

20-7780
No.

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES PLAS SAMS,
PETITIONER,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL
RESPONDENTS.

ORIGINAL

ON PETITION FOR WRIT OF CERTIORARI TO
COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

FEB 16 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

JAMES PLAS SAMS

No. BB9787

P.O. Box 2199

Blythe, CA 92226

Petitioner in pro se

QUESTION PRESENTED

The Constitution guarantees a right to expressive association for activities protected by the First Amendment. Similarly, the Constitution limits content-based regulations that prohibit public discussion of an entire topic. Petitioner and other inmates filed group grievances that challenged constitutional violations pursuant to California regulations. The grievances were arbitrarily rejected and Petitioner filed a civil lawsuit. In retaliation California banned the group grievance regulations that had been in effect for 30 years. Did California's actions violate the right of expressive association and constitute content-based discrimination?

LIST OF PARTIES

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

California Department of Corrections and Rehabilitation;

Chelsea Armenta;

Captain W. Hawkins;

P. Birdsong;

P. Messerli;

R.W. Smith;

Natalie Fransham;

Ruben Jimenez;

Christina Bristow;

C. Tennison;

P. Ramos;

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT.....	4
CONCLUSION.....	7

INDEX TO APPENDICES

Appendix A	Decision of the Ninth Circuit Court of Appeals
Appendix B	Decision of the United States District Court
Appendix C	Ninth Circuit denial of petition for rehearing
Appendix D	Cal. Code Regs. tit 15 §3084.2 (Group Appeals)
Appendix E	CDCR pamphlet banning group appeals

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE</u>
Ashcroft v. Iqbal, 556 U.S. 662 (2009).....	7
Blaisdell v. Frappiea, 729 F.3d 1237 (9th Cir. 2013).....	5
Broadrick v. Oklahoma, 413 U.S. 601 (1973).....	6
Castro v. United States, 540 U.S. 375 (2003).....	7
Erickson v. Pardus, 551 U.S. 89 (2007).....	7
Lozman v. Cty. of Riviera Beach, 138 S. Ct. 1945 (2018)...	7
Nieves v. Bartlett, 139 S. Ct. 1715 (2019).....	7
Pell v. Procunier, 417 U.S. 817 (1974).....	4
Police Dep't. of Chicago v. Mosley, 408 U.S. 92 (1972)...	5
Procunior v. Martinez, 416 U.S. 396 (1974).....	4
Ramirez v. Galaza, 334 F.3d 850 (9th Cir. 2003).....	5
R.A.V. v. St. Paul, 505 U.S. 377 (1992).....	6
Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015).....	6
Roberts v. U.S. Jaycees, 468 U.S. 609 (1984).....	4
Sorell v. IMS Health, Inc., 564 U.S. 552 (2011).....	6

STATUTES AND RULES

28 U.S.C. §1254(1).....	1
Supreme Court Rule 10.....	4, 5

OTHER

CALIFORNIA CODE OF REGULATIONS

Cal Code Reg., tit 15 §3084.2 (h).....	2
Cal. Code Reg., tit 15 §§3480-3487.....	2

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

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

OPINIONS BELOW

For cases from federal courts:

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

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

** The magistrate judge findings and recommendations were destroyed in a cell search. Attachment B, dismissal with leave to amend, is based on the same reasoning. Adopted by district judge.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 10, 2020.

A timely petition for rehearing was denied by the United States Court of Appeals on December 9, 2020, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

2. California Code of Regulations, Title 15 §3084.2 (h):

Group appeal. If a group of inmates/parolees intend to appeal a policy, decision, action, condition or omission affecting all members of the group, one CDCR Form 602, Inmate/Parolee Appeal, shall be submitted describing the appeal issue(s) and action requested, accompanied by a Form 602-G (08/09), Inmate/Parolee Group Appeal, which is incorporated by reference, with the legible name, departmental identification number, assignment, housing, and dated signature of the inmate or parole who prepared the appeal. Each page of the CDCR Form 602 must contain the appeal issue, action requested, and a statement that that all the undersigned agree with the appeal issue/action requested.

3. California Code of Regulations, Title 15 §3480-3487:

See Appendix E pamphlet banning group appeals.

STATEMENT OF THE CASE

On February 19, 2019, prison mail room staff confiscated an "Eden Press" catalog from Petitioner, inmate Burciaga, and inmate Ramirez. In response Petitioner along with the other inmates filed a group appeal as the issue affected "all members of the group" as allowed under Cal. Code of Regs. tit. 15 §3084.2(h).

In response and contrary to the regulations the appeals coordinator rejected the appeal stating, "Upon review the issue does appear to be of a similar nature; however as supporting documentation demonstrates the event occurred to three (3) seperate individuals versus the group collectively/as a whole." (Complaint Supp., Exh. 1).

Subsequently, any group appeal by any inmates no matter the topic from arbitrary trust account deductions, inadequate law library access, unconstitutional mass middle of the night strip searches, and procedures that exposed inmates to COVID-19 were arbitrarily rejected.

Petitioner and other inmates filed civil actions that alleged violations of the First Amendment rights of expressive association, right to petition the government for the redress of grievances, and retaliation. Within 30 days of these civil actions the California Dep't. of Corr. & Rehab. enacted emergency regulations to ban all group appeals from all inmates in California. The group appeal regulations had been in effect for more than 30 years.

The district court and court of appeal ruled there is a failure to state a claim.

REASONS FOR GRANTING THE WRIT

- I. The Court of Appeals has decided the important questions of the Right to Petition and Expressive Association in a way that conflicts with decisions of this Court under Sup. Ct. R. 10 (c)

The First Amendment guarantees the right to petition the government for the redress of grievances. Accordingly, this Court has held that "prisoners retain those First Amendment right of speech not inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974).

Similarly, this Court has held:

"[A]n individual's freedom to speak, to worship, and petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were also guaranteed."

Roberts v. U.S. Jaycees, 468 U.S. 609, 618 (1984).

"[T]he right to associate for expressive purposes is not, however, absolute. Infringement on that right might be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." Roberts, at 623. See also Procunior v. Martinez, 416 U.S. 396, 413 (1974) (Prison regulations that restrict First Amendment rights are only justified if it "furthers an important interest unrelated to the suppression of expression.").

In this matter the district court and Court of Appeals cite an often copied and pasted case cited in virtually all cases in the Circuit, Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) ("inmates lack a separate constitutional entitlement to a specific grievance procedure"). See Attachment B, at 17-18. Moreover, the decision conflicts with another opinion Blaisdell v. Frappiea, 729 F.3d 1237, 1245 (9th Cir. 2013) ("inmate associational rights only extend to groups engaged in expressive activities").

Here, the appeals coordinators refusal to process all group appeals infringed on the right of expressive association without a legitimate penological interest. Moreover, CDCR's enactment of regulations to ban all group appeals lacked any penological interest. Similarly, there were less restrictive means to restrict associational freedoms as the group appeal regulations had been in effect for over 30 years.

II. The Court of Appeals has decided the important question of content-based discrimination in a way that conflicts with decisions of this Court under Sup. Ct. R. 10 (c)

The First Amendment applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." A government "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95 (1972). Content-based laws-those that target speech based on its communicative content-are presumptively unconstitutional and may be justified only if the government proves that they are

narrowly tailored to serve compelling state interests.

R. A. V. v. St. Paul, 505 U.S. 377, 395 (1992). Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. Sorell v. IMS Health, Inc., 564 U.S. 552, 555 (2011).

"[T]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." Reed v. Town of Gilbert, 135 S. Ct. 2218, 2230 (2015).

In this matter prison officials within 30 days of lawsuits that challenged arbitrary rejections of group appeals banned all group appeals because of the motivating ideology of expressive association. The vast majority of prisoners are afraid to file single appeals for fear of retaliation.

Petitioner is an apt example that barely survived COVID-19, with diabetes and hypertension, after Respondent Armenta and others refused to single cell him when similarly situated high risk inmates were. This in retaliation for grievances and civil actions.

Here, the ban on group appeals may cause some citizens "to refrain from constitutionally protected activity." Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973).

"[A]n official retaliatory policy is a particularly troubling and potent form of retaliation, for a policy can be long term and pervasive, unlike an ad hoc, on the spot decision by an individual officer." Lozman v. Cty. of Riviera Beach, 138 S. Ct. 1945, 1954 (2018).

"[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech." Nieves v. Bartlett, 139 S. Ct. 1715, 1722 (2019).

In this matter the California Dep't. of Corrections and Rehabilitation embarked in a retaliatory policy to infringe on the bedrock constitutional guarantee of the right to Petition. This in effect leaves many inmates with no viable mechanism to remedy prison injustices.

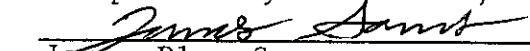
CONCLUSION

The opinions below may have overlooked this Court's precedents requiring pro se pleadings to be liberally construed. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam); Castro v. United States, 540 U.S. 375, 381 (2003) (courts' have authority to recast pro se litigants pleadings to "avoid unnecessary dismissal"). Petitioner's allegations "plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

As the Petition raises questions of national importance concerning First Amendment rights of prisoners and pro se litigants the writ of certiorari should be granted.

Dated: 02/15/21

Respectfully submitted,


James Plas Sams