

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

IN THE  
SUPREME COURT OF THE UNITED STATES

MICHAEL LOUIS BEATTIE — PETITIONER  
(Your Name)

vs.

L. ROMERO, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL LOUIS BEATTIE

(Your Name)  
CDCR # H-93682  
New Folsom Prison- P.O. BOX 290066

(Address)

REPRESA, CALIFORNIA 95671

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1.) When, during Summary Judgment proceedings, a non-moving party asserts a fact - or set of facts - and the moving party doesn't dispute the fact, is the fact asserted considered admitted? Put another way, is an uncontroverted fact deemed admitted?
- 2.) Is a prison grievance "properly submitted" when, per the prison's own regulations, the prison official on duty at the time takes possession of the grievance for the purpose of mailing it to the final level of review?
- 3.) When prison officials lose a properly submitted grievance, and, as a direct of that loss, the time for submitting the grievance expires, is the prisoner deemed to have exhausted all "available" remedies?

## 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.) Plaintiff is a prisoner in state custody in California named  
Michael Louis Beattie
- 2.) Defendants are three correctional officers employed by CDCR and are named:  
L. Romero  
I. Marquez  
I. Ugalde

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APPENDIX B	MEMORANDUM OF THE NINTH CIRCUIT dated April 20, 2016
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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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Ross v. Blake, 136 S.Ct. 1850 (2016)

Andres v. Marshall, 867 F.3d 1076 (9th Cir. 2017)

### STATUTES AND RULES

42 U.S.C. 1983

Rule 56(b) Summary Judgment

Rule 60(b) Motion to Alter, Amend or Vacate Judgment

Exhaustion of Administrative Remedies rule

Eighth Amendment to the U.S. Constitution (excessive force)

First Amendment to the U.S. Constitution (retaliation for accessing court, submitting prison grievance.)

### 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**: **Michael Louis Beattie v. L. Romero, et al.**

The opinion of the United States court of appeals appears at Appendix B, C and F 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 A & D 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**:

N/A

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 twice. 1st on April 20, 2016 (en banc rehearing October 4, 2016)

2nd on August 15, 2018

No petition for rehearing was timely filed in my case.

Not this time for the Rule 60(b) Motion appeal

A timely petition for rehearing was denied by the United States Court of Appeals 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. § 1254(1).

For cases from **state courts**: **N/A**

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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The underlying claim arose from a 1983 prisoner rights suit alleging that three prison officials used excessive force against plaintiff in retaliation for plaintiff's jailhouse lawyering activities. First and Eighth Amendments.

Subsequent to the underlying claim the central issue involved is "exhaustion of administrative remedies" of the PLRA.

## STATEMENT OF THE CASE

Petitioner/plaintiff, Michael Louis Beattie, is a prisoner incarcerated in the state of California. Plaintiff is acting in pro se. Plaintiff is serving Life Without Parole for the 1995 'in-jail' murder of a fellow prisoner. (See People v. Schmaus (2004) 109 C.A.4th 846, for details.) This case does not concern plaintiff's criminal conviction. This case stems from a claim that prison officials assaulted plaintiff in retaliation for his jailhouse lawyering activities.

In 2013, when the events of this case took place, plaintiff was incarcerated at R.J. Donovan state prison in San Diego, California. Plaintiff was housed in the Administrative Segregation unit (ASU) at R.J. Donovan when, in retaliation for his grieving the conditions of confinement within that unit (as well as his prior legal activities), three corrections officers destroyed/confiscated personal property and assaulted plaintiff while he was in hand cuffs.

The harassment continued for 6 months until, in July 2013, plaintiff "cell extracted" in order to call attention to the abuses. In response to the treatment (or mistreatment) plaintiff had suffered, the warden of R.J. Donovan (D. Paramo) held an 'emergency committee' and released plaintiff back into the General Population of the prison.

Once free from the watchful gaze of the officers involved in the assaults and harassments plaintiff submitted a CDCR 602 inmate grievance. Plaintiff exhausted the first two levels of the grievance process before resubmitting his grievance to the third and final level reviewer in Sacramento, California.

A month later plaintiff received his inmate grievance from the Sacramento reviewer as rejected. The reviewer instructed plaintiff to cure a simple defect with the grievance and return it to Sacramento. Plaintiff did as he was instructed.

Plaintiff went to the prison's law library, obtained the Rights and Responsibility form necessary to process his grievance, signed and dated it, and re-mailed that grievance back to the third level reviewer in Sacramento. Plaintiff mailed the grievance by placing the grievance and all attached documents in an envelope addressed to "Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. BOX 942888, Sacramento, California, 94283-0001." Plaintiff placed 2 first class stamps on the envelope and delivered the entire envelope with its contents to correctional officer Lopez (the C/O on duty) on January 15, 2014, to mail as legal mail. Officer Lopez took the envelope, looked through it briefly and sealed it. She then took possession of the envelope for mailing purposes. That is the procedure outlined in the Title 15, the rule book for California prisoners.

To reiterate this point, plaintiff resubmitted the grievance to the third level reviewer in Sacramento by delivering it to officer Lopez to mail. Thus the grievance was in <sup>the</sup> possession of CDCR officials.

Plaintiff waited months for a response from the third level reviewer but never heard back.  $4\frac{1}{2}$  months later, long after a response was due, plaintiff filed his 1983 civil suit.

Counsel for defendants moved for Summary Judgment based on plaintiff's failure to exhaust his administrative remedies. Plaintiff filed opposition to Summary Judgment and argued that he had properly submitted his inmate grievance (or resubmitted it) by curing the defect and giving it to officer Lopez on January 15, 2014, for mailing. Plaintiff presented three Declarations sworn

to under penalty of perjury in support of his version of events. The first Declaration was from Andrew Granger, the clerk in the law library. Granger stated that he remembered plaintiff obtaining the Rights and Responsibility form shortly before January 15, 2014, and telling Granger why he needed the form. Plaintiff told Granger that he needed that form to satisfy the demands of the Appeal officer in Sacramento. The second Declaration was from Shawn Taylor, an inmate at Donovan prison. Taylor stated that he was with plaintiff when plaintiff gave his grievance to officer Lopez to mail to the third level reviewer. This was January 15, 2014. Third, plaintiff provided a Declaration sworn to under penalty of perjury that, on January 15, 2014, after fixing the defects identified by the appeals office, he gave his grievance to officer Lopez to mail as legal mail to the third level reviewer.

Defendants filed a response and stated that they have no record of the grievance being mailed. However, and here's a key fact in this case, they never controverted the fact that plaintiff gave his grievance to officer Lopez on January 15, 2014.

To reiterate this point. Defendants never controverted the fact that plaintiff properly resubmitted his grievance by giving it to officer Lopez to mail. They could have provided evidence from officer Lopez in the form of a Declaration which controverted plaintiff version of events, but chose not to.

Therefore, the facts show that prison officials were in possession of the grievance at the time it went missing and that, because of that, the time for resubmitting the grievance had passed.

The District court granted Summary Judgment stating that plaintiff presented no evidence that he resubmitted his prisoner grievance.

Plaintiff appealed and the 9th Circuit affirmed the grant of Summary Judgment.

The 9th Circuit ruled that "even accepting Beattie's contention that he delivered the required form to a prison officer on January 15, 2014 to be mailed, Beattie failed to exhaust his administrative remedies." (See page 2, MEMORANDUM dated April 20, 2016.)

Plaintiff filed a Motion for en banc rehearing arguing that that ruling misstated or misapplied the law. Plaintiff argued that when prison officials fail to respond to a properly filed grievance, and the time limits have passed, the prisoner is deemed to have exhausted. The 9th Circuit denied plaintiff's request for en banc rehearing.

Meanwhile, the U.S. Supreme Court Rukled on a case involving exhaustion of adminstrative remedies. (See Ross v. Blake, 136 S.Ct. 1850 (2016).) The Supreme Court made clear that there are three categories of instances or occurrences in which a prisoner's grievance is deemed to be exhausted. In applying the principles of Ross to an exhaustion case just 6 months later, the 9th circuit stated explicitly that 'when prison officials fail to respond to a prisoner's grievance within a reasonable time, the prisoner is deemed to have exhausted available administrative remedies.' THAT is the exact argument plaintiff had been making for years!

Plaintiff filed a Rule 60 Motion arguing that the 9th Circuit misstaed or misapplied the law with regard to exhaustion in his case. Plaintiff argued that his case is factually indistinguishable from the Andres, yet the 9th Circuit reached different conclusions. The District court denied the motion finding that the Andres case was distinguishable from plaintiff's in that Andres had a fact finding hearing in state court. Plaintiff appealed to the 9th Circuit.

In the 9th Circuit plaintiff argued that that difference - the location

of the fact finding process - did not amount to a distinction of facts. Plaintiff had a fact finding process: the Summary Judgment process. And the uncontroverted facts demonstrated that plaintiff properly resubmitted his grievance and that defendants (through officer Lopez, their agent) lost the grievance. Plaintiff argued that the venue for the fact finding process - one the state and the other the federal court - does not, without more, amount to a factual distinction. The fact remains, in plaintiff's case the 9th Circuit court held that "even accepting Beattie's contention that he delivered the required form to a prison officer on January 15, 2014 to be mailed, Beattie failed to exhaust his administrative remedies" while holding in Andres v. Marshall, 867 F3d 1076 (9th Cir. 2017) that "when prison officials fail to respond to a prisoner's grievance within a reasonable time, the prisoner is deemed to have exhausted available administrative remedies." Those two legal principles conflict.

In its brief MEMORANDUM dated August 15, 2018, the 9th Circuit states that Andres (supra) is factually distinguishable from his case, yet fails to state how the two cases are distinguishable.

Plaintiff is claiming that the 9th Circuit Court's MEMORANDUM dated April 20, 2016, provides the facts which makes his case factually indistinguishable from the Andres case. The most important fact in Andres was that he properly submitted his grievance by giving it to an officer for processing, but never received a response. In plaintiff's case the 9th Circuit accepted the uncontroverted facts that plaintiff properly resubmitted his grievance when, on January 15, 2014, he gave his grievance to officer Lopez to mail. In both cases prison officials lost the grievances. Yet prison officials are benefitting from that loss in this case while in Andres the Court recognized that exhaustion had occurred according to the principles announced in Ross (supra).

These are the facts which give rise to this petition.

## REASONS FOR GRANTING THE PETITION

This Court should grant review in this case for several reasons. First, it's clear that exhaustion of administrative remedies is an area of law that is undergoing rapid change at this time. There has recently been a sea-change in this area. The 9th Circuit (as well as all other Circuits) used to hear exhaustion issues under the 12(b) venue. Now, however, the issue is heard under the rules governing Summary Judgment (Rule 56, that is). For this reason there is still a lot of fluidity in the range of factual determination the judge can make. Therefore, continued guidance from the Supreme court is necessary.

Second, the issue involved in this case impacts a whole class of citizens, namely prisoners. Third, the Circuits are still not uniform in when a grievance qualifies for one of the exceptions to the exhaustion requirement. For example, in this case, the 9th Circuit is reaching conflicting holdings in two cases which appear to be "factually" indistinguishable. Despite the 9th Circuit's unreasoned opinion that plaintiff's case is distinguishable from *Andres v. Marshall* (supra), its own MEMORANDUM suggest otherwise. Fourth, allowing this ruling to stand - that prison officials can benefit from loosing a grievance - risk eroding fundamental rights of prisoners to access the courts. Since exhaustion is required if a prisoner is to secure his (or her) basic rights, it can't be presumed that losing a properly submitted grievance will prevent a prisoner from accessing the court system. Allowing this opinion to stand would encourage prison officials to 'lose' grievances and not worry about reprocussions. THAT is a dangerous precedent to set. Fifth, if the rule of law is based on its equal application to everyone, then the conflicting holding in the instant case and *Andres v. Marshall* is opposed to the rule of law.

To reiterate, the 9th Circuit stated that even if plaintiff in this case properly submitted his grievance - meaning the prison officials lost it - he still failed to exhaust while, in Andres v. Marshall, applying the principles announced in Ross v. Blake, the same 9th Circuit said when prison officials fail to respond to a properly submitted grievance exhaustion has occurred. Those conflicting opinions erode the uniformity of the law.

For all of these reasons this Court should grant review. This Court should use this case - and the clear and uncontroverted facts of this case - to reaffirm that "when prison officials lose, misplace or destroy a properly submitted grievance, the prisoner is deemed to have satisfied the exhaustion rule." You wouldn't think that that need saying; however, the facts and rulings in this case suggest otherwise.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Date: 14 October 2018