CASE NO. 17-3040

IN THE

SUPREME COURT OF THE UNITED STATES

ADRIAN MICHAEL REQUENA -- PETITIONER

vs.

RAY ROBERTS, et al., -- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ADRIAN M. REQUENA, Petitioner, pro se.
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Hutchinson, KS 67504

QUESTION PRESENTED

Can Prison Officials violate a prisoner's Constitutional Rights and the Court System turn a blind eye?

LIST OF PARTIES

[**X**] 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:

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IN THE
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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

[X] reported at, **Requena v. Roberts, 2018 U.S. App. LEXIS 17031, 893 F.3d 1195.**

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

[ ] is unpublished

The opinion of the United States district court appears at Appendix " **B** " to the petition and is

[ ] reported at **N/A** ; or,

[ ] has been designated for publication but is not yet reported; or

[**X**] is unpublished.

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

The opiion of the highest state court to review the merits appears at Appedix_____ to the petition and is

[ ] report at_____;or

[ ] has been desiganted 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[ ] is unpublished.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[ ] is unpublished.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 dicided my case was **June 22, 2018.**

[**X**] 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:_____, 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 Appplication No.__A____.

The jurisdiction of this Court is invoked under **28 USCS § 1254 (1).**

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

The date on which the highest state court decided my case was_____. A copy of the 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 the Court is invoked under 28 USCS § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

USCS Const. Amend. 1

Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

USCS Const. Amend. 8

Bail--Punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

USCS Const. Amend. 14

Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USCS § 1331

Federal question.

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USCS § 1343

Civil rights and elective franchise.

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

28 USCS § 1367

Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

42 USCS § 1997e

Suits by prisoners

(a) Applicability of administrative remedies. No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (**42 U.S.C. 1983**), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(e) Limitation on recovery. No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18, United States Code).

28 USCS § 1254

Courts of appeals; certiorari; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

USCS Supreme Ct R 10

Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

STATEMENT OF THE CASE

Plaintiff, Requena brought up eight issues before the UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT which are as follows:

ISSUE I: Plaintiff was denied basic hygiene supplies while in segregation for over a month and showed the court that the reason why he was denied was due to the fact that he received a disciplinary report for undue familiarity and was retaliated against for being suspected of having a relationship with a state employee. The practice was not a established policy and being denied basic hygiene supplies for over a month Plaintiff believes violated our Eighth Amendment because Plaintiff had acquired rashes on his body from not being able to wash off dirt and that Plaintiff had sustained scars form the rashes.

ISSUE II: Plaintiff was subjected to prejudice by prison officials and retaliated against when state employees act together to prevent the inmate from filing grievances by filing false disciplinary actions.

ISSUE III: Plaintiff was denied property when prison officials use established policy to abuse power as a form of retaliation against Plaintiff for filing grievances.

ISSUE IV: Plaintiff was denied access to the courts when prison officials denied him copies to file a legitimate appeal to courts when Plaintiff proved that the hearing officer denied him due process of presenting documentary evidence that proved Plaintiff's innocence.

ISSUE V: Plaintiff was denied protection from prison officials when prison officials knew that the inmates was in danger of being brutally beaten at the hands of other inmates.

ISSUE VI: Plaintiff was denied adequate medical care and sustained hearing loss, eye loss because medical officials mis diagnosed his head injury from a brutal beaten at the hands of other inmates.

ISSUE VII: Plaintiff was subjected to false convictions of disciplinary actions for filing grievances and Writs of Habeas Corpus challenging disciplinary actions. These false convictions were in retaliation of Plaintiff's filings.

ISSUE VIII: Plaintiff's money, interest, is being taken from his account without compensation and prison officials are using Plaintiff's money for other reasons.

Requena argued in **ISSUE I:**, that he was denied basic hygiene supplies from prison officials and acquired rashes on his body from not being able to wash off dirt and sustained scars from the rashes. The United States Appeals Court for the Tenth Circuit ruled that, since Requena did not amend his complaint when the opportunity arose and failed to take advantage to reopen the case after dismissal under Fed. R. Civ. P. 59(e) or 60(b) that is gave Requena an opportunity to cure deficiencies. This court has held in **Conley v. Gibson, 355 U.S. 41, 48,78 S.Ct. 99; 2 L. Ed. 2d 80(1957),** that:

> The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. Maty v. Grasselli Chemical Co., 303 U.S. 197.

This Court has also held in **Haines v. Kerner, 404 U.S. 519, 521, 92 S. Ct. 594; 30 L. Ed. 2d 652(1972),** that:

> We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.(citation omitted and underline added).

The United States Court of Appeals for the Tenth Circuit admitted that scars of such a injury might suffice in stating a claim, see **Requena v. Roberts, 2018 U.S. App. LEXIS 17031*,** at **10*; 893 F.3d 1195(10th Cir. 2018).** Requena may not know all the Federal Rules of Civil Procedure and, since he is in prison, and doesn't have unlimited access to the prison library which doesn't allow prisoner to check out law books to review while in our cells. He can only go off of what he knows especially when he is given a limited amount of time to file motions and other papers to be scanned in the United States District Court for the District of Kansas, (see **USCS Fed Rules Civ Proc R 59(e)** which only allows a Plaintiff 28 days to file a Motion to Alter or Amend a Judgment). Requena is at a disadvantage when judges are allowed to act as the defendants counsel especial when the courts allow things such as affirmative defense (see **Fratus v. Deland, 49 F.3d 673, 674-75 (10th Cir. 1995)** (district court may consider affirmative defenses sua sponte when the defense is obvious from the face of the complaint and no further factual record is required to be developed). (see also **28 USCS § 1915A (b)** which in no way says anything about dismissing for deficiencies). Requena has shown that an injury has occured and that prison officials denied him basic hygiene supplies which should suffice in stating a claim where relief should be granted.

This is a disadvantage because there are no federal statutes, or case laws that give a prisoner, Plaintiff, an a affirmative prosecution. **42 U.S.C. 1983** maybe a vehicle to bring a civil complaint against a prison official but prison officials are given all kinds of defenses; qualified immunity, affirmative defense, attorneys, screening, etc...that allow prison officials to escape prosecution by a technicality after technicality. The PLRA which was enacted in 1995, was originally set into place to allegedly to prevent prisoners from bringing frivolous suits and wasting the courts time.

It is sad that when an inmate commits a crime while in prison he is given a longer sentence, and yet when prison officails commit the same crimes against a prisoner the court system are reluctant to press charges or allow a prisoner to move forward in a civil suit giving the prison official all kinds of defenses.

In **Trop v. Dulles, 356 U.S. 86,** at **101** and **103, 785 S. Ct. 590, 2 L. Ed. 2d 630,(1958),** this court held that:

> The Amendment, Eighth Amendment, must draw its meaning from the *evolving standards of decency that marks the progress of a maturing society.*
> We are *oath-bound to defend the Constitution.* This obligation requires that congressional *enactments be judged* by the standards of the Constitution. (Italics and underline added).

Requena points out that almost 40 years have passed and the **hands-off-doctrine** is alive and well in the United States Court system, while inmates are systematically being killed and abused.

In **Ramos v. Lamm, 485 F. Supp. 122, 130(D. Colo. 1979),** the United States District Court for the District of Colorado went on to say that:

> A great deal of this deference to state officials has been due to the substantial reluctance of federal courts to intervene in matters of prison administration. For many years, the so-called "hands off" policy was a near absolute jurisdictional bar to federal court review of alleged violations of prisoners' asserted constitutional rights.

Where is the evolving standards of prison officials, that believe retaliation and abuse is the decency that marks their progress, which prison officials use hands-off-doctrine and they exploit it to achieve the abuse without any punishment. While judges turn a blind eye and make rulings to show that they are maturing toward in making it that more difficult for a prisoner to bring up allegations of abuse but seldom defend the Constitution in favor of a prisoner/ Plaintiff. Society should know that the court system try more to protect it's corporation **(see 28 U.S.C. 3002 (15) (a)),** and employees, than to judge it's enactments like the **PLRA,** which is used to allow abuse by the corporations employees.

In **ISSUE II,** Requena argued about the racial discrimination of being Native American and Mexican descent and how he was being discriminated against by a unit team and a correctional officer, who was working together in retaliating against Requena for filing a grievance for the racial discrimination he was being subjected to. The retaliation was the officer who wrote a false disciplinary action against Requena three days after Requena filed a grievance against the unit team for racial discimination. The Tenth Circuit made it sound like the white inmate plan to use the inmate phone system, while Requena wanted to use Lamb's phone system. The Tenth Circuit had it wrong because the white inmate Requena was speaking about was using Lamb's phone system and not the inmates phone system. Then Requena requested assistance from Lamb on several issues but the form 9's was never returned back to Requena to show as documentational evidence that Requena made an attempt to request assistance from unit team Lamb.

In **ISSUE III,** Requena argued that prison officials used established policies to donate his T.V. and to throw away his appeal brief. The Tenth Circuit held that Requena can not plead facts that show his State post-deprivation remedy was inadequate. Requena did file with the State of Kansas Joint Committee Claims against the State on a administrative review but was denied. Maybe Requena can't show any inadequacies but Requena can show that prison officials did intentionally get rid of his T.V. as retaliation and without giving him a chance to mail it out and did intentionally throw away his brief in retaliation so Requena would have to

re-write it all over again. Requena even had two eye witnesses, inmate Kenneth Wade # 101313 and Dean James # 52501, who were present when J. Pettay the property officer came to Requena's cell door and laid a paper on his food pass without saying a word, in which the paper said the T.V. had already been donated. Requena tried to show the court that prison officials used a policy to deprive him of that property. The court just used, "State post-deprivation remedy was inadequate" as a defense to get prison officials out of depriving Requena of his property. The only reason Requena put $227.00 on his property claim was because that was the current price of a T.V. at the time and Requena didn't have any of his property to show the exact price that he paid for the T.V. that he was deprived of. You can believe if Requena had deprived prison officials of their property that he would had been charged with a criminal offense and not a civil suit.

In **ISSUE IV,** Requena argued that he was denied access to the courts. The Tenth Circuit ruled that Requena was barred by Collateral Estoppel but Requena raised this issue first in this case which was originally filed March 8, 2013. The other case was filed March 31, 2014 and Requena can not control what or how a judge rules. Requena can not help when he told the United States District Court that he was already litigating this issue **(**see **Requena v. Sheridan, 691 F. App'x 523(10th Cir. 2017),** and **Requena v. Roberts,** et al., **Case No. 5:13-cv-03043-SAC** should control in a ruling. The court made Requena file a separate complaint when Requena was trying to exhaust his judicial remedies **(**see **Requena v. Roberts, 2013 U.S. Dist. LEXIS 168499 (D. Kan., Nov. 27, 2013)).** Requena believe that he had to file a 28 U.S.C. 2241 in order to bring a 42 U.S.C. 1983. Requena proved that the poems were written in 2001 in a writing class in Lansing, Kansas prison. The writing officer who wrote Requena a disciplinay action, wrote Requena under **K.A.R. § 44-12-328** in 2011 when he was at the Hutchinson, Kansas prison 10 years after the poems were written. Requena tried to tell the court that he didn't even know the writing officer 10 years previously but the court still affirmed the disciplinay conviction. The reversal of this disciplinay conviction would had show an actual injury in the access to court but the court system was protecting prison officials and to prevent Requena from prevailing on this issue.

In **ISSUE V,** Requena argued that a unit team and a administrative attoney failed to protect him of a July 31, 2012 beating. The Tenth Circuit did reverse the failure to protect against, Newkirk, Cranston and Crotts but affirmed against Dusseau and Graves. Requena did inform Dusseau the unit team that he feared more retaliation by the Native American members and informed Graves the administrative attorney that Requena would sign into protective custody. The inmate who assaulted Requena was being paid by a member of the Native American callout to assault Requena on July 31, 2012.

Requena did not metion this but had he reached discovery this information would had come to light. Even so one would think that the callout has several members and the drumsticks were very important to the members to lose, and therefore retaliation was expected especially in this volatile environment. This is the reason why Requena in his complaint said that prison officials did this, taking the drumsticks, intentionally because they knew that the members would retaliate against Requena and administrators was hoping that it would scare Requena from filing grievances and Writs of Habeas Corpus challenging disciplinay actions and teach Requena a lesson for messing with administrators.

In **ISSUE VI,** Requena argued that medical staff failed to provide him with adequate, medical treatment by mis diagnosing Requena's head injury from a brutal beating he received on June 30, 2012 than that of allergies. Requena repeatedly put in medical request after medical request trying to find out why was he losing his eye sight and hearing. Medical staff tried to tell Requena that it was due to allergies, and then let his allergy medication run out without any follow ups or any concerns to his eye sight and hearing, especially being in a volatile environment. Their diagnose left Requena in vulnerable situation not being able to see or hear danger. Medical staff waited several months to do an eye exam and to provide him with glasses to see, and waited fifteen months for a hearing exam but then denied Requena the use of access to the hearing aid he was fitted for.

The Tenth Circuit held that a mis diagnosis by medical staff is negligence and not a deliberate indifference, and that mental health providers was not deliberate indifferent because no physician diagnosed Requena with anxiety and anger problems, therefore no need for treatment. Requena's institutional record would had shown, if he would had made it to screening, that mental health provider were trying to stay away from Requena in order to prevent from being liable. Mental health providers simply refused to give Requena treatment and this was the reason why no pyschologist would diagnose him because they would give Requena a leg to stand on. Had the court allowed Requena to proceed to discovery they would had seen Requena's behavior change dramatically from the head injury. Requena sees his eye loss and hearing loss as a deliberate indifference because he becomes vulnerable in a very volatile environment.

In **ISSUE VII,** Requena argued that he was being retaliated against by prison officials and that prison officials were using false disciplinary convictions as a means to retaliate against Requena for filing grievances and Writs of Habeas Corpus challenging disciplinary convictions. Requena had already showed that defendant, Wagner was forced to pack out Requena's property because of the brutal beating he received on June 30, 2012. The Tenth Circuit held that since Requena didn't show atypical or a significant hardship in the segregation and restriction he endured than Requena could not allege a protected liberty interest. If Wagner hadn't filed the false disciplinary action in the first place Requena would had never been subjected to the segregation or restriction. But hey, prison officials are allowed to file false disciplinary actions and not be punished for their actions. Just like with defendant, McGehee who filed a false disciplinary action because she wanted to help defendant, Lamb from Requena's grievance of racism. The Tenth Circuit claims in their headnote 16 that they already addressed this issue (see Requena v. Roberts, 2016 U.S. Dist. LEXIS 190872), but in that case all they addressed was the conviction and goodtime credits taken. The Tenth Circuir never addressed the **USCS Const. Amend. 14,** of being subjected to retaliation. Even though in that case Requena showed that the camera never seen Requena touch defendant, McGehee nor even come close to her. It is sad that a prison officials word is more convincing than the security camera that caught the action and then when prison officials knew they were wrong got rid of the security video before Requena could even appeal the affirmance. I'm sure prison officials were hoping the judges would ignore the video, which is what they did, and ruled that her testimony was enough evidence.

In **ISSUE VIII,** Requena argued about the interest being taken from his prison account, and used it for something else by prison officials. The Tenth Circuit held that since Requena didn't raise the issue in his complaint that they were not going to consider it. Requena raised the issue in his declaration in his complaint and added the exhausted administrative remedies to show that the issue existed. But hey, since we are already trying to find a way to get prison officials out of any complaints lets just not question them taking thousands of inmates money especially Requena's money. The Tenth Circuit noted that Requena didn't follow Rule 28 (a) (6) but yet they can't see when prison officails abuse their power. Wow, even if Requena did follow Rule 28 (a) (6) by citing the references to the record he bets the court would had come up with more excuses on how to get prison officials out of being liable for their abusive actions. The ISSUES Requena has addressed are clearly a violation of his constitutional rights, but judges want prisoner to ask permission (Permission for Leave to Amend), to bring a claim of violations by prison officials. What kind of a system do we live in where we have to ask permission if we can complain about prison officials actions. I guess I go back to **28 U.S.C. 3002 (15) (A)** where I assume judges are only protecting it's corporation.

REASONS FOR GRANTING THE PETITION

Requena believes his Writ of Certiorari should be ganted for several reasons:

1.) The State or Federal government uses tax payers money and unlimited resources to prosecute a defendant where most prisoners are indigent.

2.) The State or Federal government uses tax payers money and unlimited resources to defend a prosecution in a civil suit where most prisoners who bring a claim are indigent.

3.) Requena believes that **Trop v. Dulles, 356 U.S. 86, 101; 78 S.Ct. 590; 2 L. Ed. 2d 630(1958),** is a bunch of hogwash, "The Amendment, Eighth Amendment, must draw its meaning from the evolving standards of decency that marks the progress of a maturing society." Wow, what is evolving or decent about a court system that allows prison officials to still get away with abusing prisoners and making it easy for prison officials to get away with abuse from rulings that make it that much harder for a prisoner to bring a suit of abuse. The maturing progress (PLRA), must be the keeping of prisoners from bringing a legitimate complaint against prison officials.

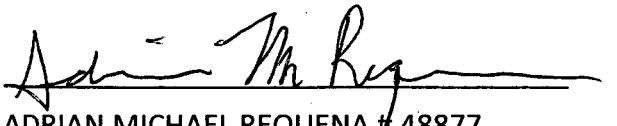
CONCLUSION

Maybe Requena isn't articulate like the attorneys who has had years of schooling and years of practicing law but at least he knows abuse when he sees it. Sure judges say that their schooling and practice should not be an excuse for prisoners, but believe if a prisoner was to start a law firm in prison, without a degree, without passing the bar and not having a license you can believe he would be charged with a crime. Requena notice that prison officials don't even file appearances, which is most likely because they know judges will protect them.

The petition for Writ of Certiorari should be granted.

On this 17th day of September, 2018.

Respectfully Submitted,



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