

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Kevin Abdul Gilbert, — PETITIONER  
(Your Name)

vs.  
Dr. Jody Becker-Green, And  
Margaret Gilbert, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court Of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin Abdul Gilbert  
(Your Name)  
Stafford Creek Corr. Center H2-B-123  
191 Constantine Way  
(Address)

Aberdeen, WA 98520  
(City, State, Zip Code)

N/A  
(Phone Number)

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18-7221 ORIGIN

Supreme Court, U.S.  
FILED

DEC 28 2018

OFFICE OF THE CLERK

IN THE UNITED STATES SUPREME COURT

KEVIN ABDUL GILBERT  
PETITIONER,  
V.  
DOC SECRETARY,  
DR. JODY BECKER-GREEN,  
AND,  
SCCC SUPERINTENDENT,  
MARGARET GILBERT,  
RESPONDENTS,

No. \_\_\_\_\_

Petition For Writ Of  
Certiorari Pursuant To Rule  
10 To Resolve Conflicts In  
Rulings Interpreting [This]  
Court's Heck Doctrine Bar On  
Claims Under 42 U.S.C. § 1983  
Erroneously Recharacterized  
As To Be Claims Under 28  
U.S.C. § 2254 In Violation  
Of [This] Court's Castro  
Notice.

I. PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner, Kevin Abdul

Gilbert, Pro Se, without counsel, is currently being held within the Department of Corrections at Stafford Creek Corrections Center 191 Constantine Way, in Aberdeen, Washington, respectfully moving (this) Court to grant (this) Petition for Writ of Certiorari Purusant to Rule 10, to resolve conflicting court rulings of law under the Heck Doctrine bar on some claims, that do not encompass the same elements as

1        that do not encompass the same elements as those  
2        a Petitioner was convicted (or) sentenced on (and)  
3        thus, would not undermine either. See: Heck v.  
4        Humphrey, 512 U.S. 477, 114 S.Ct 2364, 129 L.Ed, 2d  
5        383 (U.S.1994).

6

7        The Respondent(s) in (this) Condition of  
8        Confinement challenge pursuant to 42 U.S.C. §1983  
9        Civil Rights Claims are: (1) Dr. Jody Becker-Green,  
10      Head of the Department of Corrections, and (2)  
11      Margaret Gilbert, Superintendent of Stafford Creek  
12      Corr. Center. See: RCW 72.02.230 (Order of  
13      Commitment, i.e., Warrant of Commitment. U.S. Const.  
14      Amend 4, U.S. Const. Amend 14.

15

#### QUESTIONS PRESENTED

16        1. Whether the Ninth Circuit of Appeals erred in  
17        affirming the Western U.S. District Court's ruling  
18        barring the Petitioner's 42 U.S.C. §1983 claims for  
19        Unlawful Arrest, Assault and Battery, Unlawful  
20        Imprisonment (and) Negligence, pursuant to the Heck  
21        Doctrine, in which, conflict with several other  
22        circuit court rulings, now warranting review by  
23        Certiorari to resolve the conflict on Constitutional  
24        grounds in the interest of justice before the ruling  
25        becomes clearly ambiguous? Yes, so Certiorari should  
26        be granted on Constitutional grounds in the interest  
          of justice.

1  
2        2. Whether the Ninth Circuit Court of Appeals  
3        erred in affirming the Western U.S. Court of Appeals  
4        erred in affirming the Western ruling barring the  
5        Petitioner's 42 U.S.C. §1983 claims for Unlawful  
6        Arrest, Assault and Battery, Unlawful Imprisonment  
7        (and) Negligence pursuant to the Heck Doctrine, in  
8        which, conflict with (this) court's ruling on Valid  
9        Conviction, now warranting review by Certiorari to  
10       resolve the conflict on Constitutional grounds in the  
11       interest of justice, before the ruling becomes  
12       clearly ambiguous. Yes, so Certiorari should be  
13       granted on Constitutional grounds in the interest of  
14       justice.

15  
16       3. Whether the Ninth Circuit Court of Appeals  
17       erred in affirming the Western U.S. District Court's  
18       ruling barring the Petitioner's 42 U.S.C. §1983  
19       claims for Unlawful Arrest, Assault and Battery,  
20       Unlawful Imprisonment (and) Negligence pursuant to  
21       the Heck Doctrine, in which, conflict with (this)  
22       Court's ruling on Rubber Stamp Warrants, now  
23       warranting review by Certiorari to resolve the  
24       conflict on Constitutional grounds in the interest of  
25       justice before the ruling becomes clearly ambiguous.  
26       Yes, so Certiorari should be granted on  
            Constitutional grounds in the interest of justice.

1           4. Whether the Ninth Circuit Court of Appeals  
2        erred in affirming the Western U.S. District Courts  
3        ruling on barring the Petitioner's 42 U.S.C. §1983  
4        claims for Unlawful Arrest, Assault and battery,  
5        Unlawful Imprisonment (and) Negligence pursuant to  
6        the Heck Doctrine? In which conflict with (this)  
7        Court's ruling under the Castro Notice Requirement,  
8        now warranting review by certiorari to resolve the  
9        conflict on Constitutional grounds in the interest of  
10       justice before} the ruling becomes clearly ambiguous?  
11       Yes, so Certiorari should be granted on  
12       Constitutional grounds in the interest of justice.  
13

14           5. Whether the Petitioner unsigned (limited)  
15        Felony of Transfer to the Department of Corrections  
16        pending his Direct Appeal, is Constitutionally valid  
17        under U.S. Amend. 4th and U.S. Constitutional Amend.  
18        14, for the Respondents to have lawful jurisdiction  
19        over the Petitioner (and) his person? No, so  
20        Certiorari should be granted on Constitutional  
21        grounds in the interest of justice.  
22

23           6. Whether the Respondents should be held liable  
24        to the Petitioner for unlawfully arresting him and  
25        his person, by taking him into their custody  
26        unlawfully on 2-3-2006 without Authority of Law,

1       i.e., Valid Warrant over the jurisdiction of his  
2 person, now warranting the requested relief in  
3 damages? Yes, so Certiorari should be granted on  
4 Constitutional grounds in the interest of justice.

5

6       7. Should the Respondent be held liable to the  
7 petitioner for Assault and Battery caused by the  
8 Unlawful Arrest, now warranting the requested relief  
9 in damages? Yes, so Certiorari should be granted on  
10 Constitutional grounds in the interest of justice.

11

12       8. Should the Respondents be held liable to the  
13 Petitioner for Unlawfully imprisoning him without  
14 lawful authority, in which the Respondent's acts were  
15 not enacted pursuant to a Valid Legal Process i.e.,  
16 Valid Warrant of Commitment and/or Valid of  
17 Commitment pursuant to RCW 72.02.230), now warranting  
18 the requested relief in damages? Yes, Certiorari  
19 should be granted on Constitutional grounds in the  
20 interest of justice.

21

22       9. Should the Respondent's be held liable to the  
23 Petitioner for Negligence in failing to follow  
24 Mandatory Statutory requirements under RCW 72.02.230,  
25 before taking the Petitioner person inot their  
26 custody without lawful authority (and) jurisdiction  
over him and/or his person. Now warranting the

requested relief in damages? Yes, so Certiorari  
1 should be granted.

2

3 JURISDICTION

4 A Washington State Prisoner, appeals Pro se, the  
5 District Court's dismissal without prejudice (and)  
6 the Ninth Circuit affirming the dismissal his 42  
7 U.S.C. §1983 claims which conflicts with several  
8 other Circuit Courts on the same types of claims  
9 (and) the ruling being challenged now all so  
10 conflicts with three of (this) Court's rulings. See:  
11 Exhibits A-D.

12

13 [This] action is now timely being sought to be  
14 reviewed by (this) Court and that Counsel be  
15 appointed for the Pro se Petitioner because this  
16 action and clear conflicts are so ripe for review  
17 warranting only (this) jurisdiction pursuant to 28  
18 U.S.C. §1291.

19 CONSTITUTIONAL AND STATUTORY INVOLVED

20 CR 58 provides the effective time of a judgment  
21 as:

22 Judgments shall be deemed entered for all  
23 procedural purposes from the time of delivery to the  
24 Clerk for filing, unless the judge earlier permits  
25 the judgment to be filed directly with the judge as  
26 authorized by Rule 5(e).

## 2 §U.S. Const. Amend 4 (Constitutional Seizures)

3 in relevant part provides:

4 The right of the people to be secure in their  
5 persons,....[And] effects, against  
6 unreasonable...[And] seizures, shall not be violated,  
7 and no warrants shall issue, but upon...[or]  
8 affirmation, and particularly...person [or] things to  
9 be seized.

11 U.S. Const. Amend 14 (Procedural Due Process of  
12 Law) provides that:

13 The requirements of procedural due process  
14 encompasses by the Fourteenth Amendment apply only to  
15 State's deprivation of life, liberty (or) property.

17 Fed.R.Crim.P.4(b)(1) it explicitly states that:  
18 Warrants must be signed by a judge.

20 RCW 7.36.130 provides that:

State Habeas Corpus Statute that does not lie to  
inquiry into the sufficiency of warrant.

23 RCW 72.02.230 provides that:

24 The Division of Prisons shall receive all  
25 person's convicted of a felony by the Superior Court  
26 and committed by the Superior Court to the reception  
units for classification and placement in such

facility as the secretary shall designate.

1        The Superintendent of these institutions shall  
2 only receive prisoners for classification and study  
3 in the institution upon presentation of certified  
4 copy of a judgment, sentence, and order of commitment  
5 of the Superior Court and the statement of the  
6 Prosecuting Attorney, along with other reports as may  
7 have been made in reference to each individual  
8 prisoner.

DOI: 10.4236/jcm.201909101

11 For transfer of persons convicted of felonies  
12 from a county jail to a state institution (if) the  
13 person fails to post bond within 30 days of the  
14 judgment, is operative to permit transfer of persons  
15 convicted of crimes committed prior to enactment of  
16 the statute.

18 RCW 9.95.060 it provides for:

19 When a sentence begins to run. Thus, judgment of  
20 convict is self-executing in that no (warrant of  
21 commitment) (or) further action by trial court is  
22 necessary to implement execution of sentence imposed  
23 in final judgment.

25 STATEMENT OF CASE

26 On 7-4-2015, the Petitioner discovered that his

1 (limited) felony warrant of transfer, i.e.,  
2 authorizing temporary custody of him and his person  
3 into the care (and) custody of the Respondents  
4 pending his direct appeal was Constitutionally  
5 insufficient under U.S. Const. Amend 4, U.S. Const.  
6 Amend 14 (and) in violation of RCW 72.02.230.

7

8 It must be noted that the felony warrant of  
9 transfer is only limited because it was reportedly  
10 issued during the pending Direct Appeal in his  
11 criminal case, in which became final 9-12-2008.

12

13 The Petitioner does not challenge the transfer  
14 from the County Jail to the Department of  
15 Corrections, but does only challenge the following:

16 (1) The sufficiency of the warrant in question  
17 on Constitutional grounds, (and)

18 (2) Whether the Respondents should be ordered to  
19 obtain a Valid Order of Commitment against the  
20 Petitioner just like all other State Prisons under  
21 their custody required by State Statute (and)

22 (3) Whether the Respondents should be held  
23 liable to the Petitioner for not obtaining a Valid  
24 Signed and Filed Order of Commitment (or) Warrant of  
25 Commitment before taking the Petitioner and his  
26 person into custody unlawfully, i.e., constituting  
the claimed clear Civil Rights Violations of Unlawful

Arrest, Assault and Battery, Unlawful  
Imprisonment (and) Negligence Without Lawful  
Authority of Law.

The Petitioner calls the felony warrant into question as unconstitutional beyond a reasonable doubt because it is, in fact, unsigned by the judge that reportedly issued it (and) it was also unfiled in the Superior Court Clerk evident by the Court docket. Thus, it lacked the Constitutional Authority of Law that our Country has always required.

Because the Felony Warrant in question is Constitutionally invalid, the Respondents are, in fact, Without the Authority of Law that is Constitutionally required to have the petitioner in their custody (and) they are clearly not following their own mandatory statute pursuant to RCW 72.02.230.

So the Petitioner seeks that, the Respondents be held for their Unlawful Arrest, Assault and Battery, Unlawfull Imprisonment and Negligence Without Lawful Authority of Law, i.e., warrant to have the petitioner under their jurisdiction. See: U.S. Const. Amend.4, U.S. Const. Amend. 14 (and) RCW 72.02.230.

1                   The petitioner, files (this) claim pursuant to  
2                   42 U.S.C. §1983 alleging that the Respondents are  
3                   violating his Fourth (and) Fourteenth Amendment  
4                   Rights without the Constitutional Due Process of Law,  
5                   i.e., Valid Warrant.

6                   The Petitioner clearly shows (this) Court the  
7                   distinct difference between a valid (and) invalid  
8                   warrant. See: Exhibit E (a signed and filed felony  
9                   warrant) (and) compare Exhibit F (an unsigned and  
10                   unfiled invalid warrant), see also Exhibit G (a copy  
11                   of the Court docket showing, in fact, that the felony  
12                   warrant in question was not filed), Exhibit H (a King  
13                   County Superior Clerk letter showing the unsigned  
14                   warrant will not be filed [unless] it is a signed  
15                   order from a Judge. See: CR 58).

17                   Thus based on the unlawful Felony Warrant the  
18                   Petitioner claims against the Respondents by records  
19                   under 42 U.S.C. §1983 are: Unlawful Arrest, Assault  
20                   and Battery, Unlawful Imprisonment (and) Negligence.  
21                   See Exhibits E-H.

23                   Claims under 42 U.S.C. §1983, is subject to  
24                   exhaustion of administrative remedies as required by  
25                   the Prison Litigation Reform Act (PLRA). See: Porter  
26                   v. Nussle, 534 U.S. 516, at 524, 122 S.Ct. 983, 152

1 L.Ed.12 (U.S. 2002).

2  
3  
4 Under the PLRA, a Prisoner bringing an action  
5 with respect to prison conditions under 42 U.S.C.  
6 §1983 must first exhaust all available administrative  
7 remedies. See: 42 U.S.C. §1997e.

8  
9 Exhaustion as provided in 42 U.S.C. §1997e(a)  
10 cases is now mandatory. See: *Booth v. Churner*, 532  
11 U.S. 731, at 741, 121 S.Ct. 19819, 149 L.Ed.2d 958  
(U.S. 2001).

12  
13 The petitioner shows that he has met his  
14 required standard of proof by record of his  
15 exhaustion before seeking a (timely) review of the  
16 claims by (this) Court:

17  
18 (1) State tort, Exhibit I (Attachment #1 is Ex. F).  
19  
20 (2) A tort claim civil complaint in Superior  
21 Court and exhausted the proceedings civilly in State  
22 Courts. See: Exhibit J, and  
23  
24 (3) A 42 U.S.C. §1983 Civil Rights Lawsuit in  
25 Federal Courts. See: Exhibit K.

26  
27 Is action is now, so timely and ripe for review  
28 in (this) court to resolve the clear conflicts  
identified herein.

1  
2                    REASONS FOR GRANTING THE PETITION  
3

4                    This Court should grant (this) petition for Writ  
5                    of Certiorari pursuant to 42 U.S.C. §1983 Conditions  
6                    of Confinement Civil Rights Claims, (concerning):

7                    The applicability of (this) Court's well-  
8                    settled ruling in Heck v. Humphrey, 512 U.S. 477,  
9                    114, S.Ct. 2364, 129 L.Ed.2d 383 (U.S. 1994)  
10                  as to which claims of Unlawful Arrest, Assault and  
11                  Battery, Unlawful Imprisonment (and) Negligence, can  
12                  be barred as the Western U.S. District Court's  
13                  ruling, in which the Ninth Circuit Courts of Appeals  
14                  rulings. See: Exhibit A, (and) compare the following  
15                  other Circuit's rulings Simpson v. Rown, 73 F.3d 134,  
16                  at 136 (7th Cir. 1995), cert. denied, 136 L.Ed.2d 58,  
17                  117 S.Ct. 104 (U.S. 1996), Antonelli v. Foster, 104  
18                  F.3d 899, at 901 (7th Cir. 1997), cert. denied,  
19                  U.S.-, 139 L.Ed.2d 58, 118 S.Ct. (U.S. 1997), Hughes  
20                  v. Lott, 350 F.3d 1157, at 1160 (11th Cir. 2003),  
21                  Cohen v. Longshore, 621 F.3d 1311, at 1317 (10th Cir.  
22                  2010).  
23

24                  Moreover, the ruling in Exhibit A directly  
25                  conflicts with the U.S. Supreme Court rulings in  
26                  Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43  
                        L.Ed.2d 54 (U.S. 1975), Aguilar v. Texas, 378 U.S.

1 108, at 111, 84 S.Ct. 1509 (U.S. 1964), Johnson v.  
2 United States, 333 U.S. 10, at 13-14. 68 S.Ct. 367,  
3 92 L.Ed 436 (U.S. 1948), and Castro v. United States,  
4 540 U.S. 370, 124 S.Ct. 786, 157 L.Ed.2d 778 (U.S.  
5 2003) (Castro Notice is required before  
6 recharacterize Pro se Litigant's pleading), in which,  
7 all of the above rulings must now be overruled by  
8 (this) Court if allowed to stand and not corrected.  
9

10 The national importance of this case cuts across  
11 the lines of Valid Warrants, what constitutes a  
12 Rubber Stamp Warrant, if a Court can recharacterize  
13 Pro se Litigant's pleading from a 42 U.S.C. §1983 to  
14 a 28 U.S.C. §2254 without a Castro Notice (and) in  
15 the face of the State and Federal one-year procedural  
16 bar, valid convictions, and if the Heck Doctrine can  
17 bar challenged claims that did not have (any) of the  
18 same elements relating to a Petitioner's convictions  
19 and/or sentences. See: Exhibit A.

20 So it is needed for (this) Court to decide the  
21 questions involved based on the records and conflicts  
22 in this case. See: Exhibits A-H.  
23

24 It should go without saying that, it is  
25 important for (this) Court to resolve the clear  
26 conflicts between Circuits and (this) Court's rulings  
noted herein warranting review pursuant to Rule 10

1 (this) Court should find that there is  
2 compelling reasons on the substantial issues  
3 presented that exist for the exercise of (this)  
4 Court's discretionary jurisdiction.

5 CONCLUSION  
6

7 The Petitioner, Kevin Abdul Gilbert, asks that,  
8 (this) court to grant Certiorari to resolve all  
9 conflicts and legal issues presented, in which, the  
10 Petitioner prays for review and relief, in the  
11 interest of justice.

12 Respectfully sent by,  
13

14  
15 Kevin Abdul Gilbert  
16 Kevin Abdul Gilbert, #890221  
17 Pro Se, Petitioner  
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