19-6952

IN THE

SUPREME COURT OF THE UNITED STATES

No. ____________

ORIGINAL

SIR GIORGIO SANFORD CLÁRDY
Petitioner

-against-

JUDY GILMORE, et. al.,
Respondents

Supreme Court, U.S.
FILED
NOV 06 2019
OFFICE OF THE CLERK

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Sir Giorgio Sanford Clárdy
SWISS #682809
Multnomah County Detention Center
11540 NE Inverness Drive
Portland, Oregon 97220

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QUESTIONS PRESENTED

1. After waiving defendants service of summons, are they required to comply with Fed. R. Civ. P. 12(a)(1)(A)(i) or 12(a)(1)(A)(ii) when filing timely answers? And if the answer is Fed. R. Civ. P. 12(a)(1)(A)(ii), would defendants affirmative defenses be waived and guilt admitted when they don't file an answer timely from the 60 days after the request for waiver of service of summons is sent to defendants.

2. Can the district court grant summary judgment without allowing plaintiff the discovery he seeks to respond against summary judgment?

PARTIES

The petitioner is Sir Giorgio Sanford Clardy, a detainee at Multnomah County Detention Center in Portland, Oregon. The respondents are "John" Jones and "John" Steiner, correctional officers at Snake River Correctional Institution ("S.R.C.I."), "John" Jost, correctional Captain at S.R.C.I., Judy Gilmore and Jason Bell, Assistant superintendents at S.R.C.I., "John" Miller, acting superintendent at S.R.C.I., Collette Peters, Director of the Oregon Department of Corrections ("O.D.O.C."), "Jane" Waggoner, Mental Health Counselor at S.R.C.I., "John" Bugher, Mental Health Manager at S.R.C.I., "John" Mooney, Counselor at S.R.C.I., and "John" and "Jane Does", I.P.C. Committee Member at S.R.C.I.

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The decision of the United States Court of Appeals for the Ninth Circuit is unreported. It is cited in the table at 2019 U.S. App. LEXIS 2201 (9th Cir 2019) and a copy is attached in the Appendix to this petition. see ~~[illegible]~~ A20-24. The order of the United States District Court for the District of Oregon is reported. It is cited in the table at 2017 U.S. Dist. LEXIS 63445 (April 23, 2017) and a copy is attached ~~at~~ in the Appendix to this petition. see A26-31.

JURISDICTION

The ~~[illegible]~~ Memorandum of the United States Court of Appeals for the Ninth Circuit was entered with a judgment on July 22, 2019. An order denying a petition for rehearing en banc was entered on August 28, 2019, and a copy of that order is attached in the Appendix to this petition. see A 25. Jurisdiction is conferred by 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION AND COURT RULES INVOLVED

This case involves Amendment XIV to the U.S. Constitution, which provides:

> section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the 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 it's jurisdiction the equal protection of the laws.
>
> * * *
>
> section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendment has governing authority over Federal Rules of Civil Procedures, which provide in relevant terms of this case:

> F.R.C.P. 4(d)(3). Time To Answer After A Waiver. A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until

60 days after the request was sent out until 90 days after it was sent to the defendent outside any judicial district of the United States.

* * *

F.R.C.P. 12(a)(1)(A). In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is a follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

* * *

F.R.C.P. 26(b)(1). Scope In General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense — including the existence, description, nature, custody, condition, and location of any documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

STATEMENT OF THE CASE

On July 23, 2013, after ~~plaintiff~~ petitioner was sentenced to over 100 years in State custody based upon multiple dangerous offender sentence enhancements due to a decision that found he suffered from a severe mental health disorder, he was transported from county custody to State custody to begin his sentence, where he was housed at both the Oregon State Penitentary ("O.S.P.") and Eastern Oregon Correctional Institution ("E.O.C.I.") from July 23, 2013 until March 2014, see [Dist Court DKT # 32 at ¶¶ 2-4] and [Dist Court DKT # 30 at ¶¶ 2-7]. During petitioners stay at both O.S.P. and E.O.C.I. he continued to complain about needing adequate mental health evaluations and mental health treatment for his severe mental health disorder but he was never adequately provided it. Id. Petitioner was then transported to Snake River Correctional Institution's ("S.R.C.I.") Intensive Management Unit ("I.M.U.") program on March 26, 2014 which he was trapped in an endless cycle of isolation and punishment until he was transported back to O.S.P. on October 5, 2016. Id.

After months of complaining to state defendants Waggoner and Mooney about I.M.U. not being adequately appropriate housing for his severe mental health disorder, and after he finally was notified on how to participate in a "seperate internal correction review process" that's called the "I.M.U. Status Review Process" which is seperate than the grievance process[1], he sent the I.P.C. Committee, whom consisted of defendants Jost, Gilmore, Bell, Miller, Waggoner, Bugher, Mooney and other unknown named state officials/employees, a personally designed I.M.U. administrate request exhausting multiple complaints as an available remedy, suchas, pointing out the fact that I.M.U. fails to deal with severe mental health disorders and I.M.U. fails to provide adequate and qualified staff and treatment for petitioners severe mental health disorder. The I.M.U. administrative request form was supported with attached exhibits, but it was disregarded by the I.P.C. committee and office of Population Management ("O.P.M."), see [Dist Court Dtk # 30 at II 7] and [Dist Court Dtk # 32 at II 4].

On April 23, 2015 and while the I.P.C. committee and O.P.M. were reviewing petitioner's I.M.U. status review complaint, he was brutally assaulted when he was hand-cuffed by defendant Jones while defendant Steiner stood-by and did nothing to protect petitioner which they both are not skilled, trained and qualified to deal with his severe mental health disorder, see [Dist Court Dtk # 32 at II 5]. In an attempt to cover-up the scene defendants Steiner, Jones and other unknown named correctional officials allowed the hazmat orderly to clean up the blood left on the floor without preserving evidence by taking photographs which is required by their own rules. Id. Petitioner ended up with serious injuries to his head area and back. Id. On May 1, 2015 Special Management Unit ("S.M.U.") Inspector General Lieutenant Shautz discussed with petitioner on how an administrative investigation was going to be conducted regarding defendant Jones assaulting petitioner after he spoke with the Oregon State Police about it but if he was willing to waive the opportunity to speak with the Oregon

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1 O.D.O.C. has designed seperate internal correction review processes like the I.M.U. Status Review Process governed under OAR 291-055-0025 and 291-055-0031 which are available complaint remedies to address issues in I.M.U., and would otherwise be unareviable under OAR 291-109-0140(3)(b) if grieved.

State Police then the inspector general office will begin their investigation so petitioner decided to speak with the Oregon State Police, see [Dist Court Dtk # 32 at ¶ 6].

On May 7, 2015 petitioner was seen by Detective Javier Marquez out of the State Police office which petitioner explained the incident in detail and suggested that he had multiple witnesses but he needed to see if they were willing to be witnesses for criminal charges, since they're only aware of being witnesses for a civil action so Det. Marquez said he would see petitioner on another day at the S.R.C.I. facility in-order to get petitioner's witness list, see Id at ¶ 7. On May 13, 2015 Det. Marquez came to S.R.C.I. to speak with petitioner which they discussed the criminal investigation and petitioner provided him with the witness list, see Id at ¶ 8. Even though petitioner process in properally exhausting his administrative remedies were interferred, impeded, impaired, obstructed and frustrated, he still was able to file multiple tort claims, grievances and I.M.U. status reviews in relations to all his claims addressed in his complaint [Dist Court Dtk # 2], therefore exhausting all available administrative remedies in connection to case law and administrative rules, see [Dist Court Dtk # 32 at ¶ 10].

On July 6, 2015, plaintiff complaint was entered into the court file but it wasn't until December 11, 2015 that Magistrate Judge Mark D. Clarke ordered petitioner to proceed in forma paupers, see [Dist Court Dtk # 2 and # 6]. This same day Magistrate Judge Clarke sent defense counsel Shannon Vincent a "Notice of Lawsuit and Request for Waiver of Service of Summons" [Dist Court Dtk # 7] with a copy of the complaint and designated the "Waiver of Summons" form to be due in 30 days which would be January 14, 2016. see [Dist Court Dtk # 32 at ¶ 11]. This same notice/request form [Dist Court Dtk # 7] also explained to the state defendants that if they comply with the waiving of summons, then the execution of a waiver from shall "<u>NOT</u>" increase the time in which to file their answer or responsive pleading pursuant to F.R.C.P. 12(a)(1)(A)(ii). Id. On January 15, 2016, instead of adequately processing petitioner's Subpoena Duces Tecum for his requested discovery of documents in Det. Marquez possession, the clerk of the U.S. District Court mistakenly filed it as a motion and failed to forward it to the U.S. Marshall service, see [Dist Court Dtk # 32 at ¶¶ 12, 13, 15 and 16].

After filing a "Waiver of service of summons" [Dist Court DtK #17] on February 16, 2016 in-behalf of defendants, defense counsel Vanessa A. Nordkye filed an untimely answer[2] [Dist Court DtK #21] on March 8, 2016 with several affirmative defenses, than turned around and immediately filed their motion for summary Judgment ("M.S.J.") [Dist Court DtK #23] by using those same untimely filed affirmative defenses in it which they untimely filed in their Answer, see [Dist Court DtK #32 at ¶¶ 12-14]. On this sameday, defendants filed their motion to stay discovery [Dist Court DtK #22] in an attempt to prevent petitioner from filing supporting evidence to provide an adequate response, however Magistrate Judge Clarke allowed discovery to go forth but defendants refused to comply, see [Dist. Court DtK #83-84]. On December 19, 2016 Magistrate Judge Clarke filed his Findings and Recommendation [Dist Court DtK #78] to dismiss petitioners case with prejudice which clearly appeared to be based upon all similiar arguments raised in defendants M.S.J., see [Dist Court DtK #23].

In response, petitioner filed his objection to the findings and recommendation because not only was defendants affirmative defenses waived and guilt admitted, due to an untimely answer, but alternatively petitioner could clearly show how he did exhaust all available administrative remedies or how the grievance process was ineffective, unobtainable, unduly, inadequate and obviously futile had defendants complied with petitioner discovery request, since it concealled his supporting evidence, see [Dist Court DtK #84]. On April 23, 2017, the originating court adopted Magistrate Judge Clarke findings and recommendation, and dismissed his case, see [Dist Court DtK #85-86].

On August 25, 2017, petitioner filed his "Appellant's Informal Brief". see [Appellate Court DtK #10]; A1-19. On December 26, 2017, defendants filed their response brief against petitioners informal Opening Brief with arguments that misintreprate both the "Request for Waiver of service of summons" and "Waiver of service Form" procedural law in-order to justify why they believed their affirmative defenses were time filed. see [Appellate Court DtK #18, pgs 7-11]. In summary, defendant argued that they believed they have 21 days from the date after filing their waiver of service to assert their affirmative defenses through an answer. Id. Defendants response brief also arg-

[2] At no time, before or after filing their Answer has defendants filed a motion for extension of time to file untimely answers upon a showing of good cause or excusable neglect.

ued that (1) the district court did not abuse it's discretion in granting discovery to be stayed and (2) the district court correctly granted summary judgment based upon unexhausted administrative remedies. Id.

In reply, petitioner filed his reply brief in an attempt to eliminate any such misintrepration of the law the defendants and district court had applied, see [Appellate Court DKT #27]. On July 22, 2019, the Ninth Circuit Court filed an Memorandum ruling that (1) petitioner has not shown what material facts would be discovered that would preclude summary judgment, (2) defendants answer was timely served by the filing of their waiver form that triggered a 21-day deadline to file their answer, which then they complied with under FRCP 12(a)(1)(A)(i), and (3) petitioner failed to exhaust available administrative remedies against all defendants excluding Jost, see [Appellate Court DKT #59].

On July 30, 2019, petitioner sought review of the memorandum in a petition for rehearing en banc because (1) there is a misapplication of the waiver of summons procedures when dealing with deadlines to file answers, (2) petitioner exhausted all available administrative remedies, and (3) petitioner clearly supported a showing of material fact which would have been discovered through discovery that he exhausted all available administrative remedies precluding defendants summary judgment based upon their allegation of unexhausted administrative remedies, see [Appellate Court DKT #60]. On August 28, 2019, petitioners petition for rehearing en banc was denied. [Appellate Court DKT #61].

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation and misapplication of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Federal Rules of Civil Procedures. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. § 1331

REASONS FOR GRANTING THE WRIT

A. Conflicts With Decisions of Other Courts For Waiver of Service of Summons

The holding of the courts below that if a defendant timely waive service of summons under Fed. R. Civ. P. 4(d), a defendant must serve an answer within 21 days after the defendants waiver is filed with the court is directly contrary not only to the Fed. R. Civ. P. but to the holdings of five ~~do~~ federal courts. see Citizens Banks v. Pames, 376 Fed Appx 496, 498 (6th Cir 2010); Macco Franchising, LLC v. B.T.T.P. Enterprises, Inc., et al. 2015 U.S. Dist LEXIS 76414; Turner Broadcasting System, Inc. v. Sanyo Electronic, Inc 33 BR 996 (N.D. Ga. 1983), aff, 742 F.2d 1465 (11th Cir 1984); The Tire Hanger Corporation v. My Car Guy Concierge Services Inc., 060414 CACDC, 5:14-cv-00549-ODW (MANx); Bergson v. United States, 110817 WAWDG, 2:17-cv-01441-RSM. In addition, the U.S. Supreme Court has held that "[I]f the defendant is served with summons and the complaint is filed in court, but under local rules, services of the complaint is not required, the removal period runs from the date the complaint is made available through filing". Murphy Bros v. Michetti Pipe, 526 U.S. 344, 354, 143 LED2d 448 (1999).

B. Importance of The Question Presented For Waiver of service of summons

This case presents a fundamental question of the interpretation of Fed. R. Civ. P. 4(d)(3), 12(a)(1)(A) and of this Courts decision in Murphy Bros v. Michetti Pipe. The question presented is of great public importance because it affects the operations of waiver of service of summons in prisoners in forma paupers cases in all 50 states and the District of Oregon. In view of the large amount of litigation for in forma paupens proceedings, guidance on the question is also of great importance to prisoners, because it affects their ability to receive fair decisions in proceedings that may result in months or years of added litigation.

The issue's importance is enhanced by the facts that the District Court of Oregon and Ninth Circuit Court in this case have seriously misinterpreted Fed. R. Civ. P. 4(d)(3) and 12(a)(1)(A)(ii). The purpose of the service of summons process is governed under those Federal Rules to ensure that the addressee is notified of proceeding against them and that an answer or respondive pleading is timely filed against it. The Court reiterated this point in Murphy Bros, and added that a required time frame period be applied when local rules do not require service of the complaint, i.e., waivers of service of summons.

It has been ruled on by the District Court of Oregon and Ninth Circuit Court that defendants in petitioners cases have filed a timely answer, therefore not waiving their affirmative defense. see Clardy v. Jones, et al, USDC No 2:15-cv-01241-CL; also see Clardy v. Gilmore, et. al., 773 Fed Appx 958 (9th Cir 2019). These courts relied on Fed. R. Civ. P. 12(a)(1)(A)(i) through the District Court of Oregon individual rules established from their self-created "Notice of Lawsuit and Request for Waiver of service of Summons" form [Dist Court Dkt #7] which stated that, "If you [petitioner] comply with this request and return the waiver to the court, no summons will be served". Clardy v. Gilmore, et al, 773 Fed Appx at 959. These courts went on to rule that, "* * * [T]he defendants filing of the waiver form triggered the 21-day deadline to file their answer which they complied with, see Fed. R. Civ. P. 12(a)(1)(A)(i)". Id

However, Federal Rules, not local rules or courts individual rules, govern deadlines for filing answers. see Allstate Ins. Co. v. Administratia Asigurarilor De Stat, 163 F.R.D. 196 (S.D. N.Y 1995). under Fed. R. Civ. P. 12(a)(1)(A)(ii), if a defendant timely waives service of summons under Fed. R. Civ. P. 4(d) a defendant must serve an answer, "within 60 days after the request for a waiver is sent." And, under Fed. R. Civ. P. 4(d)(3) "Time To Answer After A Waiver" it clearly states that, a defendant who, before being served with process, timely return a waiver need not serve an answer to the complaint until 60 days after the request for waiver of service of summons was sent.

Accordingly, here, defendants were required to file an answer within 60 days after the designation of the request for waiver of service of summons which was December 11, 2015, but defendants failed to timely do so. The District Court of Oregon and Ninth Circuit Court wants one to believe that defendants have 21 days after they waive and file their waiver of service to file their answer under Fed. R. Civ. P. 12(a)(1)(A)(i). However, the 21 day process does not apply to defendants who waive service of summons, and instead the federal circuits recognize that once defendants waive service of summons they have 60 days from mailing off the request of waiver to answer. see Citizens Banks v. Parnes, 376 Fed Appx 496, 498 (6th Cir May 4 2010); also see Macco Franchising, LLC v. B.T.T.P. Enterprises, Inc. et.al 2015 U.S. Dist LEXIS 76414.

Thus the District Court of Oregon and Ninth Circuit Court seriously misinterpreted Fed. R. Civ. P. 4(d)(3) and 12(a)(1)(A)(ii) by failing to distinguish between the time-frame in serving an answer when served with the summons and complaint, and when service of summons have been waived. The Court should correct that misinterpretation and make it clear that when defendants waive service of summons, an answer must be served in accordance with Fed. R. Civ. P. 12(a)(1)(A)(ii).

C. Conflicts With Decisions of other Courts For Discovery Issues

The holding of the Courts below that petitioner did not show that material facts would be discovered in discovery that would preclude summary judgment is directly contrary not only to Fed. R. Civ. P. and facts in this case but to the holdings of seven federal courts. see Jones v. Blanas, 393 F.3d 918, 930-31 (9th Cir 2004); Klingele v. Eikenberry, 849 F.2d 409, 412-13 (9th Cir 1988); LaBounty v. Coughlin, 137 F.3d 68, 71-72 (2nd Cir 1998); Nauman v. Bugado, 374 F. Supp 2d 893, 900-01 (D. Haw 2005); Ingle v. Yelton, 439 F.3d 191, 196 (4th Cir 2006); Leigh v. Warner Bros, Inc. 212 F.3d 1210, 1219 (11th Cir 2000); Abdul-Wadood v. Duckworth, 860 F.2d 280, 282-83 (7th Cir 1988). In addition, the U.S. Supreme Court has held that "[t]he general rule in the federal system is that '[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.' Fed. Rule. Civ. Proc. 26(b)(1)". see Republic of Arg v. NML Capital, Ltd, 573 U.S. 134, 139, 134 S.Ct 2250, 189 L. Ed 2d 234, 240 (2014).

D. Importance of The Question Presented For Discovery Issues

This case presents a fundamental question of the interpretation of Fed. R. Civ. P. 26(b)(1) and of this courts decision in Republic of Arg v. NML Capital, Ltd because it affects the operation of discovery for plaintiffs in general all around the 50 state and District in America. In view of the large amount of litigations over a plaintiff legal proceedings, guidance on the question is also of great importance to prisoners, because it affects their ability to receive fair decisions in discovery proceeding and litigation that may result in months or years of added litigation.

The issue's importance is enhanced by the facts that the District Court of Oregon and and Ninth Circuit Court in this case have seriously misinterpreted Fed. R. Civ. P. 26(b)(1) and

Republic of Arg, as well as either misunderstood or failed to pay attention to the actual facts and legal theories on why discovery would preclude summary judgment. This court held in Republic of Arg that parties may obtain discovery regarding relevent material to claims and defenses. It has been ruled on by the District Court of Oregon and Ninth Circuit Court that even if discovery was provided material facts from the discovery would not preclude summary judgment alleging that petitioner did not exhaust all available administrative remedies. see Clardy v. Jones, et. al, USDC No. 2:15-cv-01241-CL; also see Clardy v. Gilmore, et al., 773 Fed Appx 958 (9th Cir 2019). In general, these courts relied on five seperate reasons which clearly appears as if the facts and claims raised by petitioner are being overlooked and misapprehended, so for those reasons the following will be an outline guide on how not only did petitioner exhausted. But how petitioner also requested discovery of material fact that would have raised a genuine dispute as to whether remedies were exhausted and/or ineffective, unobtainable, unduly, inadequate or obviously futile precluding summary judgment regarding respondents affirmative defense that claimed unexhausted administrative remedies defense.

It is well-established caselaw that a court should not grant summary judgment against a party who has not had an opportunity to pursue discovery or who discovery request have not been answered. Respondent's failed to adequately comply with petitioners discovery request [Dist Court DKt #32 at ¶ 15]. Though respondents requested discovery to be stayed pending resolution of M.S.J. [Dist Court DKt #22] this district court continued discovery through an extension of time [Dist Court DKt #43 and 60], but the respondents still failed to comply with petitioners request of discovery. see [Dist Court DKt # 32 at ¶ 15]. Petitioner has continued to argue that he sought discovery which would have allowed him to adequately respond to respondents M.S.J. precluding it but respondents failed to comply with his discovery request and the lower courts disregard the impotence of the discovery request as to it's relevants.

First of all, if an issue is not "grievable" under the grievance rules, a petitioner does not have to exhaust the grievance system. see Carr v. Carlyn, 699 Fed Appx 722, 723 (9th Cir

2017) "not grievable" issues make remedies unavailable and allows plaintiff to not have to exhaust the grievance system); also see Mitchell v. Caruso, 2006 WL 3825077, *2 (E.D. Mich Dec 26 2006) (noting that grievance policy made "the content of a policy or procedure non-grievable"); McGrath v. Johnson, 67 F. Supp. 2d., 499, 510-11 (E.D. Pa 1999) (holding prisoner not required to file a grievance on a matter the inmate grievance procedure would not address).

Oregon Department of Corrections ("O.D.O.C.") grievance policy and procedure has clearly made certain content non-grievable which petitioner has raised three of them as being reasons of why he was not required to exhaust their grievance system since it was not available, see Appellants Informal Brief, pgs 11-15 [~~[illegible]~~ A 11 to 15]; also see Petitioner for Rehearing En Banc ~~see~~ [A 37 to 40]. One of the ways grievance contents in O.D.O.C. can ~~[illegible]~~ be non-grievable are related to "incidents or actions for which an inmate may take part; *** classification issues, etc.", see OAR 291-109-0140(3)(b). OAR ~~[illegible]~~ 291-109-0140(3)(b) was created to allow inmates a "seperate internal correction review process" for specific topics and if that avenue was or even wasn't used it would not be grievable. It has been ruled that petitioner failed to comply with O.D.O.C. grievance rules against respondents Bell, Bugher, Gilmore, Miller, Morey, Peters and Waggoner. see A 22. Petitioner disagrees because as raised he used a seperate "internal department appeal or review" process based upon his classification in the Intensive Management Unit ("I.M.U.") which are ~~[illegible]~~ provided through what is called "Situational Review" and "Retention/Re-assignment from IMU Status" under OAR 291-055-0025 and 291-055-0031. see A 13; also see A 38-39; also see Owens v. Keeling, 461 F.3d 763, 769 (6th Cir 2006) (holding grievance system was not an available remedy for classification complaint where prison required use of a seperate classification appeal procedure).

Petitioners complaint has raised a claim of equal protection regarding IMU failing to deal with his severe mental health illness and I.M.U. failing to provide adequate and qualified staff and treatment to deal with his severe mental health which are all classification issues not grievable and is why petitioner complied with O.D.O.C. policy of using a seperate internal correction review process. Discovery was not complied with by respondents but had it ~~be~~ been complied with production of documents, admission request and interrogatories by petitioner would had reveailed that seperate internal correction review processes are allowed and required for classification issues which would be otherwise non-grievable, and the IMU status/situational review were applied by petitioner, in relations to all the circumstances addressed in his complaint which would preclude summary judgment claims of unexhausted administrative remedies defense.

Secondly, another way grievance contents can be non-grievable are related to "Misconduct report, investigations leading to or from misconduct reports or disciplinary hearings, findings and sanctions", see OAR 291-109-0140(3)(e). Petitioners complaint has raised a claim of excessive use of force against "all respondents" for an incident he received a misconduct report, disciplinary hearing, findings and sanctions which is otherwise not grievable. Id. The lower court overlooked and/or misapprehanded that issue and instead ruled that petitioner failed to comply with grievance rules by exceeding the maximum number of initial grievance that can be filed per week and month. see A 22-23. Petitioner disagrees not only because the contents centered around his complaint are not grievable under OAR 291-109-0140(3)(e), but as raised in his informal opening brief limiting initial grievances to only two per week and six per month is ineffective and obstructs exhaustion avenues. see A 14-15 ; also see Williams v. Paramo, 775 F.3d 1182, 1191 (9th Cir 2015) ("ineffective, unobtainable, unduly, prolonged, inadequate or obviously futile" grievance system prevails against unexhaustion affirmative defensive.); also see A 39

Discovery for this specific issue was not complied with by respondents but had it been complied with production of documents, admission request and interrogatories by petitioner would have revealed that he received a misconduct report, disciplinary hearing, findings and sanctions centered around the incident his lawsuit is about which is otherwise non-grievable and would preclude summary judgment claims of unexhausted administrative remedies. Furthermore, this same discovery would have revealed that O.D.O.C. grievance process of only allowing two grievances per week and six per month are ineffective/obstructive, unavailable, unobtainable and inadequate which barred petitioner from exhausting in that area (though it wasn't needed because of ungrievable rules) because he did not have an opportunity to file them before exceeding the limits since the limit was already exceeded with other issues complained about before those incident arose, therefore precluding summary judgment claims of unexhausted administrative remedies.

The last way grievance contents can be non-grievable are related to "claims or issues for which the inmate has filed a Notice of Tort with Oregon Department of Administrative Services, Risk Management Division", see OAR 291-109-0140(3)(g). The Ninth Circuit reversed the grant of summary judgment for defendant Jost and remanded for the district court to consider in the first instance whether O.D.O.C.'s policy prohibiting the simultaneous filing of a grievance and notice of tort claim deprived petitioner of an administrative remedy. see A 23. Petitioner disagrees because the Ninth Circuit has already ruled in an Oregon prisoner's case that the O.D.O.C. policy (OAR 291-109-0140(3)(g)) which does not allow a grievance and a Notice of Tort Claim to both be filed in administrative remedies due to O.D.O.C. rules being inapplicable in exhausting administrative remedies which petitioner raised in his brief. see A 14, 39 and 40 ~~Appendix~~; also see White v. Hall, 384 Fed Appx 560 (9th Cir 2010)(unpublished), opinion, reversing and remanding White v. Hall, 2009 WL 602975 (D. Ore March 6, 2009). Furthermore, discovery for this specific issue was not complied with by respondents but had it been complied with production of documents, admission request and interrogatories by petitioner would have revealed that notice of tort claims were filed against "all respondents" preventing petitioner from filing grievance against "all respondents" as being ungrievable and would preclude summary judgment claims unexhausted administrative remedies.

Thus the District Court of Oregon and Ninth Circuit Court not only seriously misinterpreted Fed. R. Civ. P. 26(b)(1) and Republic of Arg v. NML Capital, Ltd by failing to distinguish between non-relevant and relevant discovery request, but they ~~mainly~~ overlooked and misapprehended the relevant facts of petitioner case which prevented them from appropriately considering what the relevant discovery could be. The Court should correct those misinterpretation, oversights and misapprehence and make it clear what is "relevant" discovery to preclude summary judgments.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

DATED this 31st day of October 2019

Sir Giorgio Sanford Clardy

Sir Giorgio Sanford Clardy
Petitioner— In Pro se