

23-5067

ORIGINAL

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

IN THE

SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543

FILED

JUN 21 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Donivan Diaz — PETITIONER  
(Your Name)

vs.

Raymond Madden, Warden — RESPONDENT(S)  
R. Bumgart, N. Telles, D. Loop, Correctional LT.  
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Donivan Diaz # AU5079  
(Your Name)

CSP, P.O. Box 921/C2-217  
(Address)

Imperial, California. 92251  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

Whether prison officials interference with petitioner's ability to litigate his habeas cases by denying him access to his legal materials rise to the level of denial of access to courts establishing actual injury to a nonfrivolous legal claim being impeded.

## LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

## RELATED CASES

. Diaz v. Madden, No. 19-cv-1681, U.S. District Court for the Central District of California. Judgment entered January 6, 2023.

. Diaz v. Madden, No. 23-55061, U.S. Court of Appeals for the Ninth Circuit. Currently Pending.

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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 B 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☒ is unpublished.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 A 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 May 8, 2023.

☐ 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: May 8, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

This case involves Amendment I to the United States Constitution, which provides:

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

The Amendment is enforced by Title 42, Section 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## STATEMENT OF THE CASE

The petitioner's complaint alleged that he was denied access to the courts by prison officials. It further alleged that the interference by prison officials caused petitioner's non-frivolous state and federal habeas petitions to be dismissed and that in reality the petitioner had suffered actual injury by prison officials actions.<sup>1</sup>

Pursuant to the usual procedure, the petitioner requested to speak with Warden, respondent Madden, regarding the confiscation of petitioner's computerized legal materials for the purpose of obtaining access to his legal materials for his habeas cases. Petitioner's request for a hearing went unanswered. The following week, Petitioner made several other requests to respondent Madden " for a hearing but respondent Madden did not answer."

Instead, Respondent Telles responded to one of petitioner's requests by asking "a Facility Captain to look into the requests, " and told petitioner that he would be contacted in a few days by a Facility Captain. A few days later petitioner spoke to a Centinela Captain who said that he was unaware of the issue regarding the computerized legal materials and instructed petitioner to resubmit another request. At some point, Petitioner resubmitted his request on March 24, 2016 and received a written response from respondent Telles in April " stating that petitioner had an opportunity to 'speak with a Facility Captain' and stated that 'Centinela had made a good faith effort to assist' the petitioner. Respondents Madden and Telles declined any request from the petitioner to hold a hearing so petitioner could asked questions regarding the confiscation of petitioner's computerized legal materials. The

<sup>1</sup>FN 1: Petitioner's federal petition, Diaz v. Madden, C.D. Civil case no. 19-1681-CAS-(JEM) was dismissed with prejudice on January 6, 2023.

petitioner was denied a hearing and the actions by prison officials caused the denial of access to the courts.

Petitioner's administrative appeal, which described the refusal to hold a hearing and stated the reasons for respondents' interference with access to Petitioner's computerized legal materials, was denied by the Warden, respondent Madden.

Respondents' actions caused petitioner's non-frivolous state and federal habeas cases in, In re Donovan Diaz, case no.'s B282708, B284197, B285842, B286073, B286836, B286962, B287856, B289770, B290713, B291136, B287858, B292543, B292910, B294353, B304041, B305819, and Diaz v. Madden, C.D. Civil case no. 19-1681-CAS-(JEM),<sup>2</sup> to be dismissed due to petitioner's inability to attach copies of reasonable available documentary evidence supporting the claims, including pertinent portions of trial transcripts, affidavits, or declarations for ineffective assistance of counsel, prosecutorial misconduct, jury tampering, and insufficient evidence claims.

The district court dismissed petitioner's complaint on the ground that his access to court claim failed to state a claim upon which relief can be granted. The court of appeals affirmed the dismissal of petitioner's complaint for the reasons stated by the district court.

#### BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation to petition the Government for a redress of grievances of the First Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331.

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<sup>2</sup>FN 2: Petitioner's federal petition, Diaz v. Madden, C.D. Civil case no. 19-1681-CAS-(JEM) was dismissed with prejudice on January 6, 2023.

## REASONS FOR GRANTING THE PETITION

### A. Conflicts with Decisions of Other Courts

The holding of the courts below that "actual injury" need not personally apply in interference cases is directly contrary to the holding of three federal circuits. See, Ali v. District of Columbia, 278 F.3d 1,8 (D.C. Cir. 2003); Cody v. Weber, 256 F.3d 764, 769-70 (8th Cir. 2001); Johnson v. Hamilton, 452 F.3d 967, 973-74 (8th Cir. 2006). In addition, the 11th Circuit Court of Appeal has held that "Interference with the right of court access by state agents who intentionally conceal the true facts about a crime... is a deprivation of constitutional rights." Chappell v. Rich, 340 F.3d 1279, 1283 (11th Cir. 2003); Christopher v. Harbury, 536 U.S. 403, 414, 416 n.13, 122 S. Ct. 2179 (2002).

### B. Importance of the Question Presented

This case presents a fundamental question of the interpretation of this court's decision in Lewis v. Casey, 518 U.S. 343, 116 S. Ct. 2174 (1996). The question presented is of great public importance because it affects the operations of the prison system in all 50 states, the District of Columbia, and hundreds of city and county jails. In view of the large amount of litigation over Interference cases, guidance on the question is also of great importance to prisoners, because it affects their right to be free from Interference with Court Access by prison officials who "frustrates or impeded" prisoners efforts to pursue a non-frivolous claim.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted Casey. This Court

held in Casey that prisoners have a constitutional right of access to the courts. This Court first addressed this point in Bounds v. Smith, 430 U.S. 817 (1977), and added that prison authorities must assist inmates with adequate assistance from persons trained in the law. However, Bounds made no mention of an actual injury requirement, it can hardly be thought to have eliminated that constitutional prerequisite.

Casey addressed the "Actual Injury" Requirement rule that plaintiffs must show "actual injury," i.e., that they were "frustrated...or impeded" in pursuing a non-frivolous claim, which applies to interference cases. Exactly what "frustrated or impeded" means is not completely clear. Casey gave two examples:

[The inmate] might show, for example, that a complaint he prepared was dismissed for failure to satisfy some technical requirement which, because of deficiencies in the prison's legal assistance facilities, he could not have known, Or that he had suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint.<sup>3</sup>

Id. 518 U.S. at 351; see, Simkins v. Bruce, 406 F.3d 1239, 1243-44 (10th Cir. 2005). This Court held in a later decision that "cases that were inadequately tried or settled, or where a particular kind of relief could not be sought, as a result of officials actions, could support a claim of denial of court access, in addition to those that were dismissed or never filed." See, Christopher v. Harbury, 536 U.S. 403 414, 416 n.13(2002)

FN 3: Petitioner's federal petition, Diaz v. Madden, C.D. Civil case no. 19-1681-CAS-(JEM) was dismissed with prejudice on January 6, 2023.

The lower court's reasoning that " Plaintiff was instructed that in order to state a claim for denial of access to the courts he must allege more than conceivable injury, he must allege actual injury " is unconvincing. (See, Exhibit A at p. 10). It relied on a case from its District Court that does contain that holding. See, Brooks v. Alameda, 446 F. Supp.2d 1179, 1185 (S.D. Cal. 2006). However, Brooks cited its conclusion on Christopher v. Harbury, 536 U.S. 403, 414, 416 n. 13, 122 S. Ct. 2179 (2002)-- a case that ended poorly, or could not have commenced, or could have produced a remedy subsequently unobtainable. The Harbury Court made this case crystal clear, as an example of a potentially meritorious denial of court access claim that is inconsistent with the view that the right of court access only protects the right to file a complaint. 536 U.S. at 403, 414, 416 n.13. The Court in Casey had also held that " It is the role of courts to provide relief to claimants in individuals or class actions, who have suffered, or will imminently suffer, actual harm... 518 U.S. at 349. However, this holding did not address the "conceivable injury" for access court claims. (See, Exhibit A at p. 10). The Court stated a completely different standard for injury, that prisoners must show that the inadequacies or restrictions in prison caused them "actual injury", i.e., "that a nonfrivolous legal claim had been "frustrated or was being impeded." Lewis, 518 U.S. at 351-53. This Standard permits prisoners to show that the alleged inadequacies of a prison's library facilities or legal assistance program caused him "actual injury"-- that is, "actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim," while making no mention of " conceivable injury" in its holding to prisoners case. Brooks is contrary to the distinction made

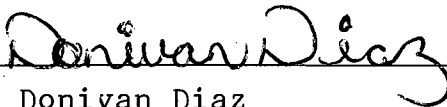
in Casey between "Conceivable Injury" and "Actual Injury," and Brooks alters the Casey holding concerning the injury requirement.

Thus, the court below seriously misinterpreted Casey by failing to distinguish between conceivable injury and actual injury for the injury requirement. The Court should correct that misinterpretation and make it clear that "Conceivable Injury" is not part of the actual injury requirement and cannot apply in interference cases by prison officials who "frustrates or impeded" prisoners efforts to pursue a non-frivolous claim.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Donivan Diaz

Date: 06/21/2023