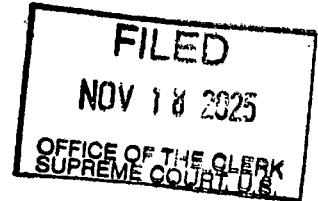


No.

24-6392

IN THE  
SUPREME COURT OF THE UNITED STATES

Joseph Raymond McCoy, PETITIONER  
(Your Name)



vs.

Angel Gonzales, et al., RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

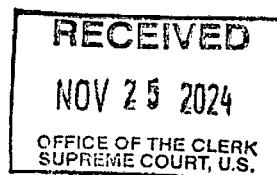
PETITION FOR WRIT OF CERTIORARI

Joseph Raymond McCoy  
(Your Name)

P.O. Box 5242  
(Address)

Corcoran, Ca 93212-5242  
(City, State, Zip Code)

029276  
(Phone Number)



QUESTIONS PRESENTED

1. When statutory time period is computed from a particular day or event, First day is excluded and the last day included. Does this apply also to the United States Judicial Department?
2. When Court-Ordered Deadline is signed, dated, filed the-day-after the original Court Ordered Deadline has already expired, is the order invalid?
3. When is the Constitutional violations asserted in Petitioner's (Appellant's Informal Opening Brief) to the United States Court Of Appeals for the Ninth Circuit, accompanied by reference to documentary evidence cited, in support thereof, so insubstantial as not to afford First and Fourteenth Amendment Constitutional protections, guaranteed right to access the courts, to petition government for redress of grievances, and guaranteed right to be heard, at a meaningful time and in a meaningful manner?
4. When a party admits to being personally involved in the deprivations alleged in a complaint, is the party injured entitled to a remedy?
5. If so, then what is that remedy?
6. When a prisoner, inmate or person confined, hands over to confining authority pleadings, proceedings, and other documents (Exhibits), to be deposited into the United States

QUESTIONS PRESENTED

mail, addressed to the Clerk of the Court, are such documents deemed "filed"?

7. When confining authority fails to serve and file opposition or a statement of no opposition to the granting of relief sought by movant, alleging Bounds Verses Smith violations by confining authority, mandated by local court rules, subject to imposition of sanctions, including waiver of any opposition to the granting of the relief sought, is it within the Court's power, authority, or discretion not to conduct inquiry prior to entry of judgment or ruling thereon?

8. When magistrate judge's order directing judgment on the pleadings, or for summary judgment is clearly contrary to U.S. Congress' legislative intent upon its enactment of Title 28 Section 636(b)(1)(A) of the United States Code, Jurisdiction, Powers and Temporary Assignment. What is the remedy?

9. Whenever a party in any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge proceed no further therein, but another judge shall be assigned to hear such proceeding. If and or when the district court fails or refuses to comply with U.S. Congress' legislative intent upon its enactment of Title 28 Section 144 of the United States Code, mandate. What is the remedy?

QUESTIONS PRESENTED

10. Congress' legislative intent upon its enactment of Title 28 Section 1291, Final Decisions of District Courts, Jurisdiction and Venue, mandating, the courts of appeals...shall have jurisdiction of appeals from all decisions of the district courts of the United States, is it clear, Congress' legislative intent upon enactment of §1291, Final Decisions of the district courts of the United States, intends "all final decisions" to mean, the process by which "all final decisions" is reached, and not the decision itself, otherwise, the reference to "all final decisions" would be mere surplusage, entirely without meaning?

11. When the United States Court of Appeals for the Ninth Circuit construed Petitioner's (Petition For Panel Rehearing) a (Motion For Reconsideration), was this contrary to this Court's holdings in Marbury Verses Madison (cited) therein?

12. When the United States District Court for the Eastern District of California, declined to address and resolve on the merits of Petitioner's motion in opposition to defendant's motion for summary judgment, table of exhibits marked (A)-(Z-10); memorandum of points and authorities, prior to adoption in full magistrate judge's findings and recommendations, and entering summary judgment for defendants', was this fair?

13. When the United States Diso.sio Daf.o na. om, -reo,.h

QUESTIONS PRESENTED

13. When the United States District Court for the Eastern District of California denied all petitioner's motions sought to accurately prosecute and maintain a pliable defense and in this same regard granted all motions filed by adversed party to the same effect, was this fair?
14. When the United States District Judge presiding over this case failed to comply with the United States Court of Appeals for the Ninth Circuit's instruction to reverse his entry of summary judgment on exhaustion, and enter judgment in favor of Petitioner, did the United States District Court for the Eastern District of California, have jurisdiction?
15. What did this Court mean, to close their eyes on the Constitution and see only the law?
16. If petitioner receives an injury, is he entitled to a remedy?
17. If so, then what is that remedy?

## 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:

C.Stronach, K.LeMay, R.Fisher Jr., C.Peltran, M.Tann, D.Snell

## RELATED CASES

9th Cir. Case No.15-17148 McCoy V. Gonzales, et.al.

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

### APPENDIX A

Ninth Circuit's Dated 2-9-23; 11-17-23

### APPENDIX B

Appellant's Informal Opening Brief

### APPENDIX C

Defendants-Appellees' Motion to Revoke Plaintiff's IFP Privileges On Appeal

### APPENDIX D

Plaintiff's Motion In Opposition and Request For Judicial Notice

### APPENDIX E

Motion To Expedite and Request For Judicial Notice

### APPENDIX F

Defendants Opposition To Motion For Expedited Briefing and Request For Judicial Notice

### APPENDIX G

Reply To Defendants' Opposition For Expedited Briefing and Request For Judicial Notice

INDEX OF APPENDICES

APPENDIX H

General Docket USCA Ninth Circuit

APPENDIX I

Appellees' Motion For Summary Affirmance

APPENDIX J

Appendix Of Records In Support Of Motion For Summary Affirmance

APPENDIX K

CDC119 McCoy C29239 Outgoing Mail Log

APPENDIX L

Motion In Opposition To Defendants' Motion For Summary Judgment  
Table Of Exhibits Marked (A)-(Z-10) Memorandum Of Points And Authorities

APPENDIX M

Findings and Recommendation Of Magistrate Judge

APPENDIX N

Order ECF No.257

APPENDIX O

Order ECF No.261

APPENDIX P

CDC119 McCoy C29239 Incoming/Outgoing Confidential Mail Log

APPENDIX Q

Order ECF No.295

APPENDIX R

Request For Judicial Notice Dated 4-9-24

APPENDIX S

Appellee's Response In Opposition To Appellees' Motion For

APPENDIX T

Objections To Order Denying Plaintiff's Seventh Motion For Appointment Of Counsel

APPENDIX U

Declaration Of Joseph Raymond McCoy re Statement of Case

APPENDIX V

Order Granting Appellees' Summary Affirmance

APPENDIX W

Petition For Panel Rehearing

APPENDIX X

Objections To Order Denying Without Prejudice Plaintiff's Seventh Motion For appointment of Counsel

APPENDIX Y

Objections to Order Granting Parties Extensions Of Time To File Dispositive Motions

APPENDIX Z

Objections To Order Denying Plaintiff's Motion For Stay Of Dispositive Deadline Pending Final Determination By Presiding District Judge Pursuant to L.R. 303(e)

APPENDIX Z-1

Objections To Order Denying Plaintiff's Request For Appointment Counsel Without Prejudice

APPENDIX Z-2

Declaration Of Bias or Prejudice Of Judge Anthony W. Ishii

APPENDIX Z-3

Order Denying Plaintiff's Motion For Reconsideration and Disqualification

APPENDIX Z-4

Application For An Order For Enforcement Of Administrative Agency Judgment And Request For Judicial Notice

APPENDIX Z-5

Memorandum re 9th Cir. Case No. 15-17148

APPENDIX Z-6

Opening Brief Of Joseph Raymond McCoy re 9th Cir.Case No.15-17148

APPENDIX Z-7

Order Directing Judgment In Favor On Plaintiff On Exhaustion

Administrative Remedies

APPENDIX Z-8

Emergency Physician's Order

APPENDIX Z-9

First Amended Complaint

APPENDIX Z-10

Order Denying Motion For Reconsideration And Request For  
Judicial Notice

APPENDIX Z-11

Declaration Of Joseph Raymond McCoy Filed 4-11-24

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Estelle V. Gamble, 429 U.S. 97 (1976)	9
Bounds V. Smith (1977) 430 U.S. 817,	6
Earle V. McVeigh, 91 U.S. 503 (1888)	13
Houston V. Lack, 487 U.S. 266, 276 (1988)	3, 8, 20, 26, 29
Marbury V. Madison, 5 U.S. 137 (1803)	6, 24, 29
Renaud V. Abbott, 116 U.S. 277 (1886)	13
Sheets V. Selden's Lessee <sup>1</sup> , 69 U.S. 177 ( )	21
Williams V. Paramo, 775 F.3d 1182 (9th Cir. 2015)	14
Alonzo V. Prop. Mgmt., 643 F.3d 578 (9th Cir. 1981)	21
United States V. Hooton, 693 F.2d 857 (9th Cir. 1982)	24
STATUTES AND RULES	
28 U.S.C. §636(b)(1)(A)	3, 6, 26,
28 U.S.C. §144	25, 26
28 U.S.C. §1746	1, 5, 7
28 U.S.C. §1732	18
28 U.S.C. §1915(g)	9
28 U.S.C. §1915(a)	11
28 U.S.C. §1291	24
42 U.S.C. §1997e(a)	27
Fed.R.Civ.P.5	2, 13, 23
Fed.R.Civ.P.6	2, 5, 6, 21, 23
Fed.R.Civ.P.112, 6, 23	2, 6, 23
Fed.R.Civ.P.38(d)	2, 3
Fed.R.Civ.P.72(a)	3, 6, 7, 25
Fed.R.App.P.25	12
Fed.R.Evid. Rule 102	
Fed.R.Evid. Rule 201	11, 18
OTHER	
Black's Law Dictionary re Excess of Jurisdiction	22
Henry P. Monaghan, Marbury and the Administrative State, 33 Colum.L.Rev. 1, 6 (1983)	24

TABLE OF AUTHORITIES

	PAGE(S)
<b>STATUTES AND RULES</b>	
Fed.R.Evid. Rule 201(d)	29
USDC E.D.Cal. Local Rules	
230(1)	3,4,5,6
303(e)	3,6
303(f)	3,6
California Code Of Regulations	
Title 15, §3143(b)	16

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        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        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 4-25-24

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: 5-5-24, and a copy of the order denying rehearing appears at Appendix (Z-10).

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT U.S. CONSTITUTION  
FOURTEENTH AMENDMENT U.S. CONSTITUTION  
EIGHTH AMENDMENT U.S. CONSTITUTION

## STATEMENT OF THE CASE

On March 22, 2023, the Clerk of the United States Court of Appeals for the Ninth Circuit filed petitioner's ("McCoy") Informal Opening Brief in compliance with Court-Ordered Deadline which included instructions mandating defendants, appellees' to serve and file an "Answering Brief" within the specified time, which included the production of evidence cited in McCoy's Opening Brief".

Appendix (A) Order re 9th Cir. Case No. 21-16878 filed 2-9-23 D.C. No. 1:12-cv-00983-AWI-SAB E.D.Cal.

A Brief containing not only allegations charging the District Court with entering an agreement with Counsel of Record for Defendants-Appellees to sign, date and issue an (Order ECF. No.257), granting defendants' motion to extend the time to serve and file a dispositive motion on October 1, 2020, after the court ordered deadline (September 30, 2020) had already expired, find good cause presented, that the dispositive motion deadline is extened to October 14, 2020.

On October 21, 2020 McCoy was served by Counsel of Records for Defendants' ("Defendants'") notification of presiding magistrate judge's (Order ECF No.261) agreeing to grant, in part, Defendants' motion to extend dispositive motion deadline (Order ECF No.257) not only, on the same-date for filing dispositive motion deadline (Order ECF No.261) had been set to expire.

An (Order ECF No.261) granted, absent good cause or excusable neglect, presented.

An (Order ECF No.261) filed October 15, 2020, "the day-after dispositive motion deadline (Order ECF No.257) October 14th 2020 filed October 1, 2020 had already expired.

On October 21, 2020, the same-date ("Defendants'") served McCoy notice of presiding magistrate judge's (Order ECF No.261) disclosing an agreement, between defendants' and magistrate judge, to grant, in part, Defendants' motion to extend the date to file dispositive motion deadline had been set to expire.

McCoy handed over to prison authorities at CSATE-SP California Substance Abuse Treatment Facility and State Prison, Corcoran, Ca., a Proof of Service By U.S. Mail pursuant to Title 28 U.S.C. §1746 (Act of Congress) enclosed inside a sealed envelope, addressed to the Clerk of the United States District Court E.D. Cal., containing his "objections" to magistrate judge's (Order ECF No.261) granting in part, Defendants' motion to extend dispositive motion deadline which included but not limited to: facts or set of facts outlined and set forth herein, and throughout this brief, and as well as the critical fact, McCoy never received a [M]otion to Extend Dispositive Motion Deadline [Fed.R.Civ.P.5] to which in this regard, presiding magistrate judge admittedly used as the basis, to support his decision to enter into an agreement between Counsels of Record for Defendants' and the United States District Court, to grant, in part, Defendants' Motion To Extend Dispositive Motion Deadline, not only, the day-after finding Counsels of Record for Defendants' violated [Fed.R.Civ.P.11(b)] Representation To Courts, in Defendants' favor, also in "Excess of Jurisdiction [Fed.R.Civ.P.6 et seq.]

Up Until McCoy was served by the Clerk of the Court, official notification seven days after a written agreement had been forged between Counsels of Record for Defendants' and presiding magistrate judge, to abruptly change the date to file dispositive motion deadline (Order ECF No.261 filed 10-1-20) on October 21, 2020, the same-day that the Court-Ordered Deadline to "File" Dispositive Motion Deadline had-been-set-to-expire.

McCoy had been led to believe, by Counsels of Record for Defendants' and presiding magistrate judge, the deadline for filing dispositive motion was set to expire (October 14, 2020) (Order ECF No.257 filed October 1, 2020) and that failure of either party, to serve and file a dispositive motion on the date ordered by presiding magistrate judge [Fed.R.Civ.P. 38(d) Demand For Jury Trial].

The District Court, was (then) under mandate [Fed.R.Civ.P.38(d)] Demand for Jury Trial promulgated by and under the VII Amendment to the United States Constitution, to set-a-date for trial on all issues so triable as demanded in McCoy's (FAC) First Amended Complaint on the merits. Appendix (B) Appellant's Informal Opening Brief 9th Cir.Case No.21-16878 FACTS [I] pg.2 paragraphs 1-10

Instead of adjudicating on the merits of McCoy's timely "filed" objections presiding magistrate judge's (Order ECF No.261 filed 10-15-20) in compliance with local Rule L.R. 303(f) Standard of Review, imposing a clear mandate, requiring, the standard that the assigned judge shall use in all such requests is "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. §36(b)(1)(A) See Fed.R.Civ.P. 72(a) (citation); Houston V. Lack, 487 U.S. 266, 276 (1988) Bright Line Rule.

Documented by prison authority at CSATF-SP (Defendants-Appellees) to had been deposited in the U.S.Mail on October 22, 2020 addressed to the clerk of the court pursuant to California Code of Regulations CCR Title 15, §3142 et seq. Processing Outgoing Confidential mail re Log CDC 119 History of McCoy C29239 Incoming/ Outgoing Confidential Mail pg.56 of 60. Compare: Magistrate Judge's Findings and Recommendation (MJRF) pg.2 Lines 17-18 USDC E.D.Cal.1:12-cv-00983-AWI-SAB McCoy V. Stronach, et.al., to which in this same regard, the presiding magistrate judge found.

On November 2nd 2020, approximately two weeks after McCoy, handed over to prison authority at CSATF-SP (Defendants-appellees) his timely filed objections to presiding magistrate judge's (Order ECF No.261) challenging the United States District Court jurisdiction (L.R. 303(e)) which shall be referred yo the assigned judge automatically by the Clerk, promptly following the date for filing opposition (L.R. 230(1) not more than twenty-one (21) days after the date of service.

The assigned judge, sidestepped the process. [paragraphs 11-15]

Records maintained by prison officials (Appellees) at CSATE-SP, Corcoran, Ca., U.S. District Court for the Eastern District of California, and Counsels of Record for appellees, not only show.

McCoy have repeatedly served and filed motion requesting extensions of time to file objections to magistrate judge's findings and recommendations based on clear violation by appellees of the Supreme court landmarked decision in Bounds Vereses Smith which impose a clear constitutional obligation, requiring appellees to either provide (pro se) prisoner litigants (1) aacees to adequate libraries or (2) Access to adequate persons trained in the law.

Despite the fact that appellees had repeatedly failed to serve and file either an opposition or a statement of no opposition to the granting of appellant's motions in question, and conceded to allegation of Bounds violation.

Clearly erroneous and contrary to [L.R. 203(1) which provide procedural due process safeguard requirements to be accorded to the parties, including but not limited to: "Failure of the responding party to file an opposition or to serve and file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion, and may result in the imposition of sanctions"

• See (Order Doc Nos. 267, 288 pg.1 Lines 24-26; Order Doc. No.295.

The Lower court, instead of maintaining compliance with its own procedural due procees "safeguard" requirement [L.R. 230(1) imposing a clear mandate, requiring "A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically, designating the motion in question". [re FACT [II] pg.2 paragraphs 1-5].

On September 28, 2021, clearly erroneous to the fact counsel of record for appellees conceded to allegations of Bounds violation by prison officials, denied McCoy's sixth motion to file objections to magistrate judge's findings and

recommendation [Order Doc. No. 295] and found own its own, including but not limited to: "that because it appears that plaintiff is simply attempting to stall the case" See First Amendment U.S. Constitution §1 upon which to determine, that the First Amendment "Guaranteed" Right to Petition Government for Redress of Grievances and First Amendment "Guaranteed" Right to Access the Courts, were not to be accorded to McCoy, a pro se prisoner litigant. See Fed.R.Civ.P. 11(b)(1) Representation to the Court; Compare: USDC E.D.Cal. 1:12-cv-00983-AWI-SAB McCoy v. Stronach, et.al. re Order Doc. Nos. 267, 280; Motion for Appointment of Counsel and fourth Request For Extension Of Time To File Objections re McCoy v. Gonzales, et.al.

Not only does the lower court admit to the fact that McCoy has requested five extensions of time to file objections, all of which the lower court granted [Fed.R.Civ.P. 6 (b)(1)] for good cause presented, derived from McCoy's repeated allegations of Bounds violations by prison officials (appellees) See Order Doc. Nos. 267, 280 pg.1 Line 26; Compare: USDC E.D.Cal. L.R. 230(l) Motions in Prisoner Actions (quotations).

The lower court, instead of maintaining compliance with the mandatory procedural due process safeguards requirements, which provides, for All motions, except motions to dismiss for lack of prosecution, filed in actions wherein one party is incarcerated and proceeding in propria persona, shall be submitted upon the record without oral argument unless otherwise ordered by the Court". See Order Denying Plaintiff's Seventh Motion For Appointment Of Counsel and Granting Fourth Motion For Extension Of time To File Objections re Order ECF No. 287, 288 filed July 12, 2021; Compare: Objections To Order Denying Seventh Motion For Appointment Of Counsel re McCoy V. Gonzales, et.al. 1:12-cv-00983-AWI-SAB (PC) In re Proof of Service By U.S. Mail Title 28 U.S.C. §1746 dated July 21, 2021; Compare: Order

Doc No. 295 pgs. 2-3 Also See Fed.R.Civ.P. 72(a); 28 U.S.C. §636(b)(1)(A); Local Rule 303(f).

The Lower Court, instead of issuing orders upon which to conduct oral arguments, including but not limited to: appointment of pro bono counsel, to ensure McCoy's First Amendment to the United States Constitution "Guaranteed" Right to Petition Government for Redress of Grievances had been accorded, in light of the fact that counsels of record for appellees failed to file an opposition or to serve and file a statement of no opposition to the granting of McCoy's sixth motion to extend the time to file objections to magistrate judge's findings and recommendation, and failure to contest or otherwise, controvert or refute allegations declared under penalty of perjury of Bounds violations by confining authority [See (Order ECF Nos. 278, 288; Compare: L.R. 230(1); Fed.R.Civ.P.11(b) et seq.; Fed.R.Civ.P.72(a)].

The Lower Court, instead of maintaining compliance with its own Local Rule 303(f) governing the standard that the assigned judge "shall" use in all such requests is the "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. §636(b)(1)(A); See Fed.R.Civ.P.72(a), including but not limited to: its duty to consider timely objections (L.R. 303(e) Notice and Argument) which is mandated to take place "promptly" following the date for filing opposition (L.R. 230(1)) without the necessity of a specific motion for such reference by the parties. Compare: *Marbury V. Madison*, 5 U.S. 137, 178 (Holding, "It is emphatically the province and duty of the judicial department to say what the law is") (original citation).

In This Regard, the Lower Court, not only failed to expound on McCoy's First Amendment to the U.S. Constitution claim of Bounds violation by appellees. See *Bounds V. Smith* (1977) 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72.

The Lower Court failed to rule on McCoy's timely objections to (Order Denying Plaintiff's Seventh Motion For Appointment of Counsel and Granting Fourth Motion For Extension Of Time To File Objections) Compare: Objections To Order Granting, In Part, Defendants' Motion To Extend Dispositive Deadline re McCoy V. Stronach, et.al. 1:12-cv-00983-AWI-SAB (PC) Order ECF No, 261 filed 10-15-20 via Proof Of Service By U.S.Mail filed 10-21-20; FACTS [II] pg. 2 paragraphs 1-12.

The Lower Court, also failed to rule on McCoy's objections to order granting, in part, Defendants motion to extend dispositive deadline (Order ECF No. 261 filed October 15, 2020)

An Order, not only filed "the-day-after" the original deadline to file dispositive motion (Order ECF No.257 filed 10-1-20) dated 10-14-20 had already expired.

An Order derived from a motion that McCoy never received and an order notifying McCoy on "the-same-day" dispositive motion deadline had been set to expire. (L.R. 303(f) Standard of Review; Fed.R.Civ.P.72(a)).

The Lower court, not only failed to enquire into essential facts upon which to make a professional judgment regarding McCoy's Constitutional claim of Bounds violation committed by prison officials prior to denying McCoy's sixth motion to extend the time to file objections to magistrate judge's findings and recommendation and adopting in full magistrate judge's findings and recommendation, and entering summary judgment in defendants' favor.

The Lower Court, agreed to magistrate judge's findings, including but notr limited to: finding, it simply appears McCoy is attempting to stall the case, despite defendants' concession to the fact that prison officials violation of Bounds which the Supreme Court landmark decision impose a constitutional obligation upon prison officials (appellees) to either provide pro se prisoners, access to adequate libraries or access to adequate persons

trained in the law. (paragraphs 13-17).

Likewise, contrary to the Supreme Court's landmark decision announced in [Houston V. Lack, 487 U.S. 266, 276 (1988)] holding inmate's pleading is deemed "filed" at the time it is handed over to prison authority, addressed to the Clerk of the Court (original citation and quotation omitted).

On September 22nd 2021, McCoy handed over to prison authority at (CSATF-SP) California Substance Abuse Treatment and State Prison (Defendants-Appellees) a motion to extend the time to serve and file his (Objections To Magistrate Judge's Findings and Recommendation) in compliance with (CCR Title 15, §3142 et seq.) Processing Outgoing Confidential Mail, addressed to the Clerk of the Court [Houston V. Lack, 487 U.S., at 276] See CDC 119 History McCoy C29239 Incoming/Outgoing Confidential Mail Log. pg. 59 of 62 dated Friday September 23rd 2021.

Documented by Defendants-Appellees at CSATF-SP to had been deposited in the United States Mail on September 23rd 2021, addressed to the Clerk of the Court. (Order ECF No.295 filed September 28, 2021) to which in this regard, presiding magistrate judge, not only found.

On September 27th 2021, the Clerk of the Court, placed on the Court's docket McCoy's Sixth Motion To Extend The Time To Serve an File Objections To Magistrate Judge's Findings and Recommendation, approximately a week after McCoy handed it over to prison authority whaich was deemed "filed" on that date [Ibid. Houston, 487 U.S., at 276].

Nevertheless, the United States District Court, deemed McCoy's motion to extend violaed statute of limitation pursuant to [Fed.R.Civ.P.6] and denied on such ground. [FACTS [III] pg.2 paragraphs 1-5].

Instead of maintaining compliance with the specifications of 9th Circuit's Appendix (A) Court-Ordered deadlines to serve and file their "answering brief" to McCoy's "informal opening brief", pending before the Court, on adjudication on the merits, which included, orders instructing Defendants' to "File Supplemental Excerpts of Records that contains all of the documents cited in the pro se opening brief, or otherwise, required by Rule 30-1.4 as well as those documents cited in the answering brief".

Defendants' served and filed a motion to revoke McCoy's In forma Pauperis Privileges On Appeal [Appendix (C)] on April 21, 2023, alleging therein, amongst other things (pg.8 paragraph 1) "McCoy Did Not Face An Imminent Danger Related to His Allegations When He Brought This Appeal". (28 U.S.C. §1915(g))

In opposition thereto, McCoy filed a motion in opposition to defendants'- appellees motion to revoke his IFP privileges on appeal, requesting the Court take judicial notice pursuant to [Rules of Evidence Rule 201(b) Article II. Judicial Notice re Federal Civil Judicial Procedure and Rules. (Appendix (D) S[I] RJN pg.8].

McCoy alleged, defendants' admit to the fact, that instead of carrying out orders after they had been prescribed by offsite emergency physician at Fresno Community Regional Medical Center, on June 15, 2009, orders to provide him access to medical personnel qualified to properly assess and provide appropriate treatment to his serious medical needs (RJN §[II] Undisputed Facts pgs.2-3) admit (§[III] Undisputed Facts pg.3) to personal participation in (1) Intentionally denying McCoy access to medical care, (2) Intentionally interfering with McCoy's treatment once prescribed or in access to treatment; and (3) failure to carry out medical orders once prescribed. See *Estelle V. Gamble*, 429 U.S. 97, 104-105, 107, 97 S.Ct.285 (1976)( citation omitted).

Admit to conspiratorially planned disciplinary actions to cover-up "official misconduct" (§[IV] Undisputed Facts pg.3).

Admit to personal participation in the deprivations alleged in McCoy's (FAC) First Amended Complaint (1:12-cv-00983-AWI-DLB (PC) McCoy V. Gonzales, et.al., pgs.3-12 paragraphs 7-34 re §[I] Factual Allegations In re §[V] Undisputed Facts pg.4).

Admit to the fact, that their "expert witness" omitted to finding evidence showing defendants', instead of carrying out orders after they had been prescribed by offsite emergency physician at Fresno Community Regional Medical Center on June 15, 2009, for specified treatment of McCoy's right foot.

Declared under penalty of perjury that no action or inaction on part of the defendants caused any delay in diagnosis or treatment of McCoy's right foot infection. "McCoy's claim that Defendants were deliberately indifferent to his right foot infection is not support by the medical record (§[VI] Undisputed Facts pgs.4-5).

Admit to the fact, that some fourteen years later and counting, McCoy is yet being compelled to ambulate (barefoot) without footwear clinically designed to prevent the potential spread of infectious diseases or further contamination and which todate McCoy's right foot remains infected and he is partially paralyzed in two of the toes on his right foot which McCoy was never treated or provided access to orthopedic for treatment ordered over fourteen years ago: (§[VII] Undisputed Facts pg.5).

McCoy asserted, that contrary to appellees' presumption, McCoy did not face an imminent danger related to his allegations when he brought this appeal the facts or set of facts set forth in the accompanying Objections to Magistrate Judge's Findings and Recommendation, though consists of 46 pages,

only represent a small but relevant view to which to demonstrate or support the fact that had the lower court granted McCoy's sixth request to extend the time to serve and file these objections, specifically, to shepardize case law, statutes ect. relevant to these objections.

The necessity to seek to secure appellate review, in a second time for the same/similar matter may had been non-existent. [9th Cir. Case No. 15-17148]

To which, as demonstrated, even without the assistance of persons trained in law, and with an eighth grade level of education, as well as the facts which constitutes "ongoing danger of serious physical injury, qualifies McCoy for imminent danger exception on Appeal. (SIVIII) Undisputed Facts pg.6.).

Defendants' did not serve and file any timely reply in opposition to McCoy's opposition motion to revoke his IFP privileges on appeal nor did Defendants' serve and file any timely request for judicial notice or otherwise refute McCoy's presentation of evidence pursuant to (Federal Civil Judicial Procedure and Rules (Rule 102) Rules of Evidence Purpose and Construction (citation omitted). Appendix (A) re Order Dated November 17, 2023.

On November 17th 2023, the 9th Circuit issued an order in response to McCoy's motion for an extension of time to file a reply in support of the motion to revoke appellant's in forma pauperis status, is granted.

The 9th Circuit also granted McCoy's motion in opposition to defendants' motion to revoke McCoy's in forma pauperis status, also with McCoy's Request for Judicial Notice.

The Court found McCoy's filings demonstrate that McCoy has alleged imminent danger of serious physical injury and denied Defendants' motion to revoke McCoy's in forma pauperis status pursuant to (28 U.S.C. §1915(a)).

The 9th Circuit further found, McCoy's opening brief has been filed and set a deadline upon which Defendants' answering brief due date of December 21, 2023 and McCoy's optional reply brief's due date within 21 days after service of the answering brief.

On February 1, 2024, McCoy moved for expedited briefing [Appendix (E)] pursuant to (9th Cir.R.27-12(3)), providing for motions to expedite briefing and hearing may be filed and will be granted upon a showing of good cause.

"Good Cause" includes, but is not limited to situations in which...in the absence of expedited treatment, irreparable harm may occur...(citation, in pertinent part) pg.2 §[I].

McCoy, not only, reiterated [Appendix (A) re 9th Cir. November 17th 2023 Order] finding McCoy demonstrated by his filings has alleged imminent danger of serious physical injury; alleges an "ongoing danger at the time the notice of appeal was filed (§§[III];[XXI] pg.2.) re Appendix (E).

McCoy asserted, Defendants-Appellees admit to the facts or set of facts, that instead of following "Emergency Physician Orders, personally participated in "widespread" [D]eprivations, alleged in McCoy's (FAC) First Amended Complaint, under penalty of perjury to had taken place in a Prison Medical Clinic.

Deprivations which continues to date, and will continue until exposed to the "Public-at-Large", in a forum designed to accord a XIV Amendment to the United States Constitution guarantee, "the right to be heard".

On the merits. See 9th Cir.Case No.15-17148 McCoy V. Clark, et.al. to which in this regard [Appendix (A), re Appendix (E) paragraphs 6-8 pg.3].

McCoy also brought to the attention of the Ninth Circuit, defendants-appellees repeated and deliberate failure to comply with [FRAP] Rule 25 Filing and Service Requirement.

In This Same Regard, McCoy served and filed a Request for Judicial Notice [RJN] Appendix (E).

In his request for judicial notice, McCoy expounded on [Fed.R.App.P. 25 Filing and Service; Title VII. General Provisions Subdivision (b) Service of all Papers Required] requiring, (Unless a rule requires service by the clerk, a party must, at or before the time of filing paper, serve a copy on the other party to the appeal or review (citation) re S[II] Undisputed Facts pg.2 paragraph 2.

Likewise, [Fed.R.Civ.P.5] provides a similar "service of process" of all papers between the parties [Compare: Appellant's Informal Opening Brief S[I] FACTS pg.2 paragraph 7] in this regard. McCoy asserted, Defendants-Appellees' violation thereof, specifically, McCoy never received a motion to extend dispositive deadline, to which in this same regard, McCoy never received appellees' motions to extend the time to file their answering brief. [paragraph 3].

Thus, violative of the XIV Amendment to the U.S. Constitution Due Process Clause, including a guaranteed "right to be heard". See, e.g., Renaud V. Abbott, 116 U.S. 277, 29 L.Ed. 629. 6 S.Ct. 1194 (1886); Earle V. McVeigh, 91 U.S. 503, 23 L.Ed 398 (1888). (paragraph 4 pgs. 2-3)

McCoy concluded, entitles him to the remedies sought by motion to expedite briefing, specifically, issuance of an order directing defendants-appellees to serve and file an "answering brief" to McCoy's informal opening brief, on or before 2-22-24, including but not limited to: excerpts of the legal documents identified in McCoy's opening brief. [S[III] Conclusion paragraph 5.

On February 20, 2024, Defendants' filed an opposition to McCoy's motion for expedited briefing and request for judicial notice [Appendix (F) re Introduction pg.1 paragraph 1]

Stating, the Court should deny McCoy's motion for expedited briefing and request for judicial notice. McCoy failed to establish good cause for an order requiring defendants to file their answering brief fourteen days earlier than the current deadline. Additionally, the allegations in his request for judicial notice are subject to reasonable dispute, making judicial notice improper. [Argument SI. pgs.1-2 paragraph 1].

Here, Defendants argue, McCoy has not established good cause warranting expedited briefing: First, the supposed irreparable harm occurred in 2009 and is not related to the issue on appeal. The issue raised in McCoy's opening brief involves the denial of his sixth motion for an extension of time to object to the magistrate judge's findings and recommendations to grant defendants motion for summary judgment. McCoy's opening brief does not reference any current medical need or physical injury. (paragraph 2 pg.2)

Second, because the documents McCoy produced in support of his attempt to show an irreparable injury are more than a decade old, they do not alone show McCoy currently faces any injury related to his allegations, let alone one that would be irreparably harmed by a two week difference in the answering brief deadline, and McCoy's reliance on the Court's denial of defendants motion to revoke McCoy's IFP privilege is misplaced. As the Court stated in Williams V. Paramo, 775 F.3d 1182, 1190 (9th Cir.2015), allegations of imminent danger sufficient to proceed IFP are not subjected to "overly detailed" review. Thus, that the Court permitted McCoy to proceed IFP does not support the conclusion that he faces an irreparable injury absent expediting briefing by fourteen days. (papragraph 3 pgs.2-3).

Third, the briefing schedule in this appeal has been extended largely due to McCoy's actions, refuting any claim of imminent harm. He has made four prior requests to extend his deadline to file an opening brief and due to those requests and his miscellaneous filings, delayed that deadline by a total of 443 days from January 5, 2022...to March 24, 2024. Given those lengthy delays, McCoy cannot show that it is necessary for defendants' to file their answering brief on an expedited basis. [§II. pgs.3-4 paragraph 2].

Defendants' further argued, the Court should deny McCoy's request for judicial notice, stating, Although unclear, it appears McCoy's requests for judicial notice of the allegation that he did not receive defendants' motion for an extension of time to file an answering brief, and of allegations regarding medical care McCoy supposedly received in June 2009. These are not facts that are subject to judicial notice because they are "subject to reasonable dispute" and their accuracy cannot be determined from the documents McCoy provided. Further, defendants motion shows that it was properly served. Thus, this Court should deny the request for judicial notice. [re Conclusion pg.4 paragraph 1].

McCoy failed to establish good cause warranting expedited briefing under Circuit Rule 27-12. Also, his allegations are not the proper subject of judicial notice. Thus, the Court should deny McCoy's motion for expedited briefing, and request for judicial notice. [Appendix (G)]

On March 3, 2024, McCoy served and filed a reply to defendants' opposition to his motion for expedited briefing and request for judicial notice. [§I. paragraphs 1-3].

Because appellees' did not offer as proof evidence to which demonstrate McCoy actually received appellees' alleged service on McCoy theirs motions to extend deadlines to "file" answering brief and reliance on defendants' motion to show proper service is not in compliance with [Article 4. Mail General Policy Governing Processing Incoming Confidential Mail re SI.]

Inmates shall sign for all confidential mail at the time of delivery. This shall be accomplished by use of a permanent logbook or use of receipts. If receipts are used, the receipts shall be forwarded to the mailroom for filing. The log book at minimum must record the date of delivery, the inmate's name and departmental identification number, and the senders name and address (citing: California Code of Regulations CCR Title 15, §3143(b)).

Defendants' reliance on their motions to extend deadlines to "file" answering brief served upon the Court were not properly served on McCoy.

Thus, proper for adjudication on the facts under rules of evidence [Article II. Judicial Notice Rule 201 et seq.].

Because appellees' opposition to granting McCoy's motion to expedite briefing and request is construed a belated attempt to "object" to Court order filed November 17th 2023 finding McCoy's filings demonstrate that McCoy has alleged imminent danger of serious physical injury...an "ongoing danger" at the time the notice of appeal is filed it cannot be relitigated in this Court for failure to "timely" seek review reconsideration or reversal waives further litigation on the "subject matter". [§II. pg.2].

This matter is "settled". [pg.3 Line 1].

Because appellees' failure to address McCoy's request for judicial notice §II. Undisputed facts governing federal rules of appellate procedure 25 filing and service promulgated under Title VII. general provisions subdivision (b) service of all papers mandate in their opposition thereto entitles McCoy to

grant of motion to expedite briefing and hearing requiring Defendants' to file an answering brief to McCoy's informal opening brief pending before the Court as so ordered [§III. pg.3].

McCoy's [RJN] Request For Judicial Notice §II. Undisputed Facts pgs.2-3] remain "Undisputed". See Defendants' Opposition To Plaintiff's Motion For Expedited Briefing and Request for Judicial Notice pgs.1-4.

Thus, entitles McCoy to grant of motion to expedite and hearing, requiring defendants' to "file" an "answering brief" to McCoy informal opening brief pending before the Court as so ordered [paragraphs 5-6].

Until and only until appellees' "file" their "answering brief" to McCoy's informal opening brief the Court is not required to "adjudicate" the merits and thus appellees' arguments based thereon is not properly before the Court and should be disregarded in the interests of justice. [§IV. pg.3].

Defendants' argued. See Defendants' Opposition To Plaintiff's Motion For Expedited Briefing and Request For Judicial Notice §I. The Court should deny McCoy's motion for expedited briefing [pg.1].

First, the supposed irreparable harm occurred in 2009 and not related to the issue on appeal. The issue raised in McCoy's opening brief involves denial of his sixth motion for an extension of time to object to the magistrate judge's findings and recommendations to grant defendants' motion for summary judgment.

Thus, until and only until Defendants' "File" their "answering brief" to "McCoy's Informal Opening Brief", the Court is not required to "adjudicate" the merits, and therefore, defendants' arguments based thereon is not properly before the court and should be disregarded in the interests of justice [paragraphs 8-9].

The purpose and construction of rules of evidence, shall be construed to secure fairness in administration, elimination of unjustified expense and delay, promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined (quoting: Article I. General Provisions Rules Of Evidence Rule 102 (Pub.L.93-595 §1. Jan.2, 1975, 88 Stat.).

Thus, appellees' failure to introduce evidence demonstrating an entitlement to any opposition to the granting of McCoy's motion to expedite briefing and hearing and request for judicial notice, entitles McCoy to the remedy sought thereby expedited briefing and hearing as so ordered. [SV. re Conclusion paragraphs 10-11].

In This Regard, the record is silent on the issue. [Appendix (H) General Docket United States Court of Appeal for the Ninth Circuit].

On March 4, 2024, Defendants' again, instead of complying with [Appendix (A)] Ninth Circuit's court-ordered deadlines to serve and file their "answering brief" to McCoy's "informal opening brief", including the production of documentary evidence [Chapter 115—Evidence—Documentary 28 U.S.C. §1732; See 9th Cir.R.30-1.4] specifically, "all documents that are cited in McCoy's pro se opening brief; as well as those documents cited in the answering brief. [Appendix (I)].

Filed a motion for summary affirmance [re Document 51. The Court Should Summarily Affirm The Judgment] arguing, amongst other things, McCoy failed to present any substantial legal issue for this Court's review (9th Cir.R. 3-6) This Court should find waiver because McCoy did not address the deliberate indifference claims in his opening brief or oppose defendants' motion for summary judgment on the merits.

McCoy waived any merit-based opposition to defendants' motion for summary judgment in the district court opposition to the motion or opening brief, his challenges to the district court's procedural rulings are insufficient to overturn the judgment (pg.6 paragraph 1)

Nothing in the record or the opening brief suggests that the change to dispositive deadline prejudiced McCoy's ability to oppose summary judgment nor has McCoy identified any evidence he would have raised in opposition that would have created a material factual dispute (pg.9 Lines 4-8). See Appendix (J) re Appendix Of Records In Support Of Defendants-Appellees' Motion For Summary Affirmance pg.3 Docket No. 275 dated 12-3-20.

Not only does records submitted to the 9th Circuit, in support of their motion for summary affirmance show: (1) McCoy handed over to prison authority his reply to defendants' opposition to his opposition to defendants' motion for summary judgment on 11-29-20 addressed to both the Office of the Clerk of the Court and counsels of record for the defendants, (2) alerting defendants' and the district court to the fact that on 11-16-20 McCoy served and filed a "Motion In Opposition To Defendants motion for summary judgment, (3) Documented (Appendix (K) re CDC 119 McCoy C29239 Outgoing Mail Log date 11-30-20) by prison authority to had been forwarded to both the district court's clerk and counsels of record for defendants (pg.56 of 62)

No records show, defendants' forwarded to the Office of the Clerk of the United States District Court for the Eastern District of California [Appendix (L)] McCoy's Motion In Opposition To Defendants' Motion For Summary Judgment, Table Of Exhibits, and Memorandum Of Points And Authorities, challenging Defendants' Motion For Summary Judgment on the merits, deemed "filed" [Houston V. Lack, 487 U.S., at 276] on the date it is handed over to prison authorities, to be delivered to the Clerk of the Court. See Appendix (J) re pg.3 Docket No. 275 dated December 3, 2020; Compare: Appendix (M) re Findings and Recommendations of Magistrate Judge (FR) pg.2 Line 22 n.2.

The District Court, declined to address and resolve on the merits of McCoy's [Appendix (L)] motion in opposition to defendants' motion for summary judgment, table of exhibits marked (A)-(Z-10); memorandum of points and authorities; finding [Appendix (M) n.2 pg.3] in the instance the Court will exercise its discretion and not strike the sur-reply, as it does not change the analysis of defendants' motion for summary judgment. [Appendix (I) SB. McCoy's Challenges to the District Court's Procedural Rulings Are Not a Basis to Overturn the Judgment, and He has Not Shown an Abuse Of Discretion pg.9].

Defendants' also argued, McCoy's arguments regarding two procedural rulings---the extension of the dispositive-motion deadline [Appendix (N) re USDC E.D.Cal.1:12-cv-00983-AWI-SAB (PC) Order ECF Nos. 257 dated October 1, 2020; Compare: Appendix (B) Appellant's Informal Opening Brief (AIOB) FACTS [I] pg.2 paragraphs 1-2; See Appendix (O) re (Order ECF No.261) filed October 15, 2020 re FACTS [I] pg.2 paragraphs 3-4 re Appendix (B); Appendix (P) re Log CDC 119 History of McCoy C29239 Incoming/Outgoing Confidential Mail pgs. 57 of 60 In

Mail pg. 57 of 60; Also Appendix (W) re (F2) pg.2 Lines 17-18; Appendix (B)

re FACTS [I] pg.2 paragraphs 5-7; paragraphs 13-15; Compare: Appendix (Q)

re (Ordr ECF No.295) Denying Plaintiff's Sixth Motion For Extension f Time

To File Objections filed 9-28-21]

And the denial of McCoy's sixth motion to extend the deadline to file objections---are frivolous because he has not explained how either rulings would had changed the outcome [Appendix (I) pg.9 paragraph 1 Lines 1-4;

Compare" Appendix (B) re Appellant's Informal Opening Brief 9th Cir. Case No.21-16878 McCoy V. Gonzales, et.al. filed 3-19-23 FACTS [I],[II],[III] pg.2].

This is entirely untrue, as explained in McCoy's opening brief (FACTS [I] pg.2 paragraphs 1) the magistrate judge, not only entered into an agreement with counsels of records (State Department Of Justice) for defendants', to sign, date and issue an order (ECF No.257) granting defendants' motion to extend dispositive motion deadline, not only the date after the Court-Ordered deadline had already expired, finding good cause presented, extending dispositive motion deadline is extended to October 14, 2020.

An (Order ECF No.261) filed October 15, 2020, granting, in part, defendants motion to extend the time to file dispositive motion deadline (Order ECF No.257) not only filed the date after the dispositive motion deadline had already expired. Also served on McCoy the same date (Order ECF No.261) October 21, 2020, had been set to expire. (paragraphs 2-5)

Violated not only "statute of limitations [Fed.R.Civ.P. 6(a) Computation Of Time] See, e.g., Common Law Origin, Sheets V. Selden's Lessee', 69 U.S. 177, 190, 17 L.Ed 822 (When statutory time period is computed from a particular day or event, First Day is Excluded and Last Day Included)(original citation); Alonzo V. Prop. Mgmt., 643 F.3d 573, 580-581 (9th Cir.1981) (computation of time provisions are integral to statute of limitation)

(Computation of time provisions are intended to statute of limitations)  
(citation); paragraph 7 Line 16 ("in excess of jurisdiction") See Black's Law Dictionary pg.584 Excess of Jurisdiction 1.(2) ("When the judgment or order issued is of a kind that the court has no power to issue; 2. A court's departure from recognized and established requirements of law, despite apparent adherence to procedural form, the effect of which is a deprivation of one's constitutional rights") Also See Appendix (R) Request For Judicial Notice filed 4-9-24 re §[VII] Undisputed Facts pg.5 paragraph 13,

Not only did McCoy serve and file a motion in opposition to appellees' motion for summary affirmance [Appendix (H) re Docket Entry 45 Dated 3-20-24]

The record also show, in reply to appellees' to appellant's response in opposition to their summary affirmance motion [Appendix (S)] filed 3-27-24.

McCoy requested of the 9th Circuit, to take judicial notice of facts whose accuracy cannot reasonable be questioned [RJN §[VII] Undisputed Facts pg.5 paragraph 13] alleging appellees' motion for summary affirmance seeks to persuade the Court, not to conduct a personal inspection of all the documents identified in appellant's informal opening brief [Appendix (A)] which the Court ordered produced along with their answering brief [paragraph 14] seek to shift its burden of proof as to the validity of the lower court's judgment, without having to answer, not only to allegations alleging an agreement between the presiding magistrate judge and counsels of record for defendants'; to grant, in part, defendants motion to extend dispositive

motion deadline [Appendix (O) re Order ECF No.261] not only after the day after the court ordered deadline to file dispositive motion deadline to file [Appendix (N) re Order ECF No.257] had already expired, after finding [Appendix (O)] counsels of record for defendants' violated Fed.R.Civ.P.11(b) Representation of the Courts, in defendants' favor, in excess of jurisdiction Fed.R.Civ.P.6 et seq.; See FE Fed.R.Civ.P.5 (A motion that McCoy never received) re paragraph 15.

Seek to persuade the Court not to address and resolve the assigned judge's failure to rule on "timely" made objections identified in McCoy's informal opening brief re paragraph 16.

Seeks to persuade the court, not to accord McCoy to exercise and enjoy the benefits "guaranteed" by the XIV Amendment to the United States Constitution Due Process, right to be heard, at a meaningful time and in a meaningful manner.

Seek to persuade the court not to address and resolve the lower court's failure to rule on McCoy's timely filed objection to order denying his seventh motion for appointment of counsel. [Appendix (T)].

In this regard, defendants having failed to serve and file an answering brief to McCoy's informal opening brief as so ordered [Appendix (A)] to not only repeatedly refused to address the constitutional questions contained in and throughout McCoy's informal opening brief, convinced the lower court to agree to closing their eyes on the constitution and see only the law.

[Appendix (B); Compare: Appendix (U) re Declaration of Joseph Raymond McCoy In re Statement of Case filed 4-11-24 In re Appendix (H); See Appendix (V)].

On 4-25-24, the 9th Circuit issued an order granting appellees' motion for summary affirmance, stating, "A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial

as not to require further arguments pursuant to {9th Cir.R.3-6; See United States v. Hooton, 693 F.2d 857, 859 (9th Cir.1982)}.

On May 5, 2024, McCoy served and filed a "Petition For Panel Rehearing", alleging, amongst other things, the 9th Circuit decision conflicts with this Court's decision as announced in [Marbury V. Madison, 5 U.S. 137, 177-78 (1803)] ("Once jurisdiction is granted, Marbury indicated that the court's interpretational duty [must be] that of applying the full meaning of the relevant constitutional provisions..." Henry P. Monaghan, Marbury and the Administrative State, 33 Column.L.Rev. 1,6 (1983)(The court and the profession have treated the judicial duty as requiring independent judgment, not deference, when the decisive issue turns on the meaning of the constitutional text. *Id.* at 9. There is no half-way position in constitutional cases; so long as it is directed to decide the case, an Article III court cannot be jurisdictionally shut off from full consideration of the substantive constitutional issues...*Id.* at 11 re Appendix (W) §[I] Article III Principle of Marbury and Subsequent Cases, pgs.2-3 paragraphs 4-6; §[III] Marbury Doctrine, pg.3 paragraph 9. (Those...who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity that the courts must close their eyes on the constitution and see only the law)(citations)].

McCoy, argued §[VI] Congress's Legislative Intent Upon Enactment Of Title 28 §1291 Final Decisions of the United States District Court United States Code Act, pgs.5-6 paragraphs 18-19 (Because §1291 Final Decisions of District Courts, expressly refers to "all final decisions" of the district courts of the United States, it is clear, Congress' legislative intent upon enactment of §1291 Final Decisions of the district court of the United States, intends,

"all final decisions" to mean, the process by which "all final decisions" of the United States District Courts, is reached, and not the decisions itself, otherwise, the reference to "all final decisions, would be mere surplusage, entirely without meaning (citing, *Marbury V. Madison*, 5 U.S., at 174).

Decisions of the United States District Court for the Eastern District of California, assigned judge, not to rule on [Appendix (X) Objections To Order Denying Without Prejudice Plaintiff's Seventh Motion For Appointment Of Counsel Case No.1:12-cv-00983-AWI-SAB (PC) McCoy v. Gonzales, et.al. filed September 28, 2020; Appendix (Y) Objections To Order Granting Parties Extensions Of Time To File Dispositive Motions filed 9-13-20; Appendix (Z) Objections To Order Denying Plaintiff's Motion For Stay Of Dispositive Deadline Proceedings Pending Final Determination By Presiding District Judge Pursuant To Local Rule 303(e) filed 9-13-20; Appendix (Z-1) Objections To Order Denying Plaintiff's Request For Appointment Of Counsel Without Prejudice filed February 27, 2020; Appendix (Z-2) Declaration Of Bias Or Prejudice Of Judge Anthony W. Ishii filed September 27, 2020; Compare: Appendix (Z-3) Order Denying Plaintiff's Motion For Reconsideration and Disqualification filed January 15, 2021].

Including the assigned district judge's decision not to comply with Congress' legislative intent upon enactment of 28 U.S.C. §144, which provides: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or of any adverse party, such judge shall proceed no further, but another judge shall be assigned"

to hear such proceedings. (Appendix (Z-3) pg.1 Lines 24-27). Though the assigned judge knowledged congress' legislative intent upon its enactment of 28 U.S.C. §144 issued a mandate to the United States Judicial Department to proceed no further, once a "timely and sufficient" affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party (pg.3 Lines 4-5) and had been made aware (Appendix (Z-2) pg.2 paragraphs 3-5) a timely declaration of bias or prejudice made sufficient facts warranting him to proceed no further, requiring the Court to assign another judge to hear the proceeding (Appendix (Z-3) pg.3 Lines 16-17) denied, stating- "Plaintiff's motions for disqualification and reconsideration of the Magistrate Judge's October 15, 2020 order. Compare: Appendix (B) re Appellant's Informal Opening Brief re FACTS [I] pg.2 paragraph 11.

McCoy, alleged, "Instead of adjudicating on the merits of McCoy's timely "filed" objections (Houston V. LaCK, 487 U.S. 266, 276 (1988)) Bright Line Rule, the presiding magistrate judge's (Order ECF No.261) filed October 15, 2020, in compliance with Local Rule L.R. 303(f) Standard of Review, imposing a clear mandate, requiring the standard that the assigned judge shall use in all such requests is "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. §636(b)(1)(A) See Fed.R.Civ.P.72(a) (citation) (paragraph 15) "The assigned judge sidestepped the process. Compare: Appendix (Z-4) After the United States Court of Appeals for the Ninth Circuit issued After the USCA United States Court of Appeals for the Ninth Circuit ("9th Cir. Case No.15-17148 re McCoy V. Gonzales, et.al. USDC E.D.Cal.1:12-

Application For An Order For Enforcement Of Administrative Agency Judgment

And request For Judicial Notice re Declaration paragraphs 1-2 pg.1. ("Upon securing reversal of District Judge Ishii entry of summary judgment through pro bono counsel and remand, instructing Ishii to enter summary judgment in my favor on "Exhaustion Of Administrative Remedies". I was under the impression that once Ishii complied wit Wallace, Siler and McKeon's instructions, I was entitled to initiate accurate and unobstructed prosecution of my case") filed 9-10-19; See Appendix (U) re Declaration of Joseph Raymond McCoy In re Statement of Case filed 4-11-24; Compare: Appendix (Z-S) Memorandum re 9th Cir.Case No.15-17148 filed April 1, 2019 USDC E.D.Cal.1:12-cv-00983-AWI-DLB (PC).

After the 9th Circuit issued its [M]emorandum remanding this case to the United States District Court for the Eastern District of California, with order, instructing the assigned District Judge Anthony W. Ishii, to reverse his entry of judgment for the defendants' dated 9-1-15 on grounds of exhaustion (pg.6 paragraph 1) pursuant to 42 U.S.C. §1997e(a) which included (paragraph 2 pg.6) the Court's expressed appreciation to McCoy's counsel for their participation in the pro bono program and their excellent written arguments in this case, Counsel correctly identified the exhaustion issue and legal framework for our review, which included [Appendix (Z-6) re Opening Brief Of Joseph Raymond McCoy 9th Cir.Case No.15-17148 pg.32 4. McCoy is Entitled To Summary Judgment That He Exhausted His Claim (Lines 6-7)(He is therefore entitled...to proceed to the merits of his claim. [Appendix (Z-7) re Order Directing Judgment In Favor On Plaintiff On Exhaustion of Administrative Remedies Dated April 24, 2019 by United States Magistrate Judge Stanley A. Boone; Compare: Appendix (B) Appellant's Informal Opening Brief 9th Cir.Case No.21-16878 re FACTS [I] pg.2 paragraph 10; Also Compare:

(D) In re Statement Of The Case, pgs.9-11 paragraph 1-9.

In this regard, defendants' did not refute, that the merits of McCoy's case consists of a paragraph, specifically, alleging, defendants' admit to the fact, that instead of following emergency physician's orders Appendix (Z-8) personally participated in the deprivations alleged in McCoy's (FAC) First Amended Complaint Appendix (Z-9).

In this same regard [re Statement Of The Case pgs. 18-20] Contrary to defendants' motion for summary affirmance, claiming, nothing in the record... suggests that the change to dispositive deadline prejudiced McCoy's ability to oppose summary judgment nor has McCoy identified any evidence he would have raised in opposition that would created a material factual dispute Appendix (I) pg.9 Lines 4-8. Compare: Appendix (L)

No records show, defendants' forwarded to the Office of the Clerk of the United States District Court for the Eastern District of California, McCoy's motion in opposition to defendants motion for summary judgment, table of exhibits marked (A)-(Z-10) and Memorandum of points and authorities, challenging defendants' motion for summary judgment on the merits (re Statement Of The Case pg.20 paragraph 1) Appendix (M) (FR) pg.2 Line 22 n.2.

In this regard, the assigned judge declined to hear and address the merits of McCoy's motion in opposition to defendants' motion for summary judgment table of exhibits marked (A)-(Z-10) and memorandum of points and authorities which are deemed "filed" at the time it was handed over to prison officials addressed to the Office of the Clerk.

On August 20, 2024, the United States Court of Appeals for the Ninth Circuit [Appendix (2-10)] issued an order, construing petitioner's [Appendix (W)] "Petition For Panel Rehearing", to be a "Motion For Reconsideration", not only finding the issues on appeal are so "insubstantial" as not to warrant further arguments, construed to mean that the Constitutional violations cited in McCoy's pro se [Appendix (B) Appellant's Informal Opening Brief] evidenced by all the documents cited [Appendix (A) re Order Filed 11-17-23] ordered produced in appellees' "answering brief" to petitioner's pro se brief, pending before the Court, alleging, amongst other things, the United States Judicial Department, acting in agreements with the Department of Justice, as so alleged in McCoy's [Appendix (B)]. Informal Opening Brief, to deny him the benefits of the First Amendment "Guaranteed" right to access the courts, to petition government for redress of grievances; Fourteenth Amendment "Guaranteed" right to be heard, at a meaningful time and a in a meaningful manner. See *Houston V. Lack*, 487 U.S. 266, 276 "Bright Line Rule", *Bounds V. Smith* (1977) 430 U.S. 817; *Sheets V. Selden's Lessee*', 69 U.S. 177; *Marbury V. Madison*, 5 U.S. 137 (1803); See Article II. Judicial Notice Rule 201(d) When Mandatory; (e) Opportunity to be heard (citations omitted).

Denied Petitioner's [RJN] Request For Judicial Notice, mandated by Act of Congress [Appendix (2-11) re Declaration Of Joseph Raymond McCoy filed 4-11-24] after being supplied with the necessary information. [Rule 201(d)].

REASONS FOR GRANTING THE PETITION

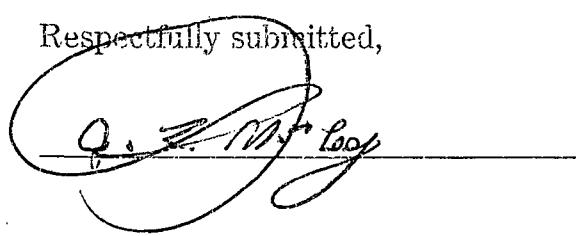
The Lower Court's decision conflicts with the decisions in this Court.

The United States Court of Appeals for the Ninth Circuit has entered a decision in conflict with the decision of this Court, has decided an important federal question in a way that conflicts with the decisions entered in this Court; has so departed from the accepted and usual course of judicial proceedings; sanctioned such departure by the lower court, as to call for an exercise of this Court's supervisory power.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Q. H. M. Loop". The signature is enclosed within a large, roughly circular, hand-drawn oval.

Date: November 17th 2024