MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

December 4, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Andino, Luis v. Sup'dt John Rodriguez, Chief Love, et al. (re disciplinary decisions at the ECCF)*
Document Received:	Order to Show Cause
Name of Claimant:	Luis Andino #60944, #05-B-1233 Erie County Correctional Facility 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Claimant is *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

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STATE OF NEW YORK
County of Erie

Affidavit and support

IN The MATTER OF; Order To Show Cause Of
Article 78 CPLR

LUIS AUDINO, Petitioner

V.S.

Superintendant John Rodriguez respondant
Chief Love Respondant
Capt. Respondant
Sgt. Spellman respondant
Sgt. Whalen respondant
Sgt Green respondant
Sgt John Doe respondant
officer Utz respondant
officer Iodo respondant
officer John Doe respondant
officer King respondant
officer John Doe respondant
officer K respondant

Statement of facts

petitioner andino seeks to invoke jurisdiction of this court ordering the responding to reverse all disciplinary decisions made in a unlawful manner. Thus further ordering to immediately release petitioner from unlawful imprisonment of the she solitary confinement. And reimburse petitioner All penalty fees encumber as a result of disciplinary hearings determination which was conducted in a gross and wide manner. Petitioner luis andino is a totally blind person and which such terms defines under title 2 of the American disability act as a qualified individual with a known disability. Petitioner further seeks to invoke the jurisdiction pursuant to title 2 of the American with disabilities act 1990 subsection 504 of the rehabilitation act of 1973 42 USC 12131. 42 USC 12132. 29 USC 794, and under the United States 1st, 8th, 14 Constitutional amendments.

Petitioner asserts, that the Eric county correctional facility is a public entity and govern under title 2 of the ADA. Petitioner further assert that ECCF receives federal funding and as such must comply with 504 of the rehabilitation act.

Petitioner alledges among other things that the respondents John Rodriguez et.al are agents of a government body and must comply with such said laws and statues while performing their duty under the color of law.

1) on or about Aug 10th 2012 petitioner while housed at E.C.C.F. [redacted] submitted a reasonable accomodation request to be provided with the facilities policies, procedures (inmate rule book) in audio format so petitioner could be properly informed of the facility rules and regulations.

see wolff vs McDonnell 418 US 539, 94 S.Ct. 2963, 41 L.ed.

please see exhibit A

2) on or about Aug 28th 2012 petitioner filed a notarized grievance against John Rodriguez ect for violation of petitioners rights under the ADA and failure to provide the petitioner with reasonable accomodations.

Please see exhibit B

3) on or about Sept 2nd 2012 Petitioner filed grievance against medical and the superintendent deliberate indifference against petitioner disability and medical condition which respondants have customed policy and practice of stone walling petitioners grievances and accomodation request

4) on or about Sept 7, 2012 Petitioner was ordered to report to operations to speak with respondent Rodriguez. During such meeting the respondent Rodriguez threatened the petitioner using methods of intimidation tactics stating "your supposed to be my nephew and this is my new job your making me look very bad sign off the grievance I will see what I can do for you

if you persue the grievance things are going to get very bad for you." End of quote. Respondent Rodriguez then called petitioner Step mother attempting to down play the situation.

5) Petitioner refused to sign a waiver on grievance number and as a result an act of retaliatory plot was implimented on Sept 14, 2012 at 9:05 am respondent King cursing the law library targeted petitioner with abussive behavior and abusive langue which such comportment was wholly unethical arbitrary and reck less to the comportment of any public authority within uniform. Respondent King undermined petitioners right to humane treatment the fabricated fraudulent descipliner allegations by way of issuing falsified governmental instrument

Please see exibit C

6) on Sept. 14, 2012 petitioner submitted a 3 page letter for accomodating request for petitioner to prepare for his defense, such request was founded to respondents Lou Rodriguez, Brenko which the respondents discriminated against petitioner and ignored all of petitioners requests for accomodations to prepare petitioners defense.

please see exibit D

7) on or about Sept 17, 2012 respondents whalen, utz, and officer penzelsk commenced petitioner descepli nary proceedings against petitioner and when respondent whalen completed the reading of the misbehavior report

petitioner stated officer utz and officer penzelski have been grieved by petitioner on numerous occasions and they are defendants in petitioner civil right action. petitioner then stated in order for a impartial hearing both defendants utz and penzelski must step down from the disciplinary panel. As a result the hearing was adjourned

civil rights CV 1:12-CV-00552-RJA-HBS

8) Subsequently on Sept 19 2012 petitioner who was housed on medical unit and is not allowed to go to other units and obtain other statements from other inmates on petitioner behalf and petitioner being totally blind and deprived of conducting any legal research to prepare petitioners legal defense and having been denied [redacted] assistance for disciplinary report which also infringe petitioner due process. Subsequent on Sept 19, 2012 [redacted] petitioner was taken to disciplinary hearing which was being conducted by respondent sgt spellman, respondent logo, and respondent John doe. petitioner immediately objected to respondent Spellman conducting disciplinary proceeding with respects to governmental instrument issued by respondent King on sept 14th 2012 due to the fact that respondent sgt spellman was the sgt in the law library on Sept 14, 2012 thus conspire with respondent King against petitioner. please see law library officers log book which shows respondent spellman signing but [redacted] prison officials refuse to provide [redacted] petitioner with a copy law library officers log book dated Sept 14

2012 signed by respondent sgt spellman several days before petetioner was issued erroneous misbehavior report

Please see exhibit E

9.) In addition respondent spellman denied petitioner fair and impartial hearing, denied petetioner to enter documentary evidence on his behalf and violated petitioner right to due process by conducting disciplinary proceeding in a malicious manner and proveded misrepresented info while decision making and opposed solitary confinement upon petitioner's petetioner request to have disciplinary proceedings recorded in audio but was denied for the soul purpose of respondents concealing such misconducts

10.) petetioner was sentenced to 10 days keeplock and deprived of the right to utilize any meaning of access assistance for disciplinary appeal purposes. Thus violating petitioners right to appeal.

Eve

11.) on or about Sept 28, 2012 petetioner was released from Solitary confinement have ever during petetioner keeplock confinement petetioner was strapped of human treatment and forced to endure a typical and significant hardship because petetioner who is totally blind and was never provided with a talking computer or laptop with Jaws

software or a typewriter with respects to petitioner right to access the court and correspond with attorney and family members petitioner was never provided with sided assistance or a scanner reader for the soul purpose of having legal mail or regular mail read to petitioner. petitioner was deprived of adequate exercise, showers, medical treatment because petitioner couldn't call out sick call slips. there for petitioner was left without asthma inhaler pain medication ice bandage wraps and to further the deplorable treatment petitioner was subjected too petitioner was even denied assistance with cell cleanup and the right to keep family ties. Although inmates who are not disabled are afforded the right to access the courts attorney and family at cell petitioner was deprived of such equal opportunities

Please see exhibit F.

12) Although petitioner was forced to seek reading and writing assistance of inmates who are ingroup and sgts per order and the superintendents with handicaped petitioners rights to access the courts and correspond with family by using threats and intimidation tactics against inmate that would assist petitioner with reading and writing task. one inmate James Wyzlec-14258 was placed in Admin Seg because he would not conspire with sgt. mcmahon on Aug 28th 2012, at approx 4:55 pm. every inmate that assisted petitioner was targeted with harrasment threat and disciplinary and loss of good time. on Sept 19 2012 inmate anthony harris whole attempting

to assist petitioner with desciplinary appeal research was approached by respondant utz who stated andrews per orders of chief love I am here to pick up all the law library books. The chief believes that its in the facility best interest for you to no longer possess law books end of quote The books petitioner was assigned to borrow by the librarian andrews names was as followed rights of prisoner 1st 2nd 3rd and 4th adaptation black law dictionary and the gilberts 2011 issues respondant utz also issued inmate anthony Harris a misbehavior report allegedly inmate Harris was not authorized to assist petitioner However petitioner step brother Juan Morales who locks on Echo block was denied the right to assist petitioner with accessing the court and keeping family ties. other inmates that petitioner was comfortable working with was targeted with retaliation because they aided petitioner in filing grievances and civil rights actions.

13) On or About Oct 9 2012 petitioner forwarded a letter to respondant chief love to have someone assist petitioner in the law library due to law library being inadequate for blind inmates such as petitioner Petitioner informed respondant chief love that petitioner would be going for parole trial however petitioners request for assistance remained to no avail.

14) In lieu, of petitioner having made numerous requests for adequate equipment that would allow petitioner to persue legal matters in the nature of confidentiality because another inmate who possesses such personal and confidential information pertaining to petitioner could result in petitioner being assaulted by another inmate will first assist petitioner in preparing legal work and while assisting petitioner with such preparation on legal matters stumbles upon information with in petitioners legal work which this other inmate finds to be offensive or disliked which in petitioners case on Oct 20, 2012 after having been assisted by inmate Samuel brown for several weeks which inmate brown learned much information of petitioner legal matters and this disgruntled petitioners pending criminal charges and parole violations on or about Oct 20, 2012 inmate Samuel brown and petitioner got into a physical confrontation which was provoked by the lack of accomodations petitioner has been requesting.

15) Due to the fact petitioner was forced to rely on samuel brown for reading and writing assistance for pending legal matters which such breach of this privacy right is especially problematic in the prison setting where a inmate's possession of confidential information about another inmate can be used in threatening and dangerous ways petitioner asserts his right to privacy was violated by respondants practice of being deliberately indifferent to petitioners disability thus the depriving petitioner reasonable

while accomodations please see Harris vs Thigpen 941 F.2d 1495, 1513 (11th cir. 1991); Nolley v. County of Erie 776 F. Supp. 715, 729 (W.D. N.Y. 1991); Doe v. Coughlin, 697 F. Supp. 1234, 1238 (N.D. N.Y. 1988); Wood v. White, 689 F. Supp. 874, 875-77 (W.D. Wis. 1988), aff'd with op., 872 F.2d 17 (7th cir. 1990). Respondents have violated petitioners due process to privacy in their failure to provide qualified assistance which is bounded to confidentiality and failing to provide petitioner with access to a taken computer, scanner reader, Type writer for cell use, and assistive devices to legal matters, disciplinary, grievance parole proceedings.

16) After petitioner was assaulted by inmate brown petitioner was then assaulted by Sgt. Green, Sgt. John Do, Officer ball, officer nutsko, officer [redacted] groves, and several other prison officials who are unknown and who assaulted petitioner. while petitioner was handcuffed on his cell petitioner was then maced and force showed in toilet which prison officials mocked petitioner stating I bet you cant see now. Petitioner is asthmatic and as a result of being pepper sprayed petitioner went into a Asthmatic attack and prison officials h[redacted] had taking petitioner property and asthmatic inhaler nearly leaving petitioner for dead petitioner began kicking on cell door in prayer of medical assistance. however petitioner was violently slammed down to the floor and respondent green stated which foot did you kick

the door with andersa? petitioner has plates and screws in his left foot which prison officerals stomped on and causing serious and intentional injury to petitioner. subsequently petitioner again was [redacted] handcuffed and dragged to admin-seg where petitioner stopped breathing due to asthma attack where medical was rushed over and petitioner was treated with asthma treatment then taken to E.C.M.C. medical

17) where as on Oct 20, 2012 upon petitioner returning from Erie County Medical Center petitioner was immediately placed back in admin-seg / Shu pending disciplinary proceeding [redacted]

Please see exhibit G

18) Petitioner who is totally blind and housed in admin-seg / Shu h-104 Oct 20, 2012 which said date was on a Sat. petitioner received misbehavior report which was served by officer Julia who denied petitioner of assistance and improperly served petitioner [redacted] The misbehavior report by sliding the misbehavior report under petitioners cell door and failure to give petitioner proper notice of charges by refusing to read said misbehavior report

please see Exhibit H

19) on oct 24, 2012 petitioner received another mis-behavior report which was served by officer Judith who also denied petitioner assistance for tier hear-ing. petitioner further asserts that prison officials violated petitioner procedural due process of 14th Amendment which petitioner was immediately placed on solitary confinement with no means of being able to conduct legal research, obtain statement from witnesses, or provided with any essential accomodations or equipment so that petitioner could prepare a adequate defense for disciplinary proceedure.

20) petitioner is a state parole violator currently incarcerated at E.C.C.F and as such sly state inmates have protected liberty interests, created by state regulations, in remaining free from administrative confinement, which enteres triggers due process requirements; prior to imposed of such punishment, inmate is entitled to hearing with various procedural safe guards U.S.C.A Const. Amend. 14

21) process to which inmates are entitled regarding administrative confinement is composed of notice of charges against them and opportunity to present their views to prison officials charged with deciding whether to confine them. U.S.C.A Const. Amend. 14

22) more over Due to petetioner being confined petetioner should have been entitled to informal opportunity to be heard within reasonable time after his confinement perhaps even before his hearing.

23) never the less petitioner was unconstitutionally deprived of such rights and on Oct 22, 2012 petitioner was taken to a hearing which was conducted by respondent Sgt. Whalen, respondent officer utz, and respondent officer John doe. in spite petitioner hevat't given respondent whalen constructive notice. On sept 17, 2012 that respondent utz is a defendant in petition of civil rights action see (civil 12-cv-00852-RJA-HBS) and petitioner have grieved respondent utz on several occasions. petitioner on Oct 22, 2012 went on further to inform respondent whalen that if respondent utz was allowed to remain on the disciplinary hearing panel then petitioner would deprived of a impartial hearing. respondent whalen proceeded to conduct the hearing in a malicious manner. petitioner was denied all rights during said gross disciplinary proceedings respondent utz re-sided over both disciplinary proceedings.

24) there fore respondent whalen recklessly disregarded petitioners right to emphasize petitioners 5th amendment The petitioners right to remain silent during disciplinary proceeding due to pititioner intent to pursue criminal prosecution against said persons for

assaulted petitioner respondents whalen, utz, and John doe unlawfully, and conspiracously imposed a guilty verdict upon petitioner despite the fact petitioner [redacted] chose to exercize the 5th admendment which states; no person shall be held to answer for a capital, or other wise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger, nor shall any person be the subject for the same offense twice put in jeopardy of life or limb; nor shall be compelled in any [redacted] criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

25. petitioner is a totally blind person cannot function within solitary confinement and to allow petitioner to be placed in such solitary restrictions/shu recklessly disregards petitioners rights under title 2 of the ADA. The respondent. superintendent rodriguez has recklessly disregarded his position as commander chief officer and respondent rodriguez has condoned insubordinance misconduct and abusive authority while in the performance of their official duties.

(5)

26) in Farmer the court has held that if prison officials are aware that if there is a cobra snake in a cell and prison officials still places an inmate in the cell with the cobra knowing that the end result would be that the inmate would be attacked by the cobra prison officials have recklessly disregarded the inmates safety and well being in light of such petitioner have been placed in a unknown environment with no mobility leaving within the shu area nor does petitioner know how to get to the shower, recreation area (yard), or law library independently and prison official have broke petitioners blind cane. prison officials have failed to provide petitioner with any means of accomodations with respects to non disabled inmates are afforded books to read pens and papers to access the courts friends and family and non disabled prisoner are afforded access to computers in the law library and access to law books ect. Even while on shu status. How ever petitioner is deprived of the enjoyments of such benefits, services, and activities within a public entity. prison officials alledge that inmates housed in shu are a danger and threat to the safety and well order of the facility how ever petitioner who cannot see if he was going to be attacked by one of these inmate in shu but prison officials have housed petitioner in shu with such inmates see Farmer V. Brennan 114 S.CT 1970 (1994). further more because petitioner is disabled and has been house in solitary confinement this the punishment imposed on petitioner

Tips the scale beyond cruel and unusual punishment and borders the scope of a typical significant hard ships see Sanden v. Conner

27) where force due to the petitioners disability The courts have held that inmates have a right to whatever care is nessecary To treat and accomodate serious disabilities Davis v. Hall 992 F2d 151 8th cir 1993 where inmate was sent to a facility not equipped such as petitioner being housed in shu To accomodate disability It is also held that failure to provide such accessible facilities well often result in liability petitioner was given 30 days shu and respondant love, rodriguez, et al have delibitately discriminated against petitioner a few inmates Have challenged Discrimination against them on basis of their disabilities it is clear in an appropriate case discrimination against inmates could violate the equal protection clause of the 14th amendment also see Wolf vs McDonell and Yeskey v. (State of pa)

28) petitioner alledges that the respondants at E.C.C.F having such knowledge of petitioners disabilities and rights to equal protection, Recklessly Disregarded Such and discriminated against petitioner by also failing to provide petitioner with assistance or equipment for appeal process. although petitioner pleaded the 5th amendment (right to remain silent) The respondants predicated petitioners guilt.

further more petetioner alledges to be deprived of his right to due process in respect to petitioners right to receive proper notice of facility inmate rule book, policies and proceedures and disciplinary Charges in audio format and to date petitioner has not been properly served The Courts recognize the minimal requirements and hearing Guaranteed by due process Clauses respectfully as in case where Deprivatio of life liberty and property interest are critical factors. The Court noted that state prisons are public Entetes and the term "Qualified individuals with a disability" Includes state prisoners so long as they Qualify as Disabled under the same Definition as free world individuals. The respondents at ECCF have conspired in acts of retaliation against petitioner for seeking redress. Last but not least petetioner has been deprived of his rights under title 2 of the ADA and Subsection 504 the rehabilitation act of 1973 and the respondents have exercised deficient policies accustains and practices that have been deliberate indifferen to petetioners rights under due process of the United states Constitution 14th Amendment section I All persons born or naturalized in the U.S. and subject to the Jurisdiction there of, are citizens of the U.S. and of th State wherein they reside. no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Also please see Clarkson v. Coughlin 898 F.Supp 1019 (S.D.N.Y. 1995)

further relief sought;

1) petitioner further seeks for this court to order respondents to reverse the malicious findings of the disciplinary panel

2) That the court further order the respondent to release petitioner from shu/solitary confinement unlawful imprisonment

3) That the court further order the respondents to audibly record all further disciplinary proceedings against petitioner and all other inmates at E.C.C.F.

4) That the court further order the respondents to implement assistance for tier hearing proceedings with respects to disabled person (petitioner)

5) That the court order the respondents to establish policies and procedures that enable prisoners to obtain statements and documentary evidence and allow prisoners the right to conduct legal research and present such defense at disciplinary proceedures

6) That the court further order the respondents at E.C.C.F to conduct all administrative and disciplinary procedures in accordance with legislative policies

7) That the court further order the respondents re-emburse the petitioner all penalty fees, filing fees, postage fees, copying fees, any other fees that the court may deem just and proper.

(8)

8) that the court further order the respondents to establish adequate disciplinary appeal mechanisms for disabled persons (petitioner is totally blind while on Keeplock and she status)

9) in prayer petitioner seeks that this court to expeditiously intervene and rule on the merits on this order to show cause because without the court ruling petitioners request will remain null and void

[illegible]