

1 **JEFFREY E. GORDER, PUBLIC DEFENDER [SBN 121228]**  
2 **COUNTY OF SHASTA**

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SHASTA**

11 ROBERT A. GIBBS

12 Petitioner,

13 vs.

14 SHASTA COUNTY SHERIFF,

15 Respondent

Case No: 17HB2399, 17HB4757

PETITIONER'S STATEMENT OF FACTS AND  
ISSUES

Date: September 26, 2017

Time: 9:00

Dept: TBA

16 **FACTS**

17 ROBERT A. GIBBS ("PETITIONER") was arrested on September 12, 2015. He has been in continuous  
18 custody at the Shasta County jail ("JAIL") *pending* various criminal charges in Superior Court case numbers  
19 14F4854, 14F6355, 15F5464, 15F5736<sup>1</sup>. Throughout the pendency of these cases, PETITIONER has had great  
20 difficulty working with lawyers and jail staff and vice a versa; to wit, six attorneys have been appointed, seven  
21 psychological evaluations have been completed, more than one hundred and fifty grievances or requests for  
22 information have been filed by the PETITIONER along with numerous Writs of Habeas Corpus, and  
23 approximately twenty one disciplinary sanctions necessitating housing in administrative segregation (hereafter  
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25 <sup>1</sup> PETITIONER asks the court to take judicial notice of these files and specifically of the psychological  
26 evaluations that were conducted by Drs. Saunders, Wilson, Carlson, Caruzo and Pai.

1 "ad-seg"). The psychological evaluations all agree that the PETITIONER suffers from mental illness with  
2 diagnosis's ranging between bi-polar disorder, post-traumatic stress disorder, personality disorders and mood  
3 disorders. Reading the narratives for the doctors' reports, the doctors are in agreement that PETITIONER has a  
4 history of difficulties with basic human interactions. These difficulties include instances where the PETITIONER  
5 has requested assistance yet cannot cooperate in a meaningful manner with the very assistance that he requests.  
6 For instance, in 14F4854, the PETITIONER declared himself incompetent pursuant to Penal Code § 1368 when he  
7 was out of custody and yet struggled to make the doctor's appointment. "It took five separate telephone  
8 conversations with him, about an hour-and-a-half altogether, and two telephone conversations with his girlfriend  
9 Ms. Dubuque to handle what should be the simple transaction of making an appointment with him." (See page 1  
10 of Dr. Wilson's letter to Judge Flynn dated May 13, 2015, in case number 14F4854.)

11 When the PETITIONER was initially booked into the jail, he told custodial staff that he did not have any  
12 enemies and did not request protective custody. Due to statements that he made during booking, he was initially  
13 housed in ad-seg. Thereafter, he has been housed in ad-seg due to either administrative sanctions or at his request  
14 due to his fear of violence in other housing pods. While in ad-seg, he is in his cell for approximately twenty three  
15 hours a day. There is no set schedule for how long he is out of his cell; for instance, sometimes he is on an every-  
16 other-day schedule for half an hour, sometimes he is out for approximately an hour and rarely it can as long as an  
17 hour and one half. Likewise, there is no set schedule for when PETITIONER is out of his cell; for instance, time  
18 out-of-cell may be in the morning, afternoon, evening or after mid-night. It is not uncommon for PETITIONER  
19 to have time-out-of cell in the morning one day, and in the evening the next day. Due to this sporadic timing of  
20 when he is out of his cell,, there are approximately 178 periods of time where PETITIONER has been in his cell  
21 for more than 24 consecutive hours.<sup>2</sup> The randomness of when PETITIONER is let out of his cell is especially  
22 problematic when the out-of-cell time is between 11:30 pm and 3:30 am and then next day he is not let out again

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24 <sup>2</sup> This number reflects a review of various logs provided by the JAIL. However, it may not be an  
25 accurate number because I did not have the inmate Rec Yard Movement logs at the time that this brief is  
26 prepared. Therefore, while I expect 178 periods of time to be too high, recreation time only occurs  
twice a week therefore the reality that the PETITIONER is in his cell frequently more than 24 hours at a  
time remains accurate.

1 until mid-day or later. In those situations, it is not uncommon for PETITIONER to remain in his cell for more  
2 than 30 plus hours at a time. On 5 of those instances when the PETITIONER was let out of his cell in the middle  
3 of the night and then was in his cell for more than 24 hours, his behavior was problematic with a resulting flurry  
4 of incident reports and/or requests for writs of habeas corpus forms.

5 The conditions within the cell are also problematic. PETITIONER has complained about increased  
6 anxiety due to the constant noise. The ad-seg pod where PETITIONER is placed often also houses other inmates  
7 who are very mentally ill, frequently yelling/ shouting and otherwise getting into trouble. Likewise, the custodial  
8 staff can be disrespectful to the PETITIONER, including encouraging him to commit suicide. Long term  
9 placement in this unit is impacting the PETITIONER'S mental health.

10 During PETITIONER'S current incarceration, he has three times refused to eat and advised staff that he  
11 is conducting a hunger strike, and has made at least 18 statements about harming himself by committing suicide.  
12 As recently as July 2017, PETITIONER made statements on two separate occasions indicating that he was going  
13 to commit suicide. PETITIONER does not want medications for his mental illness and stopped asking for mental  
14 health counseling as he feels such a request is futile.

15 **THE CONDITIONS UNDER WHICH THE PETITIONER IS BEING HELD ARE A FORM OF**  
16 **PUNISHMENT WHICH IS PROHIBITED BY THE FOURTEENTH AMENDMENT.**

17 *Kingsley v Hendrickson* (2015) 135 S. Ct. 2466 is the most recent decision concerning conditions under  
18 which pretrial detainees may be maintained. The Court acknowledged that "pretrial detainees (unlike convicted  
19 prisoners) cannot be punished at all" and rejected the argument that cases brought by convicted prisoners under  
20 the Eighth Amendment should guide the analysis of pretrial detainees claims under the Fourteenth Amendment.  
21 The Court held that in an excessive force claim against a prison official, the "pretrial detainee must show only that  
22 the force purposefully or knowingly used against him [by a prison official] was objectively unreasonable." *Id* at  
23 p. 2473. Consequently, PETITIONER does not have to show a subjective malfeasance in order to be successful  
24 and the behavior of the officials should be considered objectively.

25 The JAIL is objectively punishing the PETITIONER by its indifference to the PETITIONER'S serious  
26 mental illness. Bi-polar Disorder, Post-Traumatic Stress Disorder, Personality Disorder with Schizoid Type, and

1 Mood Disorder are all diagnosis that have been attributed to the PETITIONER. Regardless of name of the illness,  
2 it is clear that the mental disorders negatively impact the PETITIONER'S ability to cooperate with the JAIL'S  
3 rules ore mores, his ability to work with his attorney(s), and with the superior court. Indeed, the PETITIONER'S  
4 mental health issues are exacerbated by the isolation caused by being in ad-seg, by the randomness of when he is  
5 let out of his cell, by the length of time between out-of-cell time, and by the noise on the pod and by the behavior  
6 of the other inmates.

7 When the PETITIONER suffers from acute anxiety or frustration, he "vents" and makes inappropriate or  
8 often threatening statements. As a consequence, the PETITIONER then receives disciplinary sanctions from the  
9 jail and/or his relationship with his attorney fractures. Due to the disciplinary sanctions including increased  
10 isolation within his cell, the PETITIONER'S anxiety heightens which increases the inappropriate behavior.

11 The JAIL is aware of the PETITIONER'S mental illness both because of requests that he has made and  
12 because of the problem that he creates in the jail through his negative behavior, his extensive use of the grievance  
13 process and the endless number of Writs that he prepares. The PETITIONER wants a therapist with whom he can  
14 develop rapport and who can assist him in understanding proper behavior in the jail, with his attorney(s) and in  
15 the courtroom.

16  
17 **THE PETITIONER IS A DISABLED PERSON DUE TO HIS SERIOUS MENTAL ILLNESS**  
18 **WHO IS BEING UNLAWFULLY DISCRIMINATED AGAINST IN VIOLATION OF SECTION 504 OF**  
19 **THE REHABILITATION ACT OF 1973, 29 USC § 794(a) and Title II of the AMERICANS WITH**  
20 **DISABILITIES ACT ("ADA"), 42 U.S.C. § 12131, et seq.**

21 The ADA defines disability as follows:

- 22 1) a physical or mental impairment that substantially limits one or more of the major life activities or  
23 such individual;
- 24 2) a record of such impairment; or
- 25 3) being regarded as having such impairment.

26 The courts are instructed to interpret the phrase "substantially limits" generously. See 42 U.S.C. § 12102(4).

1 The PETITIONER has a mental impairment in that he has been diagnosed with the above mentioned  
2 disorders. Such disorder substantially limits his participation in a major life activity because he cannot  
3 communicate with people in an appropriate fashion, cannot follow the rules the way other people can, and is so  
4 emotionally driven that he cannot control his own moods. The PETITIONER'S disorders are well documented in  
5 the psychological evaluations conducted in the referenced criminal cases.

6 Title II of the ADA states that:

7 "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from  
8 participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected  
9 to discrimination by any such entity." More particularly, the ADA requires public entities to "administer services,  
10 programs, and activities in the most integrated setting appropriate to the needs of the qualified individuals with  
11 disabilities" 28 C.F.R. § 35.230(d). Thus, unjustified isolation may be properly regarded as discrimination on the  
12 basis of disability. *Olmstead v. L.C.* (1999) 527 U.S. 581, 592.

13 The placement of the PETITIONER in ad-seg is a form of discrimination which is based upon his mental  
14 illnesses. As mentioned above, the PETITIONER has a number of long term mental disorders which cause him  
15 to be hyper-emotional. When he is triggered emotionally, he makes inappropriate statements. Consequently, he  
16 is placed in the ad-seg pod with disciplinary sanctions. Long term placement in this unit, with the randomness of  
17 when his time out of cell is, often causes the PETITIONER to spend more than 24 hours at a stretch inside his  
18 cell. These lengthy periods of isolation negatively impact his mental illnesses which triggers the inappropriate  
19 statements, the endless number of grievances and the filing of Writs.

20 Instead of isolating and sanctioning with even more isolation, the JAIL must provide services (such as  
21 therapy) which would allow the PETITIONER to participate in and benefit from activities, programs and services  
22 available to the general population.

23 **THE PETITIONER IS NOT CONSISTENTLY RECEIVING THE EXERCISE TIME PURSUANT TO**  
24 **SHASTA COUNTY JAIL POLICY**

25 Pursuant to regulation and policy, the PETITIONER is supposed to receive at least three hours over a  
26 seven day period of scheduled recreation yard use per week. When the PETITIONER is in a safety cell, he is not

1 offered recreation time; thus there are months in which he is not offered enough recreational time: to wit; March  
2 2017 and August 2017. Although recreational time is offered, there are times when such opportunities are  
3 meaningless because the PETITIONER has been awake in the middle of the night and the proffered recreational  
4 opportunity is early in the morning.

5 **CORRECTIONAL STAFF TAUNT THE PETITIONER TO COMMIT SUICIDE WHICH IS IN**  
6 **VIOLATION OF SHASTA COUNTY POLICY REQUIRING STAFF NOT TO ADDRESS INMATES IN**  
7 **A DEROGATORY MANNER AND WHICH NEGATIVELY EXCERBATES PETITIONER'S MENTAL**  
8 **ILLNESS**

9 The PETITIONER alleges that the custodial staff regularly encourage him to commit suicide. Custodial  
10 Officers Amaya and Espinoza are the officers most frequently identified with this type of behavior. When such  
11 taunts occur, PETITIONER becomes suicidal and gets moved to a safety cell. Placement in a safety cell typically  
12 requires cavity searches and a loss of exercise opportunities. In turn, the PETITIONER'S mental illness is  
13 impacted which causes an increase in grievances, writs and an inability to work with attorney(s).

14 **CONCLUSION**

15 The PETITIONER has been in the jail for two years. The PETITIONER knows that he doesn't  
16 accurately read social cues. The PETITIONER knows that he is frustrating to other people, both jail staff and  
17 inmates, and which is both frustrating and frightening to him. After these two years, it is clear that the manner  
18 with which the jail is treating and sanctioning him is not improving compliance with the jail nor with the "court  
19 system."

20 It is time for change. The PETITIONER requests talk therapy; someone with whom he can speak in order  
21 to vent his frustrations in a safe and appropriate manner and who can help him interpret the social cues with other  
22 people that he so often miss-perceives. In addition, a consistent schedule for out of cell time may reduce the  
23 anxiety of being isolated.

24 **PRAYER**

- 25 1) Consistent schedule for when the PETITIONER is out of his cell. A reliable schedule will reduce the  
26 PETITIONER'S anxiety which may decrease his hyper emotional responses and improve his ability  
to comply with both the JAIL and his attorney(s).

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- 2) The schedule is to insure that the PETITIONER is never in his cell for more than a 24 hour stretch at any time.
- 3) Provide a therapist with whom he can develop a rapport and who can help him process the challenges which confront him without "venting" inappropriately.

Date:

Respectfully submitted,

JEFFREY GORDER  
SHASTA COUNTY PUBLIC DEFENDER

Margaret Huscher  
Deputy Public Defender

DECLARATION OF MARGARET HUSCHER

I, Margaret Huscher, declare under penalty of perjury and pursuant to the laws of the State of California, the following:

- 1) I am an attorney licensed to practice in California and employed by the Shasta County Public Defender's Office;
- 2) I am assigned to represent the PETITIONER in his Writ proceeding;
- 3) I have meet with PETITIONER multiple times. At every meeting, the PETITIONER is always difficult to work with because he is always agitated and argumentative. The anger is right below the surface of his emotions. He does not listen to my advice and frequently tells me either directly or implicitly that he does not trust me or my advice. In addition, he often behaves in ways that undercut what I am trying to do for him.
- 4) I have been a public defender for thirty years. The PETITIONER is an outlier in that he is one of the most difficult people with whom I have ever worked because he is so easily agitated, so emotional and cannot stay focused on the issues. I have spoken with a number of PETITIONER'S criminal attorneys and their investigators. Their experience with the PETITIONER is the same as mine; depending on the attorney, some of them have had a more difficult time than I have.
- 5) In my years of experience, I have found that when my clients are receiving appropriate mental health treatment, they have an easier time working with me by being able to stay focused on the subject of the conversations and to behave appropriately. The PETITIONER has a very difficult time staying focused on the conversation and cannot plan a legal strategy with me. Based upon my experience, I believe that the PETITIONER would be able to cooperate with me and his criminal attorneys better if he was receiving appropriate mental health care.
- 6) Attached to this declaration and incorporated herein is Exhibit A which is the witness statements for the September 28, 2017 incident in the jail where the PETITIONER'S nose was broken.
- 7) Attached to this declaration and incorporated herein is Exhibit B which is the Prison Health Guide.



1 8) Attached to this declaration and incorporated herein is Exhibit C which are the disciplinary hearing  
2 reports documenting the lag time between behavior and imposition of sanction. Those reports are  
3 summarized as follows. The first date is the hearing date. The number is incident report # which is  
4 followed by a brief description of the behavior. The final dates are when the sanction is to be served.

5 a. Disciplinary records

- 6 i. 9/25/17 # 1622 threats, etc 30 days 9/27/17 – 10/27/17
- 7 ii. 9/29/17 # 1645 disrespect and threats 30 day 10/28/17-11/27/17
- 8 iii. 9/29/17 # 1647 disrespect 30 days 11/28/17 – 12/18/17
- 9 iv. 9/29/17 # 1648 cheeking meds (but hearing officer says that def threatened him) 25 days  
10 12/19/17-1/13/18
- 11 v. 10/1/17 #1666 disrespect and pod disturbance 30 days 1/14/18-2/13/18
- 12 vi. 10/31/17 # 1829 disrespect and threats 30 days 2/14/18 – 3/16/18
- 13 vii. 11/2/18 # 1833 not following orders/threats 30 days 3/17/18-4/16/18
- 14 viii. 11/17/18 #1916 disrespect towards a deputy 10 days 5/18/18-5/28/18
- 15 ix. 11/17/18 # 1617 failure to follow orders 12 days 5/29/18-6/10/18
- 16 x. 11/19/17 # 1925 disrespect and being loud 30 days 7/28/18-8/27/18
- 17 Occurred during two disciplinary hearings
- 18 xi. 11/25/17 1957 attempting to manipulate and threats 15 days 6/11/18-6/26/18
- 19 xii. 11/28/17 # 1964 refusing to follow orders and threats – def didn't participate 30 days  
20 6/27/18-7/27/18
- 21 Def making random sounds and yelling; mop handle, broken property tub, destroyed  
22 books and trash
- 23 xiii. 11/30/17 #1956 refusing direct order and not participating in the hearing 30 days  
24 8/29/18-9/28/18
- 25 Incident where def was taken to medical
- 26

- 1 xiv. 12/15/17 -# 2064 failing to follow orders and refusing to participate – 15 days from  
 2 10/19/18-11/3/17  
 3 Def made incoherent statement and was agitated.
- 4 xv. 12/24/17 -# 2112 disrespect - 30 days from 11/4/18-12/4/18
- 5 xvi. 1/10/18 – # 43 disrespect – def wouldn't comment – 15 days 12/5/18-12/20/18  
 6 Frustration with not taking grievance form and suicidal statements
- 7 xvii. 2/2/18 – # 198 not following rules 15 days 1/6/19-1/21/19  
 8 Threw razor
- 9 xviii. 2/4/18- # 214 possession of gassing material 25 days 1/22/19-2/16/19  
 10 Bag of fecal matter in the cell which def said was in case he was gassed
- 11 xix. 2/11/18 – # 257 failure to follow direct order 30 days 2/17/19 – 3/19/19  
 12 Wouldn't get out of the shower and CO turned off the water
- 13 xx. 2/12/18 – # 268 failure to follow direct order- 21 days 3/20/19- 4/10/19  
 14 Wouldn't lockdown and climbed on table.

15 9) Attached to this record and incorporated herein is Exhibit D are mental health grievances filed by the  
 16 PETITIONER.

17 10) Attached to this declaration and incorporated herein is Exhibit E which is the article from the Journal of  
 18 the American Academy of Psychiatry and Law entitled: "solitary Confinement and Mental Illness in U.S.  
 19 Prisons: A Challenge for Medical Ethics.

20 11) Attached to this declaration and incorporated herein is Exhibit F which are the incident reports from  
 21 September 2017 through February 12, 2018

23 Date: 3/26/18

24 Margaret Huscher  
 Margaret Huscher