

CT's

MACK WEST JR #F00029  
VALLEY STATE PRISON - A2-A1-2LOW  
P.O. BOX 96  
CHANDLER, CA 93610

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IN THE UNITED STATES SUPREME COURT

MACK WEST JR, PETITIONER  
V.  
F. ULLOA, ET AL, RESPONDENTS

No. \_\_\_\_\_  
Ct. OF APPEAL (9th Cir) NO. 20-56167  
PETITIONER REQUEST FOR AN 60 DAY  
EXTENSION TO FILE HIS WRIT OF  
CERTIORARI, DUE TO EXTRAORDINARY  
CIRCUMSTANCES, PURSUANT TO S. CT.  
RULE 13.3

RECEIVED  
JUN -2 2023  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

PETITIONER MACK WEST JR RESPECTFULLY AND IN GOOD FAITH  
REQUEST AN EXTENSION OF TIME TO FILE HIS WRIT OF CERTIORARI  
DUE TO SUFFERING AN EXTRAORDINARY CIRCUMSTANCE WHICH  
PREVENTED HIM FROM PREPARING AND FILING HIS WRIT OF  
CERTIORARI. BEFORE HIS 90 DAYS DEADLINE OF JUNE 2, 2023.

PETITIONER RECEIVED THE COURT OF APPEAL OF THE NINTH <sup>CIRCUIT</sup>  
DENIAL OF HIS PETITION FOR REVENRING PANEL ON OR ABOUT  
MARCH 3, 2023 LATER ~~NO~~ ISSUING IT JUDGMENT ON OR ABOUT  
DECEMBER 5 2022. (SEE, APPENDIX - "A-1" - WEST V. ULLOA, 2022  
U.S. APP. LEVIS 33405 ).

PETITIONER EXERCISED DUE DILIGENCE AND BEGAN CONDUCTING  
THE NEEDED LEGAL RESEARCH TO ENABLE HIM TO PREPARED AND FILE  
HIS WRIT OF CERTIORARI, ON OR ABOUT JUNE 2, 2023.

1  
2 ON OR ABOUT FEBRUARY-APRIL OF 2023, PETITIONER PLICED A  
3 REQUEST TO THE A-YARD PROGRAM SGT. Q TO ARRANGE A APPOINTMENT  
4 WITH R&R, TO ACCESS HIS NEEDED LEGAL FILES, TO ENABLE HIM  
5 TO ACCESS TO THE COURT... (SEE, APPENDIX "A-2")  
6

7 PRIOR TO THE ABOVE MENTIONED DATE, PETITIONER HAD REPEATEDLY  
8 REQUESTED FROM THE EOP- SGT. DAYS OF HIS NEED TO ACCESS HIS  
9 LEGAL FILES, DUE TO HAVING COURT DEADLINES... (SEE, APPENDIX "A-2")  
10

11 THESE A-YARD SUPERVISORS (PROGRAM SGT. Q, AND EOP-SGT. DAYS)  
12 RESPONSES TO THE PETITIONER, <sup>WERE</sup> THAT DUE TO LACK OF STAFF TO ESCORT  
13 THE PETITIONER TO R&R, THEY WERE UNABLE TO PERMIT HIM TO ACCESS  
14 TO HIS LEGAL FILES; OR DUE TO ALARMS, THEY WERE UNABLE  
15 TO ALLOW HIM TO GO TO R&R TO ACCESS HIS NEEDED LEGAL  
16 FILES... (SEE, APPENDIX "A-2")  
17

18 DURING THE NINETY-DAYS STATUTORY DEADLINE PERIOD, PETITIONER  
19 CONTINUE TO EXERCISE DUE DILIGENCE, ON OR ABOUT APRIL 7  
20 2023 ON OR ABOUT FRIDAY, REQUESTED FROM ACTING SERGEANT  
21 GARICA OF HIS NEED TO GO TO R&R TO ACCESS HIS LEGAL FILES  
22 DUE TO COURT DEADLINES, AT WHICH TIME, HE CALLED R&R  
23 AND TALKED TO AN R&R STAFF, WHO EXPLAINED THAT THE BEST  
24 TIME TO COME TO R&R IS DURING THE WEEK DAY, ON SECOND  
25 WARD. IN THE EARLY MORNINGS. (SEE, APPENDIX - A-2)  
26  
27  
28

1 PETITIONER ALSO FILED AN 602/APPEAL DATED APRIL 17,  
2 2023, REGARDING CUSTODY STAFF ONGOING FAILURE TO  
3 ALLOW HIM ACCESS TO HIS LEGAL FILES FOR COURT  
4 PURPOSES AND COURT DEADLINES, BUT PETITIONER HAS  
5 NOT RECEIVED ANY RESPONSE AS OF YET. (SEE, <sup>APPENDIX A-2</sup> ~~EXHIBIT~~  
6 602 DATED 4/17/23 ... ) SHOWING A CONTINUAL EXERCISE  
7 OF DUE DILIGENCE. ~~ON A MONTHLY BASIS~~

8  
9 SALINAS VALLEY STATE PRISON, GRIEVANCE PROCESS GIVES  
10 THE GRIEVANCES STAFF UP TO 60 DAYS TO RESPOND,  
11 MAKING THEIR DEADLINE ON OR ABOUT ~~APRIL~~ JUNE 14, 2023  
12 PER CDCR POLICY 15. CCR. § 3483 (g) .

13  
14 DURING PETITIONER 90 DAY DEADLINE MENTIONED ABOVE  
15 THE ENTIRE PRISON, WAS PLACED ON LOCKDOWN/MODIFIED  
16 PROGRAM, DUE TO A ALLEGED LIEUTENANT ON C-YARD  
17 BEING BATTERED OR STABBED ON OR ABOUT APRIL 9 2023  
18 CREATING ANOTHER IMPEDIMENT BEYOND THE PETITIONER'S  
19 CONTROL THAT MADE IT IMPOSSIBLE TO CONDUCT THE  
20 NEEDED LEGAL RESEARCH TO PREPARE HIS WRIT OF CERTIORARI  
21 BY THE 90 DAYS STATUTORY DEADLINE, THE  
22 LOCKDOWN DID NOT PERMIT INMATES OR PETITIONER TO  
23 ACCESS THE LAW LIBRARY TO CONDUCT THE <sup>LEGAL</sup> ~~CERTIORARI~~  
24 RESEARCH AND PREPARE HIS CERTIORARI AND TO FILE  
25 A TIMELY WRIT OF CERTIORARI. FOR ABOUT 2 WEEKS,  
26  
27  
28

1 AS SOON AS, THE LOCK DOWN WAS LIFTED, THE PETITIONER  
2 EXERCISED DUE DILIGENCE BY GOING TO THE LAW LIBRARY  
3 TO CONTINUE HIS LEGAL RESEARCH, AND TO PREPARE AND  
4 FILE HIS WRIT OF CERTIORARI, ON OR ABOUT APRIL 23  
5 2023, WHICH HE WAS UNABLE TO COMPLETE DUE TO  
6 THE ~~APPROVED~~ BELOW TRANSFER AND TRANSPARK  
7 UP HIS PROPERTY. ON OR ABOUT APRIL 30, 2023...  
8  
9

10 PETITIONER, WAS FURTHER IMPEDED FROM PREPARING AND  
11 FILING HIS WRIT OF CERTIORARI BY JUNE 2, 2023, WHEN  
12 HIS IN-CELL PROPERTY INCLUDING LEGAL PROPERTY RELATING  
13 TO THIS CASE WAS CONFISCATED ON APRIL 30, 2023 TO  
14 TRANSPARK AND TRANSFER HIM TO VALLEY STATE PRISON.  
15 (SEE, ~~ENCL~~, APPENDIX - B, AND APPENDIX - C  
16 WHICH IS BEYOND HIS CONTROL WHICH PREVENTED HIM  
17 FROM PREPARING HIS WRIT OF CERTIORARI BY JUNE  
18 2, 2023.  
19

20 ON OR ABOUT MAY 1, 2023, PETITIONER ARRIVED AT  
21 VALLEY STATE PRISON, AND VSP-ROR STAFF STORED  
22 ABOUT 13 LEGAL BOXES IN ~~THEIR~~ THEIR STORAGE  
23 PER CDCR POLICY. AND AFTER PETITIONER WENT  
24 THROUGH HIS ALLOTTED PROPERTY, HE DISCOVERED THAT  
25 PARTS OF HIS NEEDED LEGAL FILES WERE IN VSP-  
26 ROR AND REQUESTED TWICE ~~FOR~~ TO ALLOW HIM  
27 ACCESS TO HIS LEGAL FILES DUE TO DELAYED, AND  
28 ROR STAFF HAS FAILED TO RESPOND. (SEE, APPENDIX - B

1 SECOND ID FORM DATED 5/11/23. ....)

2 PETITIONER ALSO FILED AN 602 REGARDING BE BEING  
3 DENIED ACCESS TO NEEDED LEGAL FILES TO FILE DOCUMENTS  
4 TO THE COURTS DATED 5-11-23, WHICH HE IS AWAITING  
5 AN RESPONSE. (SEE APPENDIX-B " 602 DATED 5-11-23 )  
6 WHICH RBR STAFF FAILURE TO ALLOW HIM ACCESS TO HIS  
7 NEEDED LEGAL FILES TO PREPARE HIS WRIT OF HABEAS  
8 CERTIORARI BY JUNE 2, 2023.

9  
10 PETITIONER EXERCISED DUE DILIGENCE UPON HIS  
11 ARRIVAL AND AT THE FIRST POSSIBLE OPPORTUNITY - WENT TO  
12 THE MAIN YARD LAW LIBRARY ON OR ABOUT ~~THE~~ JUNE 2,  
13 2023, BUT WAS UNABLE TO CONDUCT THE LEGAL RESEARCH  
14 TO ADDRESS HIS LEGAL CLAIMS AND TO RESPOND TO THE  
15 JUDGMENT (EXTENSION OF TIME DUE TO EXTRAORDINARY  
16 CIRCUMSTANCES) BECAUSE THE LAW LIBRARY WAS SHUT  
17 DOWN, DUE TO A B-YARD AND C-YARD MUGGED RIOTS  
18 CREATED AN IMPEDIMENT BEYOND THE PETITIONER'S  
19 CONTROL, THAT PREVENTED HIM FROM PREPARING AND  
20 FILING THIS EXTENSION OF TIME UNDER S.C.T. R. 13.3  
21 DUE TO EXTRAORDINARY CIRCUMSTANCES.

22  
23 THE NEXT POSSIBLE OPPORTUNITY PETITIONER HAD ACCESS  
24 TO THE LAW LIBRARY WAS ON OR ABOUT MAY 8, 2023,  
25 AT WHICH TIME HE DISCOVERED DURING HIS LEGAL RESEARCH  
26 THE PROPER AND CORRECT STEP TO TAKE, WHEN SUFFERING FROM  
27 EXTRAORDINARY CIRCUMSTANCES BEYOND HIS CONTROL ... UNDER  
28 SUPREME COURT RULE 13. et seq. WAS A GOOD FAITH EFFORT OF

1 PETITIONER EXERCISING DUE DILIGENCE, AND HE WAS ABLE

2 TO PREPARE AND FILE THIS EXTENSION OF TIME DUE TO

3 EXTRAORDINARY CIRCUMSTANCES, PAR 5. CT. R. 13. CHECK

4 ALSO, THE MAIN YARD LAW LIBRARY STATE HAS INFORMED

5 THE PETITIONER THAT IF THE COURT NEEDS VERIFICATION

6 ABOUT THE ABOVE MENTIONED EXTRAORDINARY CIRCUMSTANCES

7 AT THE LAW LIBRARY SHE WILL PROVIDE IT.

8

9

10 PETITIONER, REQUEST IN GOOD FAITH AND WITH PROPER

11 REASONS FOR A ONE TIME 60 DAY EXTENSION TO FILE

12 HIS WRIT OF HABEAS CORPUS, DUE TO SUFFERING BACK TO BACK

13 IMPEDIMENTS MENTIONED ABOVE, WHICH WERE BEYOND HIS

14 CONTROL, THAT PREVENT HIM FROM PREPARING AND FILING

15 HIS WRIT OF HABEAS CORPUS BY HIS DEADLINE ON OR ABOUT

16 JUNE 2, 2013, AND FROM PREPARING AND FILING THIS

17 EXTENSION OF TIME UNDER 5. CT. R. 13 A-509.

18

19

20 THIS COURT (US SUPREME COURT) WAS JURISDICTIONAL OVER

21 THE SUBJECT MATTER AND THIS CIVIL CASE AND THIS COURT

22 HAS AUTHORITY TO CONSIDER THE PETITIONER'S CLAIM OF

23 EQUITABLE TOLLING RATE AND TO GRANT PETITIONER'S

24 EXTENSION OF TIME DUE TO EXTRAORDINARY CIRCUMSTANCES

25 UNDER 28 U.S.C. § 2101 (c)

26 AND UNDER SCHWARTZ

27 V. UNITED STATES, 398 U.S. 58, 90 S. CT 1555, 26 L. ED. 2D 44, 1970 U.S. LEXIS 89 (1970), WHICH HELD THAT

28

1 THE SUPREME COURT WOULD WAIVE PREDECESSOR TO RULE 13.2  
 2 WHERE PETITIONER FOR CERTIORARI WAS SUPPORTED BY UN-  
 3 UNCHALLENGED AFFIDAVITS SHOWING THAT PETITIONER ACTED  
 4 IN GOOD FAITH AND THAT THE DELAY WAS BROUGHT ABOUT BY  
 5 CIRCUMSTANCE LARGELY BEYOND HIS CONTROL AND IN  
 6 ADDITION, UNDER DOBSON V. RYAN, 2018 U.S. DIST. LEXIS  
 7 208726; UNITED STATES V. BUCKLES, 647 F3d 883 (C  
 8 9TH CIR. 2011) ... FOR GOOD CAUSE, A JUSTICE MAY  
 9 EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF  
 10 CERTIORARI FOR A PERIOD NOT TO EXCEED 60 DAYS &  
 11 AN APPLICATION TO EXTEND THE TIME TO FILE SHALL SET  
 12 OUT THE BASIS FOR JURISDICTION, UNDER U.S. SUP. CT. R.  
 13 13.1; AND 13.5.

15 PETITIONER IS UNABLE TO PRESENT A COPY OF OPINION AND  
 16 THE ORDER RESPECTING REHEARING, <sup>DUE TO EXTRAORDINARY</sup> ~~PREVIOUSLY~~ MAY  
 17 CIRCUMSTANCES OF VSP-R&R HAVING THESE LEGAL DOCUMENTS  
 18 IN THEIR STORAGE, SINCE MAY 11, 2023. AS MENTIONED  
 19 ABOVE, BUT DOES SET OUT SPECIFIC REASONS WHY A EXTENSION  
 20 OF TIME IS JUSTIFIED - AND THE PARTIES WHOM THE  
 21 EXTENSION OF TIME IS BROUGHT IS AS FOLLOWS:

1. ~~Evilla, % individual & official Capacity~~ ; 2. ~~Estroff, % individual & official Capacity~~
3. ~~Gray, % individual & official Capacity~~ ; 4. ~~C. Freeman, Capt. individual & official Capacity~~
5. ~~Hogan, % individual & official Capacity~~ ; 6. ~~W. R. Reavie, Lt. individual & official Capacity~~
7. ~~B. Martin, % individual & official Capacity~~ ; 8. ~~Leanny, % individual & official Capacity~~
9. ~~Pat, % individual & official Capacity~~ ; 10. ~~Schwarzer, % individual & official Capacity~~
11. ~~Burns, % individual & official Capacity~~ ; 12. ~~M. Williams, % individual & official Capacity~~

PETITIONER, DOES NOT HAVE IN HIS POSSESSION THE ORIGINAL JUDGMENT NOR THE OPINION OF THE 9TH CIRCUIT COURT OF APPEALS, DUE TO V.S.P. - R&R STAFF FAILURE TO PERMIT HIM ACCESS TO HIS NEEDED LEGAL FILES RELATED TO THIS CASE. (SEE, APPENDIX - A - 2, AND APPENDIX - B, AND ALSO APPENDIX - C ... ) AND ~~WAS~~<sup>HE</sup> WAS FORCED TO RETRIEVE THE JUDGMENT/OPINION FROM V.S.P. - LAW LIBRARY ADVANCE. LEXIS COMPUTER SYSTEM IN HIS GOOD FAITH EFFORTS TO MEET THIS COURT'S REQUIREMENTS, WHICH IS AN EXTRAORDINARY CIRCUMSTANCE, WHICH PREVENTS THE PETITIONER FROM PROPERLY PRESENTING OR PREPARING THIS REQUEST FOR EXTENSION OF TIME, DUE TO THE EXTRAORDINARY CIRCUMSTANCE WHICH IS BEYOND HIS CONTROL, WARRANTING EQUITABLE TOLLING RELIEF. (SEE, APPENDIX - A - 1 - ADVANCE. LEXIS, WEST V. ULLOA, 2022 U.S. APP. LEXIS 33405, DATED DECEMBER 5, 2022. )

PETITIONER FILED A PETITION FOR PANEL REHEARING UNDER FRAP RULE 40. ON OR ABOUT FEBRUARY 4, 2023, WHICH THE COURT OF APPEALS 9TH CIRCUIT RENDERED ITS DECISION ON OR ABOUT MARCH 3, 2023, (ITS DENIAL) AND THIS DECISION IS INCLUDED IN THE ABOVE MENTIONED LEGAL FILES THAT ARE IN R&R STORAGE, WHICH R&R STAFF HAS FAILED TO ALLOW THE PETITIONER ACCESS TO IMPEDING HIS ABILITY TO PREPARE THIS REQUEST AND HIS PETITION FOR WRIT OF CERTIORARI, CREATING AN EXTRAORDINARY CIRCUMSTANCE BEYOND HIS CONTROL THAT PREVENTS HIM FROM PREPARING AND FILING THIS REQUEST PROPERLY AND HIS WRIT OF CERTIORARI TIMELY. (SEE, APPENDIX - A - 2; APPENDIX - B; AND APPENDIX - C.)



I, MACK WEST JR. DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE? EXECUTED MAY 12, 2023. IN CHOWCHILLA CALIFORNIA.

SI MWJR  
MACK WEST JR.  
PRO SE, PETITIONER

CERTIFICATE OF SERVICE

I MACK WEST JR. CERTIFY THAT I SERVED ON THE PERSON(S) LISTED BELOW BY MAIL A COPY OF THIS REQUEST FOR AN 60 DAY EXTENSION OF TIME TO FILE MY WRIT OF CERTIORARI, DUE TO EXTRAORDINARY CIRCUMSTANCES, BEYOND MY CONTROL, PURSUANT TO 5. CT. RULE 13-3 AND ANY ATTACHMENTS / APPENDIXES:

SI MWJR

DATED: 5/14/23

<u>NAMES</u>	<u>ADDRESSES</u>	<u>DATED</u>
U.S. SUPREME COURT	1 FIRST STREET NE WASHINGTON, DC 20543	5/15/23
DEP. ATTORNEY GENERAL OLIVER WU, FOR THE RESPONDENTS	455 GOLDEN GATE AVE. #11000 SAN FRANCISCO, CA 94102	5/15/23

# EXHIBIT / APPENDIX - A-1<sup>u</sup>

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DESCRIPTION: West v. UWOA, 2022 }  
U.S. App. LEXIS 33405, ADVANCE. SERIS  
COMPUTER SYSTEM... OPINION / DECISION  
DATED DECEMBER 5, 2022

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EXHIBIT / APPENDIX - A-1 ÷ OPINION / DECISION DATED  
DEC. 5, 2022.

Document: West v. Ulloa, 2022 U.S. App. LEXIS 33405

**West v. Ulloa, 2022 U.S. App. LEXIS 33405**

**Copy Citation**

United States Court of Appeals for the Ninth Circuit

December 5, 2022, Submitted, San Francisco, California; December 5, 2022, Filed

No. 20-56167

**Reporter**

2022 U.S. App. LEXIS 33405 \* | 2022 WL 17412865

MACK A. WEST, Jr., Plaintiff-Appellant, v. F. ULLOA, Correctional Officer, individual and official capacity; et al., Defendants-Appellees.

**Notice:** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** [\*1] Appeal from the United States District Court for the Central District of California. Valerie Baker Fairbank, District Judge, Presiding. D.C. No. 2:17-cv-04892-VBF-KES.

W. v. Ulloa, 2020 U.S. Dist. LEXIS 181142 (C.D. Cal., Sept. 30, 2020)

**Disposition:** AFFIRMED.

**Core Terms**

district court, properly dismiss, retaliated, retaliation claim, amend, deliberate indifference, adverse action, grievances, fail to protect, rights, cell, administrative segregation, conscious disregard, false information, reversible error, substantial risk, judicial notice, alleged facts, serious harm, deny leave, circumstances, unacceptable, referencing, speculation, responses, Appeals, chilled, suicide, futile, inmate

**Counsel:** MACK A. WEST, Jr., Plaintiff - Appellant, Pro se, Soledad, CA.

For F. ULLOA, Correctional Officer, individual and official capacity, E. TORRES, Correctional Officer, individual and official capacity, GRAY, Correctional Officer, individual and official capacity, C. FREEMAN, Captain, individual and official capacity, HOGAN, Correctional Officer, individual and official capacity, WAYNE REAUME, Correctional Officer, individual and official capacity, B. MARTIN, Correctional Officer, individual and official capacity, LEAVRY, PAZ, SCHUMACHER, BURNS, Correctional Counselor I, individual and official capacity, M. WILLIAMS, Correctional Officer, individual and official capacity, GHASSEMI, Psychologist, individual and official capacity, XAVIER CANO, Warden, DEBBIE ASUNCION, Warden, individual and official capacity, C. WOOD, Associate Warden, individual and official capacity, T. J. RHODES, Correctional Counselor II, Supervisor, individual and official capacity, CASTRO II, Correctional Counselor I, individual and official capacity, [\*2] DAVIS, Sergeant, individual and official capacity, RODRIGUEZ, Correctional Counselor I, individual and official capacity, PEREZ, Sergeant, official capacity, GRAVES, WALTERS, B. A. GONZALES, Sergeant, individual and official capacity, J. CURIEL, Appeal Coordinator, individual and official capacity, J. BARNES, Appeal Staff, individual and official capacity, K. ESTRADA, LEDUC, Clinician, WALTERS, Correctional Counselor II, individual and official capacity, T. GARRETT, Psychologist, official capacity, GRAVES, Lieutenant, individual and official capacity, Defendant - Appellee: Oliver Wu, AGCA - Office of the

California Attorney General, San Francisco, CA.

**Judges:** Before: BADE ▼, LEE ▼, and KOH ▼, Circuit Judges.

## Opinion

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### MEMORANDUM

Mack A. West, Jr., a California state prisoner proceeding pro se, appeals the district court's judgment dismissing his 42 U.S.C. § 1983 action against twenty-eight defendants alleging violations of his rights under the First and Eighth Amendments. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's dismissal for failure to state a claim de novo and its denial of leave to amend for abuse of discretion. *Chappel v. Lab'y Corp. of Am.*, 232 F.3d 719, 723, 725-26 (9th Cir. 2000). We affirm.

The district court properly dismissed West's First Amendment retaliation claims against Correctional Officers Ulloa and [\*3] Torres because he failed to plausibly allege that they took adverse actions or retaliated against him, or that their actions chilled the exercise of his First Amendment rights. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (setting forth the elements of a First Amendment retaliation claim in "the prison context"); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (a plaintiff must allege facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

The district court properly dismissed West's First Amendment retaliation claims against Warden Asuncion and Grievance Appeals Coordinators Barnes, Curiel, and Estrada, premised on their responses to his grievances, because West made only speculative allegations that they retaliated against him. *See Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014) ("We have repeatedly held that mere speculation that defendants acted out of retaliation is insufficient.").

The district court properly dismissed West's First Amendment retaliation claims alleging that Chief Deputy Warden Cano, Correctional Counselor Rhodes, and Captain Freeman created a document that included false information about West and interfered with West's grievance responses because West failed to plausibly allege that they took adverse actions or retaliated against him, or that their actions chilled the exercise [\*4] of his First Amendment rights. *See Rhodes*, 408 F.3d at 567-68.

The district court properly dismissed West's First Amendment retaliation claims against Lieutenant Reaume, which alleged that Reaume placed West in administrative segregation as retaliation and obstructed an inquiry into one of West's grievances. However, West conceded that he was transferred to administrative segregation because a weapon was found in his cell. Moreover, West did not plausibly allege an adverse action, that Reaume retaliated against him, or that Reaume's actions lacked a legitimate correctional goal. *See id.*; *Schroeder v. McDonald*, 55 F.3d 454, 461 (9th Cir. 1995) ("Legitimate goals of a correctional institution include the preservation of internal order and discipline and the maintenance of institutional security.").

Because West failed to plausibly allege that Correctional Officers Gray and Hogan took adverse actions or retaliated against him, the district court properly dismissed West's claims alleging that Gray and Hogan fabricated inmate communications as excuses for retaliatory cell searches. *See Rhodes*, 408 F.3d at 567-68.

The district court properly dismissed West's Eighth Amendment claim alleging that other defendants failed to protect him from Ulloa and Torres because West failed to plausibly allege that any defendant knew that Ulloa and Torres posed [\*5] a substantial risk of serious harm to him. *See Farmer v. Brennan*, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994) (setting forth the elements of an Eighth Amendment claim of deliberate indifference).

The district court properly dismissed West's Eighth Amendment claim alleging that Ulloa, Torres, Cano, and Rhodes failed to protect him from other inmates by creating a document that included false information about West because West did not plausibly allege that they knew of any substantial risk of serious harm. *See id.*

The district court properly dismissed West's Eighth Amendment claim alleging that Ulloa and Torres failed to protect him from himself when they allegedly planted weapons in his cell, slid him a small piece of metal, and taunted him because he did not allege facts showing that they had any reason to know that he was at serious risk of suicide. *See id.*; *Conn v. City of Reno*, 591 F.3d 1081, 1102 (9th Cir. 2010), *vacated*, 563 U.S. 915, 131 S. Ct. 1812, 179 L. Ed. 2d 769 (2011), *opinion reinstated in relevant part*, 658 F.3d 897 (9th Cir. 2011) (discussing deliberate indifference in the context of a risk of suicide). Moreover, a verbal taunt, without more, would not rise to the level of an Eighth Amendment violation. *See Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (per curiam).

The district court properly dismissed West's Eighth Amendment claims for deliberate indifference to his mental health needs because he failed to allege that medical providers Leduc, Garret, Paz, and Ghassemi provided care that [\*6] was medically unacceptable under the circumstances or chosen in conscious disregard of an excessive risk to his health. *See Toguchi v. Chung*, 391 F.3d 1051, 1058-60 (9th Cir. 2004) (explaining that a prisoner's difference of opinion concerning the appropriate course of treatment does not state a claim for medical deliberate indifference unless the prisoner can show "that the chosen course of treatment 'was medically unacceptable under the circumstances,' and was chosen 'in conscious disregard of an excessive risk to the prisoner's health'" (citation omitted)).

The district court did not abuse its discretion in dismissing without leave to amend because amendment would be futile. *See Chappel*, 232 F.3d at 725-26 (explaining that a district court properly denies leave to amend when it would be futile); *Fid. Fin. Corp. v. Fed. Home Loan Bank of San Francisco*, 792 F.2d 1432, 1438 (9th Cir. 1986) ("The district court's discretion to deny leave to amend is particularly broad where the court has already given the plaintiff an opportunity to amend his complaint.").

The district court did not abuse its discretion in referencing documents outside the record. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir. 2001) (explaining that on a Rule 12(b) motion to dismiss, a court may "take judicial notice of undisputed matters of public record"). To the extent that the district court erred by referencing testimony in West's prior criminal [\*7] trial, we find no reversible error because the district court based its decision not on information outside the record, but on deficiencies in the amended complaint. *See La. Mun. Police Emps.' Ret. Sys. v. Wynn*, 829 F.3d 1048, 1063-64 (9th Cir. 2016) (finding no reversible error when "even if the district court's reference to extrinsic materials were excised, its analysis would still be sufficient to uphold its conclusions.").

West's requests for appointment of counsel on appeal (Docket Entry Nos. 55 and 62) and request for judicial notice (Docket Entry No. 58) are DENIED.

**AFFIRMED.**

**Footnotes**

\*\*

The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

\*

This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

**Content Type:** Cases

**Terms:** 2022 US APP LEXIS 33405

**Narrow By:** -None-

**Date and Time:** May 12, 2023 03:38:55 p.m. EDT



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**General Docket  
United States Court of Appeals for the Ninth Circuit**

<b>Court of Appeals Docket #:</b> 20-56167 <b>Nature of Suit:</b> 3550 Prisoner-Civil Rights Mack West, Jr. v. F. Ulloa, et al <b>Appeal From:</b> U.S. District Court for Central California, Los Angeles <b>Fee Status:</b> Partially Paid	<b>Docketed:</b> 11/05/2020 <b>Termed:</b> 12/05/2022
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<b>Case Type Information:</b> 1) prisoner 2) state 3) civil rights
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<b>Originating Court Information:</b> <b>District:</b> 0973-2 : 2:17-cv-04892-VBF-KES <b>Trial Judge:</b> Valerie Baker Fairbank, District Judge <b>Date Filed:</b> 07/03/2017			
<b>Date Order/Judgment:</b> 09/30/2020	<b>Date Order/Judgment EOD:</b> 09/30/2020	<b>Date NOA Filed:</b> 10/30/2020	<b>Date Rec'd COA:</b> 11/05/2020

10/28/2022 62 Filed Appellant Mack A. West, Jr. motion to appoint pro bono counsel. Deficiencies: None. Served on 10/24/2022. [12575987] (BJK) [Entered: 10/28/2022 04:16 PM]

12/05/2022 63 FILED MEMORANDUM DISPOSITION (BRIDGET S. BADE, KENNETH K. LEE and LUCY H. KOH) West's requests for appointment of counsel on appeal (Docket Entry Nos. [55] and [62]) and request for judicial notice (Docket Entry No. [58]) are DENIED. AFFIRMED. FILED AND ENTERED JUDGMENT. [12601723] (JN) [Entered: 12/05/2022 08:30 AM]

12/07/2022 64 Filed (ECF) Appellees Debbie Asuncion, J. Barnes, Burns, Xavier Cano, Castro, II, J. Curiel, Davis, K. Estrada, C. Freeman, T. Garrett, Ghassemi, B. A. Gonzales, Mr. Graves, Gray, Hogan, Leavry, Leduc, B. Martin, Paz, Perez, Wayne Reaume, T. J. Rhodes, Rodriguez, Schumacher, E. Torres, F. Ulloa, Walters, M. Williams and C. Wood bill of costs (Form 10) in the amount of \$405.50 USD. Date of service: 12/07/2022 [12604170] [20-56167] (Wu, Oliver) [Entered: 12/07/2022 09:50 AM]

12/16/2022 65 Filed Appellant Mack A. West, Jr. FORM 14 motion for extension of time. Deficiencies: None. Served on 12/13/2022. [12612683] (RL) [Entered: 12/16/2022 02:06 PM]

12/19/2022 66 Filed text clerk order (Deputy Clerk: AF): Appellant's motion for extension of time to file petition for rehearing, and extension of time to file an opposition to the bill costs, Dkt. [65], is granted. [12613516] (AF) [Entered: 12/19/2022 09:52 AM]

01/19/2023 67 Filed Appellant Mack A. West, Jr. FORM 14 motion for extension of time. Deficiencies: None. Served on 01/11/2023. (PANEL) [12634010] (RL) [Entered: 01/19/2023 01:40 PM]

02/02/2023 68 Filed text clerk order (OC): The motion to extend the time to file a petition for rehearing [67], is granted. The petition is due on or before February 8, 2023. [12645027] (OC) [Entered: 02/02/2023 02:18 PM]

02/13/2023 69 Filed Appellant Mack A. West, Jr. petition for panel rehearing Number of Pages 13. Served on 02/08/2023. Deficiency: Late. Date circulated to the court: (PANEL, (Panel: BSB, KKL and LHK) [12652293] (RL) [Entered: 02/13/2023 04:52 PM]

03/03/2023 70 Filed text clerk order (Deputy Clerk: OC): The petition for panel rehearing [69], is DENIED. [12666669] (OC) [Entered: 03/03/2023 10:46 AM]

04/07/2023 71 MANDATE ISSUED.(BSB, KKL and LHK) Costs taxed against Appellant in the amount of \$405.50. [12691170] (RL) [Entered: 04/07/2023 11:20 AM]

PACER Service Center			
Transaction Receipt			
U.S. Court of Appeals for the 9th Circuit - 06/07/2023 10:48:43			
PACER Login:	scotus2023	Client Code:	
Description:	Case Summary	Search Criteria:	20-56167
Billable Pages:	1	Cost:	0.10
Exempt Flag:	Exempt	Exempt Reason:	Always

APPENDIX - A-2 /  
EXHIBIT A-2 "

Description of this Exhibit 22 FORM TO EOP SGT. DAVIS DATED  
4/27/23  
602 DATED 4/17/23  
\_\_\_\_\_  
\_\_\_\_\_

Number of Pages 3

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EXHIBIT/APPENDIX - A-2: 22 FORM TO EOP SGT. DAVIS DATED 4-27-23  
602 DATED 4/17/23



# INMATE REQUEST FOR INTERVIEW

DATE <b>4-27-23</b>	TO <b>EOP-SGT. DAYS</b>	FROM (LAST NAME) <b>MACK WEST OR - AAR</b>	CDC NUMBER <b>PC0029</b>
HOUSING <b>A5-137</b>	BED NUMBER <b>137</b>	WORK ASSIGNMENT	JOB NUMBER FROM TO
OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.) <b>EOP</b>			ASSIGNMENT HOURS FROM TO

**Clearly state your reason for requesting this interview.**

You will be called in for interview in the near future if the matter cannot be handled by correspondence.

**EOP-SGT. DAYS - I HAVE REPEATEDLY REQUESTED ACCESS TO MY LEGAL FILES FOR MY PENDING CASES, AND YOU HAVE REPEATEDLY EXPLAINED THAT EITHER DUE TO THE LACK OF STAFF OR DUE TO THE 2ND WEEK LOCKDOWN I WAS NOT ALLOWED THE ACCESS TO MY LEGAL FILES IN R&R STORAGE. BUT NOW THAT THE LOCKDOWN IS OVER, WHEN CAN I BE ALLOW ACCESS TO MY LEGAL FILES IN R&R? I HAVE DEADLINES.**

Do NOT write below this line. If more space is required, write on back.

INTERVIEWED BY	DATE
DISPOSITION	

STAFF USE ONLY	OGT Log No: _____ Date Received: _____
	Decision Due Date: _____
	Categories: _____

Complainant Name: Mark West Jr - MR CDCR #: FG0029  
 Institution/Parole Region: SVSP Current Housing/Parole Unit: A5-134

STAFF USE ONLY

Please use this form to file a complaint with the Department.

**Order for the Department to understand your complaint, please answer all of the following questions:**

- What is the nature of your complaint?
- When and where did the complaint occur?
- Who was involved?
- Which specific people can support your complaint?
- Did you try to informally resolve the complaint?
- What rule or policy are you relying on to make your complaint?
- What specific action would resolve your complaint?

NOTE: Attach documents that help support your complaint (identify the documents if you do not have them).

THIS IS A COMPLAINT AGAINST A-YARD CUSTODY SERGEANTS FOR THEIR ONGOING FAILURE TO ALLOW ME ACCESS TO MY LEGAL FILES IN ROR STORAGE, BEFORE THIS LOCKDOWN ON OR ABOUT APRIL, 2023, I HAVE REQUESTED TO GO TO ~~THE~~ ROR, TO ACCESS MY LEGAL FILES FROM THE PROGRAMM SECT. C, AND EOP SECT. DAYS, AND BEEN DENIED ON THE BASIS OF WORK OF STAFF, OR DUBTD PLANS ON THE YARD. BUT, THIS DOES NOT ALLOW THESE SUPERVISORS TO HIDE BEHIND THESE REASONS WHEN THE PROGRAM IS UP AND RUNNING NORMAL, AND THEIR RESPONSES ARE LET ~~ME~~ <sup>THEY</sup> GET BACK WITH ME BUT NEVER TO, THESE SUPERVISORS HAS CONTINUE TO DENY ME ACCESS TO THE COURT BY THEIR ONGOING DENIAL OF ME ACCESS TO MY NEEDED LEGAL FILES BECAUSE I SPOKE WITH ACTING SECT. GARICA, WHO CALLED DURING THE WEEKDAY AND HE TOLD ME ROR STAFF SAID THE BEST TIME TO GO TO ROR IS EARLY IN THE MORNING ON 2ND WATCH AND SECT. DAY ALSO TOLD ME THAT IF I DID NOT GO DURING THE WEEK THAT ROR STAFF AND I'LL BE ALLOWED TO GO ON THE WEEKEND BUT THEY ARE STILL NOT ALLOWING ACCESS TO MY LEGAL FILES AND DENYING ME ACCESS

TO THE COURT. I REQUEST THAT I BE ALLOWED ACCESS TO MY  
LEGAL FEES TO PREPARE MY DOCUMENTS TO THE COURTS AND THAT  
EOP SGT. DAVIS AND PROGRAM SGT. Q, STOP DENYING ME ACCESS TO MY  
LEGAL FEES AND STOP DENYING ME ACCESS TO THE COURTS.

Claimant Signature: MWAH W/O PREJUDICE

Date Signed: 4-17-23

APPENDIX - B /

# EXHIBIT B

Description of this Exhibit A SECOND  
'22 FORM TO R & R STAFF DATED  
5/11/23; AND  
602 DATED 5/11/23

Number of Pages 3

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EXHIBIT/APPENDIX - B ; A SECOND '22 FORM TO R & R STAFF DATED 5/11/23 ;  
602 DATED 5/11/23

# INMATE REQUEST FOR INTERVIEW

DATE 5/11/23	TO R & R STAFF	FROM (LAST NAME) Mark West Jr.	CDC NUMBER P60029
HOUSING A2	BED NUMBER A1-2LOW	WORK ASSIGNMENT	JOB NUMBER FROM TO
OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.)			ASSIGNMENT HOURS FROM TO

Clearly state your reason for requesting this interview.

You will be called in for interview in the near future if the matter cannot be handled by correspondence.

R & R STAFF - I REQUESTED LAST WEEK ACCESS TO MY LEGAL FILES THAT'S STORED IN R & R STORAGE/ANNEX, BY SUBMITTING A 22 FORM TO R & R, AND I NEVER RECEIVED AN RESPONSE NOR HAVE I BE CALLED TO R & R. THIS IS MY SECOND REQUEST, COULD I PLEASE HAVE ACCESS TO MY LEGAL FILES FOR COURT PURPOSES AND DEADLINES. THANK YOU.

Do NOT write below this line. If more space is required, write on back.

INTERVIEWED BY

DATE

DISPOSITION

<b>STAFF USE ONLY</b>	OGT Log No: _____ Date Received: _____
	Decision Due Date: _____
	Categories: _____

Claimant Name: MACK WEST JR. - ARR CDCR #: \_\_\_\_\_  
Institution/Parole Region: V.S.P. Current Housing/Parole Unit: AR-A1-2 Low

**STAFF USE ONLY**

Use this form to file a complaint with the Department.

**In order for the Department to understand your complaint, please answer all of the following questions:**

- What is the nature of your complaint?
- When and where did the complaint occur?
- Who was involved?
- Which specific people can support your complaint?
- Did you try to informally resolve the complaint?
- What rule or policy are you relying on to make your complaint?
- What specific action would resolve your complaint?

NOTE: Attach documents that help support your complaint (identify the documents if you do not have them).

THIS IS A COMPLAINT AGAINST R&R STAFF AT VALLEY STATE PRISON FOR DENYING ACCESS TO MY LEGAL FILES IN R&R STORAGE, BECAUSE LAST WEEK I SUBMITTED A 22 FORM REQUESTING ACCESS TO MY LEGAL FILES... AND I HAVE NOT RECEIVED A RESPONSE NOR HAVE I BE GIVEN ACCESS TO MY LEGAL FILES, THIS IS A VIOLATION OF YOUR POLICY AND DENYING ME ACCESS TO THE COURTS WHICH IS A FIRST AMENDMENT VIOLATION. I REQUEST THAT R&R STAFF STOP DENYING ME ACCESS TO MY LEGAL FILES AND ~~STOP~~ DENYING ME ACCESS TO THE COURTS, AND I BE PERMITTED ACCESS TO MY LEGAL ~~FILES~~ FILES TO ENABLE ME ACCESS TO THE COURTS.



APPENDIX - e /  
EXHIBIT C

Description of this Exhibit INMATE PROPERTY INVENTORY SHEET  
DATED 4/30/23 (TRANSPAK -  
PROPERTY)  
COPY OF PETITIONER'S TRANSFER  
AND PROPERTY ON MAY 1, 2023

Number of Pages

4

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EXHIBIT/APPENDIX - C: INMATE PROPERTY INVENTORY SHEET DATED 4/30/23  
COPY OF PET TRANSFER AND PROPERTY ON MAY 1, 2023





## INMATE PROPERTY INVENTORY

<b>OFFENDER NAME</b> WEST, MACK A.	<b>CDC NUMBER</b> F60029	<b>FACILITY</b> SVSP-Facility A [SVSP-A]	<b>CELL/HOUSING UNIT</b> A 005 1
<b>PURPOSE</b> Transfer			

**NOTE: Some property items listed on this form may be restricted by local institution policies and procedures.**

ITEM	QUANTITY		UNIT OF MEASURE	ITEM	QUANTITY		UNIT OF MEASURE
	FULL	PARTIAL			FULL	PARTIAL	
<b>APPLIANCES - LOCATION: Facility Property Room</b>							
Audio Entertainment (CD) (Battery)	1	0	Each	Battery Charger	1	0	Each
Fan	1	0	Each	Hair Clipper / Trimmer (Battery)	1	0	Each
Headphones	1	0	Each	Hot Pot	1	0	Each
Television Color (A/C)	1	0	Each				
<b>ELECTRONICS - LOCATION: Facility Property Room</b>							
Antenna Wire	1	0	Each	Battery Recharger	1	0	Each
Clock	1	0	Each	Extension Cord	1	0	Each
<b>FOOD - LOCATION: Facility Property Room</b>							
Beverages	5	0	Each	Coffee	4	0	Each

Condiments	4	0	Each	Creamer	2	0	Each
Dried Vegetables	2	0	Each	Food Pouches	8	0	Each
Soups / Noodles	54	0	Each	Tea	1	0	Box
<b>GAMES - LOCATION: Facility Property Room</b>							
Cards	1	0	Each	Chess	1	0	Each
Dominoes	1	0	Each				
<b>PERSONAL CARE/HYGIENE - LOCATION: Facility Property Room</b>							
Baby Oil	2	0	Each	Blush	1	0	Each
Body Lotion	4	0	Each	Body Powder	1	0	Each
Body Soap	5	0	Each	Deodorant	3	0	Each
Hair Oil / Grease	2	0	Each	Laundry Detergent	2	0	Each
Mirror	1	0	Each	Shampoo	2	0	Each
Toothpaste	5	0	Each				
<b>PERSONAL CLOTHING - LOCATION: Facility Property Room</b>							
Athletic Shorts	2	0	Each	Hat	1	0	Each
Shower Shoes	2	0	Pair	Socks	9	0	Pair
Sweat Pants	2	0	Each	Sweat Shirts	1	0	Each
Tennis Shoes (with laces)	1	0	Pair	Undershirts	4	0	Each
Underwear	4	0	Each				
<b>PERSONAL ITEMS - LOCATION: Facility Property Room</b>							
Books	10	0	Each	Bowl	2	0	Each
Compact Disc (CD)							

	11	0	Each	Legal Material	16	0	Box
Photo Album	1	0	Each	Tumbler / Cups	1	0	Each

**PERSONAL MEDICATIONS - LOCATION: Facility Property Room**

Vitamins	1	0	Each				
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**STATIONERY - LOCATION: Facility Property Room**

Pencils	2	0	Each				
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I acknowledge and understand that the Department of Corrections and Rehabilitation grants me the privilege of possessing the above described property, specifically conditioned on my agreement to abide by not trading, loaning, giving, selling or otherwise exchanging any of the above-described property with any other offender without the written pre-authorization of the Warden/Designee.

*MWR w/o PREJUDICE*

Signature of Offender

K. Mendoza [MEKE028]

Signature of Staff Member

*6 MURS PACKED UP MY PROPERTY 2ND WATCH*

*11-30-23*

Date Signed

04/30/2023

Date Signed

OFFENDER NAME: WEST, MACK A.

CDC NO.: F60029

INST. FROM: SVSP-Facility A

REASON: Transfer

INST. TO: VSP-Central Service

NO. OF BOXES: 19 OF 20

COMMENTS:

CDCR SOMS ISST210 - PROPERTY TRANSFER TAG

**PROOF OF SERVICE BY MAIL**

**BY PERSON IN STATE CUSTODY**

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, MARK WEST JR., declare:

I am over 18 years of age and a party to this action. I am a resident of \_\_\_\_\_

\_\_\_\_\_ VALLEY STATE Prison,

in the county of CHOWCHILLA,

State of California. My prison address is: P.O. Box 96, CHOWCHILLA, CA 93610

On 5/15/23 (DATE)

I served the attached: REQUEST FOR AN 60 DAY EXTENSION OF TIME TO FILE HIS

WRIT OF CERTIORARI, DUE TO EXTRAORDINARY CIRCUMSTANCES PURS: TO 5. CT. RULE 13.3.  
(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

U.S. SUPREME COURT  
1 FIRST STREET NE  
WASHINGTON, DC 20543  
OFC. OF THE CLERK

DEP. ATTORNEY GENERAL OLIVER WU  
455 GOLDEN GATE AVE. STE 11000  
SAN FRANCISCO, CA 94102

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 5/15/23  
(DATE)

MARK  
(DECLARANT'S SIGNATURE)