

No. 23-7493

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAY 08 2024

OFFICE OF THE CLERK

Lisa Perez — PETITIONER
(Your Name)

vs.

Dutch Captain; et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE NINTH CIRCUIT COURT OF APPEALS, CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lisa Perez WG0016
(Your Name)

16756 Chino Corona Rd.
(Address)

Corona, CA 92880
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Whether granting summary judgment for defendant's was proper when genuine issues of fact existed and jury trial was demanded. (*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249.).
2. Whether, to establish the requirement of exhaustion was hardened into inflexibility. (*Ogo Associates v. City of Torrance*, (1974) 37 Cal. App. 3d 830, 834).

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 DUCH, Captain; Jerry Jones, Captain;
Alyssa MORELAND, Deputy; Jaklynn CALLIS, Deputy;
Micah Smith, Deputy; Meghan TROTT, Deputy; Katie WEBBER,
Deputy; HADLEY, Lieutenant

RELATED CASES

Belvien v. DUCH, et al. 2:17-cv-01213-JAM-JDP
Court of Appeals, Ninth Circuit 22-15495

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
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A: Opinion of the Court of Appeals for the Ninth Circuit, dated April 4, 2024	1a
APPENDIX B: Opinion of the United States District Court for the Eastern District of California, dated March 16, 2022	4a
APPENDIX C: Order of the Court of Appeals for the Ninth Circuit Denying petition for rehearing, dated April 18, 2024	9a
APPENDIX D: Evidence substantiating cruel and unusual punishment during incarceration at Butte County Jail	10a
APPENDIX E: Butte County Sheriff's Office Policy Manual Sections	22a
APPENDIX F: Butte County Sheriff's Office Custody Manual Sections	25a

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Cruz v. City of Anaheim</i> 765 F.3d 1076 -----	6
<i>In re Serna</i> , 76 Cal. App. 3d 1010 -----	5
<i>Jones v. Bock</i> , 549 U.S. 199 -----	4
<i>Kingsley v. Hendrickson</i> , 576 U.S 389 -----	5
<i>Rodriguez v. Cnty of Los Angeles</i> , 891 F.3d 776 -----	5
<i>Taylor v. Riojas</i> , 141 S.Ct. 52 -----	4

STATUTES AND RULES

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 _____.

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: April 18, 2024, 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

42 U.S.C. § 1983 -----

Pages)

5

EIGHTH AMENDMENT OF THE U.S. CONSTITUTION

BUCKET COUNTY SHERIFF'S OFFICE POLICY MANUAL:

Section 314.3.2 Appx. 23a
Section 314.4.2 Appx. 24a

BUCKET COUNTY SHERIFF'S OFFICE CUSTODY MANUAL:

CODE OF ETHICS Appx. 27a
PHILOSOPHY Appx. 26a
Sections 605.1 - 605.4 Appx. 29a
Sections 806.1 - 806.3 Appx. 31a

STATEMENT OF THE CASE

During my entire stay at Butte County Jail I was subjected to mental anguish by staff, and inmates, deprived of sleep the entire time. T.V.'s were allowed to blare, cell/hallway doors were slammed throughout the day and night. I wrote letters to the Captains, I filed grievances and appeals. All were denied, or 'administratively closed', to which I was informed I could not appeal. I was threatened with physical violence. My legal mail was tampered with and stolen. My grievances were tampered with- whitewashed out- and 'lost.' I sent copies of everything to Tait Belyea. Subsequently Mr. Belyea lost all documents when he failed to pay for storage fees.

The Ninth Circuit Court of Appeals rejected my claim that I exhausted all available remedies because I could not provide the proof. I demanded a jury trial so that I could argue that I did exhaust all my administrative remedies. The Court also granted summary judgment for defendant's against this court's rulings in *Taylor v. Riojas*, 141 S.Ct. 52; *Jones v. Bock*, 549 U.S. 199.

The defendant's behavior never ceased. I've had nightmares, sleep problems, and my PTSD has become worse than it ever was, [App. D].

REASONS FOR GRANTING THE PETITION

This is an important issue that warrants this court's review because it bears directly on the fundamental elements and purpose of 42 U.S.C. § 1983 and may be dispositive of summary judgment and exhaustion claims in hundreds, if not thousands, of federal § 1983 claims.

I. EXHAUSTION OF ADMINISTRATIVE REMEDIES ARE NOT REQUIRED WHEN REMEDIES ARE UNAVAILABLE

The Ninth Circuit Court of Appeals ruled that "when there is sufficient evidence to demonstrate that the administrative remedy is 'effectively' unavailable exhaustion is not required, *Rodriguez v. City of Los Angeles*, 891 F.3d 776, and fear of retaliation made the grievance system effectively unavailable for the prisoners, at HN8 and also *Kingsley v. Hendrickson*, 576 U.S. 389.

I submitted enough evidence to prove I exhausted my administrative remedies [and] that they were effectively unavailable for fear of retaliation.

As here, My claims to irreparable injury to my fundamental rights, the constitutional nature of my claims, and the futility of further appeals in Butte County Jail justify a waiver of the exhaustion rule, *In re Serna*, 76 Cal. App 3d 1010, 1017.

Therefore, remand is required.

II. SUMMARY JUDGMENT IS ONLY APPROPRIATE
WHEN NO GENUINE ISSUE TO ANY MATERIAL
FACT EXISTS

The Ninth Circuit Court of Appeals and the District Court for the Eastern District of California abused their discretion in granting summary judgment because there were numerous genuine issues of fact raised and argued.

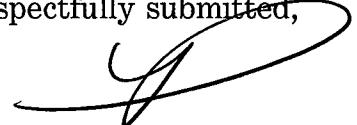
The Ninth Circuit reversed the District Court's ruling for summary judgment on the issues of genuine fact in *Cruz v. City of Anaheim*, 765 F.3d 1076.

My testimony would lead a jury to reasonably find that defendant's conduct rose to a level of constitutional violation and an award of punitive damages. Remand is required.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Lisa Perez

Date: May 1, 2024