

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

VADIM STANLEY MIESEGAES — PETITIONER
(Your Name)

vs.

SUPERIOR COURT OF SAN LUIS OBISPO et al. ,RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

VADIM STANLEY MIESEGAES
(Your Name)

10333 EL CAMINO REAL BLVD.
(Address)

ATASCADERO, CA 93423
(City, State, Zip Code)

805.468.3442
(Phone Number)

QUESTION(S) PRESENTED

Federal courts hold that the provisions of the Prison Litigation Reform Act and its exhaustion of State and administrative remedies do not apply to insane civil detainees as is petitioner. Case law reveals that only if a state ground is independant and not intervowen with federal law, may the States apply their own application of a rule. Drawing from these inferences and antecedent rulings of federal laws, it appears that state courts are equally required to follow the invalidity of the Prison Litigation Reform Act requirements and its exhaustion principles when applied to insane civil detainees?

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- 1) THE SUPERIOR COURT OF SAN LUIS OBISPO COUNTY, Respondent;
- 2) CALIFORNIA DEPARTMENT OF STATE HOSPITALS-ATASCADERO, Real Party of Interest.

TABLE OF AUTHORITIES CITED

CASES (FEDERAL):	PAGE NUMBER
<u>Patsy v Florida Board of Regents</u> , 457 U.S. 496 (1982)	5.
<u>Alley v. Carey</u> , 2005 U.S. Dist.Lexis 37301 (2005)	5.
<u>Gashi v. County of Westchester</u> , 2005 U.S. Dist.Lexis 1215 (2005)	5.
<u>Mullen v. Surtshi</u> , 590 F.Supp.2d 1233 (N.D.Cal.2008)	6.
<u>Smith v. California</u> , 2014 WL 2180532 (S.D.Cal.2014)	6.
CASES (STATE):	
<u>Abelleira v. Dist. Court of Appeal</u> , 17 Cal.2d 280 (Cal.1941)	6.
<u>In re Dexter</u> , 25 Cal.3d 921 (Cal.1979)	5.
<u>In re Head</u> , 213 Cal.Rptr. 304 (C.A. 1 Dist. 1985)	6.
<u>Plantier v. Ramma Municipal Water Dist.</u> , 12 Cal.App.5h 856 (C.A.4 Dist. 2017)	7.
STATUTES AND RULES (FEDERAL):	
42 U.S.C. §1997e	5.
28 U.S.C. §1915 et seq. (Prison Litigation Reform Act)	3, 6.
28 U.S.C. §1257(a)	3, 4, 7.
28 U.S.C. §2101(c)	3, 4.
STATUTES AND RULES (STATE):	
Cal.Civ.Code.Proc. §421	3, 4.
Cal.Civ.Code.Proc. §657	3, 4.
Cal.Civ.Code.Proc. §43	3, 4.
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ 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 C 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 SUPERIOR COURT OF SAN LUIS OBISPO court appears at Appendix B to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Sept. 20, 2017.
A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. §1997e Suits by Prisoners; Subsection (a):

"Applicability of administrative remedies. No action shall be brought with respect to prison conditions under Section 1979 of the Revised Statutes of the United States (42 U.S.C. §1983), or any other federal law, by a prisoner confined in jail, prison, or any other correctional facility until such administrative remedies as are available are exhausted."

28 U.S.C. §1915 Proceedings in forma pauperis; Subsection (h):

"...the term prisoner means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."

28 U.S.C. §2101 Supreme Court; time for appeal or certiorari; Subsection (c):

"...any writ of certiorari intended to bring any judgement or decree in a civil action, suit, or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgement."

28 U.S.C. §1257 Review by Supreme Court; Subsection (h):

"Final judgement by the highest court of a State ...may be reviewed by the Supreme Court by writ of certiorari where the validity of...a statute of the United States is drawn in question."

Cal. Civ. Code. Proc. §421 Forms and rules of pleadings:

"The forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this code."

Cal. Civ. Code. Proc. §43 Powers of the appellate courts:

"The Supreme Court, and the courts of appeal, may affirm, reverse, or modify any judgement or order appealed from, and may direct the proper judgement or order to be ordered, or direct a new trial to be had."

Cal. Civ. Code. Proc. §657 Grounds for new trial:

"The verdict may be vacated and any other decision modified or vacated in whole or in part, and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Irregularities in the proceedings of the court... or any order of the court or abuse of discretion by which either party was prevented from having a fair trial.
6. Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision of law."

Cal.Civ.Code.Proc. §32 Civil and criminal remedies not merged:

"When the violation of a right admits both a civil and criminal remedy the right to prosecute the one is not merged in the other."

STATEMENT OF THE CASE

On June 23, 2016, petitioner mailed a civil action pursuant to §421 of the California Code of Civil Procedure with the San Luis Obispo Superior Court alleging 9 claims against the real party of interest-California's Department of State Hospitals at Atascadero ("DSH-A").

On August 17, 2016, and contrary to Cal.Code.Civ.Pro. §32 that reads: "when the violations of rights [involves] both a criminal and civil remedy the right to prosecute the one is not merged in the other.", the Superior Court merged petitioner's original civil proceedings as criminal ones. (Appdx. B, p.1, ¶2).

On February 22, 2017, the Superior Court denied the complaint on grounds that petitioner failed to exhaust his administrative remedies on 8 counts and weighed in favor of defendants on the remainder. (Appdx. B).

On March 6, 2017, petitioner mailed a notice to appeal responded to on March 10, 2017, by the Superior Court informing that petitioner could not appeal; this being the result of the Superior Court's merger. Supra.

On May 17, 2017, petitioner petitioned the California Court of Appeals ("CAL-COA") for a motion for new trial pursuant to Cal.Code.Civ.Pro. §657, subdivisions 1 and 6, and §43 that granted jurisdiction to the CAL-COA to issue a new trial. On June 27, 2017, the CAL-COA denied the petition. (Appdx. A).

On July 10, 2017, petitioner petitioned for review with the California Supreme Court and on September 20, 2017, the petition was denied.

On November 29, 2017, petitioner served and mailed this Writ for Certiorari pursuant to 28 U.S.C. §2101(c)'s 90 days deadline and 28 U.S.C. §1257(a)'s provision that allow the United States Supreme Court ("USSC") to review judgements of the higher courts of the States.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because the state courts did not follow federal precedence nor the doctrine of **stare decisis** of the federal courts whose findings of facts and conclusions of law state that petitioner is not required to exhaust administrative remedies in civil rights actions. 42 U.S.C. §1997e.

In its order, the Superior Court cites In re Dexter, 25 Cal.3d 921 (1979), (Appdx. B, p.4), for exhaustion purposes and later denies petitioner relief for failure "to show an exhaustion of administrative remedies.", id p.5. Dexter would bar this court jurisdiction if the exhaustion doctrine were an "independent State ground". See Alley v. Carey, 2005 U.S. Dist. Lexis 37301 (Aug. 30, 2005) (The Dexter rule). However, and because it is intervenor and dependant on an antecedent ruling of federal law, the Dexter rule of exhaustion fails. See Alley, citing Park v. California, 202 F.3d 1146 1153 (9th Cir. 2000)("[A] State ground is independent if it is not intervenor with federal law, viz., application of the rule is not dependant on an antecedent ruling of federal law.").

Here, and as applied to petitioner, a civil detainee, Dexter is intervenor and dependant on federal rulings that confirm that petitioner is not required to exhaust his State and administrative remedies. See Patsy v. Florida Board of Regents, 457 U.S. 496 500 (1982), citing Steffel v. Thompson, 415 U.S. 472-73 (1974)(In civil rights actions, "[We] have not required exhaustion of State judicial or administrative remedies, recognizing the paramount role Congress has assigned to federal courts to protect Constitutional rights."); see also Gashi v. County of Westchester, 2005 U.S. Dist. Lexis 1215 (Jan. 27, 2005)("Whether or not plaintiff has in fact exhausted his administrative remedies, his complaint may not be dismissed for failure to exhaust.").

Civil detainees, as is petitioner who was adjudged not guilty by reason of

REASONS FOR GRANTING THE PETITION

insanity, are barred from the following the provisions of the Prison Litigation and Reform Act ("PLRA"). Both the Northern and Southern District Court's decisions in California confirm petitioner's assertion that the exhaustion doctrine is inapplicable to him. See Mullen v. Surtshi, 590 F.Supp.2d 1233 (N.D. Cal. 2008) ("The court concludes that because plaintiff was adjudicated NGI and committed to the hospital as a matter of that adjudication, he is not a prisoner as defined under the PLRA and, therefore, is not required to exhaust his administrative remedies."); Smith v. California, 2014 WL 2180532, *1 (S.D. Cal. 2014) ("Civil detainee on the other hand, is not a prisoner within the meaning of the PLRA.", citing Andrew v. King, 398 F.3d 1113, 1122 (9th Cir. 2005).

Moreover, not only did the State courts not conduct an independent standard of review into petitioner's claim that he isn't required to exhaust his administrative remedies, the Superior Court also merged petitioner's original civil proceedings as criminal which state statutes forbid. When a violation of rights for which civil and criminal remedy exist, the right to prosecute "one is not merged in the other". Cal.Code.Civ.Pro. §32. See also In re Head, 213 Cal.Rptr. 304 (C.A. 1 Dist. 1985) ("Cal.Civ.Proc.Code apply only to civil cases, and a habeas proceeding is a criminal case."). Such excess of jurisdiction may be restrained or annulled on Certiorari, Abelleira v. Dist. Court of Appeal, 17 Cal.2d 280 291 (Cal. 1941) ("[A]ny acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of Stare Decisis, are in excess of jurisdiction... and may be restrained or annulled on certiorari."). It follows from Abelleira that the State courts also exceeded their defined power by not conducting an

independant standard of review. See Plantier v. Ramma Municipal Water Dist..

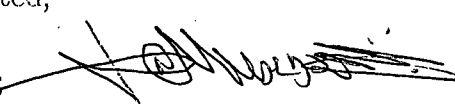
12 Cal.App.5th 856 (C.A. 4 Dist. 2017)("An appellate court applies a de novo or independant standard of review in determining whether the exhaustion of administrative remedies applies in a given case.").

For these reasons and pursuant to 28 U.S.C. §1257(a) that grants the USSC jurisdiction to review "the validity of a ...statute of the United States drawn in question" which in this case is the invalidity of exhaustion to non-PLRA litigants in state civil proceedings, the USSC may review and settle these questions of national relevance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

VADIM S. MIESEGAES 

Date: November 29, 2017