

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

ANTHONY TYRONE CAMPBELL — PETITIONER  
(Your Name)

vs.

J. MENDEZ, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANTHONY TYRONE CAMPBELL SR.  
(Your Name)

CSP - Solano, P.O. Box 4000  
(Address)

Vacaville, CA. 95696  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

1. Did 9<sup>th</sup> Circuit Court of Appeals decision conflict with 10<sup>th</sup> Circuit Court of Appeals decision where determining factor significantly substantiate Plaintiff did not fail to timely exhaust administrative remedies?
2. Did Plaintiff, Pursuant to § 1997 e(a), of the Prison Litigation Reform Act, factually exhaust administrative remedies as far as available Prior to bringing forth his § 1983 civil action claim?

## LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. J. Mendez
2. D. Aguinaga
3. T. Ramos
4. D. Cardenas
5. B. Barajas

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. <u>Norton v. City of Marietta, Oklahoma</u> , 432 F. 3d . . . . 7 1145, 1150 (10 <sup>th</sup> Cir. 2005).	
2. <u>Aguilar-Avellaveda v. Terrell</u> , 478 F. 3d . . . . 7 1223, 1225 (10 <sup>th</sup> Cir. 2007).	

## STATUTES AND RULES

1. California Code of Regulations, Title 15, § 3084.6 (b)(1) . . . . 6
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## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

reported at N/A; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

reported at N/A; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 17, 2017.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 29, 2017, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix N/A.

A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 42 U.S.C. § 1983.
2. 42 U.S.C. § 1997 e(a).

### STATEMENT OF THE CASE

On September 11, 2014, Plaintiff in compliance to the District Courts order effectively submitted an amended civil rights actions Pursuant to 42 U.S.C. § 1983.

Subsequently the U.S. District Court For The Eastern District of California screened the complaint and found that Plaintiff did indeed state a cognizable claim against Defendants J. Mendez, D. Aquinaga, T. Ramos, D. Cardenas, and M. Barajas for the unreasonable use of excessive force.

Plaintiff does acknowledge that a Prison administrative remedy Process was available to him and further declare he did indeed timely exhaust his grievance as far as he was procedurally allowed.

On May 4, 2015, the Defendants' filed answer claiming Plaintiff did not timely exhaust his appeal and on August 28, 2015, inclusive to filing a Motion For Summary Judgement warned that failure to submit evidence showing genuine dispute could result in a Judgement unfavorable to Plaintiff.

On November 2, 2015, the Magistrate Judge in Findings concluded Plaintiff failed to timely exhaust his claim and recommended that Summary Judgement should be adopted on this basis.

## Statement of the Case continued:

On July 26, 2016, the District Court Judge reviewed De novo and adopted the Findings and Recommendation holding that even if submitted on August 3, 2013, the grievance was still untimely and properly cancelled.

On October 26, 2016, Plaintiff appealed District Court Judge-  
ment to the United States Court of Appeals for the Ninth  
Circuit.

On March 17, 2017, the 9<sup>th</sup> circuit court of Appeals affirmed the District Court's Judgement.

On April 5, 2017, Plaintiff filed a Petition For Rehearing en banc, and on November 29, 2017, the 9<sup>th</sup> circuit court of Appeals denied Petition for rehearing.

#### REASONS FOR GRANTING THE PETITION

The Defendants' submitted evidence to the 9<sup>th</sup> circuit court of appeals that indicate Prison appeals coordinator J. Morgan, Pursuant to Cal. Code of Regs., Title 15, § 3084.6(b)(1), unreasonably rejected Plaintiff's appeal although directly related to the excessive force incident which occurred July 3, 2013.

Please See: ADDENDUM A - Pg. 66; See Also: ADDENDUM B.

Moreover, the appeals coordinator's decision to reject Plaintiff's appeal procedurally tolled Plaintiff's exhaustion requirement wherein, effective immediately, the Time Limits deadline date moved from August 2, 2013, to August 19, 2013.

As such, this significant determining factor evidence should have been keenly considered by both the District Court and 9<sup>th</sup> circuit court of appeals as judgement derived from each court was significantly based upon Time Limits issue.

Please See Also: Cal. Code of Regs., Title 15, § 3084.6 (a)(2).

Thereafter, on August 14, 2013, five days prior to the Time Limits deadline date, appeals coordinator J. Morgan moved to improperly cancel Plaintiff's appeal Pursuant to Cal. Code of Regs., Title 15, § 3084.6(c)(4).

This improper cancellation of the appeal effectively disrupted the administrative exhaustion requirement, and in furtherance prejudiced Plaintiff from seeking a further Third Level Review.

## Reasons For Granting Petition Continued

Please See: Norton v. City of Marietta, Oklahoma, 432 F. 3d 1145, 1150 (10<sup>th</sup> Cir. 2005); "It is the Plaintiff's status at time he files suit that determines whether § 1997 e (a)'s exhaustion Provision applies..."

See Also: Aguilar-Avellaveda v. Terrell, 478 F. 3d 1223, 1225 (10<sup>th</sup> Cir 2007); "an administrative remedy is not considered to have been available if a Prisoner, through no fault of his own, was Prevented from availing himself of it."

In overview, the California Code of Regulations, Title 15, Div 3, § 3084.6(e), Profoundly interpret that an appeal cancelled at its Second Level Review is essentially exhausted as far as available because any further intent by a Prisoner seeking a Third Level disposition is affirmly Prohibited under Prison Policy.

Wherefore, by the Preponderance of the determining factors entailed in this instant Petition For Writ of Certiorari, it is not beyond reason to determine Plaintiff did indeed Properly exhaust the required administrative remedies as far as was available, and/or allowed by Prison Official(s) Prior to him bringing suit.

For this reason this Petition For Writ of Certiorari should be granted.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cuthbert Campbell sr.

Date: February 1, 2018