



United States Department of State

*United States Permanent Mission to the  
Organization of American States*

*Washington, D.C. 20520*

February 4, 2019

Dr. Paulo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: Paul Thomas McCreary, Petition No. P-259-12  
Response to Petition**

Dear Dr. Abrão:

The United States Government has the honor of submitting to the Inter-American Commission on Human Rights (“Commission”) this response to the Petition your office transmitted to us on August 28, 2017, via a letter dated August 22, 2017. The Petition, with exhibits, was filed by Paul Thomas McCreary (“Petitioner” or “Mr. McCreary”) in the above-referenced matter. Please find enclosed the United States’ response to the Petition. We trust this information is useful to the Commission and thank the Commission for its attention to this matter.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CT', written over a faint circular stamp.

Carlos Trujillo  
Ambassador

Enclosures:

McCreary v. Malone, Case No. 3:10-CV-00126-RCJ-VPC, United States District Court District of Nevada (March 4, 2010).

McCreary v. Skolnik, Order Denying Motion for Enlargement of Time and Motion to Exceed Limitations, Case No. CF-0912032, 7<sup>th</sup> District Court of Nevada (January 6, 2011).

McCreary v. Skolnik, Case Appeal Statement, Case No. CF-0912032, 7<sup>th</sup> District Court of Nevada (March 22, 2011).

**PETITION NO. P-259-12, PAUL THOMAS MCCREARY  
RESPONSE OF THE UNITED STATES OF AMERICA**

The United States appreciates the opportunity to submit these observations on the documents submitted by Mr. McCreary (“the Petitioner”) to the Inter-American Commission on Human Rights (“Commission”) and forwarded to the United States as Petition No. P-259-12 (“Petition”). The Petition was received by the Commission in February 2012 and forwarded to the United States in August 2017.

The United States respectfully submits that the matter addressed by the Petition is not admissible and must be dismissed because it fails to meet the Commission’s established criteria in Articles 31 and 34 of its Rules of Procedure (“Rules”). In particular, the Petition is inadmissible under Article 31(1) of the Rules because Petitioner has failed to exhaust his administrative and domestic remedies. Moreover, Petitioner’s claims fail to state facts that establish a violation of his rights under Article 34(a) and are manifestly groundless under Article 34(b) and, as such, the Petition fails to establish any violations<sup>1</sup> of rights set forth in the American Declaration of the Rights of Duties of Man (“American Declaration” or “Declaration”).

**A. BACKGROUND**

At the outset, we would like to explain to the Commission that Petitioner’s submissions are, unfortunately, difficult to understand. We have undertaken a careful and detailed review of the Petition, expending many hours of attorney time

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<sup>1</sup> As the American Declaration of the Rights and Duties of Man is a non-binding instrument and does not create legal rights or impose legal duties on member states of the Organization of American States, the United States understands that a “violation” in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. The United States respects its political commitment to uphold the American Declaration. For an elaboration of the United States’ longstanding position on the non-binding nature of the American Declaration, see Request for an Advisory Opinion Submitted by the Government of Colombia to the Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988, *available at* <http://www1.umn.edu/humanrts/iachr/B/10-esp-3.html>. U.S. federal courts of appeals have independently held that the American Declaration is nonbinding and that the Commission’s decisions do not bind the United States. *See, e.g.,* Garza v. Lappin, 253 F.3d 918, 925 (7th Cir. 2001).

and engaging in significant research to ascertain the status of Mr. McCreary's many domestic cases. In light of the fact that Petitioner is representing himself and is apparently not familiar with the American Declaration, we have tried to construe his claims in terms of the relevant articles of the American Declaration where possible.

It appears that Petitioner is alleging claims against the Nevada Department of Corrections ("NDOC") arising from an incident that took place at Ely State Prison on November 5, 2008. Mr. McCreary alleges that over the course of that night, Nevada prison officials "broke [his] left ankle which has a bar in it in order for [him] to walk." He also alleges that he was "sexually assaulted" by prison officers that night. In addition, he claims that he has been "wrongfully held in criminal Jeopardy [sic]" and "denied liberty and [his] civil rights to be free from inhumane treatment and corporal [sic] punishment" because he "was denied Hospitalization [and] Medical attention." Mr. McCreary further alleges that certain actions of Nevada state officials denied him his right to a fair trial, to due process of law, and of protection from arbitrary arrest. Though Petitioner does not clearly state which articles of the Declaration these allegations would violate, to the United States' best understanding he has alleged violations of Articles I (life, liberty, and personal security), XI (preservation of health and well-being), XVII, XVIII (fair trial), XXV (arbitrary arrest), and XXVI (due process) of the Declaration.

When Mr. McCreary filed his Petition, there were two unexhausted cases related to the alleged incidents referenced in the Petition: *McCreary v. Skolnik*,<sup>2</sup> which was filed in a Nevada state court alleging sexual and physical assault, and *McCreary v. Malone*,<sup>3</sup> which was filed in federal court alleging retaliation for filing *Skolnik*.

## **B. DISCUSSION**

### **a. The Petition Is Inadmissible under Article 31(1) of the Rules for Failure to Exhaust Domestic Administrative and Judicial Remedies.**

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<sup>2</sup> *McCreary v. Skolnick*, Case No. CF-0912032 (7<sup>th</sup> Dist. Ct. of NV, 2010).

<sup>3</sup> *McCreary v. Malone*, Case No. 3:10-CV-00126 (NV Dist. Ct., 2010).

The Commission should declare the Petition inadmissible because Petitioner has not satisfied his duty to demonstrate that he has “invoked and exhausted” domestic remedies under Article 20(c) of the Commission’s Statute and Article 31 of the Rules.

The Commission has repeatedly emphasized that a petitioner has the duty to pursue all available domestic remedies. Article 31(1) of the Rules states that “[i]n order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.” As the Commission is aware, the requirement of exhaustion of domestic remedies stems from customary international law, as a means of respecting State sovereignty. It ensures that the State on whose territory a human rights violation allegedly has occurred has the opportunity to redress the allegation by its own means within the framework of its own domestic legal system.<sup>4</sup> It is a sovereign right of a State conducting judicial proceedings for its national system to be given the opportunity to determine the merits of a claim and decide the appropriate remedy before resort to an international body.<sup>5</sup> The Inter-American Court of Human Rights has remarked that the exhaustion requirement is of particular importance “in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction.”<sup>6</sup> The Commission has repeatedly made clear that the petitioner has the duty to pursue *all* available domestic remedies.<sup>7</sup>

*McCreary v. Skolnik*, filed in a Nevada state court, contains the same sexual and physical assault allegations included in the petition.<sup>8</sup> In *Skolnik*, the Nevada district court denied Mr. McCreary’s motion for enlargement of time to serve defendants and motion to exceed the copy page limitations set by the prison. The court denied the motion because Mr. McCreary still had time to serve defendants

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<sup>4</sup> See, e.g., *Interhandel Case (Switzerland v. United States)* [1959] I.C.J. 6, 26–27; *Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania)*, 1939 P.C.I.J., Ser. A/B, No. 76.

<sup>5</sup> THOMAS HAESLER, *THE EXHAUSTION OF LOCAL REMEDIES IN THE CASE LAW OF INTERNATIONAL COURTS AND TRIBUNALS* (1968), at 18–19.

<sup>6</sup> *Velásquez Rodríguez Case*, Judgment of July 29, 1988, ¶ 61, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988).

<sup>7</sup> See, e.g., *Páez García v. Venezuela*, Petition No. 670-01, Report No. 13/13, Mar. 20, 2013, Analysis § B(1) & Conclusions ¶ 35 (finding petition inadmissible for failure to exhaust because petitioner did not avail himself of remedies available to him in the domestic system).

<sup>8</sup> *McCreary v. Skolnick*, Case No. CF-0912032 (7<sup>th</sup> Dist. Ct. of NV, 2010).

so the motion was not yet ripe and he had not shown a need for more pages to be copied.<sup>9</sup> Instead of serving defendants on time or requesting an enlargement of time once his motion was ripe, Mr. McCreary appealed this decision to the Nevada Supreme Court. The Nevada Supreme Court dismissed the appeal “as no statute or court rule authorizes an appeal from an order denying such motions.”<sup>10</sup> Mr. McCreary then appealed to the United States Supreme Court, which denied his petition for a writ of certiorari.<sup>11</sup> Mr. McCreary never served the defendants in this case and thereby failed to exhaust his domestic remedies.<sup>12</sup> Therefore, any claims stemming from the alleged incident in *Skolnik* that Mr. McCreary now brings under the Declaration through this Petition must be dismissed under Article 31(1) of the Rules.

Relatedly, in *McCreary v. Malone*, Mr. McCreary filed a complaint with the U.S. district court alleging that Nevada state officials refused to file his state court claim, he was being kept in solitary confinement due to a dismissed criminal charge against him, and he was facing retaliation from prison guards for submitting his state court complaint. Again, these same allegations are included in the petition. The district court considered the facts alleged and dismissed Mr. McCreary’s case. Mr. McCreary appealed his case to the United States Court of Appeals for the Ninth Circuit and his appeal was dismissed for failure to respond to a court order.<sup>13</sup> Mr. McCreary did not re-file his appeal with the Court of Appeals. Failure to comply with simple court orders or re-file appeals as necessary – as Mr. McCreary has done on countless times in other civil suits – simply cannot be considered to satisfy the requirement to exhaust domestic remedies. Therefore, Mr. McCreary cannot be considered to have exhausted all domestic legal remedies with respect to these claims as required by Article 31(1) of the Rules.

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<sup>9</sup> *McCreary v. Skolnik*, Order Denying Motion for Enlargement of Time and Motion to Exceed Limitations Case No. CF-0912032 (7<sup>th</sup> Dist. Ct. of NV, 2011).

<sup>10</sup> *McCreary v. Skolnik*, Order Dismissing Appeal, No. 57996 (Supreme Court of the State of Nevada, 2011).

<sup>11</sup> *McCreary v. Skolnik*, No. 10-11098 Supreme Court of the United States Office of the Clerk (2011).

<sup>12</sup> Although there is no official order on the Court’s electronic docket dismissing the case, under the Rules of Procedure for the Nevada District Courts, the case would have been subject to dismissal without prejudice for failure to timely serve defendants. As such, it appears that Mr. McCreary had, and continues to have, the opportunity to re-file the case at any time. Rules of Procedure for the Nevada District Courts, Rule 4(i).

<sup>13</sup> *McCreary v. Malone*, Case No. 11-15214, United States Court of Appeals for the Ninth Circuit (2011).

As the state and federal proceedings in *Skolnik* and *Malone* demonstrate, Mr. McCreary has failed to exhaust the domestic remedies available to him with respect to the subject matter of the Petition. Therefore, the Petition is inadmissible under Article 31(1) of the Rules and must be dismissed.

**b. The Petition Is Inadmissible under Article 34(a) for Failing to State Facts that Establish a Violation of the Rights under the Declaration and Article 34(b) for Stating Facts that Indicate It Is Manifestly Groundless.**

Even if the Commission does not dismiss this Petition for failing to exhaust domestic legal remedies, this Petition is inadmissible under Article 34(a) and Article 34(b).

i. Claims are inadmissible for failing to state facts that establish a violation of the rights under the Declaration (Article 34(a))

Mr. McCreary alleges that on November 5, 2008, he was assaulted by prison guards and denied medical treatment in violation of his right to life, liberty and personal security and his right to the preservation of health and to well-being. Mr. McCreary also alleges that the actions of Nevada state officials denied him his right to a fair trial, to due process of law, and of protection from arbitrary arrest. Mr. McCreary's Petition and additional documents provided by the United States in this response demonstrate that Mr. McCreary's claims have not established a violation of his rights under the Declaration and are manifestly groundless; therefore, the Petition should be dismissed under Article 34(a).

With respect to his allegations of physical and sexual assault, Mr. McCreary has failed to allege in his Petition any facts that tend to establish a violation of the rights under the American Declaration (presumably, Article I of the Declaration). Petitioner has only vaguely described the alleged acts that occurred on November 5, 2008. Mr. McCreary merely states, "the facts show; sexual assault that occurred on 11-5-08, at 6:40 P.M. in front of Ely State Prisons Corrections Officers of Hammock and toycen. A beating that broke my left ankle which has a bar in it in order for me to walk on 11-05-08 at 7:05 P.M. in front of Ely State Prisons Central Control Bubble next to the visiting room...I was wrongfully held in Criminal Jepordy." But Petitioner fails to corroborate these bare allegations with facts that would "tend to establish a violation of the rights" in the American

Declaration; bare allegations are no substitute for facts themselves. Therefore, these claims, ostensibly under Article I of the Declaration, must be dismissed for failing to state facts that establish a violation under Article 34(a).

Petitioner also alleges violations of his rights to health and well-being, a fair trial, due process of law, and protection from arbitrary arrest (presumably, Articles XI, XVIII, XXV, and XXVI of the Declaration). However, in his Petition, Mr. McCreary merely alleges that “the facts show retaliation for filing the case stated above.” Importantly, again, Petitioner alleges no facts to “establish a violation of the rights” in the American Declaration; bare allegations are insufficient to render claims admissible.<sup>14</sup> The Commission should dismiss Petitioner’s claims under Article 34(a) for failing to state facts that establish a violation of his rights under these Articles of the Declaration.

ii. Claims are inadmissible for stating facts that indicate they are manifestly groundless (Article 34(b))

Moreover, Petitioner’s claims—presumably under Articles XVIII, XXV, and XXVI of the Declaration—should also be dismissed as manifestly groundless under Article 34(b). In Petitioner’s district court complaint, Petitioner alleged that Mrs. Malone, a Nevada State official, violated his rights and supported this allegation with the claim that Mrs. Malone “refus[ed] to file/process a 1983 civil action.”<sup>15</sup> Later in the complaint, however, Mr. McCreary admits that Mrs. Malone sent him a letter explaining the status of his claim.<sup>16</sup> Mr. McCreary’s own statements clearly refute the allegation that Mrs. Malone violated Mr. McCreary’s

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<sup>14</sup> Mr. McCreary claims in his Petition that Nevada prison officials violated his “right to humane treatment,” which the United States can only assume is a reference to his right to the preservation of health and to well-being (Article XI of the Declaration). Mr. McCreary alleged no facts to substantiate this claim in his Petition. However, in Mr. McCreary’s related complaint to the U.S. District Court, Mr. McCreary alleged that he was “denied [the right] to take a shower”, had his cell searched and his pens removed, and his walls and personal items were “sprayed with chemicals.” The district court dismissed Mr. McCreary’s claims. Mr. McCreary fails to allege that these actions by Nevada prison officials, even if true, were anything other than cleaning his cell. Not only are Mr. McCreary’s claims that his right to the preservation of health and well-being baseless; if anything, the facts in Mr. McCreary’s district court filing, but which were not included in his petition, indicate that Nevada prison officials acted in furtherance of that right. *See* McCreary v. Malone Court Opinion, at 5-6.

<sup>15</sup> McCreary v. Malone, United States District Court of Nevada Case No. 3:10-CV-00126 (2010).

<sup>16</sup> *Id.* at 5 (Explaining that the claim “‘is still in the Judges chambers for consideration. You do have the option to motion the Court for review, however, please be aware that the judges workload is extensive and your case will be attended to as soon as possible.’”).

rights under Articles XVIII, XXV, and XXVI of the Declaration.<sup>17</sup> Additionally, in his unexhausted *Malone* complaint, and now in his Petition, Mr. McCreary claims that Nevada state prison officials violated his right to due process and right of protection from arbitrary arrest by allegedly denying his request for a transfer to a different prison. However, this denial does not constitute a violation of any right in the American Declaration.<sup>18</sup>

Mr. McCreary's claims, ostensibly under Articles XVIII, XXV, and XXVI of the Declaration, are manifestly groundless and are therefore inadmissible under Article 34(b) of the Rules.

### C. CONCLUSION

Nothing in the principles established by the American Declaration or in the Rules would suggest that the Commission should intervene in a meritless claim that has been adequately addressed by domestic courts in the United States. As a result, this matter is inadmissible under Articles 31(1), 34(a), and 34(b) of the Rules and the Commission should respect the decisions of U.S. courts and close this matter.<sup>19</sup> We reserve the right to submit further observations, however, should it reach the merits stage.

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<sup>17</sup> Only three months had passed from the time Mr. McCreary filed his case with the Nevada State Court to when he filed his related claim with the U.S. District Court. As the Commission is aware, and can no doubt empathize, courts are frequently overwhelmed with requests and it can sometimes take longer than anticipated to address every complaint, and certainly longer than three months. *See* *McCreary v. Malone Complaint*, United States District Court of Nevada at 5.

<sup>18</sup> Furthermore, the district court properly found that “prisoners have no liberty interest in avoiding being transferred, or not transferred, to another prison.” *See* *McCreary v. Malone Court Opinion*, at 4.

<sup>19</sup> *Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. United States*, Petition No. 478-05, Report No. 78/08, Admissibility, Aug. 5, 2009, ¶ 60 (where alleged victims pursued a civil lawsuit and won a judgment, Commission concluding that the alleged victims had access to an effective remedy and that no further review would be warranted).

Paul McCreary  
Name

P.O. Box # 1989 - Ely NV, 89301  
Address

M.D.C. # 78362  
Prison Number

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COUNSEL/PARTIES OF RECORD	
MAR - 4 2010	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Paul McCreary,  
Plaintiff,

vs.

Joann Malone,

Schmidt,

Renee Baker,

Oxborrow,

Bybee,  
Defendant(s).

CASE NO. 3:10-CV-00126 -  
(To be s

**CIVIL RIGHTS COMPLAINT  
PURSUANT TO  
42 U.S.C. § 1983**

Jury Trial Demanded.

**A. JURISDICTION**

1) This complaint alleges that the civil rights of Plaintiff, Paul McCreary,  
(print Plaintiff's name)

who presently resides at Ely State Prison - M.D.C., were  
(mailing address or place of confinement)

violated by the actions of the below named individuals which were directed against

Plaintiff at Ely State Prison / Ely Township # 2 on the following dates  
(institution/city where violation occurred)

01-14-10, 02-10-10, and 02-18-10.  
(Count I) (Count II) (Count III)

**Make a copy of this page to provide the below information if you are naming more than five (5) defendants**

2) Defendant Jeann Malone resides at 801 Clark St, Suite #4,  
 (full name of first defendant) (address of first defendant)  
 and is employed as White Pine County Clerk. This defendant is sued in his/her  
 (defendant's position and title, if any)

individual  official capacity. (Check one or both). Explain how this defendant was acting under color of law: Mrs. Malone is a County clerk who refuses to file/process a 1983 Civil Action = CF-0912032.

3) Defendant Schmidt resides at P.O. Box #1989 = E.S.P.,  
 (full name of first defendant) (address of first defendant)  
 and is employed as Senior Corrections Officer, E.S.P. This defendant is sued in his/her  
 (defendant's position and title, if any)

individual  official capacity. (Check one or both). Explain how this defendant was acting under color of law: Retaliated By spraying chemicals on my walls, Food, legal papers, Medication, while I was in the shower.

4) Defendant Renee Baker resides at P.O. Box #1989 = E.S.P.,  
 (full name of first defendant) (address of first defendant)  
 and is employed as Associate Warden of Programs. This defendant is sued in his/her  
 (defendant's position and title, if any)

individual  official capacity. (Check one or both). Explain how this defendant was acting under color of law: Mrs. Baker has knowledge of the Court ordered M.J-30 dismissal and the retaliation for filing a 1983.

5) Defendant OxBarrow resides at P.O. Box #1989 = E.S.P.,  
 (full name of first defendant) (address of first defendant)  
 and is employed as Correctional Case Worker Specialist. This defendant is sued in his/her  
 (defendant's position and title, if any)

individual  official capacity. (Check one or both). Explain how this defendant was acting under color of law: OxBarrow is a Caseworker at the F.C.C. Hearing and was notified in person about the unit's retaliation.

6) Defendant Bybee resides at P.O. Box #1989 = E.S.P.  
 (full name of first defendant) (address of first defendant)

and is employed as Correctional officer. This defendant is sued in his/her  
 (defendant's position and title, if any)

individual  official capacity. (Check one or both). Explain how this defendant was

acting under color of law: Retaliated by spraying my walls with chemicals and removing writing materials, pens, soap, ect. while I was in the shower.

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

Prisoner Litigation Reform Act, All of it.

Institutionalized Persons Act, All of it.

**B. NATURE OF THE CASE**

1) Briefly state the background of your case.

1) on 01-05-10, I mailed the Corrections to a 1983 Civil Action to the 7th Judicial District Court of the State of Nevada in and for the County of White Pine, County Clerk Mrs. Maloney on 2-07-10, I wrote white pine County clerk's office asking in regards to the filing of my 1983, on 2-18-10, I find out my Complaint is just sitting in the Judges chambers.

2) Balter - Oxborrow think a court order dismissed MJ-30 by Justice Court Judge Ron niman (Case #09-00070 held on 8-20-09 at 9:30-10:00 A.M.) is appropriate enough to hold me in Ad-Seq for punishment at the F.C.C. Hearing held on 01-14-10.

3) I have been retaliated against for filing a 1983 Civil Action Case #CF-0912032 in Dept. #2. Every since 12-18-09, S/O Schmidt and C/O Bybee have been denying my Federal right to take a shower every 72 Hours and spraying my cell and property. A.W.P. Balter and Caseworker Oxborrow know of the incidents and do nothing to stop it.

C. CAUSE OF ACTION

COUNT I

The following civil right has been violated: \_\_\_\_\_

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On 01-14-10 at 9:50 A.M., I seen Associate Warden of Programs Renee Baker and Caseworker OXBorrow for a Full Classification Committee hearing for a transfer to Levelock Correctional Center.

During the interview Renee Baker stated that "You where convicted of a MJ-30-O.F.C.#290476, We here at ELg don't like that behavior."

I told Baker "Judge Riman dismissed that write up, Because both my cases 09-00042 and 09-00070 where dismissed on 5-26-09 and 8-20-09, If the write up don't hold weight in Criminal Court how does it hold weight in N.D.C.'s Disciplinary process?"

Baker said "I don't think the Courts can do that, I'm not doing anything with you today."

OXBorrow stated "Yes, You'll be in Ad-seg here at F.B.P. for a while longer."

So now I sit here in the hole on Ad-seg Because Baker and OXBorrow don't follow court dismissals by Judge Ren Riman.

Administrative Segregation is not to be used as punishment Confined to a Single Cell per Renee Baker.

COUNT II

The following civil right has been violated: \_\_\_\_\_

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

ON 2-10-10, I recieved a letter from white pine County clerk Joann Malone's office stating "The above-mentioned case you have inquired about is still in the Judges chambers for consideration. You do have the option to motion the Court for review, however, please be aware that the judges workload is extensive and your case will be attended to as soon as possible." This letter is in regards to the status on Case no. CF-0912032-Dept #2...

This case # CF-0912032 has been active and awaiting to be filed since December 30<sup>th</sup> 2009...

Here it is March 01, 2010 - 3 months later, I am stating that the white pine County clerks Joann Malone are violating my due process rights as my Complaint (1983) is simply not being processed or acted on...

I have not recieved my (1983) Complaints from white pine County clerks stamped "Filed."

The motion to review Complaint was filed on February 02, 2010 at 4:00 P.M.,

COUNT III

The following civil right has been violated: \_\_\_\_\_

\_\_\_\_\_

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Between 12-18-09 and 2-21-10, I have been retaliated against for attempting to file a (1983) Complaint by the day shift, Weekend Crew of Seniore Corrections Officer (S/O) Schmidt and Corrections officer (C/O) Bybee.

From 12-18-09 to 02-21-10, I was denied to take a shower by S/O Schmidt and C/O Bybee for filing complaints and Grievances on both officers.

On 02-18-10, While I was allowed to shower, C/O Bybee searched my cell and sprayed chemicals on my walls and removed Soap and pens that I use to write with.

On 02-21-10, While I was allowed to shower, S/O Schmidt searched my cell and sprayed chemicals on my walls, Food, CF-0912032<sup>1</sup>-Legal work, Medication.

These retaliation will continue even after this (1983) is filed.

A.W.P. Renee Baker and Caseworker OX Borrow are notified of this retaliation as I told them.

\_\_\_\_\_

**D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF**

1) Have you filed other actions in state or federal courts involving the **same or similar facts** as involved in this action?  Yes  No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below outline).

- a) Defendants: \_\_\_\_\_
- b) Name of court and docket number: \_\_\_\_\_
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?):  
\_\_\_\_\_
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**  Yes  No. If your answer is "Yes", describe each lawsuit. (If you have had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline).

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_
- b) Name of court and case number: \_\_\_\_\_
- c) The case was dismissed because it was found to be (check one):  frivolous  
 malicious or  failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_

- b) Name of court and case number: \_\_\_\_\_.
- c) The case was dismissed because it was found to be (check one): \_\_\_ frivolous \_\_\_ malicious or \_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_.
- e) Approximate date it was filed: \_\_\_\_\_.
- f) Approximate date of disposition: \_\_\_\_\_.

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_.
- b) Name of court and case number: \_\_\_\_\_.
- c) The case was dismissed because it was found to be (check one): \_\_\_ frivolous \_\_\_ malicious or \_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_.
- e) Approximate date it was filed: \_\_\_\_\_.
- f) Approximate date of disposition: \_\_\_\_\_.

3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures?  Yes  No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) \_\_\_ disciplinary hearing; (2) \_\_\_ state or federal court decision; (3) \_\_\_ state or federal law or regulation; (4) \_\_\_ parole board decision; or (5)  other A inmate can't grieve the County clerks.

If your answer is "Yes", provide the following information. Grievance Number Informal 2006-28-89582.

Date and institution where grievance was filed 03-01-10, 12-27-09 at Ely State Prison.

Response to grievance: Abuse of the inmate grievance procedure. Your grievance has been reviewed. You have filed more than (4) un-founded, frivolous, or vexatious grievances this month and therefore per A.R. 740, this grievance was not accepted. This is E.S.P.'s R. Batters usual response to a grievance or it doesn't come back.



NOTICE OF LAWSUIT AND REQUEST  
FOR WAIVER OF SERVICE OF SUMMONS

TO:

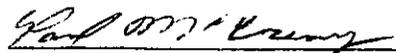
A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the District of Nevada and has been assigned docket number \_\_\_\_\_.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this Notice is sent.

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive service of the summons, which is set forth on the reverse side of the waiver form.

I affirm that this Request is being sent to you on behalf of the plaintiff, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

  
\_\_\_\_\_  
Signature Of Plaintiff

WAIVER OF SERVICE OF SUMMONS

TO:

I acknowledge receipt of your request that I waive service of a summons in action \_\_\_\_\_, which is case number \_\_\_\_\_, in the United States District Court for the District of Nevada. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after \_\_\_\_\_.

(date request was sent)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed/Typed Name

[as \_\_\_\_\_]

[of \_\_\_\_\_]

[ See Reverse Side ]

DUTY TO AVOID UNNECESSARY COSTS  
OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

(Added April 22, 1993, eff. Dec. 1, 1993.)

FILE!

2011 JAN -6 AM 11:19

WHITE PINE COUNTY CLERK  
BY LB  
DEPUTY

Case No. CF-0912032

Dept. No. 02

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

\*\*\*\*\*

PAUL McCREARY,

Plaintiff,

vs.

HOWARD SKOLNIK, et al.,

Defendant.

ORDER DENYING MOTION FOR  
ENLARGEMENT OF TIME AND  
MOTION TO EXCEED LIMITATIONS

FACTUAL AND PROCEDURAL HISTORY

Plaintiff filed a Application to Proceed In Forma Pauperis January 14, 2010. Plaintiff next filed a Motion to Review Complaint on February 24, 2010. Plaintiff then filed a Motion for the Appointment of Counsel March 17, 2010. The Court entered an Order Denying Motion for Appointment of Counsel on March 17, 2010.

Plaintiff filed a Motion to Submit into Evidence/Discovery March 29, 2010. On April 14, 2010, Plaintiff filed a Motion to be Present at Hearings and a Motion to Exceed Limitations. Plaintiff filed a Motion to Note Address Change July 8, 2010. This Court issued an Order to Proceed in Forma Pauperis October 25, 2010. Plaintiff then filed 1983 Civil Action Jury Demanded October 25, 2010.

SEVENTH JUDICIAL DISTRICT COURT  
DAN L. PAPEZ  
DISTRICT JUDGE  
DEPARTMENT 2  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA





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Plaintiff filed a Motion for Enlargement of Time<sup>1</sup> and a Motion to Exceed Limitations on November 22, 2010. Finally, Plaintiff filed a Motion to Request of Review December 2, 2010.

Upon reviewing the file, the Court finds additional briefing or argument is not necessary.

DISCUSSION

**A. MOTION FOR ENLARGEMENT OF TIME.**

Plaintiff requests additional time wherein he might serve Defendants with summonses. However, this Court cannot see a reason for this Motion. Plaintiff filed his complaint October 25, 2010. Plaintiff has one hundred twenty days to serve the summons.<sup>2</sup> This means the Defendants need to be served by February 21, 2010 for service to be timely. Because Plaintiff still has time to serve Defendants, Plaintiff's Motion for Enlargement of Time is not ripe and must be DENIED.

**B. MOTION TO EXCEED LIMITATIONS.**

Plaintiff asks this Court to issue an Order allowing Plaintiff to exceed the ONE HUNDRED dollar maximum debt for copy work while in prison. Prison regulations state: "Inmates can only accrue a maximum of \$100 debt for copy work expenses for all cases, not per case."<sup>3</sup>

"Allowing inmates to pay for and receive photocopies and legal materials required by the courts is part of the 'meaningful access' to the courts that inmates are constitutionally entitled to."<sup>4</sup> However, meaningful access to the courts does not include

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<sup>1</sup>This Motion for Enlargement of Time seeks additional time in which to serve summonses on Defendants.

<sup>2</sup>N.R.C.P. 4(i).

<sup>3</sup>A.R. 722.01.9(D).

<sup>4</sup>*Johnson v. Parke*, 642 F.2d 377, 380 (10<sup>th</sup> Cir. 1981).

1 unlimited or free access to copy work, especially when suitable alternatives exist.<sup>5</sup>

2 When an indigent prisoner alleges inadequate provision of supplies, the Ninth Circuit  
3 has "declined to read in to the Constitution any specific minimum requirements other than  
4 those provided by *Bounds*."<sup>6</sup> Instead, the focus has been on whether the "particular  
5 prisoner has had meaningful access."<sup>7</sup> However, in *Sands*, the court noted the  
6 "Constitution does not require the elimination of all economic, intellectual, and  
7 technological barriers to litigation."<sup>8</sup>

8 Under *Bounds v. Smith*, the State must provide paper and pen to indigent inmates  
9 for drafting legal documents.<sup>9</sup> To show a violation of the *Bounds* standard, an inmate must  
10 show actual injury resulting from the alleged deficiency.<sup>10</sup> Several circuits have established  
11 a two part test when dealing with claims for inadequate legal supplies: (1) has there been  
12 a denial; and (2) the denial lead to an actual injury to the particular prisoner.<sup>11</sup>

13 Plaintiff did not provide arguments supporting extension of the ONE HUNDRED  
14 dollar copy limit. Plaintiff shows a denial of access to make copies because he has  
15 apparently reached his limit under prison standards, but Plaintiff fails to state any injury.

16 \_\_\_\_\_  
17 <sup>5</sup> *Jones v. Franzen*, 697 F.2d 801, 803 (7<sup>th</sup> Cir. 1983) (holding no constitutional right to xerox); *Harrell v. Keohane*, 621 F.2d 1059 (10<sup>th</sup> Cir. 1980).

18 <sup>6</sup> *Sands v. Lewis*, 886 F.2d 1166, 1169 (9<sup>th</sup> Cir. 1989) (referring to *Bounds v. Smith*, 430 U.S. 817, 820 (1977) (holding "Prisoners have a Constitutional right to access to the courts.")).

19 <sup>7</sup> *Id.*

20 <sup>8</sup> *Id.*

21 <sup>9</sup> *Bounds v. Smith*, 430 U.S. 817, 824 (1977).

22 <sup>10</sup> *Id.* at 825.

23 <sup>11</sup> See *Gentry v. Duckworth*, 65 F.3d 555 (7<sup>th</sup> Cir. 1995); *Sands*, 886 F.2d at 1170; *Kershner v. Mazurkiewicz*, 670 F.2d 440, 442 (3<sup>rd</sup> Cir. 1982); *Magee v. Waters*, 810 F.2d 451, 452 (4<sup>th</sup> Cir. 1987); *Mann v. Smith*, 796 F.2d 79, 84 (5<sup>th</sup> Cir. 1986); *Cookish v. Cunningham*, 787 F.2d 1, 5 (1<sup>st</sup> Cir. 1986); *Hoppins v. Wallace*, 751 F.2d 1161, 1162 (11<sup>th</sup> Cir. 1985); *Myers v. Hundly*, 101 F.3d 542, 544 (8<sup>th</sup> Cir. 1996).



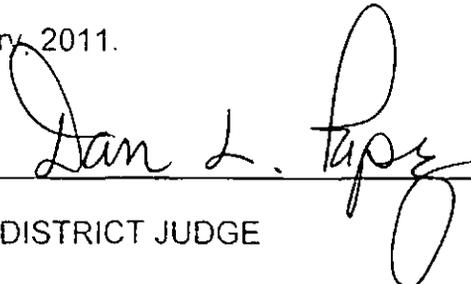
1 Plaintiff has not alleged any infringement on his right to hand write copies of his legal work.  
2 Because Plaintiff has not shown a denial of other alternatives to copy his legal work, the  
3 Court sees no reason to allow Plaintiff to accumulate copy debt in excess of the ONE  
4 HUNDRED dollar limit. Because Plaintiff has not been denied access to the courts,  
5 Plaintiff's motion must be DENIED.

6  
7  
8 Good Cause Appearing,

9 IT IS HEREBY ORDERED that this MOTION FOR ENLARGEMENT OF TIME is  
10 DENIED.

11 IT IS FURTHER ORDERED that this MOTION TO EXCEED LIMITATIONS is  
12 DENIED.

13 DATED this 6 day of January, 2011.

14  
15   
16 \_\_\_\_\_  
17 DISTRICT JUDGE

SEVENTH JUDICIAL DISTRICT COURT  
DAN L. PAPEZ  
DISTRICT JUDGE  
DEPARTMENT 2  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA



FILED

2011 MAR 22 AM 9:21

Case No: CF-0912032  
Dept: 2

LINDA F. BURLEIGH  
WHITE PINE COUNTY CLERK

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

PAUL MCCREARY,  
Plaintiff/Appellant,

-vs-

### Case Appeal Statement

HOWARD SKOLNIK, ROBERT  
BANNISTER, RENEE BAKER,  
CLAUDE WILLIS, MARTIN  
GREGORY, RON NIMAN, MICHAEL  
BONGARD, JERRY THOMPSON, HAL  
HOLLINGSWORTH, VINCE  
CZECHOROSKY, JOHN DOE #1,  
JOHN DOE #2, MICHAEL KOEHN,  
JACK PALMER,  
Defendants/Respondents.

- 
1. PAUL MCCREARY, Plaintiff -v- HOWARD SKOLNIK, ROBERT BANNISTER, RENEE BAKER, CLAUDE WILLIS, MARTIN GREGORY, RON NIMAN, MICHAEL BONGARD, JERRY THOMPSON, HAL HOLLINGSWORTH, VINCE CZECHOROSKY, JOHN DOE #1, JOHN DOE #2, MICHAEL KOEHN, JACK PALMER.
  2. DAN L. PAPEZ, District Court Judge
  3. PAUL MCCREARY, Appellant was not represented by counsel on appeal.
  5. Defendants/Respondents HOWARD SKOLNIK, ROBERT BANNISTER, RENEE BAKER, CLAUDE WILLIS, MARTIN GREGORY, RON NIMAN, MICHAEL BONGARD, JERRY THOMPSON, HAL HOLLINGSWORTH, VINCE CZECHOROSKY, JOHN DOE #1, JOHN DOE #2, MICHAEL KOEHN, JACK PALMER are not represented on appeal or in District Court by counsel.
  6. Plaintiff was not appointed nor represented by counsel in District Court
  7. Appellant was not appointed nor represented by counsel on appeal
  8. Leave to Proceed in Forma Pauperis was granted October 25, 2010.

9. Proceedings commenced on October 25, 2010
10. Appellant alleges in his Notice of Appeal that he is appealing a final judgment entered in this matter on the 21<sup>st</sup> day of February, 2011. However, there was no order or judgment entered in this matter since January 6<sup>th</sup>, 2011, which denied Plaintiff's Motion for Enlargement of Time and denies his Motion to Exceed Limitations for copy work within the prison. From reviewing the file and pleadings from the Plaintiff, it appears to me that the Plaintiff was a little confused over the contents of the January 6<sup>th</sup> order. I believe he expected the Court to enter an order on February 21<sup>st</sup>, 2011 when the time limit for serving the Defendants had expired. No such order was entered.
11. This case has not previously been on appeal in the Supreme Court.
12. This case does not involve child custody or visitation.
13. There is no possibility of settlement in this matter.

Dated this 22nd day of March, 2011.