

**In The  
Supreme Court of the United States**

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JOHN HENNEBERRY,

*Petitioner,*

*vs.*

COUNTY OF ALAMEDA, CALIFORNIA, ET AL,  
*Respondents.*

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**On Petition for Writ of Certiorari  
To The United States Court of Appeals  
For The Ninth Circuit**

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**PETITION FOR REHEARING**

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11 APPENDIX 'A' Criminal Summons, dated May 19, 2014  
12 Includes 'Declaration of Service by Mail'  
13 Conforms to Code of Civil Procedure  
14 1 page

15 APPENDIX 'B' Report Compiled by The National Conference of State Legislatures:  
16 Summary of Citation in Lieu of Arrest statutes, according to state  
17 23 pages

1                   **BASIS FOR JURISDICTION OF THIS COURT TO REVIEW THIS CASE**

2

3       The United States District Court of Northern California entered judgment and orders against

4       Petitioner on October 12, 2016. The Ninth Circuit Court of Appeals entered judgment and

5       orders against Petitioner on December 18, 2018 and issued a one-page mandate on January 9,

6       2019. Petitioner requested that the Supreme Court grant a Writ of Certiorari to review and

7       reverse those judgments and orders in accordance with 28 U.S.C. §1254 (1). This court denied

8       Petitioner's petition for Writ of Certiorari on May 13, 2019.

9       Pursuant to Rule 44, Petitioner requests that the United States Supreme Court review its decision

10      and order to deny Petitioner's Petition for Writ of Certiorari. Petitioner makes this request in

11      accordance with Rule 44.2. Petitioner is presenting this petition because substantial and

12      controlling effects have not been presented.

13

14                   **OPINIONS AND ORDERS ENTERED IN THE CASE, RELATED CASES**

15

16       This Court denied Petitioner's Petition for Writ of Certiorari on May 13, 2019.

17       Before he petitioned the Supreme Court for a Writ of Certiorari, Petitioner appealed to The Ninth

18       Circuit Court of Appeals in accordance with 18 U.S.C. §1291. The Appellate Court entered

19       judgment against Petitioner, affirming the United States District Court of Northern California

20       ruling that dismissed all of Petitioner's claims against all of the Respondents. The Ninth Circuit

21       Court issued a four-page memorandum dated December 18, 2018 and a one-page mandate dated

22       January 9, 2019. Ninth Circuit case number: 16-17049.

23       The United States District Court of Northern California entered judgment against Petitioner, -

24       dismissing all claims against all Respondents following four defense motions to dismiss

25       Petitioner's complaint pursuant to Federal Rules 12(b)(6) and 8(a)(2).

26       The District Court's 41-page ruling and order was issued on October 12, 2016.

27       United States District Court of Northern California case number: 16cv-02766-EDL.

1 Except for the rulings and orders, the lower court's opinions have not been published. Petitioner  
2 is not a party to any cases that are directly related to this case.

3

4 **SUMMARY OF SUBSTANTIAL AND CONTROLLING EFFECTS**  
5 **NOT PREVIOUSLY PRESENTED**

6

7 A more complete description of substantial and controlling effects that have not been previously  
8 presented is in a section that follows on pages 7 - 9. Petitioner did not present these substantial  
9 and controlling effects in his Petition for Writ of Certiorari due to content requirements and page  
10 limits. Due to the nature of these controlling effects, they would have been best presented to  
11 this court in an amicus curiae brief. However, according to Rule 37.1 an amicus curiae brief in  
12 support of a Petition for a Writ of Certiorari will be filed only if it has been presented by an  
13 attorney that has been admitted to practice before the Supreme Court.

14 The subject matter of Petitioner's complaint is the Respondents' unlawful and malicious or  
15 extremely reckless use of criminal justice infrastructure to bypass clearly defined California  
16 statutes that regulate the imprisonment of misdemeanor suspects before the time of arraignment.  
17 Since the year 1986, California has had a, 'Presumption of Citation.' This means that unless  
18 specific statutory exceptions exist at the time of arrest, the police are required by statute to cite-  
19 and-release misdemeanor suspects. This 'Presumption of Citation' is a statutory requirement in  
20 six states that are located within the jurisdictions of five federal circuits. This means that in this  
21 regard, 79 million Americans are subject to the machinations of any prosecutor with nefarious  
22 intent. The problem described herein disproportionately affects impoverished and otherwise  
23 under-resourced criminal suspects that have not yet been arraigned for any crime. Considering  
24 that the national poverty rate is approximately 12%, another estimate for the number of people  
25 that are subject to these civil rights violations is approximately 12% of the 79 million people that  
26 reside within these six states. That estimate amounts to 9.5 million people. People living in  
27 poverty that suffer any kind of injury have significantly less access to recourse compared to  
28 others. In these cases, the people most adversely affected have the least access to recourse.

## **JURISDICTION OF THE FEDERAL COURT**

The jurisdiction of the United States District Court was invoked pursuant to 42 U.S.C. § 1983 et seq.; 28 U.S.C. §§ 1331 and 1343(a). Supplemental jurisdiction over state law claims exists pursuant to 28 U.S.C. § 1367. Venue was proper in the Northern District of California as the events described in Petitioner's complaint occurred in that district. Petitioner is not a corporation.

## **CASE SUMMARY**

This summary is included in the petition to provide context. Petitioner filed a civil rights complaint in the district court arising from the Unconstitutional and unlawful arrest and imprisonment of Petitioner/Plaintiff John Henneberry. On the night of July 2, 2014 Petitioner was arrested at his home as a result of what was later determined to be a faulty and fabricated no-bail bench warrant for failure to appear in the California Superior Court of Alameda County for a misdemeanor arraignment.

The bench warrant was issued after the Respondents utilized the United States Mail to serve Petitioner with a summons to appear in court. Service of the summons was fabricated because a sworn peace officer or an officer of the court was required to personally serve the criminal summons in accordance with the California Penal Code. To compound the fabricated service, service of the summons was faulty because it was mailed to an incorrect address despite the fact that all parties involved in the criminal matter had Petitioner's correct home address. Petitioner had not been cited by the police and he had no knowledge that he was being prosecuted for a crime. Petitioner did not receive the summons and he had no knowledge that he had been ordered to appear in court for arraignment.

Due to the malicious or extremely reckless actions of the district attorney, Petitioner did not have the opportunity to appear in court for arraignment. The Respondents then requested that the Superior Court of California, County of Alameda issue the no-bail bench warrant for failure to

1 appear. When requesting the no-bail warrant for failure to appear, the district attorney made an  
2 implicit or direct argument before the Superior Court that the accused had been properly served  
3 with the summons in accordance with California statute. The Superior Court then issued a no-  
4 bail bench warrant for failure to appear.

5 As a result of the July 2, 2014 arrest, Petitioner was held in the Alameda County jail for seven  
6 days without bail. He spent the first 24 hours in concrete holding cells among violent prisoners.  
7 While being held in county custody as a misdemeanor suspect for seven days, Petitioner was  
8 strip-searched, denied prescription medication, was never taken to court and never arraigned.  
9 Petitioner was released from county custody only after a relative appeared in court on his behalf,  
10 requested that bail be set and then posted cash bail. The misdemeanor for which Petitioner was  
11 eventually arraigned weeks later would have required the police to cite-and-release him in the  
12 event a probable cause misdemeanor arrest was made by the police in accordance with clearly  
13 defined California statute; posting cash bail for release had not been required by law since the  
14 statute was amended in the year 1986.

15 According to statute, the district attorney and her co-Respondents forfeited the right to request  
16 that the Superior Court issue a misdemeanor, no-bail arrest warrant based on probable cause as  
17 soon as the criminal summons was requested.

18 Worth noting is that capturing misdemeanor suspects by way of no-bail, misdemeanor arrest  
19 warrants based on probable cause presented at a Superior Court hearing is a more difficult  
20 process compared to simply capturing those suspects by way of probable cause misdemeanor  
21 police arrests. This is due to the fact that the district attorney will be required participate in a  
22 probable cause hearing and thereby convince a judge that a misdemeanor suspect needs to be  
23 captured by the police and held without bail for suspicion of committing a misdemeanor.

24 In terms of a misdemeanor suspect's statutory right to be free from imprisonment following a  
25 probable cause misdemeanor arrest initiated by the police, the likely worst-case scenario is that  
26 the suspect will be restrained by the police, transported to the arresting agency and then held for  
27 approximately two hours for fingerprinting and booking before being released from custody.

1 None of the enumerated statutory exceptions for cite-and-release applied to Petitioner during the  
2 time of arrest: He had no outstanding arrest warrants, he presented valid, state-issued  
3 identification which more than satisfied the identification requirement, he was not suspected of  
4 being a threat to himself or others, he was not suspected of domestic violence, he was not  
5 intoxicated, he did not demand to be taken before a magistrate, etc.

6 It is believed that the district attorney desired to jail Petitioner for several days and to also force  
7 him to remain imprisoned until such time that he posted cash bail. If this can be proven to the  
8 satisfaction of a jury, it demonstrates malice. In the event the district attorney's actions are  
9 determined to be extremely reckless and incompetent instead of malicious, this extreme  
10 recklessness and incompetence will satisfy the element of malice. The Respondents could have  
11 used the more complicated legal mechanism available in an attempt to have the Petitioner  
12 arrested and held without bail, but they chose not to do so. That process would have required the  
13 Respondents to request that the Superior Court grant a no-bail misdemeanor arrest warrant, a  
14 process which requires a probable cause hearing. Moreover, the option for the district attorney  
15 to request that the Superior Court grant a no-bail probable cause misdemeanor arrest warrant was  
16 not available according to statute as soon as the Respondents requested the summons.

17 In summary, the district attorney and her co-Respondents manipulated criminal justice  
18 infrastructure for nefarious, unlawful purposes and in doing so, violated a number of Petitioner's  
19 legal and Constitutional rights. The most obvious rights violations were Petitioner's 4<sup>th</sup>  
20 Amendment right to be free from seizure and his 5<sup>th</sup> Amendment right to due process. The  
21 Respondents committed fraud. Use of the U.S. Mail to execute this scheme elevated the act to  
22 mail fraud.

23 Petitioner was also kidnapped by state actors. He has the right to a private action for violations  
24 of specified sections of Title 18, the Federal Criminal Code due to the Respondents' pattern and  
25 practice of mail fraud in combination with the authority of the federal Racketeering statutes. The  
26 Respondents' actions were a perversion of criminal justice infrastructure which relies on public  
27 funding and consent for its existence. Petitioner was never convicted of any crime as a result of  
28 the no-bail arrest and imprisonment for failure to appear at a misdemeanor arraignment.

1 **SUBSTANTIAL AND CONTROLLING EFFECTS NOT PREVIOUSLY PRESENTED**

2

3 All fifty states allow the police to cite and release criminal suspects at the time of arrest.

4 A total of six states currently have a statutory, ‘Presumption of Citation.’ This means that

5 unless specific statutory exceptions exist at the time of arrest, the police are required to cite and

6 release misdemeanor suspects following arrest. These suspects can be either ‘field cited,’ or,

7 restrained by the police before being transported to the arresting agency for fingerprinting and

8 booking. In either case, the police are required to release misdemeanor suspects with a citation

9 and date to appear in court. California has had a Presumption of Citation since 1986 which was

10 the year the state legislature amended the relevant statute, changing a single word from, “may”

11 to “shall.”

12 California Penal Code Section 853.6(a)(1) follows:

13

14 In any case in which a person is arrested for an offense declared to be a misdemeanor,

15 including a violation of any city or county ordinance, and does not demand to be taken

16 before a magistrate, that person shall, instead of being taken before a magistrate, be

17 released according to the procedures set forth by this chapter, although nothing

18 prevents an officer from first booking an arrestee pursuant to subdivision (g).

19

20 What follows is a list of the six states and the five federal circuits in which they are located that

21 currently have a statutory Presumption of Citation for misdemeanor arrest:

22 California, 9<sup>th</sup> Circuit;

23 Ohio, 6<sup>th</sup> Circuit;

24 Pennsylvania, 3<sup>rd</sup> Circuit;

25 Vermont, 2<sup>nd</sup> Circuit;

26 Maryland, 4<sup>th</sup> Circuit;

27 Virginia, 4<sup>th</sup> Circuit.

1 It is not unreasonable to assume that a number of misdemeanor arrestees in any of the  
2 aforementioned six states have been similarly situated to the Petitioner in terms of being  
3 victimized by prosecutors that have a practice of mailing misdemeanor summonses and then  
4 seeking and obtaining no-bail arrest warrants for failure to appear. The combined population of  
5 these six states totals 79 million people. Given that the national poverty rate is approximately  
6 12% and those living in poverty are typically the class of people that are targets of the abuse  
7 described herein, one reasonable estimate for the number of potential targets of this abuse is 12%  
8 of the 79 million people that live in the affected states. That amounts to a realistic number of  
9 9.5 million people that may be targeted by the unlawful scheme described herein. This scheme is  
10 designed to produce, or at the very least will invariably lead to, a multitude of significant  
11 injuries.

12 Misdemeanor suspects live below the poverty level and suffer the ill-effects of ignorance in  
13 disproportionately high numbers relative to the general population. When these suspects are  
14 subjected to, and eventually injured by the fabrication-of-service-of-summons schemes described  
15 herein, they have little understanding of the abuse they are suffering, little understanding of their  
16 rights that are being violated and remarkably poor access to recourse and remedy.

17 On the other side of this abuse equation are district attorneys, their deputies, their support staff,  
18 the police agencies that they refer to as law enforcement partners and the jails that the people  
19 allow them to maintain and control. These legal professionals are highly trained and fully  
20 understand the laws they are sworn to uphold and the rights they must protect.

21 Described here is a social power imbalance that on one side involves district attorneys, the police  
22 who are armed with deadly weapons and restraints, and, local courts that are essentially franchise  
23 operations which are allowed to enforce state laws and they are also charged with generating  
24 most if not all of their own operating revenue.

25 It is not unreasonable to assume that for the purpose of granting Petitioner a rehearing,  
26 significant amounts of criminal justice infrastructure are being used in the manner described  
27 herein for unlawful and Unconstitutional purposes in any of six states which are located in five  
28 federal circuits. Given the socio-economic status of the typical victim in these schemes which

1 clearly violate basic, well-defined statutory and Constitutional rights, there is a high degree of  
2 probability that the malfeasance will continue to be unreported to any public or private authority.  
3 From there, federal complaints will not be filed and because of this, federal appellants that would  
4 be similarly situated to the Petitioner will simply not exist. Finally, the Supreme Court will not  
5 have any basis for resolving any disparity in rulings among two or more federal circuits because  
6 of the absence of plaintiffs at the district court level.

7 Petitioner understands that this court is more agreeable to granting Petitions for Writ of  
8 Certiorari when the subject matter involves either or both of the following:

9 1) A disparity exists in rulings for similar cases in two or more federal circuits.  
10 2) The subject matter is of national importance.

11  
12 Those living in poverty are unable to bear the burden of almost any litigation, much less the  
13 protracted litigation necessary to create disparate rulings in two or more federal circuits.

14 A large number of victims similarly situated to the Petitioner likely exist in the aforementioned  
15 six states which are located in five federal circuits. Because these victims effectively have no  
16 access to recourse and remedy, this is worthy subject matter for the Supreme Court to review.

## QUESTIONS FOR REVIEW

Petitioner's complaint was complex. A total of seventeen defendants were named, which included three entities and fourteen individuals. A total of twenty claims were presented. Due to this complexity, Petitioner is reiterating his questions for review that were enumerated on page one of his Petition for Writ of Certiorari. This reiteration is intended to provide context and clarity.

1. When deciding the matter of a no-bail bench warrant for failure to appear, can the court allow faulty and fabricated, misdirected service-by-mail of a criminal summons that if not faulty, would otherwise conform to the California Code of Civil Procedure instead of requiring personal, service-by-sworn-peace officer that conforms to the Penal Code?
2. The record demonstrates Respondents' pattern and practice of faulty and fabricated service that does not conform to the Penal Code. Is the district attorney, her county employer and others liable for damages resulting from faulty and fabricated service of a criminal summons?
3. Petitioner was arrested at his home as a result of a no-bail warrant and held in police custody for seven days and required to post cash bail to secure his release. According to statute, the only crime for which petitioner was arraigned would have required the Respondents to cite-and-release petitioner following booking had the police made the misdemeanor arrest. Petitioner was not convicted of any crime as a result of the prosecution. Was Petitioner denied his Fifth Amendment right to due process and his Fourth Amendment right to be free from seizure?
4. The district attorney cited the Code of Civil Procedure on the criminal summons, creating the appearance of authority for proper service. The district attorney then convinced a judge to issue a no-bail bench warrant for failure to appear. If a pattern and practice of mail fraud can be established, can the district attorney, the police and other public officials be held liable in a private action for mail fraud and kidnapping in accordance with the federal RICO statutes?

1       5. Did the Respondents' reckless acts alleged in Petitioner's complaint exceed the reasonable  
2       person standard that would otherwise afford the Respondents qualified immunity?

3  
4       6. Were the acts alleged in Petitioner's complaint sufficient to meet the standard for conspiracy  
5       to deny Petitioner his legal and Constitutional rights?

6  
7       7. Was Petitioner's complaint sufficient to survive defense motions to dismiss the complaint?

8  
9       **DESCRIPTION OF APPENDICES**

10  
11      Petitioner has included two appendices in this Petition for Rehearing:

12  
13      APPENDIX 'A': Criminal summons dated May 19, 2014. It includes a sworn statement that it  
14      was mailed to Petitioner by the Respondents, conforming to the Code of Civil Procedure. This  
15      summons was incorrectly addressed because the apartment number was wrong.

16      This appendix is included in the petition to provide context.

17      One-page document.

18  
19      APPENDIX 'B': Report compiled by the National Conference of State Legislatures. The  
20      report summarizes Citation in Lieu of Arrest statutes according to state. All 50 U.S. states allow  
21      the police to cite criminal suspects in lieu of arrest. Six states have a statutory,  
22      'Presumption of Citation' which requires the police to cite and release misdemeanor suspects  
23      unless specific, well-defined statutory exceptions exist at the time of arrest. Petitioner has not  
24      previously presented this information in any form to this court or at any time during the  
25      litigation.

26      23-page document.

## **CONCLUSION**

For the reasons described in this petition and all other pleadings and documents filed in this case, Petitioner asks this court to grant his petition for rehearing. Petitioner also asks this court to grant his petition for Writ of Certiorari.

Respectfully submitted,

June 4, 2019

John Henneberry

**Pro Se Petitioner**

**CERTIFICATE THAT PETITION IS BEING PRESENTED IN GOOD FAITH**

In accordance with Rule 44, this petition is being presented in good faith and not for delay. This petition is being presented on the grounds that substantial and controlling effects have not been previously presented to this court.

June 4, 2019

John Henneberry

**Pro Se Petitioner**