

23-7252
No. _____

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SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES
OF AMERICA

MYCHAL ANDRA REED — PETITIONER
(Your Name) (In Pro ~~per~~ ^{SE})

vs.

CSP-LAC, ET AL., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS-9TH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Mychal A. Reed #AE9821

(Your Name)

CSP-LAC 44750 60TH STREET-WEST

(Address)

Lancaster, CA 93536

(City, State, Zip Code)

n/a

(Phone Number)

(1)

QUESTION(S) PRESENTED

- 1) Can the district court lawfully dismiss petitioner's valid Civil Rights complaint (violation) case because he failed to appear due to "EXCEPTIONAL CIRCUMSTANCES": Medically incapacitated and suffering effects of Covid-19, where he was physically and mentally incapable of appearing for pre-trial hearings at the time?.
- 2) Can the Circuit court lawfully affirm district court's erroneous dismissal of petitioner's (plaintiff) valid Civil Rights violation case, for failure to appear, by excluding material facts therein their Affirming document, that are crucial and Highly significant to petitioner's cause?
- 3) Can the Circuit court lawfully disregard their own caselaw precedent (stare decisis) in affirming district court's erroneous dismissal of petitioner's valid Civil Rights violation case, for failure to appear, due to a medical emergency, and not be considered JUDICIAL BIAS?

LIST OF PARTIES

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

[X] 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:

CSP-LAC: California Department of Corrections and Rehabilitation; Chief M.D. Paulette Finander; Lieutenant C. Hughes; and Correction Officer Sal Uribe

RELATED CASES

- 1) Smith-St.John MFG. v. Price, 1989 U.S. Lexis 1168 U.S. Dist. Crt. for Dist. of Kanas 1/9/1989
- 2) Zoya Petrovina Milentyeva v. Gonzales, 142 Fed. Appx. 994 (9th Cir. 2005)
- 3) Hernandez v. Whiting, 881, f.2d 768 (9th Cir. 1989)

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UNITED STATES SUPREME COURT -

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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 2023 U.S. app. LEXIS 30982, 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 2022 U.S. Dist. LEXIS 201627; 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 11/21/23.

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: 2/15/24, 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

14TH Amendment- Section 1 - Rights "ABRIDGED". (via PREJUDICE)

U.S. Supreme Court Rules - Rule 10(a)

(a) A United States court of Appeals (9th Cir.) has entered a decision in conflict with another United States court of Appeals (9th Cir.) on the same important matter. (Failure to appear due to EXCEPTIONAL CIRCUMSTANCES.). See Hernandez v. Whiting, 881 F.2d 768 (9th Cir. 1989) and Zoya Petrovina Milentyeva v. Gonzales, 142 Fed. Appx. 994 (9th Cir. 2005)

1 STATEMENT OF CASE

2 On May 17, 2012, appellant (Reed), who is DEAF, was viciously
3 attacked by a lancaster prison c/o (Uribe) while he was lying
4 face down and not resisting. Appellant sustained a dislocated
5 left shoulder, fractured nose and busted lips.

6 Thereafter, appellant was falsely accused and charged with
7 Battery on a peace officer, allegedly on an officer he had zero
8 direct or indirect contact with (c/o Ruiz). Done by lancaster
9 (lac) officials to attempt to conceal the unnecessary excessive
10 force used on Reed.

11 Reed was subsequently found guilty in a "MOCK" rules violation
12 report (RVR) hearing, where, 1) no effective communication (asl
13 or written notes were ^{Not} rendered to him so he could understand the
14 hearings dialogue, and 2) he was refused by the hearing officer,
15 any witnesses to testify on his behalf.

16 Thereafter, Lac staff illegally unverified Reed's DEAF/hearing
17 impaired status (via zero exam) after previously verifying his
18 disability 4 (four) times upon his 2010 prison entrance, and the
19 fact that Reed was DEAF prior to prison and he was receiving
20 Social Security insurance benefits. (see SAC exhibits).

21 Reed was then transferred to Security Housing Unit (SHU) at
22 California Correctional Institution (CCI) for a year for the
23 false said charge (B.O.A.P.O.), after his hearing aid for his
24 only semi-operable ear (right ear) was discarded by Lac staff and
25 his hearing impaired vest was taken also from him.

26 Appellant Reed, after his SHU stint, was transferred to a NON-
27 ADA CERTIFIED prison, Pelican Bay State prison, where he was
28 again seriously injured. (Broken nose, lose teeth and severe

1
2 bruises). (Reed DEAF/hearing impaired status was eventually
3 reverified by CDCR officials AFTER he was transferred from PBSP.).

4 Reed correctly filed his Civil Rights complaint against said
5 prison officials to the district court, who immediately dismissed
6 his ADA claims, alleging his disability was "CONFLICTING" (suspect)
7 per defendants fraudulent statements, and although he was in fact,
8 DEAF prior to prison, and although defendants had previously
9 verified him being DEAF upon his prison entry, and he was currently
10 verified DEAF. Defendants changed his DEAF status AFTER he was
11 injured after previously verifying his disability 4 (four) times.

12 District court allowed his case to pend idly for 10 (ten) years
13 (lost witnesses and evidence), although Reed filed multiple
14 "DEMAND FOR JURY TRIAL" motions over the same period. Reed NEVER
15 filed "MULTIPLE" continuances motions, as the previous panel
16 falsely alleges..(jury demands: Dkt.s 22,49,52,130 & 197)

17 District court finally ordered a trial in September 2022. How-
18 ever, Reed was seriously injured (Ruptured left eye oracle,
19 fractured cheek bone and contusions) on September 15, 2022, after
20 being assaulted by prison gang members at CCI prison. (Reed has
21 never been involved in any gang).

22 During said assault upon Reed, his hearing aid for his only semi-
23 operable ear (right ear. Left ear dead since 1991 due to Menieries
24 disease.) was again discarded by prison staff and had to again be
25 replaced.

26 Doctors at the hospital that Reed was initially taken to after
27 said assault upon him (Tehachapi Valley hospital), also diagnosed
28

1 Reed as having Covid-19 on 9/15/22. (Reed was transferred to
2 Riverside hospital to a specialist for his seriously injured left
3 eye, where he stayed there for 3 days and was discharged from
4 medical care in November 2022.).

5 Reed, thereafter, still attempted to attend his pre-trial hearing
6 while in severe pain (mentally, physically and emotionally) on
7 September 27, 2022, and without his hearing apparatus, hearing
8 aid, that had not been replaced as of yet. However, prison
9 staff were not providing Reed with adequate medical care nor did
10 they give him his pain medicine to take to court with him, there-
11 fore, Reed was too incapacitated with eye pain and face pain to
12 attend his pre-trial proceedings.on 9/28/22. Additionally, CCI
13 staff refused to allow Reed to contact the court via TTY-telephone
14 to inform them of his situation. Reed was clearly INCAPCITATED
15 at that time, and clearly not capable of proceeding with his
16 trial at that time, compounded by the fact, his hearing aid had
17 still not been replaced at that time, and Covid-19 symptoms.

18 Appellant Reed immediately filed a timely "MOTION FOR AN
19 INDEFINITE DELAY" on September 29, 2022 to the district court.
20 The district court therafter dismissed his complaint, he believes
21 erroneously.

22 Subsequently, ^{9th circuit} ~~this courts~~ hearing panel affirmed district crt.s
23 dismissal, alleging appellant Reed was previously granted
24 "MULTIPLE" continuances, which is not true, nor can it be
25 confirmed or verified via district court docket sheet. It has
26 been appellant Reed who had been fervently requesting a jury
27 trial to the district court, multiple times, to no avail for ten
28 years. If not for said injuries, Reed would had been at court.

1
2 Circuit court panel, in affirming district court's dismissal,
3 made no mention therein their affirming document that Reed was
4 in fact, incapacitated at the time district dismissed his civil
5 suit, due to factual serious injuries, ailment (covid-19) and
6 inadequate medical from prison officials. Nor did they mention
7 Reed "TIMELY" motion for delay to the district court due his
8 medical emergency and physical incapabilities at the time, in it
9 he stated all said hinderances therein his original appeal to
10 this court. Reed believes the forgoing was totally unfair and
11 seeming bias.,(See Appendix B)

12 Again, district court's records does not reflect Reed requesting
13 nor being granted "MULTIPLE" continues, as panel alleges.

14 Appellant Reed again states emphatically, had he not been
15 seriously injured, therefore, incapacitated, he would have
16 certainly attended said pre-trial hearings and eventually his
17 trial. Reed is 60 (sixty) years old, not a young man any more.
18 He gave a GOOD FAITH effort to still try to attend his pre-
19 proceedings. he should not be punished for events he had no
20 control over. Prison is a vicious place with prison officials
21 conducting themselves like "MERCENARIES", and should not get a
22 free pass due to appellant Reed's totally unexpected occurrences.

23 Lastly, Covid-19 drains your resolve to ~~do~~ anything. Yet, Reed
24 still attempted to go through with his trial as is, but could
25 not for obvious reasons. Now for reasons unbeknownst to him,
26 they refuse to^{have} any compassion toward Reed, although prior courts
27 have. (Smith-St.John MFG. v. Price, 1989 U.S. lexis 1168 U.S.
28 Dist. Crt. for Dist. of Kanas 1/9/1989)

1 Moreover, on the days Reed was to appear in court, September 28,
2 2022 and September 29, 2022, the prison officials were in contact
3 with the district court, and conveyed to them statements that
4 Reed allegedly made, which were not, and amounted to hearsay.
TRUE

5 However, prison officials never told the court his actual
6 situation nor that he was in fact, incapacitated, for several
7 reasons. (Prison staff refuse to allow Reed to contact Court.)

8 District court used prison officials hearsay statements
9 extensively in its dismissal document (ECF.318), although the
10 statements were indeed hearsay and they have not been confirmed
11 nor substantiated by Reed or by evidence, which is prejudice.
12 More importantly, because of the seriousness and extent of his
13 injuries Reed sustained one week prior to his pre-trial hearing,
14 he had to be transferred by ambulance from Tehachapi Valley
15 hospital to Riverside University Health System hospital to see
16 Specialist, whom he was in their care until November 2022. (see
17 exhibit B ~~OF APPENDIX D~~)

18 Original panel had the forgoing important material fact info,
19 which was in his original Brief doc.s, however, the panel chose
20 to ignore the vital facts, as told by them never making any
21 reference nor mentioning them in their 11/21/23 memorandum.(appx.B)

22 The panel's omissions of the aforementioned crucial facts Reed
23 presented therein his original brief, was not only misleading
24 but also judicial bias, and, therefore, denied appellant Reed
25 Rights to an unbiased judge. (Liljeberg v. Health Service Corp,
26 486 U.S. 849, 100 L.Ed 2d 855, 108 S.Ct. 2194 (1988)).
27 Finally, the 9th circuit COA, for reasons unbeknownst to petitioner
28 denied his Rehearing motion on February 15, 2024.

REASON FOR GRANTING PETITION

1
2
3 In the panel's decision document to affirm district court's
4 dismissal of appellant Reed's Civil Rights violation complaint
5 against defendants, because he did not appear at his pre-trial
6 hearings on 9/28/22 and 9/29/22, they neglected to mention nor
7 made one reference to the fact that Reed was in fact seriously
8 injured, and had a medical emergency (exh.B), therefore, he was
9 physically incapable of attending his pre-trial hearings at that
10 time. (SEE EXHIBITS A&B IN APPENDIX D AS PROOF)

11 The forgoing "EXCEPTIONAL CIRCUMSTANCE" was a legitimate
12 reason for him not appearing. (Smith-St.John MFG. v. Price, 1989
13 U.S. Lexis 1168 U.S. Dist. Crt. District of Kanas 1/9/89).
14 Compounded by the fact that Reed was suffering the ill effects of
15 Covid-19 at the time of his pre-trial hearings. (exh.A, OF APPENDIX D)

16 Additionally, Reed only refused to attend his pre-trial hearing
17 because he was in excruciating pain (Ruptured left eye oracle
18 and a fractured cheekbone) See exh.B) upon the fact that his
19 resolve to litigate at the time was diminished severely due to
20 the complications of having Covid-19, which, in fact, mentally
21 and emotionally incapacitated him and made it impossible for him
22 to appear at court at that time. (Smith-St.John MFG. v. Price).

23 Moreover, prison officials were not providing Reed with proper
24 or adequate medical care at that time, (Reed was eventually
25 sent to a hospital 3 hours away from prison to a eye specialist
26 he was in the care of until November 2022), upon the fact, Reed
27 hearing aid for his only semi-operable ear (Right), that was
28 lost/discarded on the day he was attacked and seriously hurt by

1 2 (two) GangMembers (9/16/22), his hearing aid was not replaced
2 as of yet for the pre-trial hearing proceedings, so he he could
3 adequately litigate his valid case.

4 Yes, Reed did fervently attempt to still litigate his case, as
5 told by him actually attending his 9/27/22 hearing. however, his
6 injuries, especially the mental and emotional injuries, became
7 too overwhelming to overcome to appear at his pre-trial hearings
8 at that time. (Smith-St.John MFG. v. Price).

9 Reed was not neglectful, he sent district court a motion for
10 indefinite trial delay on 9/29/22 inwhich they filed on 10/4/22
11 (Dkt.311). (No jury had been seated at 9/27/22 hearing he appeared
12 at.)

13 The panel failed to mention any of the forgoing crucial material
14 facts in their 11/21/23 affirming document, which were therein
15 Reed's original Brief to their court.

16 District court's dismissal of Reed's valid Civil rights
17 complaint was a plain error (U.S. v. Fuchs, 218 F.3d 957 (9th Cir.,
18 2000)) and an abuse of discretion (United States v. Walker, 772
19 F.2d 1172 9/18/1985 at [9]) because district court "COMMITTED A
20 CLEAR ERROR OF JUDGEMENT", which was seeming prejudicial toward
21 appellant Reed.

22 Moreover, it was Reed who fervently pursued to have his case
23 heard in court, as told by him filing several demands for a jury
24 trial motions to the district court. (Dkt.s 22, 49-52-¹⁸, 130 & 197).

25 If not for Reed's said serious injuries as well as uncomprom-
26 izing circumstances, Reed had no control over, he would have
27 definitely appeared at his pre-trial hearings and thereafter.

1 Additionally, the panel's 11/21/23 decision to affirm district
2 courts dismissal of appellant Reed's valid Civil Rights complaint
3 is also in conflict with this courts prior ruling (decision);
4 (Hernandez v. City of ElMonte, 138 F.3d 393 (9th Cir. 1998), by
5 this court.

6 Hernandez court held: "DISMISSAL IS A HARSH PENALTY AND, THERE-
7 FORE, SHOULD ONLY BE IMPOSED IN EXTREME CIRCUMSTANCES" .

8 It has been Reed who has been denied justice for 10 (ten) years,
9 NOT defendants, as the panel seeming alleges. Reed only had 2
10 (two) amendments to his complaint, which is standard. Reed DID
11 NOT have "MULTIPLE" continuances as the panel alleges. district
12 court's records/docket sheet (exh.D) does not substantiate nor
13 confirm the panel's allegations that Reed had "MULTIPLE"
14 continuances granted by district court. (SEE EXHIBITS A-D IN APPENDIX D)

15 More importantly, appellant Reed's circumstance was NOT extreme
16 neglect, as is the criteria in HERNANDEZ. In fact, it was the
17 district court and defendants delays that lasted 10 (ten) years,
18 NOT appellant Reed, as is evidenced by defendants NEVER requesting
19 a "SPEEDY TRIAL" nor complaining about delays over a 10 (ten)
20 year period and over 300 docket entries.

21 Reed is 60 (sixty) years old, had Covid-19 and several serious
22 injuries and had NEVER been neglectful nor irresponsible in
23 pursuing justice in his case in 10 (ten). Had it been in Reed's
24 power and authority, his case would have been resolved ^{YEARS}
25 years ago.

26 It would be unfair and seeming the epitome of prejudice if this
27 court allows this injustice to prevail, given all the stated
28 facts presented in this rehearing request and in all the prior
29 documents Reed has presented to this court and district court.

1 Furthermore, on the days Reed failed to appear in court,
2 (9/28/22) & (9/29/22), prison officials relayed embellishments
3 to the district court of alleged statements Reed made as to why
4 he did not appear in court, which were hearsay, self-serving and
5 untrue. Although said feedback to the court was indeed "HEARSAY"
6 and therefore, amounted to hearsay (and inadmissible), district
7 court used prison officials hearsay statements extensively in
8 its dismissal document. (ECF.318) (See Federal rule 802)

9 None of the prison officials hearsay statements were confirmed
10 or substantiated by Reed or evidence.

11 Prison officials did not inform the court on 9/28/22 or 9/29/22
12 the seriousness of Reed's situation at that time (excruciating
13 pain in both his ruptured left eye oracle and his fractured left
14 cheekbone, his marred mental/emotional state or that he was not
15 receiving adequate medical care at that time due to prison staff
16 not having an OPHTHALMOLOGIST (eye doctor) nor an ORTHOPEDIC
17 surgeon (bone specialist) nor a PSYCHIATRIST on staff, this is why
18 Reed had to be later transferred 3 hours away to Riverside hospital
19 for proper care.). (Nor did the relay Reed's Covid-19 situation).

20 Prison officials didnot relay the forgoing crucial material
21 facts to the district court, for obvious self-serving reasons.

22 Reed relayed the said crucial facts to the court via: MOTION FOR
23 INDEFINITE TRIAL DELAY on 9/29/22. However, the court disregarded
24 said motion, opting instead to believe prison officials self-
25 serving statements, as told by them using them extensively in
26 their dismissal document (ECF.318), regardless that it was hear-
27 say, therefore, inadmissible. Additionally, Reed had no record of
28 delaying his trial in ten years on docket, defendants did thou.

1 Moreover, appellant Reed also believes that his U.S. constitution
2 Rights to litigate (Free of prejudice) his valid Civil Rights
3 violation complaint, are being "ABRIDGED", by first, the district
4 court's erroneous dismissal of his complaint (altough having full
5 knowledge of his serious injuries), and then, the original panel
6 erroneous affirming the district court's dismissal, and doing so
7 while omitting (inadvertently or purposely), crucial material
8 facts (People v. Perkins, 109 Cal. app. 4th 1562 (2003) - Pertaining
9 to erroneously excluding vital and crucial evidence) Reed
10 presented to them therein his original Appeal Brief (as well as
11 district court's records), all of which, violates his due process
12 Rights. (14th Amendment)

13 Finally, the evidence therein Exhibits A & B (Appendix D) Reed
14 presented in his original appeal brief, is irrefutable evidence
15 he was, in fact, incapacitated on the days of his pre-trial
16 hearings (9/28/22 and 9/29/22) and unable to attend due to
17 "EXCEPTIONAL CIRCUMSTANCES" (Zoya Petrovina Milentyeva v.
18 Gonzales, 142 Fed. Appx. 994 (9th Cir. 2005)), after making a
19 "GOOD FAITH" attempt to NOT delay his trial, as shown by him
20 actually attending his 9/27/22 pre-trial hearing while in dire
21 need of medical attention and pain. He did the forgoing, while
22 experiencing: 1) excruciating eye and facial (fractured cheek-
23 bone), 2) suffering effects of Covid-19, 3) having no hearing
24 apparatus and 4) NOT receiving any medical or mental care at said
25 times and dates. (MILENTYEVA at [*994] - "THE COURT ABUSED ITS
26 DISCRETION TO NOT REOPEN BECAUSE MILENTYEVA'S EVIDENCE OF ILL-
27 NESS ON THE DAY OF HER PROCEEDINGS AS SUFFICIENT TO ESTABLISH
28 "EXCEPTIONAL CIRCIMSTANCES" EXCUSING HER FAILURE TO APPEAR").

1 Lastly, petitioner has been litigating his case against defendants
2 for over 10 (ten) years, had it been in his power and authority,
3 his case would have been resolved via trial, years ago.

4 To show the blatant prejudice toward petitioner (prisoner) by the
5 prior courts, he survived Motion for Summary of Judgement by the
6 defendants and has been fervently pursuing his case. Then when he
7 is seriously injured in prison (a very violent environment), the
8 district court plays seeming OPPORTUNIST by erroneously dismissing
9 his valid Civil Rights violation case, and with prejudice. They
10 did the forgoing action, knowing obviously that the appeal court
11 would exhibit the exact same prejudice toward petitioner, due to
12 his deposition as a prisoner/inmate..

13 Prior courts also totally disregarded case law uniformity, and
14 said cases rendered in their court. (Hernandez v. Whiting, 881 f.
15 2d 768 (9th Cir. 1989) - Held, "APPELLANT PRISONER BROUGHT ACTION
16 AGAINST APPELLEE'S, PRISON OFFICIALS, UNDER 42 § 1983 violation
17 OF HIS CIVIL RIGHTS. APPELLANT WAS PROACTIVE IN PURSUING HIS CASE
18 PRO SE, AND EVEN SURVIVED A MOTION FOR SUMMARY JUDGEMENT. ON
19 REMAND, THE DISTRICT COURT GRANTED APPELLEE'S MOTION TO DISMISS
20 FOR APPELLANT'S FAILURE TO APPEAR FOR TRIAL. THE COURT FOUND THAT
21 THE DISMISSAL FOR FAILING TO PROSECUTE, IN THE CASE OF AN INCAR-
22 CERATED PRISONER NOT BEING ABLE TO APPEAL, CONSTITUTED ERROR. IT
23 WAS AN ERROR IN THE TRIAL COURT HAD NOT CONSIDERED A BROAD RANGE
24 OF LESS SEVERE ALTERNATIVES PRIOR TO ENTERING A DISMISSAL,
25 ESPECIALLY WHERE APPELLANT HAD VIGORIOUSLY PURSUED HIS CASE.
26 SOME ALTERNATIVES SUGGESTED BY THE COURT, INCLUDED A BENCH TRIAL
27 IN THE PRISON, TRIAL BY DEPOSITION, OR POSTPONEMENT OF THE TRIAL
28 UNTIL PRISONER'S RELEASE. THE COURT, THEREFORE, REVERSED THE

1 DECISION AND REMANDED FOR DISTRICT COURT TO CONSIDER ALTERNATIVES
2 TO DISMISSAL OF APPELLANT'S CASE".)

3 For the aforementioned reasons, petitioner prays that this court
4 grants his petition, in the interest of justice.

5
6 *IMPORTANT NOTE: In the 9th Circuit's 2/15/24 Order denying
7 petitioner's petition for rehearing en banc, it states: The full
8 court has been "ADVISED" of the petition for rehearing en banc
9 and no judge requested a vote on whether to rehear the matter
10 en banc.

11 However, the 2/15/24 Order generated by original 3 (three)
12 judge panel, never states whether the full court (en banc)
13 actually viewed petitioner's Rehearing documents (Appendix D),
14 in which, petitioner does not believe en banc (full court)
15 actually received his rehearing documents, as told by original
16 panel generating the 2/15/24 Order, (self-serving), although
17 petitioner requested Rehearing EN BANC ONLY (Appendix F) in his
18 petition for rehearing en banc. He believes any response should
19 be rendered by en banc panel Chief NOT original panel, which
20 seems prejudicial.

21 Original panel stating that en banc panel was "ADVISED", does
22 not substantiate (or confirm) that en banc panel actually viewed
23 (or received) petitioner's Rehearing documents (Appx. D).

24 IF THIS COURT DOES NOT GRANT THIS PETITION, DEFENDANT'S (PRISON
25 OFFICIALS) WILL GET AWAY WITH SERIOUSLY INJURING PETITIONER, AND,
26 THEREFORE, BE ENCOURAGED TO CONTINUE THEIR "SADISTIC" AND
27 "ABUSIVE" (CORRUPT) CONDUCT UNDER THE COLOR OF LAW AND GUISE OF
28 PROCEDURE. PLEASE HELP!

1 CASE LAWS

2 Skillern v. Estelle, 720 f.2d 839, 852 (5th Cir. 1983) - Held,
3 "ERRONEOUS EXCLUSION OF EVIDENCE IS FUNDAMENTALLY UNFAIR IF
4 EVIDENCE WAS MATERIAL IN THE SENSE THAT IT WAS CRUCIAL, AND HIGHLY
5 SIGNIFICANT"

6 The aforementioned case, SKILLERN, pertains to 9th Circuit panel
7 EXCLUSION of material facts that petitioner was in fact, seriously
8 injured and medically incapacitated on the days of his failure to
9 appear at his pre-trial hearings in the district court and other
10 crucial material evidence he presented to said panel that was
11 erroneously omitted in their affirming document. (Appendix B).

12 In lay man terms, how can a court render a decision impartially
13 without mentioning material facts that are HIGHLY significant to
14 a party? Not doing so indicates clear and undeniable PREJUDICE,
15 per SKILLERN.

16 TSC INDUS. v. NORTHWAY, 426 U.S. 438 (March 3, 1976) - Held,
17 "THE GENUINE ISSUE OF MATERIAL FACT EXISTED WITH RESPECT TO
18 WHETHER THERE WAS MANIPULATION SUFFICIENT TO BAR SUMMARY
19 JUDGEMENT"

20 There are two (2) differences in NORTHWAY case from petitioner's
21 case, 1) the omission of material facts was done by a party in
22 the case, and 2) it involved a summary judgement situation.

23 Petitioner's situation involved a erroneous dismissal, due to
24 failure to appear.

25 However, NORTHWAY is relevant (linked) to petitioner's case by
26 the fact that crucial material facts were purposely omitted, not

1 by a party in the case, but by court officials (9th Cir. 3
2 judge panel), purposely omitted (made no mention) in their
3 11/21/23 Order (Appendix B), that affirmed the district court's
4 dismissal of petitioner's Civil rights violation case (for
5 failure to appear at pre-trial hearings), that he failed to appear
6 due to having serious injuries (medical emergency, *inter alia*),
7 an "EXCEPTIONAL CIRCUMSTANCE".

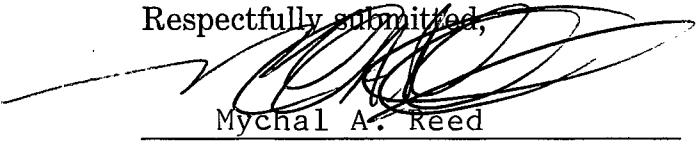
8 Petitioner believes the said actions (non-actions) by court
9 officials was to conceal prejudice toward petitioner, who is
10 currently a prisoner/inmate, and done to manipulate(mislead)
11 viewers of their 11/21/23 Order document ((Appx. B) to discern
12 that petitioner was in fact negligent and irresponsible in not
13 appearing at his 9/28/22 and 9/29/22 pre-trial hearings, which is
14 absolutely not true, as shown by the fact he had been fervently
15 pursuing his case for 10 (tèn) years. Court panel also dis-
16 regarded their own case law precedent, (Hernandez v. Whiting,
17 881 F.2d 768 (9th Cir. 1989), showing undeniable prejudice
18 toward petitioner. (See also ZOYA PETROVINA MILENTYEVA case)

19 There is no justification for said court panel to omit, not
20 mention nor make one reference, of any kind, to the crucial and
21 very significant relevant material fact, petitioner was in fact,
22 seriously injured on the days he did not appear for his pre-
23 trial hearing, especially when the undeniable evidence he
24 presented to the panel, specifically confirms (and outlines) he
25 had a Ruptured Left Eye Oracle, a broken Cheek Bone and was
26 suffering the ill effects of Covid-19 on days he failed to
27 appear. (Appendix D-Exhibits A & B).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Mychal A. Reed

Date: March 29th 2024