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No. 19-5925

IN THE

SUPREME COURT OF THE UNITED STATES

KAVIN MAURICE RHODES, — PETITIONER
(Your Name)

vs.

PETER C. SWARTH, ESQ., ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Kavin M. Rhodes, D-20245
(Your Name)

Pelican Bay State Prison
(Address)

P.O. Box 7500, A3-219
(City, State, Zip Code)

Crescent City, CA 95532
(Phone Number)

QUESTION(S) PRESENTED

1. Did the District Court violate Ashcroft v. Iqbal, (2009) 556 U.S. 662; Bell Atlantic Corp. v. Twombly, (2007) 550 U.S. 544; Nietzke v. Williams, (1989) 490 U.S. 319; Erickson v. Pardus, (2007) 551 U.S. 89, and Cruz v. Beto, (1927), when it re-wrote and used interpolations to frame Petitioner's civil rights claims in a manner, that gave the **false** appearance that the claims failed to state a claim upon which relef can be granted under Rule 8, of the Federal Rules of Civil Procedure?

2. Did the Ninth Circuit violate the constitutional principles set forth by the United States States Supreme Court in Liljeberg v. Health Service Acquisitions Corp., (1988) 486 U.S. 847, Rippo v. Baker, (2017) 137 S.Ct. 907; and Edwards v. Balisok, (1997) 520 U.S. 641, to dismiss Petitioner's Appeal to that Court, under its authority United States v. Hooton, 693 F.3d 857, finding Petitioner's allegations of the denial of a proceeding presided over by an impartial judge, insubstantial? And does this Court's harmless error doctrine apply in this context?

3. Should the United States Supreme Court settle the conflict between the United States Court of Appeals, for the 2nd, 7th, and 9th Circuits, in Hearns v. San Bernardo Police Dept., 350 F.3d 1124; Snyder v. McMahon, 360 F.3d 73, and Garst v. Lockheed-Martin Corp., 325 F.3d 347 (7th Cir. 2003), that a complaint should be dismissed under Rule 8 alone, because of its length, and how does Rule 8(e)(2), of the Federal Rules of Civil Procedure apply in this context?

4. Does California's historical enactment of California Penal Code § 141, effective January 1, 2016, declaring it a felony to suppress exculpatory evidence, that criminal defendants are Constitutionally entitled under Brady v. Maryland, 373 U.S. 83 (1983), **suggest** Petitioner may have a State Created Liberty Interest, in that statute's protection? And does the State and Federal Court's in this case blanket refusal to afford Petitioner the protection under Penal Code § 141, because it was implemented against lawyers, constitute a descriminative enforcement of that law, and the denial of police protection, within the meaning of the United States Supreme Court's decision in Yick Woo v. Hopkins, 118 U.S. 370 (1886)?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

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LIST OF PARTIES

(Continued...)

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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 E 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 April 19, 2019.

[ ] 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: July 12, 2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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 United States Constitution

Fifth Amendment to the United States Constitution

42 U.S.C. § 1983

18 U.S.C. sections
1341
1512(c)(2)
1519
1961(c)
1961(5)
1962(d)

Federal Rules of Civil Procedure
Rule 8(a)
Rule 8(a)(2)
Rule 9(b)
Rule 41(b)

California Code of Civil Procedure
Section 340.6(a)

Calirornia Penal Code
Section 141

STATEMENT OF THE CASE

TO THE HONORABLE JUSTICE NEIL GORSUCH:

Petitioner Kavin Maurice Rhodes, an inmate confined in a California prison, and proceeding in Pro Se in the courts below, filed a Civil Rights Complaint, pursuant to 42 U.S.C. § 1983, and a Civil RICO Complaint, pursuant to 18 U.S.C. §§ 1961-1968, that collectively painted a horrid and thruthful picture of judicial corruption implemented by state court appointed lawyers, and a federal public defender, whom collectively, and individually enlisted prison officials, to engage in all forms of First Amendment retaliation in the form of beatings, and the confiscation of personal and legal property, in the attempt to intimidate Petitioner into silence, as a means of covering up the fact that Petitioner has at this juncture spent 32 years in prison for a crime that he did not commit.

In the interim in which the Civil Rights Complaint dismissed by the district court, here complained of was pending, the federal Magistrate Judge assigned to the case; and also former federal public defender, out of the same office at at least one defendant in the case before that Court, according to defendant John S. Crouchley's co-counsel in Petitioner's pending federal habeas corpus petition, Rhodes v. Pfieffer, Case No. 14-CV-07687-JGB-KK, i.e., Callie Glanton Steele, continued to inform Petitioner, "The Magistrate Judge, said that she don't wont you filing that RICO suit against Crouchley, and she don't have time to be reading all that stuff."

Therefore, Petitioner filed timely motions to recuse the Magistrate Judge, for bias and prejudice, each of which was denied by the Article III Judge.

However, the Magistrate Judge, as a means of affording the attorney defenants in this case, continued to improperly invoke Rule 8, of the Federal Rules of Civil Procedure, to force Petitioner to amend his pleadings, and delete most, if not all, his allegations of brutal physical beatings by prison officials, and the confiscation of all of Petitioner's personal and legal property, and gross First Amendment retaliation, and misconduct, by the state court attorney defendants, each of whom collectively banded together, to try and keep covered-up, the emergence of documentary evidence, which proves Petitioner's innocence, of the crime for which he has been wrongfully convicted. Misconduct in the constant comission of Mail Fraud, 18 U.S.C. § 1341, proscribed by RICO, and the conspiracy to violate RICO. 18 U.S.C. § 1962(d).

The instant case, is a **clear example** of the denial of fundamental fairness, and the denial of Petitioner's constitutional right of access to the courts, in violation of the First, and Fifth Amendments to the United States Constitution.

The district court's implimentation of Rule 8, of the Federal Rules of Civil Procedure, as a means of a form of immunity from suit for the defendants, and the United States Court of Appeals, for the Ninth Circuit, consummation of the denial of the above described violation of due process and equal protection of the law, also highlights a conflict, between the Circuit Courts of Appeals, for

the Second, Seventh, and the Ninth Circuit, as even observed by the Ninth Circuit, with respects as to whether a complaint can be dismissed under FRCP Rule 8 alone, for failure to state a claim upon which relief can be granted, that which in this case was used as a means of cersorship, and unfair procedural springe. See e.g., the Ninth Circuits deicision in Hearns v. San Bernardino Police Dept., 530 F.3d 1124, 1131-33 (9th Cir. 2007), acknowledging conflicts with its sister Circuit Courts of Appeals, in which the Ninth Circuit opined: "Decisions from other Circuits are also consistent with the view that verbosity or length is not a basis for dismissing a complaint on Rule 8(a) grounds. And see Snyder v. McMahon. 360 F.3d 73, 80 (2nd Cir. 2004), holding that the district court erred in dismissing on Rule 8 grounds when the complaint, though long, was no so "unintelligible that the true substance, if any, is well disguised;" and see Garst v. Lockheed-Martin Corp., 325 F.3d 347, 378 (7th Cir. 2003), opining "some complaints are windy but understandable. Surplausage can be ignorded." When in fact, Petitioner's complaint in the district court, contained no surplausage, and complied with the short plain statement of Rule 8(a)(2), of the Federal Rules of Civil Procedure, that which under the legal principles as set forth by this Honorable Court, the Ninth Circuit Court of Appeals, was obliged to engage in de novo review of Petitioner's faithful compliance with Rule 8(a)(2), of the Federal Rules of Civil Procedure. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002), and Petitioner also complied with the command of the

district court, to use the district court's pre-prepared civil rights complaint form, and upon which, for each and every individual claim against each defendant, Petitioner was careful to use only the space provided on the form, to which Petitioner contends that Rule 8(a)(2), of the Federal Rules of Civil Procedure, was on the minds of Judicial Comittee, whom created Civil Rights Complaint Form, "CV-66(7/97)," United States District Court, for the Central District of California. Therefore, Petitioner ask that this Honrable Court, take Judicial Notice to his Civil Rights Complaint filed in the district court, pursuant to Fed. R. Evid. 201(d), attached hereto, as Appendix F. That when placed in context with the Report and Recommendation, to the Article III Judge, to dismiss Petitioner's Civil Rights Complaint, also attached hereto, as Appendix E, to which Judicial Notice, is also sought, this **astute Court**, can glean, that the Magistrate Judge, **actually used interpolations**, as fully illustrat[ed] hereafter, at pp. 14-19, to improperly invoke Rule 8(a)(2) of the Federal Rules of Civil Procedure, to give the **false appearance**, that Petitioner's pleadings failed to state a claim, upon which relief can be granted. To which Petitioner did make timely objections to in the district court, as well as, brought that issues to the attention of the United States Court of Appeals, for the Ninth Circuit, in his Opening Brief, also attached hereto, as Appendix C.

It is unclear under which Rule of Civil Procedure, i.e., Rule 8(a)(2), or Rule 41(b), that the district court dismissed Petitioner's Civil Rights Complaint. Therefore, Petitioner was careful to

point out to the Court of Appeal, in his Opening Brief on Appeal, attached hereto, as Appendix C, at pp. 4-6, that Petitioner under Ninth Circuit case law, Edwards v. Marin Park, Inc., 356 F.3d 1058, 1067 (9th Cir. 2004), is permitted to rely on the adequacy of his Civil RICO complaint, without sanction under Rule 41(b), of the Federal Rules of Civil Procedure.

The Three Judge Panel in the instant case, has sidestepped the entire body of controlling law above, first by under its authority set forth in Hooker v. American Airlines, 302 F.3d 1091, 1092 (2002), asked the district court to certify if Petitioner's appeal was taken in good faith, to set the stage to revoke his in forma pauperis, as further censorship of the allegations made against the corrupt lawyer defendants in this case, and required Petitioner to file a "Statement That The Appeal Should Go Forward" or pay the $505.00 filing fee, that Petitioner complied with. See Appendix C, attached hereto. In which Petitioner also was careful to point out, that under the law as set forth by this Court, in Coppage v. United States, 369 U.S. 438, 445 (1962), that the **good faith standard**, under 28 U.S.C. § 1915, is an objective one. And a plaintiff satisfies the "good faith" requirement if he or she seeks review of any issue that is not "frivolous." Garden v. Pouge, 558 F.2d 548, 551 (9th Cir. 1997) (quoting Coppage, 369 U.S. at p. 445. And that a complaint is frivolous where it lack an arguable basis either in fact or law. See Nietzke v. Williams, 490 U.S. 319, 325 (1989). Legally frivolous claims are those "based on an indisputably meritless legal theory,"

such as claims against defendants who are immune from suit or alleging infringement of a legal interest that does not exist." Id. at p. 327. Factually frivolous claims are those "describing fantastic or delusional scenarios." Id. at pp. 327-328. And in anticipation that the Court of Appeals would consummate the district court's denial of Petitioner's constitutional right of access t the courts in violation of the First and the Fifth Amendments to the United States Constitution. Under the guise of Rule 8(a)(2), of the Federal Rules of Civil Procedure, and the concomitant revocation of in forma pauperis status, as an effective means of censorship, and cover-up. Petitioner solicited the donations from a church to pay the $505.00 filing fee, to file his appeal in the Court of Appeal (but unable to do so here) and the Ninth Circuit again side-stepped reviewing Petitioner's allegations of the violation of his Constitutional and Civil Rights, which includes often physical abuse by prison officials, at the direction of corrupt lawyer defendants, constituting an-association-in-fact-RICO-enterprise, within the meaning of 18 U.S.C. § 1961(5). And the Ninth Circuit, completed the rubicon of the district court's silenc[ing] Petitioner, with a citation to its authority, under United States v. Hooton, 693 F.2d 857, 858 (9th Cir. 1982), decided in the criminal context, that stands to the proposition "summary dismissal of an appeal is appropriate because 'the questions raised in this appeal are so insubstantial as to not require further argument.'" Id. That which Petitioner contends, is an application of the harmless error doctrine to

the gross violation of his Constitutional and Civil Rights, even though Petitioner's Appeal to the Ninth Circuit, attached hereto, at Appendix C, at pp. 21-24, raised the issue of the Magistrate Judge in the instant case, having by appearance, sua sponte recused herself from the case, while the attorney defendant John S. Crouchley, abused his authority as counsel of record in Petitioner's companion habeas corpus petition, to have Petitioner shipped out to court, seperated from all his legal documents, while the Civil RICO suit was assigned to another Magistrate Judge, and dismissed, a ploy under which the current Magistrate Judge, could avoid the appearance of impropriety. However, when that plow failed, the Magistrate Judge reasserted jurisdiction over the case, and issued a disingenous Report and Recommendation, that the case be dismissed under Rule 8(a)(2), of the Federal Rules of Civil Procedure.

Most notably, is that the standard applied by the Ninth Circuit under United States v. Hooton, supra, 356 F.3d 857, 858, again, as astablished in the criminal context, is that the Government filed a motion for summary dismissal of the appeal. Whereas, here, the Court of Appeal sua sponte, dismissed the appeal, which is actually contrary, to its practice, under its own law. See Id., 693 F.3d at p. 858, fn. 3, opining: "For instance, United States v. Alex, 81-6010, appellee requested summary affirmance of the district court's denial of Alex's 28 U.S.C. § 2255 petition. In his petition, Alex suggested that his codefendant had threatened him and his family unless he pleaded guilty to a bank robbery charge. On the basis of Fed. R. Crim. P. 11 colloquy, the district

court found Alex's allegation palpably false and denied the petition without a hearing. We did not believe that the question whether Alex was entitled to an evidentiary hearing was so insubstantial as to merit summary disposition." Here, in the instant case, no one has disputed the allegations made by Petitioner in his Civil Rights Complaint, that which at the pleading stage, under the law of this Court, must be deemed true. See Cruz v. Beto, 405 U.S. 319, 322 (1972), and a court is bound to give a plaintiff the benefit of every reasonable inference to be drawn from well-pleaded allegations of the complaint. Retail Int'l Ass'n v. Schermerhorn, 373 U.S. 746, 753 (1963). And a plaintiff need not allege "'specific facts' beyond those necessary to state his claim and the grounds showing entitlement to relief.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007); Swierkiewicz, supra, 534 U.S. at p. 508. "A claim has factual plausibility when the pleaded factual content allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678-679 (2009) (citing Twombly, 550 U.S. at p. 556). And pro se pleadings are to be liberally construed. Erickson v. Pardus, 551 U.S. 89, 94 (2007). And see United States v. Hooton, supra, 693 F.2d at p. 858, citing Page v. United States, 356 F.2d 337, 339, fn. 1 (9th Cir. 1996) (Government filed motion), and Page in turn cites, Head v. United States, 346 F.2d 194, 196 (9th Cir. 1965), for the proposition that **harmless errors are so insubstantial** as to not need further argument." The harmless error doctrine does not apply to the

violation of Petitioner's civil rights. Unless of course, the message that the Ninth Circuit actually seeks to send, is that because Petitioner is in prison, and endure First Amendment retaliation, by prison officials, at the direction of lawyers, Petitioner as a human being, and an American citizen, he himself, is insubstantial.

It is also noteworthy, to pause here for a moment, and point out that the Ninth Circuit, in Page v. United States Supra, 356 F.2d at p. 338, noted that "while the rules of the Ninth Circuit does not specifically provide for a motion to affirm, Rule 8(a)(2) provides that the practice shall be the same as in the Supreme Court of the United States, as far as the same shall be applicable. Rule 16(1) of the Supreme Court provides for 'motions' to affirm on appeal where it is manifest that the question on which the decision of the court depends are so insubstantial as to need no further argument. See Robert L. Stern and Eugene Gressman: Supreme Court Practice, 3d §§ 7-12, pages 286-290. In our opinion the practice of permitting 'motions' to affirm, as authorized by Rule 16(1) of the Supreme Court, is applicable to appeals in this circuit." Again, however, no motion has been filed in this case, and the sua sponte affirmance of the district courts erroneous dismissal of Petitioner's civil rights complaint, served to effectuate the censorship of Petitioner's speech, whereby, prison officials began a new round of attacks. This Honorable Court in the context of its Rule 16(1), in Stewart v. LaGrand, 526 U.S. 115, 121 (1999) (dissenting opinion of Stevens, J.),

(critizized the majority for dispensing with "full briefing and argument" and instead summarily deciding "important question").

The Ninth Circuit Court of Appeals in the instant case, under it's authority of United States v. Hooton, supra, 693 F.3d 857, to summarily extinguish Petitioner's claims of the violation of his Civil and and Constitutional rights, presented to it in his Opening Brief, attached hereto, as Appendix C, at pp. 4-24, finding the legal arguments to be insubstantial as to require summary affirmance on the Court's own motion. Conflicts with the decisions of the Supreme Court, as exemplifed above. And even conflicts whith the decisions of its own Court, and has sanctioned the district court's departure of all law that can be fairly embraced under the First And Fifth Amendment to the United States Constitution, within the ambit of Rule 10(a), of the United States Supreme Court.

As Petitioner's claims in the district court, were clearly pled, and in succint form, as Exhibited at Appendix F, attached hereto. However, the Magistrate Judge in the Report and Recommendation to the Article III Judge, resulting in the improper dismissal of Petitioner's Civil Rights Complaint, engaged in sport, by first Ordering Plaintiff-Petitioner to use that Court's pre-pared civil rights complaint form, which provides a **two-part** section, for each claim, devid[ing] the 'legal ground' section, from its 'supporting facts' section. And under this ruse, the Magistrate Judge in the Report and Recommendation, attached here to at Appendix E, at pp. 8-10, identified Claims 4, 6, and 27, seperating the legal ground section, from their supporting facts section, and presented

Petitioner's Claims to the Article III Judge, in a deceptive, and incorrect form to give a very **false appearance** of the presentation of Petitioner's Claims, to makes the Claims appear to fail to state a claim for relief that's plausible on their face, by deviding the claims into **subparts** , for review by the Article III Judge, fully objected to by Petitioner, to no avail.

For example, the Magistrate Judge's Report and Recommendation, ("R&R," **begining at p. 8:11-12**), set up the improper view of Petitioner's Claims by using the discriptive: "The **digressions** are remarkable and are **interwoven throught the SAC.**" To which Petitioner respectfully contends are at odds with Rule 8(e)(2), of the Federal Civil Procedure, which provides in pertinent part:

> "A party may set forth two or more statements of a claim or defenses made in the alternative and one of them if made independantly would be sufficient, the pleading is not made insufficient by the insufficiency of one or more alternative statements. A party may also state as many claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds." Id.

And as for the "digressions" being "interwoven throught the SAC," the United States Supreme Court, in the context of RICO claims, has set for the legal principle that, "often times evidence of pattern of RICO and enterprise elements **coalesce**." See United States v. Turkett, 452 U.S. 576, 583 (1981). An established legal principle, that the Ninth Circuit, and the district court, seeks to upset, by breaking Petitioner's well pled RICO claims into **subparts**, to present a **deceptive** finding of fact.

That is, in the R&R, at page 8:17-27, the Magistrate Judge

writes a **partial discription** of Petitioner's Claim 4, as follows:

> "Under 'Claim 4,' Plaintiff writes the following: Defendants Bowen, Tinsley, and Santiago, conspired with attorney general Noah P. Hill (not named as a defendant) to deny Plaintiff access to case law, to demonstrate that Hill's citation to People v. Carson, (2005) 35 Cal.4th 1, 12-13, fn. 3 & 4, was false in his claim that Plaintiff receipt of the newly discovered evidence of witnesses criminal histories provided GiGi Gordon in 2011, was in the version of the murder book provided to plaintiff in 1988, while in pro per. Needed to Oppose Hill's Opposition Motion in case Rhodes v. Biter, Case No. 14-70204 (9th Cir. 2014) in federal court. And is the obstruction of justice. 18 U.S.C. §§ 1512(c)(2), 1519, 1962(d). Predicate Act Five. And is First Amendment Retaliation.'"

However, what the Magistrate Judge egregiously **[o]mits**, is the Supporting Facts section of Claim 4, which reads:

> "On or about August 1, 2014, Plaintiff was forced to explain to defendant Bowen that he neded a copy of People v. Carson, 35 Cal.4th 1, 12-23, fn. 3 & 4. And because that very same case law proves that Hill's assertion that the witness criminal histories was in the version of the murder book given to Plaintiff while in pro per. The very next day, 8-14-14, Bowen at the direction of Hill destroyed the entire law library, as a pretext to deny Plaintiff's request. And this same exact murder book evidence, is the evidence provided to Plaintiff by GiGi Gordon that defenadnts Crouchley, Choi, and Holmes also subsequently conspired to falsely claim was found in Holme's home, on July 28, 2017." Id.

Thus, Petitioner ask that this Honorable Court take Judicial Notice to his Claim 4, in its entirety. Attached hereto, as Appendix E, SAC at p. 31, as the same request was made in the Ninth Ciruit, and the district court, under Fed. R. Evid. 201(d), to no avail. Clearly, Claim 4 when read in its entirety, inclusive of its Claim Section, and its Supporting Facts Section, **it is not at all "confusing"** and complies with Rule 8(a), of the Federal Rules of Civil Procedure. And if this Court would endeavor to

take Judicial Notice to the Magistrate Judge R&R of November 13, 2017, [Dkt. No. 13], at pp. 14:14-28; 15:1-9, where the Magistrate Judge Ordered Petitioner not to name Noah P. Hill as a defendant, and it is for that reason, that Petitioner writes in his Claim 4 above, "Noah P. Hill '(not named as a defendant).'"

The Magistrate Judge, employed the same device of deviding Claim 6, into **sub-parts** to misrepresent Petitioner's Claims. Please take Judicial Notice to the R&R of August 6, 2018, attached hereto as Appendix E, at p. 9:3-15, where the Magistrate Judge writes:

> "Under 'Claim 6,' Plaintiff writes: Plaintiff makes the allegation, that Kern Valley State **Prison** defendants, along with corrupt Los Angeles Superior Court Judge Sam **Ohta**, are very likely responsible for the **deaths** of GiGi Gordon, Alberto Luper, Anthony Smith, Hyron Tucker, to **include** the death of an Hispanic Prisoner on Facility-A at Kern Valley State Prison, as a ruse to justify having Plaintiff killed, during the pendacy of the RICO suit Rhodes v. Gordon, Case No. 2:12-cv-02863-JGB(DTB), in which they were defendants, to render that suit moot. 18 U.S.C. §§ 1961(A)(G), 1961(5), and 1962(d). Plaintiff is entitled to a chance at discovery, before dismissal. That which at the pleading stage must be deemed true.'" Id. See Claim 6, SAC at p. 33.

The Magistrate Judge, has also **egregiously omitt[ed]** the Supporting Facts section of Claim 6, which reads:

> "During the course of Plaintiff's attempts to access the courts to obtain Brady Material out of LAPD Officer personnel files, in succession, all parties died. GiGi Gordon **allegedly** committed suicide in 2012 after she provided Plaintiff the murder book from his criminal case containing suppressed Brady material, but before she could file a Pitchess Motion, discovered to contain Brady Material in Officer Smith's personnel files. Alberto Luper the detective that framed Plaintiff (Gordon's investigator) died in 2013. On January 31, 2013, Smith died. And the State's primary witness Hyron Tucker paid to give perjured

> testimony at Plaintiff's criminal trial, is also reported to have died in an Arkansas jail. The same fate as the infamous Jailhouse Informant Sidney Storch, having died in a New York Jail, before he could be expidited back to California, to give testimony in regards to his having been exploited by the Los Angeles County D.A. and LAPD, to give perjured testimony." Id. See Claim 6, SAC at p. 33.

Petitioner also ask that this Court take Judicial Notice of his Claim 6, in its entirety. Attached hereto, as Appendix E.. Fed. R. Evid. 201(d). Claim 6, in toto, meets "short plain statement rule of Rule 8, of the Federal Rules of Civil Procedure. And law in the RICO context, Plaintiffs could proplerly be put to their proof only upon completion of pre-trial discovery. At that point, the failure to produce evidence of the requisite pattern warrants summary judgment. Fed. R. Civ. P. 56(c)(e). Petitioner alleged a pattern of rackteering activity, by an association-in-fact-RICO-enterprise, that function together, as a continuing unit. 18 U.S.C. §§ 1961(5), 1962(c), by a criminal enterprise within the State's Penal and Judicial System, and that killing prisoners, is the regular way that they conduct their business. See H.J. v. Northwestern Bell Telephone Co., 492 U.S. 229, 241, 249-50 (1989). And it cannot be reasonably disputed that murder is a predicate act under RICO. See RJR Nabisco v. Eurpean Community, 136 S.Ct. 2115, ___ (2016); 18 U.S.C. § 1961(A)(G). Congress created these civil remedies to supplement scarse prosecutorial resources by encouraging victims to serve as "private attorneys general" dedicated to eliminating racketeering activity. Rotella v. Wood, 528 U.S. 549, 557, n. 3 (2000); see also Holmes v. Sec.

Investor Prot. Corp., 503 U.S. 258, 269-70 (1992), (Senator Hruska, one of RICO's original sponsors said, "The criminal provisions are intended primarily as a adjunct to the civil provisons, which I consider to be the most important feature of the bill." 115 Cong. Rec. 6993 (1969)).

Finally, and most significantly, the Magistrate Judge, R&R of August 6, 2018, at pp. 9:16-28; 10:1-2, here at Appendix E, uses the **same** exact **deceptive tactic**, in regards to Petitioner's Claim 27, where the Magistrate Judge also seperates the Claim section of Calim 27, from its Supporting Facts section, where the Magistrate Judge writes: "In another example, under 'Claim 27,' Plaintiff writes:

> "Defendant Crouchley's conspiring with Los Angeles District Attorney Jackey Lacey, to deny Plaintiff's liberty interest in the newly enacted Cal. Penal Code § 141, and thus police protection, in violation of equal protection rights of the 5th and 14th Amendment. As well as, having become complicit in the court's denial of discovery rights, without objection to deprive of appellate review. In his continued conspiracy to Obstruct Justice. 18 U.S.C. §§1512(c)(2), 1519. And the conspiracy to violate RICO. 18 U.S.C. § 1962(d). Through the comission of Mail Fraud. 18 U.S.C. § 1341. Predicate Acts Thirty-Five and Thirty-Six. From which Crouchley is not immune. And is Malpractice on Crouchley's behalf. Cal. Code of Civ. P. § 340.6(a). To which Plaintiff ask the Court to exercise Supplemental Jurisdiction over Plaintiff's state law claims. 28 U.S.C. § 1367(a).'" See Claim 27, SAC at p. 58.

The Magistrate Judge has also **egregiously omitt[ed]** the Supporting Facts section of Claim 27 which reads:

> "On April 13, 2017, the District Court in Plaintiff's federal habeas corpus petition, held a telephonic conference, at which it narrowed some of Plaintiff's discovery request. However, on June 5, 2017, the Court issed an

Order (that Crouchley sandbagged Plaintiff on its issuance) which the Court made a horrible mistake on all of the timelines for Plaintiff's discovery request, that are off by a full decade after Plaintiff's trial and conviction, which assist the custodian of records in making the false claim that the sought after discovery material does not exist. So, Plaintiff wrote a letter to Crouchley, and asked for his assistance at having the Court to correct its clear errors, but Crouchley would not respond. Therefore, Plaintiff filed a motion for the corrections on his own with the Court, which the Court refused to docket, and instead forward Plaintiff's pleadings to Crouchley. And on July 12, 2017, Crouchley arranged a phone call to the prison, and informed Plaintiff that the Court would file file his motion for corrections. At which time Crouchley agreed that the Court made errors, and informed Plaintiff that he would file a motion to have the Court make the corrections. At which time Crouchley asked Plaintiff, **"Do you have access to PACERS?"** To which Plaintiff replied "No." And Crouchley would not respond to Plaintiff's question as to why he saked that question.

However, Plaintiff subsequently received a letter and a motion from Crouchley dated July 12, 2017. The letter reads in part: "I have drafted the enclosed filing with the Court, wich attaches your pleading, and request an Order correcting the dates in the discovery minutes as set forth in your pleading." And the motion is captioned: **PETITIONER'S EX PARTE REQUEST FOR CORRECTION OF DISCOVERY ORDER** [Proposed Order Lodged Herewith]." And at p. 6:18-22, Crouchley writes, "To make clear, Petitioner wishes to explicitly note an objection to the denial of records, as well as any narrowing or denial of other request. Petitioner's own pleadings regarding that issue, as the errors noted above, and the applicability of the California Penal Code § 141(b)-(c), is attached hereto and incorporated herein as Exhibit B." Plaintiff on August 8, 2017, did mangage to get access to PACERS, and discovered, that the above quoted letter and Motion by Crouchley, has never been filed with the Court. The significance here being, is also the same pleading lodged with the Court in Rhodes v. Pfieffer, at [Dkt. No. 134], addressing Plaintiff's rights under Penal Code § 141, which the Court will not address." See Claim 27, SAC at pp. 58-59.

Therefore, Petitioner also ask that this Court take Judicial Notice to his Claim 27, in his SAC, attached hereto, as Appendix F. Fed. R. Evid. 201(d). As it is also plain to see, that the Magistrate Judge's statement R&R, at p. 10:3-5 here at Appendix E, that "It

is therefore impossible to determine from the SAC what each defend-dant allegedly did and what information Defendants might be compelled to provide discovery," is patent[ly] **false**. The Magistrate Judge has engaged in deception, to which Petitioner timely object to in the district court, and raised as an issue on appeal to the Ninth Circuit, to no avail.

And it is because Claim 27 is based upon fraud, pursuant to Rule 9(b) of the Federal Rules of Civil Procedure, it must be pled with particularity, and for that reason only, was an extra sheet of paper, added to the pre-prepared civil rights form, that the Court Ordered Petitioner to use, and was done in accordance with the instruction[s] on that form. The above quoted Supporting Facts section to Claim 27 above, omitted by the Magistrate Judge, is a sine quo non, to Petitioner's Mail Fraud and Malpractice allegations against Crouchley, and former co-worker of the Magistrate Judge 'and' District Judge in this case, to whom timely objections was also made. And because the district court dismissed Petitioner's complaint for failure to state a claim, under Rule 8, it was obliged to apply the same standard for a Rule 12(b)(6) motion to dismiss. See Waitson v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012). **that** Petitioner also pointed out to the Ninth Circuit in his Opening Brief on Appeal, which that Court found insubstantial in its course to dismiss the appeal.

It is also significant to point out, that in regards to the omitted portion of Claim 27, by the Magistrate Judge, in regards to Crouchley's phantom motion for correction of the discovery

minutes that falsely appeared to address Petitioner's concerns with his State Created Liberity Interest, in the newly enacted California Penal Code § 141, effective January 1, 2016, declaring it a felony to suppress Brady material, i.e., Brady v. Maryland, 373 U.S. 83 (1963). On September 27, 2018, in Petitioner's presence, on the record in Petitioner's companion federal habeas corpus petition, Rhodes v. Pfieffer, Case No. 14-cv-07687-JGB(KK), the Magistrate Judge convened a hearing, and on the ercord stated, that it is of no concern to that Court, that the State Legislatures decided to enact Penal Code 141, and that she would not in any way consider it, an issue raised in Petitioner's Civil Rights suit, and raised on appeal in the Ninth Circuit. As a federal court sanctioned denial of police protection, and the descriminative enforcement of laws, because it was to be implemented against lawyers that hide exculpatory evidence. That Petitioner contends is contrary to his due process and rights to equal protections, under the dictates of federal law, as set forth by the United States Supreme Court, in Yick Woo v. Hopkins, 118 U.S. 370, 373-74 (1886). Yet, the Ninth Circuit, also found this issue insubstantial, under its authority United States v. Hooton, supra, 693 F.2d 857, 858.

The Ninth Circuit also found "insubstantial" for appellate purposes, Petitioner's allegation, and documentary evidence, on appeal, that by appearance, the Magistratrate Judge, may have actually recused herself for cause, prior to the issuance of the August 6, 2018, Report and Recommendation, while defendant

Crouchley, was making arrangements, to have Petitioner's transferred out to court, and seperated from all his legal documents, while in the interim, this case was assigned to a new Magistrate Judge, and dismissed, giving the current Magistrate Judge, the appearance of clean hands.

That is, because defendant Crouchley is a Federal Public Defender, the law required Petitioner to serve the United States Attorney a copy of his Civil RICO Complaint, naming Crouchley as a defendant. And on April 5, and May 3, 2018, Petitioner received letters from the U.S. Attorney, informing Paetitioner that the Complaint appeared to be unfiled, at which time U.S. Attorney refer to the caption of the case as: "Kavin Maurice Rhodes v. Peter Swarth, et al., Case No. CV 17-05211 JGB(KKx)." The KKx, commonly understood to denote the recusal or re-assignment of a judge. However, neither the district court, nor the U.S. Attorney, would reply to Petitioner's inquires in that regard.

In any event, the April 5, 2018 letter from the U.S. Attorney, here at Exhibit B, of Appendix F, indicating the re-assignment or recusal of the Magistrate Judge, is dated before Petitioner's own April 30, 2018 motion, to recuse this same Magistrate Judge, for bias and prejudice, denied by the district court, on May 14, 2018, yet another issue, found insubstantial by the Ninth Circuit, under its authority, United States v. Hooton, supra, 693 F.2d 857, 858. That which under long standing Ninth Circuit precedent, is deemed an **incurable error**, for a judge to reassert jurisdiction over a case, after having sua sponte recused. See Stringer v.

United States, 233 F. 2d 947, 948 (9th Cir. 1956); accord DeFazo v. Hollister, 2007 U.S. Dist. LEXIS 25229 (E.D. Cal., March 27, 2007), cited for its persuasive value, opining: "Being disqualified for cause on the court's own motion, it would be an incurable error to reassert jurisdiction over the case. And in this case, the Magistrate Judge's R&R, qualified as a **'proceeding'** even if only ministerial duty in nature. See In re Cement Litigation, 673 F.3d 1020, 1024 (9th Cir. 1982), and Petitioner contends is a factor in determining the **"camouflaging bias"** theory, as set forth by the United States Supreme Court, in Rippo v. Baker, 137 S.Ct. 907 (2017), extending Williams v. Pennsylvania, 136 S.Ct. 1899 (2016); accord Capperton v. A.T. Massey Coal Co., 556 U.S. 868, 883-84 (2009), Withthrow v. Larkin, 421 U.S. 35, 47 (1975). Cf. Also, Liljeberg v. Health Services Acquisitions Corp., 486 U.S. 847, 863-84 (1988). And the Ninth Circuit's summary rejection of Petitioner's appeal to that Court, making the allegation of the denial of a proceeding presided over by an unbiased adjudicator, finding the issue insubstantial, under its authority, United States v. Hooton, supra, 693 F.2d 857, 858. To be in **direct conflict**, with the legal principles established by the United States Supreme Court in, Nedder v. United States,527 U.S. 1, 8 (1999); Edwards v. Balisok, 520 U.S. 641, 647 (1997), and Tumey v. Ohio, 273 U.S. 510, 523 (1927), finding the issue of a biased judge, to be structual in nature.

Finally, the Ninth Circuit found Petitioner's claim on appeal, that the district court improperly denied his Motion to Recuse

the Magistrate Judge, even in light of the fact that Petitioner in his affidavit to recuse the Magistrate Judge, informed the district judge, that Federal Public Defender, Callie Glanton Steele, informed Petitioner that, "The Magistrate Judge want you to dismiss the RICO suit against Crouchley, she don't have time to be reading all that paperwork." Yet, the district judge, did not address those claims, upon its denial of Petitioner's Recusal Motion, and the Ninth Circuit on Appeal, also found this issue to be insubstantial. Under United States v. Hooton, supra, 693 F.2d 857. 858. To which Petitioner also, respectfully submit, is within the ambit of United States Supreme Court Rule 10(a)(c).

In summation, Petitioner pray that this Honorable Court will give due, and careful consideration, to the legal and Constitutional claims made, in the instant Petition for Writ of Certiorari.

DATED: September 1 , 2019

Respectfully Submitted,

Kavin M. Rhodes

KAVIN MAURICE RHODES, IN PRO. SE

REASONS FOR GRANTING THE PETITION

The reason(s) to grant the instant Petition for Writ of Certiorari, is inherent in the following sublimate question(s) to the Highest Court in the world—are there really any words a man without an identity under the worst possible circumstances, can utter, in a world of politics, that has turned against the very concept of justice confer either by God or man, to implore fundamental fairness, in the gross disparate mistreatment, and First Amendment retaliatory abuse, because of the pursuit of constitutional and human rights said to be inalienable, in repeated provisions of American Jurisprudence, actually proven to be a covert weapon of war by judicial officers in plain sight, against the down-trodden, to selectively silence the Constitution itself, and thereby, unleashing the horror in the reality, that where a video, or recording device is not rolling, during the constitutional and civil right committed against American Citizens, by those in the Fraternity of law; its brotherless victims will be deemed a pariah, and ostracized out of court, through all manner of sport and foul play by judicial officers, because of display of a modicum of fortitude of mind and spirit after 32 years of unjust imprisonment and torture, to raise his hand, and nearly silenced voice, from behind the iron curtain of prison walls, to redress the violation of his rights, as tutored by published decision of the United States Supreme Court, as a means of silencing a rightful cry of justice? Quantified, by the historical fact, that on May 3, 1988, Petitioner was shot in the stomach by a corrupt LAPD officer, whom said, "Nigger, you're going to die, what kind of flowers do you want on your grave?" And later framed and con-

convicted of murder, to justify being shot, and sentenced to life in prison without parole. And by providence 25 years later, evidence of Petioner's innocence, began to emerge. And because Petitioner has attempted to access the courts, he is abused, and shut out of court.

Which gives new life to Justice Steven's wisdom in. Mitchum v. Foster, 407 U.S. 255, 241 (1970), "Sheriffs having eyes, see not; judges having ears to hear, hear not, witnesses conceal the truth or falsify it; grand petit juries act as if they might be accomplices. [A]ll apparatus and machinery of civil government, all the process of justice sulk away as is justice and judgment were crimes and feared detection."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: September 1, 2019