

evidence at screening. The respondent also submits a declaration from the screening officer stating that Mr. Eiseman did not request video evidence. But, in reply, Mr. Eiseman maintains that he requested video evidence at screening; he states that he was screened for twenty-five disciplinary charges on the same day, all of which charged him with engaging in an unauthorized financial transaction, and that he requested video evidence in all of them. To the extent the Screening Report does not reflect that, he says, it is because the screening officer did not write his request down.

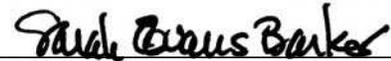
In arguing that Mr. Eiseman should be denied relief, the respondent focuses on the fact that there is no *record* that Mr. Eiseman made a request for the video evidence at screening. But Mr. Eiseman's petition—which is sworn under penalty of perjury—constitutes evidence that he did make such a request. Thus there is a dispute of material fact regarding whether Mr. Eiseman requested the video evidence at screening. “[W]hen a prisoner who seeks a writ of habeas corpus provides competent evidence (such as an affidavit by someone with personal knowledge of the events) contradicting an assertion by the prison disciplinary board on a material question of fact pertinent to an issue of constitutional law, the district court must hold an evidentiary hearing to determine where the truth lies.” *Johnson v. Finnan*, 467 F.3d 693, 694 (7th Cir. 2006). Notably, the respondent did not argue that the allegedly requested video was not exculpatory (and thus did not need to be provided) or that the error was otherwise harmless. Therefore, the Court must hold a hearing to resolve this factual dispute.

The respondent could obviate the need for a hearing if she vacated the disciplinary proceedings at issue in this action and the corresponding sanctions. Otherwise the Court will set this matter for an evidentiary hearing on the question outlined above and appoint counsel for Mr. Eiseman. See Rule 8 of the *Rules Governing Section 2254 Cases* (“If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a petitioner who qualifies to have

counsel appointed under 18 U.S.C. § 3006A.”). The respondent has **through November 21, 2017**, in which to inform the Court how this action should proceed. If a hearing is necessary, the Court will appoint counsel, schedule the hearing, and set discovery deadlines by separate order.

IT IS SO ORDERED.

Date: 11/6/2017



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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