

CASE NO _____

IN THE
SUPREME COURT OF THE UNITED STATES

ILICH VARGAS — PETITIONER

VS.

JOHN MC MAHON — RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE NINTH CIRCUIT COURT OF APPEAL CENTRAL DISTRICT OF
CALIFORNIA EAST DIVISION MARCH 14 2018 DECISION
CASE NO: 16-55816

PETITION FOR WRIT OF CERTIORARY

ILICH VARGAS 1212341370
9500 N. ETIWANDA AVE.
RANCHO CUCAMONGA CA. 91739
IN PRO-SE

RECEIVED

JUL 2 - 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

I. PETITION FOR WRIT OF CERTIORARY

PETITIONER ILUCH VARGAS HEREBY PETITIONS FOR WRIT OF CERTIORARY TO REVIEW THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT MARCH 13, 2016 DECISION IN CASE NO 16-55816 TO AFFIRM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA EAST DIVISION MAY 6, 2016 DECISION TO DENY PETITIONER'S APPLICATION TO PROCEED IN FORMA PAUPERIS (IFP) AND TO DISMISS THE PETITIONER'S 42 U.S.C. § 1983 ACTION.

II QUESTIONS HEREBY PRESENTED.

1. WHETHER A DISTRICT COURT JUDGE AND/OR MAGISTRATE CONDUCTING A 28 U.S.C § 1915 IFP SCREENING ACTS IN AN EXCESS OF DISCRETION AND BEYOND THE LIMITS OF LAW IF THEY INCORRECTLY AND UNFAIRLY MISCONSTRUE AND MISREPRESENT THE INDIGENT PRO-SE "LAY PERSON'S" PLAIN, ORDINARY AND CLEAR STATEMENTS AND LANGUAGE IN THE PLEADING OF A CIVIL RIGHTS COMPLAINT AND IN SUCH A MANNER THAT CAUSES MISSTATEMENTS AND MISINTERPRETATION OF THE PLAINTIFF'S ACTUAL STATEMENTS AND THE FACTUAL ALLEGATIONS SET FORTH IN THE INITIAL COMPLAINT PLEADING AND IN ORDER TO UNFAIRLY DENY THE INDIGENT PRO-SE PLAINTIFF'S IFP APPLICATION AT THE INITIAL SCREENING STAGE ON GROUNDS THAT THE PLAINTIFF FAILED TO STATE A CLAIM, THE CLAIM IS FRIVOLOUS OR SEEKS DAMAGES FROM IMMUNE DEFENDANT. BUT, THAT ARE BASED ON CLEAR OBJECTIVELY APPARENT MISREPRESENTATIONS AND MISSTATEMENTS OF THE MATERIAL FACTUAL ALLEGATIONS SET FORTH IN THE ACTUAL COMPLAINT PLEADING ?

IF THE ANSWER TO THE ABOVE QUESTION 1., IS: YES THEN,

2. WHETHER, SUCH CONDITIONS, IF THEY EXIST IN THIS CASE AS DESCRIBED ABOVE, (I.E. A DISTRICT COURT'S INCORRECT AND UNFAIR DENIAL OF IFP APPLICATION AND DISMISSAL OF AN INDIGENT, PRO-SE, LAY PERSON'S CIVIL RIGHTS ACTION ON THE PRETEXTS THAT PLAINTIFF FAILED TO STATE A CLAIM, THE CLAIM IS FRIVOLOUS OR MALICIOUS OR SEEKS DAMAGES FROM IMMUNE DEFENDANT; BUT THAT ARE BASED ON OBJECTIVELY APPARENT MISREPRESENTATIONS AND MISSTATEMENTS OF THE ACTUAL FACTUAL ALLEGATIONS AND LANGUAGE SET FORTH IN THE COMPLAINT PLEADING), WOULD EQUATE AND BE TANTAMOUNT TO UNCONSTITUTIONAL DEPRIVATION OF THE RIGHT TO ACCESS JUSTICE AND ACCESS TO THE COURTS OF LAW IN VIOLATION OF ARTICLE III OF THE UNITED STATES CONSTITUTION AND THE SEVENTH AMENDMENT; AND SPECIALLY IF AFTER A FAIR IMPARTIAL AND COMPLETE READING OF THE PLEADING, IN A LIGHT MOST FAVORABLE TO THE PRO-SE PLAINTIFF, AND ACCEPTING ALL FACTUAL ALLEGATIONS AS TRUE, IT IS OBJECTIVELY APPARENT THAT THE INDIGENT PRO-SE PLAINTIFF HAS IN FACT PLEAD SUFFICIENT FACTS TO STATE VALID COGNIZABLE CLAIMS OF VIOLATION OF FEDERAL CONSTITUTION CIVIL RIGHTS.?

3. WHETHER, A DISTRICT COURT (MAGISTRATE OR JUDGE) ACTS IN EXCESS OF ITS DISCRETION AND BEYOND THE LIMITS OF LAW DURING A 28 U.S.C. § 1915 SCREENING OVER THE FACIAL PLEADING OF AN INDIGENT LAY PERSON'S CIVIL RIGHTS COMPLAINT AND IFP APPLICATION IF THE DISTRICT COURT MAKES FACTUAL FINDINGS ON WHICH IT RELIED TO ENTER DECISIONS TO DENY IFP APPLICATION AND DISMISS THE CIVIL RIGHTS ACTION, BUT WITHOUT CONDUCTING ANY TYPE OF ADVERSARIAL

EVIDENTIARY HEARING IN ORDER TO ADEQUATELY RESOLVE GENUINE QUESTIONS OF FACTS, BUT RATHER MAKES FINDING OF FACTS BASED ON WHAT OBJECTIVELY APPEARS TO BE PREDISPOSED, PERSONAL, EXTRAJUDICIAL FIXED BELIEFS, IDEALS AND/OR CONJECTURES THAT ARE UNSUPPORTED BY THE CASE RECORDS OR UNSUPPORTED BY PREVAILING AUTHORITATIVE LAWS AND/OR THAT WERE BASED ON FACTS AND INFORMATION THAT COULD NOT HAVE BEEN LEARNED DURING ANY PROCEEDINGS THAT TOOK PLACE IN THE CASE ?

4. WHETHER, FACTUAL FINDINGS MADE BY A LOWER DISTRICT COURT (MAGISTRATE AND/OR JUDGE) THAT ARE NOT SUPPORTED BY THE RECORD NOR ANY FACT OR INFORMATION THAT COULD HAVE BEEN LEARNED IN THE PROCEEDINGS OF THIS CASE, BUT THAT RATHER APPEAR TO BE BASED ON THE COURT'S (MAGISTRATE OR JUDGE) PREDISPOSED, PERSONAL AND EXTRAJUDICIAL FIXED BELIEFS, IDEALS CONJECTURES AND/OR PARTIAL INCLINATIONS CONSTITUTE GROUNDS REQUIRING JUDICIAL DISQUALIFICATION AND RECUSAL FROM THE PROCEEDINGS; SPECIALLY IF IN EVERY INSTANCE SUCH PREJUDICIAL FINDINGS DEMONSTRATE A DEEPEASED FAVORITISM TOWARDS THE DEFENDANTS AND ANTAGONISM TOWARDS THE INDIGENT PRO-SE PLAINTIFF ?

5. WHETHER, ALLEGATIONS BY A CIVIL RIGHTS ACTION PLAINTIFF OF A WIDESPREAD CONSPIRACY AND/OR WIDESPREAD IMPLEMENTATION OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES, PATTERNS AND USAGES ON BEHALF OF VARIOUS COUNTY AGENCIES AND OFFICIALS AND PRIVATE CO-CONSPIRATORS

THAT RESULT IN; AND CAUSES SYSTEMIC, INSTITUTIONAL AND STRUCTUAL DEPRIVATION OF AND INTERFERENCE WITH THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING A STATE'S CRIMINAL PROSECUTION CONSTITUTE VALID GROUNDS ON WHICH A CLAIM FOR VIOLATION OF SIXTH AMENDMENT CIVIL RIGHTS OF THE U.S. CONSTITUTION MAY STAND?

6. WHETHER, ALLEGATIONS BY A CIVIL RIGHTS ACTION PLAINTIFF OF A WIDESPREAD CONSPIRACY AND/OR WIDESPREAD IMPLEMENTATION OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES, PATTERNS AND/OR USAGES ON BEHALF OF VARIOUS COUNTY AGENCIES AND OFFICIALS THAT RESULT IN AND CAUSES SYSTEMIC, INSTITUTIONAL AND STRUCTUAL DEPRIVATION OF AND INTERFERENCE WITH THE MEANINGFUL AND EFFECTIVE EXERCISE OF CIVIL RIGHTS TO SELF-REPRESENTATION DURING A STATE'S CRIMINAL PROSECUTION CONSTITUTE VALID GROUNDS ON WHICH A CLAIM FOR VIOLATION OF SIXTH AMENDMENT CIVIL RIGHTS OF THE U.S. CONSTITUTION MAY STAND?

7. WHETHER, ALLEGATIONS BY A PRESENTENCED ENCARCERATED CIVIL RIGHTS ACTION PLAINTIFF OF A WIDESPREAD CONSPIRACY AND/OR WIDESPREAD IMPLEMENTATION OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES, PATTERNS AND USAGES ON BEHALF OF VARIOUS COUNTY AGENCIES AND OFFICIALS THAT RESULT AND CAUSE SYSTEMIC, INSTITUTIONAL AND STRUCTUAL DEPRIVATION OF-OR INTERFERENCE WITH-THE RIGHT TO EFFECTIVELY ACCESS THE COURTS OF LAW FOR REDRESS OF WRONGS, CONSTITUTE VALID GROUNDS ON WHICH CLAIMS FOR

VIOLATION OF THE FIRST AND SIXTH AMENDMENT CIVIL RIGHTS OF THE U.S. CONSTITUTION MAY STAND?

8. WHETHER, ALLEGATIONS BY A PRESENTENCED ENCARCERATED CIVIL RIGHTS ACTION PLAINTIFF OF A WIDESPREAD CONSPIRACY AND/OR WIDESPREAD IMPLEMENTATION OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES, PATTERNS AND USAGES ON BEHALF OF VARIOUS COUNTY AGENCIES AND COUNTY OFFICIALS AS METHODS TO THREATEN, INTIMIDATE, COERCE, PUNISH, DISCOURAGE AND/OR CHILL THE PLAINTIFF FROM EXERCISING CIVIL RIGHTS TO ACCESS TO THE COURTS OF LAW FOR REDRESS OF WRONGS, CONSTITUTE VALID GROUNDS ON WHICH A "RETALIATION" CLAIM FOR VIOLATION OF THE FIRST AND SIXTH AMENDMENTS OF THE U.S. CONSTITUTION MAY STAND?

9. WHETHER, ALLEGATIONS BY A PRESENTENCED ENCARCERATED CIVIL RIGHTS ACTION PLAINTIFF OF WIDESPREAD IMPLEMENTATION OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES, PATTERS AND USAGE OF DELIBERATE INDIFFERENCE AND RECKLESS DISREGARD TOWARDS KNOWN, INFORMED AND APPARENT HAZARDOUS AND UNSAFE LIVING CONDITIONS EXISTING IN THE COUNTY JAIL THAT RESULTED AND CAUSED A SERIOUS RIGHT KNEE INJURY TO THE PLAINTIFF (TORN LIGAMENTS AND TENDONS) THAT REQUIRED HOSDITALIZATION; AND SURGERY; AND LONG PAINFUL RECOVERY TO REPAIR, CONSTITUTE VALID GROUNDS ON WHICH A CLAIM FOR VIOLATION OF THE EIGHTH OR FOURTEENTH AMENDMENTS TO FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT UNDER THE U.S. CONSTITUTION MAY STAND?

10. WHETHER, ALLEGATIONS BY A PRESENTENCED ENCARCERATED CIVIL RIGHTS ACTION PLAINTIFF OF WIDESPREAD IMPLEMENTATION OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES, PATTERNS AND USAGES OF DELIBERATE INDIFFERENCE AND RECKLESS DISREGARD ON BEHALF OF COUNTY JAIL OFFICIALS AND MEDICAL STAFF TOWARDS SERIOUS CHRONIC PAIN AND PHYSICAL THERAPY TREATMENT FOR RIGHT KNEE INJURY THAT RESULTED IN- AND CAUSED UNNECESSARY PROLONGMENT OF SERIOUS PAIN AND SUFFERING AND DELAYED REHABILITATION OF RIGHT KNEE INJURY AFTER SURGERY FOR TORN LIGAMENTS AND TENDONS SUFFERED AT COUNTY JAIL, BECAUSE OF HAZARDOUS AND UNSAFE LIVING CONDITIONS. CONSTITUTE VALID GROUND ON WHICH A CLAIM FOR VIOLATION OF THE EIGHTH OR FOURTEENTH AMENDMENT CIVIL RIGHT FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT UNDER THE U.S. CONSTITUTION MAY STAND?

11. WHETHER, ALLEGATIONS BY A PRESENTENCED ENCARCERATED CIVIL RIGHTS ACTION PLAINTIFF OF WIDESPREAD IMPLEMENTATION OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES, PATTERS AND USAGES OF DELIBERATE INDIFFERENCE AND RECKLESS DISREGARD ON BEHALF OF NUMEROUS AND VARIOUS COUNTY JAIL OFFICIALS TOWARDS THE DEPRIVATION OF DUE PROCESS SAFEGUARDS DURING INMATE DISCIPLINARY PROCEDURES (IE., RIGHT TO NOTICE, RIGHT TO PRESENT EVIDENCE AND CALL ON WITNESSES, AND THE RIGHT TO A HEARING BEFORE AN IMPARTIAL ARBITRATOR/OFFICER) AND THAT RESULTS IN- AND CAUSES CRUEL FORMS OF SEGREGATION, AND ISSOLATION, AND DEPRIVATION OF LIBERTY INTERESTS WITHOUT DUE PROCESS OF LAW CONSTITUTE VALID GROUNDS ON WHICH CLAIMS OF VIOLATION OF THE

FIFTH AND FOURTEENTH AMENDMENTS CIVIL RIGHTS TO DUE PROCESS OF LAW UNDER THE U.S. CONSTITUTION MAY STAND?

AND IF THE ANSWER TO ANY OF THE QUESTIONS ABOVE, 5 THROUGH 11 ARE YES THEN,

12. WHETHER, AFTER A FAIR, IMPARTIAL AND COMPLETE READING OF THE PLAINTIFF'S COMPLAINT AND SUPPORTING DOCUMENTS, TAKING ALL FACTUAL ALLEGATIONS AS TRUE AND CONSTRUING ALL STATEMENTS IN A LIGHT MOST FAVORABLE TO THE PLAINTIFF, AND GIVING THE BENEFIT OF DOUBT TO THE PLAINTIFF, COULD JURIST OF SOUND REASON BE ACTUALLY LEFT WITH NO DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS THAT WOULD ENTITLE HIM TO RELIEF TO ANY OF THE CLAIMS SET FORTH ABOVE IN QUESTIONS 5 THROUGH 11?

13. WHETHER, A PRESENTENCED INCARCERATED CIVIL RIGHTS ACTION PLAINTIFF AWAITING TRIAL IN A STATE'S CRIMINAL PROSECUTION WOULD BE EXEMPT FROM THE GENERAL APPLICATION OF HECK V. HUMPHREY 512 U.S. 477 (1994) BAR AND RULE OF ABSTENTION FOR CIVIL RIGHTS 42 U.S.C § 1983 ACTION WHERE A FAVORABLE DAMAGES OR INJUNCTIVE RELIEF JUDGMENT WOULD NOT INVALIDATE ANY EXANT CONVICTION, NOR WOULD IT INPONG AND INVALIDATE ANY FUTURE POTENTIAL CRIMINAL CONVICTION BECAUSE THE ACTUAL DAMAGES AND INJURIES CAN BE EASILY IDENTIFIED, QUANTIFIED, ISOLATED AND SEPARATED FROM ANY EFFECTS AND THE IMPLICATIONS OF A CRIMINAL CONVICTION; AND WHERE IT

HAS BEEN ALLEGED AND SHOWN THAT THE SUPERIOR, APPELLATE AND SUPREME COURTS OF LAST RESORT OF THE STATE HAVE OBJECTIVELY DEMONSTRATED A MANIFESTATION OF UNWILLINGNESS, INEFFECTIVENESS AND/OR FUTILITY TO ADEQUATELY ADDRESS, RECOGNIZE, VINDICATE AND PROTECT FEDERAL CONSTITUTION CIVIL RIGHTS THAT ARE BEING THREATENED AND/OR VIOLATED BY THE STATES COUNTY OFFICIALS DURING THE TIME OF PENDANCY OF THE CRIMINAL PROSECUTION AND THAT HAS CAUSED GREAT IMMEDIATE IRREPARABLE DAMAGES TO THE PLAINTIFF?

H. WHETHER, A PRESENTED INCARCERATED CIVIL RIGHTS ACTION PLAINTIFF AWAITING TRIAL IN A STATES CRIMINAL PROSECUTION WOULD BE EXEMPT FROM THE GENERAL APPLICATION OF THE YOUNGER V. HARRIS 401 U.S. 279 (1983) RULE OF ABSTENTION WHEN THE PLAINTIFF HAS REASONABLY ALLEGED AND SHOWN THAT EXTRAORDINARY CIRCUMSTANCES OF GREAT, IMMEDIATE AND IRREPARABLE DAMAGES EXIST BECAUSE HE IS BEING SYSTEMATICALLY, INSTITUTIONALLY AND STRUCTUALLY DEPRIVED AND PREVENTED FROM A MEANINGFUL OPPORTUNITY TO SET UP, PREPARE, PRESENT, PRESERVE AND RELY ON AN EFFECTIVE CRIMINAL DEFENSE AS THE DIRECT RESULT OF FEDERAL CIVIL RIGHTS VIOLATIONS AT HANDS OF COUNTY OFFICERS AND OFFICIALS; AND WHEN THE PLAINTIFF HAS REASONABLY ALLEGED AND SHOWN THAT THE SUPERIOR, APPELLATE AND SUPREME COURTS OF LAST RESORT OF THE STATE HAVE OBJECTIVELY DEMONSTRATED A MANIFESTATION OF UNWILLINGNESS, INEFFECTIVENESS AND/OR FUTILITY TO PROVIDE CONSTITUTIONALLY ADEQUATE PLAIN AND

SPEEDY PROCEDURE TO ADDRESS, RECOGNIZE, VINDICATE AND PROTECT FEDERAL CONSTITUTIONAL CIVIL RIGHTS THAT ARE BEING THREATENED AND VIOLATED BY COUNTY OFFICERS AND OFFICIALS DURING THE PENDANCY OF THE CRIMINAL PROSECUTION IN THE STATES COURTS. ?

15. WHETHER, A PRESENTECE INCARCERATED CIVIL RIGHTS ACTION PLAINTIFF AWAITING TRIAL IN A STATES CRIMINAL PROSECUTION WOULD BE EXEMPT FROM THE GENERAL APPLICATION OF THE YOUNGER V. HARRIS 401 U.S. 279 (1985) RULE OF ABSTENTION WHEN THE PLAINTIFF HAS REASONABLY ALLEGED AND SHOWN THAT EXTRA ORDINARY CIRCUMSTANCES OF BAD FAITH, HARASSMENT OFFICIAL LAWLESSNESS AND/OR JUDICIAL BIAS AND PARTIALITY EXISTS ON BEHALF OF STATE PROSECUTORS AND STATE COURT JUDGES DURING THE PENDANCY OF THE STATE CRIMINAL PROSECUTION AND WHEN THE PLAINTIFF HAS REASONABLY ALLEGED AND SHOWN THAT THE SUPERIOR, APPELLATE AND SUPREME COURTS OF THE STATE HAVE OBJECTIVELY DEMONSTRATED A MANIFESTATION OF UNWILLINGNESS, INEFFECTIVENESS AND/OR FUTILITY TO PROVIDE CONSTITUTIONALLY ADEQUATE PLAIN AND SPEEDY PROCEDURE TO ADDRESS, RECOGNIZE, VINDICATE AND PROTECT FEDERAL CIVIL RIGHTS THAT ARE BEING THREATENED AND VIOLATED AT HANDS OF COUNTY OFFICIALS DURING THE PENDANCY OF THE CRIMINAL PROSECUTION IN THE STATE'S COURTS. ?

IF THE ANSWERS TO QUESTIONS 13 THROUGH 15 ARE YES THEN,

16. WHETHER, AFTER A FAIR IMPARTIAL AND COMPLETE READING OF THE PLAINTIFF'S PLEADING AND SUPPORTING DOCUMENTS TO THE CIVIL RIGHTS COMPLAINT AND PLAINTIFFS OPPOSITION TO THE DISTRICT COURT MAGISTRATE RECOMMENDATIONS TO DISMISS THE COMPLAINT (CASE NO: EDCV 15-00231-R-KES) AND ALSO THE OPENING APPEAL BRIEF (9TH CIRCUIT CASE NO: 16-55816), IT MAY BE FOUND BY A FAIR MINDED JURIST OF SOUND REASON THAT THE PLAINTIFF/PETITIONER HAS IN FACT PLEAD AND SHOWN SUFFICIENT FACTUAL ALLEGATIONS THAT DEMONSTRATES THE EXTRAORDINARY CIRCUMSTANCES AS THOSE DESCRIBED IN QUESTIONS 13 THROUGH 15 DO EXIST IN THIS CASE AND THAT WOULD QUALIFY FOR EXCEMPTIONS TO THE GENERAL APPLICATION OF THE HECK V. HUMPHREY 512 U.S. 477 (1994) AND THE YOUNGER V. HARRIS 401 U.S. 279 (1985) RULES OF ABSTENTION UNDER THE PARTICULAR FACTUAL CIRCUMSTANCES OF THIS CASE?

17. WHETHER, A PUBLIC CITIZEN SUBJECT TO PRETRIAL/PRESENTENCE COUNTY JAIL ENCARCERATION PENDING TRIAL IN A STATES CRIMINAL PROSECUTION HAS A PROTECTED RIGHT TO ACCESS EQUAL PROTECTION AFFORDED BY CONGRESS ENACTMENT OF A CIVIL RIGHTS ACTION UNDER 42 U.S.C § 1983 AND TO INVOKE FEDERAL JURISDICTION UNDER ARTICLE III AND THE VII AMENDMENT OF THE UNITED STATES CONSTITUTION AND IN ORDER TO RECEIVE SWIFT AND EFFICACIOUS REDRESS, RECOGNITION, VINDICATION, PROTECTION AND A REMEDY, (EITHER BY DAMAGES AWARD AND/OR INJUNCTIVE RELIEF JUDGMENTS) FOR FIRST, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES

CONSTITUTION THAT ARE AT THREAT OF AND/OR ACTUALLY HAVE BEEN VIOLATED AT THE HANDS OF COUNTY OFFICIALS ACTING UNDER COLOR OF STATE LAW AND RESULTING IN GREAT, IMMEDIATE AND IRREPARABLE DAMAGES TO THE PLAINTIFF; AND SPECIALLY WHEN IT HAS BEEN REASONABLY ALLEGED AND SHOWN THAT THE SUPERIOR, APPELLATE AND SUPREME COURTS OF LAST RESORT OF THE STATE HAVE OBJECTIVELY DEMONSTRATED A MANIFESTATION OF UNWILLINGNESS, INEFFECTIVENESS AND/OR FUTILITY TO PROVIDE ANY TYPE OF CONSTITUTIONALLY ADEQUATE PROCEDURE THAT VINDICATES AND PROTECTS FEDERAL CONSTITUTIONAL CIVIL RIGHTS DURING THE STATE'S PENDING CRIMINAL PROSECUTION; AND WHEN THE PLAINTIFF/PETITIONER HAS NO OTHER PLAIN ADEQUATE AND SPEEDY REMEDY AVAILABLE IN THE ORDINARY COURSE OF LAW, INCLUDING, FEDERAL HABEAS CORPUS RELIEF UNDER SECTION 28 U.S.C. § 2241. THAT THE LOWER FEDERAL COURTS HAVE ALSO DECLINED TO ENTERTAIN SEE (CASE NO: CDCV 16-01931 U.S. DISTRICT COURT FOR CENTRAL DISTRICT OF CALIFORNIA) ?

III. PARTIES

1. PETITIONER/APPELLANT ILLICH VARGAS IS THE PLAINTIFF OF THE UNDERLYING 42 U.S.C. § 1983 ACTION AND IN CUSTODY OF SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT WHILE WAITING FOR TRIAL IN CASE FVI 1203282 SUPERIOR COURT OF CALIFORNIA SAN BERNARDINO COUNTY.

2. RESPONDENTS/APPELEES, JOHN MCMAHON, SAN BERNARDINO COUNTY SHERIFF IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; GREG GARLAND DEPUTY CHIEF IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; JEFF ROSE, CAPTAIN DEPUTY CHIEF, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; JAMES MAHAN, SERGEANT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; TRISH RAMER, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES; VANDERKALLEN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES; L. SAVAGE, LIUTENANT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; D. GOULD, SERGEANT, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES; L. WILTERDING, LIUTENANT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; S. HENRY, SERGEANT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; E. ESMOND, SERGEANT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; B. WIELBELD, SERGEANT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; ARMANDO CASTILLO, CORPORAL, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; T. NEWTON, LIUTENANT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; J. SPINNEY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; VILLANUEVA, DEPUTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; POWELL, DEPUTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; C. BEAN, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; J. NOLL, DEPUTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; P. RAMER, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES; SHANNON FAHERTY, DISTRICT ATTORNEY, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES; ERIC FERGUSON, DISTRICT ATTORNEY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; DEBRA HARRIS, JUDGE OF THE SAN BERNARDINO COUNTY SUPERIOR COURT, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES; STEVE MCMAHON, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; STEVE MALONE, JUDGE OF THE SAN BERNARDINO COUNTY SUPERIOR COURT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; ERIN ALEXANDER, JUDGE OF THE SAN

SAN BERNARDINO COUNTY SUPERIOR COURT, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES; JOHN TOMBERLIN, JUDGE OF THE SAN BERNARDINO COUNTY SUPERIOR COURT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; JOSHUA CASTRO, ATTORNEY, IN HIS INDIVIDUAL CAPACITY; STEVE BREMSER, ATTORNEY, IN HIS INDIVIDUAL CAPACITY; PHYLLIS MORIS, ATTORNEY, IN HER INDIVIDUAL CAPACITY; COUNTY OF SAN BERNARDINO, GOVERNMENT ENTITY; SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT, A CALIFORNIA PUBLIC ENTITY, ARE ALL DEFENDANTS IN THE UNDERLYING CIVIL RIGHTS LAW SUIT.

////
///
///
///
///

TABLE OF CONTENTS

I. OPINION BELLOW	1
II. JURISDICTION	1
III. CONSTITUTIONAL OR STATUTORY PROVISIONS INVOLVED	1
IV. STATEMENT OF THE CASE	2
V. REASONS FOR GRANTING THE PETITION	6
- A - THE LOWER COURT HAS DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED SUCH DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF SUPREME COURT'S SUPERVISORY POWER, AND IN ORDER TO SAFEGUARD AND SECURE INDISPENSABLE CIVIL RIGHTS OF THE PUBLIC	
1. A PRO-SE PLAINTIFF IS HELD TO LESS STRINGENT PLEADING STANDARDS AND HIS ACTION CANNOT BE DISMISSED UNLESS THERE IS NO DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM TO ENTITLE HIM RELIEF	6
2. THE PUBLICS TRUST AND FAITH IN OUR JUSTICE SYSTEM AND OUR COURTS OF LAW IS PREMISED ON THE FAIRNESS AND GOOD DEALINGS OF THE JUDICIARY IN EXERCISING THEIR SOUND DISCRETION EQUALLY FOR ALL PEOPLE AND IN ASSURING THAT JUSTICE REMAINS AVAILABLE FOR EVERY ONE EVEN FOR THE POOR AND DEFENSELESS.	12
- B - THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT HAS ENTERED A DECISION THAT CONFLICTS WITH THE DECISIONS OF OTHER UNITED STATES COURT OF APPEALS AND WITH ITS OWN PRIOR DECISIONS ON THE SAME ISSUES AND THAT AFFECTS THE RULE OF NATIONAL APPLICATION IN WHICH THERE IS AN OVERRIDING NEED FOR NATIONAL UNIFORMITY	
1. WHERE GENUINE QUESTIONS OF FACT EXIST OVER THE SUBJECT MATTER IT IS THE DUTY OF THE JURY TO MAKE THOSE DETERMINATIONS. INCLUDING, ASSESSING CREDIBILITY OF WITNESSES, WEIGHING THE EVIDENCE AND DECIDING WHAT IS THE TRUTH AND THE FACTS OF THE MATTER	15
(a) THE QUESTION OF THE EXISTANCE OF A CONSPIRACY SHOULD NOT BE TAKEN FROM THE JURY IF THERE IS POSSIBILITY THE JURY COULD INFER FROM CIRCUMSTANCES A MEETING OF THE MINDS OR UNDERSTANDING AMONG THE CONSPIRATORS TO ACHIEVE THE CONSPIRACY.	16

(b) ONCE A PARTICULAR POLICY CUSTOM OR COMMON PRACTICE HAS BEEN IDENTIFIED AND IT HAS BEEN ALLEGED TO HAVE RESULTED IN A VIOLATION OF FEDERAL CIVIL RIGHTS, INCLUDING A POLICY, CUSTOM OR COMMON PRACTICE OF DELIBERATE INDIFFERENCE ON BEHALF OF SUPERVISORS AND POLICY MAKERS, IT IS A QUESTION FOR THE JURY TO DECIDE WHETHER THE ACTIONS ALLEGED AGAINST THE DEFENDANTS ACTUALLY RESULTED IN THE DEPRIVATION OF CIVIL RIGHTS. 19

(c) WHERE A CIVIL RIGHT PLAINTIFF ALLEGES THAT HE HAS BEEN INTENTIONALLY TREATED DIFFERENTLY THAN OTHER SIMILARLY SITUATED AND THAT THERE IS NO RATIONAL BASIS FOR THE DIFFERENCE OF TREATMENT UNDER THE CLASS OF ONE THEORY, A VALID CLAIM UNDER EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION HAS BEEN SUCCESSFULLY MADE 23

2. DISTRICT ATTORNEYS AND PUBLIC DEFENDERS THAT CONSPIRE WITH JUDGES TO DEPRIVE A PUBLIC PERSON OF CONSTITUTIONAL CIVIL RIGHTS DO NOT ENJOY ABSOLUTE IMMUNITY SIMPLY BECAUSE OF THEIR TITLE IN CONNECTION TO A CRIMINAL PROSECUTION AGAINST THE PLAINTIFF : 24

(a) JUDGES ARE NOT ABSOLUTELY IMMUNED TO INJUNCTIVE OR DECLARATORY RELIEF AND THE PLAINTIFF ONLY SEEKS FOR DECLARATION OF HIS CIVIL RIGHTS IN REGARDS TO ANY JUDGES. 25

(b) DISTRICT ATTORNEYS DO NOT ENJOY ABSOLUTE IMMUNITY FOR ACTIONS THAT ARE NOT INTIMATELY RELATED TO THE PREPARATION AND PRESENTATION OF THE PROSECUTOR'S CASE NOR FOR ACTIONS THAT THEY HOLD NO DISCRETION TO TAKE. 26

(c) PUBLIC DEFENDERS THAT CONSPIRE WITH OFFICIALS TO VIOLATE A PERSON'S CIVIL RIGHTS DO NOT ENJOY ANY TYPE OF IMMUNITY FROM § 1983 LIABILITY. 28

3. THE PLAINTIFF HAS NOT SUED THE STATE OF CALIFORNIA, NOR THE SUPERIOR COURT, NOR ANY JUDGES OF THE CALIFORNIA STATE FOR DAMAGES AND NEITHER DOES ANY FAVORABLE JUDGMENT IN THE PLAINTIFFS § 1983 CIVIL RIGHTS SUIT AFFECT THE STATES TREASURY. THEREFORE THE ELEVENTH AMENDMENT DOES NOT HAVE ANY EFFECT TO THIS CASE. 29

-C-

THE UNITED STATES COURT OF APPEAL HAS
DECIDED AN IMPORTANT QUESTION OF FEDERAL
LAW THAT HAS NOT BEEN SQUARELY ANSWERED
BUT SHOULD BE ANSWERED BY THE SUPREME COURT
BECAUSE IT AFFECTS EXCEPTIONAL PUBLIC INTEREST
FOR EFFICACIOUS AND SPEEDY PROTECTION AND
VINDICATION OF CHERISHED CONSTITUTIONAL
CIVIL RIGHTS

31

1. THE STATE AND ITS MUNICIPAL AUTHORITIES
CANNOT BE PERMITTED TO USE THE RULES OF
ABSTENTION SET FORTH IN HECK V. HUMPHREY AND
YOUNGER V. HARRIS AS A LICENSE FOR OPPRESSION AND
VIOLATION OF CIVIL RIGHTS OF THE PUBLIC BY UNLAWFUL
METHODS AND AS LICENSE TO DEPRIVE PUBLIC
INDIVIDUALS ANY PLAIN, SPEEDY AND EFFECTIVE
PROCEDURAL SAFEGUARD FOR VINDICATION AND
PROTECTION OF CIVIL RIGHTS SIMPLY BECAUSE THE
INDIVIDUAL HAS BEEN ACCUSED OF HAVING COMMITTED
A CRIMINAL OFFENSE AND HAS BEEN DEPRIVED OF
FREEDOM AND LIBERTY

31

- (a) THE HECK V. HUMPHREY RULE OF ABSTENTION
SHOULD NOT APPLY TO THIS § 1983 ACTION
BECAUSE A JUDGMENT FAVORABLE TO THE
INCARCERATED PLAINTIFF WOULD NOT
INVALIDATE ANY EXANT CONVICTION NOR
ANY POTENTIAL FUTURE CONVICTION.

33

- (b) THE HECK V. HUMPHREY RULE OF ABSTENTION
DOES NOT APPLY TO FIRST AND SIXTH AMENDMENT
ACCESS TO THE COURT CLAIMS.

34

- (c) THE HECK V. HUMPHREY RULE OF ABSTENTION
DOES NOT BAR COMPENSATION FOR PUNITIVE
DAMAGES IN A § 1983 ACCESS TO COURT
CONSTITUTIONAL CLAIMS.

36

4. EVEN IF ABSTENTION WAS APPROPRIATE UNDER THE EXTRA ORDINARY CIRCUMSTANCES THAT EXIST IN THIS CASE A STAY OF ANY CLAIMS THAT IMPLY INVALIDITY OF A CONVICTION OR SENTENCE IS THE APPROPRIATE COURSE, NOT THE DISMISSAL OF THE CASE

37

5. THE PLAINTIFF SHOULD NOT BE DEPRIVED OF AN OPPORTUNITY TO AMEND HIS PLEADING IN ORDER TO CORRECT MINOR DEFECTS AND IN LIGHT OF THE FACT THAT THE LOWER COURT HAS CLEARLY MISREPRESENTED THE PLAINTIFFS PLAIN STATEMENTS SET FORTH IN HIS COMPLAINT

39

VI. CONCLUSION

40

TABLE OF AUTHORITIES

PEOPLE V. MARSDEN 2 CAL.3d 118 (1990)	3
CRANDEL V. BUNNELL 144 F.3d 1213 (9TH CIR 1998)	3
KING V. ATIYEH 814 F.2d 269 (9TH CIR 1987) OVERRULED ON OTHER GROUNDS IN LACEY V. MARICOPA COUNTY 693 F.3d 896 (9TH CIR 2012)	6
HAINES V. KERNER 104 U.S. 519 (1972)	6
WILBORN V. ESCALDERON 789 F.2d 1328 (9TH CIR 1986)	6
ARTICLE III OF THE UNITED STATES CONSTITUTION	7, 21
WARTH V. SELDIN 422 U.S. 490 (1975)	7
RK VENTURES INC. V. CITY OF SEATTLE 307 F.3d 1045 (9TH CIR 2002)	7
JONES V. COMMUNITY REDEVELOPMENT AGENCY OF LOS ANGELES 733 F.2d 696 (9TH CIR 1984)	7
LEATHERMAN V. TARRAT NARCOTICS INTELLIGENCE 307 U.S. 163 (1993)	7
CRONIN V. BRADLEY 795 F.2d 310 (3RD CIR 1986)	7
FED. R. CIV. P. RULE 8 (a)	8, 18
POWEL V. ALABAMA 287 U.S. 45 (1932)	8
JOHNSON V. ZERBST 304 U.S. 458 (1938)	8
STRICKLAND V. WASHINGTON 466 U.S. 668 (1984)	8
SCHILL V. WITEK 218 F.3d 1017 (9TH CIR 2000)	8
SIXTH AMENDMENT UNITED STATES CONSTITUTION	8, 9
HURRELL-HARRING V. STATE OF NEW YORK 15 N.Y.3d 8 (2ND CIR 2010)	8
DUNCAN V. STATE 284 MICH. APP. 246 (2009)	8
LUCKEY V. HARRIS 860 F.2d 1012 (11TH CIR 1988)	8
SMITH V. COUGHLIN 748 F.2d 783 (2ND CIR 1984)	8, 36
FOURTEENTH AMENDMENT UNITED STATES CONSTITUTION	8, 33, 37
FARETTA V. CALIFORNIA 422 U.S. 806 (1975)	9
MC KASKLE V. WIGGINS 465 U.S. 168 (1984)	9
BRIDIESCA V. GALAZA 215 F.3d 1015 (9TH CIR 2000)	9
MILTON V. MORRIS 767 F.2d 1443 (9TH CIR 1985)	9, 37
TAYLOR V. LIST 880 F.2d 1040 (9TH CIR 1989)	9
ALLAN V. SAKAI 48 F.3d 1082 (9TH CIR 1994)	9
LEEDS V. WATSON 630 F.3d 88 (9TH CIR 1980)	9
BOURDON V. LOUGHREN 386 F.3d 88 (2D CIR 1984)	10, 37
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION	10, 37
MC CARTHY V. MARIGAN 503 U.S. 140 (1992)	10
BOUNDS V. SMITH 430 U.S. 817 (1977)	10
LEWIS V. CASEY 518 U.S. 373 (1996)	10
GILMORE V. LYNCH 319 F.Supp 105 (N.D. CAL 1970) AFF'D SUB NOM IN YOUNGER V. GILMORE 405 U.S. 15 (1971)	10
MAY V. SNEAHAN 226 F.3d 876 (7TH CIR 2000)	10
SIMPSON V. GALLANT 231 F.Supp.2d 391 (D.ME 2002)	10
BENJAMIN V. FRASER 264 F.3d 175 (2D CIR 2001)	10
CRAWFORD-EL BRITTON 523 U.S. 574 (1998)	10
JOHN L. V. ADAMS 969 F.2d 228 (6TH CIR 1994)	10
DE TOMASO V. MC GINNIS 970 F.2d 211 (7TH CIR 1992)	10

DANNENBERG V. VALADEZ 338 F.3d 1070 (9TH CIR 2003)	10
HINES V. GOMEZ 108 F.3d 265 (9TH CIR 1997)	10
ZIMMERMAN V. TRIBBLE 226 F.3d 568 (7TH CIR 2000)	10
EIGHTH AMENDMENT UNITED STATES CONSTITUTION	11
HELLING V. MCKINNEY 509 U.S. 25 (1993)	11
HOPTOWIT V. SPELLMAN 753 F.2d 779 (9TH CIR 1985)	11
CURRY V. KERIK 163 F.SUPP. 2d 232 (S.D. N.Y. 2001)	11
JONES V. MORRIS 777 F.2d 1277 (7TH CIR 1985)	11
STELLE V. GAMBLE 429 U.S. 97 (1976)	11
GREEN V. DALEY 414 F.3d 645 (7TH CIR 2005)	11
MC ELLIGOTT V. FOLEY 182 F.3d 1248 (11TH CIR 1999)	11
WHITE V. NAPOLEON 897 F.2d 103 (3d CIR 1990)	11
LAVENDER V. LAMPERT 242 F.SUPP. 2d 821 (D. OR 2002)	11
VERSER V. ELYEA 113 F.SUPP. 2d 1211 (N.D. ILL 2000)	11
HALL V. ARTUZ 954 F.SUPP. 90 (S.D. N.Y. 1991)	11
FIFTH AMENDMENT UNITED STATES CONSTITUTION	11, 37
BELL V. WOLFISH 441 U.S. 520 (1979)	11
SANDIN V. CONNOR 513 U.S. 472 (1995)	11
HEWITT V. HELMS 459 U.S. 460 (1983)	11
MITCHEL V. DUPNIK 75 F.3d 517 (9TH CIR 1995)	11
IOBAL V. HASTY 490 F.3d 143 (2D CIR 2007)	11
MOLLY V. WOOLFOLK 415 F.3d 443 (9TH CIR 2000)	11
FUENTES V. WAGNER 206 F.3d 335 (3D CIR 2000)	12
VALDEZ V. ROSENBAUM 302 F.3d 1039 (9TH CIR 2002)	12
SUPRENTANT V. RIVAS 424 F.3d 5 (1ST CIR 2005)	12
GOMEZ V. U.S. 490 U.S. 858 (1989)	12
MALBURY V. MADISON 5 U.S. (1 CRANCH) 137 (1803)	12
COLEMAN V. SCHWARZENEGGER 922 F.SUPP. 2d 882 (9TH CIR 2009)	12, 32
PHILIPS-ROPER V. NIXON 545 F.3d 685 (8TH CIR 2008)	
DORAN V. ANAYA 642 F.SUPP. 510 (D. N.M. 1986)	
LLEWELYN V. OAKLAND COUNTY PROSECUTOR'S OFFICE 402 F.SUPP. 1379 (E.D. MICH 1975)	
SEVENTH AMENDMENT UNITED STATES CONSTITUTION	14, 17
PRISON LITIGATION REFORM ACT	14
28 U.S.C § 1914	14
28 U.S.C § 1915	14, 17
ELKINS ET AL V. U.S. 369 U.S. 208 (1960)	14
MC NABB V. U.S. 318 U.S. 332 (1943)	14
ABRAHAM LINCOLN'S JANUARY 27, 1834 ADDRESS BEFORE THE YOUNG MEN'S LYCEUM, SPRINGFIELD ILL. 33	14
"THE REPUTATION OF OUR POLITICAL INSTITUTION."	14
1992 LOS ANGELES CA. RIOTS @ WWW.GOOGLE.COM	14
2019 FERGUSON MISSOURI RIOTS @ WWW.GOOGLE.COM	14
REEVES V. ANDERSON PLUMBING PRODS INC. 530 U.S. 133 (2002)	15, 18
WHITE V. MCKINLEY 519 F.3d 806 (8TH CIR 2008)	16
GREEN V. MISSOURI 734 F.SUPP. 814 (E.D. MICH 2010)	16
BELL ATLANTIC CORP. V. TWOMBLY 550 U.S. 544 (2007)	16
ASHCROFT V. IOBAL 556 U.S. 662 (2009)	16
HARRIS V. RODERICK 126 F.3d 1189 (9TH CIR 1997)	18

VILLAGE OF WILLOWBROOK V. OLECH 528 U.S. 562 (2000)	23
FED. R. CIV. P. RULE 12	17
SWIERKIEWICZ V. SORENA N/A. 534 U.S. 506 (2002)	18
GABRAITH V. COUNTY OF SANTA CLARA 307 F.3d 1119 (9TH CIR 2002)	18
HAPTON V. HANRAHAN 600 F.2d 600 (7TH CIR 1979) REVB IN PART ON OTHER GROUNDS IN 466 U.S. 754 (1980)	18
YOUNG V. SUFFOLK COUNTY 705 SUPP. 2d 183 (2d CIR 2010)	18, 25
FISK V. LETTERMAN 401 F.SUPP. 2d 362 (S.D. N.Y. 2005)	18
MONFELL V. DEPT. OF SOCIAL SERVICES OF CITY OF NEW YORK 436 U.S. 658 (1978)	19
CANTON V. HARRIS 499 U.S. 378 (1989)	19
GIBSON V. COUNTY OF WASHOE NEV. 290 F.3d 1175 (9TH CIR 2002)	15, 19, 21
DOMINGUEZ V. CORR. MED. SERVS. 355 F.3d 543 (6TH CIR 2009)	20
BURGESS V. FISCHER 766 F.SUPP. 2d 845 (S.D. OHIO 2010)	20
ESMAIL V. MACRANE 53 F.3d 176 (1995)	23
DENNIS V. SPARKS 449 U.S. 24 (1980)	24
KALINA V. FLETCHER 522 U.S. 118 (1997)	26
BUCKLEY V. FITZSIMMONS 509 U.S. 259 (1993)	26
IMBER V. PACHTMAN 424 U.S. 409 (1976)	27
WHITEBY SWAFFORD V. PATTERSON 795 F.2d 549 (6TH CIR 1986)	27
BROOM V. BOGAN 320 F.3d 1023 (9TH CIR 2003)	27
LISKER V. CITY OF LOS ANGELES 780 F.3d 1237 (9TH CIR 2015)	27
GLOVER V. TOWER 700 F.2d 556 (9TH CIR 1983)	28
FERRI V. ACKERMAN 444 U.S. 193 (1974)	28
WHITE V. BLOOM 621 F.2d 276 (8TH CIR 1983)	29
EX PARTE YOUNG 209 U.S. 123 (1908)	29, 31
VERIZON MD V. PUB. SER. COMMS OF MARYLAND 535 U.S. 632 (2002)	30
PULLAN V. ALLAN 466 U.S. 522 (1984)	29
BUCKLEY V. FITZSIMMONS 509 U.S. 259 (1993)	26
GEZLER V. LONGBACK 410 F.3d 630 (9TH CIR 2005)	27
HECK V. HUMPHREY 512 U.S. 477 (1994)	32
WALLACE V. KATO 599 U.S. 384 (2007)	33
FOX V. DE SOTO 489 F.3d 227 (6TH CIR 2007)	34
CHRISTOPHER V. HARBURY 536 U.S. 403 (2002)	34
P.L.R.A. 42 U.S.C. 1997 (e)	36
SCHOOL DIST. V. ATACHURA 477 U.S. 299 (1986)	36
CAREY V. DIPHUS 435 U.S. 297 (1978)	36
OLIVER V. KELLER 289 F.3d 623 (9TH CIR 2002)	36
PHILLIPS V. HUST 477 F.3d 1070 (9TH CIR 2008)	36
COCKROFT V. KIRKLAND 548 F.SUPP. 2d 767 (9TH CIR 2008)	36
BENJAMIN V. FRASER 264 F.2d 175 (2d CIR 2001)	36
ZARRO V. SPITZER 274 FED. APPX. 37 (2d CIR 2008)	37
CURRY V. HENNESSEY 2007 WL 1394531 (N.D. 2007)	37
DEAKIN V. MONAGHAN 484 U.S. 193 (1988)	37
WOOLEY V. MATNARD 430 U.S. 705 (1977)	37
CV. RIVAS V. CAL FRANCHISE TAX BD. 619 F.SUPP. 2d 994 N2 (E.D. CAL 2008)	38
NOLL V. CARSON 809 F.2d 1446 (9TH CIR 1987)	39

INDEX OF APPENDIXES

- APPENDIX - A - MARCH 14, 2018 JUDGMENT BY THE NINTH CIRCUIT COURT AFFIRMING DISTRICT COURT JUDGMENT TO DENY IFP AND TO DENY APPLICATION OF APPEALABILITY. (SUMMARY JUDGMENT)
- APPENDIX - B - APRIL 20, 2016 ORDER TO DENY IFP APPLICATION AND RECCOMENDATIONS TO DISMISS BY DISTRICT COURT MAGISTRATE WITHOUT LEAVE TO AMEND
- APPENDIX - C - APRIL 27, 2018 DENIAL ORDER BY NINTH CIRCUIT OF PETITION FOR REHEARING AND REHEARING EN-BANC (SUMMARY JUDGMENT)
- APPENDIX - D - JULY 25, 2018 LETTER FROM U.S. SUPREME COURT RETURNING PETITION WITH 60 DAYS TO CORRECT DEFECTS.

I. OPINION BELOW

THE OPINION OF MARCH 14, 2018 OF THE COURT OF APPEALS WHOSE JUDGMENT IS HEREIN SOUGHT REVIEWED HAS NOT BEEN CERTIFIED FOR PUBLICATION AND IS HEREIN INCORPORATED AS (APPENDIX-A-). THE MAY 9, 2016 UNDERLYING OPINION AND DECISION BY THE DISTRICT COURT OF THE CENTRAL DISTRICT OF CALIFORNIA IS HEREIN INCORPORATED INTO THIS PETITION AS (APPENDIX-B-)

ON APRIL 27, 2018 COURT OF APPEALS DECISION TO DENY PETITIONERS PETITION FOR REHEARING AND REHEARING EN-BANC THAT WAS CONSIDERED AS PETITION FOR RECONSIDERATION AND RECONSIDERATION EN BANC IS HEREIN INCORPORATED TO THIS PETITION AS (APPENDIX-C-)

II. JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED THIS CASE WAS MARCH 14, 2018 SEE (APPENDIX-A-). JULY 25, 2018 SUPREME COURT RETURNED PETITION TO CORRECT (APPENDIX-D-)

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1)

III. CONSTITUTIONAL OR STATUTORY PROVISIONS INVOLVED

THIS CASE INVOLVES ARTICLE III AND THE 1ST, 5TH, 6TH, 7TH, 8TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION; 42 U.S.C. § 1983 AND P.L.R.A. 28 U.S.C. § 1914-1915; FED. RULES OF CIV. PROC. RULE 8

STATEMENT OF THE CASE

PETITIONER ILICH VARGAS IS A PRESENTENCE CRIMINAL DEFENDANT AWAITING TRIAL IN CUSTODY OF DEFENDANT THE SAN BERNARDINO COUNTY SHERIFFS DEPARTMENT (SBCSD). HE WAS ARRESTED DECEMBER 8, 2012 AFTER SUFFERING A TRAGIC VEHICLE ACCIDENT IN WHICH THE PASSANGER AND OWNER OF THE VEHICLE THAT MR. VARGAS WAS DRIVING DIED. MR. VARGAS HAS BEEN CHARGED WITH PC 187 MURDER; PC 191.5 GROSS VEHICULAR MAN SLAUGHTER; VC 23153 (A); PC 12022.7; PC 69; PC 667.5(b); IN CASE FVI 12032B SAN BERNARDINO COUNTY STATE OF CALIFORNIA

ORIGINALLY MR VARGAS HIRED PAID ATTORNEY, DAVID S. CHESLEY, WHO WAS FIRED FROM THE CASE AFTER APPROXIMATELY THREE MONTHS OF RENDERING INEFFECTIVE AND INSUFFICIENT CRIMINAL DEFENSE REPRESENTATION IN PARTICULAR THE COMPLETE FAILURE TO CONDUCT PROMPT INVESTIGATIONS FOR THE DEFENSE AFTER COLLECTING \$ 3333³³ OF RETAINER FEES

ON APRIL 04, 2013 THE PUBLIC DEFENDERS OFFICE, JOSHUA CASTO, WAS APPOINTED TO THE CASE. HOWEVER BETWEEN APRIL 04 2013 AND MARCH 7, 2014 MR VARGAS PETITIONED FOR SUBSTITUTION OF COUNSEL FIVE DIFFERENT TIMES ON 8/20/2013; 8/20/2013; 2/10/2018; 2/18/2018; 2/25/2018 AND BECAUSE A SERIOUS BRAKE DOWN AND IRREPARABLE DIFFERENCE IN THE ATTORNEY-CLIENT HAD DEVELOPED DUE INEFFECTIVE CRIMINAL DEFENSE REPRESENTATION. HIS MOTIONS WERE ALL DENIED. AS THE RESULT OF WHAT IS BEING ALLEGED TO BE A WIDESPREAD CONSPIRACY AND/OR

1 CUSTOM, COMMON PRACTICE AND USAGE INTENDED TO DEPRIVE CIVIL RIGHTS
2 RIGHTS UNDER PEOPLE V. MARDEN 2 CAL. 2d 3d 118 (1970); SEE ALSO
3 CRANDELL V. DUNNELL 144 F.3d 1213 (9TH CIR 1998) AND THE RIGHT TO
4 EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE UNITED STATES
5 CONSTITUTION AND RESULTING IN SUBSTANTIAL DAMAGES. SEE
6 (U.S DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CASE:
7 5:16-CV-00231-R-KES DKT 1 HEREAFTER "COMPLAINT" AT P. 20-42)

8
9 ULTIMATELY, MR. VARGAS WAS SYSTEMATICALLY FORCED AND COERCED TO
10 REPRESENT HIMSELF, AND AFTER BEING SUBJECT TO AN OVERT CAMPAIGN
11 INTENDED TO DEPRIVE HIM OF FEDERAL CONSTITUTIONAL CIVIL RIGHTS TO
12 EFFECTIVE ASSISTANCE OF COUNSEL, AT THE CRITICAL STAGE OF THE
13 PRELIMINARY EXAMINATION OF 2/18/2014 WHERE THE JUDGE, DEFENDANT,
14 ERIN ALEXANDER; THE DISTRICT ATTORNEY, DEFENDANT, SHANNON FAHERTY;
15 AND THE PUBLIC DEFENDER, DEFENDANT, JOSHUA CASTRO ALL TOGETHER AND
16 IN ONE ACCORD, OPPOSED MR. VARGAS' TIMELY AND NON-EQUIVOCAL AND
17 NUMEROUS INVOCATIONS TO EXERCISE CIVIL RIGHTS TO SELF-REPRESENTATION;
18 AND THAT RESULTED IN SUBSTANTIAL DAMAGES. (ID AT P 27-13)

19
20 ON 3/07/2014 MR. VARGAS WAS GRANTED PRO-PER STATUS TO REPRESENT
21 HIMSELF IN HIS CRIMINAL MATTER. BUT, THEREAFTER HE BECAME THE
22 SUBJECT TO MALICIOUS FORMS OF THREAT, INTIMIDATION, COERCION AND
23 PUNISHMENT AGAINST HIM ON BEHALF OF THE TRIAL COURT JUDGE,
24 DEFENDANT, JOHN TOMBERLIN AND DEFENDANT SBCSD INTENDED TO
25 CHILL AND DISCOURAGE MR. VARGAS FROM EXERCISING CIVIL RIGHTS TO
26 SELF-REPRESENTATION AND IN THE FURTHERANCE OF A WIDESPREAD
27 CONSPIRACY. FURTHERMORE, AS THE DIRECT RESULT OF THE IMPLEMENTATION
28 OF OFFICIAL AND/OR UNOFFICIAL POLICIES, CUSTOMS, COMMON PRACTICES
29 AND USAGES IMPLEMENTED BY DEFENDANT SBCSD, MR. VARGAS WAS

1 AND CONTINUES TO BE DEPRIVED OF OBJECTIVELY SUFFICIENT AND
2 EFFECTIVE PRO-PER RESOURCES AND TOOLS THAT ARE REASONABLY
3 NECESSARY FOR MEANINGFUL EXERCISE OF CIVIL RIGHTS TO EFFECTIVE
4 SELF -- REPRESENTATION; AND SPECIALLY FOR A MURDER CASE.
5 DURING MORE THAN TWO YEARS, UNTIL THE PRESENT DATE, THAT
6 MR. VARGAS HAS REPRESENTED HIMSELF AND THAT IS CAUSING
7 SUBSTANTIAL DAMAGES AS THE RESULT. (ID AT P 47-97)

8 WHILE IN CUSTODY OF DEFENDANT, SBCSD, MR. VARGAS SUFFERED
9 A SLIP AND FALL INJURY THAT CAUSED HIS RIGHT KNEE TO HYPEREXTEND
10 AND TO TEAR LIGAMENTS AND TENDONS REQUIRING HOSPITALIZATION AND
11 SURGERY TO REPAIR; AND AS THE DIRECT RESULT OF DELIBERATE
12 INDIFFERENCE AND RECKLESS DISREGARD BY SBCSD AND OFFICIALS TO
13 FIX KNOWN, INFORMED AND APPARENT HAZARDOUS AND DANGEROUS
14 LIVING CONDITIONS CAUSED BY BROKEN TOILETS, WATER LINES AND WATER
15 FAUSETS THAT CONSTANTLY SPILLED ONTO SLIPPERY HARD TILE FLOORS
16 OF HOUSING DORM RESTROOMS, WHERE NO SLIP-PROOF FLOOR MATS
17 EXISTED. (ID AT P 98-111)

18
19 FURTHERMORE, MR. VARGAS HAS MADE ALLEGATIONS THAT DURING
20 HIS PRE-SENTENCE CUSTODY IN COUNTY JAIL THAT DEFENDANTS,
21 SBCSD AND THE COUNTY JAIL MEDICAL STAFF, ACTED WITH DELIBERATE
22 INDIFFERENCE TOWARDS HIS SERIOUS MEDICAL NEEDS FOR CHRONIC PAIN
23 TO HIS RIGHT KNEE AFTER KNEE SURGERY AND TOWARDS MR. VARGAS' NEED FOR
24 PHYSICAL THERAPY AND THAT CAUSED UNNECESSARY AND PROLONGED EXCESSIVE
25 PAIN AND SUFFERING (ID AT P. 112-170)

26
27 WHEN MR. VARGAS BECAME ACTIVE IN HIS ATTEMPTS TO ADDRESS HIS
28 GRIEVANCES AND COMPLAINTS TO THE ATTENTION OF SBCSD AND THE

1 LOCAL COURTS REGARDING THE ACTIVE OBSTRUCTIONS AND DEPRIVATION
2 OF BASIC PRO-PER PRIVILEGES AND TOOLS FOR A MEANINGFUL PREPARATION
3 AND PRESENTATION OF A CRIMINAL DEFENSE IN PRO-PER STATUS, HE
4 BECAME THE SUBJECT TO A CAMPAIGN OF PUNITIVE AND MALICIOUS
5 RETALIATION, THREATS, INTIMIDATION, COERCION AND PUNISHMENT
6 AT HANDS OF SBCSD, AND NUMEROUS NAMED DEFENDANT OFFICERS,
7 INTENDED TO CHILL MR. VARGAS EXERCISE OF FIRST AMENDMENT
8 RIGHTS TO REDRESS OF WRONGS AND ACCESS TO THE COURTS OF LAW IN
9 VIOLATION OF FEDERAL CONSTITUTIONAL RIGHTS. THE METHODS AND
10 FORMS OF PUNISHMENT AND RETALIATION AGAINST MR. VARGAS
11 EMPLOYED BY SBCSD INCLUDE, BUT IS NOT LIMITED TO, ABUSE
12 OF THE JAIL DISCIPLINARY PROCESS. AND MR. VARGAS WAS DISCIPLINED
13 AND DEPRIVED OF DUE PROCESS SAFEGUARDS, SUCH AS IMPARTIAL
14 HEARINGS BY NEUTRAL OFFICIALS, AND THE RIGHT TO PRESENT WITNESSES
15 AND EXCULPATORY EVIDENCE DURING THE DISCIPLINARY HEARINGS
16 CONDUCTED IN THE COUNTY JAIL, IN VIOLATION OF FIRST, FIFTH AND
17 FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND
18 THAT CAUSED SUBSTANTIAL DAMAGES TO MR. VARGAS. SEE
19 (ID AT P. 129-171)

20
21 ON FEBRUARY 05, 2016 MR. VARGAS FILED THE UNDERLYING
22 42 U.S.C. § 1983 CIVIL RIGHTS ACTION AFTER EXHAUSTING
23 ANY AND ALL REMEDIES AVAILABLE TO HIM FROM THE
24 CONFINEMENT OF JAIL. MR. VARGAS SEEKS DECLARATION
25 OF HIS CONSTITUTIONAL CIVIL RIGHTS, INJUNCTIVE RELIEF AND
26 MONETARY DAMAGE AWARDS. (ID AT P. 171-188)

REASONS FOR GRANTING THE PETITION

- A -

THE LOWER COURT HAS DEPARTED SO FAR FROM THE
ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS
AND SANCTIONED SUCH A DEPARTURE BY A LOWER COURT
AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S
SUPERVISORY POWER IN ORDER TO SAFEGUARD AND
SECURE INDISPENSABLE CIVIL RIGHTS OF THE PUBLIC

- 1 -

A PRO-SE PLAINTIFF IS HELD TO LESS STRINGENT
PLEADING STANDARDS AND HIS ACTION CANNOT BE DISMISSED
UNLESS THERE IS NO DOUBT THAT PLAINTIFF CAN PROVE NO
SET OF FACTS IN SUPPORT OF HIS CLAIM TO ENTITLE HIM RELIEF.

WHEN REVIEWING PRO-SE COMPLAINTS DISTRICT COURTS MUST
BE MINDFUL THAT PRO-SE PLEADINGS ARE HELD TO LESS STRICT
AND STRINGENT STANDARDS THAN FORMAL PLEADINGS DEVELOPED
BY LAWYERS. SEE KING V. ATIYEH 814 F.2d 569 (9TH CIR 1982)
OVERRULED ON OTHER GROUNDS IN LACEY V. MARICOPA COUNTY
643 F.3d 896 (9TH CIR 2012) AND HAINES V. KERNER 404
U.S. 519 (1972). A COURT SHOULD NOT DISMISS A PRO-SE
COMPLAINT UNLESS AFTER A FAIR AND COMPLETE READING TAKING
ALL ALLEGATIONS AS TRUE AND GIVING THE PLAINTIFF THE
BENEFIT OF THE DOUBT, A JURIST OF REASON IS LEFT WITH
NO DOUBT THE PLAINTIFF CAN PROVE NO SET OF FACTS THAT
WOULD ENTITLE HIM TO RELIEF WILBORN V. ESCALDERON 789

1 F.2d 1328 (9th Cir 1986). PLAINTIFF MUST SIMPLY PLEAD AN
2 INJURY FAIRLY RESULTING FROM DEFENDANT'S UNLAWFUL
3 CONDUCT AND A COURT'S ABILITY TO REDRESS THE VIOLATION
4 BY THE REQUESTED RELIEF. IN ORDER FOR PLAINTIFF TO
5 INVOKE ARTICLE III OF THE U.S. CONSTITUTION. WARTH V.
6 SELDIN 422 U.S. 490 (1975); RIK VENTURES INC. V. CITY
7 OF SEATTLE 307 F.3d 1045 (9th Cir 2002).

8 THE CRUCIAL QUESTION IS SIMPLY WHETHER SUFFICIENT FACTS
9 HAVE BEEN PLEADED TO DETERMINE THAT THE COMPLAINT IS NOT
10 FRIVOLOUS AND THAT IT PROVIDES THE DEFENDANTS WITH
11 ADEQUATE NOTICE AND INFORMATION TO FRAME AN ANSWER.
12 JONES V. COMMUNITY REDEVELOPMENT AGENCY OF LOS ANGELES
13 733 F.2d 646 (9th Cir 1984). AT THE SAME TIME HOWEVER,
14 A COURT CANNOT EXPECT A PLAINTIFF TO PROVIDE PROOF OF THE
15 CLAIMS NOR TO PROFFER ALL AVAILABLE EVIDENCE SPECIALLY
16 IN CIVIL RIGHT CASES WHERE MUCH OF THE EVIDENCE CAN BE
17 DEVELOPED ONLY THROUGH DISCOVERY. WHILE THE PLAINTIFF
18 IS EXPECTED TO KNOW THE INJURIES ALLEGED TO BE SUFFERED
19 IT IS NOT REASONABLE TO EXPECT HIM OR HER TO BE
20 FAMILIAR, AT THE COMPLAINT AND PLEADING STAGE, WITH THE
21 FULL RANGE AND EXTENT OF THE DEFENDANT'S CHALLENGED
22 PRACTICES AND METHODS. A COMPLAINT NEED NOT INCLUDE
23 DETAILED FACTUAL ALLEGATIONS, BUT ONLY SUFFICIENT FACTUAL
24 STATEMENTS THAT DEMONSTRATE, THAT "IF" THE FACTS ARE TRUE,
25 THEN THE PLAINTIFF WOULD BE ENTITLED TO RELIEF. FEDERAL
26 COURTS MAY NOT APPLY HEIGHTENED PLEADING STANDARDS
27 AT MERE WHIM. LEATHERMAN V. TARRAT NARCOTICS
28 INTELLIGENCE 507 U.S. 163 (1993) AND SEE CRONIN V.

1 V. BRADLEY 795 F.2d 310 (3RD CIR 1986) AND FED. R. CIV. P. RULE 8(a)

2
3 IN THIS CASE IT APPEARS THAT THE LOWER COURT FAILED TO CONDUCT A
4 FAIR AND COMPLETE READING OF THE COMPLAINT AND SUPPORTING DOCUMENTS
5 BECAUSE, HAD IT DONE SO, IT WOULD HAVE BEEN CLEAR THAT THE
6 PLAINTIFF HAS IN FACT PLEAD SUFFICIENT FACTUAL ALLEGATIONS TO
7 STATE VALID COGNIZABLE AND GENUINE CLAIMS FOR VIOLATION OF
8 FEDERAL CONSTITUTIONAL CIVIL RIGHTS ON BEHALF OF COUNTY
9 MUNICIPALITIES AND COUNTY OFFICIALS THAT IS THREATENING TO AND/OR
10 HAVE CAUSED SERIOUS DAMAGES TO THE PLAINTIFF. IN PARTICULAR,
11 BUT NOT LIMITED TO:

12 (a) WIDESPREAD CONSPIRACY AND/OR WIDESPREAD
13 IMPLEMENTATION OF OFFICIAL OR UNOFFICIAL POLICIES, CUSTOMS
14 COMMON PRACTICES AND USAGES THAT CAUSED AND RESULTED IN
15 SYSTEMIC, INSTITUTIONAL AND STRUCTURAL DEPRIVATION AND VIOLATION
16 OF THE 6TH AND 14TH AMENDMENT RIGHTS EFFECTIVE ASSISTANCE
17 OF COUNSEL. SEE (CAL. D.C. 5:15-CV-00231-R-KES DKT 1
18 AT P. 20-46)

19
20 AND COMPARE TO: POWEL V. ALABAMA 287 U.S. 45 (1932); JOHNSON V.
21 ZERAST 304 U.S. 458 (1938); STRICKLAND V. WASHINGTON 466 U.S.
22 668 (1984); CRANDELL V. BUNELL 144 F.3d 1213 (9TH CIR 1998);
23 SCHELL V. WITEK 218 F.3d 1017 (9TH CIR 2000); AND SEE ALSO
24 HURRELL V. HARRING V. STATE OF NEW YORK 15 N.Y. 3d 8
25 (2ND CIR 2010); DUNCAN V. STATE 284 MICH. APP. 246 (2009);
26 LUCKEY V. HARRIS 860 F.2d 1012 (11TH CIR 1988); SMITH V. COUGHLIN 718
27 F.2d 783 (2ND CIR 1984) (SETTING FORTH STANDARDS AND ELEMENTS
28 OF SYSTEMIC/STRUCTURAL/INSTITUTIONAL VIOLATIONS OF THE SIXTH

1 AMENDMENTS RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL)

2
3 (b) WIDESPREAD CONSPIRACY AND/OR WIDESPREAD
4 IMPLEMENTATION OF OFFICIAL OR UNOFFICIAL POLICIES, CUSTOMS, COMMON
5 PRACTICES AND USAGES THAT CAUSED AND RESULTED IN SYSTEMIC,
6 INSTITUTIONAL AND STRUCTURAL DEPRIVATION AND VIOLATION OF
7 THE 6TH AND 14TH AMENDMENTS CIVIL RIGHTS TO MEANINGFUL AND
8 EFFECTIVE SELF-REPRESENTATION. SEE (CAL. D.C. 5:16-CV-00231
9 -R-KES DKT 1 AT P. 28-34 AND 47-98)

10
11 AND COMPARE TO: FARETTA V. CALIFORNIA 422 U.S. 806 (1975);
12 MC KASKLE V. WIGGINS 465 U.S. 168 (1984); BRIBIESCA V. GALAZA
13 215 F.3d 1015 (9TH CIR 2000) (ESTABLISHING SIXTH AMENDMENT
14 RIGHTS TO SELF-REPRESENTATION) SEE ALSO: MILTON V. MORRIS 767
15 F.2d 1443 (9TH CIR 1985); TAYLOR V. LIST 880 F.2d 1090 (9TH
16 CIR 1989); ALLAN V. SAKAI 48 F.3d 1082 (9TH CIR 1994) LEEDS V.
17 WATSON 630 F.2d 674 (9TH CIR 1984) (SETTING FORTH STANDARDS
18 AND ELEMENTS OF SYSTEMIC / STRUCTURAL / INSTITUTIONAL VIOLATIONS
19 OF SIXTH AMENDMENT RIGHTS TO EFFECTIVE SELF-REPRESENTATION)

20
21 (c) WIDESPREAD CONSPIRACY AND/OR WIDESPREAD
22 IMPLEMENTATION OF OFFICIAL OR UNOFFICIAL POLICIES, CUSTOMS
23 COMMON PRACTICES AND USAGES THAT CAUSED AND RESULTED IN
24 SYSTEMIC, INSTITUTIONAL AND STRUCTURAL DEPRIVATION AND VIOLATIONS
25 OF THE 1ST, 6TH AND 14TH AMENDMENT RIGHTS TO ACCESS TO
26 THE COURT, INCLUDING, BY METHODS OF RETALIATION
27 AND COERCION INTENDED TO CHILL THE EXERCISE OF CIVIL
28 RIGHTS. SEE (CAL. D.C. 5:16-CV-00231 DKT 1 AT P. 50-79;

86-88; 92-95 AND 126-169)

AND COMPARE TO: MC CARTHY V. MADIGAN 503 U.S. 140 (1992);
BOUNDS V. SMITH 430 U.S. 817 (1977); LEWIS V. CASEY 518 U.S.
343 (1996); U.S. V. MIKHEL 552 F.2d 961 (9TH CIR 2009);
(ESTABLISHING FIRST AND SIXTH AMENDMENT RIGHT TO ACCESS
TO THE COURTS) SEE ALSO: GILMORE V. LYNCH 319 F.SUPP 105
(N.D. CAL. 1970) AFF'D SUB NOM IN YOUNGER V. GILMORE 405 U.S.
15 (1970); MAY V. SHEAHAN 226 F.3d 876 (7TH CIR 2000); TAYLOR
V. COX 912 F.SUPP 140 (E.D. PA. 1995); SIMPSON V. GALLANT 231
F.SUPP 2d 341 (D. ME 2002); BENJAMINE V. FRASER 264 F.3d
175 (2D CIR 2001); AND THOSE CASES LISTED ABOVE IN SECTIONS
a AND **b** (SETTING FORTH STANDARDS AND ELEMENTS OF SYSTEMIC,
STRUCTURAL AND INSTITUTIONAL DEPRIVATION AND VIOLATIONS OF
MEANINGFUL ACCESS TO THE COURTS OF LAW) AND SEE (CRAWFORD-
EL V. BRITTON 523 U.S. 574, 588 N.10 (1998); DETOMAZO V. MC.
GINNIS 970 F.2d 211, 214 (7TH CIR 1992); DANNENBERG V. VALADEZ 338
F.3d 1070, 1072 (9TH CIR 2003); HINES V. GOMEZ 108 F.3d 265
(9TH CIR 1997); RHODES V. ROBINSON 408 F.3d 559, 567- 568
(9TH CIR 2005); ZIMMERMAN V. TRIMBLE 226 F.3d 568 (7TH CIR
2001); (SETTING FORTH STANDARDS AND ELEMENTS OF RETALIATION AS
METHODS TO CHILL INTERFERE AND VIOLATE FIRST AND SIXTH
AMENDMENT RIGHTS TO ACCESS TO THE COURTS)

(d) HAZARDOUS AND UNCONSTITUTIONAL LIVING CONDITIONS
THAT CAUSED ACTUAL AND SERIOUS PHYSICAL INJURY DUE TO
DELIBERATE INDIFFERENCE AND RECKLESS DISREGARD ON BEHALF
OF JAIL OFFICIALS TOWARDS KNOWN, INFORMED AND OBVIOUS

HAZARDOUS AND DANGEROUS LIVING CONDITIONS. SEE (CAL. D.C. 5:16-CV-00231-R-KES DKT 1 AT P. 98-111)

AND COMPARE TO: HELLING V. MCKINNEY 509 U.S. 25 (1993); HOPTOWIT V. SPELLMAN 753 F.2d 779 (9TH CIR 1985); CORY V. KERIK 163 F.SUPP. 2d 232 (S.D.N.Y 2001); JONES V. MORRIS 777 F.2d 1277, 1280 (7TH CIR 1985)

(E) DEPRIVATION OF ADEQUATE AND SUFFICIENT MEDICAL CARE. CRUEL AND UNUSUAL PUNISHMENT. SEE (CAL D.C. 5:16-CV-00231-R-KES DKT 1 AT P. 112-125)

AND COMPARE TO: ESTELLE V. GAMBLE 429 U.S. 97 (1976); HOPTOWIT V. RAY 682 F.2d 1237 (9TH CIR 1982); GREENO V. DALEY 414 F.3d 645, 654 (7TH CIR 2005); MC ELLIGOTT V. FOLEY 182 F.3d 1248, 1256-1257 (11TH CIR 1999); WHITE V. NAPOLEON 897 F.2d 103 (3D CIR 1990); LAVENDER V. LAMPERT 242 F.SUPP 2d 821 (D. OR. 2002); VERSER V. ELYEA 113 F.SUPP.2d 1211 (N.D. ILL. 2000); HALL V. ARTUZ 954 F. 90 (S.D.N.Y 1997)

(F) DEPRIVATION OF LIBERTY INTERESTS AND PUNITIVE PUNISHMENT WITHOUT FAIR DUE PROCESS OF LAW. SEE (CAL. D.C. 5:16-CV-00231-R-KES DKT 1 AT P. 126-170)

AND COMPARE TO: BELL V. WOLFISH 441 U.S. 520 (1979); SANDIN V. CONNOR 515 U.S. 472 (1995); HEWITT V. HELMS 459 U.S. 460 (1983); MITCHEL V. DUPNIK 75 F.3d 517 (9TH CIR 1995); TIBBAL V. HASTY 490 F.3d 43 (2D CIR 2007); HOLLY V. WOOLFOLK 415 F.3d 678 (7TH CIR

2005); RESNICK V. HAYES 213 F.3d 443 (9TH CIR 2000); FUENTES
V. WAGNER 206 F.3d 395 (3D CIR 2000); VALDEZ V. ROUSENBAUM
302 F.3d 1039 (9TH CIR 2002); SURPRENANT V. RIVAS 424 F.3d 5
(1ST CIR 2005)

- 2 -

THE PUBLICS TRUST AND FAITH IN OUR JUSTICE SYSTEM AND OUR
COURTS OF LAW IS PREMISED ON THE FAIRNESS AND GOOD
DEALINGS OF THE JUDICIARY IN EXERCISING THEIR SOUND
DISCRETION EQUALLY FOR ALL PEOPLE AND INSURING THAT
JUSTICE REMAINS REASONABLY AVAILABLE FOR EVERYONE, EVEN
FOR THE POOR AND DEFENSELESS.

THE UNITED STATES SUPREME COURT HAS WISELY RECOGNIZED
THAT FAIRNESS AND IMPARTIALITY OF THE JUDICIARY GOES TO
THE VERY INTEGRITY OF THE LEGAL SYSTEM. SEE GOMEZ V. U.S. 490
858 876 (1989). IT IS THE DUTY OF THE JUDICIARY TO INSURE
THAT PUBLIC PERSON'S CONSTITUTIONAL RIGHTS BE PROTECTED
IN EVERY CASE. JOHNSON V. ZERBST 304 U.S. 458 (1938);
MALBURY V. MADISON 5 U.S. (1 CRANCH) 137, 177-180 (1803)

"WHEN FEDERAL COURTS INTERVENTION BECOMES THE ONLY MEANS
BY WHICH TO ENFORCE RIGHTS GUARANTEED BY THE CONSTITUTION
FEDERAL COURTS ARE OBLIGATED TO ACT (WITHOUT THIS ALL
RESERVATION OF PARTICULAR RIGHTS OR PRIVILEGES WOULD
AMOUNT TO NOTHING.) [CITATION]²² COLEMAN V. SCHWARZENEGGER
922 F.SUPP.2d 882 (9TH CIR 2009)

1 HOW MUCH FAITH AND TRUST CAN BE EXPECTED FROM US,
2 THE COMMON PEOPLE, TOWARDS OUR LEGAL AND JUSTICE
3 SYSTEM WHEN FOR INSTANCE, HYPOTHETICALLY SPEAKING, THE
4 PLAINTIFF ALLEGES THAT: "THE COLOR OF THIS PAPER, ON WHICH
5 THIS DOCUMENT IS WRITTEN, IS WHITE," AND BY PLAIN LANGUAGE
6 CLEARLY EXPRESSES SUCH FACT IS TRUE, AND EVEN PROVIDES A
7 SAMPLE OF THE DOCUMENT AS PROFFERED PROOF TO SUBSTANTIATE
8 HIS CLAIMS THAT: "THE PAPER IS WHITE." BUT, THEN TO HAVE
9 A SWORN JUDGE, MAGISTRATE OR ARBITRATOR MAKE A FALSE
10 DETERMINATION THAT IS BASED ON CLEAR MISREPRESENTATIONS
11 OF THE STATEMENTS AND BY ARBITRARILY DECIDING THAT:
12 THE COLOR OF THIS PAPER IS GREEN (OR) IN THE ALTERNATIVE
13 TO HOLD THAT THE PLAINTIFF FAILED TO STATE "IT IS WHITE"?
14
15 BUT WORST YET, THEN TO WITNESS HOW THE TRUSTED JUDGE,
16 MAGISTRATE OR ARBITRATOR KNOWINGLY IMPLEMENTS SUCH A
17 FLAWED, UNFAIR AND MISLEADING METHOD OF ANALYSIS IN
18 ORDER TO DEPRIVE A PERSON FROM ACCESSING A COMPETENT
19 FAIR MINDED TRIER OF FACT (A JURY) TO DETERMINE THE TRUTH.
20 IN ESSENCE, THAT IS WHAT IS TAKING PLACE IN THIS INSTANT
21 MATTER, EXCEPT THAT THE DIFFERENCE IS, THAT THE PLAINTIFF IN
22 THIS CASE HAS MADE ALLEGATIONS AGAINST THE DEFENDANTS
23 THAT IMPLICATE THE VERY SPIRIT AND LIFE BLOOD OF LIBERTY
24 AND FREEDOM, WHICH IS WHAT THE JUDICIAL OATH TO
25 OFFICE IS MEANT TO PROTECT AND SAFEGUARD.
26
27 IT'S NOT A NOVEL CONCEPT THAT WHEN THE GOVERNMENT FAILS
28 TO PROTECT ITS CITIZENS FROM ABUSE OF AUTHORITY ON BEHALF

1 OF LAW ENFORCEMENT AND SWORN OFFICIALS WHOM ABUSE
2 THEIR POWER IN ORDER TO OPPRESS THE PUBLIC; HISTORY
3 TEACHES US HOW SUCH CONDITIONS AND CIRCUMSTANCES IN
4 A SOCIETY CAN ONLY LEAD TO CONTEMPT FOR THE LAW AND
5 TO THE DEMISE OF PUBLIC ORDER. IT GIVES CAUSE, A REASON,
6 FOR PUBLIC UNREST AND BECOMES THE CATALYST TO
7 ANARCHY, THE ANTITHESIS TO THE RULE OF LAW. SEE
8 ELKIN ET AL V. UNITED STATES 364 U.S. 208 (1960)
9 MC. NABB V. U.S. 318 U.S. 332 (1943) AND SEE "THE
10 REPUTATION OF OUR POLITICAL INSTITUTION" EBRAHAM LINCOLN'S
11 JANUARY 27, 1838 ADDRESS BEFORE THE YOUNG MEN'S LYCEUM
12 AND COMPARE TO: THE 1992 RODNEY KING RIOTS IN LOS
13 ANGELES CA. AND THE 2014, FERGUSON, MISSOURI, RIOTS @
14 GOOGLE.COM / WORLD WIDE WEB.

15
16 IN THIS CASE THE METHODS EMPLOYED BY THE DISTRICT COURT
17 TO ENFORCE THE PRISON LITIGATION REFORM ACT (PLRA) AND
18 28 U.S.C §1914 - §1915 HAS THE TENDENCY OF CREATING
19 THE REAL THREAT TO PUBLIC WELL BEING, BECAUSE OF THE
20 DANGER CREATED TO INDIVIDUALS THAT ARE SUBJECTED TO SERIOUS
21 HARM AND INJURIES AT HANDS OF OFFICIALS, BUT WHO WILL BE
22 UNFAIRLY AND ARBITRARILY DEPRIVED OF CONSTITUTIONAL
23 PROTECTIONS GUARANTEED BY ARTICLE III AND VII AMENDMENT
24 OF THE UNITED STATES CONSTITUTION SIMPLY BECAUSE THEY ARE
25 POOR AND THE COURTS ARBITRARILY AND UNFAIRLY REFUSE
26 TO HEAR AND TREAT THE PEOPLES CLAIMS WITH RESPECT. SUCH
27 CONDITIONS ULTIMATELY CAN ONLY LEAD TO PUBLIC REVOLT
28 AND CONTRARY TO THE PUBLICS INTEREST IN JUSTICE AND ORDER.

-B-

1 THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
2 HAS ENTERED A DECISION THAT CONFLICTS WITH THE DECISION
3 OF OTHER UNITED STATES COURTS OF APPEAL AND WITH ITS OWN
4 PRIOR DECISIONS ON THE SAME ISSUE AND THAT AFFECTS THE
5 RULE OF NATIONAL APPLICATION IN WHICH THERE IS AN
6 OVERRIDING NEED FOR NATIONAL UNIFORMITY.
7

- 1 -

8 WHERE GENUINE QUESTIONS OF FACT EXIST OVER THE SUBJECT
9 MATTER IT IS THE DUTY OF THE JURY TO MAKE THOSE
10 DETERMINATIONS INCLUDING ASSESSING CREDIBILITY OF
11 WITNESSES, WEIGHING THE EVIDENCE AND DECIDING WHAT IS
12 TRUTH AND FACTS OF THE MATTER
13

14 THE UNITED STATES COURT MADE IT CLEAR THAT IT IS THE DUTY OF
15 THE JURY TO MAKE DETERMINATIONS OVER CREDIBILITY OF WITNESSES,
16 THE EVIDENCE AND TO DECIDE WHAT THE FACTS ARE IN A CASE
17 REEVES V. ANDERSON PLUMBING PRODS. INC 530 U.S. 133 (2000)
18

19 IN THE PLEADING STAGES HOWEVER, IT IS WELL RECOGNIZED THAT
20 A PLAINTIFF IS NOT REQUIRED TO PROVE HIS ENTIRE CASE BY
21 PRESENTING DIRECT OR CIRCUMSTANTIAL EVIDENCE WITH HIS
22 CIVIL RIGHTS COMPLAINT AND WITH THE PLEADING. FILED WITH
23 THE COURT TO INITIATE A CIVIL ACTION. A PERSON MUST SIMPLY
24 SUBSTANTIATE THE ELEMENTS TO THE LEGAL THEORY BY
25 PROVIDING A STATEMENT OF THE FACTS AND OF THE
26 CIRCUMSTANCES LEADING UP TO AND THAT CAUSED THE INJURY.
27 AND DAMAGES; AND THAT IDENTIFIES THOSE RESPONSIBLE.
28

(a)

THE QUESTION OF THE EXISTANCE OF A CONSPIRACY SHOULD NOT BE TAKEN FROM THE JURY IF THERE IS POSSIBILITY THE JURY COULD INFER FROM CIRCUMSTANCES A MEETING OF THE MINDS OR UNDERSTANDING AMONG THE CONSPIRATORS TO ACHIEVE THE CONSPIRACY. WHITE V. MCKINLEY 519 F.3d 806, 816 (8th 2008) AND GREEN V. MISSOURI 734 F.SUPP 814, 850-851 (E.D MICH 2010) AND CITED CASES.

IT HAS BEEN HELD THAT IN A CONSPIRACY CLAIM A COMPLAINT MUST PLEAD "ENOUGH FACTS TO STATE A CLAIM TO RELIEF THAT IS PLAUSIBLE ON ITS FACE." BELL ATLANTIC CORP. V. TWOMBLY 550 U.S. 544, 570 (2007) "A CLAIM HAS FACIAL PLAUSABILITY WHEN THE PLAINTIFF PLEADS FACTUAL CONTENT THAT ALLOWS THE COURT TO DRAW THE REASONABLE INFERENCE THAT THE DEFENDANT IS LIABLE FOR THE MISCONDUCT ALLEGED." ASHCROFT V. IQBAL 556 U.S. 662, 678 (2009)

IN THIS INSTANT MATTER THE PLAINTIFF HAS MET THIS BURDEN. UNDER THE STANDARDS OF ASHCROFT THE U.S. SUPREME COURT MAKES IT CLEAR THAT AT THE PLEADING STAGES OF A COMPLAINT THE THRESHOLD THAT THE PLAINTIFF MUST MEET IS TO PLEAD SUFFICIENT FACT THAT "ALLOWS THE COURT TO DRAW REASONABLE INFERENCE" OF AN UNLAWFUL CONDUCT ON BEHALF OF THE DEFENDANTS. THE KEY WORD IS "ALLOWS". THE RULE DOES NOT REQUIRE A PLAINTIFF TO ALLEGE SUFFICIENT FACTS THAT WOULD

1 MAKE THE COURT CONVINCED OF THE FACTS ALLEGED BY THE
2 PLAINTIFF. IT IS THE JURY THAT THE PLAINTIFF
3 MUST CONVINCE. IT IS FOR THE JURY TO MAKE ANY
4 REASONABLE INFERENCES FROM THE DIRECT AN/OR
5 CIRCUMSTANTIAL EVIDENCE PRESENTED TO IT AT AN
6 ADVERSARIAL HEARING, WHERE BOTH PARTIES ARE GIVEN
7 AN OPPORTUNITY TO CONTEST AND ARGUE THEIR POINTS.

8
9 ALTHOUGH THE COURTS HAVE DISCRETION TO SCREEN THE
10 COMPLAINT AT THE VERY INITIAL STAGES OF THE COMPLAINT
11 TO DETERMINE WHETHER A PRO-SE INDIGENT PLAINTIFF
12 HAS STATED VALID CLAIMS AND CONTROVERSIES IN ORDER
13 TO BE GRANTED IFP RELIEF UNDER 28 U.S.C § 1915
14 STANDARDS, AND TO INVOKE THE CIVIL PROTECTION UNDER
15 ARTICLE III AND THE VII AMENDMENT OF THE U.S.
16 CONSTITUTION; THE STANDARD IS NOT SO RIGOROUS AS TO
17 REQUIRE A PLAINTIFF TO PROVE HIS ENTIRE CASE BY
18 CONVINCING EVIDENCE AT THE INITIAL IFP SCREENING.
19 IN FACT SUCH RIGOROUS STANDARDS ARE NOT EVEN
20 MANDATED UNDER RULE 12 (b) FEDERAL RULES OF CIVIL
21 PROCEDURES AND IN ORDER FOR A PLAINTIFF TO OVERCOME
22 A MOTION TO DISMISS. AFTER THE DEFENDANTS HAVE ACTUALLY
23 PROVIDED A RESPONSE OR ANSWER, THE COURTS HAVE
24 REPEATEDLY STRUCK DOWN HIGHTENED PLEADING STANDARDS
25 THAT DEMAND MORE THAN THE BASIC REQUIREMENTS;
26 (i.e., "A SHORT AND PLAIN STATEMENT") THAT SHOWS
27 THAT (IF) THE FACTS ARE DETERMINED (BY A JURY) TO BE
28 TRUE THE PLAINTIFF IS ENTITLED TO RELIEF; AND THAT

1 PROVIDED SUFFICIENT NOTICE AND FACTUAL ALLEGATIONS
2 TO PERMIT THE DEFENDANTS TO FORMULATE A RESPONSE.
3 RULE 8 FEDERAL RULES OF CIVIL PROCEDURES) SEE
4 ALSO; REEVES V. ANDERSON PLUMBING PRODS INC. 530
5 U.S. 133, 150 (2000); SWIERKIEWICZ V. SORENA N.A.
6 534 U.S. 506 (2002); WHITE V. MCKINLEY 519 F.3d
7 806, 816 (8TH CIR 2008); GALBRAITH V. COUNTY OF
8 SANTA CLARA 307 F.3d 1119, 1125 (9TH CIR 2002); HARTON
9 V. HANRAHAN 600 F.2d 600, 620-624 (7TH CIR 1979);
10 REV'D IN PART ON OTHER GROUNDS IN 466 U.S. 754 (1980);
11 YOUNG V. SUFFOLK COUNTY 705 SUPP.2d 183 (2ND CIR 2010);
12 GREEN V. MISSOURI 734 F.SUPP.2d 814, 850-851 (E.D.
13 MICH 2010); FISK V. LETTERMAN 401 F.SUPP.2d 362,
14 376 (S.D.N.Y 2005) AND THE CITED CASES.

15
16 THE PLAINTIFF NEED NOT PROVE THE EXISTENCE OF A CONSPIRACY
17 AT THE PLEADING STAGE. HE NEED ONLY ALLEGE A PLAUSIBLE CLAIM
18 THAT THERE WAS AN AGREEMENT OR JOINT ACTION TO INFLECT AN
19 UNCONSTITUTIONAL INJURY AND AN OVERT ACT IN FURTHERANCE
20 OF THE GOAL BY THE DEFENDANT. "PLAINTIFF NEED NOT LIST
21 THE PLACE AND DATE OF DEFENDANTS' MEETINGS OR THE DETAILS
22 OF THEIR CONVERSATIONS IN ORDER TO ADEQUATELY ALLEGE THE
23 EXISTENCE OF A CONSPIRACY?" YOUNG V. SUFFOLK COUNTY
24 705 F.SUPP.2d 183, 197 (E.D.N.Y. 2010) AND CITED CASES.
25 SEE ALSO HARRIS V. RODERICK 126 F.3d 1189, 1196 (9TH CIR 1997)
26 AND COMPARE (CA.D.C. 5:16-CV-00231 DK1 AT P. 28-34; 41-48; 126-
27 169)

28 ///

(b.)

ONCE A PARTICULAR POLICY, CUSTOM OR COMMON PRACTICE HAS BEEN IDENTIFIED AND IT HAS BEEN ALLEGED TO HAVE RESULTED IN A VIOLATION OF FEDERAL CIVIL RIGHTS, INCLUDING A POLICY, CUSTOM OR COMMON PRACTICE OF DELIBERATE INDIFFERENCE ON BEHALF OF SUPERVISORS AND POLICY MAKERS, IT IS A QUESTION FOR THE JURY TO DECIDE WHETHER THE ACTIONS ALLEGED AGAINST THE DEFENDANTS ACTUALLY RESULTED IN THE DEPRIVATION OF CIVIL RIGHTS. *MONELL V. DEPT. OF SOCIAL SERVICES OF CITY OF NEW YORK* 436 U.S. 658 (1978); *CITY OF CANTON V. HARRIS* 499 U.S. 378 (1989).

THE NINTH CIRCUIT COURT OF APPEALS HAS RECOGNIZED THAT "THE COUNTY'S LIABILITY HOWEVER, HINGES NOT ONLY ON THE EXISTANCE OF A PUBLIC POLICY THAT POSSES A SUBSTANTIAL RISK OF SERIOUS HARM, BUT ALSO ON WHETHER THE COUNTY WAS AWARE OF THE RISK. [CITATION] ALTHOUGH DIRECT EVIDENCE OF A PERSON'S MENTAL STATE RARELY EXISTS, IT IS NOT ALWAYS NECESSARY TO PROVE A PERSON'S SUBJECTIVE AWARENESS AS THIS INQUIRY IS 'SUBJECT TO DEMONSTRATION IN THE USUAL WAYS INCLUDING INFERENCE FROM CIRCUMSTANTIAL EVIDENCE'. IN THIS CASE A PLETHORA OF CIRCUMSTANTIAL EVIDENCE COULD LEAD A REASONABLE JURY TO INFER THAT THE COUNTY WAS AWARE OF THE RISK THAT ITS POLICIES PRESENTED." *GIBSON V. COUNTY OF WASHOE NEV.* 290 F.3d 1175, 1190 (9TH CIR 2002) (QUOTING *FARMER V. BRENNAN* 511 U.S. 825, 837 (1994))

1 THE SIXTH CIRCUIT HAS RECOGNIZED THESE BASIC PRINCIPLES, IN
2 DOMINGUEZ V. CORR. MED. SERVS. 555 F.3d 543 AT P. 550 (6TH CIR
3 2009) THE COURT SAID: "BECAUSE GOVERNMENT OFFICIALS DO NOT
4 READILY ADMIT THE SUBJECTIVE COMPONENT OF THE TEST, IT MAY BE
5 'DEMONSTRATED' IN THE USUAL WAYS, INCLUDING INFERENCE FROM
6 CIRCUMSTANTIAL EVIDENCE... AND A FACT FINDER MAY CONCLUDE
7 THAT PRISON OFFICIALS KNEW OF A SUBSTANTIAL RISK FROM THE
8 VERY FACT THAT THE RISK WAS OBVIOUS." SEE ALSO BURGESS
9 V. FISCHER 766 F.SUPP.2d 895, 850 (S.D. OHIO 2010) AND CITED
10 CASES.

11
12 IN CITY OF CANTON V. HARRIS 499 U.S. 378 (1989) THE
13 SUPREME COURT HELD THAT A "FAILURE TO TRAIN" POLICE
14 OFFICERS MAY SERVE AS THE BASIS FOR LIABILITY UNDER § 1983
15 "WHERE FAILURE TO TRAIN AMOUNTS TO DELIBERATE
16 INDIFFERENCE TO RIGHTS OF PERSONS WITH WHOM THE
17 POLICE COME IN CONTACT." (ID AT P. 388)

18
19 REMARKABLY, THE NINTH CIRCUIT COURT OF APPEALS ALSO RECOGNIZES
20 THESE BASIC PRINCIPLES IN GIBSON V. COUNTY OF WASHOE
21 NEV. 290 F.3d 1175 (9TH CIR 2002) WHEN IT FURTHER HELD THAT:
22 "POLICIES OF OMMISSION REGARDING THE SUPERVISION OF EMPLOYEES,
23 THEN CAN BE 'POLICIES' OR 'CUSTOMS' THAT CREATE MUNICIPAL
24 LIABILITY UNDER MONELL BUT ONLY IF THE OMMISSION 'REFLECTS A
25 DELIBERATE' OR 'CONSCIOUS' CHOICE' TO COUNTENANCE THE
26 POSSIBILITY OF A CONSTITUTIONAL VIOLATION." (ID AT 1194)
27 (QUOTING CITY OF CANTON SUPRA 499 U.S. AT P 389-390).

1 "A JURY MAY INFER THAT A MUNICIPALITY MADE SUCH A
2 DELIBERATE CHOICE ' WHEN A MUNICIPAL ACTOR DISREGARDED
3 A KNOWN OR OBVIOUS CONSEQUENCE OF HIS ACTION.'
4 [CITATION] WHETHER A LOCAL GOVERNMENT HAS DISPLAYED A
5 POLICY OF DELIBERATE INDIFFERENCE TO THE CONSTITUTIONAL
6 RIGHTS OF ITS CITIZENS IS GENERALLY A JURY
7 QUESTION.' [CITATION] GIBSON SUPRA 290 F.3d AT P.
8 1194-1195.

9
10 "THE CANTON COURT RECOGNIZED THAT WHEN THE NEED TO
11 REMEDY THE OMISSION 'IS SO OBVIOUS AND INADEQUACY SO
12 LIKELY TO RESULT IN THE VIOLATION OF CONSTITUTIONAL RIGHTS
13 ... THE POLICYMAKERS OF THE CITY CAN REASONABLY BE SAID
14 TO HAVE BEEN DELIBERATELY INDIFFERENT TO THE NEED.'
15 [CITATION] ... THE NEED TO ACT MAY BE OBVIOUS BECAUSE
16 ANY REASONABLE PERSON WOULD RECOGNIZE THE NEED...'
17 (ID AT P. 1195)

18
19 IN THE INSTANT MATTER MR. VARGAS HAS SUFFICIENTLY AND
20 REASONABLY IDENTIFIED THE MUNICIPALITIES AND/OR THE
21 INDIVIDUAL DEFENDANTS THAT ACTING UNDER COLOR OF LAW
22 HAVE BEEN ALLEGED TO BE RESPONSIBLE AND LIABLE FOR
23 HAVING HAD KNOWINGLY, DELIBERATELY AND/OR RECKLESSLY
24 ENGAGED AND PARTICIPATED IN, EITHER, A COHORT WIDESPREAD
25 CONSPIRACY WITH OTHER DEFENDANTS INTENDED TO VIOLATE
26 CIVIL RIGHTS AND CAUSE INJURY TO MR. VARGAS (AND/OR) IN
27 HAVING IMPLEMENTED OR CONCENTED TO THE IMPLEMENTATION
28 AND USAGE OF WIDESPREAD OFFICIAL OR UNOFFICIAL POLICIES,

1 CUSTOM OR COMMON PRACTICES THAT THE NAMED DEFENDANTS
2 KNEW; WERE ACTUALLY PLACED ON NOTICE AND/OR THE RISK
3 AND DANGER WAS SO OBVIOUS THAT ANY REASONABLE PERSON
4 SHOULD OF KNOWN IT WOULD VERY LIKELY RESULT IN INJURY TO
5 MR. VARGAS. SEE. (CA. D.C. NO 5:16 - CV - 00231 - R - KES
6 DKT 1 COMPLAINT AT P. 14-19; 20-45; 47-49; 95-96;
7 105-107; 115-119; 125; 128-132; 167-169)

8
9 FURTHERMORE, IN THE CASE THAT THE JURY DETERMINES THAT
10 IN THIS CASE AFTER REASONABLY ASSESSING THE EVIDENCE,
11 THAT THERE IS INSUFFICIENT PROOF OF A WIDESPREAD
12 "CONSPIRACY" OR OF WIDESPREAD IMPLEMENTATION OF OFFICIAL
13 OR UNOFFICIAL "POLICIES, CUSTOMS, COMMON PRACTICES" THAT
14 EFFECTUATED VIOLATIONS OF MR VARGAS' CONSTITUTIONAL CIVIL
15 RIGHTS. THE JURY MAY NONTHELESS, DETERMINE THAT
16 MR. VARGAS WAS IN FACT CAUSED DAMAGES DUE TO THE
17 VIOLATION OF CONSTITUTIONAL CIVIL RIGHTS RESULTING FROM
18 DISCRIMINATION OF A "CLASS OF ONE," AN ACTIONABLE
19 THEORY THAT HAS BEEN RECOGNIZED BY THE UNITED STATES
20 SUPREME COURT AND OTHER CIRCUIT COURTS OF APPEALS, AND
21 THAT APPLIES WHEN A PERSON IS TREATED UNFAIRLY AND
22 DIFFERENTLY THAN OTHER SIMILARLY SITUATED PERSONS
23 UNDER THE SAME CIRCUMSTANCES; AND THAT JUST SO HAPPENS,
24 MR. VARGAS, SUFFICIENTLY ALLEGES TO EXIST IN THIS INSTANT
25 CASE. SEE (ID AT P. 34, PP 82; P. 85, PP 150; P. 169, PP 268)

(C)

WHERE A CIVIL RIGHTS PLAINTIFF ALLEGES THAT HE HAS BEEN INTENTIONALLY TREATED DIFFERENTLY THAN OTHER SIMILARLY SITUATED AND THAT THERE IS NO RATIONAL BASIS FOR THE DIFFERENCE OF TREATMENT UNDER THE CLASS OF ONE THEORY, A VALID CLAIM UNDER EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION HAS BEEN SUCCESSFULLY MADE VILLAGE OF WILLOWBROOK V. OLECH 528 U.S. 562, 563-564 (2000).

THE SUPREME COURT HAS RECOGNIZED IN VILLAGE OF WILLOWBROOK THAT "THE PURPOSE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT IS TO SECURE EVERY PERSON WITHIN THE STATES JURISDICTION AGAINST INTENTIONAL AND ARBITRARY DISCRIMINATION WHETHER OCCASIONED BY EXPRESS TERMS OF A STATUTE OR BY ITS PROPER EXECUTION THROUGH DULY CONSTITUTED AGENTS." (528 U.S. AT P. 564) (QUOTING SIOUX CITY BRIDGE CO. V. DAKOTA COUNTY 260 U.S. 441 445 (1923), QUOTING SUNDAY LAKE IRON CO. V. TOWNSHIP OF WAKEFIELD 247 U.S. 350, 352 (1918)) SEE ALSO YOUNG V. SUFFOLK COUNTY 705 F. SUPP. 2D 183, 205 (2ND CIR 2010). THE SEVENTH CIRCUIT COURT OF APPEALS HAS SO ELOQUENTLY STRESSED THIS POINT WHEN IT RECOGNIZED AND HELD THAT: "A CLASS OF ONE IS LIKELY TO BE THE MOST VULNERABLE OF ALL AND WE DO NOT UNDERSTAND THEREFORE, WHY IT SHOULD BE DENIED THE PROTECTION OF THE EQUAL PROTECTION CLAUSE." SEE ESMAIL V. MACRANE 53 F.3D 176, 176 (1995). WE SIMPLY ASK IN THIS INSTANT MATTER, WHETHER THERE IS REASONABLE JUSTIFICATION FOR DEPRIVING MR. VARGAS OF HIS CIVIL RIGHTS TO EQUAL PROTECTION?

DISTRICT ATTORNEYS AND PUBLIC DEFENDERS THAT CONSPIRE WITH JUDGES TO DEPRIVE A PUBLIC PERSON OF CONSTITUTIONAL CIVIL RIGHTS DO NOT ENJOY ABSOLUTE IMMUNITY. SIMPLY BECAUSE OF THEIR TITLE IN CONNECTION TO A CRIMINAL PROSECUTION AGAINST THE PLAINTIFF

IN THE SEMINAL CASE OF DENNIS V. SPARKS 449 U.S. 24 (1980) THE UNITED STATES SUPREME COURT UPHELD THE RULE THAT WHEN "PRIVATE PARTIES WHO CORRUPTLY CONSPIRE WITH A JUDGE IN CONNECTION WITH SUCH CONDUCT ARE THUS ACTING UNDER COLOR OF LAW OF STATE LAW UNDER THE MEANING OF § 1983." (ID AT P.29)

THE COURT FURTHER HELD THAT THE GENERAL ABSOLUTE IMMUNITY FROM CIVIL LIABILITY THAT SHIELD JUDGES FROM CIVIL LIABILITY DOES NOT PROTECT OTHER PRIVATE PARTIES THAT CONSPIRED WITH A JUDGE TO VIOLATE CIVIL RIGHTS. THE REASONING FOR THE COURT'S DECISION WAS FOUNDED ON THE PRINCIPLE THAT ANY POTENTIAL HARM OF DENYING ABSOLUTE IMMUNITY TO ANY PRIVATE CO-CONSPIRATORS IS OUTWEIGHED BY THE BENEFIT OF PROVIDING A REMEDY AGAINST THOSE PRIVATE PERSONS WHO PARTICIPATE IN SUBVERTING THE JUDICIAL PROCESS AND IN SO DOING INFLECT INJURY ON OTHER PERSONS.

IN THIS CASE THE PLAINTIFF HAS ALLEGED AND REASONABLY SHOWN AN UNDERSTANDING AND MEETING OF

1 THE MINDS BETWEEN COURT JUDGES, THE DISTRICT
2 ATTORNEY(S) AND PUBLIC DEFENDERS IN ADDITION
3 TO ACTUAL OVERT AND CONCERTED ACTIONS BETWEEN
4 THE INDIVIDUALS INTENDED TO /AND FOR THE FURTHERANCE
5 OF EFFECTIVELY DEPRIVING MR. VARGAS OF (CHERISHED,
6 ABSOLUTE, SELF-PRESERVING AND AUTONOMOUS FEDERAL
7 CIVIL RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL
8 AND/OR TO SELF-REPRESENTATION. SEE (CA. CD.
9 5:16-CV-00231-DKT 1 AT P. 20-98)

10
11 NONETHELESS, THE LOWER DISTRICT COURT HELD THAT ALL
12 THE NAMED DEFENDANTS ACTING IN THEIR INDIVIDUAL
13 CAPACITIES ARE ALL ABSOLUTE IMMUNED FROM
14 LIABILITY SIMPLY BECAUSE OF THEIR TITLE IN THE PENDING
15 STATE CRIMINAL PROSECUTION. HOWEVER, AS WE POINT OUT
16 BELOW THE DISTRICT COURT HAS MADE CLEAR ERROR
17 OF LAW AND ENTERED AND OBJECTIVELY UNREASONABLE
18 DECISION IN THIS CASE.

19
20 (a.)

21 JUDGES ARE NOT ABSOLUTELY IMMUNED TO INJUNCTIVE
22 OR DECLARATORY RELIEF AND THE PLAINTIFF ONLY REQUESTS
23 FOR DECLARATION OF HIS CIVIL RIGHTS IN REGARDS TO ANY JUDGES

24
25 IN PULLAN V. ALLEN 466 U.S. 522 541-543 (1984)
26 THE SUPREME COURT HELD THAT JUDGES DO NOT ENJOY
27 ABSOLUTE IMMUNITY TO INJUNCTIVE AND DECLARATORY RELIEF.
28 COMPARE TO (CA. C.D 5:16-CV-00231 DKT 1 AT P. 10-11)

1 IN THIS CASE THE LOWER COURT'S FINDINGS THAT MR. VARGAS
2 IS SEEKING DAMAGE AWARD FROM JUDGES IS NOT ONLY
3 A CLEAR MISREPRESENTATION OF THE PLEADING. BUT, IT IS
4 ALSO AN UNREASONABLE BASIS FOR DENYING THE
5 PLAINTIFFS CLAIMS AGAINST THE CO-CONSPIRATORS
6 DISTRICT ATTORNEY(S) AND THE PUBLIC DEFENDERS, AND
7 BY HOLDING THAT THE CO-CONSPIRATORS ENJOY THE
8 SAME ABSOLUTE IMMUNITY AS JUDGES. SEE
9 (APPENDIX-B - AT D.8) AND COMPARE DAVIS V. BATLESS
10 TO F.3d 367 (5TH CIR 1995)

11
12 (B)

13 DISTRICT ATTORNEYS DO NOT ENJOY ABSOLUTE
14 IMMUNITY FOR ACTIONS THAT ARE NOT INTIMATELY
15 RELATED TO THE PREPARATION AND PRESENTATION OF THE
16 PROSECUTOR'S CASE NOR FOR ACTIONS THAT THEY HOLD NO
17 DISCRETION TO TAKE.

18
19 IN KALINA V. FLETCHER 522 U.S. 118 (1997) THE SUPREME
20 COURT REITERATED THAT "ABSOLUTE IMMUNITY THAT
21 PROTECTS THE PROSECUTOR'S ROLE ... IS NOT GROUNDED
22 ON ANY SPECIAL 'ESTEEM FOR THOSE WHO PERFORM THESE
23 FUNCTIONS ...' [CITATION] IN DETERMINING IMMUNITY
24 WE EXAMINE 'THE NATURE OF THE FUNCTION PERFORMED
25 NOT THE IDENTITY OF THE ACTOR WHO PERFORMED IT.'
26 [CITATION]?" (ID AT P. 127) SEE ALSO BUCKLEY V.
27 FITZSIMMONS 509 U.S. 259 (1993) ["ACTIONS OF
28 PROSECUTORS ARE NOT ABSOLUTELY IMMUNED MERELY

1 BECAUSE THEY ARE PERFORMED BY A PROSECUTOR. ²⁾
2 THE COURT HAS RULED THAT THE TRADITIONAL ROLES WHERE
3 PROSECUTORS ARE ENTITLED TO ABSOLUTE IMMUNITY ARE
4 FOR "INITIATING A PROSECUTION AND IN PRESENTING THE
5 STATES CASE" SEE IMBER V. PACHTMAN 424 U.S.
6 409, 431 (1976)

7 HOWEVER, WHERE THE PROSECUTOR HAS NO DISCRETION
8 TO EXERCISE WITH REGARD TO THE PERFORMANCE OF A
9 PARTICULAR ACT, HE SHOULD NOT BE VIEWED AS HAVING
10 ENGAGED IN AN "ADVOCACY" FUNCTION, AND SHOULD NOT
11 BE ENTITLED TO ABSOLUTE IMMUNITY. SEE WHITE BY
12 SWAFFORD V. GERBITZ 860 F.2d 661 (6TH CIR 1988);
13 JOSEPH V. PATTERSON 795 F.2d 599 (6TH CIR 1986);
14 THE COURTS HAVE REPEATEDLY DECLINED TO ALLOW
15 ABSOLUTE IMMUNITY TO PROSECUTORS WHEN THE NATURE
16 OF THE FUNCTION IS INVESTIGATIVE AND OR ADMINISTRATIVE,
17 AND IT WILL NOT SHIELD FABRICATION OF EVIDENCE;
18 FABRICATING INFORMATION ON PROBABLE CAUSE DECLARATION;
19 FABRICATING FALSE POLICE REPORTS; FAILING TO DISCLOSE
20 KNOWN AND APPARENT EXCULPATORY EVIDENCE AND FOR
21 CONSPIRING TO PRESENT FALSE TESTIMONY AT A HEARING.
22 SEE, KALINA V. FLETCHER 522 U.S. 118 (1997); GEZLER
23 V. LONGAN BACK 410 F.3d 630 (9TH CIR 2005);
24 CONNIE V. THOMPSON 563 U.S. 51 (2011); BROAD V.
25 BOGAN 320 F.3d 1023 (9TH CIR 2003); LISKEE V.
26 CITY OF LOS ANGELES 780 F.3d 1231 (9TH CIR 2015)

1 IN THIS INSTANT MATTER THE CLAIMS AGAINST THE DISTRICT
2 ATTORNEYS THAT TOOK OVERT ACTIONS OF DELIBERATELY
3 FALSEFYING AND MISREPRESENTING MATERIAL FACTS IN THE
4 FURTHERANCE OF A CONSPIRACY TO EFFECTIVELY VIOLATE
5 AND SUBVERT THE PLAINTIFF'S CIVIL RIGHT TO EFFECTIVE
6 ASSISTANCE OF COUNSEL AND/OR THE RIGHT TO EFFECTIVE
7 SELF-REPRESENTATION CAN HARDLY BE CONSIDERED
8 TRADITIONAL FUNCTIONS OF THE PROSECUTOR(S) ROLES.
9 SPECIALLY, WHERE NO DISCRETION EXISTS, NOR NO
10 LAW CAN EXIST, THAT WOULD ALLOW DISTRICT
11 ATTORNEY PROSECUTORS TO INTENTIONALLY VIOLATE AND
12 SUBVERT A CRIMINAL DEFENDANT'S SIXTH AMENDMENT
13 PROTECTIONS. TO PERMIT SUCH ACTIONS COULD
14 LEAD TO THE DEMISE OF FREEDOM AND LIBERTY.

15
16 THEREFORE, NO ABSOLUTE IMMUNITY SHOULD BE
17 PERMITTED TO SHIELD THE DEFENDANT PROSECUTORS
18 FOR THEIR DELIBERATE ACTIONS ALLEGED IN THIS
19 CASE. SEE (CA. CD. - 15:16 - LV - 00231 DKT 1 AT
20 P. 28-34; 54-59)

21
22 (C)

23 PUBLIC DEFENDERS THAT CONSPIRE WITH OFFICIALS
24 TO VIOLATE A PERSONS CIVIL RIGHTS DO NOT ENJOY
25 ANY TYPE OF IMMUNITY FROM §1983 LIABILITY
26 GLOVER V. TOWER 700 F.2d 556 (9TH CIR 1983)
27 FERRI V. ACKERMAN 494 U.S. 193 (1979)

1 IN FERRY 444 U.S. 193 SUPRA THE SUPREME COURT
2 OVERRULED ITS PREVIOUS DECISIONS THAT EXTENDED ABSOLUTE
3 IMMUNITY TO APPOINTED DEFENSE COUNSEL FOR AN
4 INDIGENT DEFENDANT. THE NINTH CIRCUIT HAS RECOGNIZED
5 THE CHANGE IN LAW IN GLOVER. THUS THE LOWER
6 DISTRICT COURTS ANALYSIS AND CONCLUSION IN THIS CASE
7 ARE IN CLEAR ERROR AND CONFLICTS WITH ITS OWN
8 PRIOR DECISIONS. SEE ALSO WHITE V. BLOOM 621
9 F.2d 276 180 (8TH CIR 1983) CERT DENIED IN
10 449 U.S. 995 (1980)

11
12 - 3 -

13 3. PLAINTIFF HAS NOT SUED THE STATE OF CALIFORNIA,
14 NOR THE SUPERIOR COURT, NOR ANY JUDGES OF THE
15 CALIFORNIA STATE FOR ANY DAMAGES AND NEITHER DOES
16 ANY FAVORABLE JUDGMENT IN THE PLAINTIFFS' § 1983
17 CIVIL RIGHTS SUIT AFFECT THE STATES TREASURY.
18 THEREFORE THE ELEVENTH AMENDMENT DOES NOT HAVE
19 ANY EFFECT TO THIS CASE

20 IN EX PARTE YOUNG 209 U.S. 123 (1908) THE SUPREME COURT
21 MADE IT CLEAR THAT UNCONSTITUTIONAL ACTIONS BY STATE
22 OFFICERS ENJOY NO PROTECTIONS REGARDLESS OF THEIR OFFICIAL
23 TITLE (ID AT P. 159). FURTHERMORE, THE COURT HELD THAT
24 EQUITABLE RELIEF WOULD REMAIN AVAILABLE THROUGH § 1983
25 ACTIONS TO ENJOIN A STATES OFFICIALS FROM UNLAWFUL
26 ACTIONS.

1 IN VERIZON MD V. PUB. SERV. COMM'S OF MARYLAND
2 535 U.S. 632 (2002) THE SUPREME COURT
3 UPHOLD THE "STRAIGHTFORWARD INQUIRY" MANDATED IN
4 EX PARTE YOUNG THAT IN DETERMINING WHETHER THE
5 COMPLAINT ALLEGES 'AN ONGOING VIOLATION OF FEDERAL
6 LAW AND SEEKS RELIEF PROPERLY CHARACTERIZED AS
7 PROSPECTIVE AND AS LONG AS THE RELIEF SOUGHT WAS
8 LIMITED TO DECLARATORY OR INJUNCTIVE RELIEF AND
9 THE EFFECTS WOULD NOT RESULT IN DAMAGES LIABILITY
10 THAT WOULD AFFECT STATE TREASURY, THEN, WOULD NOT
11 IMPLICATE THE ELEVENTH AMENDMENT.

12
13 IN THIS CASE THE LOWER COURTS DECISION AS EXPLAINED
14 ABOVE WAS PREMISED ON THE MISLEADING AND INCORRECT
15 MISREPRESENTATION OF THE DISTRICT COURT MAGISTRATE
16 THAT THE PLAINTIFF WAS SUING COURT JUDGES FOR DAMAGES
17 WHEN IN REALITY ALL PLAINTIFF SEEKS IS DECLARATION
18 OF HIS CIVIL RIGHTS THAT THE STATE HAS FAILED TO RECOGNIZE.
19 SEE (APPENDIX - B - AT P 9-10) BUT COMPARE TO (CA. C.D-
20 5:16 -CV- 00231 DKT 1 AT P. 10-11). FURTHERMORE AS
21 FAR AS INJUNCTION RELIEF. THE PLAINTIFF SEEK RELIEF FROM
22 EXISTING AND FUTURE ("PROSPECTIVE") CONDITIONS OF CONFINEMENT
23 AND FROM WIDESPREAD POLICIES, CUSTOMS, COMMON PRACTICES
24 THAT VIOLATE FIRST, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS
25 THAT ARE BEING IMPLEMENTED BY THE COUNTY OF SAN
26 BERNARDINO. THE PLAINTIFF HAS NO WHERE IN THE COMPLAINT
27 MADE ANY DEMANDS THAT WOULD AFFECT THE STATE OR ITS
28 TREASURY. COMPARE (ID AT P. 177-187)

-C-

1 C. THE UNITED STATES COURT OF APPEALS HAS DECIDED AN
2 IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN
3 SQUARELY ANSWERED BUT SHOULD BE ANSWERED BY THE
4 SUPREME COURT BECAUSE IT AFFECTS EXCEPTIONAL PUBLIC
5 INTEREST FOR EFFICACIOUS AND SPEEDY PROTECTION AND
6 VINDICATION OF CHERISHED CONSTITUTIONAL CIVIL RIGHTS.
7

-1-

8
9 THE STATE AND ITS MUNICIPAL AUTHORITIES CANNOT BE
10 PERMITTED TO USE THE RULES OF ABSTENTION SET FORTH IN
11 HECK V. HUMPHREY AND YOUNGER V. HARRIS AS A LICENSE
12 FOR OPPRESSION AND VIOLATION OF CIVIL RIGHTS OF THE
13 PUBLIC BY LAWLESS METHODS AND AS LICENCE TO DEPRIVE
14 PUBLIC INDIVIDUALS ANY PLAIN, SPEEDY AND EFFECTIVE PROCEDURAL
15 SAFEGUARD FOR VINDICATION AND PROTECTIONS OF CIVIL RIGHTS.
16 SIMPLY BECAUSE THE INDIVIDUAL HAS BEEN ACCUSED OF HAVING
17 COMMITTED A CRIMINAL OFFENSE. AND HAS BEEN DEPRIVED OF
18 FREEDOM AND LIBERTY

19
20 THE UNITED STATES SUPREME COURT AND THE UNITED STATES
21 COURT OF APPEALS HAVE ALWAYS ENDEAVORED TO UPHOLD AND
22 PROTECT OUR CHERISHED NATIONAL CONSTITUTION AND ITS
23 PRINCIPLES. AS EARLY 1908 IN THE SEMINAL CASE OF EX PARTE
24 YOUNG 209 U.S. 123 (1908) THE UNITED STATES SUPREME
25 COURT HAS RECOGNIZED THAT ^{IF} THE JUDICIARY CANNOT, AS THE
26 LEGISLATURE MAY, AVOID A MEASURE BECAUSE IT APPROACHES
27 THE CONFINES OF THE CONSTITUTION. WE CANNOT PASS IT BY
28 BECAUSE IT IS DOUBTFUL. WITH WHATEVER DOUBTS, WITH

1 WHATEVER DIFFICULTIES A CASE MAY BE ATTENDED, WE MUST
2 DECIDE IT IF IT BE BROUGHT BEFORE US. WE HAVE NO
3 MORE RIGHT TO DECLINE THE EXERCISE OF JURISDICTION
4 WHICH IS GIVEN THAN TO USURP THAT WHICH IS NOT GIVEN.
5 THE ONE OR THE OTHER WOULD BE TREASON TO THE
6 CONSTITUTION... (ID. AT P. 143) (QUOTING COHEN V.
7 VIRGINIA 6 WHEAT 264-404)

8
9 "WHEN FEDERAL COURT INTERVENTION BECOMES THE
10 ONLY MEANS BY WHICH TO ENFORCE RIGHTS GUARANTEED
11 BY THE CONSTITUTION FEDERAL COURTS ARE OBLIGATED TO
12 ACT. "WITHOUT THIS ALL RESERVATIONS OF PARTICULAR
13 RIGHTS WOULD AMOUNT TO NOTHING." [CITATION] COLEMAN
14 V. SCHWARZENEGGER 922 F.SUPP 2d 882; 888-889
15 (9TH CIR 2009) AND CITED CASES.

16
17 IN THIS INSTANT MATTER WE PRESENT A CASE WHERE THE
18 LOWER COURTS ATTEMPT TO AVOID FULFILLING THEIR OBLIGATION
19 TO ENFORCE RIGHTS GUARANTEED BY THE CONSTITUTION AND BY
20 THE UNFAIR, OVER REACHING AND UNCONSTITUTIONAL APPLICATION
21 OF YOUNGER V. HARRIS AND HECK V. HUMPHREY RULES OF
22 ABSTENTION WHILE HAPHAZARDLY REFUSING TO ADDRESS AND/OR
23 CONSIDER THE EXCEPTIONAL EXTRAORDINARY CIRCUMSTANCES
24 THAT HAVE BEEN ALLEGED TO EXIST IN THIS CASE.

25
26 HOWEVER, BY PERMITTING SUCH PRACTICE WHAT THE COURTS
27 WOULD DISPLAY IS BEING COMPLICIT IN THE FLAGRANT
28 VIOLATIONS AND DEPRIVATION OF CONSTITUTIONAL CIVIL RIGHTS.

(a)

THE HECK V. HUMPHREY RULE OF ABSTENTION SHOULD NOT APPLY TO THIS §1983 ACTION BECAUSE A JUDGMENT FAVORABLE TO THE INCARCERATED PLAINTIFF WOULD NOT INVALIDATE ANY EXANT CONVICTION NOR ANY POTENTIAL FUTURE CONVICTION

IN HECK V. HUMPHREY 512 U.S. 477 (1994) THE U.S. SUPREME COURT MADE IT CLEAR THAT THE BAR TO A §1983 ACTION WOULD NOT APPLY WHERE A PLAINTIFF IS CAPABLE OF DEMONSTRATING THAT A JUDGMENT IN HIS FAVOR WOULD NOT NECESSARILY IMPUNG AN EXISTING CRIMINAL CONVICTION AND WHERE THE DAMAGES DID NOT IMPLICATE AN EXISTING SENTENCE AND/OR COMMITMENT AFTER A CONVICTION. (ID AT P. 186-187). MOREOVER IN WALLACE V. KATO 549 U.S. 384 (2007) THE COURT CLARIFIED THAT THE HECK BAR HAS NO APPLICATION IN PRE-CONVICTION CONTEXT. SEE ALSO FOX V. DESOTO 489 F.3d 227, 233 (6TH CIR 2007)

IN THIS CASE THE LOWER COURT FAILED TO RECOGNIZE THAT, FIRST OF ALL, THE DAMAGES AND INJURIES THAT HAVE BEEN CAUSED TO MR VARGAS CAN BE REASONABLY AND REDILY QUANTIFIED AND SEPARATED FROM ANY EFFECTS TO ANY POSSIBLE FUTURE CONVICTION. MOREOVER, MONETARY DAMAGES CAN BE ISSOLATED TO THE SPECIFIC PERIOD OF TIME AND THE EVENTS THAT TOOK PLACE PRIOR TO ANY SPECULATIVE POTENTIAL TRIAL AND ISSOLATED TO SPECIFIC ATYPICAL

33 OF 40

~~37 OF 44~~

1 UNFAIR, UNJUSTIFIED AND UNDESERVED HARDSHIP AND DISTRESS
2 THAT WAS CAUSED TO MR. VARGAS AND THAT IS SEPARATE
3 AND DIFFERENT FROM THE MERE INCIDENTAL DISCOMFORT OF
4 BEING DETAINED IN A JAIL. SEE (CA. CD. NO: 5:16-CV-
5 00231-R-KES DKT 1 AT P. 45-46; 95-96). MORESO, JUST TO
6 BE SURE WE EMPHASIZE THE FACT THAT MR. VARGAS HAS NOT
7 ANYWHERE IN THE COMPLAINT REQUESTED TO BE RELEASED FROM
8 CUSTODY NOR HAS HE CLAIMED THAT HIS PRESENT ENCARCERATION
9 IS UNLAWFUL (ID AT P. 170-179), AND CONTRARY TO ANY
10 INSINUATIONS BY THE DISTRICT COURT THAT MR. VARGAS SEEKS RELEASE.
11

12 (b.)

13 THE HECK V. HUMPHREY RULE OF ABSTENTION DOES NOT APPLY
14 TO FIRST AND SIXTH AMENDMEN ACCESS TO THE COURT CLAIMS
15

16 IN CHRISTOPHER V. HARBURN 536 U.S. 403 (2002) THE SUPREME
17 COURT MADE IT CLEAR THAT ACCESS TO THE COURT CLAIMS ARE
18 INDEPENDENT CLAIMS INTENDED TO PROVIDE PROTECTION AND
19 REMEDY WHEN A LEGAL ACTION OR LITIGATION HAS BEEN HINDERED
20 AND/OR IS AT THREAT OF BEING HINDEED AND FRUSTRATED BY
21 EXISTING UNCONSTITUTIONAL OBSTRUCTIONS. IT DOES NOT DEPEND
22 ON THE OUTCOME OF THE UNDERLYING LITIGATION. IT ONLY REQUIRES
23 A PLAINTIFF TO IDENTIFY THE THWARTED AND/OR FRUSTRATED
24 CIVIL ACTION; THE UNCONSTITUTIONAL OBSTRUCTION AND THE
25 PERSONS RESPONSIBLE FOR THE UNCONSTITUTIONAL DEPRIVATION,
26 THE SUPREME COURT EMPHASIZED THAT "WHILE THE CIRCUMSTANCES
27 MAY VARY THE ULTIMATE JUSTIFICATION FOR RECOGNIZING EACH
28 KIND OF [ACCESS] CLAIMS IS THE SAME. WHETHER THE
29 ACCESS CLAIM TURNS ON A LITIGATING OPPORTUNITY YET TO BE

1 GAINED OR AN OPPORTUNITY ALREADY LOST THE VERY POINT OF
2 RECOGNIZING ANY CLAIM IS TO PROVIDE SOME EFFECTIVE
3 VINDICATION FOR A SEPARATE DISTINCT RIGHT TO SEEK RELIEF
4 FOR SOME WRONG... WE INDICATE AS MUCH IN OUR MOST RECENT
5 CASE ON DENIAL OF ACCESS LEWIS V. CASEY SUPRA... EVEN IN
6 FORWARD LOOKING... ACTIONS TO REMOVE ROADBLOCKS TO
7 FUTURE LITIGATIONS THE NAMED PLAINTIFF MUST IDENTIFY
8 "NON FRIVOLOUS" "ARGUABLE" UNDERLYING CLAIM... IT
9 FOLLOWS TOO THAT WHEN THE ACCESS CLAIM... LOOKS
10 BACKWARDS THE COMPLAINT MUST IDENTIFY A REMEDY
11 THAT MAY BE AWARDED AS RECOMPENSE BUT NOT OTHERWISE
12 AVAILABLE IN SOME SUIT THAT MAY BE BROUGHT." (ID AT
13 P. 114-115) [EMPHASIS ADDED]

14
15 IN THIS CASE THE PLAINTIFF HAS DONE WHAT THE LAW REQUIRES
16 TO STATE VALID CLAIMS OF ACCESS TO THE COURTS AND IDENTIFIED
17 WITH SUFFICIENT DETAILS THE ACTUAL FRUSTRATED ACTIONS
18 AND LITIGATION CAUSED BY THE UNCONSTITUTIONAL INSTITUTIONAL
19 AND SYSTEMIC CONDITIONS OF CONFINEMENT. HE ALSO CLEARLY
20 IDENTIFIED THE ONGOING EXISTING THREAT TO THE EXERCISE
21 OF HIS RIGHTS TO ACCESS THE COURTS OF LAW BY WIDESPREAD
22 INSTITUTIONAL POLICIES FOR WHICH HE HAS NO OTHER
23 REMEDY TO CORRECT EXCEPT THIS PRESENT SUIT. (SEE
24 CA. C.D. 5:16-CV-DK1 AT P. 97-98) AND COMPARE
25 (ID AT P. 183-186), THE REMEDY HE REQUESTS IS MONETARY
26 RELIEF FOR "OPPORTUNITIES ALREADY LOST" AND INJUNCTIVE
27 RELIEF TO "REMOVE ROADBLOCKS" THAT PREVENT MEANINGFUL
28 FUTURE EXERCISE OF SIXTH AMENDMENT ACCESS TO COURTS.

1 IN THE PENDING NON FRIVOLOUS CRIMINAL MATTER AND THAT REQUIRES
2 MORE THAN MERELY FILING PAPERS IN A COURT. POWEL V. ALABAMA
3 287 U.S. 42 (1932); FARETTA V. CALIFORNIA 422 U.S. 806 (1975);
4 MILON V. MORRIS 767 F.2d 1443 (9TH CIR 1985); BOURDON V.
5 LOUGHREN 386 F.3d 88 (2D CIR 1984); HURRELL-HARRIN V.
6 STATE OF NEW YORK 15 N.Y.3d 8 (2ND CIR 2010) AND CITED CASES

7
8 (C.)

9 THE HECK V. HUMPHREY RULE OF ABSTENTION DOES NOT BAR
10 COMPENSATION FOR PUNITIVE DAMAGES IN A § 1983 ACCESS
11 TO COURT CONSTITUTIONAL CLAIMS

12
13 IT IS WELL RECOGNIZED BY THE SUPREME COURT AND THE
14 CIRCUIT COURTS THAT IN DEPRIVATION OF ACCESS TO THE
15 COURT CLAIMS WHERE NO ACTUAL PHYSICAL INJURY ACCURS,
16 PER THE LANGUAGE OF PLRA 42 U.S.C 1997(e), MONETARY
17 AND PUNITIVE DAMAGES COMPENSATION REMAINS AVAILABLE,
18 INCLUDING "NOMINAL" AWARD, WHERE ACTUAL DAMAGES ARE NOT
19 PROOVEN. SEE SCHOOL DIST V. ATACHORA 477 U.S. 299, 305 -
20 309 (1986); CAREY V. PIPHUS 435 U.S. 247 265 - 267 (1978);
21 OLIVER V. KELLER 289 F.3d 623 630 (9TH CIR 2002);
22 PHILLIPS V. HUST 477 F.3d 1070 (9TH CIR 2008); DOCKCROFT
23 V. KIRKLAND 548 F.SUPP.2d 767 (9TH CIR 2008); BENJAMIN
24 V. FRASER 264 F.2d 175 (2D CIR 2001) SMITH V. COUGHLIN
25 748 F.2d 783 (2D CIR 1984) AND COMPARE TO (CA. C.D
26 5:16-CV-00231 DK1 AT P. 42-46; 56-59; 64-71; 83-93;
27 95-97; 111; 125-170, PINPOINTING "ACTUAL DAMAGES" IN THIS
28 INSTANT MATTER)

EVEN IF ABSTENTION WAS APPROPRIATE UNDER THE EXTRAORDINARY CIRCUMSTANCES THAT EXIST IN THIS CASE, A STAY OF ANY CLAIMS THAT IMPLY INVALIDITY OF A CONVICTION OR SENTENCE IS THE APPROPRIATE COURSE, NOT THE DISMISSAL OF THE CASE

THE SUPREME COURT HAS RECOGNIZED THAT HECK V. HUMPHREY BAR TO § 1983 LAW SUITS ONLY APPLIES TO EXANT CONVICTIONS AND SENTENCE AND DOES NOT APPLY IN THE PRE-CONVICTION CONTEXT. WALLACE V. KATO 519 U.S. 384 (2007). SEE ALSO ZARRO V. SPITZER 274 FED. APPX. 31, 35 (2D CIR 2008); FOX V. DE SOTO 489 F.3d 227, 233 (6TH CIR 2007) AND CURRY V. HENNESSEY 2007 WL 1394531 (N.D. 2007)

HOWEVER, IN THOSE CASES WHERE AN "EXANT CONVICTION" MAY BE IMPONG BY A § 1983 JUDGMENT THE APPROPRIATE COURSE WOULD BE TO STAY THE MATTER IN THE FEDERAL COURT IN ORDER TO PRESERVE AN ADEQUATE FORUM FOR DAMAGE REMEDY AND ALSO PREVENT FURTHER DAMAGES FROM OCCURRING DUE TO EXPIRATION OF STATUTORY DEADLINES AND/OR WHERE THE PENDANT STATE PROCEEDINGS WILL NOT PROVIDE FOR RECOVERY FROM DAMAGES. SEE WOOLEY V. MAYNARD 430 U.S. 705 (1977) AND DEAKIN V. MONAGHAN 484 U.S. 193 (1988)

AS EXPLAINED ABOVE IN SECTION C.1 (ANTE AT P. 31-36), IN THIS INSTANT MATTER, AND UNDER THE PARTICULAR CIRCUMSTANCES

1 OF THIS CASE, NEITHER THE HECK V. HUMPHREY NOR
2 YOUNGER V. HARRIS RULES OF ABSTENTION SHOULD APPLY
3 BECAUSE NO CONVICTION EXISTS AND GREAT IMMEDIATE
4 IRREPARABLE DAMAGES ARE BEING CAUSED TO THE THE
5 PLAINTIFF WITHOUT FEDERAL COURT INTERVENTION. BUT, EVEN,
6 IF ABSTENTION WAS ACCEPTABLE, THE LOWER DISTRICT
7 COURT SHOULD HAVE STAYED RATHER THAN DISMISSED
8 ANY CLAIMS THAT IMPLICATE THE VALIDITY OF A CONVICTION, (CA. CO.
9 S:16-CV-00231 DKT 1 AT P. 20-98; 178-179) AND
10 IN ACCORDANCE TO THE LAW. SEE ALSO C.F. RIVAS V.
11 CAL FRANCHISE TAX BD. 619 F.SUPP. 2d 999, 1000 N.2
12 (E.D. CAL 2008)

13
14
15 MOREOVER WE NOTE THAT PLAINTIFFS THIRD, FOURTH AND
16 FIFTH CAUSES OF ACTIONS DO NOT, IN ANY WAY, RELATE
17 TO THE PLAINTIFFS PENDANT CRIMINAL MATTER AND AS
18 SUCH ABSTENTION DOES NOT APPLY TO THEM. SEE
19 CAL. C.D. S:15-CV-00231 DKT 1 AT P. 98-177)

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

1 THE PLAINTIFF SHOULD NOT BE DEPRIVED OF AN OPPORTUNITY TO
2 AMEND HIS PLEADING IN ORDER TO CORRECT MINOR DEFECTS
3 AND IN LIGHT OF THE FACT THAT THE LOWER DISTRICT COURT HAS
4 CLEARLY MISINTERPRETED AND MISREPRESENTED THE PLAINTIFFS
5 PLAIN STATEMENTS SET FORTH IN HIS COMPLAINT.
6

7
8 THE NINTH CIRCUIT HAS RECOGNIZED THAT A PRO-SE PLAINTIFF
9 MUST BE GIVEN LEAVE TO AMEND HIS PLEADING UNLESS IT IS
10 CLEAR HE CANNOT CURE THE DEFICIENCIES. NOLL V. CARSON
11 809 F.2d 1446, 1448 (9TH CIR 1987)
12

13 IN THIS CASE THE LOWER DISTRICT COURT MAGISTRATE THAT
14 CONDUCTED THE IFP SCREENING AND THAT RECOMMENDED
15 THAT ALL OF MR. VARGAS' CLAIMS BE DENIED AND DISMISSED
16 BASED ON HER MISCONSTRUED AND MISREPRESENTED FINDING
17 OF FACTS. (SEE ANTE AT P. 7-13) ALSO RECOMMENDS THAT
18 THE PLAINTIFF BE DENIED LEAVE TO AMEND IN ORDER TO
19 CORRECT ANY DEFICIENCIES. ACCORDING TO THE MAGISTRATE
20 IT WAS CLEAR THAT THE PLAINTIFF COULD NOT CURE THE
21 DEFICIENCIES. (APPENDIX - B - AT P. 31)
22

23 NONETHELESS, A SERIOUS PROBLEM PRESENTS ITSELF HERE
24 BECAUSE, DUE TO THE APPARENT METHOD, THE PRACTICE;
25 THE PATTERNS AND/OR USAGE OF DELIBERATE MISINTERPRETATION,
26 MISREPRESENTING AND MISCONSTRUING OF THE FACTUAL
27 ALLEGATIONS OF THE PLAINTIFF OF THE ACTUAL PLEADING THAT
28 IS BEING EMPLOYED BY THE DISTRICT COURT MAGISTRATE

1 IN ORDER TO DEPRIVE THE INDIGENT PRO-SE INCARCERATED PLAINTIFF
2 OF IFP RELIEF AND ACCESS TO JUSTICE; THE REAL DANGER
3 AND THREAT EXISTS UNDER SUCH EXTREMELY UNFAIR AND
4 UNREASONABLE STANDARDS OF REVIEWING CIVIL RIGHTS ACTIONS
5 RAISED BY INCARCERATED INDIGENT PERSONS THAT, EVEN IF A LAY
6 PERSON FILES A PERFECTLY ERROR FREE FORMATED COMPLAINT AS
7 A PRO-SE INDIGENT PLAINTIFF FROM THE CONFINES OF JAIL IT IS
8 VERY UNLIKELY THAT HE OR SHE WOULD BE CAPABLE TO SATISFY AND
9 PASS THE HIGHTENED PLEADING STANDARDS AND UNFAIR HIGHTENED
10 EXPECTATIONS THAT THE DISTRICT COURT HAS HAPHAZARDLY IMPOSED
11 ON THE PLAINTIFF IN THIS CASE DURING THE INITIAL IFP
12 SCREENING IN ORDER TO PREVENT HIM FROM ACCESSING
13 MEANINGFUL JUSTICE, AND BECAUSE HE IS INDIGENT AND UNABLE
14 TO RETAIN A COMPETENT ATTORNEY WHILE BEING ENCARCERATED
15 AND HAS BEEN ACCUSED, (NOT CONVICTED), OF COMMITTING A CRIME.

16 CONCLUSION

17 WHEREFORE THE FOREGOING REASON THE PETITIONER RESPECTFULLY
18 PRAYS THAT THE COURT WOULD GRANT THE WRIT OF CERTIORARI
19 AND REVIEW THIS CASE IN HOPES TO ANSWER THE EXEPTIONAL
20 QUESTIONS BEING PRESENTED
21

22
23 JUNE 10, 2018

24 
25 ILUCH VARGAS
26 1212341370
27 9500 N. ETIWANDA AVE.
28 RANCHO CUCAMONGA CA 91739
IN PRO-SE