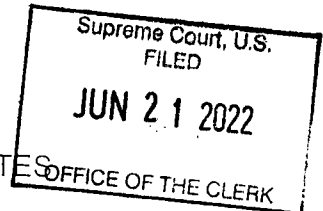


No. 21-8251

IN THE

SUPREME COURT OF THE UNITED STATES



JOHN L. MILLER — PETITIONER
(Your Name)

vs.

S. ACOSTA, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the 9th Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John L. Miller, A-44862
(Your Name)

CSP-LAC, P.O. Box 8457
(Address)

Lancaster, CA 93539
(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

Is the 1st Amendment right of access to the courts violated when magistrate, district, and circuit judges, personally biased against prisoner litigants, have the mindset that the prisoner litigants have nothing coming and unethically & unhonorably use their judicial powers to sabotage the cognizable, constitutional, and legal claims of those prisoner litigant before them, so as to dispense with their cases?

Is qualified immunity meant to protect a prison-staff cook who, while having an official list of the inmates approved for religious meals, nonetheless deprived those inmates of their religious meals who did not yet have a Religious Diet Card, even though there was no regulatory requirement that they show the card in order to get their religious meal?

Is the 14th Amendment right of equal protection of the laws violated when a prison-staff cook discriminates against inmates on the Religious Meat Alternate diet (whose commonality was being non-Christian) by overseeing the serving by inmate kitchen workers of half-rotten bananas to them but fresh cantaloupe to inmates

on the regular prison diet?

Is it a violation of the 1st Amendment's right "to petition the Government for a redress of grievances" when two other prison-staff cooks retaliated against the inmate whose prison-filed grievances led to the aforesaid, discriminatory cook being reassigned out of there and their retaliation (consisting of untrue write-ups) caused the inmate to wrongly be removed from his religious diet?

Is it a violation of the 1st Amendment's right to "the free exercise" of religion when a prison-staff chaplain, despite a mandatory state regulation to interview beforehand, presumptuously & precipitously removes an inmate from his religious diet based on staff write-ups that an interview would have easily revealed to be untrue, but the chaplain was deliberately indifferent to the inmate's rights (regulatory & constitutional)?

Due to the lack of an extrajudicial source for their bias, is it allowable, under 28 U.S.C. section 455(a), for a magistrate judge and a district judge to be personally biased against prisoner litigants and to proceed with their section 1983 lawsuits on the basis of the prisoner

litigants having nothing coming?

On the matter of whether or not a magistrate judge and a district judge conspired to reject a meritorious motion to disqualify the district judge and then quickly rendered judgment to close out the case, does their lawyer BS prevail over common sense in the objective assessment of what is shown by the preponderance of the circumstantial evidence?

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:

S. Acosta

E. Henry

S. Lopez

Abdul Wahab Omeira

TABLE OF CONTENTS

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

INDEX TO APPENDICES

APPENDIX A	9th Circuit
APPENDIX B	District Court Judgment
APPENDIX C	Amended R & R of Magistrate Judge
APPENDIX D	Objections to Amended R & R
APPENDIX E	Second Motion to Disqualify Judge George H. Wu
APPENDIX F	Notice of Document Discrepancies
APPENDIX G	Notice of Appeal
APPENDIX H	Motion to Vacate Judgment

APPENDIX I Amended Notice of Appeal

APPENDIX J Complaint of Judicial
Misconduct

APPENDIX K Order by 9th Circuit's
Chief Judge

APPENDIX L Petition for Review

APPENDIX M Order by 9th Circuit's
Judicial Council

APPENDIX N Appellant's Informal
Opening Brief

APPENDIX O Reply Brief

APPENDIX P Order Denying Motion
to Vacate Judgment

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

28 U.S.C. section 455(a)	17
42 U.S.C. section 1983	12
Fed. R. Civ. P. 60(b)(6)	20-21

OTHER

1st Amendment	15-16
14th Amendment	14

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from federal courts:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ 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 Feb. 15, 2022

☒ 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: _____, 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 June 27, 2022 (date) on May 19, 2022 (date) in Application No. 21 A 736.

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

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
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

First Amendment

Fourteenth Amendment

28 U.S.C. section 455(a)

42 U.S.C. section 1983

STATEMENT OF THE CASE

INTRODUCTION

Virtually all circuit & district judges are biased against prison inmates. That's both natural & understandable, because those inmates are bad guys, felons.

The problem, though, is when the unhonorable among those judges use their judicial powers to wrongly deprive incarcerated felons of their constitutional & legal rights, thereby becoming "bad guys" themselves.

That commonly occurs in the lawsuits brought by state prisoners under 42 U.S.C. sec. 1983 against prison staff, because those cases comprise somewhere between a quarter and a third of federal litigation and have been accused of "clogging" the courts, thus providing biased & unhonorable judges with the rationale & rationalization for dispensing with such lawsuits by hook or by crook as soon as feasible.

This instant case falls into that category, and petitioner has good, circumstantial evidence in support of the magistrate judge, district judge, and circuit judges having unethically abused their judicial powers in petitioner's case.

The more persuasive of that

evidence is against the District Court judge and magistrate judge, but the simplest is against the circuit judges of the 9th Circuit panel. So the latter will be addressed first.

I Qualified Immunity

The 9th Circuit panel held that the:

"district court properly determined that defendant Acosta was entitled to qualified immunity on Miller's free exercise claim because Acosta's conduct in refusing to provide Miller with his RMA meals when Miller did not show him a Religious Diet Card did not violate clearly established law."

(See Appendix A: 9th Circuit Decision, at page 2.)

Qualified immunity is meant to protect officials who thought, even mistakenly, that they were doing the right thing — not, as here, to protect jerks who mistreat people under their authority. That is a misuse of qualified immunity.

Defendant Acosta was a prison cook who had an official list of inmates approved for religious diets and merely used their lack of a Religious Diet Card (which he knew both that the prison was out of them and that there was no regula-

tory requirement for the inmates to show such a card to get their religious meals) as a pretext for depriving them (which included petitioner) of their religious-diet meals.

Petitioner submitted an administrative grievance appeal ("grievance") on the matter, and Defendant Acosta's supervisor made him knock it off.

(See Appendix N: Appellant's Informal Opening Brief, at pages 1-2, Appendix O: Reply Brief, at pages 2-7, and Appendix D: Objections to Amended R & R, at pages 5-14.)

II

Religious Discrimination

The 9th Circuit panel also held that the:

"district court properly dismissed Miller's remaining claims because Miller failed to allege facts sufficient to state any plausible claim."

(See Appendix A: 9th Circuit Decision, at pages 2-3.)

That included the 14th Amendment discriminatory claim against Defendant Acosta for having subsequently oversaw, as the supervisor of inmate kitchen workers, the feeding of fresh cantaloupe to inmates on the regular prison diet but half-rotten bananas to inmates (including petitioner) on the Religious Meat Alternate ("RMA") diet.

Petitioner again submitted a grievance against Defendant Acosta, and this time Acosta's supervisor reassigned him out of the facility's Kitchen/culinary.

(See Appendix N: Appellant's Informal Opening Brief, at pages 1-2, Appendix O: Reply Brief, at pages 8-12, and Appendix D: Objections to Amended R&R, at pages 14-18.)

III Retaliation

The 9th Circuit panel's holding of proper dismissals also included the 1st Amendment claim against Defendants Henry and Lopez, prison cooks who, while filling in for the reassigned Acosta, retaliated against petitioner for his grievances against Acosta by falsely writing petitioner up for not having picked up his RMA diet tray during the general feeding, causing him to be removed from his religious diet.

However, petitioner worked in the culinary for Defendants Henry and Lopez on the dates in issue and so ate earlier at the culinary shortline for inmate workers, not during the general feeding when working.

Petitioner's subsequent grievance on the matter was granted, and he was thus reinstated to the RMA diet.

(See Appendix N: Appellant's Informal Opening Brief, at pages

2-3, Appendix O: Reply Brief, at pages 12-15, and Appendix D: Objections to Amended R&R, at pages 19-22.)

IV

Free Exercise of Religion

The 9th Circuit panel's holding of proper dismissal additionally included the 1st Amendment claim against Defendant Omeira for depriving petitioner of the free exercise of his Wiccan religion.

Chaplain Omeira did that by removing petitioner from his RMA diet based on the aforesaid write-ups by Defendants Henry and Lopez without first interviewing him as required by California state regulation, and Omeira's deliberate indifference to that mandatory regulation was the same deliberate indifference he had to petitioner's constitutional right to the free exercise of his religion.

Conversely, Omeira's deliberate indifference to petitioner's 1st Amendment right to the free exercise of his religion was the same deliberate indifference that Omeira had to the mandatory state regulation of interviewing petitioner before deciding to remove him from his RMA diet.

And, had Chaplain Omeira first interviewed him, petitioner presumably (due to Omeira's having been the one who granted the

grievance against the removal) would not have been removed from his RMA diet in the first place and thus wouldn't have been deprived of his religious meals until his reinstatement.

(See Appendix N: Appellant's Informal Opening Brief, at page 2, Appendix O: Reply Brief, at pages 13-15, and Appendix D: Objections to Amended R&R, at pages 22-24.)

Disqualification Motions

The 9th Circuit panel held that the:

"district court did not abuse its discretion by denying Miller's motions to disqualify the magistrate judge and district judge because Miller failed to establish extrajudicial bias or prejudice."

(See Appendix A: 9th Circuit Decision, at page 3.)

Petitioner's motions to disqualify them were brought under 28 U.S.C. sec. 455(a) and alleged that their impartiality might reasonably be questioned in judicial matters having to do with plaintiff because of their bias against him as a prisoner.

Therefore, by holding that petitioner "failed to establish extrajudicial bias or prejudice," the panel in effect determined that a judge's personal bias against a litigant be-

cause he's a convicted & incarcerated felon doesn't violate sec. 455(a), since that bias isn't extrajudicial. (See Appendix N: Appellant's Informal Opening Brief, at pages 4-6, and Appendix O: Reply Brief, at pages 15-19.)

VI Cognizable Claims

The preceding judicial actions of the magistrate & district judges that the 9th Circuit panel found nothing wrong with clearly demonstrate judicial sabotage by biased district & circuit judges of cognizable, constitutional claims.

Moreover, that judicial sabotage was in collusion with the Office of the California Attorney General, which repeatedly lied in its Motion to Dismiss and Answering Brief instead of ethically & honorably performing its defense counsel role as officers of the court.

VII Second Motion

The 9th Circuit panel held that: "We reject as without merit Miller's contention that the magistrate judge and the district judge conspired to reject improperly Miller's second motion to disqualify the district judge."

(See Appendix A: 9th Circuit Decision, at page 3.)

That "without merit" finding is itself totally without merit, because anyone with good common sense will, based on the facts, conclude that there is a preponderance of circumstantial evidence showing that the magistrate judge and district judge did conspire "to reject improperly Miller's second motion to disqualify the district judge".

That circumstantial evidence is fully set forth in the appendices.

(See Appendix N: Appellant's Informal Opening Brief, at pages 5-9, Appendix O: Reply Brief, at pages 22-26, Appendix F: Notice of Document Discrepancies, Appendix H: Motion to Vacate Judgment, Appendix J: Complaint of Judicial Misconduct, Appendix K: Order by 9th Circuit's Chief Judge, Appendix L: Petition for Review, and Appendix M: Order by 9th Circuit's Judicial Council.)

Additionally, the particular magistrate judge in issue is the same unethical & unhonorable magistrate judge who blatantly falsified a Ninth Circuit decision, so falsifying a mere Notice of Document Discrepancies would be but child's play. (See Appendix H: Motion to Vacate Judgment, at page 10, line 18, to page 12, line 27, and its Exhibit C.

See, also, Appendix F: Notice of Document Discrepancies.)

VIII Motion to Vacate

The 9th Circuit panel held that, after the Notice of Appeal, "the district court lacked jurisdiction to consider the motion" to vacate the judgment. (See Appendix A: 9th Circuit Decision, at page 3, Appendix G: Notice of Appeal, and Appendix I: Amended Notice of Appeal.)

Yet the panel did address the allegation therein of the magistrate judge and district judge having conspired to reject the aforesaid "second motion to disqualify the district judge". (See, supra, at VII Second Motion.)

On the other hand, the panel did not address the arguments therein that:

- I The Court falsified the non-filing of plaintiff's Second Motion to Disqualify Judge George H. Wu
- II The Judgment was rendered by a biased judge in order to avoid adjudication of a meritorious disqualification motion

III Judge Wu did NOT conduct a de novo review of plain- tiff's June 2, 2019 Objections

(See Appendix H: Motion to Vacate Judgment.)

However, after the Ninth Circuit affirmed the Judgment, the District Court acted on the motion, with the magistrate judge writing a Memorandum and Order Denying Plaintiff's Motion to Vacate Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) and the district judge signing it, in the last act of their collusion in the case. (See Appendix P: Order Denying Motion to Vacate Judgment.)

Their lawyer BS, though, cannot overcome common sense.

But, by denying the Motion to Vacate Judgment, the District Court rendered it subject for review by the U.S. Supreme Court.

CONCLUSION

In deciding whether or not to issue a Writ of Certiorari, the matters of the qualified immunity, religious discrimination, retaliation, free exercise of religion, disqualification motions, and cognizable claims should not be evaluated as issues in & of themselves but as possible judicial abuses by biased district & circuit judges seeking

to deprive another prison inmate of his constitutional right of realistic access to the courts by unwarrantedly dispensing with his sec. 1983 lawsuit.

Accordingly, this petition for a writ of certiorari should be granted.

Respectfully submitted,

John L. Miller
JOHN L. MILLER
Petitioner

DATED: June 21, 2022

REASONS FOR GRANTING THE PETITION

The problem with federal judges (magistrate, district, & circuit) who are biased against prisoner litigants and use their judicial powers to dispense with their lawsuits by hook or by crook as soon as feasible, thereby undermining their right of access to the courts, is widespread and is overdue in needing to be adequately addressed by this Supreme Court.

But to effectively do so, the Court needs a good case, ~~out~~ which petitioner's is due to all of the supportive circumstantial evidence that is bereft in the far majority of such cases.