

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

\_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Darryl Burghardt — PETITIONER  
(Your Name)

vs.

R. Graham — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Ninth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darryl Burghardt  
(Your Name)

P.O. BOX 290066 B-8/129 CSP-Sacramento  
(Address)

Repres, CA 95671  
(City, State, Zip Code)

NA  
(Phone Number)

#### QUESTION(S) PRESENTED

Is an incarcerated pro se Petitioner's First & Fourteenth Amendment U.S. Constitutional rights violated if they're under In Forma Pauperis (IFP) status and they have their civil action dismissed due to the U.S. Marshals not being able to serve a [particular] defendant a copy of the complaint & summons thereto after the petitioner already furnished the court with more than enough info necessary to find or help locate the defendant?

## LIST OF PARTIES

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

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION .....	6

## INDEX TO APPENDICES

APPENDIX A The U.S. Court of Appeals for the Ninth Circuit's 9-24-2018 order dismissing appeal no. 18-15191.

APPENDIX B The U.S. District Court for the Northern District of California's 1-22-2018 order dismissing case no. 5:12-CV-05190-BLF.

APPENDIX C The U.S. Court of Appeals for the Ninth Circuit's 12-20-2016 memorandum vacating the judgment in part and remanding for further proceedings as to the R. Graham claim only.

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Walker v. Sumner 14 F.3d 1415, 1421-22 (9 <sup>th</sup> Cir. 1994).....	5
Puett v. Blandford, 912 F.2d 270, 273, 275 (9 <sup>th</sup> Cir. 1990).....	5

## STATUTES AND RULES

Title 28 of the United States Code (U.S.C) section (§) 1915.....	4
Title 42 U.S.C § 1983.....	5
First Amendment to the U.S. Constitution.....	I
Fourteenth Amendment to the U.S. Constitution.....	I

## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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

The opinion of the United States district court appears at Appendix B to the petition and is

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

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

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

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

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

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was on 9-24-2018.

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

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

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

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment to the U.S. Constitution

Fourteenth Amendment to the U.S. Constitution

Title 28 U.S.C § 1915

Title 42 U.S.C § 1983



### STATEMENT OF THE CASE

On or about 12-20-2016 the United States Court of Appeals for the Ninth Circuit (USCOANC) vacated & remanded just the R. Graham claim of a suit to the United States District Court for the Northern District of California (USDC-NDCA) as a result of appeal no. 15-15498 - due to R. Graham having not been served a copy of the civil complaint and the summons thereto. See Appendix C & the USDC-NDCA & USCOANC's general case dockets & all proceedings therein. Thereafter or throughout the year 2017, the USDC-NDCA made requests for the incarcerated indigent pro se petitioner to provide it with more info likely to lead to R. Graham. Petitioner complied, by eventually sending the USDC-NDCA all of the info likely to lead to R. Graham's current location that petitioner could access but the U.S. Marshals were still unable to reach R. Graham. See the USDC-NDCA & USCOANC's general case dockets & all proceedings therein. On 1-22-2018 the USDC-NDCA dismissed the case (no. 5:12-cv-05190-BLF) and on or about 1-31-2018 petitioner appealed. See Appendix B & the USDC-NDCA & USCOANC's general case dockets & all proceedings therein. Nevertheless, on 9-24-2018 the USCOANC dismissed petitioner's case no. 18-15191 as frivolous or for [petitioner] failing to serve R. Graham even though petitioner is once again, incarcerated, in pro se, & under IFP status, meaning: he has to rely upon the U.S. Marshals to effect service on R. Graham, who is also a key party to suit no. 17-cv-00339-BLF in the USDC-NDCA. See Appendix A & the USDC-NDCA & USCOANC's general case dockets & all proceedings therein. See also Title 28 U.S.C § 1915.

### REASONS FOR GRANTING THE PETITION

Why has Petitioner been held accountable for the U.S. Marshal's misfortunes rather failures? Petitioner cannot be penalized by having his action dismissed for the U.S. Marshal's failure to effect service. See Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir. 1994) & Puett v. Blandford, 912 F.2d 270, 273, 275 (9th Cir. 1990). Under Title 42 U.S.C § 1983, the USCOANC's decision to dismiss the incarcerated, indigent, pro se Petitioner's case for the U.S. Marshals not being able to effectuate service upon R. Graham was unjust and requires remand to the USCOANC or USDC-NDCA for further review, reconsideration, or another alternative.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darryl Bingham

Date: 11-4-2018