

CASREF, PAW

**U.S. District Court
Southern District of Florida (Ft. Pierce)
CIVIL DOCKET FOR CASE #: 2:10-cv-14296-DLG**

Del Sol v. McNeil et al
Assigned to: Judge Donald L. Graham
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 10/29/2010
Jury Demand: Defendant
Nature of Suit: 555 Habeas Corpus
(Prison Condition)
Jurisdiction: Federal Question

Plaintiff**Roberto Del Sol**

represented by **Roberto Del Sol**
DC #082574
Charlotte Correctional Inst.
33123 Oil Well Road
Punta Gorda, FL 33955
PRO SE

V.

Defendant

Secretary Walter A. McNeil
Florida Department of Corrections
TERMINATED: 02/04/2011

Defendant**Asst. Warden Inman**

represented by **Kathleen Mary Savor**
Office of the Attorney General
110 SE 6 Street
10th Floor
Fort Lauderdale, FL 33301
(954) 712-4600
Fax: (954) 712-4700
Email:
kathleen.savor@myfloridalegal.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Ms. Anderson**

represented by **Kathleen Mary Savor**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Officer Poston**

represented by **Kathleen Mary Savor**

(See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Defendant**Mr. Pedigo**

Date Filed	#	Docket Text
10/29/2010	<u>1</u>	COMPLAINT against Anderson, Inman, Walter A. McNeil, Pedigo, Poston. Filing fee \$ 350.00. IFP Filed, filed by Roberto Del Sol.(lh) Modified MJSTAR Event on 1/21/2011 (ra). (Entered: 10/29/2010)
10/29/2010	2	Judge Assignment RE: Electronic Complaint to Judge Donald L. Graham (lh) (Entered: 10/29/2010)
10/29/2010	3	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (lh) (Entered: 10/29/2010)
10/29/2010	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Roberto Del Sol. (lh) (Entered: 10/29/2010)
11/29/2010	<u>5</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 11/24/2010. (tw) (Entered: 11/29/2010)
11/29/2010	<u>6</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 11/24/2010. (tw) (Entered: 11/29/2010)
01/20/2011	<u>7</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Roberto Del Sol. Recommending this complaint shall continue on the issue of endangerment against Inman, Anderson, Poston and Pedigo. Objections to R&R due by 2/7/2011. Signed by Magistrate Judge Patrick A. White on 1/20/2011. (tw) (Entered: 01/20/2011)
01/24/2011	<u>8</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AN INDIVIDUAL. The United States Marshal shall serve a copy of the complaint and appropriate summons upon: Inman, Assistant Warden, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, FL 34956; Ms. Anderson, Classification Officer, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, FL 34956; Ms. Poston, Classification Officer, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, FL 34956 and Mr. Pedigo, Psych Counselor, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, FL 34956. Signed by Magistrate Judge Patrick A. White on 1/21/2011. (tw) (Entered: 01/24/2011)
01/25/2011	<u>9</u>	Summons Issued as to Anderson, Inman, Pedigo, Poston. (mg) (Entered: 01/25/2011)

		01/25/2011)
01/31/2011	<u>10</u>	OBJECTIONS to <u>7</u> Report and Recommendations by Roberto Del Sol. (mg) (Entered: 02/01/2011)
02/04/2011	<u>11</u>	ORDER ADOPTING, Affirming and Ratifying REPORT AND RECOMMENDATIONS for <u>7</u> Report and Recommendations. The Plaintiff's claims for vicarious liability against Defendant Walter A. McNeil are dismissed. Signed by Judge Donald L. Graham on 2/4/2011. (mg) (Entered: 02/07/2011)
05/12/2011	<u>12</u>	ORDER The United States Marshal shall file returns of service as to defendants Warden Inman, Ms. Anderson, Officer Poston, and Mr. Pedigo forthwith. Signed by Magistrate Judge Patrick A. White on 5/12/2011. (tw) (Entered: 05/12/2011)
05/19/2011	<u>13</u>	ACKNOWLEDGMENT OF SERVICE Unexecuted as to <u>1</u> Complaint/Petition Acknowledgment filed by Roberto Del Sol. (abe) Modified text on 5/19/2011 (dm). (Entered: 05/19/2011)
05/19/2011	<u>14</u>	Summons (Affidavit) Returned Unexecuted by Roberto Del Sol as to Pedigo. (abe) (Entered: 05/19/2011)
05/20/2011	<u>15</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Poston.(Savor, Kathleen) (Entered: 05/20/2011)
05/24/2011	<u>16</u>	ACKNOWLEDGMENT OF SERVICE Executed as to <u>9</u> Summons Issued, <u>1</u> Complaint/Petition Acknowledgment filed by Roberto Del Sol. (abe) (Entered: 05/25/2011)
05/25/2011	<u>17</u>	ACKNOWLEDGMENT OF SERVICE Executed as to <u>1</u> Complaint/Petition Acknowledgment filed by Roberto Del Sol. (abe) (Entered: 05/25/2011)
05/26/2011	<u>18</u>	ORDER OF MAGISTRATE JUDGE. The plaintiff shall supply the Court with a current address for Defendant Pedigo on or before July 29, 2011, or risk dismissal of this defendant. Signed by Magistrate Judge Patrick A. White on 5/26/2011. (tw) (Entered: 05/26/2011)
05/27/2011	<u>19</u>	SCHEDULING ORDER: Amended Pleadings due by 9/23/2011. Discovery due by 9/9/2011. Dispositive Motions due by 10/14/2011. Plaintiff's Pretrial Statement due by 10/28/11; Defendants' Pretrial Statement due by 11/4/11. Signed by Magistrate Judge Patrick A. White on 5/27/2011. (br) (Entered: 05/31/2011)
06/03/2011	<u>20</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Inman.(Savor, Kathleen) (Entered: 06/03/2011)
06/06/2011	<u>21</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Anderson.(Savor, Kathleen) (Entered: 06/06/2011)
06/17/2011	<u>22</u>	Defendant's MOTION to Take Deposition from Roberto Del Sol by Anderson, Inman, Poston. (Savor, Kathleen) (Entered: 06/17/2011)
06/29/2011	<u>23</u>	ORDER granting <u>22</u> Motion to Take Deposition from Roberto Del Sol. This is an unrepresented plaintiff and the defendants shall act accordingly.. Signed by

		Magistrate Judge Patrick A. White on 6/29/2011. (cz) (Entered: 06/29/2011)
06/30/2011	<u>24</u>	MOTION to Appoint Counsel by Roberto Del Sol. Responses due by 7/18/2011 (abe) (Entered: 06/30/2011)
06/30/2011	<u>25</u>	PLAINTIFFS RESPONSE to DEFENDANTS POSTONS ANSWER <u>15</u> Answer to Complaint by Roberto Del Sol. (abe) (Entered: 06/30/2011)
06/30/2011	<u>26</u>	PLAINTIFFS RESPONSE TO DEFENDANT INMAN'S ANSWER <u>20</u> Answer to Complaint by Roberto Del Sol. (abe) (Entered: 06/30/2011)
07/07/2011	<u>27</u>	ORDER denying <u>24</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 7/7/2011. (cz) (Entered: 07/07/2011)
07/18/2011	<u>28</u>	NOTICE of Change of Address by Roberto Del Sol (Address Updated) (abe) (Entered: 07/19/2011)

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07/20/2011 10:20:33			
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(Rev. 01/2005) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

UNITED STATES DISTRICT COURT

Southern District of Florida

FT. PIERCE - DIVISION

Case Number: **10-14296-Civ-GRAHAM/WHITE**

ROBERTO DEL SOL

(Enter above the full name of the plaintiff or plaintiffs in this action.)

v. WALTER A. MCNEEL ;

ASSISTANT WARDEN INMAN ;

CLO MS. ANDERSON ;

CLO MS. POSTON ;

MR. PEDIGO , ET AL.

(Enter above the full name of the defendant or defendants in this action.)

Provided to Tomoka C.I.

On 10/26/10 For Mailing

RDS

FILED by _____ D.C.
OCT 29 2010
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - FT. PIERCE

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Instructions for Filing:

This packet includes four copies of the complaint form and two copies of the Application to Proceed without Prepayment of Fees and Affidavit. To start an action you must file an original and one copy of your complaint for the court and one copy for each defendant you name. For example, if you name two defendants, you must file the original and three copies of the complaint (a total of four) with the court. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Your complaint must be legibly handwritten or typewritten. Please do not use pencil to complete these forms. The plaintiff or plaintiffs must sign and swear to the complaint. If you need additional space to answer a question, use an additional blank page.

Your complaint can be brought in this court only if one or more of the named defendants is located within this district. Further, it is necessary for you to file a separate complaint for each claim that you have unless they are all related to the same incident or issue.

There is a filing fee of \$250.00 for this complaint to be filed. If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed in forma pauperis.

Two blank Applications to Proceed without Prepayment of Fees and Affidavit for this purpose are included in this packet. Both should be completed and filed with your complaint.

In addition, if the Judge directs the U.S. Marshal to serve the summons and complaint to teach defendant, the United States Marshal will require you to pay for the costs of this service.

You will note that you are required to give facts. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.

When these forms are completed, mail the original and the copies to the Clerk's Office of the United States District Court, Southern District of Florida, 301 North Miami Avenue, Miami, Florida 33128-7788.

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes () No (X)

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

N/A

1. Parties to this previous lawsuit

Plaintiffs: N/A

Defendants: N/A

2. Court (if federal court, name the district; if state court, name the county): N/A

3. Case Number: N/A

4. Name of Judge to whom case was assigned: N/A

5. Disposition (for example: Was the case dismissed?; Was it appealed?; Is it still pending?): N/A

6. Approximate date of filing lawsuit: N/A

7. Approximate date of disposition: N/A

II. Place of present confinement: TOMOKA CORRECTIONAL INSTITUTION
3950 TIGER BAY ROAD, DAYTONA BEACH, FL. 32124

A. Is there a prisoner grievance procedure in this institution?
Yes No

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?
Yes No

C. If your answer is YES:
1. What steps did you take? N/A

2. What was the result? N/A

D. If your answer is NO, explain why not: I WAS HOSPITALIZED FOR SEVERAL DAYS; WHEN RETURNED TO INSTITUTION I WAS PLACED ON PROPERTY RESTRICTIONS AND DENIED ASSISTANCE OF LAW CLERK. UPON BEING ALLOWED PROPERTY, AND UPON CONCLUSION OF INVESTIGATION BY INSPECTOR GENERAL TIME HAD EXPIRED TO FILE GRIEVANCES.

III. Parties
(In Item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of plaintiff: ROBERTA DEL SOL, DC# 082574
Address: TOMOKA CORRECTIONAL INSTITUTION
3950 TIGER BAY ROAD, DAYTONA BEACH, FL. 32124

In Item B below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use Item C for the names, positions, and places of employment of any additional defendants.

B. Defendant WALTER A. MCNEEL
is employed as SECRETARY
at FLA. DEPT. OF CORRECTIONS, 2601 BLAIRSOME ROAD
TALLAHASSEE, FL 32399-2500

- C. Additional Defendants: ASSISTANT WARDEN MR. INMAN (AW);
CLASSIFICATION OFFICER (CLO) MS. ANDERSON;
CLASSIFICATION OFFICER (CLO) MS. POSTON;
MR. PEDIGO, PSYCH COUNSELOR;
EMPLOYED AT: MARTIN CORRECTIONAL INSTITUTION,
1150 S.W. ALLAPATTAH ROAD, INDEANTOWN, FL. 34956

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places.

Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach an additional blank page if necessary.)

GENERAL FACTS OF THE EVENTS:

- 1.) THE PLAINTIFF IS AND WAS AT ALL TIMES MENTIONED HEREIN A
PRISONER OF THE STATE OF FLORIDA IN THE DEPARTMENT OF
CORRECTIONS. AT THE TIME OF THE EVENTS MENTIONED
HEREIN THE PLAINTIFF WAS CONFINED AT MARTIN CORRECTIONAL
INSTITUTION, 1150 S.W. ALLAPATTAH ROAD, INDEANTOWN, FL. 34956.
- 2.) ON OR ABOUT APRIL 5, 2009 THE PLAINTIFF WAS ADVISED BY
CLO. MS. ANDERSON THAT HE WILL BE ASSIGNED TO AN INMATE
IN A WHEELCHAIR AS A IMPAIRED AIDE, AND THAT HE WILL
BE MOVED FOR THIS PURPOSE FROM E-DORM 4208 TO G-DORM,
BECAUSE E-DORM HAS NO WHEELCHAIR CELLS. PLAINTIFF
TOLD CLO. MS. ANDERSON THAT HE CANNOT MOVE TO G-DORM
BECAUSE HE HAS ENEMIES IN G-DORM.
- 3.) A FEW DAYS AFTER THE CONVERSATION BETWEEN THE PLAINTIFF
AND MS. ANDERSON, THE PLAINTIFF WAS ORDERED TO
MOVE TO G-DORM. THE PLAINTIFF TOLD THE E-DORM SERGEANT
DAVES THAT HE IS NOT GOING TO MOVE. SGT. DAVES ESCORTED

THE PLAINTIFF TO CLASSIFICATION TO TALK TO MS. ANDERSON. THE PLAINTIFF AGAIN TOLD MS. ANDERSON THAT HE GOT ENEMIES IN G-DORM AND ASKED NOT TO MOVE HIM.

4.) MS. ANDERSON INQUIRED AS TO WHAT PROBLEMS PLAINTIFF HAS AND WHO THOSE ENEMIES ARE. PLAINTIFF REFUSED TO PROVIDE THOSE INFORMATION AS HIS LIFE WOULD BE IN JEOPARDY IF HE DID. MS. ANDERSON CONSULTED MS. POSTON, WHO IS IN CHARGE FOR PROTECTIVE MANAGEMENT, AND SHE ASKED PLAINTIFF WHETHER HE WANTS TO CHECK-IN AND HE NEEDS TO GIVE HER THE NAMES OF HIS ENEMIES. YET, BECAUSE PLAINTIFF REFUSED TO PROVIDE THE NAMES MS. POSTON AND MS. ANDERSON REFUSED TO TAKE ANY ACTION.

5.) MS. ANDERSON THAN CALLED THE ASSISTANT WARDEN (AW) MR. INMAN IN REGARD TO THIS MATTER, WHO ALSO WANTED TO KNOW THE NAMES. THE PLAINTIFF REFUSED TO PROVIDE THE NAMES, BECAUSE ONLY A FEW DAYS BEFORE TWO (2) WHITE INMATES IN A SIMILAR SITUATION, THEY GOT IN FACT BEATEN UP BY OTHER INMATES, THAN PROVIDED NAMES AND ALL THE INSTITUTION DID QUESTIONED THOSE INMATES WHO OF COURSE DENIED THE ALLEGATIONS, AND NO OTHER ACTIONS WERE TAKEN TO PROTECT THOSE (2) WHITE INMATES.

6.) HOWEVER, THE PLAINTIFF DID ADVISED MR. INMAN, MS. ANDERSON, AND MS. POSTON THAT THE PROBLEMS HE HAS ORIGINATED FROM AN INCIDENT AT ANOTHER INSTITUTION AT WASHINGTON C.I., WHERE THE PLAINTIFF HELPED A FEMALE STAFF MEMBER FROM BEING ASSAULTED BY OTHER INMATES. THE PLAINTIFF

EVEN PRESENTED A LETTER CONCERNING THE INVESTIGATION OF THIS MATTER, YET, AN MR. INMAN, CLO. MS. AMERSON, AND CLO. MS. POSTON DID NOT CARE, THE PLAINTIFF STILL WAS ORDERED TO MOVE TO G-DORM 4201 ON APRIL 6, 2009. AFTER MOVING THE PLAINTIFF HAD TO FIND OUT THAT THE IMPAIRED INMATE WAS NOT EVEN HOUSED IN A WHEELCHAIR-CELL, G-4114, WHICH WAS THE SOLE REASON WHY PLAINTIFF WAS ORDERED TO MOVE.

- 7.) ON OR ABOUT APRIL 8, 2009 THE PLAINTIFF SEEN MENTAL HEALTH STAFF MR. PEDIGO (PSYCH - COUNSELOR) AND PLAINTIFF EXPLAINED THE SITUATION TO MR. PEDIGO, HOWEVER, MR. PEDIGO REFUSED TO TAKE ANY ACTION.
- 8.) ON OR ABOUT MAY 10, 2009 (SUNDAY), AT APPROXIMATELY 0945 HOURS THE PLAINTIFF WAS LAYING IN HIS BUNK IN HIS UNDERWEAR, WITH THE CELL-DOOR SECURED. AT THIS TIME THE DOOR OPENED AND 3 OTHER INMATES WITH SKI MASKS STORMED IN PLAINTIFF'S CELL. PLAINTIFF ASKED "WHAT IS THIS ABOUT?", AND ONE OF THE INMATES STATED "BECAUSE OF WHAT HAPPEN AT WASHINGTON C.I.", THEN THE PLAINTIFF GOT STABBED BY THOSE THREE INMATES 8 TIMES.
- 9.) TO PLAINTIFF'S KNOWLEDGE AND BELIEF THE THREE INMATES GAINED ACCESS TO THE DORM AND PLAINTIFF'S CELL BEFORE THE 1000 HOUR MOVEMENT BY OFFICER MS. TYGERAN AND EXITED THE SAME WAY BEFORE 1000 HOURS. THE INMATES HAD TO HAVE ASSISTANCE

BY THE DORM OFFICER MS. TYGERAN AT THAT TIME, AS 3 DOORS HAD TO BE OPENED TO GET TO PLAINTIFF'S CELL AND PER SECURITY PROCEDURES THE INMATES WOULD HAVE BEEN REQUIRED TO PRESENT COLOR-CODED DORMITORY ID-CARDS TO GAIN ACCESS.

- 10.) UPON FURTHER INFORMATION AND BELIEF AT APPROX. 1000 HOURS ON THAT DAY (MAY 10, 2009) A PHONE CALL FROM THE OUTSIDE WAS MADE TO THE INSTITUTION REPORTING THE HIT/ASSAULT ON PLAINTIFF.
- 11.) SHORTLY AFTER 1000 HOURS STAFF RUSHED IN THE DORM TO PLAINTIFF'S CELL (G-4201), WHICH SHOULD BE NOTED WAS LOCATED IN PLAIN AND DIRECT VIEW OF THE OFFICER STATION.
- 12.) THE PLAINTIFF NOW WAS QUESTIONED WHETHER HE MADE A PHONE CALL AND HE ANSWERED "NO", THEN HE WAS ASKED WHO DID IT, AND HE ANSWERED THAT HE DON'T KNOW, ALL HE KNOWS IS THAT IT WERE 3-PERSONS (1-WHITE, 1-BLACK, AND 1-HEISPANIC).
- 13.) AFTER APPROX. 15-MINUTES OF BEING QUESTIONED, WHILE SEVERELY INJURED, THE PLAINTIFF WAS ASKED TO GET DRESSED, SECURE HIS PROPERTY, AND THEN HE WAS ESCORTED (WALKED) TO THE MEDICAL-DEPARTMENT. WHILE AT MEDICAL AWAITING PARAMEDICS TO ARRIVE THE PLAINTIFF WAS FURTHER QUESTIONED AND PLAINTIFF OFFERED TO PICK THE ASSAILANTS FROM A LINE UP, YET, NO LINE UP WAS EVER PREPARED.

- 14.) THE PLAINTIFF WAS THEN TRANSFERRED BY HELICOPTER TO THE HOSPITAL WHERE HOSPITAL STAFF DISCOVERED AND/OR DIAGNOSED PUNCTURED LUNGS, SEVERAL INJURIES TO PLAINTIFF'S HEAD, AND STABBING OF THE PLAINTIFF'S TESTICLES.
- 15.) THE HOSPITAL CONDUCTED A FULL-BODY M.R.I. ON PLAINTIFF, WHICH AN OBJECT IN PLAINTIFF'S RECTUM SHOWED. THE OBJECT WAS ASSUMED TO BE A CONCEALED CELL-PHONE, AND THUS A IMPROPER CAVATY SEARCH WAS CONDUCTED ON PLAINTIFF WHILE RESTRAINT AND UNDER MORPHINE SHOCK. PLAINTIFF WAS THEN GIVEN A SPECIAL LEQUD TO INCREASE HIS STOOL, AND EVEN AFTER SEARCHING PLAINTIFF'S STOOL NO CELL-PHONE WAS EVER FOUND.
- 16.) NEVERTHELESS, PLAINTIFF RECEIVED A DISCIPLINARY REPORT CHARGING PLAINTIFF WITH POSSESSION OF A CELLULAR-DEVICE. SAID DISCIPLINARY REPORT WAS SEVERAL WEEKS LATER OVERTURNED.
- 17.) PLAINTIFF WAS HOSPITALIZED FOR THREE DAYS AND THEN RETURNED TO MARTIN C.I., WHERE HE WAS HOUSED IN A STRIP-CELL WITH NO PROPERTY OR ACCESS TO WRITING MATERIAL FROM MAY 13, 2009 THROUGH JUNE 2, 2009.

18.) DURING HIS STAY AT THE HOSPITAL AND BACK AT MARTIN C.I., THE PLAINTIFF WAS REPEATEDLY INTERROGATED BY (2) INSPECTORS FROM THE D.O.C - INSPECTOR GENERAL'S OFFICE, AND BY (2) POLICE DETECTIVES IN REGARD TO WHAT OCCURRED AND WHO DID IT. PLAINTIFF AGAIN OFFERED THAT A LINEUP SHOULD BE CONDUCTED TO IDENTIFY THE ASSAILANTS, HOWEVER, NO LINE-UP PROCEDURE WAS EVER CONDUCTED.

19.) YES, AFTER THE PLAINTIFF GOT ASSAULTED AND STABBED THE INSTITUTION FAILED TO LOCK DOWN THE FACILITY IN ORDER TO CONDUCT THE NECESSARY INVESTIGATIONS, A PROCEDURE WHICH IS NORMALLY DONE IN INCIDENTS SUCH AS THE INSTANT ONE.

20.) DUE TO THE INSTITUTION'S FAILURE TO LOCK DOWN THE FACILITY, THE NEXT DAY MAY 11, 2009 A HISPANIC INMATE GOT KILLED, ASSUMINGLY RELATED TO THE ASSAULT ON PLAINTIFF. NOT UNTIL THE KILLING OF THE HISPANIC INMATE THAT PROCEDURES WERE FOLLOWED AND THE INSTITUTION WAS NOW LOCKED DOWN.

21.) PLAINTIFF WAS QUESTIONED ABOUT IT WHILE HOSPITALIZED, AS IT WAS ASSUMED THAT THE MURDERED HISPANIC INMATE WAS ONE OF THE PLAINTIFF'S ASSAILANTS.

- 22.) THE ASSAULT ON PLAINTIFF IN HIS CELL WAS WITNESSED AND INTERRUPTED BY INMATE JOHN USSERY, DC# 056200, WHO WAS IMMEDIATELY AFTER THE ASSAULT WELTING TO IDENTIFY THE ASSAILANTS, HOWEVER, THE INVESTIGATING OFFICERS WERE NOT INTERESTED UNTIL THE NEXT DAY, AFTER THE HISPANIC INMATE (A LATIN KING GANG MEMBER) GOT KILLED.
- 23.) PLAINTIFF THEN WAS MOVED ON OR ABOUT JUNE 2, 2009 FROM THE STRIP-CELL TO CONFINEMENT AND HOUSED UNDER PROTECTIVE MANAGEMENT STATUS. HOWEVER, EVEN SO THE ADMINISTRATION KNEW BY THEN THE IDENTITY OF PLAINTIFF'S ASSAILANTS, THE PLAINTIFF NOW WAS HOUSED IN A CELL WITH A DIRECT VIEW IN A CELL ACROSS WHICH HOUSED MICHAEL HENDERSON, DC# U08548, ONE OF PLAINTIFF'S ASSAILANTS, CAUSING EXTREME MENTAL STRESS FOR PLAINTIFF.
- 24.) PLAINTIFF REQUESTED TO FILE FORMAL CHARGES AGAINST HIS ASSAILANTS, AND EVEN CONTACTED F.O.L.E. (FLORIDA DEPARTMENT OF LAW ENFORCEMENT) TO OBTAIN INVESTIGATIVE REPORTS, HOWEVER HE WAS NEVER PROVIDED ANY REPORTS AND NO FORMAL CHARGES WERE EVER FILED.
- 25.) DURING THE TIME OF THE ASSAULT THE INSTITUTION NEVER ESTABLISHED AN EMERGENCY CONTACT WITH PLAINTIFF'S NEXT OF KIN TO INFORM THEM ABOUT WHAT OCCURRED, IN FACT WHEN THE

PLAINTIFF'S FAMILY ATTEMPTED TO VISIT HIM THEY WERE SIMPLY TOLD THAT PLAINTIFF'S VISITS ARE CANCELED AT THAT MOMENT BECAUSE HE IS UNDER MEDICATION. WHEN PLAINTIFF'S FAMILY LATER ON FOUND OUT ABOUT THE INCIDENT THEY WERE ALL EXTREMELY STRESSED OUT OVER THE FACT THAT THEY WAS INFORMED BY THE INSTITUTION.

DEFENDANT'S ACTIONS:

26.) DEFENDANT WALTER A. McNEIL IS THE SECRETARY OF THE FLORIDA DEPARTMENT OF CORRECTIONS AND AS SUCH HE IS VICARIOUSLY LIABLE, AS HE IS LEGALLY RESPONSIBLE FOR THE OVERALL OPERATION OF THE DEPARTMENT AND EACH INSTITUTION UNDER ITS JURISDICTION, INCLUDING MARTIN CORRECTIONAL INSTITUTION. HE IS LEGALLY RESPONSIBLE TO ENSURE THAT POLICIES AND PROCEDURES ARE BEING FOLLOWED TO ENSURE THE WELFARE AND PROTECTION OF ALL INMATES.

27.) DEFENDANT ASSISTANT WARDEN MR. INMAN IS THE ASSISTANT WARDEN AT MARTIN CORRECTIONAL INSTITUTION AND HE IS LEGALLY RESPONSIBLE FOR THE OPERATION OF MARTIN C.I., AND FOR THE WELFARE OF ALL INMATES OF THAT INSTITUTION.

IN FURTHERANCE, DEFENDANT INMAN WAS PERSONALLY INFORMED BY THE PLAINTIFF THAT PLAINTIFF WAS AT RISK AND IN DANGER TO BE INJURED OR OTHERWISE TO BE HARMED, AND THUS, MR. INMAN ACTED DELIBERATE IN-

DIFFERENT AND NEGLIGENT FOR FAILURE TO ACT UPON PLAINTIFF'S NOTICE OF SUCH DANGER, BY NOT TAKEN ANY PRECAUTIONS OR OTHERWISE TAKE ACTION TO PREVENT THE EVENTS WHICH LATER OCCURRED.

28.) DEFENDANT MS. ANDERSON IS A CLASSIFICATION OFFICER AT MARTIN C.I., AND WAS LEGALLY RESPONSIBLE FOR THE NEEDS OF THE PLAINTIFF TO BE MET, AND UPON BEING ADVISED BY THE PLAINTIFF OF THE POSSIBLE RISK AND DANGER HE IS IN, SHE SHOULD HAVE MADE AT THE VERY BEST DIFFERENT ASSIGNMENT IN PLAINTIFF'S JOB AND HOUSING, INSTEAD SHE FAILED TO TAKE PREVENTIVE ACTIONS.

29.) DEFENDANT MS. POSTON IS A CLASSIFICATION OFFICER AT MARTIN C.I., IN CHARGE FOR INMATES ON PROTECTIVE MANAGEMENT AND WAS LEGALLY RESPONSIBLE FOR INMATES WITH PROTECTIVE NEEDS, AND UPON BEING ADVISED BY THE PLAINTIFF OF THE POSSIBLE RISK AND DANGER HE IS IN, SHE DELIBERATELY REFUSED TO ACT BY PLACING PLAINTIFF IN PROTECTIVE HOUSING, INSTEAD SHE LEFT THE PLAINTIFF HOUSED IN GENERAL POPULATION WITHOUT ANY PROTECTION.

30.) DEFENDANT MR. PEDIGO IS A PSYCHIATRIC COUNSELOR AT MARTIN C.I., AND WAS ASSIGNED AS COUNSELOR TO THE PLAINTIFF AND AS SUCH WAS LEGALLY RESPONSIBLE FOR THE PSYCHOLOGICAL WELFARE OF THE PLAINTIFF. MR. PEDIGO, AFTER BEING ADVISED OF PLAINTIFF'S PROBLEMS REFUSED TO ACT TO INITIATE PREVENTIVE MEASURES FOR THE PROTECTION AND WELFARE OF PLAINTIFF.

31.) LEGAL CLAIMS / DAMAGES:

THE PLAINTIFF REALIZES AND INCORPORATES BY REFERENCE THE FOREGOING PARAGRAPHS 1 - 30, AS THOUGH AS FULLY SET FORTH HEREIN.

THE ACTIONS OF THE DEFENDANTS CONSTITUTE DELIBERATE INDIFFERENCE TO UNSAFE CONDITIONS AND VIOLATED PLAINTIFF ROBERTO DEL SOL'S RIGHTS TO BE PROTECTED FROM CRUEL AND UNUSUAL PUNISHMENT, AND TO DUE PROCESS UNDER THE EIGHTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

THE PLAINTIFF HEREBY PRESERVES ANY AND ALL RIGHTS, AS NOT SPECIFICALLY WAIVED HEREIN, UNDER THE UNITED STATES CONSTITUTION AND ANY OTHER APPLICABLE LAW STATE OR FEDERAL, TO WHICH PLAINTIFF MAY BE ENTITLED TO.

DUE TO THE DEFENDANTS' ACTIONS THE PLAINTIFF NOW SUFFERS FROM POST TRAUMATIC STRESS AND HE IS NOW IN CONSTANT NEED OF PSYCHOLOGICAL TREATMENT AND COUNSELING.

PLAINTIFF SUFFERS FREQUENTLY FROM TEMPORARY LOSS OF MEMORY (BLACK-OUTS), AND IS ALSO SUBJECTED TO FREQUENT NEUROLOGICAL TREATMENTS.

BASED ON PLAINTIFF'S PREVIOUS SUBSTANTIAL ASSISTANCE AT WASHINGTON C.I. INVOLVING A D.O.C. STAFF-MEMBER, WHICH CAUSED THE UNDERLYING INCIDENT AT MARTIN C.I., THE PLAINTIFF IS NOW AT CONSTANT RISK AT ANY INSTITUTION WITHIN THE FLORIDA DEPARTMENT OF CORRECTIONS TO SIMILAR ACTS OF RETALIATION, BECAUSE EVEN THOUGH PLAINTIFF WAS SUPPOSE TO BE PLACED ON PERMANENT PROTECTIVE MANAGEMENT, YET, PLAINTIFF IS NOT ELIGIBLE FOR THOSE TWO INSTITUTIONS WHO PROVIDE SUCH HOUSING (MARTIN C.I., COLUMBIA C.I.) AT THAT TIME, THUS, D.O.C. LEAVES PLAINTIFF HOUSED IN GENERAL POPULATION.

THE PLAINTIFF HAS NO PLAIN, ADEQUATE OR COMPLETE REMEDY AT LAW TO REDRESS THE WRONGS DESCRIBED HEREIN. PLAINTIFF HAS BEEN AND WILL CONTINUE TO BE IRREPARABLY INJURED BY THE CONDUCT OF THE DEFENDANTS UNLESS THIS COURT GRANTS THE DECLARATORY AND INJUNCTIVE RELIEF WHICH PLAINTIFF SEEKS.

V. Relief

State briefly exactly what you want the court to do so for you. Make no legal arguments. Cite no cases or statutes.

- A DECLARATION THAT THE ACTS AND OMISSIONS DESCRIBED HEREIN
- 1.) VIOLATED PLAINTIFF'S RIGHTS UNDER THE LAWS AND CONSTITUTION OF THE UNITED STATES;
 - 2.) A PRELIMINARY AND PERMANENT INJUNCTION ORDERING DEFENDANT WALTER A. McNEIL TO APPROVE A INTERSTATE COMPACT FOR A TRANSFER OF PLAINTIFF TO NEW JERSEY TO PROTECT PLAINTIFF FROM FURTHER ACTS OF RETALIASATION WITHEN FLORIDA PRISONS;
 - 3) COMPENSATORY DAMAGES FOR INJURIES, MENTAL SUFFERING, ETC. IN THE AMOUNT OF \$ 250,000 (TWO-HUNDRED-FIFTY-THOUSAND) AGAINST EACH DEFENDANT, JOINTLY AND SEVERALLY.
 - 4.) PUNITIVE DAMAGES IN THE AMOUNT OF \$ 1,000,000 (ONE-MILLION) AGAINST EACH DEFENDANT.
 - 5.) A JURY TRIAL ON ALL ISSUES TRIABLE BY JURY.
 - 6.) PLAINTIFFS COSTS IN THIS SUIT
 - 7) ANY ADDITIONAL RELIEF THIS COURT DEEM) JUST, PROPER, AND EQUITABLE

Signed this 24th day of OCTOBER, 2010.

Roberto Del Sal

(Signature of plaintiff or plaintiffs)

I declare under penalty of perjury that the foregoing is true and correct. Executed on 10-24-2010

Roberto Del Sal
(Signature of plaintiff)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-14296-CIV-GRAHAM
MAGISTRATE JUDGE P. A. WHITE

ROBERTO DEL SOL,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<u>PRELIMINARY REPORT</u>
WALTER MCNEIL, et al.,	:	<u>OF MAGISTRATE JUDGE</u>
	:	
Defendants.	:	

I. Introduction

The plaintiff, Roberto Del Sol, filed a pro se civil rights suit pursuant to 42 U.S.C. §1983, alleging endangerment by officials at Martin Correctional Institution. The plaintiff is proceeding in forma pauperis. He seeks monetary damages and injunctive relief.

This civil action is before the Court for screening of the complaint (DE#1) pursuant to 28 U.S.C. §1915.

II. Analysis

A. Applicable Law for Screening

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

(e) (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

This is a civil rights action Pursuant to 42 U.S.C. §1983. Such actions require the deprivation of a federally protected right by a person acting under color of state law. See 42 U.S.C. 1983; Polk County v Dodson, 454 U.S.312 (1981); Whitehorn v Harrelson, 758 F. 2d 1416, 1419 (11 Cir. 1985. The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e) (2) (B) or Fed.R.Civ.P. 12(b) (6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e) (2) (B) (ii) tracks the language of Federal Rule of Civil Procedure 12(b) (6)"). A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319,

325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with

alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.¹

B. Factual Analysis

The plaintiff names as defendants Walter McNeil, Secretary of the Department of Corrections, Assistant Warden of Martin CI, Inman, Officers Anderson and Poston, and Psychological Consultant Pedigo, et al.

The plaintiff states that he is a handicapped inmate, confined to a wheelchair. He was informed by Anderson or about April 5, 2009, that he was to move to Dorm G, which was wheel chair accessible. He refused to move, stating he had enemies in that cell block. He refused to provide the authorities with their names, in fear of retaliation by the inmates. However he informed Inman that the enemies were a result of his aiding a female officer who was being assaulted by other inmates at Washington Correctional Institution (CI). He was moved in spite of the information he provided. He informed defendants Pedigo and Poston, as well, and they failed to take any preventive action.

On or about May 10, 2009, he was stabbed eight times by inmates, who told him it was because of his actions at Washington CI. He claims that it was probably Dorm Officer Tygean who permitted them access to his cell. After questioning, he was walked to the medical department. He offered to identify his attackers from a lineup, but was never given the opportunity.

¹ The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

He was transferred by helicopter to a hospital, where he was diagnosed with punctured lungs, along with several other injuries. A full body Mirror Imaging Exam (MRI) indicated an object in the plaintiff's rectum. A search for a plastic cell phone was undertaken, but no cell phone was found. He received a disciplinary report several weeks later, which he claims was overturned.

Following three days of hospitalization, he was returned to Martin CI and housed in a strip cell with no property or access to writing materials from May 13, 2009, to June 2, 2009. He claims that the authorities failed to lock down the facility, and on May 11, 2009, an inmate was killed, allegedly related to the assault on the plaintiff. The institution was then locked down. On June 2, 2009, he was transferred to protective management status. He sought to file formal charges against his assailants, but was never provided with the forms.

C. Supervisory Liability

The plaintiff makes no direct allegations against Defendant McNeil, claiming he is vicariously liable. He cannot be sued for liability merely for an improper or even unconstitutional act of his employees under a theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986) (citing Monell, supra). See also; Ashcroft v Iqbal, supra. (Heightened pleading standard for supervisory liability). The plaintiff has demonstrated no policy or

practice put in place by McNeil which would have resulted in his assault. It is therefore recommended that this defendant be dismissed for failure to state a claim against him.

D. Endangerment

It is well settled that the failure of prison officials to control or separate prisoners who endanger the physical safety of other prisoners may, under certain conditions, constitute an Eighth Amendment deprivation; however, the constitutional rights of inmates are not violated every time one inmate is injured as a result of another's actions. Smith v. Wade, 461 U.S. 30 (1983); Redman v. County of San Diego, 896 F.2d 362, 364-66 (9 Cir. 1990) (pretrial detainee); Zatler v. Wainwright, 802 F.2d 397, 400 (11 Cir. 1986) (convicted prisoner); Stokes v. Delcambre, 710 F.2d 1120, 1124, (5 Cir. 1983); Jones v. Diamond, 636 F.2d 1364, 1374 (5 Cir. 1981); Gates v. Collier, 501 F.2d 1291, 1308-10 (5 Cir. 1974).

The constitution requires officials to take all reasonable precautions to protect inmates from known dangers, see Davidson v. Cannon, 474 U.S. 344 (1986); Smith v. Wade, *supra*; Zatler v. Wainwright, *supra*; Harmon v. Berry, 728 F.2d 1407 (11 Cir. 1984); Saunders v. Chatham County Board of Commissioners, 728 F.2d 1367 (11 Cir. 1984); Abrams v. Hunter, 910 F.Supp. 620 (S.D.Fla. 1995); Gangloff v. Poccia, 888 F.Supp. 1549, 1555 (S.D.Fla. 1995). The known danger may arise either because there is a risk posed by one specific inmate against another, because there is a some other more general pervasive risk of harm because violence at the institution occurs with sufficient frequency that prisoners are put in reasonable fear for their safety and the problem and need for

protective measures has been made known to prison officials, see Abrams v. Hunter, supra, at 624-25.

The plaintiff states a claim of endangerment at this preliminary stage. The plaintiff alleges that he informed Assistant Warden Inman that he did not want to be moved to Dorm G because he had enemies there as a result of his intervention in the assault of a female officer at another institution. He further alleges he informed Classification Officers Anderson and Poston, who failed to take preventive measures by refusing to place him in protective housing. He alleges further, that Counselor Pedigo was also advised of the problems and refused to take protective measures. ²

III. Recommendation

It is therefore recommended as follows:

1. This complaint shall continue on the issue of endangerment against Inman, Anderson, Poston and Pedigo.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

Dated this 20th day of January, 2011.



UNITED STATES MAGISTRATE JUDGE

²The plaintiff does not name Officer Tygean in his paragraphs of defendants' actions, nor is she named in the caption of the complaint, and it appears the plaintiff is not naming her as a defendant. As such, she will not be served.

cc: Roberto Del Sol, Pro Se
#082574
Tomoka Correctional Institution
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION
Case No. 09-14296-CIV-GRAHAM

ROBERTO DEL SOL,

Plaintiff,

vs.

WALTER A. MCNEIL, et.al.,

Defendant.

ORDER

THIS CAUSE comes before the Court upon Plaintiff's complaint under the Civil Rights Act, 42 U.S.C. § 1983 [D.E. 1].

THE MATTER was referred to the Honorable United States Magistrate Judge Patrick A. White pursuant to 28 U.S.C. § 636 and the Magistrate Rules for the Southern District of Florida [D.E. 3]. Judge White issued a Preliminary Report and Recommendation [D.E. 7] recommending that this action proceed against the individual defendants Inman, Anderson, Poston and Pedigo on Plaintiff's claims of endangerment. Plaintiff has filed an objection to the preliminary report, indicating that the report incorrectly states that Plaintiff was wheelchair bound, when, in fact, Plaintiff was an "impaired aide" for wheelchair bound inmate.

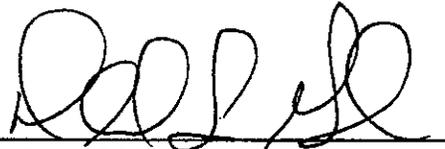
THE COURT has conducted an independent review of the record and is otherwise fully advised in the premises. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Magistrate Judge's Report [D.E. 7] is **AFFIRMED, ADOPTED AND RATIFIED** except to the extent that it indicates that Plaintiff is wheelchair bound. The Court notes that Plaintiff's allegations are that he is an impaired aide. It is further

ORDERED AND ADJUDGED that Plaintiff's claims for endangerment shall proceed against Defendants Inman, Anderson, Poston and Pedigo. It is further

ORDERED AND ADJUDGED that Plaintiff's claims for vicarious liability against Defendant Walter A. McNeil are **DISMISSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of February, 2011.



DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Patrick A. White
Roberto Del Sol, Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 10-14296-CIV-GRAHAM/WHITE

ROBERTO DEL SOL,

Plaintiff,

v.

WALTER A MCNEIL et al.,

Defendants,

DEFENDANT POSTON'S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, Defendant, JOANNE POSTON by and through undersigned counsel, pursuant to Fed. R. Civ. P. 8(b) and (c) hereby files her Answer and Affirmative Defenses to Plaintiff's Complaint (D. E. #1) and states:

GENERAL FACTS OF THE EVENTS

1. Defendant admits that Plaintiff is incarcerated with the Florida Department of Corrections and at the time of the event alleged was housed at Martin Correctional Institution, 1150 S. W. Allapattah Road, Indiantown, FL 34956.
2. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph two and therefore denies.
3. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph three and therefore denies.
4. Defendant admits that she is in charge of placement of inmates into Protective Management All remaining allegations in paragraph four are denied.

5. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph five and therefore denies.

6. Defendant denies paragraph six.

7. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph seven and therefore denies.

8. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eight and therefore denies.

9. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph nine and therefore denies.

10. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph ten and therefore denies.

11. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eleven and therefore denies.

12. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twelve and therefore denies.

13. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph thirteen and therefore denies.

14. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph fourteen and therefore denies.

15. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph fifteen and therefore denies.

16. Defendant is without sufficient knowledge to admit or deny the allegations in

paragraph sixteen and therefore denies.

17. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph seventeen and therefore denies.

18. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eighteen and therefore denies.

19. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph nineteen and therefore denies.

20. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty and therefore denies.

21. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-one and therefore denies.

22. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-two and therefore denies.

23. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-three and therefore denies.

24. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-four and therefore denies.

25. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-five and therefore denies.

DEFENDANT'S ACTIONS

26. Paragraph twenty-six does not pertain to Defendant and therefore no responsive is required.

27. Paragraph twenty-seven does not pertain to Defendant and therefore no responsive is required.

28. Paragraph twenty-eight does not pertain to Defendant and therefore no responsive is required.

29. Defendant admits she is a Classification Officer at Martin C.I. in charge of placing inmates in Protective Management. All remaining allegations in paragraph twenty-nine are denied.

30. Paragraph thirty does not pertain to Defendant and therefore no responsive is required.

LEGAL CLAIMS / DAMAGES

31. As to paragraph thirty-one, Defendant realleges and reaffirms all answers provided in paragraphs 1-30. Defendant denies all remaining allegations in paragraph thirty-one and demands strict proof thereof. Defendant is being sued in her individual capacity and therefore Plaintiff is not entitled to declaratory or injunctive relief. Additionally, Defendant denies Plaintiff is entitled to compensatory or punitive damages.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant acted reasonably within the discretion of her position and the course and scope of employment and did not violate any clearly established statutory or constitutional right of the Plaintiff with which a reasonable person would have known, and therefore is entitled to qualified immunity from suit.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. §1983.

THIRD AFFIRMATIVE DEFENSE

Defendant did not act in any way that would violate any clearly established rights guaranteed to the Plaintiff under the Constitution.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because there is no causal connection between plaintiff's claimed injuries and action or inaction by the defendant as required for liability under 42 U.S.C. §1983.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because plaintiff cannot establish the deliberate indifference required at a minimum for liability under 42 U.S.C. §1983.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because negligence is not actionable under 42 U.S.C. §1983.

SEVENTH AFFIRMATIVE DEFENSE

Defendant asserts that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by Plaintiff's negligence or wrongful acts and/or misconduct.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish as a subjective matter, that the Defendant acted with a sufficiently culpable state of mind as required for liability under 42 U.S.C. §1983.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995

(PLRA) based on failure to exhaust administrative remedies.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for punitive damages because he has not alleged the type of conduct that would meet the standards set forth by Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 1640, 75 Led.2d 632 (1983).

ELEVENTH AFFIRMATIVE DEFENSE

The actions taken by Defendant with regard to the incident in 2009 was reasonable upon objective evaluation and not so grossly disproportionate to the need to take those actions so as to warrant recovery under Section 1983.

TWELFTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and supplement these affirmative defenses adding such additional affirmative defenses as may appear to be appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered the Complaint, the Defendant, denies that the Plaintiff is entitled to the relief sought, or any relief whatsoever, and further demands trial by jury of all issues so triable as of right by jury.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

s/Kathleen M. Savor
Kathleen M. Savor (Florida Bar Number 0139114)
E-mail address: Kathleen.savor@myfloridalegal.com

OFFICE OF THE ATTORNEY GENERAL

110 S.E. 6th Street, 10th Floor
Ft. Lauderdale, FL 33301
Telephone: 954-712-4600
Facsimile: 954-527-3702
Counsel for Defendant Poston

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail on

20th Day of May, 2011 on all counsel or parties of record on the attached service list.

s/Kathleen M. Savor
Kathleen M. Savor
Assistant Attorney General

SERVICE LIST

Robert Del Sol v. McNeil, et al.
Case No: 10-14296-CIV-GRAHAM/WHITE

United States District Court, Southern District of Florida

Robert Del Sol DC# 082574
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, FL 32124
(Pro Se Plaintiff)
Served by U.S. Mail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-14296-CIV-GRAHAM
MAGISTRATE JUDGE P. A. WHITE

ROBERTO DEL SOL, :
 :
 Plaintiff, :
 :
 v. : ORDER SCHEDULING PRETRIAL
 : PROCEEDINGS WHEN PLAINTIFF
 : IS PROCEEDING PRO SE
 WALTER A. McNEIL, et al., :
 :
 Defendants. :

The plaintiff in this case is incarcerated, without counsel, so that it would be difficult for either the plaintiff or the defendants to comply fully with the pretrial procedures required by Local Rule 16.1 of this Court. It is thereupon

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **September 9, 2011**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **September 23, 2011**.

3. All motions to dismiss and/or for summary judgment shall be filed by **October 14, 2011**.

4. On or before **October 28, 2011**, the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

- (a) A brief general statement of what the case is about;
- (b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;
- (c) A list of all exhibits to be offered into evidence at the trial of the case;
- (d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);
- (e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and
- (f) A summary of the testimony that the plaintiff expects each of his witnesses to give.

5. On or before **November 4, 2011**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

6. Failure of the parties to disclose fully in the Pretrial Statement the substance of the evidence to be offered at trial may result in the exclusion of that evidence at the trial. Exceptions will be (1) matters which the Court determines were not discover-

able at the time of the pretrial conference, (2) privileged matters, and (3) matters to be used solely for impeachment purposes.

7. If the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution.

8. The plaintiff shall serve upon defense counsel, at the address given for him/her in this order, a copy of every pleading, motion, memorandum, or other paper submitted for consideration by the Court and shall include on the original document filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the pleading, motion, memorandum, or other paper was mailed to counsel. All pleadings, motions, memoranda, or other papers shall be filed with the Clerk and must include a certificate of service or they will be disregarded by the Court.

9. A pretrial conference may be set pursuant to Local Rule 16.1 of the United States District Court for the Southern District of Florida, after the pretrial statements have been filed. Prior to such a conference, the parties or their counsel shall meet in a good faith effort to:

- (a) discuss the possibility of settlement;
- (b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;
- (c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

- (d) mark all exhibits and prepare an exhibit list;
- (e) initial and date opposing party's exhibits;
- (f) prepare a list of motions or other matters which require Court attention; and
- (g) discuss any other matters that may help in concluding this case.

10. All motions filed by defense counsel must include a proposed order for the undersigned Magistrate Judge's signature.

DONE AND ORDERED at Miami, Florida, this 27th day of May, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Roberto Del Sol, Pro Se
DC #082574
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, FL 32124-1098

Kathleen M. Savor, Esquire
Office of the Attorney General
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, FL 33301

Hon. Donald L. Graham, United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 10-14296-CIV-GRAHAM/WHITE

ROBERTO DEL SOL,

Plaintiff,

v.

WALTER A MCNEIL et al.,

Defendants,

DEFENDANT INMAN'S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, Defendant, DEVERE INMAN by and through undersigned counsel, pursuant to Fed. R. Civ. P. 8(b) and (c) hereby files his Answer and Affirmative Defenses to Plaintiff's Complaint (D. E. #1) and states:

GENERAL FACTS OF THE EVENTS

1. Defendant admits that Plaintiff is incarcerated with the Florida Department of Corrections and at the time of the event alleged was housed at Martin Correctional Institution, 1150 S. W. Allapattah Road, Indiantown, FL 34956.
2. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph two and therefore denies.
3. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph three and therefore denies.
4. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph four and therefore denies.

5. Defendant denies paragraph five as written.
6. Defendant denies paragraph six.
7. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph seven and therefore denies.
8. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eight and therefore denies.
9. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph nine and therefore denies.
10. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph ten and therefore denies.
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12. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twelve and therefore denies.
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14. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph fourteen and therefore denies.
15. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph fifteen and therefore denies.
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19. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph nineteen and therefore denies.

20. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty and therefore denies.

21. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-one and therefore denies.

22. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-two and therefore denies.

23. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-three and therefore denies.

24. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-four and therefore denies.

25. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-five and therefore denies.

DEFENDANT'S ACTIONS

26. Paragraph twenty-six does not pertain to Defendant and therefore no responsive is required.

27. Defendant admits the he is an Assistant Warden a Classification at Martin C.I. All

remaining allegations in paragraph twenty-seven are denied.

28. Paragraph twenty-eight does not pertain to Defendant and therefore no responsive is required.

29. Paragraph twenty-nine does not pertain to Defendant and therefore no responsive is required.

30. Paragraph thirty does not pertain to Defendant and therefore no responsive is required.

LEGAL CLAIMS / DAMAGES

31. As to paragraph thirty-one, Defendant realleges and reaffirms all answers provided in paragraphs 1-30. Defendant denies all remaining allegations in paragraph thirty-one and demands strict proof thereof. Defendant is being sued in his individual capacity and therefore Plaintiff is not entitled to declaratory or injunctive relief. Additionally, Defendant denies Plaintiff is entitled to compensatory or punitive damages.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant acted reasonably within the discretion of his position and the course and scope of employment and did not violate any clearly established statutory or constitutional right of the Plaintiff with which a reasonable person would have known, and therefore is entitled to qualified immunity from suit.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. §1983.

THIRD AFFIRMATIVE DEFENSE

Defendant did not act in any way that would violate any clearly established rights guaranteed to the Plaintiff under the Constitution.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because there is no causal connection between plaintiff's claimed injuries and action or inaction by the defendant as required for liability under 42 U.S.C. §1983.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because plaintiff cannot establish the deliberate indifference required at a minimum for liability under 42 U.S.C. §1983.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because negligence is not actionable under 42 U.S.C. §1983.

SEVENTH AFFIRMATIVE DEFENSE

Defendant asserts that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by Plaintiff's negligence or wrongful acts and/or misconduct.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish as a subjective matter, that the Defendant acted with a sufficiently culpable state of mind as required for liability under 42 U.S.C. §1983.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995 (PLRA) based on failure to exhaust administrative remedies.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for punitive damages because he has not alleged the type of conduct that would meet the standards set forth by Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 1640, 75 Led.2d 632 (1983).

ELEVENTH AFFIRMATIVE DEFENSE

The actions taken by Defendant with regard to the incident in 2009 was reasonable upon objective evaluation and not so grossly disproportionate to the need to take those actions so as to warrant recovery under Section 1983.

TWELFTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and supplement these affirmative defenses adding such additional affirmative defenses as may appear to be appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered the Complaint, the Defendant, denies that the Plaintiff is entitled to the relief sought, or any relief whatsoever, and further demands trial by jury of all issues so triable as of right by jury.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

s/Kathleen M. Savor
Kathleen M. Savor (Florida Bar Number 0139114)
E-mail address: Kathleen.savor@myfloridalegal.com

OFFICE OF THE ATTORNEY GENERAL
110 S.E. 6th Street, 10th Floor
Ft. Lauderdale, FL 33301
Telephone: 954-712-4600
Facsimile: 954-527-3702

Counsel for Defendant Inman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail on

3rd Day of June, 2011 on all counsel or parties of record on the attached service list.

s/Kathleen M. Savor

Kathleen M. Savor

Assistant Attorney General

SERVICE LIST

Robert Del Sol v. McNeil, et al.
Case No: 10-14296-CIV-GRAHAM/WHITE

United States District Court, Southern District of Florida

Robert Del Sol DC# 082574
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, FL 32124
(Pro Se Plaintiff)
Served by U.S. Mail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 10-14296-CIV-GRAHAM/WHITE

ROBERTO DEL SOL,

Plaintiff,

v.

WALTER A MCNEIL et al.,

Defendants,

DEFENDANT ANDERSON'S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, Defendant, CARMEN ANDERSON by and through undersigned counsel, pursuant to Fed. R. Civ. P. 8(b) and (c) hereby files her Answer and Affirmative Defenses to Plaintiff's Complaint (D. E. #1) and states:

GENERAL FACTS OF THE EVENTS

1. Defendant admits that Plaintiff is incarcerated with the Florida Department of Corrections and at the time of the event alleged was housed at Martin Correctional Institution, 1150 S. W. Allapattah Road, Indiantown, FL 34956.
2. Defendant admits that Plaintiff was assigned to an inmate confined in a wheelchair and would be assigned to another dorm. All remaining allegations in paragraph two are denied.
3. Defendant denies paragraph three as written.
4. Defendant denies paragraph four as written.
5. Defendant denies paragraph five as written.
6. Defendant denies paragraph six as written.

7. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph seven and therefore denies.

8. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eight and therefore denies.

9. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph nine and therefore denies.

10. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph ten and therefore denies.

11. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eleven and therefore denies.

12. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twelve and therefore denies.

13. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph thirteen and therefore denies.

14. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph fourteen and therefore denies.

15. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph fifteen and therefore denies.

16. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph sixteen and therefore denies.

17. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph seventeen and therefore denies.

18. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eighteen and therefore denies.

19. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph nineteen and therefore denies.

20. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty and therefore denies.

21. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-one and therefore denies.

22. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-two and therefore denies.

23. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-three and therefore denies.

24. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-four and therefore denies.

25. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph twenty-five and therefore denies.

DEFENDANT'S ACTIONS

26. Paragraph twenty-six does not pertain to Defendant and therefore no responsive is required.

27. Paragraph twenty-seven does not pertain to Defendant and therefore no responsive is required.

28. Defendant admits the she was a Classification Officer at Martin C.I. during the

alleged incident. All remaining allegations in paragraph twenty-eight are denied.

29. Paragraph twenty-nine does not pertain to Defendant and therefore no responsive is required.

30. Paragraph thirty does not pertain to Defendant and therefore no responsive is required.

LEGAL CLAIMS / DAMAGES

31. As to paragraph thirty-one, Defendant realleges and reaffirms all answers provided in paragraphs 1-30. Defendant denies all remaining allegations in paragraph thirty-one and demands strict proof thereof. Defendant is being sued in her individual capacity and therefore Plaintiff is not entitled to declaratory or injunctive relief. Additionally, Defendant denies Plaintiff is entitled to compensatory or punitive damages.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant acted reasonably within the discretion of her position and the course and scope of employment and did not violate any clearly established statutory or constitutional right of the Plaintiff with which a reasonable person would have known, and therefore is entitled to qualified immunity from suit.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. §1983.

THIRD AFFIRMATIVE DEFENSE

Defendant did not act in any way that would violate any clearly established rights guaranteed to the Plaintiff under the Constitution.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because there is no causal connection between plaintiff's claimed injuries and action or inaction by the defendant as required for liability under 42 U.S.C. §1983.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because plaintiff cannot establish the deliberate indifference required at a minimum for liability under 42 U.S.C. §1983.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because negligence is not actionable under 42 U.S.C. §1983.

SEVENTH AFFIRMATIVE DEFENSE

Defendant asserts that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by Plaintiff's negligence or wrongful acts and/or misconduct.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish as a subjective matter, that the Defendant acted with a sufficiently culpable state of mind as required for liability under 42 U.S.C. §1983.

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Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995 (PLRA) based on failure to exhaust administrative remedies.

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Plaintiff has failed to state a claim for punitive damages because he has not alleged the type of conduct that would meet the standards set forth by Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct.

1625, 1640, 75 Led.2d 632 (1983).

ELEVENTH AFFIRMATIVE DEFENSE

The actions taken by Defendant with regard to the incident in 2009 was reasonable upon objective evaluation and not so grossly disproportionate to the need to take those actions so as to warrant recovery under Section 1983.

TWELFTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and supplement these affirmative defenses adding such additional affirmative defenses as may appear to be appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered the Complaint, the Defendant, denies that the Plaintiff is entitled to the relief sought, or any relief whatsoever, and further demands trial by jury of all issues so triable as of right by jury.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

s/Kathleen M. Savor
Kathleen M. Savor (Florida Bar Number 0139114)
E-mail address: Kathleen.savor@myfloridalegal.com

OFFICE OF THE ATTORNEY GENERAL
110 S.E. 6th Street, 10th Floor
Ft. Lauderdale, FL 33301
Telephone: 954-712-4600
Facsimile: 954-527-3702
Counsel for Defendant Anderson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail on
6th Day of June, 2011 on all counsel or parties of record on the attached service list.

s/Kathleen M. Savor
Kathleen M. Savor
Assistant Attorney General

SERVICE LIST

Robert Del Sol v. McNeil, et al.
Case No: 10-14296-CIV-GRAHAM/WHITE

United States District Court, Southern District of Florida

Robert Del Sol DC# 082574
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, FL 32124
(Pro Se Plaintiff)
Served by U.S. Mail

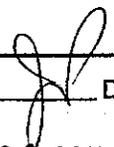
**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10CV14296DLG

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ROBERTO DEL SOL,)
PLAINTIFF,)
v.)
WARDEN INMAN, ET AL.)
DEFENDANTS.)

FILED by  D.C.
JUN 30 2011
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

CASE NO: 10-12016-GW GRAHAM
MAGISTRATE JUDGE P.A. WHITE

PLAINTIFF'S RESPONSE TO DEFENDANT POSTON'S ANSWER

COMES NOW THE PLAINTIFF, ROBERTO DEL SOL, PROSE,
AND HEREBY FILES THIS RESPONSE TO DEFENDANT'S
POSTON'S ANSWER AND AFFIRMATIVE DEFENSES, AND
STATES AS FOLLOWS:

GENERAL FACTS OF THE EVENTS

THE PLAINTIFF ACKNOWLEDGES THAT DEFENDANT
POSTON LACKS SUFFICIENT KNOWLEDGE REGARDING
THE ALLEGATIONS IN PARAGRAPHS 2, 3, 5, 7 THRU
25, AS THOSE PARAGRAPHS INVOLVE THE OTHER
DEFENDANTS IN THIS PROCEEDING

NEVERTHELESS, DEFENDANT POSTON DENIES THE
ALLEGATIONS IN PARAGRAPH 4 (IN PART), AND
PARAGRAPH 6, YET, PLAINTIFF PROVIDES IN SUPPORT
A COPY OF THE LETTER PRESENTED TO MS. POSTON,
WHICH IS AND WAS ALWAYS CONTAINED IN D.O.C.
FILES. (SEE EXHIBIT A.)

DEFENDANT'S ACTION

THE PLAINTIFF CONCEDES THAT IN REGARD TO PARAGRAPHS 26, 27, 28 AND 30, NO RESPONSE IS REQUIRED BY DEFENDANT POSTON AS THOSE PARAGRAPHS PERTAIN TO THE OTHER DEFENDANTS IN THIS ACTION.

NEVERTHELESS, DEFENDANT POSTON DENIES IN PART THE ALLEGATIONS IN PARAGRAPH 29, WHICH ADDRESSES SPECIFICALLY HER ACTIONS IN THIS SUIT.

THE PLAINTIFF DID ADVISE DEFENDANT POSTON OF THE POSSIBLE DANGER HE IS EXPOSED TO, WHICH PLAINTIFF HAD SUPPORTED BY SHOWING A LETTER TO THE DEFENDANT POSTON FOR HER INFORMATION, YET, THE LETTER WAS LIKELY CONTAINED IN PLAINTIFF'S INMATE FILE (EXHIBIT A.), AND AS SUCH THE LETTER WAS LIKELY KNOWN TO MS. POSTON PRIOR TO THE PLAINTIFF INFORMING HER ABOUT IT.

THIS IS FURTHER PROVEN BY DEFENDANT POSTON'S OWN INVESTIGATION REPORT (SEE EXHIBIT B.), WHERE SHE HERSELF ACKNOWLEDGED BEING AWARE OF PLAINTIFF'S HISTORY OF BEING ASSAULTED AND THAT SHE HAD REVIEWED HIS FILE, INCLUDING HERSELF MAKING REFERENCE TO PRIOR PM-INVESTIGATION. (EXHIBIT B.).

LEGAL CLAIMS / DAMAGES

AS TO PARAGRAPH 31, THE DEFENDANT POSTON DENIES ALL ALLEGATIONS AND DEMANDS STRICT PROOF THEREOF. SHE FURTHER STATES THAT THE PLAINTIFF IS NOT ENTITLED TO DECLARATORY OR INJUNCTIVE RELIEF, NOR THAT HE IS ENTITLED TO COMPENSATORY OR PUNITIVE DAMAGES.

AS THE ATTACHED EXHIBITS A AND B SHOW IT MUST BE ASSUMED THAT DEFENDANT POSTON IN FACT HAD KNOWLEDGE OF PLAINTIFF'S POTENTIAL EXPOSURE TO HARM AND DANGER AND THUS, HER FAILURE TO ACT DOES CONSTITUTE DELIBERATE INDIFFERENCE TO UNSAFE CONDITIONS, IN VIOLATION OF THE 8TH AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION, THUS, DECLARATORY RELIEF IS WARRANTED AND APPROPRIATE.

AS TO INJUNCTIVE RELIEF THE PLAINTIFF SUBMITS THAT HE CONTINUES TO BE ENDANGERED WITHIN THE FLORIDA PRISON SYSTEM, WHICH IS ALSO PROVEN BY A RECENT ASSAULT ON PLAINTIFF FROM ANOTHER INMATE AT PLAINTIFF'S CURRENT FACILITY, AT TINKA C.I. IN DAYTONA BEACH.

AS TO COMPENSATORY OR PUNITIVE DAMAGES THE PLAINTIFF SUBMITS THAT THIS WOULD BE A MATTER TO BE DETERMINED BY A JURY WHICH DEFENDANT POSTON DEMANDED IN HER CONCLUSION.

DEFENDANT POSTON ASSERTS 12 AFFIRMATIVE DEFENSES WHICH THE PLAINTIFF WILL ADDRESS INDIVIDUALLY IN THE FOLLOWING 12 PARAGRAPHS:

1.) QUALIFIED IMMUNITY

PLAINTIFF ASSERTS THAT DEFENDANT POSTON IS NOT SHIELDED BY QUALIFIED IMMUNITY, BECAUSE HER CONDUCT VIOLATED CLEARLY ESTABLISHED FEDERAL CONSTITUTIONAL RIGHTS OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN. SEE ALSO KABLE V. LEONARD, 477 F.3d 544, 553-54 (8th CIR. 2007) ("... NOT ENTITLED TO QUALIFIED IMMUNITY FOR ALLEGED DELIBERATE INDIFFERENCE TO SUBSTANTIAL RISK OF ... ASSAULT, ... BECAUSE A REASONABLE OFFICER WOULD KNOW SUCH INDIFFERENCE VIOLATED CONSTITUTIONAL RIGHTS").

BASED ON ATTACHED EXHIBITS "A" AND "B" IT BECOMES AXIOMATIC THAT DEFENDANT POSTON CLEARLY ACTED INDIFFERENT TO THE POTENTIAL RISK PLAINTIFF WAS EXPOSED TO, AND AS SUCH SHE SHOULD NOT BE ENTITLED TO QUALIFIED IMMUNITY FROM SUIT.

2.) FAILURE TO STATE CLAIM

PLAINTIFF SUBMITS THAT THIS AFFIRMATIVE DEFENSE SHOULD BE REJECTED BY THIS COURT AS PLAINTIFF CAN PROVE HIS SET OF FACTS IN SUPPORT OF HIS CLAIM AGAINST DEFENDANT POSTON (SEE EXHIBIT A AND B), AND THE GENERAL FACTS OF PLAINTIFF'S CLAIM ARE FURTHER SUPPORTED BY INVESTIGATIVE REPORTS (SEE EXHIBIT C.)

3.) DEFENDANT DID NOT ACT IN VIOLATION OF CONSTITUTIONAL RIGHTS

THIS DEFENSE SHOULD BE REJECTED IN LIGHT OF DEFENDANT POSTON'S OWN INVESTIGATION REPORT (EXHIBIT B.), WHICH SHOWS THAT SHE WAS AWARE OF PLAINTIFF'S HISTORY AND FILE, YET, SHE ACTED INDIFFERENT IN VIOLATION OF THE 8TH AND 14TH AMENDMENT TO THE U.S. CONSTITUTION.

4.) FAILURE TO STATE CAUSE OF ACTION

THIS DEFENSE SHOULD BE REJECTED, BECAUSE PLAINTIFF'S INJURIES ARE THE DIRECT RESULT OF DEFENDANT POSTON'S FAILURE TO TAKE ACTION WHEN SHE BECAME AWARE OF THE POTENTIAL DANGER PLAINTIFF WAS EXPOSED TO.

5.) SAME AS PARAGRAPH 4.

6.) THIS DEFENSE SHOULD BE REJECTED SHOULD BE REJECTED BECAUSE PLAINTIFF MADE NO CLAIM OF NEGLIGENCE, HIS CLAIM IS IN REGARD TO DELIBERATE INDIFFERENCE.

7.) THIS DEFENSE SHOULD BE REJECTED BECAUSE THE PLAINTIFF CLEARLY MADE THE DEFENDANTS AWARE OF THE POTENTIAL DANGER HE IS EXPOSED TO, YET, THE DEFENDANTS INCLUDING MS. POSTON FAILED TO ACT CAUSING PLAINTIFF TO SUFFER INJURY.

8.) AS TO THE DEFENDANT POSTON'S EIGHTH AFFIRMATIVE DEFENSE THE PLAINTIFF SUBMITS THAT THIS COURT SHOULD REJECT SAME, BECAUSE THE DEFENDANT POSTON APPARENTLY ACTED KNOWINGLY INDIFFERENT BEING AWARE OF THE POTENTIAL DANGER PLAINTIFF IS EXPOSED TO.

9.) EXHAUSTION OF ADMINISTRATIVE REMEDIES

THIS DEFENSE SHOULD BE REJECTED AS WELL BECAUSE THE PLAINTIFF PROVIDED A SUFFICIENT REASON WHY HE WAS UNABLE TO EXHAUST ADEQUATELY ADMINISTRATIVE REMEDIES.

10.) FAILURE TO STATE CLAIM FOR PUNITIVE DAMAGES

THIS DEFENSE SHOULD BE REJECTED, AT THE VERY LEAST OTHERWISE THE PLAINTIFF SHOULD BE ENTITLED OR ALLOWED AN OPPORTUNITY TO AMEND HIS COMPLAINT.

11.) THE ELEVENTH AFFIRMATIVE DEFENSE SHOULD BE REJECTED, BECAUSE DEFENDANT POSTON DID ACT UNDER COLOR OF LAW AT ALL TIMES AND HER DESIGNATED WORK ASSIGNMENT INCLUDED PRIMARILY THE PLACEMENT OF INMATES IN PROTECTIVE MANAGEMENT FOR GOOD CAUSE SHOWN. THUS HER EVALUATION OF THE PLAINTIFF'S SITUATION WAS GROSSLY DISAPPROPRIATE AS A NEED FOR PROTECTION FOR PLAINTIFF WAS IMMINENT.

LEGAL CONCLUSION

THE PLAINTIFF ASSERTS THAT IN LIGHT OF CONLEY V. GIBSON, 355 U.S. 41, 45-46 (1957), HIS PROSE COMPLAINT SHOULD BE HELD TO LESS STRICT STANDARDS THAN A MOTION DRAFTED BY A LAWYER. SEE ALSO BOAG V. MACDOUGALL, 454 U.S. 364, 102 S.Ct. 700, 70 LEd2d 551 (1982) AND HOLLAND V. TAYLOR, 604 F.Supp.2d 692 (D.DEL. 2009).

FURTHERMORE, "A COMPLAINT SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF", CRUZ V. BERTO, 408 U.S. 319, 322 (1972).

THE PLAINTIFF'S COMPLAINT AGAINST THE DEFENDANT POSTON SHOULD PROCEED FURTHER BEFORE THIS COURT, BECAUSE "A COMPLAINT SHOULD NOT BE DISMISSED UNLESS IT APPEARS TO A CERTAINTY THAT PLAINTIFF WOULD NOT BE ENTITLED TO RELIEF UNDER ANY SET OF FACTS WHICH COULD BE PROVED IN SUPPORT OF HIS CLAIM, AND NO MATTER HOW LIKELY IT MAY SEEM THAT PLEADEFER WOULD BE UNABLE TO PROVE HIS CASE, HE IS ENTITLED, ON AVERRING A CLAIM, TO AN OPPORTUNITY TO PROVE IT", MELW-SONICS CORP. V. CROPP, 342 F.2d 856 (3d Cir. 1965), SEE ALSO POINTER V. AMERICAN OIL CO., 295 F.Supp. 573 (S.D. IND. 1968).

HENCE, THE PLAINTIFF SHOULD BE GIVEN A FAIR OPPORTUNITY TO PROVE HIS CLAIM, BY MEANS OF EITHER AMENDING THE PRESENT COMPLAINT OR BY PROCEEDING TO JURY TRIAL, ESPECIALLY SINCE DEFENDANT POSTON MADE AN EXPRESS DEMAND FOR TRIAL BY JURY.

WHEREFORE, THE FOREGOING CONSIDERED, THE PLAINTIFF REQUESTS THIS COURT TO REJECT DEFENDANT POSTON'S AFFIRMATIVE DEFENSES AND TO RECOMMEND THE CLAIM AGAINST DEFENDANT POSTON FOR TRIAL BY JURY.

RESPECTFULLY SUBMITTED

Del Sol, Robert

ROBERTO DEL SOL

DC# 082574

Charlotte C.I.

33123 Oil Well Rd.

Punta Gorda, FL 33955

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE FOREGOING HAS BEEN FURNISHED TO:

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK, RM. 8N09
400 N. MEADE AVENUE
MEADE, FL. 33128-7716

ATTORNEY GENERAL'S OFFICE
A.A.G. KATHLEEN M. SAVOR
110 SE. 6TH STREET, 10TH FLOOR
FT. LAUDERDALE, FL. 33301
(ATTORNEY FOR DEFENDANT ROSSON)

BY PLACING THE SAME IN HANDS OF PRISON OFFICIALS
FOR MAILING THIS 24 DAY OF 6, 2011.

Del Sol, Roberts
ROBERTO DEL SOL
PLAINTIFF, PRO SE

EXHIBIT A.



FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
JEB BUSH

Secretary
JAMES V. CROSBY, JR.

An Equal Opportunity Employer

2601 Blair Stone Road • Tallahassee, FL 32399-2500

<http://www.dc.state.fl.us>

February 21, 2003

Roberto Del Sol DC# 082574
Okeechobee Correctional Institution
3420 NE 168th Street
Okeechobee, FL 34972

Inmate Del Sol:

Your letter postmarked December 30, 2002 has been received and reviewed.

Mr. Shannon, the Classification Supervisor at Okeechobee Correctional Institution, was contacted. You were transferred from Washington Correctional Institution due to your involvement in an incident surrounding the battery on an officer on December 15, 2001, I.G. Case number 01-14195, Criminal. You assisted in restraining an inmate when he attempted to hit the officer. You were transferred due to your fears of retaliation from the inmate and other inmates on the compound.

Sincerely,

A handwritten signature in cursive script that reads "Marta Villacorta".

Marta Villacorta
Regional Director of Institutions
Region IV

MV/ jy

C: Office File

EXHIBIT B.

MARTIN CORRECTIONAL INSTITUTION
PROTECTIVE MANAGEMENT INVESTIGATION

Name: Del Sol, Roberto DC #: 082574

A/C Entry Date: 6-2-09 EOS Date: Life

****This portion to be completed by inmates Classification Specialist only****

Inmate Comment: "I was assaulted"

Nature of Inmate's Crime: Robbery w/Gun,
2^o Murder

Reactions from General Population to this crime: NA

Is inmate a former Law Enforcement Official or Correctional Officer? : No

Has inmate given testimony against other inmates or staff in official proceeding?: No

Who does the inmate fear? See attached DC61
Henderson, Michael V08598

What does the inmate fear?: Physical assault

Why is the inmate afraid?: Prior assault

Was there a specific incident?: Yes

When did this incident occur?: Time and Date: 5-10-09

Where did the incident occur?: G4201

Were there witnesses, if so, who are they? Inspector C. Welsh

History of being assaulted: Yes: No: Review File: Yes: No:

Special Review: See attached list.

Comments: See prior PM investigation.

* Serious life threatening injuries.

Date: 6-2-09 Specialist: J. B. Paster, CPSO

EXHIBIT C.

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

282 - 2011 - 06000

INMATE REQUEST

(Instructions on Back)

Mail Number: _____
Team Number: _____
Institution: Tomoka Correctional

TO: Warden Classification Medical Dental
(Check One) Asst. Warden Security Mental Health Other _____

FROM:	Inmate Name <u>De/Sol, Roberto</u>	DC Number <u>082574</u>	Quarters <u>B-3-118-L</u>	Job Assignment <u>F/S</u>	Date <u>3-31-11</u>
-------	---------------------------------------	----------------------------	------------------------------	------------------------------	------------------------

REQUEST

Check here if this is an informal grievance

Ms. Kesler
This grievance concerns
A request I sent to you on 2-15-11.
See copy attached.
Where I requested information about the
time I was assaulted - At Martin C.I. on 5-10-09.
My request attached was never answered.
I need this information, to proceed with
my legal matters.
Thank you
Very Much.
Roberto De/Sol

All request will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. Informal grievances will be responded to in writing

1104-002

DO NOT WRITE BELOW THIS LINE

RECEIVED
APR 01 2011
ASST WARDEN-PROG.

RESPONSE

Your request grievance has been received and reviewed
with the following response provided.
Refer to attached as per your request.

[The following pertains to informal grievances only:
Based on the above information, your grievance is Approved (~~Returned, Denied, or Approved~~). If your informal grievance is denied,
you have the right to submit a formal grievance in accordance with Chapter 33-103.006 F.A.C.]
Official (Signature): [Signature] Date: 4-11-11

Original: Inmate (plus one copy)
CC: Retained by official responding, or if the response is to an informal grievance then forward to be placed in inmate's file.
This form is also used to file informal grievances in accordance with Rule 33-103.005, Florida Administrative Code.
Informal Grievances and Inmate Request will be responded to within 10 days, following receipt by the appropriate person.
DC6-236 (Effective 10/19/09)

When I got assaulted by three inmates on
5-10-2009. Approximately 9:40 A.M. At Martin C.I.

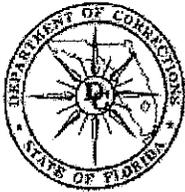
When I was seen by the inspectors, CON-
-cerning, This assault. They never gave me
any opportunity to press charges against, these
three inmates, Or to identify these three
inmates, which I did not know their names
at that time, Until I came back from the
Outside Hospital and seen them. While I
was in lock-up - Then I found out their
names, Because I already knew their
faces. I have filed numerous Grievances
at Liberty C.I. concerning this - With no
response.

So I respectfully ask you to help
me with this information, so I can
continue my legal matters in the
courts.

Thank you very much,
And God Bless you.

Roberto Del Sol

DC# 08257



Bureau of State Investigations

Case Summary

Case Number: 09-4-1461

RECEIVED
JAN 20 2010
CLASS. SECTION

Facility: MARTIN C. I.
Class: INJURIES (INMATE)

Case Type: RM
Priority:
Special Category:

Assigned: 5/14/09	Incident Date: 5/10/09	Incident Time: 10:15:00 AM
Super Appv: 5/14/09	Cent Office Appv: 5/14/09	
Distributed: 5/14/09	Addendum Pend: No	Addend. Date:
Disp. Date: 5/14/09		

Background Narrative:

ON 05-10-09 AT APPROXIMATELY 10:50AM CAPTAIN D.S. COLLINS RECEIVED AN OUTSIDE LINE FROM MRS.LISA RIVERA STATING THE SHE JUST RECEIVED A PHONE CALL ON HER CELLULAR PHONE (609)880-5863 FROM AN UNKNOWN INMATE STATING THAT INMATE DEL SOL WAS STABBED IN THE HEAD AND FOR HER TO CALL THE INSTITUTION.SHE ASLO STATED THAT WHEN SHE ASKED WHO WAS CALLING THAT OTHER INMATES WAS IN THE BACKGROUND SAYING THAT IT WAS INMATE GRACIA FROM F DORMITORY.STAFF IMMEDIATELY REPORTED TO G DORMITORY TO INVESTIGATE THE CALLER INFORMATION AND FOUND INMATE DEL SOL IN CELL G4201 WITH MULTIPLE STAB WOUNDS TO THE HEAD, BACK AND WAIST AREA.INMATE DEL SOL INJURIES WAS DEEMED LIFE THREATENING BY DR.LAMOUR AND WAS TRANSPORTED BY (911) HELICOPTER AT 11:50AM.THE HELICOPTER ARRIVED AT 12:05PM AT LAWNWOOD HOSPITAL. INMATE DEL SOL WAS ADMITTED AT APPROXIMATELY 1:30PM INTO ROOM 326-A.IT SHOULD BE NOTED THAT A CELLULAR PHONE WAS DETECTED BY THE ON DUTY PHYSICIANS AT LAWNWOOD HOSPITAL DURING X-RAYS OF INMATE DEL SOL IN HIS RECTUM.INMATE DEL SOL WAS GIVEN MEDICATION TO INDUCED A BOWEL MOVEMENT TO EXTRACT THE DEVICE AND WOULD ADVISED SECURITY STAFF OF THE OUTCOME. STAFF WAS ADVISED TO NOTIFIED THE INSTITUTION ONCE THE CELLULAR PHONE IS RECOVERED TO INITIATE A CHAIN OF CUSTODY ON THE EVIDENCE. COLONEL R. CONNER REPORTED ON THE SCENE AND INTERVIEWED INMATE DEL SOL WHERE HE WAS COHERENT TO QUESTION. CELL 4201 WAS SECURED AND WING 4 WAS PLACED ON LOCK DOWN TO BE SEARCHED. NO INMATES WAS IDENTIFIED AT THIS TIME.CONTROL MOVEMENT WAS INITIATED FOR ALL PROGRAMS AND MOVEMENT ON THE COMPOUND.A SEARCH OF THE WELLNESS YARD AND G DORMITORY WAS CONDUCTED BUT NO RESULTS OF ANY WEAPONS. EMERGENCY ACTION CENTER DUTY OFFICER M. WEGER WAS NOTIFIED AND WAS ADVISED OF THE INFORMATION. INSPECTOR JACKSON OF THE INSPECTOR GENERAL OFFICE WAS NOTIFIED AND GIVEN UPDATE ON INMATE DEL SOLE STATUS WHILE AT THE HOSPITAL. (MINS# 284224 JS)

Sustained: No

Unsustained: No

Exonerated: No

Disposition:

REFERRED TO MANAGEMENT AS A MEDICAL ISSUE. (KH,JS)

Inspector(s)

Complainant(s)

COLLINS, DARRYL S (CORRECTIONAL
OFFICER CAPTAIN)

Victim(s)

Subject(s)

DEL SOL, ROBERTO (Active
Inmate) 082574

Witness(es)

RIVERA, LISA (Civilian)
PASLEY, MARY E (CORRECTIONAL
OFFICER)

IRNO105

INMATE NAME: DELSOL, ROBERTO

REPORT OF PROTECTIVE MANAGEMENT, DC6-234A
MARTIN C.I.

402

06/12/2009 13:05
PAGE 1

DC# 082574 PREV LOC/HOUS/JOB: 430/D3101L/S05 HOURS: D3101L P.O. BOX: 1

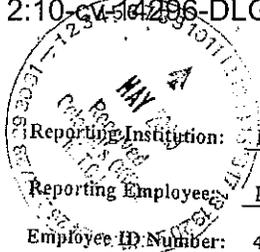
*SECTION I: PLACEMENT IN ADMINISTRATIVE CONFINEMENT (OR POSSIBLE PROTECTION NEED FROM SPECIAL MGT CASE)
DATE: 06/02/2009 TIME: 10:00
DISP: R3A = POSS PROT FOR CURR AC
STAFF: PJB04 - POSTEN, J.B.
ON 5/10/09 INMATE DELSOL WAS ASSAULTED AND REQUIRED TREATMENT AT AN OUTSIDE HOSPITAL. HE FEARS FOR HIS SAFETY AND HAS REQUESTED PROTECTION FROM HIS CURRENT A7 STATUS. HE IS PENDING A DR FOR (3-14) POSSESSION OF A CELLULAR DEVICE.

*SECTION III: INVESTIGATION OF INMATES NEED FOR PROTECTION
DATE: 06/10/2009 TIME: 15:23
DISP: Z11 = PROT. NEED INVEST CMP.
STAFF: PJB04 - POSTEN, J.B.
ON 5/10/09, AT APPROXIMATELY 10:15AM, STAFF FOUND INMATE DELSOL, IN CELL G4201. HE HAD BEEN STABBED IN THE HEAD, BACK, AND WAIST AREA. HIS INJURIES WERE SO SERIOUS THAT HE HAD TO BE TRANSPORTED TO AN OUTSIDE HOSPITAL, WHERE HE REMAINED FOR SEVERAL DAYS. INMATE DELSOL PROVIDED VERY LITTLE ASSISTANCE TO FDLE AND INSPECTORS S. THOMAS AND C. WELSH IN THEIR ATTEMPT TO INVESTIGATE THIS ASSAULT. SEVERAL SPECIAL REVIEWS HAVE ALREADY BEEN ENTERED ON THE DC61 AND INMATE DELSOL RECENTLY ALSO IDENTIFIED INMATE HENDERSON, MICHAEL #V08598 AS BEING A PERSON WHO HAD ASSAULTED HIM. HE REMAINS IN ADMINISTRATIVE CONFINEMENT AND HOUSED ALONE.

*SECTION IV: ICT RECOMMENDATION TO SCO OF INMATES NEED FOR PROTECTION
DATE: 06/11/2009 TIME: 15:35
DISP: R11 = RECORD OF BEING ASSAULTED
STAFF: PJB04 - POSTEN, J.B.

ON 6/11/09 THE ICT REVIEWED INMATE DELSOL'S REQUEST FOR PROTECTION. THE INMATE WAS PRESENT AND STATED THAT HE HAD BEEN ASSAULTED ON 5/10/09. THIS WAS VERIFIED BY INSPECTOR C. WELSH. THE TEAM RECOMMENDS THAT INMATE DELSOL BE TRANSFERRED TO RESOLVE HIS NEED FOR PROTECTION. THE INVESTIGATION IS STILL ONGOING BY FDLE AND THE INSPECTOR GENERAL'S OFFICE.
ID101 - INMAN, D. L.
AMB04 - AUSTIN, M. B.
CRH03 - CONNER, R. H.

RP-TIME
SN
2101 120
3/1/09



INCIDENT REPORT

Reporting Institution: Martin Correctional Institution Incident Report Number: 2009-05-66
 Reporting Employee: D.S. Collins, CO Captain PREA Number: _____
 Employee ID Number: 4143 Date of incident: May 10, 2009
 Person(s) Involved: Inmate Del Sol, Roberto DC#082574 Time of incident: 10:15am
Three unknown perpetrators Witness(es): M. Pasley, CO
Lisa Rivera, Outside Caller

DETAILS OF INCIDENT: On May 10, 2009, at approximately 10:50am, while assign as second shift supervisor, I D.S. Collins CO Captain received a call in "C" Dormitory from an outside caller who identified herself as Ms. Lisa Rivera. Officer Pasley were present in the Dormitory and recorded information given by Ms. Rivera. Ms. Rivera advised that she received a call on her cellular phone (609) 880-5863 from an unknown inmate stating that inmate Del Sol was stabbed in the head and for her to call the institution. She also stated when she asked who was calling, that she heard other inmates in the background say to the person on the phone tell them that inmate Garcia from "F" Dormitory called. Staff immediately reported to the "G" Dormitory to investigate this caller information and found inmate Del Sol in cell G4201 with multiple stab wounds to the head, back, waist area. Upon further inspection of his person while in the emergency room he had abrasions to his left leg and foot area. Inmate Del Sol injuries was deemed life threatening by Dr. Lamour and was transported by (911) helicopter at 11:50am. Officers M. Coccaro and C. Pierre was assign as transport officers for this transport where Officer Coccaro provided direct supervision inside the helicopter and Officer Pierre provided chase to Lawnwood Hospital. The helicopter arrived at 12:05pm to Lawnwood Hospital and Officer Pierre arrived 12:20pm as chase.

D.S. Collins, CO Captain May 10, 2009
 Reporting Employee Date

Shift Supervisor
 COMMENT: Noted: Duty Warden Colonel R. Conner reported on the scene and interviewed inmate Del Sol where he was coherent to questioning. Inmate Del Sol stated that three unknown Spanish inmates came into his cell and assaulted him around 10:15am during the inmate movement on the compound. He then changed his story and claimed that three black inmates assaulted him. Inmate Del Sol stated that the three inmates who assaulted him were from "F" Dormitory but could not name their names but could identify them by face. Cell 4201 was secured and wing four was placed on lock down to be searched. No inmates were indentified at this time. Control movement was initiated for all programs and movement on the compound. A thorough search of wellness yard and "G" Dormitory was conducted with no results of any weapon that was possible used during this assault.

D.S. Collins, CO Captain May 10, 2009
 Shift Supervisor Date

REVIEW: SEE WARDENS COMMENTS.

miss-de
 R. Conner, CO Colonel 5-11-09
 Correctional Officer Chief Date

REVIEW: Roberto As Reported. All Required Documentation Initiated And All Required Notifications Made. Inmate Del-Sol Remains In Hospital. IG To Investigate

CCI Inspector
 Warden 11-MAY-2009
 Date

DETAILS OF INCIDENT (cont.)
that a cellular phone was detected by the on duty physician at Lawnwood Hospital during X-rays of inmate Del Sol in his rectum.
The physician advised that inmate Del Sol was given some medication to induce a bowel movement to extract the device and would
advised security staff of the outcome. Security staff was advised to contact the institution once the cellular phone is recovered to
initiate a chain of custody on this evidence. It should be noted that Port St. Lucie Sheriff Office was contacted to assist with armed
supervision until our chase vehicle DC#8914 arrived at 12:20pm.

SHIFT Supervisor
COMMENT (cont.): Emergency Action Center Duty Officer M. Weger was notified and advised of this information.
Inspector Jackson from IG Office on call inspector was informed and given an update on inmate Del Sol status while at the hospital.
Sergeant J. Soto and Officer D. McKeever was assign to monitor inmate phones to ascertain any information pertaining to this assault
with no results. See attached pictures of inmate Del Sol injuries.
Mins report completed.

REVIEW (cont.):

REVIEW (cont.):

Supporting Documents Attached _____

05/11/2009
MINO101

FLORIDA DEPARTMENT OF CORRECTIONS
MINS INCIDENT REPORT

PAGE: 1
TIME 07:37

PREPARED BY: R430OYQ COLLINS, DARRYL S.
INCIDENT TYPE: 15F INJURIES
REPORT DATE: 05/10/2009
INCIDENT DATE: 05/10/2009
REPORT LOCATION: 430 MARTIN C.I.
IG NUMBER:
IG ASSIGNED:
INCIDENT LOCATION: 01 HOUSING AREA
INJURIES: Y STG/STI INVOLVEMENT: N
USE OF FORCE: N CONFIDENTIAL: N
ELECTRONIC RESTRAINING DEVICES: N

INCIDENT NUMBER: 0000284224
STATUS OF INCIDENT: ENTERED
REPORT TIME: 20:12
INCIDENT TIME: 10:15
REPORT REGION: 4
UOF NUMBER:
DATE IG ASSIGNED:
DAY CODE: 7 SHIFT CODE: 2
PHYSICAL EVIDENCE RECOVERED: Y
INCIDENT VIDEO TAPED: N
CHEMICAL AGENTS USED: N

NAME	TITLE	BIRTHDATE	R	S	ID NUMBER

COMPLAINANT (S)					
COLLINS, DARRYL S.	CORRECTIONAL OFFICER CA	11/29/1966	2	1	4143
SUBJECT (S)					
DEL SOL, ROBERTO	ACTIVE INMATE	10/05/1962	1	1	082574
WITNESSES (S)					
RIVERA, LISA	CILIVIAN		9	9	CILIVIAN
PASLEY, MARY E.	CORRECTIONAL OFFICER	01/14/1966	1	2	58302
SOTO, JOHN	CORRECTIONAL OFFICER	01/07/1969	9	1	42920

CONTRABAND RECOVERED	QUANTITY	UNIT OF MEASURE

DESCRIPTION OF PHYSICAL EVIDENCE:

A CELLULAR DEVICE WAS FOUND IN INMATE DEL SOL RECTUM WHEN ON DUTY STAFF AT LAWNWOOD DID AN X-RAY.

MEDICAL DEPT. DESCRIPTION OF INJURIES:

INMATE DEL SOL WAS STABBED MULTIPLE TIMES IN THE HEAD, BACK AND WAIST AREA.

DESCRIPTION OF INCIDENT:

ON 05-10-09 AT APPROXIMATELY 10:50AM CAPTAIN D.S. COLLINS RECEIVED AN OUTSIDE LINE FROM MRS. LISA RIVERA STATING THE SHE JUST RECEIVED A PHONE CALL ON HER CELLULAR PHONE (609)880-5863 FROM AN UNKNOWN INMATE STATING THAT INMATE DEL SOL WAS STABBED IN THE HEAD AND FOR HER TO CALL THE INSTITUTION. SHE ALSO STATED THAT WHEN SHE ASKED WHO WAS CALLING THAT OTHER INMATES WAS IN THE BACKGROUND SAYING THAT IT WAS INMATE GRACIA FROM F DORMITORY. STAFF IMMEDIATELY REPORTED TO G DORMITORY TO INVESTIGATE THE CALLER INFORMATION AND FOUND INMATE DEL SOL IN CELL G4201 WITH MULTIPLE STAB WOUNDS TO THE HEAD, BACK AND WAIST AREA. INMATE DEL SOL INJURIES WAS DEEMED LIFE THREATENING BY DR. LAMOUR

05/11/2009

FLORIDA DEPARTMENT OF CORRECTIONS

PAGE: 2

MIN0101

MINS INCIDENT REPORT

TIME 07:37

AND WAS TRANSPORTED BY (911) HELICOPTER AT 11:50AM. THE HELICOPTER ARRIVED AT 12:05PM AT LAWNWOOD HOSPITAL. INMATE DEL SOL WAS ADMITTED AT APPROXIMATELY 1:30PM INTO ROOM 326-A. IT SHOULD BE NOTED THAT A CELLULAR PHONE WAS DETECTED BY THE ON DUTY PHYSICIANS AT LAWNWOOD HOSPITAL DURING X-RAYS OF INMATE DEL SOL IN HIS RECTUM. INMATE DEL SOL WAS GIVEN MEDICATION TO INDUCE A BOWEL MOVEMENT TO EXTRACT THE DEVICE AND WOULD ADVISED SECURITY STAFF OF THE OUTCOME. STAFF WAS ADVISED TO NOTIFIED THE INSTITUTION ONCE THE CELLULAR PHONE IS RECOVERED TO INITIATE A CHAIN OF CUSTODY ON THE EVIDENCE.

ACTION TAKEN:

COLONEL R. CONNER REPORTED ON THE SCENE AND INTERVIEWED INMATE DEL SOL WHERE HE WAS COHERENT TO QUESTION. CELL 4201 WAS SECURED AND WING 4 WAS PLACED ON LOCK DOWN TO BE SEARCHED. NO INMATES WAS IDENTIFIED AT THIS TIME. CONTROL MOVEMENT WAS INITIATED FOR ALL PROGRAMS AND MOVEMENT ON THE COMPOUND. A SEARCH OF THE WELLNESS YARD AND G DORMITORY WAS CONDUCTED BUT NO RESULTS OF ANY WEAPONS. EMERGENCY ACTION CENTER DUTY OFFICER M. WEGER WAS NOTIFIED AND WAS ADVISED OF THE INFORMATION. INSPECTOR JACKSON OF THE INSPECTOR GENERAL OFFICE WAS NOTIFIED AND GIVEN UPDATE ON INMATE DEL SOL STATUS WHILE AT THE HOSPITAL.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10CV14296 DLG

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by D.C.
JUN 30 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. OF FLA. MIAMI

ROBERTO DEL SOL,)
 PLAINTIFF,)
v.)
WALTER A. MCNEIL, ET AL.)
 DEFENDANTS,)
_____)

CASE NO. 10-14296-CIV GRAHAM
MAGISTRATE JUDGE P.A. WHITE

PLAINTIFF'S RESPONSE TO DEFENDANT INMAN'S ANSWER

COMES NOW THE PLAINTIFF, ROBERTO DEL SOL, PRO'SE, AND HEREBY FILES THIS RESPONSE TO DEFENDANT'S INMAN'S ANSWER AND AFFIRMATIVE DEFENSES, AND STATES AS FOLLOWS:

GENERAL FACTS OF THE EVENTS

THE PLAINTIFF ACKNOWLEDGES THAT DEFENDANT INMAN MAY LACKS SUFFICIENT KNOWLEDGE REGARDING THE ALLEGATIONS IN PLAINTIFF'S COMPLAINT UNDER PARAGRAPHS 2, 3, 4, AND 7 THRU 25, AS THOSE PARAGRAPHS INVOLVE DIRECTLY OTHER DEFENDANTS IN THIS PROCEEDING.

NEVERTHELESS, DEFENDANT INMAN DENIES THE ALLEGATIONS IN PARAGRAPH 5 AND 6, YET, PLAINTIFF PROVIDES IN SUPPORT A COPY OF THE LETTER WHICH HE PRESENTED TO DEFENDANT AW DEVERE INMAN, MS. POSTON, AND MS. ANDERSON, WHICH LIKELY IS AND ALWAYS WAS CONTAINED IN PLAINTIFF'S INMATE FILE WITH D.O.C. (EXHIBIT A.)

DEFENDANT'S ACTION

THE PLAINTIFF ACKNOWLEDGES THAT IN REGARD TO PARAGRAPHS 26, 28, 29, AND 30, NO RESPONSE IS REQUIRED BY DEFENDANT INMAN AS THOSE PARAGRAPHS PERTAIN TO THE OTHER DEFENDANTS IN THIS ACTION.

NEVERTHELESS, DEFENDANT INMAN DENIES IN PART THE ALLEGATIONS IN PARAGRAPH 27, WHICH ADDRESSES SPECIFICALLY HIS ACTION IN THIS SUIT.

HOWEVER, THE PLAINTIFF DID ADVISE DEFENDANT INMAN, IN PRESENCE OF MS. POSTON AND MS. ANDERSON, OF THE POSSIBLE DANGER HE IS EXPOSED TO, WHICH PLAINTIFF HAD SUPPORTED BY SHOWING A LETTER TO THE DEFENDANT INMAN FOR HIS INFORMATION, YET, THE LETTER WAS LIKELY CONTAINED IN PLAINTIFF'S INMATE FILE (EXHIBIT A.), AND AS SUCH THE LETTER WAS LIKELY KNOWN, DIRECTLY OR CONSTRUCTIVELY, TO THE DEFENDANT INMAN PRIOR TO THE PLAINTIFF INFORMING HIM ABOUT IT.

LEGAL CLAIMS / DAMAGES

AS TO PARAGRAPH 31, THE DEFENDANT INMAN DENIES ALL ALLEGATIONS AND DEMANDS STRICT PROOF THEREOF. HE FURTHER STATED THAT THE PLAINTIFF IS NOT ENTITLED TO DECLARATORY OR INJUNCTIVE RELIEF, NOR THAT PLAINTIFF IS ENTITLED TO COMPENSATORY OR PUNITIVE DAMAGES.

AS THE ATTACHED EXHIBIT "A" SHOWS IT MUST BE ASSUMED THAT DEFENDANT INMAN IN FACT HAD [ACTUAL] OR [CONSTRUCTIVE] KNOWLEDGE OF PLAINTIFF'S POTENTIAL EXPOSURE TO HARM AND DANGER AND THUS, HIS FAILURE TO ACT DOES CONSTITUTE DELIBERATE INDIFFERENCE TO UNSAFE CONDITIONS, IN VIOLATION OF THE 8TH AND 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, THUS, DECLARATORY RELIEF IS WARRANTED AND APPROPRIATE.

AS TO INJUNCTIVE RELIEF THE PLAINTIFF SUBMITS THAT HE CONTINUES TO BE ENDANGERED WITHIN THE FLORIDA PRISON SYSTEM, WHICH IS ALSO PROVEN BY A RECENT ASSAULT ON PLAINTIFF FROM ANOTHER INMATE AT PLAINTIFF'S CURRENT FACILITY, AT TOMOKA C.I. IN DAYTONA BEACH, FLORIDA.

AS TO COMPENSATORY OR PUNITIVE DAMAGES THE PLAINTIFF SUBMITS THAT THIS WOULD BE A MATTER TO BE DETERMINED BY A JURY, WHICH DEFENDANT INMAN ALSO DEMANDED IN HIS CONCLUSION.

AFFIRMATIVE DEFENSE

1.) QUALIFIED IMMUNITY

PLAINTIFF ASSERTS THAT DEFENDANT INMAN IS NOT SHIELDED BY QUALIFIED IMMUNITY, BECAUSE HIS CONDUCT VIOLATED CLEARLY ESTABLISHED FEDERAL CONSTITUTIONAL RIGHTS OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN. SEE ALSO KABLE V. LEONARD, 477 F3d 544, 553-54 (8TH CIR. 2007)

("... NOT ENTITLED TO QUALIFIED IMMUNITY FOR ALLEGED DELIBERATE INDIFFERENCE TO SUBSTANTIAL RISK OF ... ASSAULT, ... BECAUSE A REASONABLE OFFICER WOULD KNOW SUCH INDIFFERENCE VIOLATED CONSTITUTIONAL RIGHTS").

BASED ON ATTACHED EXHIBIT "A", IT BECOMES AXIOMATIC THAT DEFENDANT INMAN CLEARLY ACTED INDIFFERENT TO THE POTENTIAL RISK PLAINTIFF WAS EXPOSED TO, AND AS SUCH HE SHOULD NOT BE ENTITLED TO QUALIFIED IMMUNITY FROM SUIT.

2. FAILURE TO STATE CLAIM

PLAINTIFF SUBMITS THAT THIS AFFIRMATIVE DEFENSE SHOULD BE REJECTED BY THIS COURT AS PLAINTIFF CAN PROVE HIS SET OF FACTS IN SUPPORT OF HIS CLAIM AGAINST DEFENDANT INMAN (SEE ALSO EXHIBIT A.), AND THE GENERAL FACTS OF PLAINTIFF'S CLAIM ARE FURTHER SUPPORTED BY INVESTIGATIVE REPORTS (SEE EXHIBIT B.)

3. DEFENDANT ACTED IN VIOLATION OF CONSTITUTIONAL RIGHTS

DEFENDANT INMAN DID ACT IN VIOLATION OF CONSTITUTIONAL RIGHTS UNDER COLOR OF LAW, BECAUSE HE WAS MADE AWARE OF A POTENTIAL DANGER TO PLAINTIFF, AND HE HAD [ACTUAL] AND [CONSTRUCTIVE] KNOWLEDGE OF PLAINTIFF'S INMATE FILE AND HISTORY, THUS, HE ACTED INDIFFERENT UNDER THE 8TH AND 14TH AMENDMENT TO THE U.S. CONSTITUTION. SEE ALSO 18 U.S.C. § 242.

4.) FAILURE TO STATE CAUSE OF ACTION

THIS DEFENSE SHOULD BE REJECTED, BECAUSE PLAINTIFF'S INJURIES ARE THE DIRECT RESULT OF DEFENDANT INMAN'S FAILURE TO AUTHORIZE APPROPRIATE ACTION WHEN HE BECAME AWARE OF THE POTENTIAL DANGER PLAINTIFF WAS EXPOSED TO. (SEE EXHIBIT C, PHOTOS OF INJURIES)

5.) SAME AS PARAGRAPH 4

6.) THIS DEFENSE SHOULD BE REJECTED, BECAUSE PLAINTIFF MADE NO CLAIM OF NEGLIGENCE, HIS CLAIM IS IN REGARD TO DELIBERATE INDIFFERENCE.

7.) THIS DEFENSE SHOULD BE REJECTED BECAUSE THE PLAINTIFF CLEARLY MADE THE DEFENDANTS, INCLUDING DENVER INMAN AWARE OF THE POTENTIAL DANGER HE IS EXPOSED TO, YET, THE DEFENDANTS INCLUDING DEFENDANT INMAN FAILED TO ACT CAUSING PLAINTIFF TO SUFFER INJURY.

DEFENDANT INMAN FURTHER ASSERTS THAT THE DAMAGES SUFFERED BY PLAINTIFF WERE CAUSED IN WHOLE OR IN PART BY PLAINTIFF'S NEGLIGENCE OR WRONGFUL ACTS AND/OR MISCONDUCT, YET, INMAN FAILS TO PROVIDE ANY SUPPORT FOR SUCH ALLEGATION, THUS, SUCH ALLEGATION SHOULD BE DISREGARDED BY THE COURT UNLESS STRICT PROOF IS PROVIDED.

8.) AS TO THE DEFENDANT INMAN'S EIGHTH AFFIRMATIVE DEFENSE THE PLAINTIFF SUBMITS THAT THIS COURT SHOULD REJECT SAME, BECAUSE THE DEFENDANT INMAN APPARENTLY ACTED KNOWINGLY INDIFFERENT BEING AWARE OF THE POTENTIAL DANGER PLAINTIFF IS EXPOSED TO.

9.) EXHAUSTION OF ADMINISTRATIVE REMEDIES
THIS DEFENSE SHOULD BE REJECTED AS WELL BECAUSE THE PLAINTIFF PROVIDED A SUFFICIENT REASON WHY HE WAS UNABLE TO EXHAUST ADEQUATELY ADMINISTRATIVE REMEDIES.

10.) FAILURE TO STATE CLAIM FOR PUNITIVE DAMAGES
THIS DEFENSE SHOULD BE REJECTED, AT THE VERY LEAST OTHERWISE THE PLAINTIFF SHOULD BE ALLOWED AN OPPORTUNITY TO AMEND HIS COMPLAINT.

11.) THE ELEVENTH AFFIRMATIVE DEFENSE SHOULD BE REJECTED, BECAUSE DEFENDANT INMAN DID ACT UNDER COLOR OF LAW AT ALL TIMES AND HIS DESIGNATED WORK ASSIGNMENT INCLUDES PRIMARILY THE OVERALL OPERATION IN A SAFE AND SECURE MANNER, AND THE CARE AND WELFARE OF ALL INMATES HOUSED AT MARTIN C.I.

THUS, HIS EVALUATION OF THE PLAINTIFF'S SITUATION WAS GROSSLY DISAPPROPRIATE AS A NEED FOR PROTECTION OF PLAINTIFF WAS IMMINENT.

LEGAL CONCLUSION

THE PLAINTIFF ASSERTS THAT IN LIGHT OF CONLEY v. GIBSON, 355 U.S. 41, 45-46 (1957), HIS PROSE COMPLAINT SHOULD BE HELD TO LESS STRICT STANDARDS THAN A MOTION DRAFTED BY A LAWYER. SEE ALSO BOAG v. MACDONGALL, 454 U.S. 364, 602 S.Ct. 700, 70 LEd2d 551 (1982) AND HOLLAND v. TAYLOR, 604 F.Supp.2d 692 (D. DEL. 2009).

FURTHERMORE, "A COMPLAINT SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF", CRUZ v. BERTO, 405 U.S. 319, 322 (1972).

THE PLAINTIFF'S COMPLAINT AGAINST THE DEFENDANT INMAN SHOULD CONTINUE TO PROCEED BEFORE THIS COURT, BECAUSE "A COMPLAINT SHOULD NOT BE DISMISSED UNLESS IT APPEARS TO A CERTAINTY THAT PLAINTIFF WOULD NOT BE ENTITLED TO RELIEF UNDER ANY SET OF FACTS WHICH COULD BE PROVED IN SUPPORT OF HIS CLAIM, AND NO MATTER HOW LIKELY IT MAY SEEM THAT PLAINTIFF WOULD BE UNABLE TO PROVE HIS CASE, HE IS ENTITLED, ON AVERING A CLAIM, TO AN OPPORTUNITY TO PROVE IT." SEE MLO - SONICS CORP. v. CROPP, 392 F.2d 856 (3d Cir 1965), AND POINTER v. AMERICAN OIL CO., 295 F.Supp. 573 (S.D. IND. 1968).

HENCE, THE PLAINTIFF SHOULD BE GIVEN A FAIR OPPORTUNITY TO PROVE HIS CLAIM, BY MEANS OF EITHER AMENDING THE PRESENT COMPLAINT OR BY PROCEEDING TO JURY TRIAL, ESPECIALLY SINCE DEFENDANT INMAN IN HIS ANSWER MADE AN EXPRESS DEMAND FOR TRIAL BY JURY.

WHEREFORE, THE FOREGOING CONSIDERED, THE PLAINTIFF REQUESTS THIS COURT TO REJECT DEFENDANT INMAN'S AFFIRMATIVE DEFENSES AND TO RECOMMEND THE CLAIM AGAINST DEFENDANT INMAN FOR TRIAL BY JURY.

RESPECTFULLY SUBMITTED,

Robert Del Sol
ROBERTO DEL SOL
DL# 082574
Charlotte Corr. Inst.
33123 Oilwell Road
Punta Gorda, Fla. 33955

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE FORE-
GOING HAS BEEN FURNISHED TO:

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
400 N. MIAMI AVENUE
MIAMI, FL. 33128-7716

ATTORNEY GENERAL'S OFFICE
A.A.G. KATHLEEN M. SAVAR
110 S.E. 6TH STREET, 10TH FLOOR
FT. LAUDERDALE, FL. 33301
(ATTORNEY FOR DEFENDANT INMAN)

BY PLACING THE SAME IN HANDS OF PRELIM OFFICIALS
FOR MAILING THIS 27 DAY OF 6, 2011.

PROVIDED TO
CHARLOTTE CI ON
JUN 27, 2011
RDS
FOR MAILING W/

Robert Delsol
ROBERTO DELSOL
PLAINTIFF, PRO' SE

EXHIBIT A.



FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
JEB BUSH

Secretary
JAMES V. CROSBY, JR.

An Equal Opportunity Employer

2601 Blair Stone Road • Tallahassee, FL 32399-2500

<http://www.dc.state.fl.us>

February 21, 2003

Roberto Del Sol DC# 082574
Okeechobee Correctional Institution
3420 NE 168th Street
Okeechobee, FL 34972

Inmate Del Sol:

Your letter postmarked December 30, 2002 has been received and reviewed.

Mr. Shannon, the Classification Supervisor at Okeechobee Correctional Institution, was contacted. You were transferred from Washington Correctional Institution due to your involvement in an incident surrounding the battery on an officer on December 15, 2001, I.G. Case number 01-14195, Criminal. You assisted in restraining an inmate when he attempted to hit the officer. You were transferred due to your fears of retaliation from the inmate and other inmates on the compound.

Sincerely,

A handwritten signature in cursive script that reads "Marta Villacorta".

Marta Villacorta
Regional Director of Institutions
Region IV

MV/jy

C: Office File

EXHIBIT B.

When I got assaulted by three inmates on
5-10-2009. Approximately 9:40 A.M. At Martin C.I.

When I was seen by the inspectors, CON-
-cerning, This assault. They never gave me
any opportunity to press charges against, these
three inmates, Or to identify, these three
inmates, Which I did not know these names
at that time, Until I came back from the
Outside Hospital and seen them, While I
was in lock-up - Then I found out there
names, Because I already knew there
faces. I have filed numerous Grievances
at Liberty C.I. concerning this - With no
responce.

So I respectfully ask you to help
me with this information, So I can
Continue my Legal matters in the
Courts.

Thank you Very much,
And God Bless you.

Roberto Del Sol

JCH
082574



Bureau of State Investigations

Case Summary

Case Number: 09-4-1461

JAN 20 2010
CLASSIFICATION

Facility: MARTIN C. I.
Class: INJURIES (INMATE)

Case Type: RM
Priority:
Special Category:

Assigned: 5/14/09 **Incident Date:** 5/10/09 **Incident Time:** 10:15:00 AM
Super Appv: 5/14/09 **Cent Office Appv:** 5/14/09
Distributed: 5/14/09 **Addendum Pend:** No **Addend. Date:**
Disp. Date: 5/14/09

Background Narrative:

ON 05-10-09 AT APPROXIMATELY 10:50AM CAPTAIN D.S. COLLINS RECEIVED AN OUTSIDE LINE FROM MRS.LISA RIVERA STATING THE SHE JUST RECEIVED A PHONE CALL ON HER CELLULAR PHONE (609)880-5863 FROM AN UNKNOWN INMATE STATING THAT INMATE DEL SOL WAS STABBED IN THE HEAD AND FOR HER TO CALL THE INSTITUTION.SHE ASLO STATED THAT WHEN SHE ASKED WHO WAS CALLING THAT OTHER INMATES WAS IN THE BACKGROUND SAYING THAT IT WAS INMATE GRACIA FROM F DORMITORY.STAFF IMMEDIATELY REPORTED TO G DORMITORY TO INVESTIGATE THE CALLER INFORMATION AND FOUND INMATE DEL SOL IN CELL G4201 WITH MULTIPLE STAB WOUNDS TO THE HEAD, BACK AND WAIST AREA.INMATE DEL SOL INJURIES WAS DEEMED LIFE THREATENING BY DR.LAMOUR AND WAS TRANSPORTED BY (911) HELICOPTER AT 11:50AM.THE HELICOPTER ARRIVED AT 12:05PM AT LAWNWOOD HOSPITAL. INMATE DEL SOL WAS ADMITTED AT APPROXIMATELY 1:30PM INTO ROOM 326-A.IT SHOULD BE NOTED THAT A CELLULAR PHONE WAS DETECTED BY THE ON DUTY PHYSICIANS AT LAWNWOOD HOSPITAL DURING X-RAYS OF INMATE DEL SOL IN HIS RECTUM.INMATE DEL SOL WAS GIVEN MEDICATION TO INDUCED A BOWEL MOVEMENT TO EXTRACT THE DEVICE AND WOULD ADVISED SECURITY STAFF OF THE OUTCOME. STAFF WAS ADVISED TO NOTIFIED THE INSTITUTION ONCE THE CELLULAR PHONE IS RECOVERED TO INITIATE A CHAIN OF CUSTODY ON THE EVIDENCE. COLONEL R. CONNER REPORTED ON THE SCENE AND INTERVIEWED INMATE DEL SOL WHERE HE WAS COHERENT TO QUESTION. CELL 4201 WAS SECURED AND WING 4 WAS PLACED ON LOCK DOWN TO BE SEARCHED. NO INMATES WAS IDENTIFIED AT THIS TIME.CONTROL MOVEMENT WAS INITIATED FOR ALL PROGRAMS AND MOVEMENT ON THE COMPOUND.A SEARCH OF THE WELLNESS YARD AND G DORMITORY WAS CONDUCTED BUT NO RESULTS OF ANY WEAPONS. EMERGENCY ACTION CENTER DUTY OFFICER M. WEGER WAS NOTIFIED AND WAS ADVISED OF THE INFORMATION. INSPECTOR JACKSON OF THE INSPECTOR GENERAL OFFICE WAS NOTIFIED AND GIVEN UPDATE ON INMATE DEL SOLE STATUS WHILE AT THE HOSPITAL. (MINS# 284224 JS)

Sustained: No **Unsustained:** No **Exonerated:** No

Disposition:

REFERRED TO MANAGEMENT AS A MEDICAL ISSUE. (KH,JS)

Inspector(s)

Complainant(s)

COLLINS, DARRYL S (CORRECTIONAL
OFFICER CAPTAIN)

Victim(s)

Subject(s)

DEL SOL, ROBERTO (Active
Inmate) 082574

Witness(es)

RIVERA, LISA (Civilian)
PASLEY, MARY E (CORRECTIONAL
OFFICER)

IRNO105

REPORT OF PROTECTIVE MANAGEMENT, DC6-234A
MARTIN C. I.

06/12/2009 13:05
PAGE 1

INMATE NAME: DEL SOL, ROBERTO DC#: 082574 PREV LOC/HOUS/JOB: 430/D3101L/S05 HOURS: D3101L P.O. BOX:

*SECTION I: PLACEMENT IN ADMINISTRATIVE CONFINEMENT (OR POSSIBLE PROTECTION NEED FROM SPECIAL MGR CASE)

DATE: 06/02/2009 TIME: 10:00
DISP: R3A = POSS PROT FOR CURR AC
STAFF: PUB04 - POSTEN, J.B.

ON 5/10/09 INMATE DELSOL WAS ASSAULTED AND REQUIRED TREATMENT AT AN OUTSIDE HOSPITAL. HE FEARS FOR HIS SAFETY AND HAS REQUESTED PROTECTION FROM HIS CURRENT A7 STATUS. HE IS PENDING A DR FOR (3-14) POSSESSION OF A CELLULAR DEVICE.

*SECTION III: INVESTIGATION OF INMATES NEED FOR PROTECTION

DATE: 06/10/2009 TIME: 15:23
DISP: Z11 = PROT. NEED INVEST CMP.

ON 5/10/09, AT APPROXIMATELY 10:15AM, STAFF FOUND INMATE DELSOL, IN CELL G4201. HE HAD BEEN STABBED IN THE HEAD, BACK, AND WAIST AREA. HIS INJURIES WERE SO SERIOUS THAT HE HAD TO BE TRANSPORTED TO AN OUTSIDE HOSPITAL, WHERE HE REMAINED FOR SEVERAL DAYS. INMATE DELSOL PROVIDED VERY LITTLE ASSISTANCE TO FDLE AND INSPECTORS S. THOMAS AND C. WELSH IN THEIR ATTEMPT TO INVESTIGATE THIS ASSAULT. SEVERAL SPECIAL REVIEWS HAVE ALREADY BEEN ENTERED ON THE DC61 AND INMATE DELSOL RECENTLY ALSO IDENTIFIED INMATE HENDERSON, MICHAEL #V08598 AS BEING A PERSON WHO HAD ASSAULTED HIM. HE REMAINS IN ADMINISTRATIVE CONFINEMENT AND HOUSED ALONE.

*SECTION IV: ICT RECOMMENDATION TO SCO OF INMATES NEED FOR PROTECTION

DATE: 06/11/2009 TIME: 15:35
DISP: R11 = RECORD OF BEING ASSAULTED

ON 6/11/09 THE ICT REVIEWED INMATE DELSOL'S REQUEST FOR PROTECTION. THE INMATE WAS PRESENT AND STATED THAT HE HAD BEEN ASSAULTED ON 5/10/09. THIS WAS VERIFIED BY INSPECTOR C. WELSH. THE TEAM RECOMMENDS THAT INMATE DELSOL BE TRANSPORTED TO RESOLVE HIS NEED FOR PROTECTION. THE INVESTIGATION IS STILL ONGOING BY FDLE AND THE INSPECTOR GENERAL'S OFFICE.

AMB04 - AUSTIN, M. B.

CRH03 - CONNER, R.H.

RP TIME
SN
2101 120
major

MARTIN CORRECTIONAL INSTITUTION
PROTECTIVE MANAGEMENT INVESTIGATION

Name: Del Sol, Roberto DC #: 082574
A/C Entry Date: 6-2-09 EOS Date: Life

****This portion to be completed by inmates Classification Specialist only****

Inmate Comment: "I was assaulted"

Nature of Inmate's Crime: Robbery w/Gun,
2^o Murder

Reactions from General Population to this crime: NA

Is inmate a former Law Enforcement Officer or Correctional Officer?: No

Has inmate given testimony against other inmates or staff in official proceeding?: No

Who does the inmate fear? See attached DC61
Henderson, Michael V08598

What does the inmate fear?: Physical assault

Why is the inmate afraid?: Prior assault

Was there a specific incident?: Yes

When did this incident occur?: Time and Date: 5-10-09

Where did the incident occur?: G4201

Were there witnesses, if so, who are they? Inspector C. Welsh

History of being assaulted: Yes: No: Review File: Yes: No:

Special Review: See attached list.

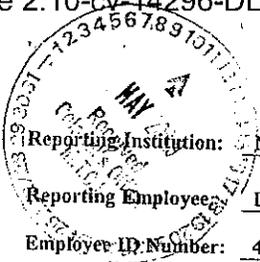
Comments: See prior PM investigation.

* Serious life threatening injuries

Date: 6-2-09 Specialist: J. B. Pated, CPSO

DEPARTMENT OF CORRECTIONS

INCIDENT REPORT



Reporting Institution: Martin Correctional Institution
 Reporting Employee: D.S. Collins, CO Captain
 Employee ID Number: 4143
 Person(s) Involved: Inmate Del Sol, Roberto DC#082574
Three unknown perpetrators
Lisa Rivera, Outside Caller

Incident Report Number: 2009-05-66
 PREA Number: _____
 Date of incident: May 10, 2009
 Time of incident: 10:15am
 Witness(es): M. Pasley, CO

DETAILS OF INCIDENT: On May 10, 2009, at approximately 10:50am, while assign as second shift supervisor, I D.S. Collins CO Captain received a call in "C" Dormitory from an outside caller who identified herself as Ms. Lisa Rivera. Officer Pasley were present in the Dormitory and recorded information given by Ms. Rivera. Ms. Rivera advised that she received a call on her cellular phone (609) 880-5863 from an unknown inmate stating that inmate Del Sol was stabbed in the head and for her to call the institution. She also stated when she asked who was calling, that she heard other inmates in the background say to the person on the phone tell them that inmate Garcia from "F" Dormitory called. Staff immediately reported to the "G" Dormitory to investigate this caller information and found inmate Del Sol in cell G4201 with multiple stab wounds to the head, back, waist area. Upon further inspection of his person while in the emergency room he had abrasions to his left leg and foot area. Inmate Del Sol injuries was deemed life threatening by Dr. Lamour and was transported by (911) helicopter at 11:50am. Officers M. Coccaro and C. Pierre was assign as transport officers for this transport where Officer Coccaro provided direct supervision inside the helicopter and Officer Pierre provided chase to Lawnwood Hospital. The helicopter arrived at 12:05pm to Lawnwood Hospital and Officer Pierre arrived 12:20pm as chase.

D.S. Collins, CO Captain May 10, 2009
 Reporting Employee Date
D. Collins

Shift Supervisor
 COMMENT: Noted: Duty Warden Colonel R. Conner reported on the scene and interviewed inmate Del Sol where he was coherent to questioning. Inmate Del Sol stated that three unknown Spanish inmates came into his cell and assaulted him around 10:15am during the inmate movement on the compound. He then changed his story and claimed that three black inmates assaulted him. Inmate Del Sol stated that the three inmates who assaulted him were from "F" Dormitory but could not name their names but could identify them by face. Cell 4201 was secured and wing four was placed on lock down to be searched. No inmates were indentified at this time. Control movement was initiated for all programs and movement on the compound. A thorough search of wellness yard and "C" Dormitory was conducted with no results of any weapon that was possible used during this assault.

D.S. Collins, CO Captain May 10, 2009
 Shift Supervisor Date
D. Collins

REVIEW: SEE WARDENS COMMENTS.

Mira - dc

[Signature]
R. Conner, CO Colonel 5-11-09
 Correctional Officer Chief Date

REVIEW: Reviewed As Required. All Required Documentation Initiated And All Required Notifications Made. Inmate Del-Sol Remains In Hospital. IG To Investigate

CCI Inspector [Signature]

[Signature]
Warden 11-May-2009
 Date

that a cellular phone was detected by the on duty physician at Lawnwood Hospital during X-rays of inmate Del Sol in his rectum.

The physician advised that inmate Del Sol was given some medication to induced a bowel movement to extract the device and would advise security staff of the outcome. Security staff was advised to contact the institution once the cellular phone is recovered to initiate a chain of custody on this evidence. It should be noted that Port St. Lucie Sheriff Office was contacted to assist with armed supervision until our chase vehicle DC#8914 arrived at 12:20pm.

SHIFT Supervisor

COMMENT (cont.): Emergency Action Center Duty Officer M. Weger was notified and advised of this information.

Inspector Jackson from IG Office on call inspector was informed and given an update on inmate Del Sol status while at the hospital.

Sergeant J. Soto and Officer D. McKeever was assign to monitor inmate phones to ascertain any information pertaining to this assault with no results. See attached pictures of inmate Del Sol injuries.

Mins report completed.

REVIEW (cont.):

REVIEW (cont.):

Supporting Documents Attached _____

05/11/2009
MINO101

FLORIDA DEPARTMENT OF CORRECTIONS
MINS INCIDENT REPORT

PAGE: 1
TIME 07:37

PREPARED BY: R4300YQ COLLINS, DARRYL S.
INCIDENT TYPE: 15F INJURIES
REPORT DATE: 05/10/2009
INCIDENT DATE: 05/10/2009
REPORT LOCATION: 430 MARTIN C.I.
IG NUMBER:
IG ASSIGNED:
INCIDENT LOCATION: 01 HOUSING AREA
INJURIES: Y STG/STI INVOLVEMENT: N
USE OF FORCE: N CONFIDENTIAL: N
ELECTRONIC RESTRAINING DEVICES: N

INCIDENT NUMBER: 0000284224
STATUS OF INCIDENT: ENTERED
REPORT TIME: 20:12
INCIDENT TIME: 10:15
REPORT REGION: 4
UOF NUMBER:
DATE IG ASSIGNED:
DAY CODE: 7 SHIFT CODE: 2
PHYSICAL EVIDENCE RECOVERED: Y
INCIDENT VIDEO TAPED: N
CHEMICAL AGENTS USED: N

NAME	TITLE	BIRTHDATE	R	S	ID NUMBER

COMPLAINANT (S)					
COLLINS, DARRYL S.	CORRECTIONAL OFFICER CA	11/29/1966	2	1	4143
SUBJECT (S)					
DEL SOL, ROBERTO	ACTIVE INMATE	10/05/1962	1	1	082574
WITNESSES (S)					
RIVERA, LISA	CILIVIAN		9	9	CILIVIAN
PASLEY, MARY E.	CORRECTIONAL OFFICER	01/14/1966	1	2	58302
SOTO, JOHN	CORRECTIONAL OFFICER	01/07/1969	9	1	42920

CONTRABAND RECOVERED	QUANTITY	UNIT OF MEASURE
-----	-----	-----

DESCRIPTION OF PHYSICAL EVIDENCE:

A CELLULAR DEVICE WAS FOUND IN INMATE DEL SOL RECTUM WHEN ON DUTY STAFF AT LAWNWOOD DID AN X-RAY.

MEDICAL DEPT. DESCRIPTION OF INJURIES:

INMATE DEL SOL WAS STABBED MULTIPLE TIMES IN THE HEAD, BACK AND WAIST AREA.

DESCRIPTION OF INCIDENT:

ON 05-10-09 AT APPROXIMATELY 10:50AM CAPTAIN D.S. COLLINS RECEIVED AN OUTSIDE LINE FROM MRS. LISA RIVERA STATING THE SHE JUST RECEIVED A PHONE CALL ON HER CELLULAR PHONE (609)880-5863 FROM AN UNKNOWN INMATE STATING THAT INMATE DEL SOL WAS STABBED IN THE HEAD AND FOR HER TO CALL THE INSTITUTION. SHE ALSO STATED THAT WHEN SHE ASKED WHO WAS CALLING THAT OTHER INMATES WAS IN THE BACKGROUND SAYING THAT IT WAS INMATE GRACIA FROM F DORMITORY. STAFF IMMEDIATELY REPORTED TO G DORMITORY TO INVESTIGATE THE CALLER INFORMATION AND FOUND INMATE DEL SOL IN CELL G4201 WITH MULTIPLE STAB WOUNDS TO THE HEAD, BACK AND WAIST AREA. INMATE DEL SOL INJURIES WAS DEEMED LIFE THREATENING BY DR. LAMOUR

05/11/2009

MINO101

FLORIDA DEPARTMENT OF CORRECTIONS
MINS INCIDENT REPORT

PAGE: 2
TIME 07:37

AND WAS TRANSPORTED BY (911) HELICOPTER AT 11:50AM. THE HELICOPTER ARRIVED AT 12:05PM AT LAWNWOOD HOSPITAL. INMATE DEL SOL WAS ADMITTED AT APPROXIMATELY 1:30PM INTO ROOM 326-A. IT SHOULD BE NOTED THAT A CELLULAR PHONE WAS DETECTED BY THE ON DUTY PHYSICIANS AT LAWNWOOD HOSPITAL DURING X-RAYS OF INMATE DEL SOL IN HIS RECTUM. INMATE DEL SOL WAS GIVEN MEDICATION TO INDUCE A BOWEL MOVEMENT TO EXTRACT THE DEVICE AND WOULD ADVISED SECURITY STAFF OF THE OUTCOME. STAFF WAS ADVISED TO NOTIFY THE INSTITUTION ONCE THE CELLULAR PHONE IS RECOVERED TO INITIATE A CHAIN OF CUSTODY ON THE EVIDENCE.

ACTION TAKEN:

COLONEL R. CONNER REPORTED ON THE SCENE AND INTERVIEWED INMATE DEL SOL WHERE HE WAS COHERENT TO QUESTION. CELL 4201 WAS SECURED AND WING 4 WAS PLACED ON LOCK DOWN TO BE SEARCHED. NO INMATES WAS IDENTIFIED AT THIS TIME. CONTROL MOVEMENT WAS INITIATED FOR ALL PROGRAMS AND MOVEMENT ON THE COMPOUND. A SEARCH OF THE WELLNESS YARD AND G DORMITORY WAS CONDUCTED BUT NO RESULTS OF ANY WEAPONS. EMERGENCY ACTION CENTER DUTY OFFICER M. WEGER WAS NOTIFIED AND WAS ADVISED OF THE INFORMATION. INSPECTOR JACKSON OF THE INSPECTOR GENERAL OFFICE WAS NOTIFIED AND GIVEN UPDATE ON INMATE DEL SOLE STATUS WHILE AT THE HOSPITAL.

EXHIBIT C.

**United States District Court
Southern District of Florida**

Case Number: 10CV14296 DLG.

SUPPLEMENTAL ATTACHMENT(S)

Please refer to supplemental paper "court file" in the division where the Judge is chambered. These attachments must not be placed in the "chron file".

NOT SCANNED

- Due to Poor Quality
- Bound Extradition Papers
- Photographs
- Surety Bond (Original or Letter of Understanding)
- CD, DVD, VHS Tape, Cassette Tape
- Other: _____

SCANNED

- But Poor Quality
- Habeas Cases (State Court Record/Transcript)

Date: 6/30/2011