

Case # _____

In the Supreme Court of the United States

Petitioner -- Frank Dippolito

Vs

Defendants

UNITED STATES OF AMERICA; ERIC HOLDER, JR., Attorney General in his Capacity as Administrator of the Second Chance Act; HARLEY LAPPIN, Former FBOP Director in his Capacity as FBOP Director; CHARLES E. SAMUELS, JR., FBOP Director in his Capacity as FBOP Director; KATHLEEN KENNY, FBOP Asst. Director of General Counsel; MR. D. SCOTT DODRILL, Assistant Director of Correctional Programs, in his Capacity as Assistant Director of Correctional Programs; JOYCE CONLEY, FBOP Asst. Dir. of Correctional Programs; WARDEN DONNA ZICKEFOOSE, FCI Fort Dix; JANEL FITZGERALD, FCI Fort Dix; MR. HUTCHENS, Regional Safety Director, in his Capacity as Regional Safety Director; MR. HOLDEN, Safety Officer, in his Capacity as Safety Officer FCI Fort Dix N.J.; MR. G. LAWHORNE; JACQUILINE NICHOLS; ROBERT HAZELWOOD; MR. H. SUTHERLAND, FCI Fort Dix Assoc. Wardens; MIKE CARROLL, Unit Manager in his Capacity as Unit Manager 5852; MR. ROBINSON, Unit Manager in his Capacity as Unit Manager 5852; MR. BULLOCK, Case Manager in his Capacity as Case Manager; MR. HARWICK, Cook Supervisor as Unit Supervisor 5852; OFFICER YEOMAN, Tool Room Officer in his Capacity as FCI Officer; OFFICER DANIELS, in his Capacity as Compound Officer; MS. ALEXANDER, Case Manager in her Capacity as Case Manager; JOE NORWOOD, FBOP Northeast Regional Director; MR. HARRELL WATTS, Central Officer Administrator in his Capacity as Central Officer Administrator; MR. LEMYRE, Facilities Manager in his Capacity as Facilities Manager; OFFICER SMEYLK, Facilities Officer in his Capacity as Facilities Officer; LIEUTENANT ANDERSON, in his Capacity as Lieutenant; JOHN/JANE DOE 1; WARDEN JORDAN HOLLINGSWORTH, FCI Fort Dix; CHRISTINE Y. DYNAN; MR. THOMAS MCGLOUGHLIN, United States Inspector General for BOP; MR. DONAHUE, FCI Fort Dix, Unit 6 Case Manager Coordinator; MR. CROKER, Food Services Administrator, 5840 Kitchen; JAMES A. GONDLES, JR., Executive Director; AMERICAN CORRECTIONAL ASSOCIATION

On petition for writ of certiorari to
The United States Third Circuit Court of Appeals
Petition for writ of Certiorari

Frank Dippolito
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856-266-3600

Question(s) Presented

1). Did Congress exceed its constitutional authority when it legislated away inmates' constitutional protections?

2). The Prison litigation Reform Act blocks inmates from the courts, allowing the Bureau of Prison to act inappropriately, with impunity, violating inmate civil rights. Encouraged knowing the Prison Litigation Reform Act prevents redress the PLRA keeps inmates from the courts and court remedies. Where can an inmate find redress and protection if not from the courts?

3). Administrative Remedy Process is flawed, masterfully manipulated and controlled by BOP staff members (unit Teams). An inmate cannot file remedies successfully, BP-8 through BP-11 when the process is controlled by the administration from who redress is sought. Did Congress intend for inmates to have no solutions? What is the intention of Congress regarding the Prison Litigation Reform Act?

4). The (SCA) Second Chance Act 42 USC 17541 section 231 chapter 1, provides for inmates ~~to~~ seeking participation in the program, home confinement for 6 months and extended half way house for up to a year. The Second Chance Act was passed into law in 2007. The administration of section 231, of 42 USC 17541 chapter 1 improving Federal Offender re-entry program has been ignored. No real policy exists. Does the BOP have the power and legal right to ignore and circumvent US statute?

5). Does the Attorney General, then Eric Holder, directed by statute (SCA) to oversee the implementation and administration of the Second Chance Act have the authority to ignore a directive mandating him to perform, statute 42 USC 17541 section 231?

6). Does the Plaintiff have a property interest in the Second Chance Act?

7). Do inmates have the same guaranteed protections as the general public from exposure to toxins / carcinogens and unsafe conditions?

8). Can private for profit corporations as The American Correctional Association, who publish standards, legally give accreditations to institutions, for a fee, (tax payer dollars). When no effort or inspections are made to see the prison conditions equal their written standards?

9). Do inmates have property interest in a non toxic living environment?

10). Do inmates have property interest in protective winter clothing, when expected to remain outdoors all day every day?

11). Does the Plaintiff have a constitutional right to be represented by appointed counsel, by protections of the 5th 6th and 14th amendment, as the defendants are represented by appointed counsel in their individual capacities by the US Attorney's office?

LIST OF PARTIES

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

UNITED STATES OF AMERICA; ERIC HOLDER, JR., Attorney General in his Capacity as Administrator of the Second Chance Act; HARLEY LAPPIN, Former FBOP Director in his Capacity as FBOP Director; CHARLES E. SAMUELS, JR., FBOP Director in his Capacity as FBOP Director; KATHLEEN KENNY, FBOP Asst. Director of General Counsel; MR. D. SCOTT DODRILL, Assistant Director of Correctional Programs, in his Capacity as Assistant Director of Correctional Programs; JOYCE CONLEY, FBOP Asst. Dir. of Correctional Programs; WARDEN DONNA ZICKEFOOSE, FCI Fort Dix; JANEL FITZGERALD, FCI Fort Dix; MR. HUTCHENS, Regional Safety Director, in his Capacity as Regional Safety Director; MR. HOLDEN, Safety Officer, in his Capacity as Safety Officer FCI Fort Dix N.J.; MR. G. LAWHORNE; JACQUILINE NICHOLS; ROBERT HAZELWOOD; MR. H. SUTHERLAND, FCI Fort Dix Assoc. Wardens; MIKE CARROLL, Unit Manager in his Capacity as Unit Manager 5852; MR. ROBINSON, Unit Manager in his Capacity as Unit Manager 5852; MR. BULLOCK, Case Manager in his Capacity as Case Manager; MR. HARWICK, Cook Supervisor as Unit Supervisor 5852; OFFICER YEOMAN, Tool Room Officer in his Capacity as FCI Officer; OFFICER DANIELS, in his Capacity as Compound Officer; MS. ALEXANDER, Case Manager in her Capacity as Case Manager; JOE NORWOOD, FBOP Northeast Regional Director; MR. HARRELL WATTS, Central Officer Administrator in his Capacity as Central Officer Administrator; MR. LEMYRE, Facilities Manager in his Capacity as Facilities Manager; OFFICER SMEYLK, Facilities Officer in his Capacity as Facilities Officer; LIEUTENANT ANDERSON, in his Capacity as Lieutenant; JOHN/JANE DOE 1; WARDEN JORDAN HOLLINGSWORTH, FCI Fort Dix; CHRISTINE Y. DYNAN; MR. THOMAS MCGLOUGHLIN, United States Inspector General for BOP; MR. DONAHUE, FCI Fort Dix, Unit 6 Case Manager Coordinator; MR. CROKER, Food Services Administrator, 5840 Kitchen; JAMES A. GONDLES, JR., Executive Director; AMERICAN CORRECTIONAL ASSOCIATION

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Relevant Law

- **18 USC 241 Conspiracy against rights.**
 - **18 USC 242 Deprivation of rights under the color of law.**
 - **18 USC 2071 Concealment, removal, or mutilation generally,**
 - (a) "Whoever, willfully and unlawfully conceals, removes mutilates, or destroys,"
 - (b) "Whoever, having the custody of any such record, proceeding, map book document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys"
 - **18 US code 4042- Duties of the Bureau of Prisons.**
 - **28 SC 1343 Civil rights and elective franchise.**
 - **42-USC- 17541 The Second Chance Act**
 - **U.S.C. §1251 et seq. (1972) the Clean Water Act (CWA)**
 - **42 USC 1983**
 - **42 USC 1986** Actions for neglect to prevent conspiracy 3 prong (1) .when violations was committed. (2).whether given officials knew or should have known. (3). whether given officials knew reasonably should have known that his conduct violated constitutional rights at issue.
 - **44USC 1501 through 1511, Codified in CFR title 28 CFR chapter v title 2 Federal Register Act**
 - (5) "rule making" means agency process for formulating, amending, or repealing a rule;
 - (6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;
- Directives Management Manual 1221.66 9/15/1998
- OVERVIEW), (1.2 TYPES OF DIRECTIVES), (1.2.1 PROGRAM STATEMENTS), (OPERATIONS MEMORANDA), (3.2.1 FEDERAL REGISTER ACT), (3.3 TYPES OF RULES), (3.4 CODE OF FEDERAL REGULATIONS), (3.5 RULE MAKING IN THE BUREAU OF PRISONS), and (4.1 DEVELOPMENT AND CLEARANCE) ...
 - **5 USC 551 et seq**
 - **5 USCS 552, False Claims Act, Maintenance of Inmates Files, Plaintiff was harmed by Defendant Bullocks actions, changing Plaintiff's computation sheet dates, and failing to correct Plaintiff's release eligibility when notified by Plaintiff. Bullock did not notify Susan Robinson, Director Regional Community Corrections, depriving Plaintiff home confinement**
 - **5 USC 702 Right of review. Stating a claim that an agency or a officer or employee thereof acted or failed to act in an official capacity or under the color of legal authority.**
 - **5 USC 706 Scope of Review. Arbitrary, Capricious, an abuse of discretion, otherwise not in accordance with the law**

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A-3 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B1 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Aug 10, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Oct 13, 2017, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☐ For cases from **state courts**:

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

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

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

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

Constitutional and Statutory Provisions Involved

A). Obstruction to the 1st Amendment redress of grievances 1st, 5th, and 14th amendment due process and equal protection.

B). Unreasonable seizure of petitioner's 4th amendment personal papers and effects and obstruction – above as interwoven.

C). 5th amendment depravation, retaliation, harassment, of petitioner's 5th and 14th amendment to due process and equal protection of the law, meaningful access to the Administrative Remedy Process and the courts and thus in violation of the administrative procedures act.

D). Patterns of obstruction referenced in A.B.C. above by design to obstruct and render ineffective Petitioner's 6th, 5th, and 14th amendment rights to self representation process being denied The assistance of counsel—process while defendants were provided with presumably effective assistance of counsel by fellow government officials, in conflict, at the taxpayers' expense and substantial prejudice.

Statement of the Case

Plaintiff was an inmate at FCI Fort Dix, New Jersey, from March 2010 to December 2013. Arriving at FCI Fort Dix, Plaintiff requested consideration for participation in The Second Chance Act of 2007-Subtitle C- Administration of Justice Reforms, Chapter 1- Improving Federal Offender Reentry, Section 231. FEDERAL PRISONER REENTRY INITIATIVE. Plaintiff's inquiry was met with indifference by case manager, Defendant Bullock. After Plaintiff displayed determination to participate, ongoing retaliation began. Starting October 19, 2010 and lasting until December 10, 2013, the day released to the half way house.

Plaintiff petitioned the courts after doing due diligence with the (ARP). Petitioner filed a habeas corpus. The Administrative Remedy Process (ARP) manipulated and tightly controlled, it was not possible to obtain answers to concerns, only boiler plate responses. See appendix (J), page 12. Plaintiff has no legal training and still struggles to present this case to the courts. Plaintiff asked the courts for help. Appointment of pro-bono counsel would level the field. To the present, no help has been granted. The Petitioner asked the courts to liberally construe this case. The Plaintiff's pleadings were not liberally construed.

There are serious unsafe conditions, health risks and substandard environmental issues at FCI Fort Dix, threatening inmate wellbeing. Do Inmates have the same right to a safe environment as all Americans? On February 11, 2011 the Plaintiff alerted the Office of the Inspector General Defendant Thomas McGloughlin and subsequently followed up with tort Claims. The hazards were not corrected. The American Correctional Association (ACA) accredited this institution. How is that possible? The ACA publishes standards. Are these published standards just a smoke screen?

On May 19, 2010, Plaintiff submitted an informal BP-8 request to Defendant, (Case Manager Bullock). Plaintiff requested consideration for participation in the extended half way house provision in the (SCA) Second Chance Act of 2007.

Bullock's response of May 2010 did not address Plaintiff's question. His response was institutional spin. Plaintiff continued his request with the Administrative Remedy Process (ARP) process, BP-9 through BP-11, Plaintiff received the last response from National Inmate Appeals on January 31 2011. A response but no answer.

On October 15, 2010 at a unit team meeting Plaintiff advised Defendant Bullock that he had read a memo written by Defendant, D. Scott Dodrill dated June 24, 2010, regarding Bureau of Prisons (BOP) non administration of The Second Chance Act. Defendant Bullock showed his displeasure.

On October 19, 2010 four days later Defendant Bullock verbally assaulted Plaintiff. Bullock believed the June 24, 2010 memo to be a secret memo. He wanted Plaintiff's copy of the memo. Bullock took apart Plaintiff's locker searching the memo. He held Plaintiff and Inmate Mike Garcia in custody until he found the same. Plaintiff and inmate Garcia were released only after he realized the memo was on the internet.

On October 28, 2010, Case Manager, Defendant Bullock addressed the prison compound workers at the compound office. He held the workers roster in his hand (Prison yard cleanup crew). Plaintiff's job assignment, He advised the workers he was changing the compound workers hours, the hours were to be longer.

At 11:00 AM that day Defendant Bullock's summoned Plaintiff to his office. Bullock threatened to take Plaintiff's job and wanted him working in the kitchen. Plaintiff documented this with letter dated **December 28, 2010** to the Office of the Inspector General (OIG) Defendant, Thomas McLaughlin. Plaintiff also sent letter to Attorney General, Defendant Eric Holder stating the conditions surrounding the insanity the Blocking of the (SCA).

On December 21, 2010 Plaintiff was given, incident report by Defendant Bullock for being indoors, all the compound workers went indoors to escape the biting wind and cold. The compound workers went to their housing units. Defendant Harwick, was Acting Unit Officer that day. He was at the door of unit 5852. He gave all the workers permission to enter because of the cold. This building is a secure building.

On December 23, 2010 Plaintiff was sanctioned with loss of phone, loss of visits, and loss of e-mail for 90 days. Plaintiff was completely cut off from his family during the Christmas Holiday of 2010. Plaintiff's commissary was not restricted. Defendant Carroll lead the proceedings (from the back room of the kangaroo court).

After December 21, 2010 Plaintiff was unable to escape from the weather, rain, snow, wind, freezing temperatures. The administration would not issue Plaintiff a winter coat or rain gear. The Plaintiff spent severe weather days in the plastic portable toilets. All the compound workers with the exception of Plaintiff were allowed to find shelter in their buildings.

The Plaintiff was subject to this retaliation because he persistently pursued participation in the provisions of the Second Chance Act.

On January 5, 2011 Defendant, Compound Officer Daniel gathered the entire compound crew. He summoned them from their bunks. He advised them that (a Rat) told him the workers were in their units and he the rat was stuck outside he told on everyone, he motioned to Plaintiff.

On September 23, 2011 Plaintiff received a second incident report from Defendant, tool guard Yeoman, accusing Plaintiff of gambling. Directly after receiving the incident report Plaintiff obtained and sent two affidavits from witnesses, cop-outs to the Case manager, Defendant Bullock, Defendant Tool Guard Yeoman, Defendant Warden Zickefoose, Defendant AW in Charge of Facilities Lemyre. And a letter to OIG, Defendant Thomas McLaughlin.

On October 3, 2011 the Incident report was dropped by Defendant Bullock.

On November 28, 2011, Plaintiff filed a Habeas Corpus action regarding the (SCA) Second Chance Act.

On March 15, 2001, Plaintiff requested, the lower bunk by cop-out. The bunk was Plaintiff's by seniority. Plaintiff suffered from severe arthritis. The bunks in these 12 man rooms were issued by seniority. The inmate senior in the room received the lower bunks. Plaintiff's arthritis is documented by Fort Dix medical dept. After release Plaintiff was diagnosed with Lyme disease the cause of arthritis affecting his ability to climb. Plaintiff was also senior by age, 25 years older than the other inmates in the room. Request was denied. Retaliation ongoing.

On March 1, 2013 Case # 1:11-cv-06990. Plaintiff mailed his Appeal to the 3rd circuit (Habeas Corpus) Second Chance Act.

On April 4, 2013 plaintiff's habeas corpus 3rd circuit appeal was dismissed for failure to prosecute. The parcel was held by Defendant Bullock and returned to Plaintiff on **April 9, 2013**, with the original stamps scribbled out with a black pen. The parcel was returned for additional postage, (\$.52). Plaintiff wasn't given this parcel until it was too late. Plaintiff's appeal was dismissed. Court Docket # 27 on 4/4/13

On May 8, 2013 Case # 13-175-RBK, District Court Docket # 3, Pertaining to this case, here in, Plaintiff filed a petition to amend this complaint, with the District court.

On July 15, 2013, District Court Docket # 4 Plaintiff was given 60 days to file an amendment.

On October 30, 2013, District Court Docket #6 the courts mailing was returned to court clerk as undeliverable.

On November 5, 2013, Plaintiff sent cop-out to Defendant, Unit Manager Robinson inquiring about legal mail.

On November 6, 2013, Plaintiff sent a friend, Gaetano Amatrudo, to the district court clerk's office to inquire about Case# 13-175-RBK. That evening at 8:51 pm Gaetano Amatrudo e-mailed plaintiff advising him that court clerk sent letter to plaintiff at Fort Dix **on October 11, 2013**, The letter was never received by Plaintiff, it was returned to court clerk as un deliverable.

On November 7, 2013 Plaintiff sent a cop-out to Unit Manager, Defendant Robinson officially accusing Defendant Bullock of withholding Plaintiff's legal mail.

On October 17, 2013 Plaintiff realized that the dates were changed on his computation sheets. The change now prevented Plaintiff from eligibility to leave the halfway house for home confinement.

On October 17, 2013, Defendant Bullock responded to Plaintiff's cop-out "check w/ records I do not compute sentence comps."

On October 18, 19, 20, 2013, Plaintiff started his 5 days waiting standing outside the records office. Dates were eventually corrected but never forwarded to Susan Robinson community corrections coordinator. Defendant Bullock claimed he forwarded same by e-mail, stated in his response to cop-out.

On October 23, 2013, Plaintiff sent registered certified letter to Susan Robinson, Regional Director Community Corrections US Customs House Phila. PA. Alerting her of the incorrect dates on his computation sheet and to advise her Defendant Bullock was to email her the correct dates.

On December 4, 2013, Defendant Bullock Signed furlough application without correcting the false information. He sent bad information to Susan Robinson, Regional Director Community Corrections.

Proof that Bullock was aware of Plaintiff's correct dates, on October 22, 2012, Defendant Bullock filed an affidavit with the District Court for case # 1:11- cv- 06990, Declaration, and Affidavit, signed by him on October 3, 2012. He declared that all documents attached were true and accurate. Exhibit 1, Plaintiff's computation sheet, with correct dates.

On December 10, 2013, Plaintiff was released to Halfway House without the possibility of home confinement. Plaintiff has a liberty interest in home confinement.

On December 12, 2013, Plaintiff submitted BP-9 to Case Manager, Ms. Torres at Liberty Management Half Way House asking for her help, Plaintiff's home detention date already passed it was **September 8, 2013**, the date of **February 10, 2014** prevented Plaintiff from home confinement. Case Manager Ms. Torres had the dates corrected by the BOP, however, Plaintiff had already been damaged.

The Second Chance Act, see Appendix (D-1) appeal brief appendix r, r-1. The BOP directives management overview is clear regarding policy making. Chapter 3, section 251, The Act mandates the BOP director issue regulations no later than 90 days after the date of enactment. This was never done. Legitimate policy was never made. The Attorney General, BOP Directors, Directors of Programs, down through to the Case managers subverted Congressional intent. Memos were written to subvert the Second Chance Act. BOP directive overview see Appendix (D-1) appendix from appeal brief Appendix o, o-1, o-2, o-3, o-4, o-5. More proof is in the memos. Memo sets criteria for inmates to seek placement 17-19 months before release date, it is obvious this criteria set by BOP makes it impossible to participate in the program. Placement in halfway house and home confinement total 18 months. Applying 17-19 months doesn't work. How can any inmate benefit? See Appendix (G), page 3, April 14, 2008 memo,

(G-1) November 14, 2008 memo, (G-2) June 24, 2010 memo. From the Bureau of Prison total disregard for Congressional mandate.

The accreditation of FCI Fort Dix, a prison with sub standard conditions, safety hazards and a toxic environment; it is the product of the prison industrial complex. Following the dollars, The BOP keeps prisoners in their custody for as long as it is in their power. Sending prisoners to home confinement or to halfway house reduces BOP revenues and is counter to the Bureaus self interest. The tax payer picking up the tab. There is a spoken or unspoken conspiracy, keeping inmates for maximum time. This not serving the public interest. The Federal prison system is already severely overcrowded, by 33%. The BOP and The American Correctional Association are RICO organizations.

Reasons for Granting the Petition

There are serious constitutional matters at issue. Human Rights, Civil Rights, Subverting Congressional Intent, Abuse of Power, Misuse of the Administrative Remedy Process and interference with US mail are just a part. Do prisoners have the right and protections of the Constitution to petition the court? Does congress have the authority to diminish prisoners' constitutional rights using the Prison Litigation Reform Act, blocking inmates court access, the BOP is a rogue agency, run wild with no oversight. The Supreme Court is the right venue for these issues.

The District Court and the 3rd circuit court of appeals, have not granted Petitioner the benefit of liberal construction. It has become easy to dismiss Petitioner and other petitioners', rulings using the broken (ARP) administrative remedies denying inmates due process. The ARP is broken. It does not function; the BOP staff manipulates the entire process. Exhaustion is not only be futile, but impossible. The Plaintiff is in artful, has no education in the law, and unable to compete with the professional opposition. The petitioner made errors presenting his pleadings. The courts used plaintiff's failings deciding against him without liberal construction. The documented facts are undisputable. Both lower courts did not review all the facts. Petitioner could not get the courts attention. Plaintiff's case is complicated.

The ill effects of condition at FCI Fort Dix, will eventually have profound health effects on the Petitioner and fellow Americans confined there. The PLRA requires inmate suffer bodily injury, the internal injuries cannot be seen or detected until later years when cancer and other diseases can overcome a persons good health. The affect of the conditions are silent. The onset of future disease and suffering will only come with time. This is exploited by the BOP behind the PLRA. Do prisoners have human rights? Do they have civil rights?

Appendix (A-3) Opinion, Page 3 of Appeal to the US 3rd circuit. The court stated the Plaintiff did not exhaust the Administrative remedies. The Fort Dix administration (Unit Teams) maliciously control the Administrative Remedy System. The court did not consider Plaintiff's evidences regarding the ARP subversion presented in his pleadings. Do the Plaintiff's evidences deserve consideration; hundreds of exhibits- appendixes have been presented the facts are real and should be reviewed. Pleas for appointed counsel were not granted. See Plaintiff's motion to the courts for counsel. Appendix (H, H-1). Appendix (I) court opinion and order denying counsel.

Congress passed the PLRA as a rider to an omnibus appropriations bill,105 so it was "never the subject of a Committee mark-up, and there [was] no Judiciary Committee report.""- There was just one

hearing in the Judiciary Committee."7 Senator Ted Kennedy noted that this abbreviated process was "hardly the type of thorough review that a measure of this scope deserves."

- From Oyez: The Court ruled unanimously that the Sixth Circuit's rules for exhaustion of administrative remedies were not required by the Prisoner Litigation Reform Act. The opinion by Chief Justice John Roberts held that prisoners bring civil rights lawsuits do not need to demonstrate that they have already exhausted all administrative remedies
- : the PLRA is unconstitutional, a slap to the Equal Protection Clause of the U.S. Constitution, and an illegal provision which makes prisoners, both state and federal, second-class citizens. This surely couldn't have been the intention of the drafters of that wonderful document called the United States Constitution when they were dreaming, and then subsequently proclaiming, the action that ALL men are created equal – even prisoners of this great country.
- "there is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff v. McDonnell* (1974) 418 U.S. 539, 555-556, 94 S. Ct. 2963, 2974, 41 L. Ed. 2d 935. Prison officials who engage in depriving prisoners of their constitutional rights will be allotted no deference from the federal courts. *Palmigiano v. Garrahy* (D.R.I.1977) 443 F. Supp. 956, 979, aff'd, (1st Cir.1980) 616 F.2d 598, cert. denied, 449 U.S. 839, 101 S. Ct. 115, 66 L. Ed. 2d 45. Except for those necessarily lost as a result of confinement, prisoners retain all rights provided to free citizens. *Id.*, *Palmigiano*, 443 F. Supp. at 978. Additionally, the institution heads have a state-mandated duty to follow the rules and regulations prescribed by the director for the administration of state prisons. Cal.Admin.Code, tit. 15, div. 3; Cal.Pen.Code § 2079; see also *In re French* (1980) 106 Cal.App.3d 74, 85, n. 24, 164 Cal.Rptr. 800.
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- . Lighting, Heating, Ventilation, and Plumbing
- Inadequate lighting, heating, ventilation, and plumbing are all conditions subject to Eighth Amendment review. *Hoptowit v. Ray*, supra, 682 F.2d at 1256; *Ramos v. Lamm* (10th Cir.1980) 639 F.2d 559, 568, cert. denied, (1981) 450 U.S. 1041, 101 S. Ct. 1759, 68 L. Ed. 2d 239; *Palmigiano v. Garrahy*, supra, 443 F. Supp. at 961, aff'd, (1st Cir.1980) 616 F.2d 598, cert. denied, (1980) 449 U.S. 839, 101 S. Ct. 115, 66 L. Ed. 2d 45; *Jordan v. Fitzharris* (N.D.Cal. 1966) 257 F. Supp. 674, 683-84. The debilitating psychological effects which inadequate lighting can have upon inmates was further noted in *Palmigiano v. Garrahy*, supra, 443 F. Supp. at 961, aff'd, (1st Cir. 1980) 616 F.2d 598, cert. denied, (1980) 449 U.S. 839, 101 S. Ct. 115, 66 L. Ed. 2d 45. This Court concludes that the lighting, heating, ventilating, and plumbing conditions which are challenged here conflict sharply with common notions of human decency and constitute a serious question of compliance with the federal and state prohibition against cruel and unusual punishment.
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- . Mail Service
- Lack of adequate mail service is similarly a proper subject for consideration under the prohibition against cruel and unusual punishment. *Bolding v. Holshouser* (4th Cir.1978) 575 F.2d 461, 464-465, cert. denied, (1978) 439 U.S. 837, 99 S. Ct. 121, 58 L. Ed. 2d 133; *Laaman v. Helgemoe*, supra, 437 F. Supp. at 322. Plaintiffs have demonstrated that defendants' current practices fall short of constitutional standards. Defendants' practices also violate their own
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- Regardless of whether defendants' practices fall short of a clear Eighth Amendment violation, they violate the Director's regulations (Cal.Admin.Code, tit. 15, §§ 3337-3338), which were enacted in response to this Court's ruling in *Wright I*. Federal courts have found a violation of

due process where state or local prison officials have failed to enforce or follow their own regulations. *Giampetruzzi v. Malcolm* (S.D.N.Y.1975) 406 F. Supp. 836, 840; *King v. Higgins* (D.Mass.1974)370 F. Supp. 1023, 1028; *Lathrop v. Brewer* (D.Iowa 1972) 340 F. Supp. 873, 882. Accordingly, this Court concludes that defendants' failure to follow their own administrative regulations constitutes a violation of due process, as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, section 7 of the California Constitution.

- On a motion to dismiss pursuant to Rule 12(b)(1), the plaintiff bears the burden of establishing that the court has jurisdiction. *See District of Columbia Retirement Bd. v. United States*, 657 F.Supp. 428, 431 (D.D.C.1987). In reviewing a motion to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1), the court must accept all the complaint's well-pled factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *See Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Pitney Bowes v. United States Postal Serv.*, 27 F.Supp.2d 15, 19 (D.D.C.1998) (Urbina, J.). The court is not required, however, to accept inferences unsupported by the facts alleged or legal conclusions that are cast as factual allegations. *See, e.g., Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990).
- The Third Circuit: *White v. Fauver* and *Nyluis v. Reno* In *White v. Fauver*, the plaintiffs filed a class action suit alleging that prison officials and guards violated their constitutional rights by subjecting them to physical abuse, threats, and unconstitutional living conditions such as serving rancid food and depriving inmates of showers, bedding, and clothing." The plaintiffs sought damages as well as injunctive relief. 7 The New Jersey Inmate Grievance Procedure, however, does not offer monetary remedies. 9 In response to the state's motion to dismiss for failure to exhaust administrative remedies, the District of New Jersey held that requiring the prisoner to exhaust an administrative procedure which cannot provide the remedy requested would be nothing more than a "hollow gesture."180 The court arrived at this decision by examining how Congress used the word "available" in the statute. The term "available" was not defined in the PLRA, so the court applied the term's ordinary meaning.' Because "available" modified "remedy," Judge Orlofsky, writing for the court, found that "available" meant that the remedy sought could be obtained2 2 According to the court, interpreting "available remedy" to mean that "some procedure is available, the use of which would be but an empty formality" would be "contrary to a commonsense interpretation of the statutory language.-' ' ? Further, the court noted that applying the PLRA's exhaustion requirement in this case would amount to a conclusion that Congress included the provision in order to create purposeless barriers for prisonersY4 Such a conclusion contradicts the Supreme Court's instruction. In *Stone v. INS*,ss the Supreme Court explained that "[w]hen Congress acts to amend a statute, we presume it intends its

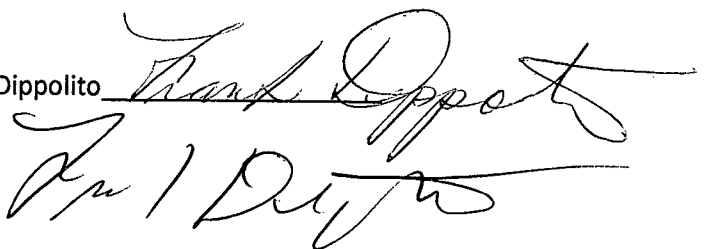
Conclusion

The Plaintiff believes that this petition must be granted based on BASIC HUMAN RIGHTS. As American citizens we should look to preserve the better treatment of our fellow Americans. Torture and exposure to carcinogens should never be allowed.

28 U.S. Code 1746 – Unsworn declaration under penalty of perjury
"I declare under penalty of perjury that the forgoing is true and correct"

Date 11/21/17

Frank Dippolito

A handwritten signature in cursive script, appearing to read "Frank Dippolito", written over a horizontal line.