official manning multiple tiers at once. See Dist.Ct.Doc.1, prgh.111-114. Butler filed grievances 710611 & 790024 raising understaffing in an overcrowded prison environment. See Dist.Ct.Doc.1, prgh.87; Dist.Ct.Doc.10, at Ex.KK & MM. Appellants' original complaint naming Appellees J. Wetzel, K. Kauffman, W.S. Walters, B. Brumbaugh, C. Green, and B. Ewell as Defendants followed. See Dist.Ct.Doc.1, prgh.72-82, 87 & 265.

Appellant Melvin's overcrowding claim is based on the same facts presented

within his grievance no.721950 raising his double-cell violation claim described, supra, (see Dist.Ct.Doc.1, prgh.70, Dist.Doc.10, at Exhibit-JJ) along with Melvin presenting him having a bad experience of a physical altercation due to one of his cell mates openly masterbating, becoming mentally unstable being housed with another prisoner in such close quarters. He asserted the fact that SCI-Huntingon is double-celling two prisoners in cells that were only built to house one substantiates said overcrowding claims. The frequent occurrance of undergarments being out of stock is a constant. Yard time and other line movements are delayed due to the time it takes to run the three daily meal lines on account of there being too many prisoners to feed. See Dist.Ct.Doc.1, prgh.115-119. Grievance responders were Appellees B. Brumbaugh, K. Kauffman and D. Varner. Dist.Doc.10, at Ex.JJ. Appellants original complaint naming these above Appellees as Defendants followed. See Appellants' Summary Judgment Response Brief at Dist.Ct.Doc.124, at pg. 17-18. Also see Dist.Ct.Doc.1, prgh.226.

Appellant Melvin's understaffing claim is based on the facts, supra, raised during the March 5, 2018 incident of him being stranded on his tier trying to enter his cell for an excessive amount of time causing him to defecate on himself. Melvin asserted facts of there never being no more than two officers tending to all four tiers on a daily basis on his unit of CA-Unit at SCI-Huntingdon. See Dist.Ct.Doc.1, prgh.89-93 & 121-123. Melvin filed a grievance no.728527 raising understaffing as a contributing factor to other additional fire safety hazards. See Dist.Ct.Doc.10, at Ex.LL. Grievance responders were Appellees B. Brumbaugh, K. Kauffman and D. Varner. See, Id. Appellants original complaint naming the above Appellees as Defendants followed. Dist.Ct.Doc.1, prgh.92; Dist.Doc.10, at Ex.U.

Yard Recreation Shortage Claim:

On April 7, 2019 Appellant Butler was prevented from attending Yard recreation due to being given an unreasonably limited amount of time to exit the unit that he was housed on. Butler also contested the extremely late time that the calling of yard is given resulting in receiving only an hour and fifteen minutes of yard recreation on most day. See Dist.Ct.Doc.1, prgh.124-126 & 130-133. This physical act in prison official Appellee Brian Harris calling yard extremely late limiting the amount of time out the cell is a regular occurrence in which that occurrence happened on the above date. This was the last act or omission in the face of a duty to act in accordance with the allotted time posted in SCI-Huntingdon handbook of receiving two (2) hours of yard three times a day and it was this act that Butler wrote to Appellee Byron Brumbaugh addressing this said issue and calling for a correction to the matter. See Dist.Ct.Doc.1, prgh.127-128. Appellant Butler never received a response (See Dist.Ct.Doc.10, at Ex.Z) and filed grievance no.796674

raising the limited amount of yard time and limited amount of time to exit the unit to attend yard. See Dist.Ct.Doc.1, pgph.129; Dist.Doc.10, at Ex.PP. The limited amount of time to exist the unit is attributed to Appellee John Barr. Grievance responders were Appellees G. Ralston, K. Kauffman and D. Varner. Appellants original complaint naming the above Appellees as Defendants followed Dist.Ct.Doc.1, pgph.270.

Vermin Endemic Claim:

Appellant Melvin's expressed vermin claims are conditions that he asserted exacerbate the condition of there being no operable ventilation system to which his vermin assertion in conjunction to his lack of ventilation claim all stem from the incidental actions in Melvin suffering smoke inhalation after being moved to the third tier occurring on CA-Unit at SCI-Huntingdon on February 18, 2018 presented in his original complaint. See Dist.Ct.Doc.1, pgph.100, 101, 103, 106 & 135-141. Melvin, in conjunction with his ventilation issues, also wrote to Appellees Paula Price and K. Kauffman about the presence of various vermin and insects which is an exacerbation from lack of ventilation system. See Dist.Ct.Doc.1, pgph.101; Dist.Ct.D@oc.10, at Ex.W-X. Melvin filed grievance no.725870 raising the lack of ventilation and inoperable vents in each cell now serve as a dwelling place and habitation for various types of bugs, insects and rats as well as lack of ventilation system allows a bird habitation living within SCI-Huntingdon's CA-Unit to drop bird feces all over the unit spawning airborne diseases such as avion flu and other diseases. See grievance at Dist.Ct.Doc.10, at Ex.OO. While awaiting a response to his grievance Appellees Robert Bilger and Mandy Sipple spoke with Melvin directly at his cell verbally conceding to Melvin that the vermin and ventilation issues existed. Grievance responders were Appellees Mandy Sipple, K. Kauffman, D. Varner and Keri Moore. Appellants original complaint naming above Appellees as Defendants followed. Dist.Ct.Doc.1, pgph.274.

Retaliatory Forgery Claim:

On April 3, 2019 Appellant Butler received a commissary purchase in which he noticed additional commissary item numbers added to his receipt that he had not filled in nor purchased on his bubble sheet commissary order form. See Dist.Ct.Doc.1, pgph.142-143. Butler filed grievance no.795556 that same day raising claims of correctional staff members deliberately placing extra numbers on Butler's commissary order form (bubble sheet) and requesting review and holding of CCTV camera footage. See Dist.Ct.Doc.1, pgph.144; Dist.Ct.Doc.10, at Ex.QQ. Said grievance was denied and while awaiting a response to Butler filing an appeal to the denial, Butler was suddenly called to report to the front of the unit in the late AM hours on May 23, 2019 where Appellee Andrea

Wakefield awaited with a grievance withdrawal form in her possession for the purpose of showing Butler what was supposed to be the bubble sheet order form in question to convince him that it has not been tampered with and to also convince Butler, by the disclosure of A bubble sheet, to withdraw his grievance. Butler stated that he would not withdraw his grievance but may consider it if he was given a copy of the bubble sheet that Wakefield possessed. Wakefeild agreed to send Butler a copy of the bubble sheet. Butler awaited this copy and did not receive said copy on May 23, 2019 nor May 24, 2019 and Butler wrote Wakiefield to demand that his appeal remain active as he did not receive a copy of the bubble sheet form. Wakefeild responded stating that she'd called Butler's counselor and he told her that he, Appellee Stratton, had given Butler a copy that day which was the date of her response on May 28, 2019 in which Wakefield states in response; "so there was no reason to reinstate the appeal and nullify the withdraw." See Dist.Ct.Doc.1, pgh.199; Dist.Ct.Doc.10, at Ex.EE. Butler had not received any documents from his counselor and wrote to him [Appellee Stratton] on May 28, 2019 informing him that Butler's appeal was not resolved. On May 29, 2019 a copy of an alleged bubble sheet was placed in Butler's cell. Butler was called to Counselor Stratton's office in which Stratton revealed a Grievance Withdrawal Form completely filled out in Butler's name, including signature, that he assured was done by Wakefield and that Stratton wanted to assure Butler that he [Stratton] had not signed off on the document where the counselor's signature goes and Butler observed that Stratton had not signed it and the form was to be cancelled.

However, on May 31, 2019, what appeared to be the same grievance withdrawal form shown to Butler the day before was delivered to Butler's cell completely filled out by either of the two Appellees cited herein with now both Wakefield and Stratton's signature placed on it. For all aforementioned facts See Dist.Ct.Doc.1, pgh.142-154; Dist.Ct.Doc.10, at Ex.FF. Butler was forced to file an additional grievance raising the claim of forgery of Butler's signature and identity and demanding that the previous grievance no.795556 be reinstated. The additional grievance was given grievance no.803973. See Dist.Ct.Doc.1, pgh.155-156 & 158; Dist.Ct.Doc.10, Ex.RR. Also see Dist.Ct.Doc.1, pgh.230-235. Appellants' original complaint naming the above Appellees as Defendants followed. See Dist.Ct.Doc.1, pgh.278.

**Retaliatory Cell Search Claim:**

On May 16, 2019 Appellant Butler was washing clothes at his sink when Appellees Reed and Emigh approached his cell door. These two officers [Reed & Emigh] peered into Butler's cell and after clearly observing Butler being the only occupant in the cell while standing at his door for several seconds both officers walked away from his cell. Moments later, both said officers

reappeared at Butler's cell and told Butler to step out of the cell for a random cell search to which Butler complied. Upon exiting the cell, neither Officer asked Butler to sign a record showing that Butler gave his consent to be present in accordance with DOC policy DC-ADM 203, Section 1(B)(2) and (C)(4)(a). While in Butler's cell, Appellee Reed began going through Butler's property with total disregard for the handling of his legal papers and material that was his own and other prisoners legal documents that he was assisting as Butler provided legal aide to other prisoners. Certain pages of legal material went missing to which Reed and Emigh exited Butler's cell with a bag filled with miscellaneous items including papers to which said officers clearly mixed Butler's (and other prisoner's legal material as to include Butler's cellmate Russell Weathers QB3565) legal papers and material in with what they discarded as legal documents were the primary focus of what was taken. They rummaged through Butler's cell mate's (Weathers) property in his absence and Russell Weathers was at work in the kitchen during the search of the cell he and Butler occupied. Butler asserted that both Appellees Reed and Emigh were aware that Butler had been known as an jail-house lawyer as the intentional search of his cell was retaliation for Butler's previous grievance filings including the claims brought in Appellants original complaint. See **Dist.Ct.Doc.1, pgh.160-168.** See **Declaration of Russell Weathers QB3565** (Butler's cellmate at the time of the incident) at **Dist.Ct.Doc.141, at Ex.B.** Butler filed grievance no.806196 raising violations of cell search policy protocol under DC-ADM 203, Section 1(B)(2) and (C)(4)(a), the reviewing and preserving of camera footage of the incident and the intent of said Appellees actions. See **Dist.Ct.Doc.1, pgh.236-241.** Appellants' original complaint naming the above Appellees as Defendants followed. **Dist.Ct.Doc. 1, pgh.283.**

**Breach of Contract Claim:**

Appellants raised a breach of contract/duty claim based on the binding language asserted within a composition of bylaws known as Department of Corrections Code of Ethics ("DOC COE" hereinafter) that must be read, signed, turned in to said Department and fully complied with in order to gain employment as a Department of Corrections employee. See **Appellee Bruce Ewell's interrogatory response at p.6; Question 15 at Dist.Ct.Doc.121, Ex.D.** Also see **DOC COE, Sec. B(31) & Sec.C (enforcement) at Dist.Ct.Doc.122, Ex.E: p.22-27.** Due to the fact that individuals named in Appellants' original complaint are DOC employees, Appellants presented the aforementioned claims upon all Appellees mentioned herein.

## Procedural History:

Note: Plaintiffs in the District Court matter below have refered to themselves as Appellants above hereinafter and Defendants are refered to as Appellees.

Appellants Shariff Butler and Jeremey Melvin as plaintiffs filed an initial complaint pursuant to 42 U.S.C. §1983 on December 15, 2019 concerning prison conditions at SCI-Huntingdon (Dist.Doc.1). Appellants named twenty-seven (27) Defendants (Appellees herein) in their complaint.

By order of the District Court in a September 2, 2020 initial screen pursuant to 28 U.S.C. §1915A sua sponte (Dist.Doc.18) the District Court dismissed fourteen (14) of the Defendants without prejudice and allowed the Appellants to proceed with the remaining thirteen (13) other Defendants. The Court also dismissed Appellant Butler's denial of a single bunk/"A Code" (single cell) status claim with prejudice. See Dist.Ct.Doc.18 **(This ruling is presented for Appellate review by This Court).**

Appellant Butler appealed the order on November 4, 2020 (Dist.Doc.26) and the Third Circuit Court of Appeals subsequently dismissed the appeal for lack of appellate jurisdiction (Dist.Doc.31). See **Dist.Ct.Doc.26 & 31.**

Following the reopening of the case (Dist.Doc.32 & 33), the court issued a scheduling order on June 2, 2021 establishing certain pretrial deadlines (Dic.4) which consisted of an amendment of complaint a motion for a joinder deadline of July 28, 2021, discovery deadline of August 28, 2021 dispositive deadline of September 28, 2021. See **Dist.Ct.Doc.41.**

Appellants filed an amended complaint which was (Dist.Doc.42) was opposed by the Appellees by arguing that the Appellant did not file a brief in support of the amended complaint in a timely manner (Dist.Doc.47). Appellants filed a brief in reply expressing constant COVID-19 related quarantines and restricted and reduced law library access hamstrung the Appellants' ability to submit timely brief in Support (Dist.Doc.61 & 63) The District Court issued its September 20, 2021 Order to Appellants' Amended Complaint deeming it stricken. See **Dist.Ct.Doc.64. (This ruling is presented for appellate review by This Court).**

Appellants terminated initial deposition scheduling (Dist.Doc.49) due to lack of appropriate notice (Appellants were told in less than 48 hours) (Dist.Doc.50-51) and filed motions to terminate deposition (in accordance with Fed.R.Civ.P.30(b)(1)) in order to acquire an appropriate preparation time for the depositions. See **Dist.Doc.54-55 & 59-60.** District Court denied said motion due to additional time given. **Dist.Doc.65.**

Appellee's counsel forwarded personalized letters to the District Court requesting to take a

second deposition. See **Dist.Ct.Doc.50-51.**

Appellants filed a motion to extend discovery deadline ex parte due to not receiving responses to interrogatories and P.O.D. requests sent to Appellees. See **Dist.Doc.57.** Said motion was denied as moot by the District Court's granting (Dist.Doc.52-53) rescheduling of Appellees second deposition. See **Dist.Doc.58.**

Appellees took a second deposition of Appellants on September 27, 2021 and Appellees' counsel filed an additional letter to request additional time to continue deposition of Appellant Butler (Dist.Doc.66) to which the District Court granted. See **Dist.Doc.67.**

Appellants filed a motion for extension of time to complete discovery due to not receiving any discovery requests from the Appellees to which the District Court labeled a motion to compel. See **Dist.Ct.Doc.68.** The District Court denied the motion as moot (Dist.Doc.70) due to said court granting Appellees' extension of time to extend deposition (Dist.Doc.67).

Appellants filed a motion for sanctions pursuant to Fed.R.Civ.P. 16(f)(1)(C) for Appellees not responding to Appellants discovery request. See Dist.Doc.71. Appellees filed a motion in opposition (Dist.Doc.74) and Appellants filed a reply brief (Dist.Doc.79).

Appellants also filed for an extension of time to file and Amended complaint and brief in support See **Dist.Doc.73,** followed by a motion to extend the discovery deadline due to still not receiving discovery from Appellees. See **Dist.Doc.75.**

The District Court answered all above filings in it's November 19, 2021 Order (Dist.Doc.82) in which it denied Appellants sanctions motions without prejudice (Dist.Doc.71) it denied Appellants motion to extend time to file an amended complaint and brief in support (Dist.Doc.73); and granted Appellants' motion to extend discovery (Dist.Doc.75) extending discovery to December 20, 2021. See **Dist.Ct.Doc.82. (This ruling is presented for appellate review by This Court).**

Appellants filed a motion for sanctions pursuant to Fed.R.Civ.P. Rule 30(d)(2) based on misconduct taking place by Appellees' counsel at the additional deposition taken on October 5, 2021 granted by the District Court. See Dist.Doc.77. Appellees filed a brief in opposition (Dist.Doc.80) with a reply brief by Appellants (Dist.Doc.83).

In receiving interrogatories and Production of Document ("POD" hereinafter) that were

incomplete, deficient or violated Fed.R.Civ.P. 37, Appellants filed a motion for extension of time to complete discovery (Dist.Doc.85), Appellees filed brief in opposition (Dist.Doc.91) and Appellants filed reply brief (dist.Doc.100); a motion to compel discovery pursuant to Fed.R.Civ.P. 37(a)(3)(B)(iv)(Dist.Doc.86), Appellee filed opposition brief (Dist.Doc.90) Appellant reply brief at Dist.Doc.99; a second motion for extension to complete discovery (Dist.Doc.87), ASppellees filed opposition brief (Dist.Doc.93) and Appellants filed reply brief (Dist.Doc.10).

Appellants filed a motion to compel discovery pursuant to Fed.R.Civ.P. 37(a)(4)(Dist.Doc.88) Appellees filed opposition motion (Dist.Doc.93) and Appellants filed reply brief (Dist.Doc.101)

Appellants filed a motion for sanctions pursuant to Fed.R.Civ.P.37(c)(1)(C)(Dist.Doc.89) Appellees filed opposition motion (Dist.Doc.93) and Appellants filed reply brief(Dist.Doc.101).

Appellants filed a motion for sanctions pursuant to Fed.R.Civ.P. 16(f)(1)(C)(Dist.Doc.92). Appellees filed opposition motion (Dist.Doc.98) Appellants were time barred to file a reply brief due to Appellees mailing process. Appellants filed a motion to extend time to file reply brief (#92) and reply brief all at.Dist.Doc.103 (discussed further below) that the District Court denied as moot in a February 22, 2022 Order. Dist.Doc.104 (due to Dist.Ct. Order at Dist.Doc.102). See Dist.Ct.Doc.108.

The District Court issued an omnibus Order on February 9, 2023 denying all of Appellants' discovery motions at Dist.Doc.#77, 85-89 & 92. See **Dist.Ct.Doc.102. (This ruling is presented for appellate review by This Court).**

Appellants filed for reconsideration motion based on District Court Feb. 9, 2022 Order (Dist.Doc.102).

Appellant also filed a hybrid motion of both a reconsideration motion and motion for extension of time to file brief/reply brief to Appellees opposition brief for Motion for sanctions (at Dist.Doc.92) to which the District Court docketed said motions separately at Dist.Doc.110 & 111. See **Dist.Ct.Doc.110 & 111.**

The District Court issued an omnibus Order on April 15, 2022 that reads as "Plaintiffs motion for extension of time is granted (at Dist.Doc.11) Plaintiffs proposed reply brief is deemed timely filed; Plaintiffs' motion to stay (Dist.Doc.107) and motions for reconsideration (at Dist.Doc.108 & 110) are denied." See **Dist.Ct.Doc.113. (This ruling is presented for appellate review by This**

Court).

In between Appellants motion discrepancies, Appellees filed a motion for summary judgment (Dist.Doc.94) accompanied with a statement of facts (Dist.Doc.95), Appendix (Dist.Doc.96) and brief in support (Dist.Doc.97) all on January 20, 2022. See **Dist.Ct.Doc.94-97.**

Appellants filed several motions for extension of time to file a response brief to Appellees' motion for summary judgment and their accompaniments. See Dist.Ct.Doc.105, 109 & 117. The District Court granted eached of Appellants' motion by orders at Dist.Doc.106, 112 & 118. See **Dist.Ct.Doc.106, 112 & 118.**

Appellants filed their brief in opposition to Appellees' motion for summary judgment accompanied with an appendix, opposition to statement of facts, and response brief in support to Appellees' brief in support of Appellees summary judgment. See **Dist.Ct.Doc. 119-124.** Appellants also had to file a motion to correct an error due to an incorrect docket citing of Appellants' declarations in support. (Dist.Doc.128) to which the District Court granted the correction (Dist.Doc.130).

On July 27, 2022 the District Court issue an Order & Memorandum Opinion granting summary judgment to the Defendants (Appellees ) in part and denying summary judgment in part, stating" motion is granted with respect to all claims other than the retaliatory cell search claim raised at Court 9 of the complaint." The District Court announced that its intention to consider granting summary judgment to the remaining Defendants (that bring J. Reed, T. Emigh & K. Kauffman) on the retaliatory cell search claim by an appearance of the complaint failing to allege a causal connection between Appellant Butler's protected conduct and Defendants' retaliatory actions and there's no evidence for fact finder to find a causal connection. See **Dist.Ct.Doc.134-135. (This ruling is presented for appellate review by This Court).** The District Court issued an order for Appellant Butler to produce any additional evidence to prove a causation. See **Dist.Ct.Doc.135, pgh.7.**

Appellants (Butler) filed a response producing additional evidence attached to response (as Ex.A-D) in compliance with the District Court's July 27, 2022 Order., See **Dist.Ct.Doc.141.**

The District Court issued its March 22, 2023 Order & Memorandum Opinion granting summary judgment to the remaining Defendants (Appellees) with respect to Count 9 retaliatory cell search claim. See **Dist.Ct.Doc.159-160. (This ruling is presented for appellate review by This Court).**

Petitioners filed a 59(e) motion to alter or amend judgment w/ brief in support of motion to alter or amend judgment along with a motion to exceed word limitation. See Dist.Doc.168-169 & 170.

Petitioners also filed a Notice of Appeal from the District Court's Orders on March 22, 2023; July 27, 2023; Sept. 2, 2020; Sept. 20, 2021; Nov. 19, 2021; Feb. 9, 2022 and April 15, 2022 and requesting that said NOA be held in abeyance until a decision was rendered on Petitioners' motion to alter or amend judgment.

The District Court granted Petitioners motion to exceed word limitation within a May 5, 2023 Order. See Dist.Ct.Doc.173.

The District Court issued it's separate May 5, 2023 Order & Memorandum Opinion denying Petitioners' motion to alter or amend. See Dist.Ct.Doc.175-176. (Said ruling was presented for appellate review to the U.S. Court of Appeals).

Petitioners filed an additional Notice of Appeal from the May 5, 2023 Order & Memorandum Opinion in order to include Dist.Doc.176 Order on motion to alter judgment, and 174 Order on motion to remove seal. See Dist.Ct.Doc.182.

United States Court of Appeals Procedures:

Petitioners Notice of Appeal was acknowledged on the U.S. Court of Appeals record on April 25, 2023.

The Petitioners filed motions to proceed In Forma Pauperis (May 11, 2023) which were granted by the U.S. Court of Appeals on May 18, 2023. See U.S. Court of Appeals Docket Sheet as Exhibit- hereto.

The U.S. Court of Appeals issued Petitioners a Briefing Notice on July 12, 2023 with the brief filing scheduled for August 21, 2023. Petitioners as pro se litigants were permitted to reference the "original record," used under Federal Rules of Appellate Procedure, Rule 30(f) in order to refer to documents, evidence and exhibits placed on said record within the U.S. District Court docket. (See Exhibit-H). See Briefing Information For Pro Se Litigants as Exhibit-G attached hereto. Petitioners were also granted a page limitation enlargement See C.A.Dkt.21 & 32 attached as Exhibit-H hereto.

Petitioners' brief was received on August 28, 2023 (filed 8/21/2024) after filing a motion for an extension of time to file said brief docketed on August 25, 2023.

The opposing party filed their response brief on October 19, 2023 and Petitioners extension of time to

file a reply brief received on November 6, 2023 followed by the filed reply brief received on November 13, 2023.

The U.S. Court of Appeals Panel rendered a decision confirming the U.S. District Court's order on March 8, 2024. See U.S. Court of Appeals Panel Opinion as Exhibit-A.

Petitioners filed a timely extension of time to file a Petition for Rehearing followed by a Petition for Rehearing En Banc received on the docket on April 29, 2024. (See Exhibit-H).

The U.S. Court of Appeals Panel issued an order denying petition for rehearing on May 14, 2024.

## REASONS FOR GRANTING THE WRIT

### I. The Court of Appeals Panel Decision Has Departed From The Accepted And Usual Course of Judicial Proceedings Conflicting With The Due Process Clause of The 14th Amendment by Said Panel Receiving Favors and/or Bribes From Parties With Cases Before The Judge As To Call For An Exercise of This Court's Supervisory Power.

The Petitioners in this above captioned case matter assert that due to the brevity of the Panel's Opinion ("Pan.Op." hereinafter) given by the assigned justices for the U.S. Court of Appelas ("COA" hereinafter) for the Third Circuit as well as the expedient manner in time taken to review matters pertaining to eleven different claims (though extended beyond said enumeration when equating multiple counts of a given claim), as to be delineated herein, along with well over 1,000 pages of documentation (e.g. Motions, exhibits, evidence, etc.), it is clearly presumed that a favor was given to this vast amount of Defendants/Appellees by the U.S. Court of Appeals' assigned Panel in this case matter constituting a claim of receiving favors and/or bribes from the Defendants (Petitioners' opposing party) with cases before the judge or likely to come before the judge in order to have the COA's assigned Panel rule in the defendants' favor. This claim mirrors claims permitted to be investigated by the Commonwealth of Pennsylvania Judicial Conduct Board at the state level. See Judicial Conduct Board Brochure (under "What The Board DOES Investigate") as Exhibit-J ("Ex." hereinafter) attached hereto. A review of the U.S. Court of Appeals' Panel Opinion in this matter shall surely reveal a 14th Amendment substantive due process violation of which extends well beyond just a misapplication of law and abuse of discretion as the claim of receiving favors and/or bribes from parties with cases before the judge or likely to come before the judge reveals a judicial bias which is also recognized as an act vested in conspiracy and "conspiracy of silence" (See Jutrowski v. Township of Riverdale, 904 F.3d 280, 294-95 (3d Cir. 2018)) Given the circumstances presented, infra, a jurist may reasonably infer said claims by way of circumstantial evidence. See Startzell v. City of Philadelphia, 533 F.3d 183, 205 (3d Cir. 2008), asserting; "In the absence of direct proof, that 'meeting of the minds' or 'understanding or agreement to conspire' can be 'inferred from circumstantial evidence.'" Based on the irrefutable evidence to support Appellants' claims presented with adequate factual specificity, The COA Panel's Opinion undermines any rational explanation a "skilled/professional" judge would render given the claims, facts and evidence

presented at length by the Petitioners which lends credence to an indication that "foul play' has been conducted in the Petitioners' appellate process deliberately. See U.S. Court of Appeals' Pan.Op. as Ex.A. attached hereto. For the COA to have given Petitioners' Appeal, that consisted of a "72 page brief," a proper review would have called for an assessment more extensive than an opinion rendered in "two (2) days" (See Ex.A) within an 8 page composition of mere succinctly framed bald assertions on how Petitioners' claims are either "conclusory allegations and anecdotes" or have "offered no evidence" to support said claims as this said approach in review was clearly erroneous by the precedence of Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002) who took the aproach of; "reversing the dismissal of the entire complaint as 'broad and conclusory' where the compalint set forth four claims with adequate specificity." The Petitioners shall prove that the same adequate specificity exists within the claims presented in their case herein, infra, and that the Petitioners' obligations in presenting each Petitioners' individual claims, facts and evidence for a multitude of meritorious claims cannot be held against the Petitioners as to warrant an Pan.Op. that reads like a syllabus. See Garrett v. Wexford Health, 938 F.3d 69, 92 (3d Cir. 2019)("Court's are more forgiving of pro se litigants for filing relatively unorganized or somewhat lengthy complaints.") (Underline emphasis added). The manner in which the assigned panel conducted their review of Petitioners' appeal runs contrary to and/or is "uncharacteristic" in conduct in comparison to another case decided by this same assigned Panel within D'Agostino v. Sec'y United States A.F., 2024 U.S. App. LEXIS 6712 (3d Cir. 2024) (Non-Precedential Opinion) in which said case was given a more extensive opinion despite the instant Petitioners' case having more Appellants and far more claims presented. The fact that this said assigned Panel of justices displays a pattern of solely issuing succinct opinions, the Petitioners' Appeal was required to be places in front of a panel of judges whose professionalism is issuing meticulous, careful & extensive reviews for cases involving many claims, Appellants, facts and evidence. Petitioners' appeal was far-more extensive than ALL cases ever assigned to and reviewed by this specific Panel. This, Panel is also known to only give "non-precedential" opinions which raises the question, "why was Petitioners' case automatically assigned as a non-precedential" case offered to a specific panel of judges who only conduct concise opinions that are never precedential." One can presume that this was all done by design.

And with this said evident opinion, supra, assuring the practice of such a proper

review being conducted in D'Agostino, supra, along with the peculiar manner of specified panel assignment and questionable appeal review assessment methods in impropriety, it can be presumed that political/economic influence also seen as extrajudicial influence lead by the initial Defendants' personal interest in financial gain and monetary resources acquired by ensuring the continued unconstitutional operations of SCI-Huntingdon (by way of the multitude of deplorable living conditions) due to its consistently lucrative generation of profits acquired annually and siphoned to support Defendants' personal economic interests and comfortability and the COA Panel's complicit support of said unconstitutionality executed in this case has occurred. Black's Law Dictionary, 11th Edition, defines "economic coercion" as: "Conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it." The COA Panel has been audacious enough as to conspire with the Defendants by wielding it's judicial powers as to assist in the Defendants' interest in assuring SCI-Huntingdon sustains its improper use of powers to compel the Petitioners to submit to their [Defendants] wishes in operating a state prison with 8th Amendment levels of deplorable conditions. These types of economic-based judicial favors offend concepts of fundamental fairness as it is also identified, as aforementioned, a judicial-bias. See, for example, Commonwealth v. Koehler, 229 A.3d 915, 932 (PA. 2020), establishing; "A claim that an appellate jurist harbored an unconstitutional potential for bias during a prior proceeding calls into question the constitutionality of that proceeding and undermines the truth-determining process that resulted in that appellate decision." Id., 229 A.3d at 932-33., further states; "To rule that a claim of appellate level judicial bias is not cognizable...would effectively hold that there is no rememdy for this potential due process violation...To strip the Due Process Clause of all remedies to address that clause's violation is to eliminate the underlying right itself. Ubi jus, ibi remedium (where there is a right, there is a rememdy)." See, e.g., United States v. Loughrey, 172 U.S. 206, 232, 19 S. Ct. 153, 43 L. Ed. 420 (1898)("The maxim, 'Ubi jus, ibi remedium', lies at the very foundation of all systems of law.") The assigned COA Panel judges in this instant matter are considered "public officials" (See "Judge" defined in Black's Law Dictionary, 11th Ed. (p. 1005)) to which their actions in judicial bias (as they are considered judicial officers) constitutes a public official favor legally activating judicial bias. Black's Law Dictionary, 11th Ed. (p. 198), defines "judicial bias" as: "A judge's bias toward one or more of the parties to a case over which the judge presides. •Judicial bias is usu. not enough to disqualify a judge from presiding over a case unless the judge's bias is personal or based on some extrajudicial

reason," (Underline emphasis added).

To debunk any notion of Petitioners' claims here being overreaching or farfetched, Pennsylvania Superior Court in Commonwealth v. White, 787 A. 2d 1088, 1094 n. 5 (PA. Super. 2001) has acknowledged; "Although it does not appear that there was an underhanded dealing in the present case, an unscrupulous prosecutor could make substantial promises off the record, convince the defendant to keep it off the record and then renege without impunity after receiving favors from the defendant." Now by this same premise, an unscrupulous cast of defendants by the conduit of their assigned counsel (i.e. the Attorney General) could make substantial promises off the record, convince the COA Panel Judges of that promise and to keep it off the record (of course) and the Defendants making good on their promise after receiving the favor from the COA Judge Panel of ruling in the Defendants' (the Appellees in the instant case) favor thereby affirming the District Court's erroneous ruling.

This type of bias and corrupt conduct runs akin to a conspiratorial act of Quid Pro Quo to which This U.S. Supreme Court has established in FEC v. Ted Cruz For Senate, 596 U.S. ___, 142 S. Ct. ___, 212 L. Ed. 2d 654 (Separate Op. II)(2022) the understanding of; "Quid pro quo corruption--which extends beyond criminal bribery to 'less blatant and specific' arrangements--'subver[ts] the political process' and threatens 'the integrity of our system of representative democracy.'" The allegations of conspiracy presented herein by the Petitioners resulted in more than an appeal denial, it also perpetuated the punishment of Petitioners (and all other prisoner witnesses identified herein, infra) having to endure actual deplorable conditions that deprive said Petitioners of a basic human need and places a risk of harm onto them.

Petitioners had a constitutional right to bring the civil action claims presented to the U.S. District Court under §1983 as well as appealing their claims to the U.S. Court of Appeals for the Third Circuit. So by exercising said rights, the allegations presented, supra, are unlawful and are not legally permissible nor are the Petitioners permitted to be subjected to punitive motives or anything that can be identified as punishment for the primary claims of deplorable conditions presented, infra. In support of these assertions, United States v. Goodwin, 457 U.S. 368, 372 (1982), clarifies; "To punish a person because he has done what the law plainly allows him to do is a due process violation 'of the most basic sort.'" Citing Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978). Goodwin, Id., furthers with; "For while an

individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right." As for the above accusations of improper vindictive motives and conspiracy to such motives, Goodwin, Id., establishes; "Because the court believed that the circumstances surrounding the felony indictment gave rise to a genuine risk of retaliation, it adopted a legal presumption designed to spare courts the 'unseemly task' of probing the actual motives..." Id., 457 U.S. at 372-73 asserts; "The presence of a punitive motivation, therefore, does not provide an adequate basis for...governmental action that is an impermissible response to noncriminal, protected activity. Motives are complex and difficult to prove. As a result, in certain cases in which action detrimental to the [ ] has been taken after the exercise of a legal right, the Court has found it necessary to 'presume' an improper vindictive motive." (Brackets added).

The Petitioners shall now substantiate how the claim, as presented above, is further substantiated by the sufficiency in presenting their civil action claims to the said courts below with adequate specificity (Swierkiewicz, supra) and their irrefutable assertions presented as a verified complaint provided sufficient evidence to overcome summary judgment that was delineated to each level of court as presented in the claims argued, infra, that is clear and in plain view upon the record below lending credence to the motive spelled out in the articulated fashion aforementioned. The Petitioners' claims in dispute in this case are as follows.

## II. The COA Panel Decision Conflicts With Precedential Decisions Within Their Circuit, Our Sister Circuits And The United States Supreme Court resulting In an Abuse of Discretion.

### A. The COA Panel Decision Failed to Adhere To The Requirement of Applying The Applicable Law To Pro Se Prisoner Litigants Irrespective of Whether They've Mentioned It By Name.

The Panel in this matter issued an opinion affirming the District Courts' Order grant summary judgment to the Appellees herein under the guise that no applicable law applied to support Petitioners' claims on appeal. See March 8, 2024 Pan.Op. as Ex.A hereto. However, applying the applicable law to pro se litigants (especially prisoners) is a requisite established by the COA Court in Higgins, supra, asserting; "In a §1983 action, the court must apply the applicable law, irrespective of whether

the pro se litigant has mentioned it by name." Id. at 688. (Underline emphasis added). Quoting Holley, at 247-48. A liberal construing of a pro se complaint is established in Dluhos, supra, and U.S. Supreme Court cases Haines, 404 U.S. at 520 and Estelle, 429 U.S. at 106. Even the assigned Panel (Judges Bibas, Porter & Montgomery-Reeves) had subscribed to liberal construction by pro se appellants within (non-precedential) Givey v. U.S. Dep't of Justice, 2023 U.S. App. LEXIS 34176, at *2-3 (3d Cir. 2023), asserting "standards for dismissing a federal claim as especially high." Liberal "flexibility" is especially bolstered for 'imprisoned pro se litigants." See Mala, 704 F.3d at 244-45 (Quoting McNeil v. United States, 508 U.S. 106, 113 (1993)). Petitioners are pro se prisoner litigants who filed their "first" ever civil action in this matter entitling them to the equal protection safeguards of the 14th Amendment (U.S.C.A.14)(expressed further, infra) as being "similarly situated" to the legal precedents cited in this section, supra. Granting of a certiorari should be awarded for the failure in applying said precedents alone, though pro se Petitioners now assert that said legal authorities are applied to the claims of 1st, 8th, and 14th Amendment violations addressed, infra. To maintain uniformity with all cases, supra, This Court should grant Petitoiners' certiorari. Note that if any documented evidence previously filed or attached herein and referenced by Petitioners has become absent for This Court's chance to review from the record created by Petitioners in the lower courts, this constitutes a spoliation of evidence" by either the Appellees at SCI-Huntingdon or the District Court thereby violating, by default judgement, assertions held in Schmid v. Milwaukee Elec. Tool Corp., 13 F. 3d 76, 78 (3d Cir. 1994); Bull v. United States Parcel Service, Inc., 665 F.3d 68 (3d Cir. 2021).

**B. The Panel Decision Conflicts With Stipulations Defining The Continuing Violation Doctrine's Last Omission In The Face of a Duty to Act And The Applicable Time between Post-Injury And Pre-Grievance Being Tolled By Statutory Prohibition And The Applicable Law That Entitles Appellants to Equitable Tolling.**

The COA Panel decision agreed with the District Court's decision to deem Petitioners' recreation time, ventilation & vermin claims of an 8th Amendment violation time-barred. See Pan.Op. at p.4 as Ex.A. However, the language establishing a defendant's last act "or" "omission in the face of a duty to act" as one in the same in a continuing violation doctrine is held in Randall, 919 F. 3d at 198-199, expressed

with specificity as; "this doctrine [continuing violation] applies when defendant's conduct is part of a continuing practice. In such cases, so long as the last act [in] the continuing practice falls within the limitations period...the court will grant relief for the earlier related acts that would otherwise be time barred." Id., at 199, continues with; "Continued detention was an effect of his Philadelphia arrest and prosecution, not an act (or omission in the face of a duty to act) by any defendant."

In Petitioners' case, their named Defendants' last "omission in the face of a duty to act" all fell within the limitations period to bring suit. The Defendants' (Appellees herein) omission in the face of a duty to act is their failure to remedy the inoperable (thereby inadequate) ventilation system, infestation of vermin and recreation time shortage once confronted by Petitioners. The confronted dates and Appellees' identity are referenced within the Statement of The Case, supra, see (C.A.Dkt. No.23 "statement of the case," at p. 5-6 (Ventilation); p.8-9 (Recreation/Yard Time Shortage); and p.9 (Vermin Claim)) with all Appellees' omissions in the face of a duty to act taking place between years 2017-2018. Take notice to Appellees Bilger & Sipple conceding to both Melvin's ventilation & vermin claims on April 9, 2018. See D.C.Dkt.1, prghs.100-106 & 134-141; D.C.Dkt.10 at Ex.W-X & OO. (Please review all referenced documents above). Petitioners, as laypersons, and not experts, "Knew of the alleged conditions "discomfort & irritation" [ill at ease] more than ten years before" as stated by the Panel (with no "expert" awareness of them being actual "injuries [i.e. violated rights]") but the last, "and only," omission in the face of a duty to act occurred on the aforementioned dates referenced, supra. These are the relevant dates of awareness. In Wisniewski v. Fisher, 857 F.3d 152, 157 (3d Cir. 2017), the language specifies; "The doctrine does not apply when the defendant's allegedly wrongful conduct has a degree of permenence..." (Underline emphasis added). "Conduct": meaning--"act in a given way." Appellees' act or omission in the face of a duty to act triggered Petitioners' timely filing of their Dec. 15, 2019 Complaint within the two year statute of limitation of 42.Pa.C.S. §5524 from defendants (Appellees) last acts dated above. So in accordance with Randall, at 198-99, the facts presented by Petitioners are sufficient for a continuing violation doctrine claim. The applicability of time in-between post-injury and pre-grievance tolling statute of limitations by "statutory prohibition" held in Jones v. Unknown DO.C. Bus Driver & Transp. Crew, 944 F.3d 478, 480-82 (3d Cir. 2019) applies equally to Petitioners as pro se prisoner litigants. See Higgins, supra, & U.S.C.A.14. Petitioner Butler's Eighth Amendment double-celling violation claim is entitled to the

applicable law of "equitable tolling" being applied as Petitioners were, and still are, pro se prisoner litigants (see Higgins, supra) and equitable tolling is, in fact, law. See New Castle Cty. v. Halliburton NUS Corp., 111 F.3d 1116, 1126 (3d Cir. 1997), asserting; "to be afforded equitable tolling, a plaintiff must show that he exercised reasonable diligence in pursuing his claim." Seitzinger v. Reading Hosp. and Med. Ctr., 165 F.3d 236, 240 (3d Cir. 1999), confirms; "Equitable tolling allows plaintiffs to sue after the statutory time period for filing a complaint has expired if they have been prevented from filing in a timely manner due to sufficiently inequitable circumstances [,] including when the defendant has actively misled the plaintiff;..." Tolling is consistent with 42 Pa. C.S. §5535(b), "Stay by Statutory Prohibition," and supports holding in Young v. United States, 535 U.S. 43, 49-50 (2002); Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). Butler exercised due diligence in receiving requisite information from Appellees to present his double-celling violation claim as on August, 28, 2017 Butler was denied a DOC policy code (A-Code) allowing single-celling based on the duration of sentence (10 years or longer), not based on asserting any rights nor reviewing any information of deplorable conditions or constitutional violations at that time. See D.C.Dkt.1; prghs.35-45 & D.C.Dkt.10 at Ex.A-G. Butler was not given an explanation for the denial by Defendants which constitutes "misleading' as A-Code policy DC-ADM 11.2.1., Sec.5.C.5.6. asserts a "specific reason" shall be given for denial. See D.C.Dkt.10 at Ex.G. Butler immediately wrote to all Appellees (Defendants) responsible for the vote. See D.C.Dkt.10 at Ex.F & H-L. Butler received responses from Appellees up until Sept. 25, 2017. Butler received requisite information by responses, research & legal data of unconstitutional violation by double-celling and filed grievance No.698749 on Sept. 26, 2017. See D.C.Dkt.1; prghs. 46-56 & D.C.Dkt.10 at Ex.II. Said facts also allow for the statutory prohibition in post-injury to pre-grievance time defined above in Jones, at 480-82, by Petitioners' pro se prisoner status to applicable law requisites of Higgins, supra, & Holley, supra, and equal protection (U.S.C.A.14) to Jones, supra, New Castle Cty., supra, and Seitzinger, supra, to apply as expressed further, infra, thereby tolling time from Aug. 28, 2017 to SOIGA Final Appeal Response on Dec. 19, 2017. The Dec. 15, 2019 Complaint filing made Butler's claim here timely.

In conclusion, allow the record to reflect that despite the decisions given by the COA Panel full court on these claims in the appeal and rehearing denial below, the sufficiency of the conditions resulting in an 8th Amendment violation aforementioned are ironclad as substantiated proof of there being no operable/inadequate ventilation

system and there being a bird and insect infestation comes by way of the conceding attestation of Respondent Major Mandy Sipple in her Initial Review Response ("IRR") to grievance No.725870 asserting; "You should not expect to get a surge of air through the vents in your cell; that is not the purpose or output expectation of the vents. Once the weather is warmer, the windows on the housing unit will be open to the outside to increase airflow." Id., continues with; "however with doors open for yard movements and the birds already in the facility there is little way to prevent continued habitation." See IRR of Mandy Sipple grv.#725870 as Ex.K attached hereto. Said document qualifies as sufficient evidence filed on the record at D.C.Dkt.10 as Ex.OO and referenced by Petitioners to the District Court, COA and now This Court. See D.C.Dkt.124; p.14-15 and Petitioners' Appeal at C.A.Dkt.23 at p.54 and Petitioners' Reply Brief at p.28 all filed with the lower Courts. This evidence is further coupled with and supported by Petitioners' verified complaint that the "courts are obligated to consider' as an affidavit and is sufficient evidence based upon personal knowledge and set out facts admissible in evidence. (See Verification Page at D.C.Dkt.1, p.46) See Porter, 974 F.3d at 443, Citing Revock, supra. Both conditions are in the original complaint at D.C.Dkt.1, prghs.97-106 & 134-141. Both said conditions are considered unconstitutional by law. See Kost v. Kozakiewicz, 1 F.3d 176, 188 (3d Cir. 1993) ("unbearable temperatures and lack of ventilation enough to state an Eighth Amendment claim"); Tillery, 907 F.2d at 423 ("Ventilation is grossly inadequate. During the summers air flow is provided only by opening windows, many of which have been broken..."). Id., 719 F.Supp. 1256, 1265 (W.D.PA.Aug.15, 1989), asserts; "A significant bird population nest in the pipe chases and drop feces on the floors and railings of the tiers... The bird feces pose significant health risk because they can transmit a number of serious diseases to humans." The above documented evidence (Ex.K hereto) support the additional unconstitutional condition of 8th Amendment violation claims, infra, that Petitioners shall now show that the COA Panel further erred by affirming the District Court's Order on these issues. To maintain uniformity with all precedent cases cited, supra, The Court should grant certiorari and reverse the COA Panel decision as it brings with it confusion amongst the District Court, sister circuit and this precedential deciding Court.

### C. The Panel Decision Conflicts With The Facts Documented On Record Permitting A Standing Claim To Proceedd And The U.S. Supreme Court's Precedential Decisions Establishing Permitted Criteria For Standing Acceptance.

In the COA Panel's opinion it attempts to debunk Melvin's double-cell 8th

Amendment violation claim by asserting; "To establish Article III standing, a plaintiff must demonstrate, inter alia, an injury-in-fact, which must be 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" See Pan.Op. at p.5 as Ex.A hereto. Citing Susan B. Anthony List v. Driehaus, 134 S. Ct. 2334, 2341 (2014). Though this excerpt speaks a truth, to which Melvin has complied with by his "particularized" and "concrete" asserted claim in Petitioner's original complaint, see TransUnion, supra, (see Original Complaint ("Or.Cmpt." hereinafter) at D.C.Dkt.1, pgh.70, 245-246), Susan B. Anthony List, supra, also cite additional acceptable "standing" standards in which it asserts, "an allegation of future injury may suffice if the threatened injury is 'certainly impending' or there is a 'substantial risk' that the harm will occur." (Underline emphasis added) Id., citing Clapper v. Amnesty Int'l USA, 568 U.S. ___, ___, n.5, 133 S. Ct. 1138 (2013). Melvin provided concrete proof that not only would the real risk of harm to his double-cell violation occur, but that it did, in fact, occur as Melvin was forced to double-cell yet again prior to and during Petitioners' response to Respondents' summary judgment motion. Melvin was moved back into a double cell on October 29, 2021 during District Court pretrial proceedings (before summary judgment) and wrote to current facility manager John Rivello to address the matter and was told; "You do not have a Z Code therefore you are not entitled to a single cell." See Facility Manager John Rivello's response as Ex.L attached hereto. These facts and evidence reflect in Petitioners' response to Respondents' summary judgment motion. See Sum.Judg.Mot.Resp. at D.C.Dkt.124 at p.8-10. The Respondents also never "mooted" Melvin's standing claim by burden of showing that double-celling him again would not "recur" as required in Burns, supra; Boley, supra; Davis, supra; Already, LLC, supra; and Friends of the Earth, supra. This evidence debunks the COA Panels opinion asserting; "it was undisputed that, at the time Appellants filed the complaint and throughout litigation, Melvin was housed in a single cell." See Pan.Op., p.5 as Ex.A hereto. Also, Melvin was double-celled for the entire grievance exhaustion process and months after in which he alerted Respondents of his civil pursuit of this claim. See D.C.Dkt.10 at Ex.JJ; D.C.Dkt.1 at prgh.64-71 & 116. Next, to debunk the COA Panel's erroneous assertion of there being no "constitutional right to temporary or permanent placement in a single cell," (See Ex.A, p.5) Petitioners cited Tillery, 907 F.2d at 418, asserting; "double-celling Appellee inmates in an overcrowded, dilapidated, and unsanitary state prison violated the Eighth Amendment prohibition on cruel and unusual punishment." And to prove Petitioners provided sufficient evidence of the conditions of their confinement violating the Eighth Amendment, Petitioners referenced Respondent Mandy Sipple's

conceding IRR to inadequate ventilation & vermin as Ex.K attached hereto, referenced in Section B, supra, along with the supporting precedent citings of Kost, surpa, and Tillery, 907 F.2d at 423 & 719 F.Supp. at 1265, 1271, revealing inadequate ventilation & vermin constitutional violations. The existence of overcrowding was sufficiently proven by response from Laundry Dept. Supervisor Garman attesting to overcrowding being a factor in undergarment shortages. See Garman's Nov.24, 2019 response as Ex.M attached hereto. (Referenced at D.C.Dkt.124, p.19). This evidence is bolstered by Appellants' original "verified" complaint attesting to personal knowledge experiences, mental/psychological effects and physical altercations all stemming from double-celling due to overcrowding at SCI-Huntingdon. See Or.Compt. at D.C.Dkt.1, prghs.107-123 & p.46. Porter, 974 F.3d at 443, confirms verified complaints are obligated to be considered in deciding motions for summary judgment. Id., concluding; "Porter, thus provided sufficient evidence...to survive judgment." Also see Taylor v. Riojas, 592 U.S. ___, 141 S. Ct. ___, 208 L. Ed. 2d 164 (2020)(Separate Opinion, I & II, Justice Alito, concurring in the judgment). As pro se prisoner litigants, Petitioners are entitled to all applicable law cited above, see Higgins, supra; Holley, surpa, Haines, supra, and are entitled to the equal protection of said laws, supra, by being similarly situated to their cited reliefs, expressed further, infra. See Olech, surpa. To maintain uniformity with all cited cases supra, and to prevent any confusion for the District Court within the circuit and preventing conflicting decisions within the COA, The Court should grant certiorari as an abuse of discretion has been conducted by the COA Panel.

### D. The COA Panel Decision Ignores And Conflicts With Precedential Decisions Establishing What All Constitutes An Eighth Amendment Violation And What Establishes Sufficient Evidence To Support Said Violations.

Crawford-El, 523 U.S. at 594, clarifies with specificity; "Neither the text of §1983 or any other federal statute, nor the Federal Rules of Civil Procedure, provide any support for imposing the clear and convincing burden of proof on plaintiffs either at the summary judgment stage or in the trial itself." (Underline emphasis added). The COA Panel seems to ignore this clarity in law while also ignoring a case cited by said Panel in Porter, 974 F.3d at 441, which reveals; "The proof necessary to show that there was a substantial risk of harm is less demanding than the proof needed to show that there was a probable risk of harm." (Underline emphasis added) citing Chavarriaga v. N.J. Dep't of Corr., 806 F.2d 210, 227 (3d Cir. 2015). Also, Petitioners'

overcrowding claim calls for proof of inmates being deprived of a "basic human need" depriving inmates of minimal civilized measures of life's necessities. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Petitioners proved this specified 8th Amendment violation as well in their verified complaint. See Or.Cmplt. D.C.Dkt.1 at prghs.107-109 & 115-119. Porter, at 443, further confirms; "We consider as affidavits [Plaintiff's] sworn verified complaints, to the extent that they are based upon personal knowledge and set out facts that would be admissible in evidence." Citing Revock, 853 F.3d at 100 n.1, 66 VI 905 (citing Fed.R.Civ.P.56(c)(4) & Reese v. Sparks, 760 F.2d 64, 67 (3d Cir.d 1985)). Porter, Id., concludes; "The verified complaint was part of the record...that the Magistrate Judge was obligated to consider...in deciding the motions for summary judgment. Porter thus provided sufficient evidence...to survive summary judgment." (Underline emphasis added). See Taylor v. Riojas, 592 U.S. ___, 141 S. Ct. ___, 208 L. Ed. 2d 164 (2020)(Separate Opinion, I & II, Justice Alito, concurring in the judgment) supporting a verified complaint review as providing sufficient evidence. Again, Petitioners verified their original complaint (See D.C.Dkt.1, p.46) that's based inclusively upon personal knowledge and sets out facts that's admissible in evidence concerning Petitioners fire safety hazards, overcrowding, and understaffing (among other claim facts) Petitioners detailed the particulars of every event, experiences (EX: what took place during the Feb. 29, 2019 fire and personal knowledge observation of all visible fire safety hazards), mental/psychological effects and even physical altercations stemming from said claims. See D.C.Dkt.1 (fire safety hazard claim) at prgh.72-88 & 89-96; Id. (overcrowding), supra; & Id. (Understaffing) at prghs.72-82, 89-93, 100-114 & 120-123. Helling v. McKinney, 509 U.S. 25, 33-34 (1993), confirms; "Hoever, a 'remedy for unsafe conditions need not await a tragic event.'" See Tillery v. Owens, 719 F.Supp. 1256, 1279 (W.D.PA. Aug. 15, 1989)(Citing Leeds v. Watson, 630 F.2d 674, 675-76 (9th Cir. 1980)). The Petitioner's asserted that on February 28, 2019 a kitchen fire occurred causing the facility at SCI-Huntingdon to announce that all prisoners return to their cells where they were double-locked in said cell (double-locked meaning each cell door locked manually with a key and over-head bar locking tier of cells) during said fire and released several hours later. Petitioner Butler was at a class during the start of this fire and was told to return to his cell to be locked in, and Melvin was about to attend lunch in the chow hall when told to "lock it in his cell." See D.C.Dkt.1, prghs.83-96. Petitioners asserted that the overcrowding at SCI-Huntingdon is a direct cause of issued clothing shortages, the late running of all chow line meals, thereby causing all yard & recreational programs to be curtailed due to lateness in their

announcements. See D.C.Dkt.1, prghs.107-109 & 115-119. Brown v. Plata, 563 U.S. 493, 179 L. Ed 2d 969, 988 (2011), supports Petitioners' overcrowding claim for in that case; "the three-judge court found a population limit appropriate, necessary, and authorized after giving substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." In Petitioners' claims evidence show that overcrowding exist with other deplorable conditions of inadequate ventilation, vermin habitation, understaffing,and multiple fire safety hazards. (See Ex.K hereto). By these facts, pro se Petitioners' verified complaint is deemed sufficient evidence to survive summary judgment in likeness to Porter, at 443. Equal protection (U.S.C.A.14) entitles Petitioners to the same relief. The applicable law here was to be applied to pro se Petitioners Held in Higgins, and supra, and Higgins, and required both courts (D.C. & C.A.) to acknowledge and accept Petitioners cited excerpts from Tillery, 719 F.Supp. at 1279, made by an "expert" identified as Thomas Jaeger (Fire Protection Engineer specailizing in prison environments) See Petitioners' Sum.Judg.Mot.Resp. at D.C.Dkt.124, p.13-14. The COA Panel erroneously states; "beyond conclusory allegations and anecdotes, Appellants offer no evidence to show that SCI-Huntingdon's fire protocols, population, or staffing created a substantial risk of serious harm." See Pan.Op. at Ex.A , p.5-6 hereto. Blacks' Law Dictionary, 11th Edition (p.362), defines "conclusory" as: "Expressing a factual influence without stating the underlying facts on which the inference is based." There's nothing conclusory about the asserted facts attested to within Petitioners' verified complaint. With that, This Court in Kirleis v. Dickey, McCarney & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009), asserted; "Kirleis's affidavit satisfies the standard. Far from a conclusory statement...Kirleis detailed the specific circumstances." This excerpt further supports Petitioners original verified complaint and other evidence including detail-specific declarations by them and by witnesses, Hilton Mincy DT6431 (stating; "the showers are crowded to a point where you can feel water & soap from the next person splashing on you."); Rahman Henderson DT5081; Tasia Betts LW1444; Calvin Young J.R. JR8486 and; Vernon Robbins GK8880 attesting to the personal knowledge observations, experiences and effects of the aforementioned conditions. Se D.C.Dkt.56; Ex.UU-AAA (Id. Decl. at D.C.Dkt.120; #3 Ex.C ); Laundry Dept. Response (Ex. M hereto); Overcrowding statistics at SCI-Huntingdon cited at : https//www.paauditor.gov.; Facebook: Pennsylvania Auditor General; Twitter: PA Auditor Gen.; Google: D.O.C. Pa., Statistics-Monthly Population Report (2017-2019); Citing Jochen v. Horn, 727 A.2d 645 (Pa.Cmmw.Ct. 1999)(Citing 291 fire hazard violations at SCI-Huntingdon). All evidence is cited in Petitioners' sum.judg. response. See

D.C.Dkt.124 at p.13, 18-20 & Exhibit at Dkt.120-122. Said facts and evidence are supported by Swierkiewicz, supra ("reversing the dismissal of the entire complaint as 'broad and conclusory' where the complaint set forth four claims with adequate specificity"). Equal Protection rights (U.S.C.A.14) here are asserted. To maintain uniformity with all cases cited, surpa; Cortex Corp. v. Catrett, 477 U.S. 317, 324 (1986) & Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) of which both support declarations as being accepted as evidence to avoid summary judgment (See Fed.R.Civ.P.56(c)(1)(A)) and thereby confirming sufficient evidence acceptance This Court should grant certiorari and reverse the affirming order as the COA Panel has committed an abuse of discretion of which warrants a default judgment.

**E. The COA Panel Decision Conflicts With Precedential Decisions Establishing Sufficient Grounds To Sustain A Retaliation Claim Showing Adverse Action And Causation.**

Crawford-El, 523 U.S. at 574, confirms a holding of; "it was held that the prisoner was not required to adduce clear and convincing evidence of improper motive in order to defeat the officer's summary judgment motion with respect to the First Amendment retaliation claim, as (i) it would not be unfair to hold the officer accountable for actions that she knew, or should have known, violated the prisoner's constitutional rights." Also, Id. at 591. Nieves v. Bartlett, 587 U.S. ___, 204 L. Ed. 2d. 1. (2019), holds; "To prevail on such a claim, a plaintiff must establish a 'causal connection' between the government defendant's 'retaliatory animus' and the plaintiff's subsequent injury...the motive must cause the injury. Specifically, it must be a 'but-for' cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive." Citing Hartman v. Moore, 547 U.S. 250, 259-60 (2006). Respondents J. Reed, T. Emigh & K. Kauffman offered "absolutely" no argument nor defense to Petitioners' retaliatory cell search claim within Respondents' motion for summary judgment." See D.C. Dkt. 94 & 97. However, Respondents Reed & Emigh complete failure and abandonment to adhere to D.O.C. Cell Search Policy DC-ADM 203, Section 1(B)(2) and (C)(4)(a), as the cell search was not random for Reed & Emigh initially looked in Butler's cell and saw that only Butler was present, left from the cell only to return moments later telling Butler to step out for a random cell search and as Petitioner Butler's cellmate was not present as required, yet, Reed & Emigh searched the cellmates property in his absence, and these Respondents never having Butler sign the log sheet consenting his presence during said

cell search substantiates the method taken would not have been taken absent a retaliatory motive as the cell search procedures warranted Butler to sign the log sheet of him being present and the requirement of his cellmate to be present. See D.C.Dkt.1, prgh.160-168 & D.C.Dkt.10, Ex.SS & D.C.Dkt.141 at p.2 & 5-7. The COA Pan.Op. asserts in error; "Butler provides no evidance that the two defendants were aware of that grievance, so he failed to prove a causal link." See Pan.Op. at p.6 as Ex.A hereto. With the COA's understanding of prongs to sustain a First Amendment retaliation claim held in Palardy v. Twp. of Millburn, 906 F.3d 76, 80-81 (3d Cir. 2018), Petitioner Butler sufficiently established causation by circumstantial evidence in his claims against Reed, Emigh & Kauffman to which Watson v. Rozum, 834 F.3d 417, 422 (3d Cir. 2016), asserts; "While causation may be established by direct or circumstantial evidence, motivation is almost never subject to proof by direct evidence." Watson, Id., expresses that circumstantial evidence to prove a retaliatory motive is a burden satisfied by "(1) an unusually suggestive temporal proximity between the protected activity and the allegedly retaliatory action, (2) a pattern of antagonism coupled with timing that suggested a causal link" and Dondero, supra, and De Flaminis, supra, both present causation implied by "the record as a whole." Butler proved causation in all 3 regards as temporal proximity between the May 16, 2019 retaliatory cell search destroying Butler's legal material and Butler's grievance filings to Appellee Kauffman on May 5, 2019 (Gr.#795556) & May 7, 2019 (Gr.#796674) constitutes "9 to 11 days." D.C.Dkt.141 at p.2. See Lichtenstein v. Univ of Pittsburgh Med. Ctr., 691 F.3d 294, 307 (3d Cir. 2012)("seven days sufficient to show retaliatory motive at the prima facie stage"). See Conard, supra, and Marasco, supra. Pattern of antagonism applied for prior to May 16, 2019 incident in question Butler filed over 75 grievances with 4 filed against what makes up 15 of the Respondents in this case with three (3) filings in the prior 2nd, 4th & 5th months of 2019. See D.C.Dkt.1 at prghs.171, 185, 197, 216, 244, 255, 260 & 270; D.C.Dkt.141 at Ex.A thereto. Butler provided evidence gleaned from the "record as a whole" by disclosing his recorded grievance history being a facility-wide awareness with over 75 grievances to surely infer Respondents Reed and Emigh knew whose legal material they were arbitrarily confiscating and destroying coupled with the fact that said officers "only" took and destroyed Butler's legal materials. Butler referenced witness Tasai Betts LW1444 declaration attesting to identical arbitrary treatment for filing grievances. Petitioners also requested the D.C. Court to review CCTV video footage disclosing the additional violation of Cell Search Policy DC-ADM 203 on May 16, 2019 supporting the retaliatory act. See D.C.Dkt.141 at p.6. See D.C.Dkt.141 at p.5, and Butler's attestation to the adverse actions being retaliatory for his grievance filings highlighted by referencing Petitioners' original complaint ("verified complaint," see D.C.Dkt.1 at p.46)(See Swierkiewicz, supra, establishing reversal by means of complaint setting fourth multiple claims (four) "with adequate specificity"). Evidence of the "record as a whole" is proven. Next, Respondents Wakefield and Stratton committed forgery of Butler's signature and penmanship. The COA Panel decision has erred (see, Pan.Op. at p.7 as Ex.A hereto) as the COA Panel asserts "Butler failed to prove that this action deterred him from exercising his constitutional rights." Though never refuting the truthfulness of Respondents Andrea Wakefield and Allan Stratton's retaliatory forging of a grievance withdrawal form made out in Butler's name

(also forging Butler's signature), the COA Panel opines "As the District C[illegible] explained, regardless of the veracity of Butler's forging allegations it is undisputed that the grievance was reinstated,..." See Pan.Op. at p.7 as Ex.A hereto. As state officials, NO penalogical interest or rational connection can advance the state's legitimacy for forgery. This meets the criteria expressed in Crawford-El, at 574, and Hartman, 547 U.S. at 259-60 substantiating a sufficient First Amendment retaliation claim. For most importantly, as forgery must be viewed as a sufficient adverse action to deter an exercise of constitutional rights as it is a "CRIMINAL OFFENSE," not a "de minimus" act. See Forgery under 18 Pa.C.S.A. §4104(a); §4910 & Model Penal Code §224. See D.C.Dkt.1, at pgh.142-159. What stops Respondents from repeating this act carte blanche? To maintian uniformity with all precedential decisions cited, supra, The Court should grant certiorari to reverse the affirmed order.

F. The COA Panel Decision Conflicts With Precedential Decisions Establishing A Justice Required Amendment Given To Imprisoned Pro Se Litigants Under Excaordinary Circumstances.

Here, the COA Panel opinion opines; "Despite proceeding pro se, Appellants were required to follow the same rules as other litigants." Citing Mala, at 245-46. See Pan.Op. at p.7-8 as Ex.A hereto. However, Mala at 244-45, specifically express a heightened standard of flexibility for pro se prisoners asserting; "We are especially likely to be flexible when dealing with imprisoned pro se litigants. Such litigants often lack the resources and freedom necessary to comply with the technical rules of modern litigation." Citing Moore v. Florida, 703 F.2d 516, 510 (11th Cir. 1983). Id., at 245, continues with; "The Supreme Court has 'insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed and [has] held that some procedural rules must give way because of the unique circumstances of incarceration.'" Citing McNeil v. United States, 508 U.S. 106, 113 (1993). Also, see Haines, supra & Estelle, supra. With that, Fed.R.Civ.P., Rule 15(a)(2), asserts; "A party may amend its pleading only with the opposing party's written consent or the court leave. The court should freely give leave when justice so requires." (Underline emphasis added). Foman v. Davis, 371 U.S. 178, 182 (1962). As pro se prisoner litigants, Petitioners were, as now, proceeding in their first ever civil action suit at a time when the world was brought to a halt by the tumultuous effects of the COVID-19 pandemic resulting in Petitioners being housed in the custody of SCI-Huntingdon who had, by far, the highest COVID-19 infection rates recorded throughout the entire state prison system within Pennsylvania. See D.O.C. COVID-19 Infection Rate Chart as Ex. N attached hereto (Referenced & cited in Petitioners' 59(e) motion at D.C.Dkt. 169 at Ex.J ) Said infectious spread resulted in unfathomable lock-down restrictions and quarantines and Petitioners were trying to do what they could do to the best of their abilities under those circumstances. It is even this said Panel (Bibas, Porter and Montgomery-Reeves) that subscribed to the pro se standards of liberal construction in a prior ruling and setting standards for dismissal as "especially high" in Givey v. U.S.

Dep't of Justice, 2023 U.S. App. LEXIS 34176, at *2-3 (3d Cir. 2023)(non-precedential). Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd P'ship, 507 U.S. 380, 395 (1995), aserts; "the exusable neglect injury must consider all relevant circumstances surrounding the party's omission."

Upon a scheduling order by the District Court, Petitoners were given a request for Joinder of Parties and Amendment of Complaint pleadings dated July 28, 2021. See D.C.Dkt.41. Petitoners complied with the order in filing an Amended patition (See D.C.Dkt.42) though due to the unforeseen and highly devastating impact of the COVID-19 pandemic, law library limitations due to COVID-19 and incessant quarantines and law computer malfunctions Petitioners were unable to timely file their brief in support to which Respondents filed a brief in opposition to have Petitioners Amended petition stricken form the record. See D.C.Dkt.47. Petitioners filed a reply brief explaining the unforeseen and extraordinary circumstances that the COVID-19 pandemic caused along with the limited access to the law library and law computer malfunctions to which Petitioners attached evidence of all impediments as Exhibits. See D.C.Dkt.61, pat pg.5-7. The District Court issued an order on September 20, 2021 striking Petitioners' amended complaint and deeming their motion for joinder withdrawn. See D.C.Dkt. Sept.20, 2021 Order attached hereto.

Petitioners subsequently filed a motion for extension/continuance of time to file a brief in support of the strickened amended complaint/joinder of parties requesting that the District Court allow Petitioners to file said brief in support, an amended complaint and motion for joinder of parties disclosing a COVID-19 SCI-Reference Guide that stipulated only one hour of law library a week and reiterating all of the impediments that COVID-19 pandemic caused, citing both Fed.R.Civ.P. 6(b)(2)(B) for excusable neglect and Rothman v. Wells Fargo Bank N.A., 2021 U.S. Dist. LEXIS 148342 at *7 (N.J. Aug. 18, 2020) in which the court granted plaintiffs motion for an extension of time due to the COVID-19 pandemic. However, in a November 19, 2021 Order by the District Court, said court denied their said motion with an explanation that "Covid-19 cannot explain the lack of urgency given the fact that Plaintiffs were able to file three other motions interim and for lack of due diligence." See November 19, 2021 District Court Order, pg.1-3 attached hereto. To maintain uniformity with all presedential decisions cited, supra, The Court should grant this certiorari and reverse the affirm order to permit Petitioners to amend their complaint.

## G. The COA Panel Decision Conflicts With Precedential Decisions Establishing Sufficient Grounds For Seeking Relief By A Breach of Contract Claim.

In Petitoners presenting their breach of contract claim, the COA Panel decision is reduced to footnote #4 to which it expresses; "Appellants neither provided evidence that they were parties to any contract at issue nor argued that they were entitled to enforce that contract under another legal theory." See Ex.A , at p.7, n.4 hereto. The COA Panel decision is erroneous as the Petitioners referenced the Department of Corrections Code of Ethics as being the contract at issue in their response to motion for summary judgment and attached the D.O.C. Code of Ethics ("DOC COE") as an exhibit to their said response (as Ex.E hereto) to which Petitioners asserted how said document applied as a contract, signed by all Respondents, that was thereby breached. See D.C.Dkt. 124, at p.27 citing exhibit at D.C.Dkt.122, Ex.E at p.22. The DOC COE "was" the document attached as evidence. Barron's Law Dictionary, Seventh Edition, defines "Breach of Contract" as: "A party's failure to perform some contracted-for or agreed-upon act, or his failure to comply with a duty imposed by law which is owed to another or to society." In the precedential decision of Citgo Asphalt Ref.Co. v. Frescati Shipping Co., 206 L.Ed 2d 391 (2020) it's established; "Under elemental precepts of contract law, an obligor is liable in damages for breach of contract even if he is without fault...'Contract liability is strict liability.'" See 23 Williston §63:8, at 499 (2018)("Liability for a breach of contract is, prima facie, strict liability"). See Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. ___, 212 L. Ed. 2d 552 (2022). Black's Law Dictionary, 11th Edition (p.1099), defines "strict liability" as: "Liability that does not depend on proof of negligence or intent to do harm but that is based instead on a duty to compensate the harms proximately caused by the activity or behavior subject to the liability rule." Also see other permitted breach of contract standards in Blair v. Scott Specially Gasses, 283 F.3d 595, 603 (3d Cir. 2001) and Opalinski, supra. Based on said precedents, the District Court was not permitted to engage in such credibility determination at the summary judgment phase and the COA Panel has erred by affirming such a decision as it demonstrates an abuse of discretion. See Hart v. Elec. Arts, Inc., 717 F.3d 141, 148 (3d Cir. 2013) and Harrington v. Richter, 562 U.S. 86, 100 (2011). The fact is the Respondents are DOC employees who engaged in conduct that violated DOC COE by not reporting violations of law consisting of the constitutional violations in prison conditions presented in Petitoners' original ("verified") complaint. See DOC COE, Section B(14)(31) & C as Ex.O

attached hereto (previously submitted as evidence at D.C.Dkt.122 as Ex.E ;p.22-27). Respondent Bruce Ewell attested to the signing of the DOC COE as being mandatory before being hired. See D.C.Dkt.124 at p.27 & Dkt.121 at Ex.D (Bruce Ewells interrogatory at p.6: Q 15). The DOC COE provisions require Respondents to "pledge to uphold duties owed to inmates." See Forward Page Sec.B(1) at Ex.O hereto. Petitioners are inmates housed in DOC care, custody & control. See Opalinski, supra, and Blair, supra. Petitioners are pro se litigants entitled to have the applicable law cited, supra, applied to their claims here. Also see Mala, at 244-45 & McNeil, at 113. To maintain uniformity with all precedential decisions, supra, The Court should grant a certiorari and reverse the affirm order.

## H. The COA Panel Decision Overlooks Precedential Decisions Establishing Penalties For Failure To Comply With Discovery Requested And The Court's Discovery Orders.

The COA Panel's discerning of no abuse of discretion for denials of Petitoners' motions to compel and sanctions is erroneous. See Pan.Op. as Ex.A , at p.8 n.5. First, there's Petitioners sanctions motion pursuant to Fed.R.Civ.P.16(f)(1)(C) (see Sanctions Motion at D.C.Dkt.92) to which the facts are simply after multiple requests for the respondents to comply with Petitioners' discovery request of interrogatories and Production of Documents ("POD" hereinafter)(See D.C.Dkt.71, 75, 82 (p.4-6)) sent to all respondents, a third subsequent discovery deadline of December 20, 2021 had expired while still awaiting several interrogatories. (Also referenced in Petitioners' Appeal Brief ("App.Br.") at p.23-26). Based on these facts, Petitioners did not receive the interrogatories of Respondents Kauffman, Ralston and Stratton by the discovery deadline of Dec.20, 2021. Petitioners immediately filed said sanctions motion, for a second time, asserting said absence in discovery responses from said Respondents. Respondents filed an opposition brief with the District Court attaching the alleged interrogatory responses of said Respondents as exhibits to defend against Petitoners' claims. However, the attached exhibits failed to include a verification page for Respondent Kevin Kauffman, See Respondents' Opposition Brief at D.C.Dkt.98-1. Based on said facts, the District Court's duty was to review said interrogatory and apply the applicable law to pro se prisoners asserted in Higgins, supra, & Holley, supra, based on a blatant violation of Fed.R.Civ.P.37(a)(4) by an absence of verification page in Respondent Kauffman's interrogatory response which violated Fed.R.Civ.P.33(b)(5) and thereby violating Rule 16(f)(1)(C) as an incomplete response

not cure an incorrect response to F.R.C.P.34 concerning a "Production of Document ("POD") request. Furthermore, the alleged correction of an answer to one question among 25 others that were formed as questions for a "Food" Maintenance Manager that Petitioners received on 12/15/2021 "5 days" before the discovery deadline on 12/20/2021 still warrants sanctions by Rule 26(e)(1)(A) because it provided "no reasonable time" for Petitioners to re-issue questions based on a "Facility" Maintenance Managers job title and knowledge completely derailing Petitioners' intended line of queries. The failure to correct Petitioners' POD requests (Rule 34) violates Rule 26(e)(1)(A)thereby violating F.R.C.P.37(c)(1)(C) and by no 3d Circuit precedent on Rule 37(c)(1)(C) Petitioners cite Yeti by Molley, Ltd, supra, and DeAngelis v. Countrywide Home Loans, Inc. (In Re Hill, 43 B.R. 503, 549 (W.D.PA. Oct. 5, 2010). Pro se prisoners Petitioners are entitled to the relief in Mala, supra, McNeil, supra, and Haines, supra. The law in these said regards were violated and the District Court and The COA Panel overlooks the clear erroneous view of the law and assessment of the evidence especially for pro se prisoner litigants. The COA Panel decision runs contrary to precedence in our sister circuits, the U.S. District Court (3d Cir.) and 1970, 1993 and 2000 Amendments Applying Rule 37(c)(1)(C) in the Advisory Committees Notes. To maintain uniformity with the above cases, rules and I.N.S., surpa; This Court should grant certiorari as the District Court and the COA are upholding a deliberate sabotage of pro se prisoner litigants right to seek discovery warranting a reversal of the COA's affirmed order.

Petitioners' claim for sanctions motion pursuant to Fed.R.Civ.P.30(d)(2)(D.C.Dkt.77) facts are on October 5, 2021, a deposition hearing was held by the Respondents counsel in which Petitioner Butler was being deposed. In taking an impermissible advantage in Butler's pro se status as a novice to such a deposition appearance, defense counsel told Butler that he was not allowed to object after the start of just a few questions in which Butler attempted to object and was further told that if Butler tried to object that defense counsel would move to dismiss Butler's case and was already placing a motion to strike a part of Butler's testimony. (Also referenced at Petitioners App.Br.; p.37-38). Based on the referenced facts, Respondents' counsel Stephen Moniak had no legal basis nor right to threaten deponent Butler at his Oct. 5, 2021 Deposition hearing with calls for dismissal of Appellants' case when Butler has a legal right to object. See Oct. 5 2021 Deposition Hearing N.T. at D.C.Dkt.96-3 (Ex.C) p. 8-11 & 13; prgh.1-18. In furtherance, said defense counsel misled Butler as to the reasons for a rightful objection by erroneously stating Butler is "only" allowed to

object on the basis of a "valid privilege." See Id., at p.11; prgh.6-18. Fed.R.Civ.P.30(c)(2) asserts, in relevant part; "An objection...to the manner of taking deposition, or to any other respect of the deposition—must be noted on the record but the examination still proceeds." These actions by defense counsel impeded and frustrated deponent Butler causing an unfair examination and no other terms are asserted to be met to properly file for sanctions in this regard and receive relief. See Fed.R.Civ.P.30(d)(2); Reed v. Lackawanna County, 2018 U.S. Dist. LEXIS 204508, at *5-6 (M.D.PA. Dec. 4, 2018) & The Advisory Committee Notes to the 1993 Amendment to Rule 30(d)(2). Pro se prisoner petitioners are to be held to Mala, supra, McNeil, supra & Haines, supra, standards. To maintain uniformity with these cases and cited federal rules, supra, I.N.S., supra, This Court should grant a certiorari reversing the order and grant default judgment.

Petitioners' claim for motions to compel pursuant to Fed.R.Civ.P.37(a)(4) (See Motion at D.C.Dkt.88) facts are Petitioners served all respondents interrogatories including Brian Harris, William Walters, Bruce Ewell and Robert Bilger on August 23 & 26 of 2021. However, all respondents refused to submit an answer to particular questions concerning the manual "lock & key" system for the cell doors at SCI-Huntingdon being a fire safety hazard (also referenced at Petitioners App.Br. at p.31-33.) Based on the referenced facts, Petitioners presented two series of questions in interrogatories posed to Respondents Harris, Walters, Ewell and Bilger. Id., 88. The one question distinctively posed to Bilger reads: "During your tenure as Safety Manager, did the conditions of there being no master/universal locking system for each cell on housing units exist at SCI-Huntingdon?" (See Id., 88 at p.5) The relevance of this question has a direct link to Petitioners presenting a claim of fire safety hazards that included the hazard of there being no master/universal locking system for the cell at SCI-Huntingdon. So this said question posed to Respondent Bilger could not be any more relevant. The other question distinctive from Butler's question posed to Harris, Walters, and Ewell asked "How long did the conditions exist," (See D.C.Dkt.88, Ex. B-D: Q:12) which is completely different from "did the conditions exist." Despite Bilger's posed question being relevant, both questions are permitted if it "may lead to the discovery of relevant information." See Clemens, supra, and Hicks v. Big Brothers/Big Sisters of America, 168 F.R.D. 528, 529 (E.D.PA. 1996). To support Petitoners' claim, sister circuit in $284,950.00, supra, asserts, "An evasive or incomplete disclosure, answer, or response to an interrogatory constitutes a failure to answer. Fed.R.Civ.P.37(a)(4)." As pro se prisoners, Petitioners are held to Mala,

supra, McNeil, supra, & Harris, supra, standards. To maintain uniformity with the above cases, federal rules and I.N.S., supra, The Court should grant certiorari and reverse the affirming order and grant default judgment.

Petitioners' claim for motions to compel pursuant to F.R.C.P.37(a)(3)(B)(iv) (See Motion at D.C.Dkt.86) facts are on August 23, 2021 Petitioners sent a first set of POD requests to then Respondent (and Former Superintendent) Kevin Kauffman by way of being sent to his defense counsel Stephen Moniak and sent out a second set of POD requests on August 26, 2021. See POD Requests at D.C.Dkt.86, at Exhibit-B & C thereto. Kauffman refused to produce all requested POD's (such as Camera footage, documents, photos of cells, etc.) with an objection that reads; "Defendant Kauffman OBJECTS to this request to the extent it seeks confidential information that if released, may jeopardize the safety and security of the institution, the staff, inmates of the general public. Defendant Kauffman further OBJECTS to this request as he is retired, and any non-privileged, non-confidential responsive documents are not in his possession, custody or control." (See D.C.Dkt.86, id.) (Also referenced at Petitioners' App.Br.; p.34-36). Based on the referenced facts Petitioners still contend that Respondent Kauffman's failure to comply with Petitioners POD requests violated said Federal Rules and legal precedent as Kauffman was sued in his individual and "official capacity." Hafer v. Melo, 502 U.S. 21, 25 (1991) asserts; "A suit against a government official in his or her official capacity is treated as a suit against the governmental entity itself." Petitioners' sought injunctive relief within their verified original complaint. See D.C.Dkt.1, p.44-46. Petitioners submitted facts that Kauffman had then complied with a POD request (after his retirement) in another case at SCI-Huntingdon. See inmate Hilton K. Mincy (Civil Action No. 1:20-CV-00717) Declaration at D.C.Dkt.86, at Ex.D. This presents Equal Protection violations, see Att'y Gen. N.J., supra & Olech, supra, as Petitioners are similarly situated to Hilton K. Mincy's POD request and compliance by Kauffman. The Panel affirming the District Court denial goes against the flexibility of pro se prisoner petitioners in semblance to Mala, supra McNeil, supra, and goes along with the District Court's abuse of discretion in failure to show a public interest in wanting to discover the truth, being withheld from pro se prisoner petitioners, revealed in footage-capturing evidence by the inherent power held in Swann, supra, Shorter, supra (Citing King, supra) and Advisory Committee Notes, 1970 Amendment subdivision (a)(3). To maintain uniformity with above cases, federal rules and I.N.S., supra, This Court should grant rehearing to reverse the affirming order.

Petitioners' claims for filing motions to extend the discovery deadline pursuant to F.R.C.P.16(b)(4) (See Motion at D.C.Dkt.85 & 87) facts are Petitioners requested a discovery extension due to having displayed due diligence in requesting pertinent information from other agencies and entities aside from the actual Respondents in this matter. See D.C.Dkt.85, p.1; D.C.Dkt.100 (Reply Brief) at p.2 & Ex.A-C attached thereto. Petitioners also sought to acquire their P.O.D. requests by the respondent Kevin Kauffman or others (Also referenced at Appellant's App.Br.; p.40-41). Based on the referenced facts, all discovery motion

claims, supra, justified a discovery deadline extension in order to take additional discovery such as re-issuing interrogatory questions related to Respondents Bruce Ewell due to Respondents counsel providing misleading information as well as requesting discovery from other outside agencies. See D.C.Dkt.100 at p.2 & Ex.A-B thereto. Petitioners provided more than enough justifiable means to show diligent discovery pursuits as pro se litigants so the District Court abused it's discretion in not allowing the extensions (as Petitioners requested two simultaneously) by Rule 16(b)(4) violating Hart, supra & Harrington, supra. As pro se prisoners, Petitioners are held to Mala, supra, and McNeil, supra, standards. To maintain uniformity with all cases, supra & I.N.S., supra, This Court should grant a certiorari and reverse the affirming order by way of rendering a default judgment.

## I. This Said Court Should Grant Certiorari For Reasons of The Application of Applicable Law Concerning Pro Se Litigants Warranting Rights of Equal Protection of All Laws Presented For Argument That Conflicts With The COA Panel Decision.

In applying the applicable law to pro se litigants, as expressed, supra, see Higgins, at 688 and Holley, 247-48, Petitioners assert their equal protection rights to all legal precedential decisions raised. See Section A-H, supra, & J, infra, as being similarly situated to the reliefs cited in support of Petitioners' claim herein. With that, the Equal Protection Clause of the Fourteenth Amendment provides a state shall not "deny to any person within its jurisdiction the equal protection of the laws." U.S.Const.Amend.14. Att'y Gen.N.J., 910 F.3d at 125, asserts; "at bottom, the Equal Protection Clause requires equal treatment of-'all person similarly situated." (quoting Shuman ex rel. Shertzer v. Penn Manor Sch. Dist., 422 F.3d 141, 151 (3d Cir. 2005)) U.S. Supreme Court Precedence in City of Cleburne v. Cleburne Living Ctr. Inc., 473 U.S. 432, 439 (1985) establishes; "An equal protection claim can be brought by a 'class of one,' a plaintiff alleging he has been intentionally treated differently from others similarly situated and...there is no rational basis for the difference in treatment." See Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Accordingly, to maintain uniformity with This Court's precedents establishing equal protection rights (U.S.C.A.14) and ensuring uniform treatment of an important issue to all pro se prisoner litigants is being exercised, This Court should grant certiorari reversing the affirmed order.

## J. This Said Court Should Grant Certiorari To Apply The Applicable Law To Pro Se Litigants Warranting Rights To A Stare Decisis Standard Review of All Law Presented Conflicting With The COA Panel Decision.

In applying the applicable law to pro se litigants, see Higgins, supra, The Third Circuit Court has set

precedent for a stare decisis standard held in Riccio v. Sentry Credit, Inc., at 590, to which an adherance to the U.S. Supreme Court, asserts; "stare decisis—in English, the idea that today's Court stands by yesterday's decision—is 'a foundation stone of the rule of law.' Citing Kimble, 135 S. Ct. at 2409 quoting Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 798 (2014). In closing, all questions presented herein, see Subsections A-I, supra, have exception importance in equal protection (U.S.C.A.14) to all incarcerated litigants, especially pro se, not only on its own terms and merit, but because the Panel's error may have downstream consequences. PLRA strikes and being barred from filing complaints in forma pauperis due to the strike rule are a real consequence. See Garret v. Murphy, 17 F.4th 419, 425 (3d Cir. 2021). This hinders *pro se* prison litigants from getting into court on any of their claims, whether singularly or future claims from being heard. Petitioners should be entitled to the stare decisis standard (U.S.C.A.14).

## CONCLUSION

To maintain uniformity with precedents in This Circuit, the sister circuits and the U.S. Supreme Court on an exceptionally important issue to not only Petitioners but to all incarcerated pro se litigants and other pro se litigants for as how the ruling of the COA stands in the instant Petitioners' case herein, it has only added confusion to precedential decision also affecting both pro se prisoner litigants and other pro se litigants while circumstantially attributing to a judicial bias by extrajudicial influence, conspiracy, and retaliatory motivation curtailing substantive due process rights under the 14th Amendment to which for said reasons cannot be allowed to stand in the interest of justice. Therefore, This Said Court should grant writ of certiorari and reverse the COA's affirmation of the District Court's judgment and said granting should warrant a default judgment, or reversal to allow Petitioners to amend the complaint or move forward to trial from the record as a whole.

# CERTIFICATE OF WORD COUNT

In accordance with Rule 33.1(d), Petitioners hereby certify that this writ of certiorari contains 16,872 words and a Motion For An Application to Exceed Word Limit is submitted to accompany this said Petition.

DATE: 9 / 26 / 2024

Respectfully Submitted,

Shariff Butler
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Huntingdon, PA 16654-1112

Jeremey Melvin
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# VERIFICATION

I do hereby certify that the following information is true and correct pursuant to 28 U.S.C. §1746 to the best of my information, knowledge and belief.

I understand that any false statement answer to any question in this verified statement will subject me to penalties provided by misdemeanor.

DATE: 9/26/2024

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