No. ____________________

IN THE

SUPREME COURT OF THE UNITED STATES

CEDRICK SAMS — PETITIONER
(Your Name)

vs.

DANIEL QUINN, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CERDRICK SAMS (#169006)
(Your Name)
CHIPPEWA CORRECTIONAL FACILITY (URF)
4269 West M-80
(Address)

Kincheloe, Michigan 49784-9200
(City, State, Zip Code)

NONE
(Phone Number)

LIST OF PARTIES

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

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

CEDRICK SAMS, **Plaintiff-Appellant.**

DANIEL QUINN, **Defendant-Appellee**

JOHN KLUDY, **Defendant-Appellee**

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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

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

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

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[X] is unpublished.

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

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[X] is unpublished.

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

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

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[ ] is unpublished.

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

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[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was September 7, 2017.

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

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 13, 2017, and a copy of the order denying rehearing appears at Appendix n.

[ ] 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

"...nor cruel and unusual punishment inflicted."

United States Constitution, Amendment 8th

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QUESTION(S) PRESENTED

ISSUE I

DID THE FEDERAL LOWER COURTS ABUSE IT'S DISCRETION AND OFFEND THE CONCEPTS OF FUNDAMENTAL FAIRNESS WHEN IT DID NOT ALLOW PETITIONER DISCOVERY BEFORE GRANTING RESPONDENT'S SUMMARY JUDGMENT MOTION

ISSUE II

DID THE LOWER COURT'S FAILED TO CONSIDER THE PETITIONER'S DIMINISHED CAPACITY DURING THE SUMMARY JUDGMENT PROCEEDING

STATEMENT OF THE CASE

1. On April 22, 2016, Cedrick Sams, Petitioner (Plaintiff-Appellant) had filed a civil complaint (42 U.S.C. section 1983), against Daniel Quinn and John Kludy, Respondents (Defendants-Appellees) (See: Complaint (Docket Entry # 7)) for excessive use of force/failure to protect claims that occurred in a Michigan State Prison (Muskegon Correctional Facility (Michigan Department of Corrections)), dated March 16, 2013. The incident involved Respondent Kludy unjustly (wrongly) tasing Petitioner Sams (whom at the time that Respondent Kludy tased Petitioner Sams, Petitioner Sams was suffering from a "diabetic low blood sugar reaction" ("Hypoglycemia") which caused him to be totally "incoherent" (unable to comprehend to any commands/orders)) and unable to comprehend to what was occurring around him (which the taser video/audio footage will show), and Respondent Quinn total failure to intervene in stopping Respondent Kludy in activating (pulling and aiming), and later deploying (firing) the taser on Petitioner Sams, as both Respondents were aware that Petitioner Sams was "incoherent" and non-combative at the time Respondent Kludy deployed (fired) the taser on Petitioner Sams. See: Complaint (D/E #7 and 30) and Affidavit from Plaintiff's Response to Motion for Summary Judgment, attached Exhibit A (D/E #21).

(**NOTE:** The use of the taser **WAS NOT** for security matter, but for a medical matter -**<u>WHICH WAS NOT AN IMMINENT THREAT, ESCAPE PREVENTION, OR RESISTING (I.E., CONSCIOUSLY AND DELIBERATELY FAILING TO FOLLOW COMMANDS/ ORDERS OF RESPONDENT KLUDY)</u>**, as Petitioner Sams needed medical attention for his diabetic low blood sugar reaction.)

2. On March 31, 2017, Honorable Paul L. Maloney, United States District Court Judge, rendered an order adopting the magistrate judge's report and recommendation granting the Respondents' motion for summary, along with denying the Petitoner's motion for leave to amend his complaint (denied as futile), and denied his motion for discovery (requesting production of both the taser and prison's wall-mounted video footage of the event) (denied as moot). See: Appendixes B and C "Order Adopting Report and Recommendation and Denying Motion for Leave to Amend, and Judgment; and Report and Recommendation".

STATEMENT OF THE CASE (CONTINUED)

3. On September 7, 2017, the Panel from the United States Court of Appeals for the Sixth Circuit had affirmed the district court's judgment and denied the Petitioner's motion for appointment of counsel (denying as moot). See: Appendix A "Order".

4. On October 13, 2017, an order was issued from the United States Court of Appeals for the Sixth Circuit denying the Petitioner's timely request for rehearing/rehearing en banc, and thus not addressing the Petitioner's issues (Issue I, II and III) that he had raised, including failing to conduct discovery in obtaining the requested and readily available taser and prison's wall-mounted video footage of the event for the Petitioner's opposition to the Respondent's motion for summary judgment. See: Appendix D "Order from the United States Court of Appeals for the Sixth Circuit Denying Rehearing/ Rehearing En Banc."

REASONS FOR GRANTING THE PETITION

ISSUE I

DID THE FEDERAL LOWER COURTS ABUSE IT'S DISCRETION AND OFFEND THE CONCEPTS OF FUNDAMENTAL FAIRNESS WHEN IT DID NOT ALLOW PETITIONER DISCOVERY BEFORE GRANTING RESPONDENT'S SUMMARY JUDGMENT MOTION

On December 5, 2016, the Petitioner had filed a timely motion requesting the district court to order the Respondents to file a certified copy of the unit and taser (video) footage with the court and order the Respondents to allow the Petitioner to review the certified copy of the unit and taser video footage (See: Motion (D/E #25)), but the district court, after the Petitioner filed an objection to the Report and Recommendation (D/E # 29) and explicitly explained that the court failed to grant and review both the taser and unit video footage of the event (which the video footage of the incident would had supported the Petitioner's opposition to the Respondent's summary judgment as it would had shown the Petitioner's totally incoherent/non-combative condition, and thus, establishing, from recorded evidence, the Petitioner was unable to respond and follow any orders), denied the motion as being MOOT without explanation. (See: Order (D/E #31), ECF No. 31, PageID.184)

The Court of Appeals affirmed the district court's decision, and stated the following in pertinent part:

> "Finally, we conclude that the district court did not abuse its discretion in denying Sam's discovery motion.... Although Sams claimed in his motion that the video would support his claim that he was confused and non-aggressive, and show that the force the defendants used was excessive, he admitted that he refused to leave his cell. (*1) Moreover, Sams's complaint shows that he sustained minor taser barb punctures that required only cleaning and covering with an adhesive bandage.... In light of Sams's admissions and the de minimis nature of his injuries, it is not likely that the video of the incident would have allowed him to successfully withstand the motion for summary judgment." See: Order, dated September 7, 2017, page 5 (Appendix A).

The Petitioner ask this Honorable Court to grant and hear this above issue

*Footnote 1: The Court of Appeals had misinterpreted the facts when it stated that the Petitioner "admitted that he refused to leave his cell". That was totally incorrect, as the Petitioner explicitly stated: "The diminished capacity state that I was in prevented me from completely obeying Defendant Kludy's commands." (See: Amended/Supplement Complaint, paragraph 6 (D/E #30)). Petitioner never consciously refused to leave his cell, as the court suggested.

as the lower courts had decided an important federal question in a way that conflicts with relevant decisions of this Court. In White's Landing Fisheries v. Buchholzer, 29 F.3d 229, 231-32 (6th cir. 1994), the Court stated:

> "Fed. R. Civ. P 56(C) provides courts with a useful method by which meritless cases maybe discharged. However, the benefits of this rule are quickly undermined if it is employed in a matter that offends concepts of fundamental fairness....
>
> **Our conclusion that some discovery must be afforded the non-movant before summary judgment is granted is supported by the Supreme Court's holdings in Anderson and Celotex Corp. v. Catrett, 477 U.S. 317; 106 S.Ct. 2548 (1986).** In Anderson, the Court discussed the shifting burdens that each party must bear within the context of summary judgment and found that the movant has the burden of proving that no genuine issues of material facts exist, **'while the plaintiff has the burden of proving specific facts which demonstrate that a triable issue is indeed present'**. 477 U.S. 256.
>
> With regard to the burden the non-movant must bear, the Court further commented:
>
> **'the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment. This is true even where the evidence is likely to be within the possession of the defendants, AS LONG AS THE PLAINTIFF HAS HAD A FULL OPPORTUNITY TO CONDUCT DISCOVERY.**
>
> Id. at 257.... It follows that a grant of summary judgment is **improper** if the non-movant is given and insufficient opportunity for discovery.
>
> A similar interpretation of Rule 56(C) was adopted by the Court in Celotex, where the Court found that 'the plain language of Rule 56(C) mandates the entry of summary judgment, **'after adequate time for discovery'**". 477 U.S. at 322."

The Petitioner has had no opportunity to produce the "readily available" taser and unit video footage of the event (which recorded the incident in its entirety).

In Alspaugh v. McDonnell, 643 F.3d 162, 166-67 (6th cir. 2012), the Court said:

> "If the non-movant makes a proper and timely showing of a need for discovery, the district court's entry of summary judgment without permitting him to conduct **any discovery at all will constitute an abuse of discretion.**"

REASONS FOR GRANTING THE PETITION (CONTINUED)

In Peterson v. Jones, 2012 U.S. App. Lexis 20552 (6th cir. Mich. Sept. 12, 2012) at (*5), the Court stated:

> "...(w)e have stated that 'the legal significance of the videotape is readily apparent' when the prisoner 'is asserting an excessive use of force claim...and the videotape would show how much force was used."

See also, Alspaugh, id. at 168.

The presented question is an important question that will effect the entire American population, as the issue involves available evidence that is only in the possession of the movant party, and the non-movant party need to obtain a copy of that evidence (in this case, the video recordings of an incident in question) in order to produce in the record in opposition of summary judgment, especially when the non-movant party is proceeding Pro se. Had the video recordings of the entire event were submitted in the record for the district court to review (just was done in Kenneth Colvin, Jr. v. Daniel H. Hyens, Case No.: 1:15-cv-00070 (United States District Court -Grand Rapids, Michigan) (ECF No. 87 PageID.541), the magistrate judge was able to review the taser video of the event, and concluded that the video **did not** support the "...(D)efendants' position that the decision to tase Plaintiff was justified or reasonable...."), the court would had concluded that it was unreasonable to tase the Petitioner, and thus, denied summary judgment.

ISSUE II

DID THE LOWER COURT'S FAILED TO CONSIDER THE PETITIONER'S DIMISHED CAPACITY DURING THE SUMMARY JUDGMENT PROCEEDING

In the United States Court of Appeals' Panel's decision in affirming the district court's ruling in granting summary judgment, the court stated the following in pertinent part:

> "(I)n this case, although Sams was incoherent and allegedly non-combative, he admitted that he did not obey Kludy's orders to leave his bunk so that he could be taken to the infirmary. **(NOTE: PLEASE FOOTNOTE *1 REGARDING UNDERLINED ASSERTION.)**
> Consequently, Kludy tased Sams so that the officers could safely gain control of him and take him to receive medical treatment.
> Thus, the record and **the facts pled by Sams** show that the defendants did not act maliciously and sadistically, but rather

> that they acted in good faith in order to get Sams medical attention. We have found that prisoners failed to established excessive-force claims against corrections officers in similar circumstances.... Accordingly we affirm the district court's grant of summary judgment to the defendants." See: Order (Appendix A), page 4.

The lower courts failed to consider the fact that the Petitioner was totally incoherent (diminished capacity), and was unable to comprehend any instructions/orders that were given to him -which medical evidence supports the Petitioner's state. See: Sams' Opposition for Summary Judgment (D/E #21, Exhibit B "Hypoglycemia" sheets). The Respondents were unequivocally aware that the Petitioner was not responding to their commands (as they were talking to him for over ten (10) minutes, before he was finally tased), and he was not threatening to them. In fact, the Respondents stated themselves that Sams was tased in order for them to have him moved to medical -that is not objectively reasonable, as they had other options (i.e., bring the nurse to Sams; grabbing Sams' arms and guided him to the wheelchair: giving Sams a honey pack (which would had risen his sugar level); and etc.) that failed to attempt before they decided to tase him. In Champion v. Outlook Nashville, Inc., 380 F.3d 893, 904 (6th cir. 2004), that court held that diminished capacity must be taken into account when assessing the amount of force exerted, and yet, this was not considered, and that panel stated:

> "(C)onsequently, the right to be free from the two types of excessive force exerted against Champion was clearly established by the law of this circuit and by the training of the officers. ...We recognize that the officers perhaps did not intended to harm Champion; indeed, they may have believed they were helping him. **"Such a consideration is immaterial, however, because the qualified immunity doctrine is an objective one; MOTIVE IS IRRELVANT'."** Id. at 904.

This issue is an extremely important issue that will effect the entire American population, including the law enforcement and corrections communities, especially when it comes to encounters with individuals who are not violent and visibly incoherent (diminished capacity).

It is not objectively reasonable to tase a man who is not in a "conscious mind".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Fredrick Farms

Date: x 12-8-17