

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

DANIEL P. McKINNEY

Petitioner,

v.

JOHN R. KASICH, OHIO GOVERNOR, *ET AL.*

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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COUNSELS FOR RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

I. QUESTIONS PRESENTED

QUESTION ONE: WHETHER PETITIONER DANIEL P. McKINNEY'S EIGHT AMENDMENT CRUEL AND UNUSUAL PUNISHMENT 42 U.S.C. SECTION 1983 CLAIMS ARE COGNIZABLE AS A MATTER OF LAW, WHERE RESPONDENTS' MEDICAL TREATMENT WAS "WOEFULLY INADEQUATE" AMOUNTING TO DELIBERATE INDIFFERENCE TO PETITIONER'S SERIOUS MEDICAL NEEDS.

QUESTION TWO: WHETHER PETITIONER DANIEL P. McKINNEY'S EIGHT AMENDMENT DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS CONSPIRACY CLAIMS WERE ADEQUATELY STATED UNDER 42 U.S.C. SECTIONS 1983, 1985, AND 1986.

LIST OF PARTIES

[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:

John R. Kasich, Ohio Governor
Gary C. Mohr, Director – Ohio Department of Rehabilitation and Correction (ODRC)
Gary Croft, ODRC Chief Inspector
Roger Wilson, ODRC Chief Inspector
Cindy Lawson, ODRC Health Care Administrator (HCA), Lebanon Corr. Inst. (LeCI)
Jane/John Doe, Director, Ohio State University Medical Center (OSUMC)
Kristine Edwards, ODRC Health Care Administrator (HCA), Allen Corr. Inst. (AOCI)
Joanna J. Factor, Institutional Inspector, Allen/Oakwood Corr. Inst. (AOCI)
Thomas Chai-I Lin, Medical Practitioner, Allen/Oakwood Corr. Inst. (AOCI)
Dr. Carlos Perez, Medical Practitioner, Allen/Oakwood Corr. Inst. (AOCI)
Deborah Rable, ODRC Health Care Administrator (HCA), Allen Corr. Inst. (AOCI)
Stephen R. Payne, ODRC Medical Contractor
Anne Berry Strait, ODRC Legal Contractor

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III. OPINIONS BELOW

The January 3, 2018 Order of the Sixth Circuit United States Court of Appeals denying Petition for Rehearing En Banc appears at **Appendix A** and is unpublished.

The September 29, 2017 Order of the Sixth Circuit United States Court of Appeals denying relief pursuant to 42 U.S.C. §§1983, 1985, and 1986 appears at **Appendix B** and is unpublished: *See McKinney v. Kasich, et al.*, 2017 U.S. App. LEXIS 19348

The December 22, 2016 Order of the Sixth Circuit United States Court of Appeals granting *forma pauperis* appears at **Appendix C** and is unpublished.

IV.
JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 2101(c) to review decisions of the Sixth Circuit United States Court of Appeals and Rule 13.1 of the Rules of the United States Supreme Court.

The petition for rehearing en banc was timely filed in this case, and the decision denying rehearing en banc was issued on January 3, 2018.

V.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

EIGHT AMENDMENT TO THE UNITED STATES CONSTITUTION
42 U.S.C. §§1983, 1985, AND 1986

VI. STATEMENT OF THE CASE

Since May, 2004 Appellant Daniel P. McKinney (“Appellant”) has remained an incarcerated prison inmate ward of the Ohio Department of Rehabilitation and Correction (“ODRC”), and has remained dependent upon ODRC and the Ohio State University Medical Center (“OSUMC”) for responsive and specialized medical treatment to ensure his safety and security from physical harm.

On May 20, 2004 the ODRC medical staff at the Lebanon Correctional Institution (“LeCI”), under the direction and supervision of LeCI health Care Administrator Appellee Cindy Lawson, examined Appellant regarding Appellant's left knee injury resulting from an automobile collision that occurred in June, 2003. (Doc. 44, Opinion and Order, pg.1, 2, PageID#497)¹ Appellant provided Appellee Lawson the results of Appellant's previous MRI examination of August, 2003, conducted while Appellant was incarcerated at the Paulding County Jail pretrial facility, that showed meniscus and related musculoskeletal injuries to Appellant's left knee as a result of the June, 2003 automobile accident. (Doc. 44, Opinion and Order, pg.1, 2, PageID#497) However, Appellee Lawson and the LeCI medical staff merely prescribed Appellant Naprosyn 500mg. for Appellant's left knee, yet failed to conduct responsive diagnosis and medical treatment inclusive of an effective magnetic resonance imaging (“MRI”) examination, a CT scan examination, an arthroscopic examination, an MR arthrogram examination, nor schedule Appellant for examination by a qualified orthopedic surgeon/specialist.

On May 30, 2009 Appellant was seen by the ODRC Allen/Oakwood Correctional Institution (“AOCI”) medical staff regarding a shoulder injury. Consistent with the ODRC

¹ *McKinney v. Kasich*, 2016 U.S. Dist. LEXIS 39519 (S.D. Ohio No. 2:15-CV-02043).

systemic policy and practice of denying prison inmates of Appellant's age class responsive diagnosis and specialized medical treatment, Appellant was refused adequate medical treatment. And on December 27, 2012 Appellant was again seen by the AOCI medical staff regarding Appellant's left knee injury and was again refused responsive diagnosis and adequate medical treatment.

On February 12, 2014 the left knee of Appellant gave out causing Appellant to slip on the ice and thereby experience a violent fall. Appellant's left knee was visibly grotesquely swollen and Appellant, experiencing extreme pain and suffering, was unable to walk without assistance. Yet, the AOCI Inmate Health Services ("IHS") staff informed Appellant that he could not be seen on an injury emergency and must submit an AOCI medical health services request.

On referral to Appellee Thomas Chai-I Lin several days later, Appellee Dr. Lin informed Appellant that Appellant's condition was arthritis and prescribed exercise for Appellant. Appellee Dr. Lin made this observation prior to having ordered and examined the results Appellant's x-ray examination. Furthermore, Appellee Dr. Lin failed to order an MRI or "soft tissue" examination critical to the diagnosis and treatment of a musculoskeletal related injury.

Continuing to experience severe pain and suffering, on March 14, 2014 Appellant's left knee developed a huge bulge on the left side of the knee cap and became grotesquely swollen again. On attempting to be seen by the AOCI IHS medical staff, Appellant was informed that he had already been treated by the AOCI IHS physician and would not be seen again unless Appellant submitted another AOCI IHS medical health services request. In compliance thereof, Appellant submitted a medical health services request that same day yet received no reply. On

March 24, 2014 Appellant submitted another medical health services request and was eventually seen by Appellee Dr. Lin on March 26, 2014. Appellee Dr. Lin merely prescribed Ibuprofen, refused to drain the fluid (“aspirate”) from Appellant's left knee, nor schedule Appellant for transportation to the Ohio State University Medical Center (“OSUMC”) for an MRI and examination by a qualified orthopedic surgeon/specialist. Moreover, Appellees Dr. Lin and Dr. Carlos Perez stated to Appellant that due to Appellant being over the age of forty (40) and the costs associated with the overcrowded conditions of ODRC prisons, ODRC and OSUMC adhere to the policy of restricting ODRC prisoners of Appellant's age class from specialized medical treatment for musculoskeletal injuries similar to Appellant's left knee and shoulder injuries.

On May 16, 2014 Appellant's left knee again gave out while walking resulting in injury to Appellant's arm, shoulder and head and Appellant again submitted an AOCI IHS medical health services request that same day. However, to date Appellant has not been provided a response to his May 16, 2014 medical health services request and has been refused *any* manner of treatment for his injuries of May 16, 2014.

Appellant thereby timely exhausted his ODRC prison grievance administrative remedies and appeals with Appellees Kasich, Mohr, Rable, Factor, Croft, Wilson, Edwards, and Lawson. During this process Appellees Anne Berry Strait and Stephen R. Payne, in an *administrative* capacity beyond a judicial scope, actively conspired with said named state agent Appellees toward denying Appellant adequate medical treatment in violation of the Eight Amendment.

Appellant sought relief under 42 U.S.C. §§ 1983. The District Court granted Appellees' motion to dismiss pursuant to the *Rooker-Feldman* doctrine and this appeal now follows.

PETITION FOR WRIT OF CERTIORARI

VII.

REASONS FOR GRANTING THE WRIT

- A. REASONS FOR GRANTING WRIT NUMBER ONE:** A Writ of Certiorari is necessary to secure uniformity of United States Supreme Court and Sixth Circuit decisions concerning the conflicting “woefully inadequate” medical care amounting to deliberate indifference interpretation rendered by the Sixth Circuit three judge panel. The Sixth Circuit decision conflicts with United States Supreme Court cases similar to *Estelle v. Gamble*, 429 U.S. 97 (1976) and *Farmer v. Brennan*, 511 U.S. 825 (1994), as well as the Sixth Circuit case of *Westlake v. Lucas*, 537 F.2d 857 (6th Cir. 1976) and their respective progeny.
- 1. QUESTIONS PRESENTED QUESTION ONE (restated):** WHETHER PETITIONER DANIEL P. MCKINNEY'S EIGHT AMENDMENT CRUEL AND UNUSUAL PUNISHMENT 42 U.S.C. SECTION 1983 CLAIMS ARE COGNIZABLE AS A MATTER OF LAW, WHERE RESPONDENTS' MEDICAL TREATMENT WAS “WOEFULLY INADEQUATE” AMOUNTING TO DELIBERATE INDIFFERENCE TO PETITIONER'S SERIOUS MEDICAL NEEDS.

Here the “woefully inadequate” medical care interpretation reached by the Sixth Circuit three judge panel directly conflicts with the controlling decision in cases consistent with the United States Supreme Court case of *Farmer v. Brennan*, 511 U.S. 825 (1994) and the Sixth Circuit case of *Westlake v. Lucas*, 537 F.2d 857 (6th Cir. 1976).

Among those uncontested facts the Sixth Circuit three judge panel selectively chose to acknowledge includes:

“McKinney alleged that staff at the Lebanon Correctional Facility began treating his knee injury in 2004, and that they provided him with prescription medication for his injury but declined to conduct additional diagnostic examinations on his knee, even though he had provided defendant Lawson with the results of a previous MRI showing structural damage to his knee. He alleged that Lawson declined to include the MRI in his medical file and declined to approve follow-up procedures and diagnostic tests. In 2012, medical staff at AOCI saw McKinney for complaints related to his knee injury, but declined to conduct additional diagnostic exams. Thereafter, McKinney alleged that he fell as a

result of his knee injury, and that his knee was 'visibly grotesquely swollen.' AOCI staff diagnosed his knee as arthritic, but did not conduct an x-ray until several days later. He alleged that staff ignored his initial request for medical treatment, but that he was eventually seen by medical staff two days after his March 24, 2014 request for medical treatment. Staff provided him with Ibuprofen, prescribed exercise and rest, but declined to conduct any other diagnostic procedures or medical treatment. In addition, defendant Perez allegedly advised McKinney that ODRC policy restricted inmates over forty years old from receiving specialized medical diagnostic services and treatment, including referrals to orthopedic specialists, specialized diagnostics, and corrective surgery. McKinney filed a grievance that defendant Factor denied in April 2014. In May 2014, McKinney again fell due to his knee condition and allegedly injured his arm, shoulder, and head. However, staff allegedly ignored his formal request for medical treatment.”

(Order, Sixth Cir. Case No. 16-3344, pg.2, ¶2, attached; *McKinney v. Kasich, et al., supra*, 2017

U.S. App. LEXIS 19348, at ¶¶2-4 (6th Cir. Sept. 29, 2017). The three judge panel went on to write:

“McKinney alleged that the defendants violated his rights under the Eight Amendment by failing to provide him with specialized treatment concerning his knee condition, including failing to provide him with an MRI or CT scan, an arthroscopic exam, or referral to an orthopedic specialist. However, he acknowledged that Dr. Chai-Lin saw him on at least two occasions following requests for medical attention related to his knee condition. Dr. Chai-Lin examined McKinney on February 12, 2014, ordered or reviewed an x-ray, and diagnosed him with arthritis. Dr. Chai-Lin examined McKinney again on March 26, 2014, and prescribed Ibuprofen, exercise, and rest. In addition, the defendants submitted a report prepared by Dr. Payne, who had reviewed McKinney's medical records from 2004-2014. Dr. Payne opined that McKinney had received reasonable medical care, including 'medical examinations, X-rays, anti-inflammatory and analgesic medications, knee support devices, activity limitations and accommodations and numerous follow-up evaluations.’”

(Order, Sixth Cir. Case No. 16-3344, pg.5, ¶2, attached; *McKinney v. Kasich, et al., supra*, 2017

U.S. App. LEXIS 19348, at ¶¶8-9 (6th Cir. Sept. 29, 2017).

However, in stating the foregoing, the Sixth Circuit panel failed to acknowledge those uncontested facts, as supported by the District Court record below, that neither Dr. Chai-I Lin, Dr. Perez, Dr. Payne, nor any of the Ohio Department of Rehabilitation and Correction (“ODRC”) medical staff who examined and treated McKinney, were qualified as an orthopedic

specialist. Most importantly, as the record below supports, the standard x-ray and additional examinations provided McKinney by the ODRC medical staff were technically inadequate to properly diagnose any serious musculoskeletal injury, such as a meniscus, Anterior Cruciate Ligament (“ACL”), or Medial Collateral Ligament (“MCL”) serious injury, consistent with that musculoskeletal serious injury that McKinney suffers.

Even the average layman untrained in either medicine or law may easily comprehend the cruel and unusual practice of merely prescribing “Ibuprofen” for a serious musculoskeletal injury, absent providing a responsive diagnostic examination by a qualified orthopedic specialist to determine the exact nature of the injury, and subsequent responsive surgical repair so that the injury does not degenerate to the status of a mere cripple as McKinney has so suffered to date.

It remains that common knowledge that any soft tissue, musculoskeletal related injury mandates a magnetic resonance imaging (“MRI”) or “soft tissue” x-ray – neither of which McKinney was ever provided by the respective ODRC and Ohio State University Medical Center (“OSUMC”) Respondents – to determine the nature and extent of the aggravation to those injuries. The Respondents have “an obligation to fully evaluate the nature and extent of” McKinney's injuries and, in so doing, “an MRI is the 'gold standard' to identify soft tissue structures.” *Darcy v. Med. Univ. of Ohio*, 2010-Ohio-5905, at ¶[*P7], 2010 Ohio Misc. LEXIS 351, at **10.

Moreover, contrary to the Sixth Circuit decision at issue herein, federal courts are too well settled that an MRI is both mandated and imperative toward the proper diagnosis and treatment of any musculoskeletal injury as this case presents. For example, in *Cook v. Comm'r. Of Soc. Sec.*, 2013 U.S. Dist. LEXIS 72508, at ¶10 (N.D. Ohio, May 22, 2013) the District Court

references the adequate diagnostic medical procedure consistent with a musculoskeletal related serious injury and wrote that:

“Dr. Stanich believed Plaintiff had a sprain with a possible tear of the anterior cruciate ligament. He switched her to a different style of knee brace, recommended physical therapy, prescribed pain medication, and noted an MRI would be the next step if Plaintiff did not improve.”

See also Goutter v. Hurley, 2009 U.S. Dist LEXIS 19349 (E.D.N.Y., March 11, 2009); *Carter v. Colvin*, 2015 U.S. Dist. LEXIS 49796 (W.D.N.Y., February 26, 2015).

The foregoing notwithstanding, in this case the three judge panel went on to state, in regards to an erroneous “woefully inadequate” deliberate indifference to serious medical need analysis, that:

“McKinney does not dispute that he received the treatment described by Dr. Payne. Rather, he argues that he should have been provided with additional 'specialized' treatment and a referral to an orthopedic specialist. McKinney's argument that the defendants subjected him to 'woefully inadequate' treatment and that they should have provided additional diagnostic tests or different types of treatment essentially amounts to allegations of medical malpractice or negligent diagnosis.”

(Order, Sixth Cir. Case No. 16-3344, pg.5, ¶2, attached; *McKinney v. Kasich, et al., supra*, 2017 U.S. App. LEXIS 19348, at ¶¶8-9 (6th Cir. Sept. 29, 2017). However, this “woefully inadequate” analysis by the Sixth Circuit three judge panel not only conflicts with the letter of United States Supreme Court and Sixth Circuit controlling Eight Amendment law, as set forth by *Westlake* and its progeny, yet it also disturbs the *spirit* of the law designed to prevent such flagrant incidents of deliberate indifference to serious medical needs of a prisoner, who, as the *Westlake* Court pronounced, has no other recourse to medical care except at the hands, or as in this case the callous whims, of the prison staff responsible for a prisoner's medical care.

Specifically, the *spirit* of the *Westlake* decision holds that:

“An individual incarcerated...becomes both vulnerable *and* dependent upon the state to provide certain simple and basic human needs. Examples are food, shelter, and sanitation...Medical care is another such need. Denial of necessary medical attention may well result in disabilities beyond that contemplated by the incarceration itself. The result may be crippling injury...since, *restrained by the authority of the state*, the individual cannot himself seek medical aid or provide the other necessities for sustaining life and health.”

Westlake, supra, 537 F.2d at 860.

Even those Sister Circuits following the Sixth Circuit in *Westlake* have spoke toward the degree of such inhumanity, holding that:

“[T]here are circumstances in which some care is provided yet it is insufficient to satisfy constitutional requirements. For instance, prison officials may not, with deliberate indifference to serious medical needs of the inmate, opt for 'an easier and less efficacious treatment' of the inmate condition...Nor may 'prison authorities deny reasonable requests for medical treatment...[w]hen such denial exposes the inmate 'to undue suffering or the threat of tangible residual injury.' And, 'knowledge of the need for medical care [may not be accompanied by the]...intentional refusal to provide that care.'”

Palakovic v. Wetzel, 854 F.3d 209, 228 (3rd Cir. 2017) *quoting Westlake, supra*, 537 F.2d at 860.

Such is the case herein, where the Respondents engage in that systemic policy/custom of opting for easier and less efficacious medical treatment to offset budgetary costs. Both United States Supreme Court and Sixth Circuit case law clearly shows that, for a musculoskeletal serious injury like that McKinney suffers, thorough judicial consideration is provided toward both the immediacy as well as the extent – inclusive of the adequacy of the diagnostic procedures the serious injury mandates – of the medical treatment at issue. *Alsbaugh v. McConnell*, 643 F.3d 162 (6th Cir. 2013); *Burton v. Kakani*, 514 Fed.Appx. 577 (6th Cir. 2013).

Given that most perfunctory inspection of the underlying record in this case shows that the Respondents provided absolutely nothing even remotely exhibiting adequate responsive

medical care for McKinney's serious musculoskeletal injuries. For a span exceeding fifteen (15) years McKinney has been forced to endure extreme pain and suffering due to the deliberate indifference of the respective Respondents. Aside from the extent of civil 42 U.S.C. § 1983 liability this case now presents, such egregious cruel and unusual punishment is viewed as criminal by any civilized social standards.

Wherefore, based upon the foregoing Certiorari should be granted herein to secure uniformity of United States Supreme Court and Sixth Circuit decisions concerning the conflicting “woefully inadequate” medical care interpretation rendered by the Sixth Circuit three judge panel. In this case, the “woefully inadequate” medical care decision of the Sixth Circuit is contrary to controlling Eight Amendment protections against cruel and unusual punishment.

B. REASONS FOR GRANTING WRIT NUMBER TWO: A Writ of Certiorari is necessary to secure uniformity of United States Supreme Court and Sixth Circuit decisions concerning the conflicting “customs” not amounting to official policy decision rendered by the Sixth Circuit three judge panel.

1. QUESTIONS PRESENTED QUESTION TWO (restated): WHETHER PETITIONER DANIEL P. MCKINNEY'S EIGHT AMENDMENT DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS CONSPIRACY CLAIMS WERE ADEQUATELY STATED UNDER 42 U.S.C. SECTIONS 1983, 1985, AND 1986.

Pursuant to controlling United States Supreme Court 42 U.S.C. §§1983, 1985, and 1986 law, Respondents herein are liable for “customs” of deliberate indifference to serious medical needs that exist as official policy of the Ohio Department of Rehabilitation and Correction (“ODRC”). The decision of the Sixth Circuit erroneously holds that:

“Even though McKinney alleged that defendants Chai-Lin and Perez informed him that ODRC maintains a policy that denies specialized medical treatment to inmates over forty years old, he has not identified any such ODRC policy governing medical treatment available to inmates over forty years old. Moreover, he has not alleged facts indicating

that Governor Kasich, ODRC Director Mohr, Chief Inspectors Wilson or Croft, ODRC Health Care Administrators Lawson and Edwards, or AOCI Institutional Inspector Factor adopted any policy denying specialized treatment to inmates over forty.”

(Order, Sixth Cir. Case No. 16-3344, pg.6, ¶2, attached; *McKinney v. Kasich, et al., supra*, 2017 U.S. App. LEXIS 19348, at ¶10).

However, the decision of the three judge panel ignores controlling United States Supreme Court and Sixth Circuit 42 U.S.C. §§1983, 1985, and 1986 law which provides that 42 U.S.C. 1983 “authorizes suit 'for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision making channels.' ” *McClendon v. City of Detroit*, 255 Fed.Appx. 980 (6th Cir. 2007). Additionally, in following United States Supreme Court law, the Sixth Circuit has too held that “[a] 'custom' for purposes of *Monell* liability must be so permanent and well settled as to constitute a custom or usage with the force of law.” *Porter v. City of Columbus Div. of Police*, 395 Fed.Appx. 197, 202 (6th Cir. 2010) *quoting Monell v. Dep't. of Social Servs. of City of New York*, 436 U.S. 658, 694 (1978).

As set forth in McKinney's § 1983 Complaint, Respondents Chai-I Lin and Perez stated to McKinney that due to McKinney being over the age of forty (40) and the costs associated with the overcrowded conditions of ODRC prisons, ODRC and the Ohio State University Medical Center (“OSUMC”) adhere to the policy of restricting ODRC prisoners of McKinney's age class from specialized medical treatment for musculoskeletal injuries similar to McKinney's knee and shoulder injuries. Most importantly, as reflected upon the District Court record below, McKinney submitted sworn witness testimony “that defendants Chai-Lin and Perez informed him that ODRC maintains a policy that denies specialized medical treatment to inmates over

forty years old.” (Order, Sixth Cir. Case No. 16-3344, pg.6, ¶2, attached; *McKinney v. Kasich, et al., supra*, 2017 U.S. App. LEXIS 19348, at ¶10). Moreover, Respondents Chai-I Lin and Perez so informed numerous AOCI prison inmates of the ODRC/OSUMC *custom*, amounting to an official policy, of denying specialized medical treatment to inmates over forty years old.

Wherefore, contrary to the decision of the Sixth Circuit finding that McKinney “has not alleged facts indicating that Governor Kasich, ODRC Director Mohr, Chief Inspectors Wilson or Croft, ODRC Health Care Administrators Lawson and Edwards, or AOCI Institutional Inspector Factor adopted any policy denying specialized treatment to inmates over forty” (*Id.*), surely no governmental agency would engage in the idiocy of submitting to writing such a heinous practice of cruel and unusual punishment. Yet, as the record below shows, this *custom* amounting to official policy is frequently communicated and well known among both AOCI medical staff and AOCI prison inmates alike.

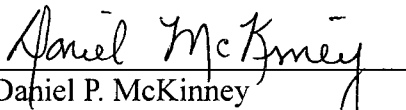
Those respective aforesaid Respondents identified by the Sixth Circuit three judge panel (i.e. Governor Kasich, ODRC Director Mohr, Chief Inspectors Wilson and Croft, ODRC Health Care Administrators Lawson and Edwards, and AOCI Institutional Inspector Factor) were made aware, via the prison inmate appeal and grievance procedure, of the *custom* amounting to official ODRC/OSUMC policy of denying specialized medical treatment to inmates over forty years old as a systemic budgetary cost saving practice.

What is even more incredulous, relevant to the record for *de novo* review below, is that sworn witness testimony too shows that those ODRC inmates over forty years old systematically denied specialized medical diagnosis and treatment for their serious musculoskeletal injuries (e.g. MRI, soft tissue x-ray, etc.) were too provided the *exact* same prognosis of having

osteoarthritis by Respondents Chai-I Lin, Dr. Perez, Payne, etc. Said medical diagnosis disturbingly made on behalf of Respondents Chai-I Lin, Dr. Perez, Payne, etc. prior to *any* diagnostic testing, even the inadequate routine x-ray. The animus underlying the *custom* being that by making said systematic misdiagnosis the possibility of incurring the additional budgetary costs of adequate specialized medical diagnosis and treatment for their serious musculoskeletal injuries (e.g. MRI, soft tissue x-ray, etc.) is removed from the very outset.

Wherefore, based upon the foregoing Certiorari should be granted herein to secure uniformity of United States Supreme Court and Sixth Circuit decisions concerning the conflicting “customs” not amounting to official policy decision rendered by the Sixth Circuit three judge panel.

Respectfully submitted,


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JOHN R. KASICH, OHIO GOVERNOR, ET AL.

Respondents.

PROOF OF SERVICE

I, Daniel P. McKinney, do swear and declare under penalty of perjury that on March 22, 2018, as required by Supreme Court Rule 29, I have served the enclosed Motion for Leave to Proceed In Forma Pauperis and Petition For A Writ of Certiorari on each party to the above proceeding or that party's counsel, by delivering said to the Allen/Oakwood Correctional Inst. legal mail staff for deposit with the ordinary U.S. Mail, first class postage prepaid.

Mr. Jeffrey T. Cox, Faruki, Ireland & Cox, 110 N. Main Street, Suite 1600, Dayton, Ohio 45402

Mr. James Donovan Miller

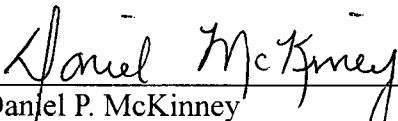
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