22-911

No. _____

In The Supreme Court of the United States

ROBERT R. SNYDER,

Petitioner,

vs.

California Department of Corrections and Rehabilitation et al.,

Respondents.

On Petition For Writ Of Certiorari To The California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- Did the California corrections agency exceed the bounds of its statutory authority when they wrote an administrative regulation without any sort of predicate timeframe?

- Can a state law without a timeframe for property reissuance, pass the reasonableness test? What would constitute an *unreasonable* delay in that context?

- Can review courts safely defer to administrative interpretation that does not exist? Does the omission of a substantive predicate—to guide decision makers—constitute an ambiguity and/or a failure to interpret (the governing authority) for *Chevron* purposes?

- Does an agency actually possess *discretion* to promulgate and then refuse to amend.., one sided administrative codes—those which result in casual and often deprivations of prisoner's chattels?

- Is the term *ministerial duty* strictly limited to the text of agency-regulations—under a state's administrative procedures—or can it be derived also from duties arising out of statutory and/or constitutional provisions?

- Upon refusing to grant relief, did the California Court of Appeal avoid some issues, confuse others and in general, fail to narrowly frame the primary questions presented in their opinion?

- Could a more fair procedure be ordered into place to prevent the exact sort of judicial bias, appurtenant to the lower court proceedings?

PARTIES TO THE PROCEEDING

Petitioner: Robert R. Snyder was the Petitioner in the lower court, Fifth District Court of Appeal and in the Supreme Court of California proceedings.

Respondents:

California Department of Corrections and Rehabilitation,

Supreme Court of California,

California Court of Appeal, Fifth Appellate District,

California State Superior Court of The County of Kings,

California Attorney General: Robert Bonta

NO RELATED CASES

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PETITION FOR WRIT OF CERTIORARI

Robert Snyder respectfully petitions for a writ of certiorari to review a proceeding by the Supreme Court of California. That review was taken subsequent to the dismissal of a direct civil appeal in the Fifth Appellate of California.

OPINIONS AND ORDERS BELOW

Order from the U.S. Supreme Court.

An extension of time to file this writ of certiorari was granted by Justice Kagan, who extended the time to and including March 18, 2023. The matter is attached at **App.1**

Opinions and Orders from the California Supreme Court.

The petition for review was filed in this court on October 15th, 2022. The court's denial is attached at **App. 2** for Case No. S276137.

Opinions and Orders from the Court of Appeal, Fifth appellate District.

The August 15th, 2022 order dismissing Plaintiff's appeal from the Superior Court of Kings County, is attached at **App.'s 3 through 9** for Case No. F081087.

Opinions and Orders from the California Superior Court, County of Kings.

The February 13, 2020 Judgment dismissing Petitioner's first amended petition for writ of mandate is attached at **App.'s 10 and 11** for Case No. 18C0297.

JURISDICTION

This Petition is authorized by United States Supreme Court rules, Rule 10 subd.(b) and is timely filed in accordance with Rule 13 and 30. Jurisdiction is conferred upon this court by 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS

This case involves issues directly related to the Fourteenth Amendment to the United States Constitution: 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 its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On Oct. 3rd, 2018 prisoner Robert Snyder petitioned Kings County Superior Court regarding agency inaction through a petition for writ of mandate in pro per after a series of post-transfer property deprivations; Case No.: 18-C0297. This case was dismissed and the judgment was entered on Feb. 13th, 2020. A timely appeal was filed on Nov. 19th, 2020 and was affirmed on Aug. 15th, 2022. The opinion (located at 2022 WL 3354785/2022 Cal. App. Unpub. LEXIS 5003) did not provide a careful consideration of the thorough legal claims posited by appellant before the court; in light of comprehensive nature of the briefs and argument on record. A Petition For Review was filed in the California Supreme Court (hereinafter, "CSC") on Sept. 15th, 2022 and a silent denial issued on Nov. 9th, 2022. Federal questions were raised throughout the state proceedings; see p. 13, 18 of the State Appellate Opening Brief. Petitioner also moved for a motion to extend the filing deadline in this court on Jan. 12th, 2023 until Mar. 18th, 2023 based upon a surprise court ordered appearance by Los Angeles County Superior, which happened during the pendency of the 90-day certiorari deadline.

First of all, petitioner would like to announce: he considers himself fortunate to appear before the court today. Second, the contextual backdrop is as follows: California's prison system continues to suffer from systemic crowding, enough so to interfere with its ability to rehabilitate all of the prisoners in their custody. Besides this, the California Dept. of Corrections and Rehabilitation,

(hereinafter "CDCR"), has various other areas of concern, including whereas here, claims of property deprivations have become normative. This matter places a spotlight on only one of several other problematic regulations within 15 Cal. Code of Regs. Based upon the evidence, the following contains no hyperbole.

A lot can be said of what was learned during the course of the proceedings, particularly when Petitioner filed for a writ of prohibition in the appellate court concerning claims of judicial bias. After the assigned judge scheduled the first hearing, Kings County switched out the bench without any notice to the petitioner; *refer to Case No.: F079978, review denied 1/29/20.

Additionally, some key tenets are: (1) California would like to confine the meaning of *ministerial duty* to be—only what their agencies rule-making[1] bodies enact; (2) Most property deprivations in prison take place immediately subsequent inter-institutional transfers—which indisputably invokes a protected liberty interest; (3) CDCR's general property policy is woefully deficient of the most essential component, a regulatory

[1] CDCR's office of Regulation and Policy Management refused to process petitioner's request for § 3190's rule-making file, in a timely manner.

timetable; [2] (4) multiple procedural due process violations below included credible evidence that the trial court proceedings were tainted by judicial bias; and (5) the court granted a request by the deputy attorney general, to hand the case off to a judge who was determined to stop the matter at the pleadings stage. Petitioner soon thereafter filed for Judicial Intervention* in the Fifth Appellate District Court of Appeal, which issued a summary denial. During that time, the summary of proceedings shows that the original judge who was assigned to the case, returned to the bench—just in case the higher court granted the peremptory writ.

REASONS FOR GRANTING CERTIORARI

Supplicant thinks the doctrine of trained incapacity explains how this and other similar controversies begin.[3] This sort of administrative scienter, evident by the lodged facts, results in agency rulemaking bodies whom may try to legislate their way into regulatory impunity. It makes sense that CDCR would not want to write a law that limits their options.

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[2] "... Strong-arming of regulated parties into voluntary compliance without the opportunity for judicial review." [*Arlington v. FCC*, (2013) *infra*]

[3] *Plata v. Scharzenegger*, (2005) U.S. Dist. Lexis 43796 at (*52)

Prisoners need officers to *act* on 'passing out their property'. However, without a time-specific rule, it is never surprising when property distribution/re-distribution is not timely or does not occur at all. Without a specific timetable to quote, it is difficult to write a cognizable grievance. It is questionable whether state congress would authorize this hardship into place, given the protection afforded prisoners by the federal constitution. The basic right to file a prison grievance becomes an ancillary issue.

The controversy started when the CDCR repeatedly engaged in hurtful and unfair discrimination concerning the deprivation of prisoner's property as well as the property of others. This factual claim led petitioner to discover a constitutionally infirm administrative policy, 15 of § 3190 of the California Code of Regulations, hereinafter "CCR". The vague and otherwise incomplete regulation became the subject of a dispute in the local trial court. CDCR's authority to write rules this way is far from clear. The attorneys for CDCR filed a *summary judgment motion*—in response to clear pleadings—disguised as a demurrer—attempting to bulldoze numerous potential factual disagreements, summarily. Petitioner's *pro per* status earned him no leniency upon making his pleading.

Upon direct civil appeal, the appellate court ignored many of the issues that would have resolved the matter favorable to the filing party here. The key facts were refused treatment by the lower court; the critical legal claims were likewise improperly set

aside, in spite of their merit. His right to present evidence before an impartial tier of facts was shrugged aside, which is an apparent procedural due process violation under the 14th Amendment to the U.S. Constitution.

ARGUMENT

A: Introduction

When Petitioner Snyder requested the court require CDCR to amend 15 CCR § 3190, he in turn was asking that they interpret their own rules, which could have been done either regionally or locally, (Cal. Pen. Code, § 2086)—one of *id.* 15 § 3190's enabling statutes. PC §§ 2600 and 2601—California's codification of the 'reasonably related' *Turner* standard and 'right to own, sell and inherit property,' (while incarcerated) statutes—are also CCR's 15 § 3190's governing authority, respectively. The other few acts listed under CCR's 15 § 3190 are either basic rulemaking vehicles or are otherwise irrelevant to central issues.

Because CDCR's guards are not expected to know the language of judicial decisions, they need specific instruction [4] by their own state agencies' official policy. Here in California, that is 'Cal. Code of Regs, CCR Title 15'. In this case, the lower court

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[4] The attitude would be "bad rule or not, we are going to follow orders". This type of improper influence is what perpetuates the mindset behind the 'trained incapacity' doctrine.

upheld the pleas of the deputy state attorney, who claimed, "The department has no 'ministerial duty' to return property within a specific timeframe," making their defense into an admission of their serious omission... Depending on the meaning of 'ministerial duty', which petitioner agues extends beyond their own custom administrative codes.., the department should not have benefited from a sustained demurer. Akin to an admission of error should not serve as a defense to suit. The question would be '... if the implementing agency's construction is reasonable,' *NCTA v. Brand X*, (2005) 545 U.S. 967, 980. How can the omission of a specific predicate be deemed reasonable?

California knows the standard set in 1995's *Bonin v. Calderon*, (C A, 9) 59 F. 3d 815, at p. 842 citing *Hewitt v. Helms*, 459 U.S. at p. 472 (1983), yet still enjoys a regulatory scheme that lacks "...substantive predicates governing official decision making..." Although 15 CCR § 3190 was created well before the shift in perspective, they nonetheless have a duty to amend their regulations. Since then, courts have recognized how many states have regulations without mandatory language. Petitioner's request was that CDCR conform to this shift. Instead, the trial court failed to recognize the merits of the claim: "After *Sandin*, it is clear that the touchstone of the inquiry into existence of a protected liberty interest ... is not the language of the regulations ... but the nature of those conditions themselves, in relation to the ordinary incidents of prison life." (*In re Williams*, 241 C.A. 4th 738, 744 (2015)). Certainly CDCR would prefer to keep their regulations silent as to how many days their inmates must wait for

their legal paper work and other important items such as food, hygiene and warm clothes. However, the competing interests at stake, which serve a higher purpose, should take precedence over administrative factors such as *convenience* and *cost-savings*.[5]

By allowing the state to keep their rules deficient, it helps the corrections agency dispel liberty interest claims regarding property. The *Sandin* court must have had such conditions in mind when it ruled out incentives [6] to write ambiguous policy; conditions where prisoners spend weeks, if not months without basic supplies.

B: Subjective Reasonableness Of Policy

The demands placed upon state prison codes are that they must be reasonable; *Yick Wo v. Hopkins*, (1886) 118 U.S. 356, 373-74; *Long Island Care v. Coke*, (2007) 551 U.S. 158, 165; *City of Arlington v. FCC*, (2013) 569 U.S 290, 311. See also, (Cal. Gov't code § 11342.2). Therefore, can a prison regulation without a yardstick survive this test? Prisoner grievances without a point of contention such as, "the deadline has passed, please return my property," would demand greater attention by verbal

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[5] "Outside of extreme or unusual circumstances, convenience and cost-savings to the government should not outweigh properly considered burdens .., " by any party. *U.S. v. Rodriguez*, 2018 U.S. Dist. LEXIS 26963 at (*19). Prisoner's interest in their property, includes the preservation of health.

[6] *Sandin v. Connor*, (1995) 515 U.S. 472, 482.

protest or by personally confronting the property officer. These methods promote disorder and may lead to disciplinary charges, which bring the due process clause to mind; also 'some important questions going to the administration of a state prison...' (1974)'s *Wolff v. McDonnell*, 418 U.S. 539.

By refusing to amend their rule regarding a fundamental right, hence keeping pace with the judiciary's evolving standards, 15 CCR § 3190 continues to lack the most essential provision: substantive guidance to which all parties could agree is fair. Precisely how many days would constitute an unreasonable delay? Along with how the question concerns rights guaranteed by California's constitution, it must be examined under strict scrutiny; it does not serve a *compelling* penological interest to maintain essentially silent property rules. Cal. Const. Art. I, § 1 enumerates its citizens 'inalienable rights', of which property is one. See how the text of Cal. Civ. Code Proc., § 1085 uses the word 'law' not 'regulation' in setting forth the requirements before an agency or board, which can be forced by mandate to discharge any duty. Petitioner believes that all agencies have a ministerial duty to respect the inalienable rights of their citizens. It seems unreasonable to confine 'ministerial duty' to only the realm of rules written by state officials; particularly when those rules contravene greater sources [7] of law.

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[7] *Johnson v. City of Hazelwood*, (2014) U.S. Dist. LEXIS 176031 at (*13)(a ministerial duty can be either statutory or regulatory).

Pell v. Procunier, (1974) 417 U.S. 817, 822-23 explains the three basic penological objectives: deterrence, rehabilitation and internal security. It is axiomatic that a prison administration has no compelling interest under *Pell* in granting themselves unlimited discretion in areas that transgress the boundaries of the United States jurisprudence.

C: Constitutionally Deficient Appellate Review

Had the Court of Appeal answered petitioner's questions, it would have resolved the case favorably and remanded the matter. Instead, a plain reading of their opinion will display how it applied inapposite case authority, comprised of decisions that had little or no factual relevance; see Appendix. "Whether any specific regulation is so unreasonable as to be arbitrary, capricious, or in excess of the delegated authority of the agency, depends on the particular facts and circumstances of the individual case," (*Sandstrom v. Cal. Horse Racing Bd.*, 31 Cal. 2d 401 (1948)). The appeal court possesses wide latitude to consider the novel questions associated with this case; arguably questions that need to be addressed eventually. However, the court declined to answer these *important* questions because petitioner suspects his *pro per* status may have disparaged his presentation.

The level of prejudice towards petitioner in this case was grievous, to say the least. He has the upmost respect for the CSC, however cannot reconcile with anything besides the whole truth;

which is the appearance of a serious injustice. The 'exhaustion of administrative remedies' defense [8] was not even briefed by the respondent because it was a non-issue on appeal. Although it was first raised by the court *itself* on appeal..? Normally this does not happen. The attached opinion affirming the denial of relief, accomplished nothing more than undue pause of a vital legal cause. Perhaps the current venue is the best way to address this question.

D: California Supreme Court's Silent Deference

The federal courts will look-through to last reasoned opinion when the state high court issues a summary ruling denying relief. In other words, the two courts agree to adopt the same position towards Snyder's petition although there is no evidence CSC gave it any consideration. Therefore, the state high court of last resort approved of both the appellate court's due process errors and has deferred to the agencies interpretation, or lack thereof in this case.

"The existence of statutory ambiguity is sometimes not enough to warrant the conclusion that congress has left a deference-warranting gap for the agency to fill because our cases make clear that other, sometimes context-specific factors will on occasion prove relevant," (*id. Arlington* at p. 308-09) *Breyer, J.*, concurring with the result. This language

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[8] The (exhaustion of administrative remedies relies on the DOC to faithfully execute their duty to process prisoner's grievances); Cf. *Thomas v. Woolum*, 337 F.3d 720, (6th Cir. 2003).

supports petitioner *ad litem's* contentions. It is not necessarily a good thing for an administrative code to remain ambiguous. In the context of criminal statutes, vague codes deemed standardless can be invalidated; Cf. *Kolender v. Lawson*, (1983) 461 U.S. 352, 358. Thus, ambiguity as to time leads officials to make arbitrary determinations as to when an incarcerated citizen will be allowed access to his/her own belongings.

Along with what is noted above, *Arlington id.*, posited a scholarly treatment of many other relative issues. In that case, *CTIA* requested a declaratory ruling of the FCC then the *City of Arlington* asked the 5th Circuit to review its affirmative ruling. During that controversy, the FCC clarified ambiguous language, changing, 'within a reasonable period of time,' into '... 90 days to process a collocation application...' [9] This court upheld the 5th circuits ruling under *Chevron* post. The FCC is an interstate federal agency obliged to make certain a workable timetable was put into place when it was faced with a 'silent or ambiguous statute'; *Arlington id.* at syllabus *2. How much more does CDCR have a similar duty to clarify 15 CCR § 3190?

It would be a daunting task to re-hash all of *Arlington v. FCC's* elaborate points that provide

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[9] Today, 47 USC § 332(c)(7)(B)(ii) actually provides 30 in place of 90 days.

thrust for this petition. *Pars interponere* does not seek to challenge the ruling in *Chevron U.S.A. v. NRDC*, (1984) 467 U.S. 837, instead declares that CSC should not have deferred to CDCR's obstinate refusal to bring 15 CCR § 3190 up to date with the well-established federal case law *post-Sandin. Proviso est providere praesentia et futura, non praeteria.*

The default interpretation of 15 CCR § 3190 by officers regarding demands for property issuances normally, "Well, I have an unlimited amount of time..," to reissue it. Hence, many courts have undoubtedly confronted similar questions as to what constitutes an 'unreasonable delay' [10] in the administrative forum; (*Sarlak v. Pompeo*, 2020 WL 3082018/2020 U.S. Dist. LEXIS 101881 at (*16); *Chen v. Chertoff*, 2007 U.S. Dist. Lexis 64664 at (*4); *TRAC v. FCC*, 750 F. 2d 70 (D.C, cir., 1984). In this case, petitioner trusts this court's ability to control the discretion of an agency that is overwhelmed by crowding related problems.

The ambiguous phrase 'within a reasonable period' is far more honest than simply leaving the timeframe up to the best guess by relatively unaccountable guards. The complete lack of predicate leaves no room for interpretation later. Was this intentional omission designed to 'alter the scope of the governing authority'?

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10 "Both service providers and zoning authorities would benefit from FCC guidance on what lengths of delay would generally be unreasonable under sec. 322(c)(7)." *City of Arlington v. FCC*, 668 F. 3d 229, 261(C A 5, 2012).

E: Additional, Miscellaneous Viewpoints From *Arlington*

With respect to its property policy, the Cal. Pen C. gave CDCR little more than a general grant of rule making authority; that is, only a minimal imprimatur of interpretive powers. All the more reason for California to proceed with caution—yet they stretched the legislative meter, into an administrative mile. It is true, "Congress often fails to speak to 'the precise question before an agency,' " (*Arlington, supra* at p. 314). And, whereas here, Cal. Pen. C. §§ 2600, 2601, 2086, 5054 and 5058 etc., offer nothing specific to help CDCR's position relative to these issues now before the court. Therefore—thus far, the California courts have sent this question up into the air so "...that it is the agency really doing the legislating," (*id.* at p. 315) but the federal supreme court does 'not leave it to the agency to decide when it is in charge." (*Id.* at p. 327).

"An agency cannot exercise interpretive authority until it has it; the question whether an agency enjoys that authority must be decided by a court without deference to the agency." (*Arlington, id.* at p. 312). In light of their recent dismissal at bar, CSC has invited a rule of federal reason; to fill in the administrative gap that their courts have thus far permitted. At this point, CDCR prisoners lack a clear initial path towards relief; seeing that (CDCR's) 'language establishing a private right of action, is ambiguous." (*Id.* at p. 319).

Hence in the interim, the question remains "...whether authority over the particular ambiguity at issue has been delegated to the agency." (*Id.* at p. 323). In their written opinion, the 5th App. Dist., focused mostly on CDCR's discretion; instead of correctly determining on "... its own whether congress delegated interpretive authority over," allowing 15 Cal. Admin. Code, § 3190 to stay standardless as to time. When we assemble all these points of view, we may be left with the sense that it violates fundamental fairness.

CONCLUSION

The over simplified approach by the lower courts was an abuse of their discretion, in many respects. A prison regulation that discriminates against prisoners through the omission of a most essential predicate, violates the 14th Amendment to the U.S. Constitution and therefore should not be protected by deference. It is hard to imagine a more fundamental liberty than a citizen's right to enjoy property. The CDCR failed to amend and/or clarify their silent regulations as required by constitutional authority. The bad faith errors throughout the proceedings, highlight CDCR's bureaucratic scienter which includes exerting undue pressure on its state's deputy attorneys. These various due process violations are intolerable by the evolving standards of 14th Amendment *jurisprudence.* Based upon the

foregoing argument, petitioner Snyder respectfully requests that the court retain jurisdiction, appoint counsel and provide a grant of Certiorari in this matter.

Quando abest provisio partis, adest provisio legis.

Thank you for the opportunity to be heard.

Respectfully Submitted,

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