

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH L. NASH — PETITIONER
(Your Name)

vs.

GARRY E. LUCAS 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

KEITH L. NASH
(Your Name)
STAFFORD CREEK CORRECTIONS CENTER
191 Constantine Way
(Address)

Aberdeen, WA. 98520
(City, State, Zip Code)
(SCCC) counselor Ryan Denzer
(360) 537-1962
(Phone Number)

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.) RICHARD J. BISHOP
- 2.) PAUL DOUGHER
- 3.) KIM BELTRAN
- 4.) KURT HOLLOPETER
- 5.) JACK G. HUFF

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REASON GRANTING PETITION

STATEMENT OF CASE

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 G 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☒ is unpublished.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 + C 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☒ is unpublished.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 _____ 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☐ is unpublished.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 _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; 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☐ is unpublished.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 January 29th, 2018.

☐ 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: May 23rd, 2018, and a copy of the order denying rehearing appears at Appendix _____.

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

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

In addition, see petitioner's Attached Pages for Jurisdiction.

☐ For cases from **state courts**:

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

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

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

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

QUESTION(S) PRESENTED

Petitioner Nash was a pretrial detainee delayed Notary access to execute a power of attorney for a friend to prevent the loss of his personal property after Lewis v. Casey, 518 U.S. 343 (1996); and Bounds v. Smith, 430 U.S. 817 (1977) became adopted as a New Rule.

(1) Is the holding in Lewis v. Casey, clearly well established as a new Rule to overrule Bounds v. Smith, 430 U.S. 817 (1977), for distinguishing the term or application of 'meaningful access'; and if so; does its requirement apply to a 42 U.S.C. § 1983 civil rights action to pretrial detainees differently from convicted prisoners claiming the denial access to courts retroactively?

(a) The 'term' meaningful access appears to be materially indistinguishable as part of interpretation of Bounds v. Smith, and Lewis v. Casey?

STATEMENT OF THE CASE

1. INTRODUCTION:

Petitioner Kerth L. Nash, a pretrial detainee, was incarcerated at the Clark County Jail facility awaiting trial on a criminal charge related proceedings.

During the term of being detained and incarcerated at the Clark County Jail facility. Petitioner made on numerous occasions requesting for notary service access to execute a power of attorney to prevent the loss of his personal property. Petitioner filed an internal complaint, claiming the delay in the Respondents ability to provide notary service caused the loss of all his personal property.

After exhausting all internal complaints in claiming the delay for notary service access. Petitioner filed a civil rights action under 42 U.S.C. § 1983.

Petitioner raised claims alleging the denial of access to courts. Petitioner was granted leave to amend the complaint and raised additional claims. The amended complaint alleged claims revolving, the denial access to courts; denial of due process clause and negligence. The U.S. District Court granted Respondents motion for summary judgment and petitioner immediately appealed the claims. Petitioner's appeal was affirmed and the request of reconsider for panel rehearing was denied.

2. FEDERAL COURT PROCEEDINGS:

On August 30th, 2014, petitioner Kerth L. Nash began his incarceration on a criminal charge at the Respondent(s) Garry E. Lucas, Clark County Jail facility. See U.S. District Court's Docketing Sheet Report; See Appendix (A) copies of the DKT's #6 and #38, petitioner's Civil Rights Complaint and the Amended Complaint. On October 3rd, 2014, petitioner commenced with this civil rights action

and the U.S. District Court of Western District of the State of Washington granted petitioner leave to proceed in forma paupens (IFP), under cause number 3:14-cv-05851-RBL see DKT's #1 and #6.

On January 9th, 2015, Respondent(s) filed an answer to the Complaint and the court entered an Order Setting Pretrial Scheduling on January 12th, 2015. See U.S. Dist. DKT #16 and #17.

On June 18th, 2015, the court entered an order in granting petitioner's Motion to Amend the Complaint. See U.S. Dist. DKT's #37, #38 and #39.

On August 27, 2015, the court revised both parties Pretrial Scheduling Order. See U.S. Dist. DKT #68.

On July 20th, 2016, the court entered a Minute Order Setting Trial and Pretrial Dates. See U.S. Dist. DKT #81.

On December 27th, 2016, Respondent(s) filed a motion for summary judgment. See U.S. Dist. DKT #99.

The court granted petitioner with several extension of time to file a timely response to the motion for summary judgment. See U.S. Dist. DKT #111 and #118.

On May 30th, 2017, the court granted Respondent(s) motion for summary judgment. See U.S. Dist. DKT #135; see Appendix (B) copies of the court's order granting summary judgment.

On June 12th, 2017, petitioner filed for reconsideration along with several motions [i.e.] motion to amend complaint. See U.S. Dist. DKT #139 and #140.

On June 14th, 2017, the court denied petitioner's motion for reconsideration and various motions [i.e.] motion to amend complaint. See U.S. Dist. DKT #143; see Appendix (C) copies of the court's order denying various motions and reconsideration.

On June 27th, 2017, the U.S. District Court granted petitioner's Request for leave to proceed under

informa pauperis status (IFP) on appeal. See U.S. Dist. Court DKT #145, #146 and #147; see Appendix (D) copies of the U.S. District Court's order granting (IFP) for appeal status.

On June 28th, 2017, the U.S. Court of Appeals for the Ninth Circuit entered a scheduling order for both parties to submit their briefs. See Appendix (E) copies of the U.S. Court of Appeals scheduling order.

On July 7th, 2017, the U.S. Court of Appeals in for the Ninth Circuit entered an order granting petitioner to proceed on appeal as informa pauperis. See Appendix (F) copies of the U.S. Court of Appeals order granting (IFP) status.

On January 16th, 2018, the U.S. Court of Appeals in for the Ninth Circuit entered its memorandum, opinion and decision for the appeal. See Appendix (G) copies of the U.S. Court of Appeals in for the Ninth Circuit memorandum and decision.

On February 27th, 2018, the U.S. Court of Appeals in for the Ninth Circuit granted petitioner with an extension of time to file a petition for a panel rehearing. See Appendix (H) copies of the U.S. Court of Appeals order extending time to file for a panel rehearing.

On May 23rd, 2018, the U.S. Court of Appeals entered an order denying petitioner's panel rehearing. See Appendix (I) copies of court's order denying petition for panel rehearing.

On May 31st, 2018, the U.S. Court of Appeals issued its mandate. See Appendix (J) copies of the court issued mandate.

On August 20th, 2018, petitioner filed this writ of certiorari in the U.S. Supreme Court for review.

3.

TIMELINESS:

Pursuant to 28 U.S.C. § 2101 (c): Supreme Court; Time for Appeal or Certiorari; Docketing; Stay:

(c) Any other appeal or any writ of certiorari intended to bring judgment or decree in a civil action, suit or proceeding before the supreme court for review shall be taken or applied for within ninety days after the entry of such judgment or decree.

A justice of the Supreme Court, for good cause shown, may extend the time for applying a writ of certiorari for a period not exceeding sixty days.

In addition, United States (U.S. Sup. Ct. Rule) 13 (1) provides in pertinent part:

'A petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States Court of Appeals is timely when it is filed with the clerk of this court within ninety days after entry of the judgment.' See Jimenez v. Quarterman, 555 U.S. 113, 119-20, 129 S.Ct. 681, 172 L.Ed. 2d 475 (2009).

Rule 13 (2):

'The clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time.' See, e.g., 28 U.S.C. § 2101 (c).

Rule 13 (3):

'The time to file a petition for writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for writ of certiorari

for all parties (whether or not they requested Rehearing or joined in the petition for Rehearing) RUNS from the date of the denial of rehearing OR, if rehearing is granted, the subsequent entry of judgment. See Maes v. Chavez, 792 F.3d 1132, 1133 (9th Cir.) cert. denied, 136 S.Ct. 258, 193 L.Ed.2d 190 (2015).

4.

JURISDICTION:

Pursuant to 28 U.S.C. 1254 (1): Court of Appeals; Certiorari
Certified Questions: Cases in the Court of Appeals may be
Reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of
any party to any civil or criminal case, before or
after rendition of judgment or decrees;

(2) By certification at any time by a court of appeal
of any question of law in any civil or criminal case
as to which institutions are desired, and upon such
certification the Supreme Court may give binding
instructions or require the entire record to be
sent up for decision of entire matter in controversy.

"The statute notably imposes no limitations as to the
status of the case, effectively giving the Supreme
Court plenary authority to grant certiorari over
cases coming from federal courts of appeals. See
Forsyth v. City of Hammona, 166 U.S. 506, 513, 41 L.Ed.

1095, 17 S.Ct. 665 (1907) (describing the Supreme
Court's authority to grant certiorari under an earlier
form of the present statute as 'comprehensive and
unlimited'); see also Hughes Tool Co. v. Trans World
Airlines, Inc., 409 U.S. 363, 365 D. 34 L.Ed. 2d 577,
93 S.Ct. 647 (1973) (concluding that a prior dismissal
of certiorari does not foreclose the court from reaching
a new issue where the court of appeals ruled that its
prior decision was not a final judgment).

The Supreme Court has frequently confined its certiorari
review to the constitution of less than all the issues
considered by the court of appeals. Typical is
the case of Dennis v. United States, 341 U.S. 494, at
page 516, 71 S.Ct. 857, at page 871, 95 L.Ed. 1137, where
the court's opinion states:

"We have not discussed many of the questions
which could be extracted from the record,
although they were treated in detail by
the court below. Our limited grant
of the writ of certiorari has withdrawn

from our consideration at this date those questions, which include, inter alia, sufficiency of the evidence, composition of jury, and conduct of the trial."

Thus, this court could have reviewed the entire case as it would any other final judgment. See 28 U.S.C. § 1254(1); See also United Mine Workers of Am. v. Gibbs, 383, U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

In addition, Title 28 U.S.C. § 2106:

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct entry of such appropriate judgment, decree or order, or require such further proceedings to be had as may be just under the circumstances." See Stutson v. United States, post, p. 193, 133 L.Ed.2d 571, 116 S.Ct. 600; see also Campbell v. United States, 365 U.S. 85, 98-99, 5 L.Ed.2d 428, 81 S.Ct. 421 (1961).

Furthermore, U.S. Sup. Ct. Rule 10 (a)-(c); Consideration Governing Review on Certiorari: Review on a writ of certiorari is not a matter of right, but a judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the court's discretion, indicate the character of the reasons the court considers:

(a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so

far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of properly stated rule of law. See S. Shapiro, K. Geller, T. Bishop, E. Hartnett, D. Himmelstark, Supreme, 188 L.Ed.2d 904 Court Practice § 5.12

(c)(3), p. 352 (10th ed. 2013) ("Error correction is outside the mainstream of the Court's functions and not among the 'compelling reasons' that govern the grant of certiorari").

A conflict among the circuits is an accepted basis for the granting of the writ of certiorari. See Supreme Court Rule 10(a).

The principal purpose of this Court's exercise of certiorari jurisdiction is to clarify the law. See Capeston v. A.T. Massey Coal Co., 506 U.S. 868, 902, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2001) (Scalia, J., dissenting). That choice will be governed by the ordinary principles in our decision whether to grant certiorari - 'a power we sparingly exercise. See Forsyth v. Hammond, 166 U.S. 506, 514, 17 S.Ct. 665, 41 L.Ed. 1095 (1897); see also *id.*, at 514-515, 17 S.Ct. 665, 41 L.Ed. 1095 (this court grants review 'only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict in the lower courts, or some matter affecting the interests of this Nation... demands such exercise (p. 1135)'; this court's Rule 10.

WRIT OF CERTIORARI • REVIEW FOR RIPENESS •

'The basic rationale of the 'ripeness' doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreement over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effect felt in a concrete way by the challenging parties'. See Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 200, 103 S.Ct. 1713, 75 L.Ed.2d 752 (1983) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 149, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967)).

'The question of ripeness turns on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration'. *Id.* at 201 (internal quotations).

omitted). A case is ripe when it presents a concrete legal dispute and no further factual development is essential to clarify the issue and there is no doubt whatever that the issue has crystallized sufficiently for purposes of judicial review. See Pub. Citizen v. Dep't of State, 276 F.3d 634, 641, 349 U.S. App. D.C. 291 (D.C. Cir. 2002) (citation omitted).

A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. See Texas v. United States, 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998) (internal quotations omitted)).

5. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION UNDER THE FIRST AMENDMENT

The First Amendment prohibits government actions abridging the right of people to 'petition the government for a redress of grievances'. See U.S. Const. Amend. I. See McDonald v. Smith, 472 U.S. 479, 482, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985).

'the right of access to the courts is one aspect of the right to petition.' See California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972).

'Under the First Amendment, a prisoner has both a right to meaningful access to the courts and a broader right to petition the government for a redress of his grievances'. See Silva v. Di Vittorio, 658 F.3d 1090, 1101-02 (9th Cir. 2011) abrogated on other grounds by Coleman v. Tollefson, 135 S.Ct. 1259, 191 L.Ed.2d 803 (2015).

The Ninth Circuit has traditionally differentiated between two types of access to courts claims:

- (1) the right to assistance, such as access to law libraries; and
- (2) the right against unreasonable, active interference, described as 'erecting barriers that impede the right of access of incarcerated persons'. See Id. at 1102-1103 (quoting John L. v. Adams, 969 F.2d 228, 235 (9th Cir. 1992)).

The First Amendment grants prisoners a limited Constitutional Rights to access to the courts. See Lloyd v. Card, 283 F.App'x 696, 700 (11th Cir. 2008) (per curiam) (citing Bounds v. Smith, 430 U.S. 817, 821 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977)).

To state a claim for denial of that right, an inmate must show an actual injury. See Lewis v. Casey, 518 U.S. 343, 349, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996).

UNITED STATES CONSTITUTION UNDER THE FOURTH AMENDMENT

The Fourth Amendment "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, upon probable cause, describing the place to be searched, and the persons or things to be seized." See U.S. Const. amend. IV.

To state a Fourth Amendment claim, plaintiff must show that the amount of force used was unreasonable OR that the manner in which the arrest was effectuated was an unlawful intrusion into her bodily integrity. See Gregory v. County of Maui, 523 F.3d 1103, 1106 (9th Cir. 2008); also Fontana v. Haskin, 262 F.3d 871, 878-79 (9th Cir. 2001).

UNITED STATES CONSTITUTION UNDER THE FOURTEENTH AMENDMENT

The Due Process Clause of the Fourteenth Amendment prohibits state action that deprives a person of life, liberty, or property without due process of law. See Wolff v. McDonnell, 418 U.S. 539, 557-58 (1974) and see Pearson v. Muntz, 606 F.3d 606, 609 (9th Cir. 2010).

The procedural guarantees of the Fifth and Fourteenth Amendments' Due Process Clauses apply only when a constitutionally protected liberty or property interest is at stake. See Ingraham v. Wright, 430 U.S. 651, 672-73 (1977); Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972).

A litigant alleging a due process violation must first demonstrate that he was deprived of a

liberty or property interest protected by the Due Process Clause and then show that the procedures attendant upon the deprivation were not constitutionally sufficient. See Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 459-60, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989).

A protected liberty interest may arise from either the Due Process Clause of the United States Constitution 'by reason of guarantees implicit in the word "liberty" from "an expectation or interest created by state laws or policies"'. See Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.Ed.2d 174 (2005); also see Board of Pardons v. Allen, 482 U.S. 369, 373, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987); see Hewitt v. Helms, 459 U.S. 460, 466 (1983), abrogated in part on other grounds by Sandin v. Connor, 515 U.S. 472 (1995).

The guarantee of substantive due process was meant to secure the individual from the arbitrary exercise of powers of government. See Daniels v. Williams, 474 U.S. 332, 106 S.Ct. 662, 665 88 L.Ed. 2d 662 (1986); ('Personal liberty is more than actual physical restraint and includes the concept "fundamental Rights"'). The role of substantive due process is to protect 'fundamental Rights' from arbitrary deprivation by state governments. See Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (state has duty to provide adequate medical care to incarcerated prisoners).

6.

STATUTORY INTERPRETATION:

When construing the meaning of a statute enacted by Congress, a court must first look to the language of that statute. See Newsom v. Friedman, 76 F.3d 813, 816 (7th Cir. 1995) (citing United States v. Hudspeth, 42 F.3d 1015, 1022 (7th Cir. 1994), cert. denied, 515 U.S. 1105, 115 S.Ct. 2252, 132 L.Ed. 2d 200 (1995), ("we [42 F.Supp.2d 839] may turn to the legislative history to interpret a statute only when the statute is ambiguous").

If a term is not defined by statute, a court construes the word in accord with its plain or ordinary meaning. See Smith v. United States, 508 U.S. 223, 228, 124 L.Ed.2d 138, 113 S.Ct. 2050, (1993); see Mace v. Van Ru Credit Corp., 109 F.3d 338, 342 (7th Cir. 1997) ("divining congressional intent from an absence of expression is a quagmire that we must try to avoid.")

However, if the plain language of a statute is ambiguous, a court must turn to the statute's legislative history in order to determine the intent of the drafters. See Crandon v. United States, 494 U.S. 152, 153, 110 S.Ct. 997, 108 L.Ed. 2d 132 (1990); (court will look not only to the statutory language but to the design of the statute as a whole and to its object and policy.).

The Seventh Circuit recently warned that "divining congressional intent from an absence of expression is a quagmire that we must try to avoid." See Mace v. Van Ru Credit Corp., 109 F.3d 338, 343 (7th Cir. 1997) (suggesting that congress failure to amend the statute at issue in the same way a related statute was amended would indicate two different intentions with regard to the statutes).

Indeed, in the absence of a statutory definition, words and phrases are accorded their ordinary and natural meaning. See Bass v. Stalper Kortzinsky & Neider, S.C., 111 F.3d 1322, 1325 (7th Cir. 1997); also Newson v. Friedman, 76 F.3d 813, 816-17 (7th Cir. 1996).

STATUTORY LIMITATIONS :

Under (RCW) 4.16.080(2), plaintiffs have three years to 'commence' a personal injury action such as this one. In Washington, "statutes of limitations do not begin to run until a cause of action accrues." 1000 Virginia Ltd. Partnership v. Vertecs Corp., 158 Wash. 2d 566, 575, [966 F. Supp. 2d 1138] 146 P.3d 423 (2006) (citing RCW 4.16.005).

"IN many instances an action accrues immediately when the wrongful act occurs." *Id.*

Usually a cause of action accrues when the party has the right to apply to a court for relief.

1000 Virginia Ltd. Partnership v. Vertecs Corp., 158 Wash. 2d 566, 575, 146 P.3d 434 (2006) (citing RCW 4.16.005 and Gazija v. Nicholas Jerns Co., 86 Wash. 2d 215, 219, 543 P.2d 338 (1975)).

On certiorari, the U.S. Supreme Court, in a per curiam opinion expressing the unanimous views of the eight participating members of the court, vacated and remanded for further consideration in light of its decision in Wilson v. Garcia, 471 U.S. —, 85 L.Ed.2d —, 107 S.Ct. —, holding:

"that all § 1983 claims should be characterized for statute of limitation purposes as actions to recover damages for injuries to the person."

TITLE 42 U.S.C. § 1983
CIVIL ACTION FOR DEPRIVATION OF RIGHTS:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the district of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless declaratory decree was violated or declaratory relief was unavailable. For purposes of this section, any act of congress applicable exclusively to the district of Columbia shall be considered to be a statute of the district of Columbia.

The purpose of § 1983 is to deter state actions from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deference fails. See Carey v. Piphus, 435 U.S. 247, 254-257, 55 L.Ed. 2d 252, 98 S.Ct. 1042 (1978).

A plaintiff bringing claims against defendants pursuant to 42 U.S.C. § 1983. A section § 1983 claim requires a showing that a plaintiff;
(1) suffered a violation of rights protected by the constitution or created by federal statute; and (2) that the violation was proximately caused by a person acting under color of state or federal law. See West v. Atkins, 487 U.S. 42, 48 (1988); see Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). A plaintiff must show how individually named defendants caused or personally participated in causing the harm alleged. See Arnold v. IBM, 637

F.2d 1350, 1355 (9th Cir. 1981).

TITLE 28 U.S.C. § 1915 •
IN FORMA PAUPERIS •

Title 28 section 1915 governs federal proceedings brought in forma pauperis. See 28 U.S.C. § 1915. See (West 1994).

Section 1915 (a) provides, in pertinent part •

'Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor.'

Title 28 section 1915 (d) authorizes federal courts to dismiss a claim filed in forma pauperis prior to service * if satisfied that the action is frivolous or malicious'. That is if the action appears to be without merit. See § 1915 (d); Smart v. Heinze, 347 F.2d 114, 115 (9th Cir. 1965). A complaint is without merit for purposes of section (d) if it 'lacks an arguable basis in law or fact'. See Martinez v. Turner, 977 F.2d 421, 423 (8th Cir. 1992).

Under this standard, a district court may review the complaint and dismiss sue sponte the claims premised on meritless legal theories or lacking any factual basis. See Denton v. Hernandez, 118 L.Ed.2d 340, 112 S.Ct. 1728, 1733 (1992).

TITLE 42 U.S.C. § 1997e
PRISON LITIGATION REFORM ACT (PLRA) •

Pursuant to the Prison Litigation Reform Act of 1997, a prisoner is required to exhaust all his administrative remedies within the prison system before he can bring a civil rights lawsuit challenging the conditions of his confinement. See 42 U.S.C. § 1997e(a).

'Proper' exhaustion of administrative remedies

is required, meaning that a prisoner must complete the administrative review process in accordance with the applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court. See Woodford v. Ngo, 548 U.S. 81, 88, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006).

There is no question that exhaustion is mandatory under the (PLRA) and that unexhausted claims cannot be brought in court. See Jones v. Bock, 549 U.S. 199, 211, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007).

The important policy concern behind requiring the exhaustion is that it "allows prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being hauled into court." Id. at 204.

In addition, the (PLRA) exhaustion requirement says:

"No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983] or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies are as available are exhausted." See 42 U.S.C. § 1997e(a). Also see Porter v. Nussle, 534 U.S. 516, 524, 122 S.Ct. 983 (2002).

TITLE 28 U.S.C. § 1331 UNITED STATES DISTRICT COURT

Under 28 U.S.C. § 1331, federal district courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. The vast majority of cases that come within this grant of jurisdiction are those in which federal law creates the cause of action. See Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 808, 92 L.Ed.2d 650, 106 S.Ct. 3229 (1986) (internal punctuation and citation omitted).

Section 1331, states:

"The District Court have original jurisdiction of all civil actions

ARISING UNDER THE CONSTITUTION, LAWS OR
TREATIES OF THE UNITED STATES.

As precedents such as Lauritzen v. Larson, 345 U.S.
571, 97 L.Ed.2d 1254, 73 S.Ct. 921 (1953), makes clear
that is sufficient to establish the District Court's
jurisdiction over these claims.

TITLE 28 U.S.C. § 1367
SUPPLEMENTAL JURISDICTION :

Title 28 U.S.C. § 1367, provides :

(a) Except as provided in subsection (b) and (c) or
as expressly provided otherwise by Federal statute,
in any civil action of which the district courts
have original jurisdiction, the district courts
shall have supplemental jurisdiction over all
other claims that are so related to claims in
the action within such original jurisdiction that
they form part of the same case or controversy
under Article III of the United States Constitution.
Such supplemental jurisdiction shall include claims
that involve the joinder or intervention of
additional parties.

(c) The district courts may decline to exercise
supplemental jurisdiction over a claim under
subsection (a) if

- (1) the claim raises a novel or complex
issue of state law;
- (2) the claim substantially predominates
over the claims over which the district
court has original jurisdiction;
- (3) the district court has dismissed all
claims over which it had original
jurisdiction;
- (4) the exceptional circumstances, there
are other compelling reasons for declining
jurisdiction;

See Herman Family Revocable Trust v.
Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001);
see Les Shockley Racing v. National
Hot Rod Ass'n, 884 F.2d 504, 509 (9th Cir. 1989).

TITLE 28 U.S.C. § 1291

FINAL DECISIONS OF DISTRICT COURTS :

THE 28 U.S.C. § 1291, provides:

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in section 1292 (c) and (d) and 1295 of this title 28 U.S.C. §§ 1292 (c) and (d) and 1295]. See *W. Mitchell v. Forsyth*, 472 U.S. 511, 86 L.Ed. 2d 411, 105 S.Ct. 2806 (1985) ((we held that a district court's rejection of a defendant's qualified immunity defense is a final decision subject to immediate appeal under the general appellate jurisdiction statute, 28 U.S.C. § 1291 [28 U.S.C. § 1291])).

(1) This court has held that under Bounds v. Smith, 430 U.S. 817 (1977); the Fourteenth Amendment to the United States Constitution guarantees, prisoners 'adequate, effective, and meaningful' access to the courts. See Bounds, 430 U.S. 817. The right of meaningful access to the courts "is the most fundamental right he or she holds." See De Mallory v. Cullen, 855 F.2d 422, 446 (7th Cir. 1988) (citing Adams v. Carlson, 488 F.2d 619, 630 (7th Cir. 1973)).

Under Lewis v. Casey, 518 U.S. 343, 346, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996); prisoners have a fundamental right to access to courts. See Lewis, 518 U.S. 343. However, a prison making an access to the court claims required to show that the denial of access caused actual injury. Id. at 352-53.

Actual injury occurs when a prisoner demonstrates that a 'nonfrivolous' and 'arguable' claim was lost because of the denial of access to the courts. Id. at 352-53. See Tai Christopher v. Harbury, 536 U.S. 403, 415, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002); the court divided access to courts claims into two categories. Id. at 413.

The first, termed 'forward looking claims', are cases where the alleged official conduct interferes with a plaintiff's ability to bring a suit at the present time. See Jennings v. City of Stillwater, 383 F.3d 1199, 1208-09 (10th Cir. 2004).

The second class, termed 'backward looking claims', arises when plaintiffs alleged that a specific claim 'cannot be tried (or tried with all the evidence) because past official action caused the loss or inadequate settlement of a meritorious case. Id. at 1209 (brackets in original) (internal).

citations omitted). With respect to backward looking claims, a prisoner claiming he was denied access to the courts must ultimately prove he suffered an actual injury by showing that the defendant's acts hindered his ability to pursue a nonfrivolous legal claim. See Wardell v. Maggard, 470 F.3d 954, 959 (10th Cir. 2006).

The right of access to the courts is 'ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court. See Christopher, 536 U.S. at 415.

A plaintiff alleging a constitutional violation against defendants pursuant to 42 USC § 1983 must require as established by this court:

- (1) suffered a violation of rights protected by the constitution or created by federal statutes;
- (2) that the violation was proximately caused by a person acting under color of state or federal law. See West v. Atkins, 487 U.S. 42, 48 (1988); see Crumpton v. Gates, 947 F.2d 1418, 1420 (4th Cir. 1991).

Lower courts must first consider what legal standard applies for a 42 U.S.C. § 1983. The applicable standard depends on plaintiff's status as an arrestee, pretrial detainee, or convicted prisoner on the date of the alleged constitutional deprivations. See Collins v. Al-Shami, 851 F.3d 727, 731 (7th Cir. 2017).

If plaintiff was a detainee, his claims derive from the Fourteenth Amendment's guarantee of due process. See Hughes v. Farris, 809 F.3d, 330, 334 (7th Cir. 2015).

"Pretrial detainees are protected under the Due

Process Clause of the Fourteenth Amendment, while incarcerated persons are protected under the Eighth Amendment. See Glover v. Gartman, 899 F.Supp.2d, 1115, 1133 (D.N.M. 2012) (quoting Lopez v. LeMaster, 772 F.3d 756, 759 n.2 (10th Cir. 1999) (internal citation omitted)).

Clearly Bounds v. Smith, 430 U.S. 817 (1977) held as a jurisdiction question:

"presented in the jurisdictional statement as to whether a state has an affirmative federal constitutional duty to furnish prison inmates with extensive law libraries or, alternatively, to provide inmates with professional or quasi-professional legal assistance." See Younger v. Gilmore, 404 U.S. 15, 30 L.Ed.2d 142, 92 S.Ct. 250, 538 F.2d 541, 250 (1971) ("holding: we held per curiam that such services are constitutionally mandated").

Therefore, "The classification of a plaintiff as a pretrial detainee 'or an inmate' can have an impact on how a court analyzes the plaintiff's constitutional claims." See Gmyr-Maez v. Schneider, 169 F.Supp.3d 1172, 1182 (D.N.M. 2016), "The choice of amendment depends on 'where the plaintiff finds himself or herself in the criminal justice system'" (quoting Estate of Booker v. Gomez, 745 F.3d 405, 418-19 (10th Cir. 2014)).

The Tenth Circuit has held that "under the Fourteenth Amendment Due Process Clause, pretrial detainees are entitled to the same degree of protections against denial of medical care as that afforded to convicted inmates under the Eighth Amendment." See Barne v. Grand Cty., Utah, 119 F.3d 862, 868 (10th Cir. 1997) (quoting omitted)).

"The Supreme court has made clear, however, that a plaintiff must plead the correct constitutional provision underlying the § 1983 claim to state a valid claim. See Chavez v. Bd. of Cty. Comm'rs of Sierra Cty., 899 F.Supp. 2d 1163, 1185 (D.N.M. 2012).

In Nordgren v. Milliken, 762 F.2d 851, 853-855, (10th Cir. 1985), cert. denied, 474 U.S. 1032, 106 S.Ct. 593, 88 L.Ed.2d 573 (1985), the U.S. Court of Appeals for the Tenth Circuit provides a recitation of decisions examining the right of meaningful access to the courts prior to and including the landmark case, Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed. 2d 72 (1977), reh'd following remand, Smith v. Bounds, 610 F.Supp. 597 (E.D.N.C. 1985) (legal assistance by attorneys is required to provide meaningful access to N.C. inmates).

These decisions are informative as to the ties between essential, constitutional rights and inmates' right to meaningful petition the courts. Meaningful access to the courts is a right basic to our system, it is well established as one of the fundamental rights protected by the Constitution. See Ryland v. Shapiro, 708 F.2d 967, 971 (5th Cir. 1983). The U.S. Court of Appeals for the Fifth Circuit notes that the Supreme Court 'viewed the right of access to the courts as one of the privileges and immunities accorded citizens under article 4 of the Constitution and the fourteenth amendment; see Ryland, 708 F.2d at 971, ref. Chambers v. Baltimore & Ohio Railroad Co., 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907).

The court in Ryland added:

"there is in the first amendment a second constitutional basis for the right of access;

'certainly the right to petition extends to all departments of Government.

The right of access to the courts, is indeed but one aspect of the right of petition. "Ibid, ref. California Motor Transport Co. v.

Trucking Unlimited, 404 U.S. 508, 510, 92

S.Ct. 609, 611, 30 L.Ed. 2d 642 (1972). "A third

constitutional basis for the right to access

to courts is found in the due process

Clause." See Ryland, 708 F.2d at 972;

and in Wolff v. McDonnell, 418 U.S. 539,

579, 94 S.Ct. 2963, 2986, 41 L.Ed. 2d 935,

(1974), the supreme court held that "the

right of access to the courts, upon which

Johnson v. Avery, 393 U.S. 483, 89 S.Ct.

747, 21 L.Ed. 2d 718, (1969) was premised,

is founded in the Due Process Clause and

assures that no person will be denied

the opportunity to present to the judiciary

allegations concerning violations of fundamental constitutional rights."

The right of an inmate to secure meaningful access to the courts was first protected in Ex parte Hull, 312 U.S. 546, 61 S.Ct. 640, 85 L.Ed. 1034 (1941).

In Wolff v. McDonnell, 418 U.S. 539, 576, 94 S.Ct. 2963, 2984, 41 L.Ed. 2d 935 (1974), the supreme court had stated:

"the Fourteenth Amendment Due Process

claim based on access to the courts,

Ex parte Hull, 312 U.S. 546, 61 S.Ct. 640,

85 L.Ed. 2d 1034 (1941); Johnson v. Avery,

393 U.S. 483, 89 S.Ct. 747, 21 L.Ed. 2d

718 (1969); Younger v. Gilmore, 404 U.S.

15, 92 S.Ct. 250, 30 L.Ed.2d 142 (1971), has not been extended by this court to apply further than protecting the ability of an inmate to prepare a petition or complaint."

Here, in this particular case. Petitioner Keith L. Nash was held as a pretrial detainee awaiting trial on a criminal proceeding. Petitioner made several requests and complained about the delay of defendant(s) in providing notary access so that he may execute a power of attorney to prevent the loss of personal property.

The U.S. District Court concluded in the motion for summary judgment that notary services are secured civil rights only under limited circumstances.

In addition, the court cited both case laws of Lewis v. Casey, 518 U.S. 343, 355, 116 S.Ct. 2174 (1996), Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977), and citing Triton Energy Corp. v. Square D Co. 68 F.3d 1216, 1221 (9th Cir. 1995) stating: "he cannot sustain his § 1983 claim against them." Appendix B.

The Ninth Circuit even affirmed petitioner's appeal in stating: "summary judgment on Nash's claim regarding the denial of access to the law library and legal supplies was proper because Nash was represented by court appointed counsel in his state court proceedings at the time of the alleged deprivations." Appendix G.

Petitioner asks this court that several controlling case laws clearly applies a clear distinction between pretrial detainees from convicted prisoners who have filed 42 USC § 1983 civil rights action that alleged denial access to courts as a quagmire.

that this court has jurisprudence to resolve the procedural legal issues. See Marshall v. Rodgers, ___ U.S. ___, 133 S.Ct. 1446, 1450, 185 L.Ed. 2d 540 (2013); (citing Parker v. Matthews, 567 U.S. 37, 47, 132 S.Ct. 2148, 2155, 183 L.Ed. 2d 32 (2012)).

(a) The 'term' meaning access appears to be materially indistinguishable as part of interpretation of Bounds v. Smith and Lewis v. Casey?

In Bounds v. Smith, 430 U.S. 817 (1977); this court held: "the right of meaningful access to the courts is the most fundamental right he or she holds". See De Mallory v. Cullen, 855 F.2d 422, 446 (7th Cir. 1988) (citing Adams v. Carlson, 488 F.2d 619, 630 (7th Cir. 1973)).

Lewis v. Casey, 518 U.S. 343 (1996); this court held: "Prisoners have a fundamental right to access to courts." See Lewis, 518 U.S. (1996).

No where mention by this court or the lower courts have there been a resolution on whether the meaningful access to court term is material to a pretrial detainee alleging for notary access.

And if, so. Does the availability for notary access extends to the amount for meaningful access to courts such as [ie] legal law library; legal pleadings; writing materials etc.

It should appear that this court has established the notary access is only for limited purposes.

However, some cases have determine that meaningful access to the courts is a right basic.

to our system, and it is well established as one of the fundamental rights protected by the Constitution. See Ryland v. Shapiro, 708 F.2d 967, 971 (5th Cir. 1983).

In addition, when a pretrial detainee challenges some aspect of his pretrial detention that is not alleged to violate any express guarantee of the U.S. Constitution, the issue to be decided is the detainee's right under the Due Process Clause to be free from punishment. See Beil v. Wolfish, 441 U.S. 520, 533, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

Accordingly, if indeed, notary access is used only for limited purposes. The the court should resolve the question which appears to be a quignire to materially distinguish the claim to clarify the term meaningful access on whether limited purpose for notary extends to filing civil actions or grievances outside the scope of the challenging a sentence or confinement. See Lewis v. Casey, 518 U.S. 343 (1996).

REASONS FOR GRANTING THE PETITION

This case presents legal issues that impact both the public interest and is of national importance to clarify civil rights actions filed by pretrial detainees as opposed to convicted inmates.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Keith L. Nash

Date: August 20th, 2018