24-5124

Case Name: Case #:

In The

Supreme Court of The United States

FILED

MAY 29 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

Case No.

Lawrence Christopher Smith
Petitioner

v

Ralph Diaz
Respondent

Petition For a Writ of Certiorari (Prose)
To The United States Court of Appeals
For The Ninth Circuit

Lawrence Christopher Smith
Kern Valley State Prison
P.O Box 3130
Delano, California 93216
CDCR # F-29502

June 29th 2024

Case Name: ______ Case #: ______

Question Presented

Are public officials actively conspiring to violate and/or deny me the enjoyment of federally afforded rights?

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Parties

I, Lawrence Christopher Smith the petitioner appears before the Court as an incarcerated pro se litigant. The respondents are various public officials to include Ralph Diaz the former Secretary of California's Department of Corrections and Rehabilitation (CDCR) and supporting staff members [subordinates etc.]

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Relevant decisions by the U.S Court of Appeals for The Ninth Circuit are attached as Appendix A (1-3) whereas the relevant decisions by the United States District Court for the Eastern District of California are attached as Appendix B (1-3)

The Citations of The Offical / Unofficial Reports of Opinions and Orders

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2. Order denying stay in appellate proceedings (Docket Entry No. 4)
3. Mandate
4. Smith v Diaz 2023 US Dist Lexis 32113 2023 WL 2245665
5. Smith v Diaz US Dist Lexis 52941 2023 WL 2667129
6. Order denying motion for Rule 60 Relief

The Basis For Federal Jurisdiction 28 USC § 1331

This case raises a question of interpretation of the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution. The district court had jurisdiction under the Federal question jurisdiction conferred by 28 USC § 1331. While the Ninth Circuit's review centered on the final judgment entered in the case on March 28th, 2023 an review which errantly found that the appeal notice was untimely hence the case dismissal on Febuary 29th, 2024

The Constitutional and Statutory Provisions Involved With The Case

This case involves multiple provisions of the United States Constitution to include:

Amendment I, 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 a redress of grievances

Amendment IV, which provides

The right of the People to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized

Amendment VII, which provides

In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII, which provides

Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishments inflicted.

Amendment XIV, which provides

Section 1. [Citizens of the United States] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the priviledges 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.

Section 5. [Power to enforce amendment] The Congress shall have the power to enforce by appropiate legislation, the provisions of this article

These Amendments are 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, priviledges 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 officers 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

Pursuant to the provisions of 42 USC§ 1983 asserted before the district court was that as both an reprisal for complaints I then had before said court system and in an effort at silencing my voice before the Federal courts as one the defendants have conspired solely against me to deny and/or violate rights afforded to all under the U.S Constitution via several means to include by unlawful uses of force the likes of which becoming the catalyst for false disciplinary infraction charges being leveled against me for allegations of assaultive conduct towards correctional staff the hearings for which all before Department [CDCR] approved tribunals where I was denied substantive rights afforded under the Fourteenth Amendment of the United States Constitution culminating into false findings of guilt being rendered for said charges judgments which were later unlawfully sustained by senior level correctional officials following the adjudication of timely appeal(s) lodged within the Departments quasi judicial appellate system [levels 2-3] and thru an measure of torture known as weight dosing an tactic in which public officials denied me adequate nutrition via various nefarious means to include starvation exploits which effectively negated my cognitive abilities ergo my submitting woeful pleadings to the Federal courts.

The district court dismissed the complaint at the screening stage purportedly on the basis of my having failed to state a claim. Whereas the court of appeals [9th Cir] errantly dismissed the appeal citing an lack of jurisdiction

Procedural Posture (abridged)

The complaint was filed before the district court on March 5th, 2020 with an initial screening occuring on January 3rd, 2022 whereupon I was directed to either stand on the complaint as written or file an amended complaint (ECF No. 33) On January 29th, 2022 I lodged an first amended complaint (FAC) (ECF No. 35) pleadings which were ultimately rejected by the district court on March 20th, 2023 (ECF No. 38) following an denial of Rule 60 relief on October 10th, 2023 (ECF No. 42) on November 12th, 2023 I lodged an notice of appeal to the Ninth Circuit (ECF No. 44) However on December 1st, 2023 the Ninth Circuit issued an order to show cause (OSC) challenging the validity of the appeal notice. In response I moved for an stay in proceedings based on the pending resolution of the action In re Smith U.S Supreme Ct Case No. 23-5850 pleadings which were submitted to the Ninth Circuit on December 13th, 2023. Nevertheless on Febuary 29th, 2024 the appeal was dismissed by the Ninth Circuit thus on the basis of an lack of jurisdiction subsequently an order of mandate was decreed on March 22nd 2024

Reasons For Granting The Writ

A. Lower Courts Findings Are In Conflict With Well Established Federal Law

1. Background

As has been exhaustively detailed before the court previously see In re Smith Case no. 23-5850 but nevertheless declared here again on the basis of my pleadings in the action of Smith v Allison 1:20-cv-01814-DAD-SLT and subsequent suits [§1983] I have filed thereafter as an requital public officials have conspired to deny and/or violate rights afforded to all under the U.S Constitution solely against me this primarily thru perverted acts in violation of both Federal/State law exploits which have led to my being repeatedly harmed both physically and mentally

2. Conspiracy

a. Screening and Dismissal of Prisoner Cases

The Prison Litigation Reform Act (PLRA) requires Federal courts to screen all suits by prisoners against government employees, and all in forma pauperis cases, and to dismiss cases that are frivolous or malicious, that fail to state a claim on which relief may be granted or that seeks damages from a defendant who is immune from damage claims[1] If a court does not immediately dismiss such claims it must dismiss them as soon afterward as is feasible

A complaint that fails to state a claim upon which relief may be granted is one in which the facts alleged do not establish a violation of law. A complaint is malicious if it is filed for an improper purpose or amounts to an abuse of the legal system. Pittman v Moore 980 F2d 994, 995 (5th Cir 1993) (citing repetitive litigation as malicious) A complaint is frivolous if it "lacks an arguable basis either in law or fact" //

1. These requirements appear in three (3) overlapping statutory provisions: 28 USC § 1915 (e)(2); 28 USC § 1915 A and 42 USC § 1997e (c)(1). Failure to exhaust administrative remedies is generally not a failure to state a claim and therefore will seldom be a basis for dismissal at the screening stage Jones v Bock 549 US 199, 214-15 127 S.Ct 910 (2007)

Neitzke v Williams 490 US 319, 327 109 S.Ct 1827; see also Denton v Hernandez 504 US 25, 33 112 S.ct 1728 (1992). A complaint is legally frivolous if it fails to raise an "arguable question of law" or is based on an "indisputably meritless legal theory." Neitzke, 490 US at 327-28. A complaint may also be legally frivolous if the facts in the complaint make it absolutely clear that the case is barred by a defense - e.g that the statute of limitations has run Street v Jose 936 F2d 38, 39 (1st Cir 1991) or that the claim is barred by immunity Neitzke 490 US at 327 or res judicata Ali v Higgs, 892 F3d 438, 440 (5th Cir 1990)

A complaint is factually frivolous only if the "claims describe[s] fantastic or delusional scenario's," Neitzke 490 US at 328 which means that "the facts alleged rise to the level of the irrational or the wholly incredible whether or not there are judicially noticeable facts available to contradict them," Denton v Hernandez 504 US 25, 31-32 112 S.Ct 1728 (1992)

Courts have also said that a case may be frivolous if it is "(1) of little or no weight, value or importance; (2) not worthy of serious consideration; or (3) trivial." Deutsch v US 67 F3d 1080, 1087 (3d Cir 1995) and that the small monetary value of a prisoner's claim may help make it frivolous Nagy v FMC Butner 376 F3d 252, 257-58 (4th Cir 2004) yet this is a ruling contrary to this very Courts previous decisions one's which have recognized that some First Amendment and procedural due process violations may only result in nominal damages see e.g., Memphis Community Sch Dist v Stachura 477 US 299, 308 n.11 106 S.Ct 2537 (1986) also Carey v Piphus 435 US 247, 267 98 S.ct 1042 (1978)

Dismissal as frivolous, malicious not stating a claim or seeking damages from an immune defendant may be done without prior notice or an opportunity to respond. Plunk v Givens 234 F3d at 1129 also Carr v Dvorin 171 F3d 115, 116 (2d Cir 1999) (per curiam). However the Ninth Circuit and the courts within her circuit have held that under the PLRA as under prior law pro se litigants are allowed an opportunity to amend deficient complaints before the Court finally dismisses them Lira v Herrera 427 F3d 1164, 1169-70 (9th Cir 2005) (It is improper to deny leave to amend a complaint unless it is clear that the complaint could not be saved by amendment) (citation omitted)) also Lopez v Smith 203 F3d 1122, 1124 (9th Cir 2000) (en banc)

Additionally a Court may dismiss a case for failure to prosecute or for failing to comply with Court rules or Court orders. Civil Rule 41(b). Nevertheless courts must be patient with the problems of pro se

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litigants. Allen v Calderon 408 F3d 1150, 1152 (9th Cir 2005) (complaint should not have been dismissed for failure to prosecute when evidence showed pro se inmate was incompetent) but repeated failures to comply with court orders or deadlines or failure to move the case forward over a long period of time will justify dismissal even in a pro se case Emerson v Thiel College 296 F3d 284, 190-191 (3d Cir 2002)[2]

1. Exhaustion of Administrative Remedies

The PLRA exhaustion requirement says:

> No action shall be brought with respect to prison conditions under [42 USC § 1983] ... or any other Federal law by a prisoner confined in any jail, prison or other correctional facility until such administrative remedies as are available are exhausted. 42 USC § 1997e(a)

Exhaustion under the PLRA means "proper exhaustion" i.e., compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings Woodford, 548 U.S at 90-91; accord, Jones v Bock, 549 US 199, 218, 127 S.Ct 910 (2007) ("Compliance with prison grievance procedures... is all that is required by the PLRA to properly exhaust")

State Law

a. Administrative Remedies

The United States and California Constitutions state that no person may be deprived of liberty or property without due process of law [US Const amend XIV § 1 Cal const art 1 § 7(a)] These constitutional guarantees apply to administrative adjudicatory action Goldberg v Kelly 397 US 254, 263 90 S.Ct 1011, 25 L.Ed 2d 287 (1970) Kruger v Wells Fargo Bank (1974) 11 Cal 3d 352, 366-67 113 Cal. Rptr

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2. In determining whether dismissal with prejudice is appropriate Courts generally consider factors such as "(1) the extent of the party's personal responsibility: (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery: (3) a history of dilatoriness: (4) whether the conduct of the party or the attorney was willful or in bad faith (5) the effectiveness of sanctions other than dismissal which entails an analysis of alternative sanctions, and (6) the meritoriousness of the claim or defense" 296 F.3d at 190

449 521 P.2d 441 (California due process provision held to be identical in scope and purpose to the due process provision of the Fourteenth Amendment to the United States Constitution) Courts balance several factors to determine what procedural due process requires in a particular case Mathews v Eldridge 424 US 319, 335 96 S.Ct 893 47 L.Ed 2d 18 (1976); Goldberg v Kelly 397 US 259, 263 90 S.Ct 2011 (1970)

Agency adjudicatory proceedings are civil in nature Molina v Munro (1956) 145 Cal.App.2d 601 606 302 P.2d 818 and are similar but not identical to civil trial procedures. Most state agencies are required to perform their judicial or adjudicatory function by conducting proceedings in accordance with the provisions of the California Administrative Procedure Act (APA) (Section § 11340 et seq) The California APA's administrative adjudication provisions were revised operative July 1st 1997 Chapters 4.5 and 5 of the act titled and cited respectively as administrative adjudication: General Provisions (section § 11400 et seq) and Administrative Adjudication: Formal Hearing (section § 11500 et seq) cover all aspects of formal hearings in administrative adjudication including:

- Pleadings - (in administrative proceedings known as accusations or statements of facts) see sections §§ 11503 - 11507
- Discovery - see sections §§ 11507.5 - 11507.7, 11511
- Hearings - see sections §§ 11508 - 11509, 11512 - 11516
- Judicial review of the administrative decision - see section § 11523

Hearings are conducted before an agency tribunal, hearing officer or an administrative law judge (ALJ) from the office of Administrative Hearings (OAH)

The provisions of Chapter 5 Administrative Adjudication: Formal Hearings (section § 11500 et seq) apply to any agency as determined by the statutes relating to that agency section § 11501 (a); Department of Alcoholic Beverage Control v Alcoholic Beverage Control Appeals Board (2002) 99 Cal.App.4th 880, 883-885 121 Cal.Rptr 2d 729 (Bus & Prof Code § 24210 authorized director to appoint ALJ who was employee of Department to hear and decide case and that statute was controlling under section § 11501 (a), 11415.10 and 11415.20 not APA requirement contained in section § 11502 that ALJ's office of Administrative Hearings be used) The provisions of Chapter 5 also apply to adjudicative proceedings of an agency created on or after July 1st 1997 unless the statutes relating to the proceeding provide otherwise section § 11501

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(b)

The provisions of Chapter 4.5 Administrative Adjudication: General Provisions (section § 11400 et seq) apply to an adjudicative proceeding required to be conducted under Chapter 5 unless the statutes relating to the proceeding provide otherwise section § 11501(c) see also section § 11410.50

Before seeking judicial review of an administrative action or decision a petitioner must fully use and exhaust all available administrative remedies. In re Dexter (1979) 25 Cal 3d 921 925 260 Cal Rptr 118 603 P.2d 35. Compliance with this basic requirement is a prerequisite to the right to seek review of the action or decision in proceedings for ordinary mandate Hurack v Franchise Tax Board (1971) 18 Cal App 3d 363, 368 95 Cal Rptr 717 and administrative mandate Temescal Water Co v Dept of Public Works (1955) 44 Cal 2d 90 106 280 P.2d 1

The exhaustion requirement is a judicially created rule Abelleira v District Court of Appeal (1941) 17 Cal 2d 280 292 109 P.2d 942; Karlin v Zalta (1984) 154 Cal. App 3d 953, 979 201 Cal. Rptr 379 This rule has been characterized as flexible and is subject to a number of judicially created exceptions County of Contra Costa v State of California 177 Cal. App 3d 62, 73 222 Cal. Rptr 750; Karlin v Zalta (supra) Application of the Rule however is not a matter committed to the discretion of the court: unless a recognized exception to the rule is established the Court does not have subject matter jurisdiction over a proceeding initiated by a petitioner who has failed to exhaust available administrative remedies Abelleira v District Court of Appeal (supra) and Wilkinson v Norcal Mutual Ins Co (1979) 98 Cal. App 3d 307 318 159 Cal. Rptr 416

b. Exceptions

Administrative Remedy Unavailable / Inadequate: Under one of the most frequently invoked exceptions to the exhaustion doctrine exhaustion is not required when the remedy is unavailable or inadequate Tiernan v Trustees of Cal State University & Colleges (1982) 33 Cal 3d 211, 217 188 Cal. Rptr 115 655 P.2d 317; Foster v Sexton (2021) 61 Cal. App 5th 998 1007-1008 276 Cal. Rptr 3d 176 (inmates allegations that prison officials obstructed his ability to use prison grievance procedure was sufficient to plead unavailability of administrative remedy such that inmate was not required to exhaust administrative remedies before going forward with relevant lawsuit in Court against prison warden for loss of inmates personal property)

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Exhaustion Would Be Futile: Exhaustion of an administrative remedy is not required when pursuit of the remedy would be futile. Under this exception, the exhaustion requirement is excused if the petitioner can demonstrate that the decision of the administrative entity is certain to be adverse George Arakelian Farms Inc v Agricultural Labor Relations Bd (1985) 40 Cal 3d 654 662 221 Cal. Rptr 488 710 P.2d 288. Conversely the futility exception does not apply when the petitioner cannot show that the agency decision is reasonably certain to be adverse Sea & Sage Audubon Society Inc v Planning Comm'n (1983) 34 Cal 3d 412, 418-19 194 Cal. Rptr 357 668 P.2d 664

The futility exception is a very narrow one: it applies only when the petitioner can positively state that the [administrative agency] has declared what its ruling will be in a particular case Steinhart v County of Los Angeles (2010) 47 Cal 4th 1298 1313-1314 104 Cal. Rptr 3d 195 223 P.3d 57 (futility exception did not apply because the owner could not show that the appeals board would have denied her assessment reduction claim.) To come within the exception, the petitioner must establish the following elements:

- There must be some declaration or conduct on the part of the administrative entity that clearly demonstrates that it had predetermined its position Doyle v Chino City of (1981) 117 Cal.App 3d 673, 683 172 Cal. Rptr. Futility cannot be established by speculation / subjective feelings
- The declarations or conduct relied on by the petitioner must be that of the decisionmaking entity itself LaCosta Beach Homeowners Assn v Wayne (1979) 89 Cal. App 3d 327 331 Cal. Rptr 355 (absent evidence that commission mechanically followed staff recommendations adverse staff recommendation insufficient to establish futility of appeal to California Coastal Zone Conservation Commission)
- The declarations or conduct relied on by the petitioner must show a predetermined position that necessitates an adverse ruling in petitioners particular case County of Contra Costa v State of California 177 Cal App 3d 62 77-78 222 Cal. Rptr. 750. This element cannot be established merely by showing that the administrative entity has ruled adversely to the contentions made by petitioner

in deciding other matters In re Serna (1978) 76 Cal. App 3d 1010, 1014 143 Cal. Rptr 350 or that it is generally hostile toward the type of claim asserted by petitioner County of Contra Costa v State of California (supra) Mountain View Chamber of Commerce v City of Mountain View (1978) 77 Cal. App 3d 82, 92-93 Cal. Rptr 441

The futility exception applies when the administrative body from whom relief would be sought has previously taken a position that would require denial of the petitioners current claim and the past positions were taken in the following circumstances

- Related proceedings involving the petitioner Collins v Woods (1984) 158 Cal. App 3d 399, 442-43 204 Cal. Rptr 650 (When hearing officer had approved retroactive application of statute in prior hearing petitioner was not required to seek another hearing on propriety of continued retroactive application.

Court Vested With Concurrent Primary Jurisdiction: When applicable statutes give concurrent primary jurisdiction over a particular type of controversy to the court and an administrative agency exhaustion of the administrative remedy is not a prerequisite to use of the judicial remedy Muir v Steinberg (1961) 197 Cal. App 2d 264-269 17 Cal. Rptr 431

- The statutes creating the administrative remedy expressly provide that they shall not supersede the statutes creating the judicial remedy Wygant v Victor Valley Joint Union High School Dist (1985) 168 Cal. App 3d 319, 322-23 214 Cal. Rptr 205
- A legislative act provides both administrative and judicial remedies and does not expressly condition the availability of the judicial remedy on the exhaustion of the administrative remedy Syngenta Crop Protection Inc v Helliker (2006) 138 Cal. App 4th 1135 1159-1161 42 Cal. Rptr 3d 191 (litigant filed complaint for declaratory and injunctive relief coupled with petition for writ of mandate non exhaustion excused.

Threat of Irreparable Injury Exists: Exhaustion of an administrative remedy is not required when it will result in irreparable injury to a litigant United States v Superior Court (1941) 19 Cal 2d 189, 196-197 120 P.2d 26. California decisions have declared that a failure to exhaust an administrative remedy will be excused when irreparable injury will result if an administrative hearing is permitted to proceed and its orders made effective without prior judicial interference Hespera Land Development Co v Superior Court (1960) 184 Cal. App 2d 865 876 7 Cal Rptr 815; Greenblatt v Munro (1958) 161 Cal. App 2d 596, 605-606 326 P.2d 929. Some decisions have stated that the "irreparable injury" necessary to justify application of the exception may be found only in very limited circumstances Mortgage Finance Corp v Watson (1951) 104 Cal. App 2d 640, 641 232 P.2d 59 and although the exception has frequently been acknowledged it has rarely been applied Dept of Personnel Administration v Superior Court (1992) 5 Cal. App 4th 155, 170-71 6 Cal. Rptr 2d 714 (irreparable injury exception recognized)

Application of Rule Is Contrary To Public Interest: An exception to the exhaustion requirement may be allowed in cases in which application of the rule would disserve an important public interest Lindeleaf v Agricultural Labor Relations Bd (1986) 41 Cal 3d 861, 870-71 226 Cal. Rptr 119 718 P.2d 106; Hull v Cason (1981) 114 Cal. App 3d 344, 358-359 171 Cal. Rptr 14; Enviormental Law Fund Inc v Town of Corte Madera (1975) 49 Cal. App 3d 105, 114 122 Cal. Rptr 282

Grievances Submitted

Conceded is that relative to the events challenged with the instant complaint the records in support of various pleadings I presented before the district court to include true and correct copies of relevant grievances are documents which on their face illustrates an failure by me to exhaust administrative remedies inaptitude which is excused however based on a plethora of reasons to include:

- My being the subject of threats by Public Officials
- Administrative remedies unavailable / inadequate
- Exhaustion would be futile
- District court was vested with concurrent primary jurisdiction, and
- Threat of irreparable injury existed

The documents in support of my contentions of being excused from failing to exhaust local administrative remedies includes but is not limited to:

- Grievance log # CoR HC 19001098 an appeal I submitted to Department officials at CSP-Corcoran on October 18th, 2019 this in concern to the institutions medical staff refusing to adhere to the standing orders of the

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Departments attending Physicians at Adventist Health Medical Center [Hospital] relative to my treatment for gastroesophageal reflux disease (GERD) to include providing me with specialized diets an document which highlights the Institutional level response by E. McDaniel, CSE (A) on December 12th, 2019 an illicit finding in which in support of denying relief falsely declared was that I did not suffer from asthma though relevant records even those attached to the appeal itself clearly indicating that I suffered from such a malady based on said GERD diagnosis an affliction exacerbated by officials denial of healthcare

- Medical ducats issued for me on December 12th, 2019 and January 13th, 2020 for nursing appointments to be held at CSP-Corcoran on December 16th, 2019 and January 21st, 2020 respectively; and
- The CDCR Form 837-C authored by Psychiatric Technician P. Flores on January 14th, 2020 a document in which PT Flores cites the fact that the Unit Health Record (UHR) maintained in my name by the Department denotes that I suffer from asthma.

Records which clearly outline the Departments actions in previously subjecting me to harm then threatening me with future harm on December 12th, 2019 this by implying my need for medical care since progressively continued well prior to said date was the aforementioned tactics of weight dosing measures which later evolved to my being subjected to outright starvation beginning on January 10th, 2020 exploits which I tried to lawfully evade at the first opportunity presented to me on January 14th, 2020 the fourth (4) day I was denied state provided meals a period of inactivity in which per regulations this very same day I was supposed to be interviewed by the Departments medical staff [Hunger strike etc.,] but nevertheless a day when in order to participate in the housing units shower program I was allowed to exit the cell I was assigned to whereupon I was placed in a secured shower stall where I later refused to exit from unless moved to new housing actions leading to my being assaulted.

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Pleading Title: Petition For Writ of Certiorari

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Federal Law

C. Federal Courts Generally Must Give State Agency Fact Finding Same Preclusive Effect To Which It Would Be Entitled In State Courts

The preclusive effect of administrative proceedings in Federal court is governed by the general common law principle in favor of preclusion in conjunction with a case-by-case determination of the nature and adequacy of the particular administrative proceeding at issue and an inquiry into whether Congress intended relitigation pursuant to the particular Federal statute under which the plaintiff has filed Federal suit *Skysign Int'l v. City and County of Honolulu* 276 F3d 1109, 1115 (9th Cir 2002) The Full Faith and Credit Act 28 USC § 1738 is inapplicable to unreviewed administrative proceedings since it applies only to state court decisions *University of Tenn v Elliot* 478 US 788, 794 106 S.Ct 3220, 92 L.Ed 2d 635 (1986) (FFCA does not bind Federal courts to unreviewed State administrative agency findings)

On occassion a Federal statute may explicitly address the issue of administrative preclusion see, e.g., Clayton Act 15 USC § 16(a) (1980 amendments) More often, the statute does not specifically address the issue and the Federal courts resort to an implied repeal analysis. Courts look to the goals of the Federal statute and whether they would be advanced or undermined by according a common law-based preclusive effect to the decisions of the administrative tribunal in question *Astoria Fed Sav and Loan Ass'n v Solimino* 501 US 104, 108 111 S.Ct 2166 115 L.Ed 2d 96 (1991) (Congress legislated with expectation that principle will apply except when statutory purpose to contrary is evident)

Unlike Title VII 42 USC § 1983 does not presumptively override the common law principle of full faith and credit. Therefore, an unreviewed administrative hearing may preclude a subsequent § 1983 suit in Federal court. However the nature of the administrative hearing specifically whether it was an adequate forum for the plaintiffs constitutional claims will determine its preclusive effect.

Two Supreme Court decisions *University of Tenn v Elliot* 478 US 788, 795-797 106 S.Ct 3220, 92 L.Ed 2d 635 (1986) and *McDonald v City of West Branch* 466 US 284, 292 104 S.Ct 1799 80 L.Ed 2d (1984) directly addressed the issue of whether unreviewed administrative fact-finding should have preclusive effect in a subsequent proceeding in Federal court under 42 USC § 1983 Federal suit was precluded in *Elliot* but not in *McDonald* because the plaintiff had an adequate opportunity to litigate Federal issues in the administrative forum in the former but not the latter case.

The Majority view is that administrative fact finding has preclusive effect in subsequent § 1983 actions but that an administrative agency's legal conclusions when unreviewed by a state court do not have similar preclusive effect.

The courts decision in University of Tenn v Elliot refers to the preclusive effect of administrative fact finding with one exception every circuit that has considered the question has held that unreviewed administrative decisions do not have claim preclusive effect. The exception being the Ninth Circuit which in Miller v County of Santa Cruz 39 F3d 1030, 1032-33 (9th Cir 1994) held that an agency's findings of ~~law~~ law, as well as its findings of fact will be preclusive as long as the United States v Utah Const & Mining Co., 384, 422, 86 S.Ct 1545, 16 L.Ed 2d 642 (1966) criteria are satisfied.

Supreme Court Extends Presumption of Preclusive Effect To Unreviewed Administrative Proceedings

The court in United States v Utah Const & Mining Co., established the general presumption in favor of preclusion of administrative proceedings by stating: [W]hen an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesistated to apply res judicata to enforce repose United States v Utah Const & Mining Co., 384 US 394 422 86 S.Ct 1545 16 L.Ed 2d 642 (1966) (enunciating rule in context of preclusive effect of Federal agency fact finding) The rule has been extended to apply to unreviewed state administrative fact finding in subsequent Federal judicial proceedings University of Tenn v Elliot 478 US 788, 797 106 S.Ct 3220, 92 L.Ed 2d 635 (1986) (administrative findings are entitled to preclusive effect) Kremer v Chemical Const Corp., 456 US 461, 484-485 n.26 102 S.Ct 1883 72 L.Ed 2d 262 rehig denied 458 US 1133 (1982) (there is no evidence that res judicata should be denied to administrative decisions)

Redetermination of issues decided by administrative tribunals is warranted if there is reason to doubt the quality, extensiveness or fairness of procedures followed in prior litigation Montana v United States 440 US 147, 164 n.11 99 S.Ct 970, 59 L.Ed 2d 210 (1979) (redetermination is warranted if there is doubt about quality and fairness of prior litigation) In the intersystem context the concern is whether the administrative proceeding can approximate the proceedings available in an Article III court or resolve the federal issues presented.

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Administrative Preclusion Requires That Parties Had Adequate Opportunity To Litigate Issues Before Agency

Whether a Federal litigant had an adequate opportunity to litigate his Federal issue in an administrative tribunal depends on the character of the tribunal and whether it has the capability and expertise to adjudicate the Federal issues the litigant seeks to address in the Federal forum Mack v. South Bay Beer Distribs, Inc 798 F2d 1279, 1283-1284 (9th Cir 1986) (informally administered unemployment benefits hearing did not provide adequate opportunity to litigate) but see Plaine v. McCabe 797 F2d 713, 718-720 (9th Cir 1986) (Federal Securities Exchange Act suit was collaterally estopped by unreviewed State administrative adjudication when preceeding was conducted with suffiuent safeguards to be equated with State court judgment, plaintiff was party to proceeding, agency made final determination and state court review was available.)

In determining whether a hearing was full and fair when conducted by a State court or an administrative agency Federal courts have tended to accord great deference to the rendering decision-maker Hawkins v. Risely 984 F2d 321, 325 (9th Cir 1993) (claim that State habeas court had given plaintiff's claims only cursory treatment did not render hearing less than full and fair when plaintiff had opportunity to submit briefs, present evidence and cross-examine State's witnesses) The burden on plaintiffs to demonstrate that a hearing was not full and fair is very difficult to meet.

The lower court cases generally identify four key factors in determining whether a State judicial hearing was full and fair

- The precluded party must have been allowed to present witnesses and to cross examine the opposing party's witnesses, and to present documentary evidence Shoemaker v. City of Bremerton, 109 Wash 2d 504, 510 745 P. 2d 858, 861 (Wash 1987) (when each side called and cross-examined witnesses and introduced documentary evidence, hearing was full and fair although rules of evidence were not in force)
- The adequacy of legal representation Lamb v. Citibank No. 93 Civ 2358, 1994 US Dist Lexis 12903 (S.D.N.Y Sept 12, 1994) (In practice, however the notion of adequacy in these cases bears little resemblence to standards of effectiveness

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of counsel. Often, adequacy of counsel connotes the mere existence of counsel, and indeed, there are cases in which a complete lack of counsel is not fatal to a finding that the hearing is full and fair

- The right to be heard before an impartial decisionmaker which is a fundamental requisite of due process and essential to a full and fair hearing Hawkins v Risely 984 F2d 321, 325 (9th Cir 1993); Shoemaker v City of Bremerton 109 Wash 2d 504, 511 745 P.2d 858, 861 (wash 1987)
- The availability of judicial review of the decision Plaine v McCabe 797 F2d 713, 718-720 (9th Cir 1986)

Redetermination of Issues Are Warranted

As illustrated above and with the pleadings/evidence I submitted in In re Smith and an host of actions heard or now before both the Ninth Circuit see Smith v Knowlton 9th Cir Case No. 24-3208 (Opening Brief) or the district court generally Knowlton but see (ECF Nos. 73 & 67) administrative remedies before the States quasi judicial and/or judicial system were unavailable based on public officials threats and uses of violence Hemphill v New York 380 F3d 680, 690-91 (2d Cir 2004); accord Turner v Burnside 541 F3d 1077, 1084 (11th Cir 2008) (Remedies that rational inmates cannot be expected to use are not capable of accomplishing their purposes and so are not available.") see also Mitchell v Adams 2008 WL 314129, *9-13 (E.D Cal Feb 4, 2008) (citing course of threatening conduct affecting multiple grievances) report and recommendation adopted 2008 WL 595922 (E.D Cal., Mar 3, 2008) measures which were solely aimed at silencing my voice before the aforementioned systems and the Federal courts retaliation which is prohibited Crawford-El v Britton 523 US 574, 588 n.10 118 S.Ct 1584 (1998) also Rhodes v Robinson 408 F3d 559, 569 (9th Cir 2005) a position particularly supported by the pleadings/evidence submitted in Secretary (ECF No. 33) thus relative to the events which led to the composition of the claims for the complaints of Allison, Chavelo, Weiss, Gibbs, Parriot, Clark [01346] and Clark [01554] as before, during and thereafter the underlying disciplinary infraction charges adjudication before Department approved tribunals and/or the Courts of California public officials blatantly denied me due process protections which ultimately resulted in false findings of guilt being rendered findings after timely appeals having been submitted unlawfully sustained. More further pursuit of administrative remedies in concern to the claims here presented were unwarranted as the assertions of public officials conspiring to solely deny and/or deprive me of the enjoyment of rights afforded to all others under the U.S Constitution this by illegal uses of force see U.S v Donnelly 370 F3d 87 (1st Cir 2004) (affirming sentence of officer for conspiracy and violation of civil rights for unwritten agreement to use excessive force on prisoners who "disrespected" staff "to teach the inmates a lesson") and thru an deprivation of Fourteenth Amendment rights during the adjudication of false disciplinary infraction charges and/or appeals lodged in point to the events in question is an claim that has been exhaustively pursued before the Departments administrative grievance system to include on several occassions prior to the events which comprise of the instant petition ergo estoppel applying to the defense of failure to exhaust administrative remedies see Wolfe v Alameda 2008 WL 4454053, *2-3 (E.D Cal., Sept 29, 2008) (holding estoppel against government requires a showing of affirmative misconduct going beyond mere negligence of serious injustice, and no harm to the public interest from imposing estoppel) see also Brown v Valoof 422 F.3d 926, 935 (9th Cir 2005) (holding a prisoner need not press on to exhaust further levels of review once he has either recieved all 'available' remedies at an intermediate level of review or been reliably informed by an administrator that no remedies are available") and Hendon v Ramsey 2007 WL 1120375, *9-10 (S.D Cal., Apr 12, 2007) (holding plaintiff had exhausted where his appeal was partly granted and he then was told that it was being referred for investigation and any finding of staff misconduct would be confidential and he would not be informed of it.)

3. Claims Presented

a. Jurisdiction

Paraphrasing United Aeronautical Corp v United States A.F 80 F 4th 1017 (9th Cir 2023)

Under [our] system of dual sovereignty we have consistently held that State courts have inherent authority and are thus presumptively competent to adjudicate claims arising under the laws of the United States Tafflin v Levitt 493 US 455, 458 110 S.Ct 792, 107 L.Ed 2d 887 (1990) Because State courts and Federal courts are as a general matter equally competent to adjudicate Federal issues we - when applying § 1331 - defer to the plaintiff as "the master of the complaint" and allow him or her "to have [a] cause heard in State court by eschewing claims based on Federal law see Holmes Grp. Inc v Vornado Air Circulation Sys Inc., 535 US 826 122 S.Ct 1889 153 L.Ed 2d 13 (2002) (citation omitted) In other words our § 1331 analysis lets litigants

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choose where to bring a claim (State or Federal court) because each is competent to hear it

Northern District of California

The action was filed before the N.D California on March 3rd, 2020 however by the authority of United States District Judge Haywood S Gilliam Jr less than two (2) days later the action was transfered to the E.D California (ECF No. 5)

b. Conspiracy To Deny / Deprive Me of Constitutional Rights

Averred therein [complaint] is that based on my assertions of constitutional violations in actions previously heard and/or were then pending resolution before the district court pleadings which again were supported by public records and more outstanding actions which should have been consolidated here per Civil Rule 15(d) see also Rules 18(a) and 20(a)(2) see Smith v Charelo 1:16-cv-01356-DAD-BAM(PC) (ECF No. 18) as many of these suits then proceeded on claims of excessive uses of force generally see Smith v Knowlton 1:18-cv-00851-JLT-BAM; Smith v Weiss 1:18-cv-00852-DAD-BAM; Smith v Gibbs 1:18-cv-00859-DAD-BAM; Smith v Campbell 1:19-cv-00241-AWI-BAM; Smith v Parriot 1:19-cv-00266-JLT-GSA; Smith v Becerra 1:19-cv-01358-DAD-BAM; Smith v Secretary 1:23-cv-00526-KES-SAB; Smith v Clark 1:21-cv-01346-JLT-EPG; Smith v Clark 1:21-cv-01559-JLT-EPG and Smith v Clark 1:21-cv-01589-JLT-EPG there was ample evidence before the district courts judicial officers to find an cause of action to lie against the defendants for numerous of claims Warren v District of Columbia 353 F3d 36, 38 (D.C Cir 2004); Dallairo v Garland 222 F.Supp 2d 86, 89 (D.Me 2002); also Preston v New York 223 F.Supp 2d 452, 461 (S.D N.Y 2002) aff'd 87 Fed.Appx 221 (2d Cir 2004) (unpublished) viable evidence under Rule 201(b) see Kelly v Johnston 111 F2d 613, 615 (9th Cir 1940) which was blatantly ignored ergo egregious abuses of discretion.

Here the instant complaint primarily focused on the defendants conduct in violation of the Eighth Amendment in denying me adequate medical care thus on the basis of my voice before the Federal courts an reprisal supporting several constitutional claim(s) and more to include for deliberate indifference and a cruel and unusual punishment an position which was firmly established upon my producing an gaggle of documents in support of such claims records which clearly illustrated public officials deeds in threatning me with grave bodily harm this by inferring within the aforementioned public records their knowledge that I was in need of both specialized and urgent medical care to include treatment for ailments/conditions

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that had yet to fully manifest themselves[3] and their placing unconstitutional conditions upon me to recieve such care see Secretary (ECF No. 33) an threat which is of course prohibited Oliver v Noll No. C-09-3840 RMW (PR) 2012 WL 2055033 at*2-3 (N.D Cal June 5, 2012) (citing cases); Parker v Asher 701 F. Supp 192, 195 (D. Nev 1988) (concluding that an allegation of verbal threats and aiming a loaded taser gun at an inmate states a cognizable claim of cruel and unusual punishment); Northington v Jackson 973 F2d 1518, 1522-24 (10th Cir 1992) (reversing dismissal of section § 1983 action where state actor put a revolver to [plaintiffs] head without identifying himself as a corrections officer [and] threatned to Kill him) Moreover though my pleadings may have technically cited an wrong theory of liability this is an gaffe which was immaterial as the screening process is to ensure that an cause of action has been stated Phillips v Girdich 408 F3d 124, 130 (2d Cir 2005); O'Grady v Village of Libertyville 304 F3d 719, 723 (7th Cir 2002) ("a plaintiff is not required to set forth a legal theory to match the facts so long as some legal theory can be sustained on the facts pleaded in the complaint) and pro se litigants pleadings are to be liberally construed Boag v MacDougall 454 US 364, 365-70 L.Ed 2d 551 102 S.Ct 700 (1982) (per curiam)

In fact the above cited facts and more made inherently clear then that the district court in an effort at preserving substantive rights afforded under the Fourteenth Amendment was required to appoint counsel on my behalf Bonin v Vasquez 999 F2d 425, 428-29 (9th Cir 1993) (a judge abuses her discretion in denying the appointment of counsel in habeas cases when the case is so complex that due process violations will occur absent the presence of counsel); Brown v United States 623 F2d 54 1980 US App LEXIS 17379 (9th Cir 1990) (counsel must be appointed for motion to vacate sentence when complexities are such that denial constitutes denial of due process) and Vigliotto v Terry 873 F2d 1201, 1202-03 (9th Cir 1989) (recognizing deprivation may constitute due process violation but not finding one when defendant lost access to his legal materials for three days) even if such assistance was solely for the limited purposes of amending the complaint Donald v Cook County Sheriffs Dept 95 F.3d 548, 556 (7th Cir 1996) ("... [T]he Court may assist the plaintiff by providing counsel for the limited of amending the complaint") Bowser v Montana 2007 WL 145

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3. This because at the time of these particular records generation officials had not yet completely resumed their tactics in denying me adequate nutrition via starvation a measure of torture thereby causing me to not only appear emaciated and becoming violently ill but an full blown anemic as well see Weiss (ECF 42)

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6012, *1 (D.Mont May 14th, 2007) (noting appointment of counsel to assist in drafting an amended complaint) guidance which was not provided and perhaps this being so based on the quality of my pleadings for hearings held in collateral actions relative to the defenses assertions of my purportedly having failed to exhaust administrative remedies generally see Gibbs and Parrot proceedings which terminated in the defendants favor [Rule56]

4. Immunities

The court has imported two types of official immunity into the operation of § 1983: absolute and qualified. Absolute immunity is at once deep and narrow. It provides complete protection from suit but only for a limited number of government officials. Conversely qualified immunity is shallow and wide. It provides (at least in theory) more limited protection from suit for a much broader number of government officials

Immunity defenses protect governmental functions rather than categories of governmental actors As a general rule, the critical factor in determining whether a public official is entitled to absolute or qualified immunity is the nature of the particular act being challenged not the office held by the defendant official Nixon v Fitzgerald 457 US 731 102 S.Ct 2690 73 L.Ed 2d 349 (1982) In Nixon a majority of the court departed from its usual approach of analyzing the particular function being performed by the defendant official and held that the President of the United States is protected by absolute immunity for any act within the 'outer perimeter' of his official responsibility 457 US at 758. Judicial and legislative acts are protected by absolute immunity while executive or administrative acts by contrast are protected by only qualified immunity. For executive officials therefore, qualified immunity represents the norm; legislative and judicial officials on the other hand typically are shielded by absolute immunity. The vitally important point to keep in mind however is that judicial and legislative officials may engage in acts of an executive or administrative nature to which qualified immunity will apply Davis v Passman 442 US 228 (1979) (Federal legislator sued for administrative activities) Conversely executive officers may be involved in acts essentially judicial or legislative in which instance they will be protected by absolute immunity see Bogan v Scott Harris 523 US 44 (1998) (Mayor absolutely immune for participating in legislative activity) Thus any question of immunity must begin by focusing on the function at issue. Merritt v Mackey 827 F2d 1368 (9th Cir 1987) (state and federal officials knowingly acting outside the scope of their authority not entitled to

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immunity); Chalkboard Inc v Brandt 902 F2d 1375 (9th Cir 1989) (State officials not entitled to absolute judicial or prosecutorial immunity to the extent that they summarily suspend day care centers license entirely by-passing the statutorily mandated procedure; state law must authorize the prosecutorial or judicial function to which absolute immunity attaches

Qualified Immunity

In Saucier v Katz 533 US 194, 121 S.Ct 2151, 150 L.Ed 2d 272 (2001) the Court then established a two-prong analysis for qualified immunity cases. First a court must determine whether -- resolving all disputes of fact and credibility in favor of the party asserting the injury - the facts adduced show that the officer's conduct violated a constitutional right Saucier 533 US at 201. If the court determines that the conduct did not violate a constitutional right the inquiry is over and the officer is entitled to qualified immunity.

However if the court determines that the conduct did violate a constitutional right Saucier's second prong requires the court to determine whether at the time of the violation the constitutional right was clearly established if its contours "are" sufficiently clear that a reasonable official would understand that what he is doing violates that right" Id (citing Anderson v Creighton 483 US 635, 640 107 S.Ct 3039 97 L.Ed 2d 523 (1987)). Even if the violated right is clearly established the Saucier court recognized that in certain situations it may be difficult for a police officer to determine how to apply the relevant legal doctrine to the particular circumstances he or she faces. It held therefore that if an officer makes an mistake in applying the relevant legal doctrine he or she is not precluded from claiming qualified immunity so long as the mistake is reasonable That is if "the officer's mistake as to what the law requires is reasonable ... the officer is entitled to the immunity defense" Id at 205.

a. Right To Bodily Integrity

It is well established that the constitution protects a citizens liberty interest in her own bodily security see e.g., Ingraham v Wright 430 US 651, 673-74 97 S.Ct 1401, 51 L.Ed 2d 711 (1977); Wood v Ostrander 879 F2d 583, 589 (9th Cir 1989) It is also well established that although the states failure to protect an individual against private violence does not generally violate the guarantee of due process it can where the state action "affirmatively place[s] the plaintiff in a position of danger" that is where state action creates or exposes an individual to a danger which he or she would not have otherwise faced. Deshaney v Winnebago County Dept of Soc Servs 489 US 189, 197 201 109 S.Ct 998 103 L.Ed 2d 249 (1989) Wood 879 F2d at 589-90

1. Danger Affirmatively Created Due To State Action

In examining whether an officer affirmatively places an individual in danger we do not look solely to the agency of the individual nor do we rest our opinion on what options may or may not have been available to the individual. Instead we examine whether the officer [] left the person in a situation that was more dangerous than the one in which they found him" Munger 227 F3d at 1086

People v Smith Case No. 19CM-1737

On April 4th, 2019 then initiated before the Kings Co Super Ct by the District Attorney of Kings County Keith Fagundes was the criminal complaint People v Smith Case No. 19CM-1737 an two count action which alleged that on November 10th, 2018 while incarcerated at CSP-Corcoran I in violation of Cal. P.C § 4501.5 committed an battery on correctional officer A. Bankston and that on this same date in violation of Cal P.C § 4502(a) I was in possession of an inmate manufactured weapon (IMW) to wit an shank an complaint wholly in violation of State law as barratry's are prohibited

Nevertheless it is purportedly based on said complaint that Department officials [CDCR] decided that it was necessary to have me temporarily housed at CSP-Corcoran an institution based in Corcoran, California and is no more than twenty-minutes away from Hanford California which is where the Kings Co Super Ct is located for at this time I was endorsed to be housed at Pelican Bay State Prison (PBSP) an institution which is no less than ten (10) hours away in Crescent City, California. So come June 27th, 2019 the process to have me housed at CSP-Corcoran began as I was removed from the confines of PBSP's facility B General Population yard an yard where I had the ability to walk free of restraints to being placed in an array of restraints and driven to CSP-Solano where I was placed in administrative segregation and held overnight [layover] with the morning thereafter my being driven to CSP-Corcoran where it was ultimately decided to have me housed in administrative segregation (Ad-Seg) Ad-Seg is housing where prisoners are completely dependent on correctional staff in all facets of life for absent the ability to both bathe (bird bath) and use the restroom in cell all movement is controlled meaning prisoners do not leave the confines of the cell they are assigned to without first being placed in mechanical restraints [handcuffs]

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Now besides the aforementioned information [19CM-1137][4] I was to also appear before the district court for ADR proceedings in the action Knowlton (ECF No. 22) proceedings which were to be held at CSP-Corcoran on July 12th, 2019 @ 0830 see also (ECF No. 67)

All the same prior to the events in question I had begun to become seriously ill due to the Department staff actions in not only having subjected me to an measure of torture known as weight dosing [starvation] but because of their denying me access to healthcare relative to such abuse as well exploits culminating in my being hospitalized at Adventist Health Medical Center located in Bakersfield California from the period of October 7th, 2019 thru October 10th, 2019 see discussions for this action i.e., district courts records at (ECF Nos. 3, 40 & 41) additionally see Chanelo (ECF No. 39) Weiss (ECF Nos. 42, 55 & 61) and Secretary (ECF No. 33)

2. Deliberate Indifference

A court must decide the related issues of whether the danger to which I had been exposed was known or obvious and whether officials acted with deliberate indifference towards it Bryan County v Brown 520 US 397, 410 117 S.Ct 1382 137 L.Ed 2d 626 (1997) ("Deliberate indifference is a stringent standard of fault requiring proof that a municipal actor disregarded a known or obvious consequence of his actions") Christie v Iopa 176 F3d 1231, 1240 (9th Cir 1999)

What should be found undisputed is that on November 9th, 2018 which is well before the events here in question had occured in Knowlton I sought for intervention by the district court this by way of the appointment of counsel and thru an declaration of injunctive measures to include an edict being issued one commanding Department officials to house me at an institution other than CSP-Corcoran (ECF No. 6) relief which was denied on April 2nd, 2019 (ECF No. 8) More via the Departments administrative grievance

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4. Since December 5th, 2017 I had been endorsed to be housed at the security housing unit (SHU) complex at PBSP this based on an host of false findings of guilt having been rendered against me during disciplinary hearings for charges of my having assaulted staff while incarcerated at CSP-Corcoran [SHU complex] from the period of September 25th, 2015 thru December 5th, 2017 regardless prior to the aforementioned information twice (2) criminal complaints were lodged against me before said court both of which being actions that were dismissed see People v Smith Case Nos. 17CM-1266 / 18CM-3727 also generally see Clark [01559]

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process I sought for housing outside of CSP-Corcoran or in the alternative not within its ad-seg unit this based on said institutions staff prior transgressions against me relief which was denied see[5] appeal log # CSPC-5-19-03591. Additionally during the adjudication of Case No. 19CM-1737 on several of occassions I sought for the Super Ct's intervention thus by various means to include by way of Murgia relief generally see Clark [01554] (ECF nos. 19-22) all of which being relief that was denied.

b. Selective Prosecution(s)

Turning to the second prong of Saucier which I have the burden of establishing Sorrels v McKee 290 F3d 965, 969 (9th Cir 2002) the Court is to consider whether I have shown that the constitutional right violated by the defendants was clearly established in 2019

To determine whether a right is clearly established the reviewing court must consider whether a reasonable officer would recognize that his or her conduct violates that right under the circumstances faced, and in light of the law that existed at that time Saucier 533 US at 202. As the Court has explained

> For a constitutional right to be clearly established its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful... but it is to say that in the light of pre existing law the unlawfulness must be apparent.

Hope v Pelzer 536 US 730, 739 122 S.Ct 2508, 153 L.Ed 2d 666 (2002) (citing Anderson v Creighton 483 US 635, 640 107 S.Ct 3034 97 L.Ed 2d 523 (1987) (internal citations omitted) However "in order to find that the law was clearly established ... the courts need not find a prior case with identical or even materially

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5. Appeal was lodged with Dept officials at CSP-Corcoran on May 30th, 2019 and later screened out on June 4th, 2019 also please see order on April 20th, 2022 in Chanelo 9th Cir Case No. 21-15827

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similar' facts. Instead the task is to determine whether the pre-existing law provided the defendants with "fair warning" that their conduct was unlawful." Flores v Morgan Hill Unified Sch Dist 324 F.3d 1130, 1136-37 (9th Cir 2003) (citing Hope 536 US at 740)

Thus the specific alleged conduct in this case need not have been previously and explicitly deemed unconstitutional but existing case law must have made it clear that the conduct violated constitutional norms. This has been an consistent standard before the Ninth Circuit since Wood. see Wood 879 F2d at 592 ("[Defendant] seemingly suggests that this case can be disposed of if it does not bear a strict factual similarity to previous cases finding liability. However this crabbed view of the good faith immunity principle cannot withstand analysis") (citing Anderson 483 US at 640)

Equal Protection

In Collins v Hardyman 341 US 651, 71 S.Ct 937 95 L.Ed 1253 (1951) the court held that section §1985(3) only reaches conspiracies to deny equal protection of the law or equal priviledges and immunities under the law. This notion was reaffirmed by the court twenty years later in Griffin v Breckenridge 403 US 88, 91 S Ct 1790 29 L.Ed 2d 338 (1971) lower courts have relied on these decisions in holding that section 1985(3) does not reach conspiracies designed to deny due process of law, freedom of speech, freedom of religion, freedom of association, freedom of assembly and fourth amendment protection against search and seizure

However police misconduct in the form of illegal arrest Curtis v Peerless Ins Co. 299 F Supp 429 (D.Minn 1969), denial of access to counsel Wakat v Harlib 253 F2d 59 (7th Cir 1958) physical assault Nugent v Sheppard 318 F Supp 314 (N.D Ind 1970) filing of charges Hampton v City of Chicago 484 F2d 602 (7th Cir 1973) cert denied 415 US 917 (1974) failure to investigate Wesley v Don Stein Buick Inc., 916 F.Supp 1299 (D.Kan 1998) perjured testimony Hampton v City of Chicago (supra) but see Mitchell v Greenough 100 F2d 184 (9th Cir 1938) and harassment Azar v Conley 456 F2d 1382 (9th Cir 1972) have given rise to actions under section 1985(3). Actions also may be brought under this section to challenge treatment in prisons Jenks v Henys 378 F2d 334 (9th Cir 1967) (interception of mail addressed to courts)

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Pleading Title: Petition for Writ of Certiorari

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Causes For Action Established

Again though inartfully articulated the pleadings and evidence submitted below [district court] e.g. ECF nos 3, 23, 40 & 41 are facts which supported pursuit of an vast array of claims against the named defendants since the conduct complained of violated numerous of constitutional amendments to include the fourteenth as discriminative prosecutions are prohibited. That habeas relief was required before the district court addressed the malicious prosecution claim is immaterial in point to the district courts errant dismissal of the complaint as the action could have and should have been stayed this while the suit was converted to one for relief under §2254 this in order to address the merits of the discriminative prosecution claim. Alternatively the cognizable conspiracy claims to include for the use of excessive force / deliberate indifference etc., are claims that should have been allowed to proceed forward

B. Importance of The Question Presented

"... [I]t is always in the public interest to protect constitutional rights" Phelps-Roper v Nixon, 545 F3d 685, 690 (8th Cir 2008)

Summation

The district court clearly abused its discretion in failing to appoint counsel for the limited purpose of assisting me in amending the complaint. Additionally the Ninth Circuits finding that the notice of appeal was deficient this in the form of said notice being found untimely is a finding inapposite of Federal law as Civil Rule 6(a)(1)(c)(d) finds that the notice of appeal is indeed timely

Wherefore I pray for the following relief

1. The actions remand for further proceedings before a district court; and
2. Any other relief that the court sees fit

Date: June 29th 2024

Respectfully Submitted

Case Name: ______ Case #: ______

Declaration of Lawrence C Smith

The undersigned declares the following

1. Relative to the citations of the official / unofficial reports of opinions and orders (pg above) the court will notice that out of the six entries only two cite such information this being because these are the only two orders that actually appear on "Lexis Nexus" which is the only means I have to retrieve such information

2. Tom Cattie demands to present oral argument before Supreme Mama Kitty Cat Cougar Judges' Field Trip Field Trip ... this is all for now.

Pursuant to 28 USC § 1746 I declare under penalty of perjury that the foregoing is true and correct

Date: June 29th, 2024