

MAY 08 2023

OFFICE OF THE CLERK

No. 23-5282

IN THE
SUPREME COURT OF THE UNITED STATES

CLARENCE LEONARD HEARNS, Jr. — PETITIONER
(Your Name)

VS.

ANDREW WHISNAND, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Clarence Leonard Hearns, Junior
(Your Name)

POST OFFICE BOX 5248
(Address)

Corcoran, CA 93212
(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED
MAY 17 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1.

WHETHER A STATE DEPUTY ATTORNEY GENERAL HAS ABSOLUTE
IMMUNITY FROM SUIT FOR INITIATING CRIMINAL CONSPIRACY?

2.

WHETHER ALL ACTORS IN A CRIMINAL CONSPIRACY CAN BENEFIT
FROM THE IMMUNITY OF ONE OF THE ALLEGED ACTORS?

3.

WHETHER FIRST AMENDMENT'S "ACCESS TO THE COURTS"
OBLIGATES PRISON OFFICIAL TO FACILITATE ~~INMATE~~
ATTENDANCE AT COURT HEARING VIA COURT ORDERED
TELEPHONE CALL?

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:

Andrew Whisnand, Deputy State Attorney General (California),
Jason Barba, SATF Litigation Coordinator, S. Flemings, Correctional
Counselor, JOHN DOE 1074 Mail Room employee (State Prison).

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT.....	5-8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A Ninth Circuit Decision

APPENDIX B Decision of District Court (Eastern)

APPENDIX C Full text of statement of facts in case.

APPENDIX D INMATE REQUEST FORM

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>HARLOW v. FITZGERLD</u> , 1982) 457 U. S. 800.	6
<u>LEWIS v. CASEY</u> , (1996) 518 U. S. 343	6
<u>HIGHMARK Inc. v. ALLCARE HEALTH MGMT. SYS.</u> , 572 U. S. 559	7
<u>COX v. SUPERIOR COURT OF AMADOR Co.</u> , 1 C.A. 5th 855	6
<u>CRANE v. DOLIHITE</u> , 70 C. A. 5th 772	6
<u>SWANSON v. CITIBANK, N.A.</u> , 614 F. 3d 400 (7th Cir. 2010)	7-8
<u>CHESSMAN v. TEETS</u> , 350 U. S. 3.	8

STATUTES AND RULES

Title 18 usca §§ 1505, 1701 & 1702	5
Title 42 usca §§ 1985 & 1986	5
Cal. Penal Code §§ 2601, 2620, 2622 & 2623	6

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 B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 23, 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: _____, 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

FIRST AMENDMENT TO THE U.S. CONSTITUTION

Congress shall make no law ... abridging the freedom of speech, ... or the right of the people ...to petition the government for a redress of grievances.

FOURTH AMENDMENT TO THE U.S. CONSTITUTION

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated...

FOURTEENTH AMENDMENT TO THE U.S. 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

1. Sometime around December of 2016, Defendant Andrew Whisnand, ^{DAS}, Jason Barba and yet to be identified John Doe defendant planned and executed multiple acts of unwarranted confiscating and/or destroying of plaintiff mail, without notice or explanation.
2. In December of 2017, the John Doe defendant confiscated Plaintiff's mail going out, and sent the content to defendant Jason Barba. Defendant Jason Barba, then destroyed the content of plaintiff's mail. And then informed defendant Andrew Whisnand that they had accomplished defendant Whisnand's objective of obstructing plaintiff's efforts at assisting other inmates in litigation.
3. On or about August 3, 2018, Defendant Jason Barba received court order and memorandum of instruction from Sacramento County Court. The memorandum instructed the defendant as prison Litigation Coordinator, to grant plaintiff access to the state operated COURTCALL system.
4. Defendant Andrew Whisnand and Jason Barba upon given notice of this pending court date decided in concert to deny plaintiff access to the court call system via use of an unmonitored phone line. Defendant S. Fleming CCI was the facilitator of the fraudulent narrative that the SATF Litigation Coordinator, defendant Barba, was unavailable on the day of the scheduled court hearing.

(see full text of claims made in suit Appendix "C")

REASONS FOR GRANTING THE PETITION

- 1) THIS COURT SHOULD GRANT THIS PETITION IN ORDER TO ADDRESS FOR THE PUBLIC AT LARGE WHAT IS THE LIMITS FOR PROSECUTORIAL IMMUNITY ?
- 2) THE LOWER COURT'S DECISION CONFLICTS WITH BOTH OTHER CIRCUITS AND THE SUPREME COURT DECISIONS

Plaintiff submitted an Amended Complaint in the district court that met all the elemental facts that constitute a *Prima facie* case, of CONSPIRACY and denial of right to access to the court. In the case at bar, all the defendants in CLAIM I shared the objective of unlawfully taking Plaintiff property. And in CLAIM II all the defendants shared the single objective of denying plaintiff his right to participate in a court ordered ~~Hearing~~, in court via use of unmonitored Prison telephone.

"To establish liability for conspiracy in a § 1983 case, a plaintiff must demonstrate the existence of an agreement or a meeting of the minds to violate constitutional rights. ... each participant must at least share the common objective..."

BURN v. CITY OF CONCORD, 99 F. Supp. 3d 1007, 1024-1025.

Next the district court in its order dismissing the action states that the lead/initiator of the CLAIM I conspiracy, Deputy Attorney General Andrew Whisnand, has immunity as an Absolute bar to even being served. And somehow his absolute immunity is shared by his alleged co-conspirators.

The acts and omissions complained of in the FAC were: 1. violation U.S. Constitution Amendment 1, 4 and 14: 18 USC §§ 1505, 1701, 1702; 42 USC §§ 1985 and 1986; California Constitution article I § 3;

California Penal Code §§ 2601 (d), 2620, 2622, 2623.

In that Plaintiff's federally and stately PROTECTED MAIL was unlawfully taken and destroyed, in a conspiracy.

Then the conspirators in CLAIM II failed and refused to allow the Plaintiff to participate in a court ordered hearing, by telephone. All in violation of his rights.

The Ninth Circuit affirmed the district court premise that: pursuant to "Lewis v. Casey, 518 U.S. 343, 349-54 (1996) (setting forth the elements of an access-to-courts claim and explaining that the right to access the court does not include the right "to litigate effectively once in court")" See page 2 Appendix A

The first problem here is that the Lewis case states that: "This case is not about a right of 'access to the courts.'" So exactly where do Inmates derive their right to access to the courts?

"A prisoner has rights under the 1st Amendment and the State Constitution, Article 1 § 3, to access the courts." COX v. SUPERIOR COURT OF AMADOR COUNTY, 1 C.A. 5th 855.

"Nonexclusive list of measures to ensure indigent prisoners are afforded meaningful access to courts include... pretrial proceedings by telephone..." (emphasis added)
California Penal Code § 2601(d) Crane v. Dolihite, 70 C.A. 5th 772.
No one presiding over the proceedings in the lower courts utilized any of the authorities on the issue of telephone access to the courts for state prisoners.

And lastly the court repeatedly failed and refused to serve the defendants. Under a mistaken belief that absolute immunity BARRED service of the complaint, on defendants

"The official claiming absolute immunity has the burden of justifying it. Establishing that justification is a 2-step process [Harlow v. Fitzgerald (1982) 457 U.S. 800, 812]

Going back to the district court finding of facts and recommendations. First and foremost Plaintiff did not received the REPORT until after the deadline of 14 days had past. Though the court sent said REPORT out the same day it issued the REPORT. which can only be explained by the defendants prior actions in delaying delivery until after deadlines had past. Plaintiff try to alert SATF Trust office that it wasn't a good idea to send Plaintiff's complaint for processing through the SATF Litigation Office, as the defendant Barba ran that office. But they declined to route my complaint around defendant Barba. See Appendix D.

In my wrongfully OVERRULED objections to Magistrate's Findings & Recommendations, Plaintiff points out that on ALL THE KEY FACTS of the complaint the magistrate got it WRONG. And she applied the WRONG legal standard. see Appendix E

The court transferred Claim II "Access to Courts" for Claim I "First Amendment violation of wrongful confiscation of mail." She even swicthed the defendants from Claim II and cite them as defendants in Claim I. Please read full text of APPENDIX E.

"The abuse of discretion standard does not preclude an appellate court's correction of a district court's legal or factual error: A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Cooter & Gell v. Hartmark Corp., 496 U.S. 384, 405 110 S. Ct. 2447. cited in: HIGHMARK INC. v. ALLCARE HEALTH MGMT. SYS., 572 U. S. 559 (2014)

Lastly the lower courts agreed that Plaintiff had not demonstrated a Plausible case. The Plausible Standard is as follows:

"The mandate, then for pleaders is to allege 'sufficient facts' enough to move beyond the level of speculation, to nudge their claims across the line from conceivable to plausible... The 'plausibility' standard is an objective target, not a subjective one. It does not require that the claims appear 'likely' or

'probably true'. see ASHCROFT V. IQBAL @696...quoting TWOMBLY @ 556... The allegations must be factual and ~~suggestive~~. TWOMBLY @ 557 note 5. In the end, a claim's allegations must 'possess enough heft 'to show an entitlement to relief. thus justifying that the costly process of litigation continue...As summarized by one court, 'plausibility' requires that the pleader supply those case details necessary 'to present a story that holds together, and that courts will ask only 'could these things have happen, not did they happen.'"
Swanson v. Citibank, N.A., 614 F. 3d 400, 404 (7th Cir. 2010)

The absolute failure of the lower courts to bring the defendants to task, for their collective and continuous acts of misconduct has only embolden them and other government official to dis-honor the positions of trust they hold. The public deserves much better.

At some point there has to be a realiment of the court's position. It is the hope of this petitioner, that this is just so a point in time. How was it that the lower court failed to even so much as issue the complaint and request an answer, from the defendants? Though the case was active for months on end. It still amounted to a summarily dismissal.

"The district Court, without issuing writ or order to show cause, dismissed the application as not stating a cause of action. The court of appeals affirmed the order of the district court. The charges of fraud as such set forth a denial of due process of law in violation of the fourteenth Amendment. see Money v. Holohan, 294 U.S. 103. Without intimating any opinion regarding the validity of the claim, we hold that in the circumstances disclosed by the record before us the application should not have been summarily dismissed."

Chessman v. Teets, 350 U. S. 3.

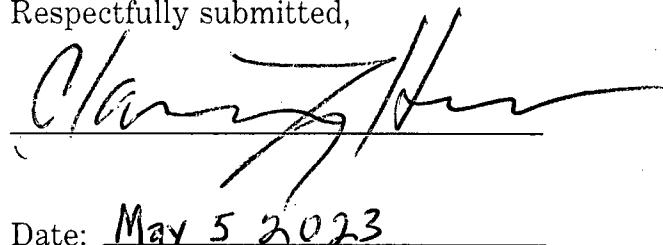
In light of all the facts and law before this court on this action. Is there no causes for just due process to prevail?
I submit.

In conclusion, I ask that this case be sent back to the lower court. And that the district court be ordered to serve the defendants with the First Amended Complaint (FAC).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 5, 2023