

22-5025

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

FILED

JUN 21 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Arthur Luther McKinney — PETITIONER  
(Your Name)

vs.

Gary Painter "ET. AL." — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Arthur Luther McKinney  
(Your Name)

P.O. Box 9000  
(Address)

Henderson, Texas 75653  
(City, State, Zip Code)

432-222-2115  
(Phone Number)

### QUESTION(S) PRESENTED

1. Did McKinney Satisfy the Exhaustion Requirement of the PLRA? Even though he felt the step two of midland county grievance procedure was made unavailable to him.
2. Did McKinney allege with sufficient specificity a material fact of "Substantial Effort Exception" to the Exhaustion Requirement.

## 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:

Gary Painter, Sheriff, Midland County; Rebecca Graham Captain, Benito Alaniz officer, FNU Henery officer, FNU Ramirez, officer; FNU Domiss, Bailiff; FNU mehaney, Licutenant, FNU Kimo, Sergeant, FNU Mayhart, Sergeant; John Doe, 1-10

## RELATED CASES

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

Giano v. Goord, 380 F. 3d. 670 (ca2 2004)

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## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Porter v. Nussle 534 us 516, 525, 122 S. Ct  
983 2002 [See page 1 Reason for granting Petition]

Estelle v. Gamble 429 us. 97, 106, 97 S. Ct. 285  
292 See page 1 Reason for granting Petition

### STATUTES AND RULES

42 U.S.C. § 1983

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### 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**:

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☐ is unpublished.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 \_\_\_\_\_ 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 31, 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: March 21, 2022, 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**:

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**

42 U.S.C. § 1997 (e) (a)

42 U.S.C. § 1983

## STATEMENT OF THE CASE

Plaintiff McKinney filed his Original 42 U.S.C. § 1983 Prisoner civil rights Complaint on April 3, 2017, Complaint alleging several different claims against numerous defendants. This case revolves around Plaintiff reporting a premeditated violent crime committed with a deadly weapon against him by a Jailer in the Midland County Detentions Center. In the first of this complaint the Magistrate Judge in this suite wrote a report and recommendation that all claims against defendants be dismissed except one: Plaintiff's claim of injury from the June 13, 2015 incident wherein Plaintiff alleged Defendant Alaniz Choked him, threw him over a table, grabbed him by his long hair, and punched him with a pair of keys repeatedly in the back of the head, causing him to be rushed to the hospital. [Docket number 42]. Plaintiff filed an objection to this report and recommendation. [Docket number 45]

The Court then adopted the Report and Recommendation after de novo review [Docket number 46]. At that point Defendant Alaniz filed a motion for Summary Judgment [Docket number 81]; which was followed by plaintiffs request for the court to Deny Defendants motion for Summary Judgment [Docket number 85] and finally by plaintiffs response in opposition [Docket number 88]. The case was ready for a decision, the US District Court granted Defendants motion for Summary and Plaintiffs 42 U.S.C. § 1983 original Civil Rights complaint is dismissed for failure to exhaust and with out Prejudice, and dismissed the amended complaint as frivolous and for failure to state a claim without Prejudice. US court of Appeals for the Fifth Circuit affirmed the US District Court Judgment and Affirmed the District Courts denying reconsideration Federal Rules of Civil Procedure 59(c), and finally the US court of Appeals for the Fifth Circuit denied Petition for Rehearing on 3-21-22.

Since the Exhaustion requirement of the "PLAR" is the issue before the Supreme Court today, Plaintiff will stick to the facts surrounding the issue of the Exhaustion requirement in this case.

All facts in the Statment of this case can be backed up by the original Complaint filed April 3, 2017. Plaintiff felt in fear for his Safety from the Jailers running the Midland County Jail. After reporting several issues to (prison officials) by filing grievances and not receiving any help with the issues, Plaintiff decided he would take his issues to the court to ask for help. On June 11, 2015 Plaintiff wrote an appeal to the Sheriff Gary Painter, "which is the final step in the Jails grievance procedure" explaining to him in it quote "I feel I have prusued ever procedure here in the Jail will you look into this to see if I have so I will be allowed to reach a court. [See docket 88 exhibit C] Two days' later after

Putting the Sheriff on notice Plaintiff was trying to Exhaust the Jail grievance procedure in order to reach a court, on June 13, 2015 Plaintiff is violently attacked with a deadly weapon by the same Jailer he had been reporting his fear of safety from. Plaintiff knowing he had to first Exhaust his available remedies before filing a 1983 law suit, started the grievance process over the June 13, 2015 assault. On June 20<sup>th</sup>, 2015 Plaintiff wrote a grievance to Captain Graham over the June 13, 2015 assault and received a reply stating "forward to CID" nothing else. Getting this reply on this grievance plaintiff was of the understanding that since the grievance was forwarded to the CID they would be answering the merits of his grievance. [See docket 88 exhibit E] Plaintiff knew he had to finish the Jails grievance procedure by filing a step two grievance to the Sheriff appealing the step one answer.

Therefore Plaintiff done ever thing he could in order to receive a response from "CID" in order to appeal the answer to the Sheriff. There is no grievance in the record proving plaintiff was trying his best to get an answer to his grievance in order to have something to appeal to the Sheriff in order to satisfy the "PLRA" Exhaustion requirement by following through with the Jails grievance procedures. It became very clear after the many grievances wrote, and they would not provide an answer to the merits of the grievance over the June 13, 2015 assault that they was not going to provide one. This left Plaintiff feeling like the Step Two was made unavailable to him, therefore he went ahead and appealed the issue on June 13, 2015 to the Sheriff in order to satisfy the Jails grievance process. [See docket 88 page 11]. Plaintiff never received an answer from the Sheriff on these grievances. [docket 88 page 11]

On August 23, 2015 over two months after the June 13, 2015 assault plaintiff was still trying to get some kind of answer to the merits of his grievance explaining to C.I.D. he did not want to file a 1983 lawsuit. [See docket 88 exhibit m]. Shortly after this plaintiff was shipped to T.D.C.N. Still trying to get some one to help hold this officer accountable and give midland county a chance to address this issue before bringing this claim to the federal courts, around 14 months after the assault by this jailer on July 21, 2016 Plaintiff wrote Teresa J. Clingman "the DA in midland county" asking for help to hold this officer accountable. She responded that her intent was to ask the Texas Rangers to look into my accusations. Six months later on December 6, 2016 Plaintiff wrote the New DA Laura Nodolf asking again for help, with a victim assistance coordinator, the DA Laura Nodolf

responded that the Texas Rangers was not going to file charges and there for was not going to be able to help me with any victim assistance.

[See docket 88 exhibit P]

Plaintiff reached out to ever one in midland county all the Jail staff, The Sheriff, The DA, and also the Texas Rangers no one would provide any help to hold this ~~Jailer~~ accountable. The Two year limitations on Filing a law suit was almost up on this claim, Plaintiff felt he had done ever thing in his power to give Midland County more than enough time and oppurtunity to address this crime before he brought this claim to the federal Courts in his 42 u.s.c § 1983 Prisoner Civil rights complaint. Plaintiff then filed his 42 u.s.c. § 1983 Prisoner Civil rights complaint on April 3, 2017.

Plaintiff's claim is now being dismissed by

the lower courts, the United States District Court Western District of Texas Midland/Odessa Division, and The Fifth Circuit Court of Appeals, for failure to exhaust available remedies. The sole reason the lower courts used in dismissing this claim for failure to exhaust available remedies, is Plaintiff's misunderstanding of the official response he received on July 2, 2015, informing him (by Captain Graham) that the matter had been (forwarded to CID), Plaintiff was of the understanding that since the matter was "forwarded to CID" they would be the one who would answer the grievance that is why there's so many grievances trying to get an answer to the merits of his grievance.

[See docket 88 exhibit A-Q] Never getting an response to the merits of Plaintiff's grievances made him feel like the step two in Midland County grievance procedure was made unavailable to him. Even though

Plaintiff felt the step two was made unavailable to him he still followed through with the last step of the midland County Grievance Procedure in order to Exhaust his available remedies by appealing the issue on June 13, 2015 to the Sheriff. Plaintiff was clear on this in his motion to oppose Summary Judgment [See docket 88 page 11] This very important fact seemed to be over looked by the lower courts. It seems all the lower courts focused on in denying plaintiffs claim was the fact plaintiff stated the Step two was made unavailable to him. The District Court said quote: "It was disingenuous of Plaintiff to say he never sought further review of that grievance because he never received an answer, when in fact, he received an answer and just never sought further review. Plaintiffs Original Complaint is, therefore, dismissed for failure to exhaust administrative remedies."

## REASONS FOR GRANTING THE PETITION

The P.L.R.A 42 U.S.C. § 1997 was set up by Congress. The Supreme Court in discussing Congress's purpose in requiring exhaustion said that, "Congress afforded corrections officers time and opportunity to address complaints internally before allowing the initiation of a federal case." *Porter v. Nussle* 534 U.S. 514, 525, 122 S.Ct. 983 (2002)

Reading what the Supreme Court stated about Congress's purpose of the P.L.R.A. Exhaustion Requirement no where in it does it say Congress intended to pass this law in order to help corrections officers find a way to trap Unsophisticated prisoners who is not trained in law school and must navigate the Administrative Process Pro-se. The Exhaustion requirement seems to be more and more abused as the years go on by prison officials

As in the case before the Supreme Court today. Here Plaintiff has proved in his Complaint he put the Sheriff on notice he was trying to complete the Jails grievance procedures in order to reach a court. Two days later he is violently attacked with a deadly weapon causing him to be rushed to the hospital by the same jailer he reported his fear of safety from. Plaintiff starts the grievance process over the assault; Plaintiff is told the matter is being forwarded to the Criminal Investigation Division. Because it was being forwarded to the CID Plaintiff feels like the CID would be answering his grievance.

Plaintiff submits 10 grievance on record proving he was trying to get an answer to appeal to the Sheriff.

Plaintiff never receives an answer from CID and feels like the step two is made unavailable to him, Plaintiff explains this to the Courts. Because of this "disingenuous statement" as the District Court put it the

District Court dismissed plaintiff claim as failure to exhaust available remedies. The fact plaintiff put the Sheriff on notice he was trying to follow through with the Jails grievance procedure to reach a court, the fact there is over 10 grievance on record of Plaintiff trying to get an answer to the merits of his grievances to have something to appeal to the Sheriff, the fact plaintiff explained even though Plaintiff felt like the step two was made unavailable to him he still wrote the Sheriff appealing the issues to him, the fact Plaintiff went on trying to get help from the Midland County DA to help hold this jailer accountable, then the fact the DA asked the Texas Rangers to look into this crime, none of these facts seemed to be considered in deciding if Plaintiff had met the Exhaustion requirement. The only thing that seemed to matter here is Plaintiff's "disingenuous"

Statement that he did not file a step two grievance because he never received an answer to his grievance, the District Court felt that the official response on June 20, 2015 by Captain Graham telling Plaintiff the matter was "forward to CID" was an appealable answer. This difference of opinion between Plaintiff and the courts of the response received on June 20, 2015 did not stop plaintiff from following through with the Jail's grievance Procedure. The Court of Appeals noted in their opinion the response's Plaintiff received are confusing. If the official responses plaintiff received were confusing to the Judges of the Fifth Circuit imagine how confusing they would be to plaintiff. There is nothing confusing about the facts layed out here, McKinney did ever thing available to him in order to give midland county more than enough time to address

this issue before bring it to the federal courts.  
Therefore satisfying Congress's purpose  
in passing the PLRA Exhaustion Requirement. To  
allow this case to be dismissed over a difference  
of opinion between Plaintiff and the courts that had  
no effect on whether Plaintiff had Exhausted or not, would  
for sure be a miscarriage of Justice and would  
do further damage to the already abused Exhaustion  
requirement. Because of the facts above Plaintiff  
Prays the court will see he has in fact Exhausted  
his Available Remedies and will hear the merits  
of this case. [See Estelle v. Gamble, 429 U.S. 97,  
106, 97 S. Ct 285, 292, 50 L. Ed 2d 251] Plaintiff  
drafted his own complaint, and we do not think that  
a pro-se complaint should be dismissed on its face  
by a technical reading of the available administrative  
procedures when plaintiff has made detailed

allegations showing a substantial effort to obtain an administrative remedy, a [prisoner] pro-se complaint, "now-ever inartfully pleaded", must be held to less stringent standards than formal pleadings drafted by lawyers"

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Arthur Luther McKinney

Date: June 17, 2022