

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT H. BARNETT — PETITIONER
(Your Name)

VS.

LAUREL COUNTY, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ROBERT H. BARNETT, PRO SE
(Your Name)

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(Address)

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QUESTION(S) PRESENTED

- I. The issue subsuming all other issues in this appeal is whether or not Mr. Robert H. Barnett, a federal prisoner, while being transported for his scheduled evidentiary hearing in U.S. District Court, London Kentucky, by correctional officers in the employ of the Laurel County Detention Center, imprudently and carelessly permitted the disabled septuagenarian prisoner to tumble headfirst from the LCDC transportation van to the hard, unforgiving floor of the U.S. Courthouse garage. It is the contention of both the district court and Sixth Circuit Court of Appeals that Mr. Barnett was required by law to exhaust his grievance procedure and administrative remedies prior to filing his Title 42 U.S.C. § 1983 civil rights complaint seeking monetary damages for the unjustified and needless injuries he incurred.
- II. A secondary issue is whether or not Mr. Barnett met or surpassed the three requirements in order to prove standing.
- III. Whether Petitioner Barnett suffered serious injuries to his head, back, neck, buttocks, shoulder, arms and legs as a direct result of the "deliberate indifference" to Petitioner Barnett's safety and well-being by Laurel County correctional officers infringing upon and violating his Eighth Amendment rights resulting in cruel and unusual punishment while being transported to district court for his evidentiary hearing requiring MEDEVAC transport to the University of Kentucky Medical Center by the U.S. Marshal's Service.

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:

Petitioner:

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Represented by: Pro Se

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Laurel County Clerk's Office
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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 to the petition and is

☒ reported at Robert H. Barnett v. Laurel County, KY; 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 C to the petition and is

☒ reported at Robert H. Barnett v. Laurel County, KY; 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 12/12/2017.

☐ 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: 02/02/2018, and a copy of the order denying rehearing appears at Appendix B.

☐ 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. Initially submitted on 03/06/2018. Have have to receive response from the Court. Seeking date of 06/16/2018.

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

U.S. CONST. amend. VIII.

Title 42 § 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Statutes

28 U.S.C. § 1915(b)

28 U.S.C. § 2255

42 U.S.C. § 1983

STATEMENT OF THE CASE

On April 29, 2015, Petitioner was a federal prisoner being held in custody at the Laurel County Detention Center, ("LCDC") located in Laurel County, Kentucky. At 12:15 P.M. that day, Petitioner was informed by unknown Laurel County Detention Center correctional officers that in a matter of minutes he would be transported to the federal courthouse in London, Kentucky to attend an evidentiary hearing on his § 2255 motion to vacate his federal conviction.

The record will reveal Petitioner was 76 years old at the time, not 74 as the Court's order mistakenly claims, clearly experiencing ambulatory difficulties necessitating he employ a cane to walk with, but nonetheless was being housed on the second floor of the LCDC. Petitioner was escorted to the LCDC elevator and transported to the first floor for the van ride to the courthouse.

Upon his arrival on the first floor, Petitioner was advised by a yet to be identified LCDC corrections officer that he would have to surrender the cane he utilized to ambulate while walking and moving around. After voluntary surrendering his cane to the unidentified male LCDC caucasian corrections officer, Petitioner was approached by the unidentified LCDC caucasian female corrections officer and advised she would be escorting him to Court for his evidentiary hearing.

The unidentified LCDC caucasian female corrections officer then began to place handcuffs on Petitioner's left and right wrists,

a metal "belly" chain encircling Barnett's waist, back and stomach and what is commonly referred to as the "black box" that is secured with the "belly chain" in the center of the abdomen. Once the above-described restraints were secured, the LCDC female corrections officer further immobilized plaintiff by attaching metal chain shackles to his left and right legs affixing one to another.

Petitioner Barnett politely inquired of the unidentified LCDC caucasian female corrections officer why he was being "black boxed" as it would undoubtedly cause him extreme difficulty walking, maneuvering and in particular getting in and out of the transportation van. The female LCDC corrections officer responded, "This is jail policy!" Petitioner made it very clear to the female LCDC caucasian corrections officer he would need his cane to balance himself and walk with. The female officer uncaringly replied, "I'll put the cane in the van."

Petitioner was escorted by the unidentified LCDC caucasian male and female corrections officers/jailers and placed in the transportation vehicle. The vehicle door was shut and secured. The vehicle proceeded to the U.S. Courthouse approximately three miles from the Laurel County Detention Center.

The transportation van was driven by a Laurel County Detention Center Corrections Officer where it entered the U.S. Courthouse garage and came to a halt. Thereupon, the unidentified LCDC caucasian male and female corrections officers exited the vehicle. The caucasian female corrections officer unlocked the sliding door on the

right side of the vehicle and proceeded to slide the door open.

The caucasian LCDC female corrections officer then looked up at Petitioner and declared, "OK, we're ready." Thereupon, Petitioner slowly wiggled his way from the seat and got to his feet as best as he could in the cramped van. The female officer then commanded, "Wait a minute, let me get this extra step due to the big gap between the van and the concrete floor." The LCDC caucasian female corrections officer then advised Petitioner, "Come on down."

Petitioner Barnett gingerly attempted to maneuver his way out of the van and navigate four (4) long steps while immobilized by the handcuffs, "black box," belly chain, and leg irons. Petitioner stood up and positioned himself at the edge of the van door and before taking his first step, Barnett paused in the doorway while attempting to maintain his balance all the while watching the caucasian LCDC male corrections officer who had driven the vehicle stand idly by in front of the vehicle. Tragically, neither LCDC officer attempted to help Petitioner step down out of the van.

Petitioner then attempted to take the first step in order to exit the vehicle, however, due to the shortness in length of the leg irons, as well as no help or support from the Laurel County Corrections Officers, Petitioner suddenly lost control and plummeted to the hard concrete floor of the garage.

This very preventable fall caused Petitioner's shackled feet and legs to come out from underneath him and fall on his back and

buttocks with his head forcefully striking the concrete floor inflicting severe pain and injuries to his head, neck, back, legs and buttocks. Thereupon, Petitioner immediately began experiencing excessive dizziness, nausea, confusion, excruciating pain causing Barnett to fade in and out of consciousness.

While laying on the concrete floor, Petitioner believed he heard an unidentified caucasian male voice thought to be a representative of the U.S. Marshal's Service loudly screaming, "Get those handcuffs off, get that "black box" off, get those chains off, now!"

Petitioner was then carried on a stretcher and placed in a waiting ambulance where he was transported to a nearby waiting MED-IVAC helicopter and was flown to the University of Kentucky Hospital Medical Center located in Lexington, Kentucky. Upon landing at the University of Kentucky Hospital and Medical Center, Petitioner was extricated, placed a gurney, and immediately wheeled to the emergency room for treatment and tests.

Still fading in and out of consciousness, Petitioner somewhat remembers an IV being inserted into his arm by medical personnel while the attending physicians evaluated and diagnosed the extent of his numerous injuries and the necessary treatment that would be required.

University of Kentucky Hospital & Medical Center records will indisputably reveal Petitioner was admitted at said medical

facility on the afternoon of April 29, 2015, and was treated for extensive injuries suffered to his head, neck, back, arms and legs. Significantly, Petitioner incurred and endured severe and excruciating pain as a result of his documented injuries. During the next three days prior to his discharge from the hospital and medical center Petitioner underwent a battery of medical tests which included but were not limited to Magnetic Resonance Imaging (MRI), CATSCAN, X-RAYS, etc. in order to properly and accurately evaluate the extent of his injuries.

As a direct result of Petitioner's fall while exiting the transportation vehicle of the Laurel County Detention Center, Petitioner has and continues to suffer on a daily basis headaches, loss of memory, debilitating movement of his right arm and right leg resulting in a loss of twenty-five percent use of these specific limbs, backaches, neckaches and re-injury to his right arm pit.

The hospital and medical staff at University of Kentucky Medical Center persisted in keeping Petitioner in the hospital for the following two days and finally discharged him to the custody of Laurel County Detention Center on the third day. Petitioner was transported "shoeless" in a hospital wheelchair to a waiting van at the entrance to the medical facility and returned to the Laurel County Detention Center by law enforcement officials.

During Petitioner's subsequent transfer from the Laurel County Detention Center to the Grayson County Detention Center,

the unknown LCDC caucasian corrections officers, without cause or justification, confiscated Petitioner's neck and back brace. This unnecessary action by the LCDC corrections officers clearly demonstrated and exhibited a "deliberate indifference" to Petitioner's known serious medical needs resulting in Barnett experiencing unnecessary pain and suffering, as well as his injuries to his neck and back becoming aggravated.

STATEMENT OF FACTS

On April 21, 2016, Petitioner Barnett filed a pro se civil rights complaint against officers and staff at Laurel County Detention Center ("LCDC"). Barnett alleged that on April 29, 2015, the staff and officer's lack of due care caused him to fall from a prisoner transport van and sustain significant injuries.

The district court dismissed the complaint upon initial screening based upon Petitioner's forthright admission that he had never been advised or informed of availability of a LCDC grievance procedure in place nor was he issued a pamphlet or handbook describing this particular procedure by LCDC officials upon his arrival at this facility by the U.S. Marshal's Service. Accordingly, Petitioner Barnett cannot in good conscience be held accountable, liable or at fault for failing to exhaust the nonexistent grievance or administrative remedy during his incarceration at LCDC. The district court further concluded that the dismissal must be with prejudice because the LCDC's grievance system was no longer available to him, due to both the passage of time and his transfer out of that facility.

On appeal, the Sixth Circuit agreed with the first conclusion but uncharacteristically disagreed with the second. LCDC's grievance policy used to require that grievances be filed "promptly following the incident," Napier v. Laurel Cty., Ky., 636 F.3d 218, 222 (6th Cir. 2011), but that language was supposedly no longer part of its policy when Barnett was injured in 2015. The Sixth Circuit therefore remanded the action to the district court to either (1) clarify its basis for concluding that Barnett's grievances would be barred as untimely, (2) to dismiss the complaint without prejudice, or (3) to conduct further proceedings. The Sixth Circuit then issued its mandate, re-vesting the district court with jurisdiction to proceed. Again, the district court denied the § 1983.

On January 30, 2017, the United States Court of Appeals for the Sixth Circuit issued an opinion affirming the district court's prior conclusion that Plaintiff Robert Herald Barnett was required to exhaust his administrative remedies at the Laurel County Detention Center ("LCDC") following his April 2015 injury, but that he had failed to do so prior to filing suit. However, the Sixth Circuit concluded that the record did not clearly establish that Barnett could not file a grievance at LCDC long after the conduct about which he complained of had occurred, and hence dismissal of his claims with prejudice was improper. The Sixth Circuit, therefore, vacated the Court's prior Order and remanded the case for further proceedings.

As a preliminary matter, the Court of Appeals confessed alleged error in its original opinion regarding the timeliness req-

uirement under LCDC's grievance policy. While the current policy plainly no longer includes such a requirement, in Barnett's case the Court of Appeals inadvertently relied upon the prior version described in the Sixth Circuit's Napier decision, which included a requirement that grievances be filed "promptly."

Shortly after the Sixth Circuit issued its decision, Barnett filed with the Court a copy of a grievance dated February 12, 2017, which he indicates was sent by certified mail to LCDC. Barnett therefore contends that he satisfied LCDC's grievance policy. Notably, there is nothing in the record to indicate that LCDC has responded to his grievance.

SUMMARY OF ARGUMENT

In the instant case now pending before this Court, Appellant Barnett set forth facts in his civil rights complaint filed in U.S. District Court pursuant to 42 U.S.C. § 1983 that indisputably entitles him to relief as a direct result of the serious injuries he sustained on April 29, 2015, as a federal prisoner being held at the Laurel County Detention Center, Laurel County, Kentucky.

Notably, the primary purpose and function of the LCDC is to house county and state defendants, not federal prisoners such as Petitioner Barnett, in pre-trial detention awaiting the formal adjudication of misdemeanor and felony charges in state court, not federal court.

This being the case, any failure to exhaust administrative remedies provided under state law are not grounds for denying relief under the Civil Rights Act under 42 U.S.C. § 1983 giving federal right of action for deprivation of any right, privilege, or immunity secured by the Federal Constitution. See Houghton v. Shafer, 392 U.S. 639, 20 L.Ed.2d 1319, 88 S.Ct. 1689 (1968).

Significantly, Barnett's injuries have been thoroughly and extensively documented by the University of Kentucky Medical Center medical personnel after having been allowed to fall from the side door of Laurel County Detention Center van to the hard concrete floor of the U.S. Courthouse in London, Kentucky, rendering him unconscious. Barnett's injuries included but were not limited to his head, neck, back, arms, shoulders, legs and buttocks.

Of critical import and paramount to Barnett's case, is the indisputable fact he has incurred and suffered an extremely serious injury to his head adversely affecting his memory, cognitive abilities, motor functions and competency to read and write in a comprehensive manner. Medical records and documents stored at the federal institution where appellant Barnett is presently incarcerated will also corroborate the fact he continues to receive medical treatment for his injuries sustained on April 29, 2015.

Much to the dismay of Appellant Barnett, the U.S. District Court in London, Kentucky has dismissed his civil rights complaint, albeit erroneously, for his failure to exhaust his administrative

remedies while incarcerated at the Laurel County detention Center after being discharged from the medical center upon his return to said detention center.

With all due respect, it is the myopic belief of the district Court and Sixth Circuit Court of Appeals that Appellant Barnett was required to exhaust all administrative remedies available to him at the LCDC before he could pursue any litigation in federal court. Normally, this would be an accurate narrative, however, the circumstances in this particular scenario clearly dictate the District Court and Sixth Circuit Court of Appeals conduct a thorough and exhaustive assessment of Barnett's injuries and mental capacity that would enable him to exhaust any available LCDC administrative remedies. The district Court's actions have been founded on an erroneous legal premise and constitutes an abuse of discretion.

Appellant Barnett submits that exhaustion should have been excused for the following meritorious reasons; (1) that requiring exhaustion would result in irreparable harm; (2) that the administrative remedy is wholly inadequate at the LCDC; and (3) that the administrative remedy at LCDC is biased making recourse to the agency futile.

Where administrative and review procedures available to plaintiffs under state statute could not provide plaintiffs with relief they sought for their claims, which involved validity of state regulations under Constitution in action under 42 U.S.C.S. § 1983, their failure to exhaust state administrative procedures did not

bar them from entertaining suit in federal court. Curtis v. Taylor, 648 F.2d 946 (5th Cir. 1980).

Rule that exhaustion of state remedies is not required as precondition for filing 42 U.S.C.S. § 1983 suit applies regardless of whether monetary or injunctive relief is sought in suit; plaintiff who is barred because of U.S. Const. amend. XI immunity from obtaining monetary damages from state agency is not required to seek monetary relief through available state administrative remedy proceedings before filing § 1983 suit seeking injunctive relief with regard to agency. James v. Richman, 547 F.3d 214 (3rd Cir. 2008).

Appellant further contends he is not bound by the general rule as a direct result of his documented debilitating serious head injury affecting his cognitive abilities, and also because the administrative remedies available to him were clearly inadequate under the circumstances and any endeavor to utilize them would have been futile. Simply put, correctional officers in the employ of the Laurel County Detention Center negligently permitted Appellant Barnett, to unnecessarily incur and endure irreparable injuries in which the concept of administrative remedy would be an empty gesture as no remedy exists to repair it.

REASONS FOR GRANTING THE PETITION

A. THE DISTRICT COURT AND SIXTH CIRCUIT OF APPEALS ERRED WHEN IT DISMISSED MR. BARNETT'S TITLE 42 § 1983 CIVIL RIGHTS COMPLAINT FOR FAILURE TO EXHAUST HIS GRIEVANCE AND ADMINISTRATIVE REMEDY RESULTING IN AN ABUSE OF DISCRETION.

Appellant Barnett respectfully advances the proposition that numerous circuit courts, as well as the U.S. Supreme Court have listed three situations where the individual's interests weigh against requiring exhaustion of administrative remedy process prior to submitting a claim under 42 U.S.C. § 1983: (1) where requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action; (2) where the agency lacks power to grant effective relief; and (3) where the agency is shown to be biased or has otherwise predetermined the issue before it.

In addition, there also exist two other commonly recognized exceptions to the exhaustion requirement. The first of these is where administrative remedies are inadequate. See Humana of South Carolina, Inc. v. Califano, 191 U.S. App. D.C. 368, 590 F.2d 1070, 1080 (D.C. Cir. 1978). The futility exception to the exhaustion requirement is actually a subpart of the inadequate remedy exception, since if resort to the administrative process is futile, the agency will not provide adequate relief. Although the two exceptions may in some circumstances overlap, the concepts are distinct. "Futile" means "completely ineffective." Webster's New Collegiate Dictionary 486 (1977). "Inadequate" means "not...lawfully and reasonably suffic-

ient."

Moreover, Appellant respectfully distinguishes the two exceptions for the sake of conceptual clarity as it applies to this case. Resort to the administrative process is futile if the Laurel County Detention Center would almost certainly deny any relief either because it has a preconceived position (jail policy) on, or lacks jurisdiction over, the matter. With regards to Appellant Barnett's particular set of circumstances, the administrative process is "inadequate" where the Laurel County Detention Center may have expressed a willingness to act, but the relief it should provide through its action will not be sufficient to right the wrong. Quite frankly, no remedy existed to heal his injuries.

It is extremely important to distinguish between these two concepts because the inquiries under the two exceptions differ. Under the futility exception a court must look to the Laurel County Detention Center's intentions regarding its position on the relevant issue and its statutory authority. When determining whether a remedy will be adequate, a court must consider all potential methods at the Detention Center's disposal to remedy the palpable violation in the instant case.

While a court has discretion to fashion exhaustion requirements, as previously demonstrated in the previous paragraphs, there are some exceptions to the exhaustion doctrine. For example, exhaustion may not be required when the administrative remedy "does not serve the purposes behind the exhaustion doctrine[]," if the

administrative remedies are inadequate or not efficacious," or where pursuit of administrative remedies would be a futile gesture. See Shawnee Coal Co. v. Andrus, 661 F.2d 1083, 1093 (6th Cir. 1981). Additionally, "[e]xhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to LCDC's procedures." See Bangura v. Hansen, 434 F.3d 487, 493 (6th Cir. 2006)(citing S. Ohio Coal Co. v. Office of Surface, Mining Reclamation and Enforcement, 20 F.3d 1425 (6th Cir. 1994)).

Appellant Barnett respectfully avers that he is bringing non-frivolous Eighth Amendment constitutional violation against the Laurel County Detention Center and other named defendants that prohibits the imposition of "cruel and unusual punishments" upon prisoners. U.S. Const. amend. VIII. Prison officials violate the Eighth Amendment when the offending conduct reflects an unnecessary and wanton infliction of pain. See Parrish v. Johnson, 800 F.2d 600, 604 (6th Cir. 1986).

Second, he argues the administrative remedy procedure at LCDC is an inadequate administrative procedure due to the fact he had already incurred serious physical injuries where no relief was possible. See Satgunam v. Michigan State University, 556 Fed. Appx. 456 (6th Cir. 2014).

Third, the LCDC's administrative policy instructed prisoners to file grievances by handing them to prison staff in envelopes with no postage and addressed simply to "the Jailer or his designee."

This process would not work anywhere outside confines of that jail, especially for a former prisoner such as Appellant after he was transferred to F.C.I. Beckley, Beaver, WV.

Prisoners have few resources, if any, that are not provided to them by the jails in which they reside. Practically speaking, the only way that compliance can be achieved by men and women who are incarcerated, earn little or no money, and have few or no possessions is if the prison provides them with resources-namely paper, pens, and a delivery system. Even if Appellant Barnett wanted to send a grievance through the mail, and had a stamp, envelope, paper, and pen, Laurel County's process does not provide a mailing address.

Therefore, Laurel County's administrative remedies were not available to Barnett when he was transferred or returned to F.C.I. Beckley unless there was some additional process by which he could have filed a grievance with Laurel County through F.C.I. Beckley federal institution. However, there was not. Individual jails are responsible for developing administrative remedies and making them available to prisoners. See Jones v. Brock, 549 U.S. 199, 218, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007), and Woodford v. Ngo, 548 U.S. 81, 88, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006).

Contrary to the district court's assessment, opinion and ruling in the instant case on appeal, there is an "established exception" to the judge-made doctrine of procedural default in review of administrative proceedings which permits individuals to raise constitutional

complaints for the first time in federal court, even if they failed to raise those claims properly before the agency. Because Appellant has raised constitutional claims, under Supreme Court precedent, the district court may not, as a matter of federal common law, apply an extrastatutory waiver requirement against him. See Sims, 530 U.S., at 115, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000)(citing Matthews v. Eldridge, 424 U.S. 319, 329, n 10, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

In civil rights action doctrine of exhaustion of state administrative remedies should not be woodenly applied; it will not be applied when (1) remedies alleged to have not been exhausted are not sufficiently clear and adequate, (2) there is not need for further exhaustion since defendants have had ample time to correct any possible oversights or inequities that may have been suffered by plaintiff, and (3) it would be unduly onerous and inequitable to dismiss complaint for lack of exhaustion of administrative remedies. Vistamar, Inc. v. Vazquez, 337 F. Supp 375 (D.C. Puerto Rico 1971).

The exhaustion doctrine also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court. To determine whether a plaintiff should have exhausted administrative remedies before bringing a claim, the Court must first look to congressional intent.

Appellant Barnett respectfully submits state administrative remedies need not be exhausted where federal court plaintiff states otherwise good cause of action under Civil Rights Act (42 U.S.C.S.

§ 1983). Gibson v. Berryhill, 411 U.S. 564, 36 L.Ed.2d 488, 930 S.Ct. 1689 (1973). Plaintiffs are not required to exhaust their administrative remedies in situations where Supreme Court has ruled that nearly identical state administrative procedures are unconstitutional. Salkay v. Williams, 445 F.2d 599 (5th Cir. 1971). Exhaustion of state administrative remedies is not required where question of adequacy of administrative remedy is for all practical purposes coextensive with merits of plaintiff's constitutional claim.

A jail grievance polic[y] need not explicitly provide for all possible scenarios in which a prisoner may seek to file a grievance. Instead, when a reasonable policy is in place, but is silent or vague in a particular circumstance, courts must look to see whether the prisoner has attempted to satisfy the requirements of the policy, or if some impediment or hindrance, such as the serious head injury Appellant Barnett endured prevented him from satisfactorily completing the administrative grievance policy. The rule is that the exhaustion requirement may be waived in exceptional circumstances. See Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers, 230 U.S. App. D.C. 72, 714 F.2d 163, 168-69 (D.C. Cir. 1983). Clearly, such is the case with Appellant Barnett.

Had Appellant Barnett, a 76 year-old septuagenarian at the time of his injury possessed his "pre-fall" faculties, mental capacity and adeptness to satisfy the administrative remedy following his release from the University of Kentucky Medical Center, he would have certainly done so. The district court should have also taken into

consideration the Laurel County Detention Center has made it abundantly obvious it would not correct the error, e.g. long-standing jail policy, thus it would be meaningless to compel the injured Barnett to pursue further administrative remedies simply for form's sake. See Hotel and Restaurant Employees Union, Local 25 v. Smith, 563 F.Supp. 157, 161-62 (D.D.C. 1983).

Moreover, it is highly unlikely that the LCDC would change its position regarding the manner in which federal inmates are handcuffed, shackled, "black boxed," and belly-chained when being transported to federal court. In fact, LCDC officials have reiterated this.

It is settled that a plaintiff in a civil rights action need not exhaust judicial remedies, and it would be inappropriate to require exhaustion of administrative remedies where issue is constitutionally or validity of statute agency must enforce, since expertise of state administrative agencies does not extend to issues of constitutional law.

Appellant Barnett further contends the inadequate remedy requirement is indistinguishable from the irreparable injury requirement. The very thing which makes an injury "irreparable" is the fact that no remedy exists to repair it...However, the irreparable injury rubric is intended to describe the quality or severity of the harm necessary to trigger equitable intervention. Therefore, for the articulated reasons stated herein, Appellant Barnett respectfully submits and moves this Court find that the U.S. District Court erred when it dismissed his Civil Rights Complaint pursuant to 42 U.S.C. § 1983 petition.

B. THE DISTRICT COURT ERRED WHEN IT DISMISSED APPELLANT BARNETT'S CIVIL RIGHT COMPLAINT AS HE HAS UNQUESTIONABLY DEMONSTRATED IN HIS PLEADINGS DOES IN FACT POSSESS "STANDING."

To prove standing, a plaintiff must meet three requirements. First, the plaintiff must have suffered an injury in fact, which is "concrete, particularized, and actual or imminent." Clapper v. Amnesty Int'l USA, 133 S.Ct. 1138, 1147, 185 L.Ed.2d 264 (2013) (citing Monsanto Co. v. Geertson Seed Farms, 130 S.Ct. 2743, 2752, 177 L.Ed.2d 461 (2010)(quotations omitted)). "Second, there must be a casual connection between the injury and the conduct complaint of" - the injury has to be "'fairly...trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court.'" Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)(quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)). Third, it must be "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" Id. at 561 (quoting Simon, 426 U.S. at 38, 43). The party invoking federal jurisdiction must prove each of these elements. Id. (citation omitted).

With all due respect, there is absolutely no doubt whatsoever that Appellant Barnett has "standing" in the civil rights complaint filed in U.S. District Court, Eastern District of Kentucky, London Division. In addition, it is a well-settled principle and

fact among the circuit courts that exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to the LCDC's procedures. Again, such is the case here.

Substantive due process guarantees that a person is not subject to "arbitrary or capricious" action by a state through its legislative or administrative process. Pearson v. City of Grand Blanc, 961 F.2d 1211, 1217 (6th Cir. 1992). "To state a claim under 42 U.S.C. § 1983, a plaintiff must set forth facts that, when construed favorably, establish (1) the deprivation of a right secured by the Constitution or laws of the United States (2) [that was] caused by a person acting under the color of state law." Sigley v. City of Parma Heights, 437 F.3d 527, 533 (6th Cir. 2006) (citing West v. Atkins, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988)). "Notably, this Court has recognized two types of substantive due process violations: (1) official acts that are unreasonable and arbitrary and may not take place no matter what procedural protections accompany them, and (2) official conduct that shocks the conscience."

C. APPELLANT BARNETT HAS UNQUESTIONABLY INCURRED AND SUFFERED SERIOUS INJURIES TO HIS HEAD, NECK, BACK, LEGS, ARMS, AS WELL AS OTHER PARTS OF HIS BODY AS A DIRECT RESULT OF THE DELIBERATE INDIFFERENCE TO APPELLATE BARNETT'S SAFETY BY LAUREL COUNTY CORRECTIONAL OFFICERS INFRINGING AND VIOLATING APPELLANT'S EIGHTH AMENDMENT CONSTITUTIONAL RIGHTS PROHIBITING THE IMPOSITION OF CRUEL AND UNUSUAL PUNISHMENT WHILE BEING TRANSPORTED TO THE UNITED STATES DISTRICT COURT HOUSE.

An official's knowledge of risk to inmate death or safety can be proven through circumstantial evidence, such as showing that the risk was so obvious that the LCDC correctional officers must have known or realized it. "The deliberate indifference of a correctional officer or official 'to a substantial risk of serious harm to an inmate violates the Eighth Amendment.'" See Verdecia v. Adams, 327 F.3d 1171, 1175 (10th Cir. 2003). A prison official violates the Eighth Amendment if he or she acts with deliberate indifference to a substantial risk of harm to prisoner. See Blake v. Schuetzle, 302 F.3d 801, 803 (8th Cir. 2002).

To establish a cognizable Eighth Amendment claim for failure to protect, the prisoner must show that he or she is incarcerated under conditions posing a substantial risk of serious harm, which is the objective component, and that the prison official who has been sued under § 1983 was deliberately indifferent to the prisoner's safety, which is the subjective component.

The court noted that deliberate indifference requires that the defendant's conduct be in disregard of a known or obvious risk that

was so great as to make it highly probable that harm would follow or that the conduct disregarded a known or obvious risk that is very likely to result in the violation of a prisoner's constitutional rights. [Id. at 1175-76.] Subjective awareness requires that the defendant must both be aware of the facts from which an inference could be drawn that a substantial risk of serious harm exists, and also draw the inference. [Id. at 1176.]

Appellant Barnett respectfully avers there is an objective component and a subjective component to an Eighth Amendment claim. Santiago v. Ringle, 734 F.3d 585, 590 (6th Cir. 2013)(citing Comstock v. McCrary, 273 F.3d 693, 702 (6th Cir. 2001)). First, "[t]he subjective component focuses on the state of mind of the prison officials."

The question must be asked "whether careless, negligent, disregarding or apathetic behavior of the LCDC correctional officers was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 7, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). Second, "[t]he objective component requires the pain inflicted to be sufficiently serious." Williams, 631 F.3d at 383 (quoting Wilson v. Seiter, 501 U.S. 294, 298, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991)). This component requires a "contextual" investigation, one that is "responsive to 'contemporary standards of decency.'" Hudson, 503 U.S. at 8 (quoting Estelle v. Gamble, 429 U.S. 97, 103, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)).

While the extent of a prisoner's injury may help determine the amount of [759 F.3d 581] force used by the prison official, it is not dispositive of whether an Eighth Amendment violation has occurred. Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S.Ct. 1175, 175 L.Ed.2d 995 (2010). "When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated...[w]hether or not significant injury is evident." Hudson, 503 U.S. at 9. "Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury." Id.

Prison officials nonetheless violate the Eighth Amendment when their "offending conduct reflects an unnecessary and wanton infliction of pain." Williams v. Curtin, 631 F.3d 380, 383 (6th Cir. 2011) (internal quotation marks omitted); Bailey v. Golladay, 421 F.Appx. 579, 582 (6th Cir. 2011). A prisoner need not provide all the elements of a constitutional claim as long as the grievance at least reasonably indicates a problem. There is no need under the Prison Litigation Reform Act (PLRA) for a prisoner to plead that he has exhausted his administrative remedies. In Nerness v. Johnson, 401 F.3d 874, 876 (8th Cir. 2005), the lack of exhaustion of administrative remedies under the PLRA does not deprive federal courts of subject matter jurisdiction.

To violate the Eighth Amendment's prohibition against cruel and unusual punishment, the deprivation alleged must objectively

be sufficiently serious, and the prison official must subjectively have a sufficiently culpable state of mind. The culpable state of mind required is that of deliberate indifference to an inmate's health or safety. [Id.] A prisoner must show that two requirements are met. The prisoner must show (1) that the deprivation alleged is objectively sufficiently serious and (2) the prisoners officials must have a sufficiently culpable state of mind. As previously set forth herein, Appellant Barnett has clearly demonstrated and satisfied the above two aforementioned requirements.

Laurel County Detention Center correctional officer's were aware of an "obvious, substantial risk" to Appellant Barnett when having him exit the van. See Farmer v. Brennan, 511 U.S. at 842-43. Again, Appellant Barnett has unquestionably established that the transporting correctional officers possessed a sufficiently culpable mind, measured by a subjective standard.

In Harris v. Maynard, 843 F.2d 414 (10th Cir. 1988), the court held that the liability of prison or jail officials turned on the determination whether they exercised their responsibility with wanton or deliberate indifference to the preservation of the life in their care. The court held that a prisoner has a right to be free from wanton and obdurate misconduct of prison or jail officials that proximately causes the prisoner's injuries.

CONCLUSION

Mr. Barnett has shown several independent reasons that should result in the REVERSAL and REMAND of Mr. Barnett's 42 U.S.C. § 1983, thus, The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert H. Barnett

Date: April 16, 2018

CERTIFICATE OF COMPLIANCE

No.

ROBERT HERALD BARNETT

Petitioner

V.

UNITED STATES OF AMERICA

Respondent

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 5,642 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 16, 2016


ROBERT H. BARNETT, PRO SE