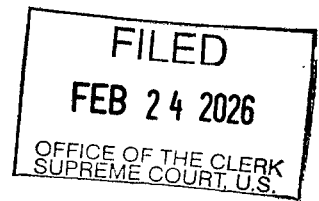


26-5643



IN THE
SUPREME COURT OF THE UNITED STATES

Russell M. Boles — PETITIONER
(Your Name)

vs.

Colorado Department of Corrections RESPONDENT(S)
et al.
ON PETITION FOR A WRIT OF CERTIORARI TO

10th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Russell M. Boles
(Your Name)

P.O. Box 600
(Address)

Canon City, CO 81215-0600
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Judicial Prejudice

Pattern and Practice of hermeneutical ignorance

Judicial Usurpation of Authority

Exorbitant Heightened Pleading Standards

Food and Medical Fraud.

Neither Kosher nor nutritionally adequate

Common sense should prevail!

Medical Care = Pretend-a-care

Buswack Defenses

Exhaustion - not properly preserved

10th Circuit Firm Waiver Rule

(*) Stars mark points of interest

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

Petitioner: Russell M. Boles

Defendant-Respondents: ^①Colorado Department of Corrections - a state agency harboring policy and regulations that offend U.S. Const.
^②Charlene Crockett is the CDC head administrator of food and laundry, who entered into conspiracy with (decoy)
^③Rabbi Yisroel Rosskamm Cowner, operator, and (CEO) of Skroll K Vaad Hakashus of Denver, promulgating non-Orthodox standards
^④Cyrus Clarkson is one of the facility level food administrators
 Other defendant on following page

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LIST OF PARTIES CONTINUED

Kristy Holgenin	-	dietitian at time of complaint					
Jason Zimm	-	food service admin.	"	"	"	"	
Kenneth Phipps	-	"	"	"	"	"	"
Dan Burns	-	"	"	supervisor	"	"	"
Marc Taylor	-	"	"	"	"	"	"
Matthew Powell	-	"	"	"	"	"	"
Derrick Roberts	-	"	"	"	"	"	"
Bryan Reichert	-	Medical Provider	"	"	"	"	"
Gary Ward	-	"	Administ		"	"	"
Reider May	-	"	"		"	"	"
Nicole Wilson	-	"	Records		"	"	"
Jessica Porecy	-	Facility Administrator	"	"	"	"	"
David Caster	-	"	Supervisor	"	"	"	"
Susan Butler	-	"	Programs	"	"	"	"
Shanna Mygaard	-	"	"	"	"	"	"
Debra Goheen	-	CDOC Accounts executive					
GPL = Global Telink	-	Thief	"	"	"	"	"

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JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Sept. 18, 2025 Appendix B

[] 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: Nov. 26, 2025, and a copy of the order denying rehearing appears at Appendix A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including May 29, 2026 (date) on March 31, 2026 (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

U.S. Constitution, Amendment One: "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 of the right of the people to peaceably assemble, and petition the Government for a redress of grievances."

U.S. Constitution, Amendment Eight: "nor cruel and unusual punishments inflicted."

U.S. Constitution, Amendment Fourteen sec. one: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state where they reside. No State shall make or enforce any law which shall abridge the privileges 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 equal protection of the laws."

29 USC § 794. Nondiscrimination under Federal Grants and Programs. (a) is cited verbatim in Appendix F.

42 USC § 2000cc-1. Protection of religious exercise of institutionalized persons. (RLUIER) is cited verbatim in Appendix F.

42 USC § 1201-12213: Equal opportunity for individuals with disabilities (ADA). Pertinent parts are cited in Appendix F.

STATEMENT OF THE CASE

Tawdry Fraudery of tax payers who expect the rehabilitation of prisoners. The Colorado Department of Corrections focuses on warehousing people. It is an agency of the Democratic extremist State Government. It has a budget larger than surrounding states combined, to support a top heavy management (more Chiefs than Indians). Most of whom do very little for the industry high salaries they receive.

There are no credited rehabilitation programs. In close custody "edovo" - a third party - offers basic self-study programs to an unmotivated population; plus - only for those who can afford it - some correspondence type college courses. Emphasis on Christian studies. No library access.

In medium and minimum, there is just a smattering of mostly blue collar training classes. Low staffing is a limiting factor in availability of those programs.

There is almost no medical care. The Department does not employ real licensed doctors. It is not uncommon for lay persons to know more than the medical providers they are allowed to see.

The food is the worst imaginable. Diet composed of mostly ultra-processed food like substances, devoid of foods that contain essential nutrients. They are patterned after outdated "SAD" regimens.

Many facilities are run in a control by abuse fashion. Medium and minimum facilities at one and a half to two times design capacity.

Thus guaranteeing recidivism and disability proliferation. That keeps people warehouses restocked and tax money coming to pay those high salaries.

Courts in too!

REASONS FOR GRANTING THE PETITION

A question of substance, not before decided by this court, a departure from accepted course of judicial proceedings. When courts immediately before examining a case - take an antagonist's view, is not viewing the case in a light favorable to the plaintiff. *Hains v. Kerner*, 404 US 519, 520-21, (1972); *Matsushita Elec Indus. Co. v. Zenith Radio*, 475 US 574, 587 (1986); *City of U.S. v. Diebold Inc.*, 369 US 654, 655 (1962); also see: *Scotts v. Harris*, 550 US 372 HN2 (2007); *Tolam v. Cotton*, 572 US 650. [2] d[3] (2014); *City & County of San Francisco v. Sheehan*, 575 US 600 [1] HN1 (2015); *Zorn v. Linton*, 146 S. Ct 926 (2026). Courts' actions by magistrate conflict with prevailing opinion. The Socratic teaching in law schools say courts should view a case from Plaintiff's perspective. The magistrate picks and chooses cases to support his errant preconceived notions, ignoring governing precedents. This is how it started.

* The magistrate, as in many lower courts, considered only procedural due process, skipping over all substantive due process concerns. The complaint is mostly about substantive rights and the deprivation thereof, without any penological objective or justification, but solely for discrimination. This is wrong no matter what process is used. *Washington v. Glucksberg*, 521 US 702, HN 7 719-720, HN 9 at 721, 117 S. Ct 2285 (1997); *Daniels v. Williams*, 474 US 327, 331 (1986); *Reno v. Flores*, 507 US 292, 301-02 (1993). That should include the process due in courts.

* Taking an errant viewpoint fosters "epistemic" or "manifest injustice". Prisoners generally, especially disabled prisoners with less common religious beliefs (Orthodox Jews) are marginalized persons in prisons. Even more so in many courts. The quickest way, and easiest, to deal with us is by employing a veil of deference to lower judicial bodies and administrations. If a magistrate's recommendation looks scholarly, it will usually be adopted without proper examination, by succeeding reviewers. The tendency to be prejudiced is ever present without an open mind. Judicial Prejudice 28 USC § 455.

A supplemental authority calls it "hermeneutical ignorance" or "closed mindedness." Jack M.C. Kwong, "Epistemic Injustice," Hypation Vol 30 n 2 (Spring 2015) pp 337-351. Judges don't regard those whom they marginalize as having anything substantive to say, so review of a plaintiff's documents is cursory at best, failing to take a challenge or alternative standpoint seriously. Flawed nature of knowledge.

* Usurpation of Authority is an unlawful exercise of prescribed jurisdiction and clear abuse of discretion, *Will v. United States*, 389 US 90, 95, 88 S. Ct 269 (1967). *Cheney v. United States*, 542 US 367, 390, 124 S. Ct. 2576 (2004). The magistrate over asserted his authority in his complete reconstruction of the complaint into what, by his standards, would not be supportable.

In the magistrate's first recommendation, his summary of claims - itself - would pass Rule 8 scrutiny. But then he dismisses everyone based on his personal perception of heightened pleading standards. Hyper technical by his view. He knew at that time I would not be able to support his new conception of claims to his exacting standards. Thus he rejected everything I offered at every turn.

The magistrate concocted idea of heightened pleading standards and greater specificity. *Conflicts with this Court's previous holdings: Jones v. Boock, 549 US 199 (2007) is instructive. HN 6 & 7 clearly establish such requirements must come by amending the rules of civil procedure, not the basis of perceived policy concerns. See: Leatherman v. Tarrant County Narc. Intel. Coord. Unit, 507 US 163, 113 S.Ct. 1160 (1993); Swierkiewicz v. Sorema N.A., 534 US 506, 123 S.Ct. 992 (2002) @ 515. Hill v. McDonough, 547 US 573, 582, 126 S.Ct. 2096 (2006) (And not through case by case determinations). Berk v. Choy, 607 US 187, 194, 146 S.Ct. 546 (2026). (A HN 7 = Fed. Rule Civ. Proc. 9, Rule 8 sets a ceiling on the information that plaintiffs can be required to provide in their claims.).

* Food is one of the major issues. In the Colorado Dept. of Corr., Food service is ~~fraud~~ service. Beerheide v. Sathers, 286 F3d 1179 (10th Cir 2002) upheld ruling in Beerheide v. Sathers, 82 F.Supp.2d 1190 (D.Cob. 2000) saying that the Dept of Corr. must provide Jewish inmates kosher food to Orthodox Standards, free.

The Beerheide case noted that "deference (to administrations) - even under Turner - is not absolute. In order to warrant deference, prison officials must present credible evidence to support their penological goals." The magistrate ignored this point. @ 1189 HNS.

The Colo. Dept. of Corr. hired Scrollk Vaad Ha Kashrus of Denver whose standards are not Orthodox, as a decoy kosher certifier under Rabbi Yisroel Rosskamm. Rosskamm is the CEO of the company; disingenuously claims to be just an employee consultant. Evidence provided by secretary of state corporate listing records. Being the Department could not support not providing kosher food in the precedent case, it is not likely they can support providing only "leite" kosher food in this case. Employing deference where it is not warranted is antagonistic therefore in conflict with current law. Turner v. Broad Sys. v. FCC, 520 US 180 (1997); Turner v. Sa. Hwy, 482 @ 90. Abdulhaseeb v. Calhoun, 600 F3d 1301, (10th Cir 2010). Courts do not defer to agencies on constitutional issues. United States West Inc v. FCC, 182 F3d 1124, HNS 1231 (10th Cir 1999) citing Chevron USA Inc v. NRDC Inc., 467 US 837, @ 845 n 11, 104 S. Ct. 2776 (1989).

There are as many opinions as to what is kosher as there are rabbis, so it was not hard to find one that would bend and lend his opinion to administrative discriminative purposes. Likewise with the "shii" dietitian - Karren Perkins - who claims correctional diets are nutritional adequate using analysis formed

by pseudoscience criteria that was officially abolished by the FDA in 2010. A problem arises when the
* magistrate accepts as fact elicited testimony of a decoy rabbi and still dietitian with obvious personal interests tied to corrections administrators without proper qualification required under Fed. R. Civ. P. 26(a)(2)(b), Fed. R. Evid. 702; and (Daubert Standard) Daubert v. Merrell Dow Pharm, Inc., 509 US 574, 113 S.Ct. 2786 (1993). Unfortunately, accepting unqualified testimony by agency personnel
* and contractors is a pattern and practice in Colorado based Federal Courts. Other examples are Mounts v. Suthers, 2008 US Dist LEXIS 67027, 2008 WL 3979364 (Aug 22 D. Colo.) and Dragon v. Erlanger, 2013 US Dist. LEXIS 92708 (D. Colo. July 2 2013).

My sincerely held belief is that what is kosher by Orthodox standards - which I hold to - should be in accordance with actual Jewish law codified in the Shulchan Oruch (Code of Jewish Law); which is without dispute the ultimate authority among Orthodox Jews. As evidence I submitted a copy of pertinent parts along with a copy of CDC Kosher Guidelines co-authored by Head Food Service Administrator and Rabbi Ross Kamm, so the Court could compare and see there is not even a close match.

* The magistrate in his recommendation for Summary Judgment, followed by both District and Appeals Courts said the claim should be denied because it was an ecclesiastical issue. However, in Jackson v. Mann, 196 F3d 316, 321 (2nd Cir 1999) (the court held

whether Jackson's beliefs are entitled to Free Exercise protection turns on whether they are "sincerely held" not on the "ecclesiastical question." District Court focused on the fact that underlying precepts of Jackson and this case differ, and deliberately overlooked the primary point of Free Exercise - sincerely held belief. ^{Pointing it out in} Holt v Hobbs, 574 US 352, 362 (2015) The guarantee of the Free Exercise Clause is not limited to beliefs which are shared by all members of a religious sect. Roskam's standards are not Orthodox and therefore do not satisfy the requirement of Beerheide supra, the 10th Cir precedent case.

If the diet were actually Kosher it would also be nutritionally adequate, because observant Orthodox Jews try to eat for health and strength to serve Hashem (G-d), not for pleasure as Gentiles do. There are no cases that clearly establish what current nutritional standards should be. I did submit a long list of authoritative books available in most libraries - therefore public record. Author websites would verify their expertise and qualifications. District Court deliberately refused to consider that information.

* It follows by common sense that if you do not get foods that contain essential nutrients, you do not get adequate nutrition. Thus a better way to establish the fact. Tomatoes and dark berries are the only foods that contain lycopene essential for adrenal gland health. I do not get any of those.

I have developed a macular degeneration problem. I do not get any of the Brassicaceae family vegetables that have the right carotenoid compounds to inhibit macular degeneration. I have particularly pronounced bowel problems. I do not get any of the onion, garlic, radish family vegetables that help control bowel issues. I do not get any leafy greens from which the majority of minerals and nutrients come from. I get very few pre-biotic and no probiotic foods.

What the department of corrections provides is mostly ultra processed food like substances along with a smattering of rotten or near rotten fresh produce. Processed food contains 5% or less of its original nutritional value. Fresh produce, picked early never develops its full nutritional value, and loses 50% of what it does have within 10 days after the harvest. So Colorado Department of Corrections does not provide adequate nutrition in the Lake Mead diet, or any other diet for that matter.

* I have a documented intestinal disorder. I am congenitally sensitive to nutritional deficiencies and processed food. Under ADA law that is a disability. Because of Colorado prison Food Fraud, I am being denied access to a critical disability accommodation. Food Service is considered a program in prisons. 42 USC § 12101-12132 (12101-12132)

I think policy should be modified so I can participate with my health in fact. So far as it has not already degenerated. Ramos v Lamm, 639 F2d 559, 570-71 N 14 (10th Cir 1980) (The State must provide an inmate

with a healthy habitative environment." This includes providing nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well being of inmate who consume it.)

* In this case Seroll K rabbis recommend violating Food Service Regulations in Colorado - patterned after the PDIT uniform version. A commanding officer in one facility - Daniel Strawn @ ECF - said food service staff performance reviews are tied to following rabbi recommendations. The recommendations are those that conform to convenience discrimination fostered by the head food service administrator. Thus a joint action of the state and private contractor. Along with the co-authored policy. There is spillover in policy between kosher and common fair diets. Both discriminate against religious and nutritional interests for convenience. AR 1550 series policies. *

* In regard to medical care, none of what the Colorado Department of Corrections offers meets state or Federal regulations or prudent modern medical practice standards. State regulations say every clinic must have a supervising physician. But there are no currently licensed physicians anywhere in the Colorado prison system. The people who act as medical providers do only what the central administrators tell them they can do. Cost over need is the discriminative factor. That - I think - is equivalent to fraud. That is particularly disparate treatment with particularly disparate impact and is illegal.

[* Janny v. Gomez, 8th 411 883 HN 46 @ 919 (10/16/2021)]

This is because it is up to medical care providers to prescribe the disability care required. Here they may admit they don't have the right expertise, send a prisoner to a specialist, then still not provide what the specialist recommends. It has happened to me twice so far - no 3 times!

Medical care is a program to which I am being denied the benefits because of my disabilities.

Supporting case law: Ruiz v. Estelle, 679 F2d 1115 (5th Cir. 1982) at 1129 HN1 (The constitutional guarantee of due process of law ordains a fair trial. The judge must not become personally embroiled in the proceedings. He must not assume the role of prosecutor) citations omitted. From the underlying case: Ruiz v. Estelle, 505 F2d 1265, 1345 (8th Cir. 1980) (The fact that unusual accommodations may be necessary, in light of their special needs, to accomplish the provision of minimal conditions of confinement does not absolve prison officials of their duty toward handicapped inmates); Robertson v. Las Animas County Sheriff's Dept., 500 F3d 1185, 1193-99 (10th Cir. 2007) (Prisoners with impaired vision or hearing are entitled to some assistance with their disabilities) HN10 at 11 and at HN18 1196 (either because that disability is obvious or because [the entity] was in learned of the disability."); Penn. DOC v. Yesky, 524 US 206, 118 S.Ct. 1952 (1998) citing ADA statute and Crawford v. Ind. DOC, 115 F3d 481, 486 (7th Cir. 1997) ("Rights against discrimination are among the few rights that prisoners do not park at the prison gates. Prisoners have the same rights

in access to programs, services, and activities available to other prisoners of the prison as disabled people on the outside have to the counterpart programs, services, and activities available to free people."]

Under the constitution, prison officials must provide for serious medical [and dental] needs. *Estate v. Gamble*, 429 US 104-106, 97 S.Ct 285 (1976); *Farmer v. Brennan*, 511 US 825, 114 S.Ct. 1970 (1994); *Ramos v. Lamm*, 639 F.2d at 574 (9th Cir. 8th Amendment duty to provide inmate medical care necessarily requires that state make available to inmates a level of care which is reasonably designed to meet the routine and emergency health needs of inmates"]. Systemic deficiencies in staffing, facilities, and procedures which make unnecessary suffering inevitable is a demonstration of deliberate indifference. *Estate v. Gamble supra*; *Alexander v. Boyd*, 876 F.Supp 773, 789 (D.S.C. 1998) ("Central to the issue of medical staffing is the necessity of a supervising physician to assure that the overall system is functioning properly to meet the overall health needs of the population").

* Despite all the case law that supports the fact everything the Colorado Department of Corrections does is wrong, the magistrate dismissed all medical and disability claims. Even though contrary to this Court's holdings and even 10th Circuit's own precedents, both Dist.

and Appeals Courts upheld the magistrate's recommendations. It may seem Democratic Extremist policy has infiltrated the Federal Courts in Colorado. So ~~now~~ ^{now} citizens have no rights except to practice sexual debauchery. A little beyond hermeneutical
* Ignorance. I say that because the fore going plain errors are blatant and there are many more clear errors, all of which the 10th Circuit Court of Appeals missed because of cursory reading of Plaintiff's documents. But discriminatively parrotting opposing counsel's answer brief with no consideration to the Reply or motion for rehearing.

* Other conflicts with governing law? put the prejudice to an object level. ① District Court judge said the fact that Rabbi Rozskamm's opinions are not Orthodox was immaterial and Plaintiff's objection were not proper for Summary Judgment stage. She refused to even look at much less compare actual Jewish law to Private Party and State co-authored policy. ② She refused to consider that some of denied ADA accommodations had been previously granted in an ancillary agreement to ~~Montez~~ v. Romer, 32 F Supp 2d 1235 (D. Colo 1999) ③ She said Plaintiff did not submit proof ignoring objection to magistrate's failure to enforce discovery orders and denial of Plaintiff request for further discovery. District Court Judge said there were several extensions of time issued for the discovery but ignored the fact all of them were for defendant, yet still never fully complying. In prison the state controls all of the information.

State defendants submitted false and incomplete medical records which could be established by the case record. The magistrate refused to sanction them. Rule 26(a), Rule 56 - See:

Summary judgment should not be granted before discovery is completed. *Murrell v. Bennett*, 615 F.2d 306, 29 Fed.R. Serv. 2d (Colloghon) 1554 (1980) U.S. App. LEXIS 18765 (5th Cir. 1980); *Olin Corp. v. Insur. Co. of N. Am.*, 603 F.Supp. 445 (S.D.N.Y. 1985).

* Although the magistrate accepted opposition's unqualified affidavit testimony by people whose interests were directly tied to Pruchnik's actions of agency, he refused to give Plaintiff's affidavits sworn to under penalty of perjury by his personal knowledge and involvement in claimed offenses any credit at all - calling them conclusory and conjectures. *Jones v. Blanes*, 343 F.3d 918, (9th Cir. 2004) (where Plaintiff is pro-se, Court must consider as evidence in opposition to summary judgment all of [his] contentions offered in motions and pleadings, where such knowledge is based on personal knowledge and set forth facts that that would be admissible in evidence; and where [Plaintiff] attests under penalty of perjury that contents of the motions are true and correct.) Followed by 62 courts.

* Bushwack defenses = Misconstrued grievances and grievance procedures. Defendants preserved the affirmative defense to exhaustion as to the original complaint but not to the magistrate reconstructed version, which changed every thing. Secondly, The

10th Circuit exclusive - Firm Waiver Rule vs. Abuse of Discretion, in conflict with Their own precedents.

Grievance assessment at the highest level and by administrative control; even lower levels is part of The legal services department. Legal Services controls law library, ADA-RA accommodations, and to a large extent - Religious accommodations as well. They look out for issues concerning clinical services and food services as well. Thus every grievance is automatically ~~st~~ treated adversely with no intent to resolve anything. They only make excuses or avert issues.

One way they do it is by denying everything that does not conform to an extremely limited number of allowed remedies. If a prisoner does not cite one of the allowed remedies, it is automatically considered a procedural denial, even if the remedy needed is not among those allowed. To them, the fact that a specific remedy is not available is not relevant.

Another way is by deliberately misconstruing the rules and often a prisoner's words in his grievance. Admin. Reg. AR 850-04 IV (c)(7) "A substantive issue or remedy may not be added at a later step." [This does not each step must be verbatim of the previous step, but that is the way they interpret it or misconstrue it.] "The issue and remedy contained in the original grievance must be incorporated in each subsequent step." [It does not say it cannot be incorporated by reference which only makes sense to do, especially if

you feel you need to restate the same thing in a different way for the sake of comprehension.]

Such tactics along with denial of meaningful access to law libraries frustrates, most prose inmate litigation. If an inmate is a tiny bit successful in court, the restrictions get tighter in retaliations as do punishments. Lewis v. Casey, 518 US 343, 351-53, 116 S.Ct 2174 (1996); Tenn. v. Lane, 541 US 508, 517 H¹¹⁶, 124 S.Ct 1979, (2004) says such tactics are forbidden to the extent of abrogating sovereign immunity.

Jones v. Bock, 549 US 199 @ H¹¹⁶, (2007) says PLRA requires exhaustion of "such remedies as are available." Woodward v. Ngo, 548 US 573 put emphasis on meeting procedural deadlines and compliance with all other applicable procedural rules. @88 compliance with grievance procedures is all that is required. Ross v. Blake, 578 US 632, 639 (2016) confirms that "The remedies must indeed be available to the prisoner." H¹¹⁶, 7, and 8 procedures that are dead end, opaque, or when Officials thwart the process, it need not be exhausted. citing Booth v. Churner, 522 US 731, 738, 121 S.Ct 1819 (2001) (Exhaustion is about the process not forms or relief). The District Court judge focused only on one sentence in the case ^{ROSS} that said there is "no excuse - even to take special circumstances into account" for not going through the process. In my case, the process was used several times for every issue though not with the exacting

specifically the magistrate and District Court erroneously imposed. Later cases confirm my efforts were proper. Valentine v. Collier, 590 US 935 (2020); Perth v. Richards, 605 US 460 (2025) mentions exceptions: (1) The consistent unwillingness to provide relief, (2) Scheme is opaque (3) Machination, misrepresentation, and intimidation by officials. Prisoners need not exhaust unavailable remedies. Ross v. Blake, 578 US 632 (2016) and "only those grievance procedures that are capable of use to obtain some relief for the action complained of."

In demonstrating my efforts, a time tining Appendix E, on the wheelchair accessible cell was submitted. Along with it, citations to Fed. R. Civ. P. 8 = affirmative defense must be pleaded in response to complaint. Magistrate reconstructed version was in effect a new complaint, to which previous defenses do not necessarily apply. C. W. Wright & A. Miller Federal Practice and Procedure §1357 pp 708-710, 721-729 (2014). When there is a four year delay, there is obvious prejudice by ambush. Gomez v. Toledo, 466 US 635 (1984), 100 S. Ct. 1920 (1980) (Mad Ritz). Estoppel should have applied.

In regard to one of the kosher food issues: Camp v. Brennan, 219 F3d 278, 280-81 (5th Cir. 2002) "When an issue is decided on the merits at the highest levels, it is exhausted - even if the grievance process was not sufficiently used." Decided before the grievance process was completed.

Kosher food grievances were pending in the long drawn out process at the same time Plaintiff and his medical provider were discussing the matter with the head food service administrator who ultimately resolved the issue.

In regard to the wheelchair accessible cell, that was one of a list of way ADA accommodation in general were being denied in the original claim. That is how it was originally grieved. It just happened to ^{be} an issue the magistrate selected to make a new claim out of. When it became clear the facility ~~did~~ not have any intention of giving me a proper cell that was wheelchair accessible, I then filed a more specific grievance see timeline addendum. In Dackson v. Essex, 105 F4th 948 (7th Cir. 2024) (Inmate who files late but nevertheless has his grievance addressed by prison system has properly exhausted remedies. Siggers v. Campbell 2008 US Dist. LEXIS 107466. The wheelchair issue being an ongoing issue doesn't have any time constraints as to when grievance need be filed under the continuing wrong rule, as long as prison authorities retain power to do something about it. Marchant v. Cox, 2020 US Dist LEXIS 78458, 2020 WL 4422998. The original grievances would have been enough under Brownell v. Krum, 446 F3d 305 NMG (2d Cir. 2006) (prisoner need not articulate every theory he may later use in litigation) @ 310 citing Stirling v. Davis 297 F3d 1646, 650 B7th Cir. 2002); Gribbin v. Brpaie, 557 F3d 1113, 1120.

C9th Cir. 2009) Nor must a grievance contain every fact necessary to prove each element of an eventual lawsuit. Because purpose is not to lay groundwork for litigation).

* The Firm Waiver Rule is wrong for this case. It was not for lack of due diligence that the date for filing objections to magistrate's first recommendation was missed. See timing call in Appendix B. The magistrate issued his recommendation on 2-16-2021 and Plaintiff received it on 2-22-2021. On the same day an extension of time motion was put in the hands of prison officers for deposit in US Mail. It would have been impossible to respond to a 79 page ~~original~~ detailed document in what remained of the 14 day period for responding (6 days). Additional 14 days was and is common for such extensions and that was what was expected. The facility was under COVID 19 lockdown with no access to a law library. Plaintiff had only an old prisoner self-help manual to go by and no way to verify case law. An extra 14 days would have given Plaintiff to 3-19-2021 with the Rule 6(d) provision, which is the day objections were placed in control of prison officers - timely by prisoner mail box rule. However, The District Court granted only 7 days instead of 14 and Plaintiff was not given notice of that order until 3-29-2021. Motion for reconsideration was filed explaining the circumstances and an appeal was attempted.

In Morales-Fernandez v. INS, 418 F.3d 1116, 1119 (10th Cir. 2005) (The Firm Waiver Rule does not apply if the plaintiff was not informed of the period for objecting.)

Under Thomas v. Arn, 474 U.S. 140, 155, 106 S.Ct. 466 (1985) (because the rule is "non-jurisdictional" ~~the~~ waiver provision the Court of Appeals may excuse the default in the interest of justice). This issue came up for the first time in opposing counsel's Answer Brief and the Appeals Court did not read Plaintiff's Reply. That reply offered similar explanation as here.

If the Appeals court would have acted as it should have, consideration would have been given Plaintiff's effort to comply, force and plausibility of explanation for failure to comply, and impact of the issues raised. "Plain error" is short hand for "interests of justice," "miscarriage of justice," or "manifest injustice" exception. United States v. Olano, 507 U.S. 725, 736, 113 S.Ct. 1770 (1993); United States v. Young, 470 U.S. 1, 15, 105 S.Ct. 1639 (1985). United States v. Gonzalez-Huerta, 403 F.3d 727, 732 (10th Cir. 2005) describes "plain error" as (1) error (2) that is plain (3) effect substantial rights, and (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings. AW4 says error must have affected the outcome of proceedings and must be prejudicial.

United States v. Brycroft, 155 F.4th ____ (10th Cir. 2023) said it is error for District Court to not consider imposition of special conditions.

Plaintiff was not informed of the period for objecting to magistrate's first recommendation because he did not receive the District Court's order on his motion for extension for more than a month after it was rendered. The magistrate's recommendation undisputably affected Plaintiff's substantial rights, as well as fairness and integrity of proceedings. His antagonistic vein from the start and all the way through litigation was overt prejudice because it conflicts with law that says a court must view a case in favor of the plaintiff. Appeals Court's perfunctory review was further prejudice.

CONCLUSION

- 1) Will overt prejudicial recommendations carry the holdings of the hermeneutical ignorant courts above him?
- 2) Will judicial usurpation of authority by magistrate be condoned?
- 3) Will food and medical care fraud continue without impunity?
- 4) Can there be relief from ambush by defendants?

I would like this court to overturn lower court holdings order that I be given opportunity to update original complaint to have it reviewed de novo without consideration of prejudicial District Court inputs.

5-25-2026

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