No. 19-6222

IN THE

SUPREME COURT OF THE UNITED STATES

CLARENCE L. HEARNS — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF CALIFORNIA — 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. Clarence Leonard Hearns Junior [ID # K-10567]
(Your Name)

P. O. Box 5248 [A-3 / 15-6 low]
(Address)

Corcoran, CA 93212
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.) WHETHER PRO-SE PRISONER CAN BE DENIED FIRST AMENDMENT RIGHT BASED ON COURT ERRORS ?

2.) WHETHER DISTRICT COURT'S ERRORS AND OVERSIGHT CREATED EXTRAORDINARY CIRCUMSTANCES WARRANTING RECALL OF MANDATE ?

3) IS PUBLIC POLICY SERVED BY CIRCUIT COURT'S SUA SPONTE DISMISSAL WHEN THERE BEEN NO BRIEFING OR FULL DEVELOPMENT OF FACTS ?

LIST OF PARTIES

[X] 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:

Ninth Circuit Court of Appeals
PO Box 193939
San Francisco, CA 94119-3939

California District Court
Attn: Judge Jacqueline H. Nguyen
312 Spring Street Rm. G-8
Los Angeles, CA 90012

CALIFORNIA ATTORNEY GENERAL OFFICE
Appellate Division [State Bar No. 61GL03-011
300 South Spring St.
1st Floor
Los Angeles, CA 90012

TABLE OF AUTHORITIES CITED

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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

[X] 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,
[X] is unpublished.

The opinion of the United States district court appears at Appendix "1" to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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[ ] is unpublished.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 July 16, 2019.

[X] 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

AMENDMENT 1 of the U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

Federal Rules of Civil Procedure rule 60

(a) Clerical Mistakes, Clerical mistakes in judgments, orders or parts of the record and errors therein arising from oversight or omissions may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any as the court orders. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be corrected with leave of the appellate court.

(b) Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party oraa party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) Fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to to relieve a party from a judgment, order, or proceeding or to grant relief to a defendant not actually personally notified as provided in Title 28 usc § 1655, or to set aside a judgment for fraud upon the court.

STATEMENT OF THE CASE

Petitioner filed a federal Writ of Habeas Corpus, [28:2254], attacking his state conviction, on 03-05-09. The District Court, Judge, Florence-Marie Cooper and Magistrate Judge Oswald Parada were assigned to preside over the Habeas proceedings. On 06-10-09, an order to show cause, was issued, regarding petition being "untimely", by Magistrate Parada.

On 07-14-09, petitioner file responsive pleadings to order under FRCP 60(b)(4). (doc. 5)

The court clerk failed to issue a copy of the magistrate's Report and Recommendations to the parties. Nor was the District Judge Florence-Marie Cooper made aware that no parties had viewed the magistrate's Report and Recommendation [R&R].

On 09-24-09, in absence of a response or objection to the R&R from any of the parties, pursuant to California Central District Local Rules, the court adopted the R&R, dismissing petitioner's habeas. [Doc. 7]

On 10-11-09, Petitioner filed a one page notice of appeal. Within this appeal, petitioner explained that He was unable to request a certificate of appealability, because he had not filed any objection, due to never recieving a copy of the magistrate's R&R. [see Doc. 8] copy of NOA never return to Petitioner, though mable copies sent to court clerk and ENDORSED COPY RETURN was requested. Docket erroneously claims NOA returned & COA pending [dmap]. ?

On 11-03-09, Judge Cooper VACATED her order [doc. 7] and ordered that R&R be issued to petitioner, along with 30 days to file objections. [doc. 9].

On 11-20-09, Magistrate Parada issued Petitioner a copy of Report & Recomeendation.

On 12-14-09 District Court Forwarded Vacated NOA (doc. 8) No COA present. 09-56974

On 1-21-10, 9th CCA sent out to parties Notice of lack of jurisdiction on Appeal case No. 09-56974.

On 12-16-09 ACTING Chief District Court Judge George H. King, took presiding district court Judge Ms. Cooper off the habeas proceeding. And assigned a Newly appointed district court Judge Ms. Jacqueline H. Nguyan. to the case. (doc. 13)

On 12-21-09, petitioner filed the OBJECTIONS TO MAGISTRATE'S R&R. The entirety of the petitioner objections were based on a JUDGMENT which lacks subject matter jurisdiction is VOID. And the one year statute-of-limitation under the AEDPA, is expressly inapplicable against a void judgment, under rule 60[b][4-6]. [doc. 14] As has been establish NO ENDORSED COPY RETURNED TO PETITIONER.

On 01-12-10, the district court issued three orders. Doc. 15 adopting R&R. Doc. 16 Dismissing petitioner's Habeas Corpus. Doc. 17 was an order DENYING an alleged unwritten request for certificate of appealability [COA]. Cited to be contained within original Notice of Appeal. (doc. 8)

On 02-22-10, Petitioner filed a NOA/COA on the district court final order "DISMISSING" petitioner's habeas corpus. (doc. 20). Again NO ENDORSED COPY RETURNED TO PETITIONER.

On 02-26-10 the court applied petitioner's NOA/COA on a NON-APPEALABLE order (doc. 17), which denied the non-existent COA, alleged to be contained in the original NOA. [doc. 8] see court docket bottom of page 3 of 5.

The 9th CCA alerted all parties the NOA [doc 20] had not been applied to the final order rendered (doc. 16). "Appellate has not filed a notice of appeal as to ~~that~~ Judgment", (doc. 22) FILED ON 03-21-10. Though district court illegally moves the document filling up ahead of the NOA [doc. 20] and places it as though it was filed on 01-21-10. Some 32 days ahead of the NOA [doc 22] the 9th CCA is citing it has no Jurisdiction over.

On 04-14-10 Appellant, NOT having any understanding of what had went wrong. Filed a rule 60(a) motion asking the district to correct or clarify the record see court doc. 23. Again NO ENDORSED COPY RETURNED TO APPELLANT/PETITIONER.

On 09-07-10 the district court claimed to have made CORRECTED CERTIFICATE OF RECORD, and referenced document 20. But failed to correctly file NOA/COA doc. 20 to the order [doc. 16] dismissing the habeas.

On 07-18-11 9th CCA dismissed appellant's appeal [doc 20). And issue it's

MANDATE closing the case on 09-22-11. Petitioner did not know what Mandate was, So...

On 12-13-13, petitioner Filed with district court Judge Jacqueline H. Nguyen a rule 60(b) motion. (doc. 33) For some unnamed reasons, Judge Nguyen, gave the motion to Judge King? Judge King order "exparte'" briefing on the motion. And as has been the case, in this matter, petitioner's brief was never ENDORSE and/or RETURNED to petitioner.

On 01-26-14, Judge King issue his order denying the presence of any abnormalities in the habeas proceedings or any extraordinary circumstances justifying issuance of an order to vacate, [doc. 35] see Appendix "I"

On 06-13-14, petitioner Filed yet another rule 60(b) motion pointing out that the petitioner's NOA (doc 20) had been erroneously applied against the Non-appealable order (doc. 17), denying a non-existant COA, alleged to be in original NOA (doc. 8)

On 06-13-14, the court order the motion returned but not filed, Citing: "Rule 60(b) motion previously denied, [ECF No. 35) Reconsideration not warranted C.D.Cal. R. 7-13." see Appendix "G"

On or about 05-25-17, petitioner filed a rule 60(a) motion DEMANDING that the court make the REQUIRED correction of the record. And citing therein the petitioner's diligence in this matter. A new district Judge appeared on the case, Ms. Virginia A. Phillips, citing this time. "Case is Closed." See App."J"

On 06-16-17 Appellant, Clarence L. Hearns, Jr., filed motion for recall of Mandate. No Endorsed Filed copy Return.

On 08-24-17, appellant filed Second motion for recall of mandate, due to not having kept a copy of the original motion. Which was explained to court clerk, as appellant would have been unable to follow citation out of motion, in the anticipated briefing schedule, on proceeding in CCA. See Appendix "B"

On 02-15-18, Petitioner/Appellant filed a motion to Strike the 06-16-17 motion for Recall - due to not having operative copy of said motion.

On 11-21-18, Petitioner requested copy of court docket in this action.

On 06-01-19, petitioner filed motion to expedite briefing in this matter.

On 06-17-19, petitioner filed a NOTICE OF DELAY, with the court clerk.

On 06-17-19 petitioner submitted an APPLICATION TO BE RELEASED ON OWN RECOGNIZANCE pursuant FRAP 23. Requesting a ruling by 10-23-19, on Application.

On 07-16-19, the 9th CCA issued its denial of petitioner's motion for recall of mandate. All other pending motions were deemed denied by reference in same order.

***** The Petitioner Now files this writ of Certiorari *****

REASONS FOR GRANTING THE PETITION

I.

FAILURE OF LOWER COURTS, STATE AND FEDERAL TO HOLD EITHER EXTENSIVE BRIEFING OR EVIDENTIARY HEARING IS A DENIAL OF PETITIONER'S FIRST AMENDMENT RIGHT TO ACCESS TO COURT.

"Where a habeas petition set forth 'specific and detailed factual assertions' that, if true, would entitled the petitioner to relief the court must ensure the development of the relevant facts. MACHIBRODA v. U. S., 368 US 487, 495...Where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing. If the habeas applicant did not receive a full and fair evidentiary hearing in state court, either at the time of trial or in a collateral proceeding. TOWNSEND V. SAIN, 372 US 293, 312 see also 28 USC § 2254(d) This duty requires 'careful consideration and plenary processing of claims including full opportunity for presentation of the relevant facts.' HARRIS v. NELSON 22 L. Ed. 281, 299. Particular care is of course required where the habeas petitioner, as here, appears pro-se or through the help of a fellow prisoner rather than with the assistance of an attorney."

VINCENT v. LOUISIANA, 83 L. Ed. 2d 939, 941.

In the state proceedings, petitioner filed a motion to suppress evidence on February 28, 1995. The motion and required evidentiary hearing were summarily dismissed, by the trial judge. After conviction, Petitioner filed a protective federal habeas corpus on the trial court's denial of his right to challenge the admissibility of evidence. Magistrate Judge Parada dismissed the 1996 habeas corpus without prejudice.

Some years later, in 1998, petitioner received a response from his FOIA request to the Los Angeles Branch of the FBI. Undercover in these FOIA documents, were a ACCOMPLISHMENT REPORT connecting LAPD with initiating the investigation against petitioner. The importance and relevance of this discovery can only be ascertained at an evidentiary hearing, of which petitioner has ~~not~~ to receive.

In the district court proceeding, on this matter, Magistrate Parada, goes to great pains not to examine any of the contentions raised by the petitioner. In petitioner's 07-14-09 Response (doc. 5) to Magistrate's order (doc. 4),

Petitioner raised through case citations and quoting from the language of Federal Rules of Civil Procedure 60(b)(4)(5)(6), to affirm before the court that the one-year-statute of limitation is expressly not operable against a void judgment, due to lack of subject matter jurisdiction. Yet the court failed and refused to have the required "plenary processing of claims."

Instead, what the record in this case shows, is that the lower court used court trickery and misapplied local rules to stifle and deny petitioner, his Constitutional rights, to full and fair hearing

II.

NINTH CIRCUIT COURT OF APPEALS' DENIAL OF PETITIONER'S REQUEST FOR RECALL OF MANDATE WITHOUT EXAMINATION AND CONNECTING TO THE ACTUAL FACTS OF THIS CASE AND THEIR RUNNING COUNTER TO ANY SUPREME COURT CASE STUDY VIOLATES PETITIONER'S RIGHT TO REDRESS OF GRIEVANCES, 1st AMEND.

> "Simply put, the application of these (or any) rules to penalize an uncounseled and incarcerated criminal defendant for a clerical error that was none of his doing and of which he had no knowledge would seem to be not only unduly harsh but resoundingly unjust. see LOGAN v. ZIMMERMAN BRUSH CO., 455 US 422, 433-437, 71 L. Ed 2d 113, 91 S. Ct. 780 (1971)...But I do not think that the Court of Appeals was precluded by those rules from affording petitioner redress. For at least with respect to the pair of civil rules that directly parallel the provisions at issue here, Court of Appeals have held that in certain 'unique' or 'extraordinary' circumstances it would not be inconsistent with the rules or the intent of congress for the district court to vacate and reenter the original order to create a fresh judgment from which timely appeals could be prefected." JAMES v. UNITED STATES, 459 US 1044, 103 S. Ct. 435.

The first QUESTION presented and further expanded on above is abridged here as: Whether Pro-Se prisoner can be denied first Amendment right by way of "court errors" ? In petitioner's Recall of Mandate (App. B), as attested to by the district court record. The Recall of Mandate affirms, under oath, that no less than fourteen irregular and unique court errors had ocurred in the district court proceedings. All of which were through NO FAULT of petitioner. These irregularities are as follows:

1) Failing to issue copy of Magistrate's Report to petitioner. And clerk fail to record, in docket when District Judge was given Report. 2) Clerk

modified original NOA [doc. 8] without written order from Judge. 3) Court clerk continued to process VACATED APPEAL (doc. 8) after order (doc. 9) vacating order dismissing habeas [doc. 7). 4) Court clerk fail to correct oversight, in continuing appeal, after 9th Cir Notification of discripencies, (12-14-2009) 5) District court Judge Nguyen denies non-existant COA, created in unauthorized "modification" of NOA (doc. 8). dated 01-14-2010, 6) The clerk then mislabeled Ninth Cir. NOTIFICATION with wrong appeal number. 7) District court switched Document reference numbers of the First NOA (doc. 8) with second NOA/COA (doc. 20). 8) Court docket altered citing that Ninth Cir. NOTIFICATION filed on 01-21-2010 9), NOA/COA (doc. 20) applied to Non-appealable order (doc. 17) denying non-existent COA. action taken on 02-22-2010. 10) second NOA/COA (doc. 20) is sent with and applied to non-appealable order (doc. 17) to Ninth Circuit, 11) Court files petitioner's rule 60(a) motion requesting correction of irregularities Noticed by ninth circuit NOTIFICATION. 04-13-2010, 12) The court made no acknowledgment of errors nor corrections in docket errors or mislabaling and modification entries, on district court docket. 13) Petitioner filed another 60(b) motion, citing the altering of ninth circuit's NOTIFICATION (doc. 22) and the erroneous filing of appellant's NOA/COA (doc. 20) on district court order (doc. 17) denying COA. The rule 60(b) motion was denied with court citings "unnecessary review". 14) petitioner filed a 2017 rule 60(a) motion. which the district court cited that habeas case was closed, in 2010.

Petitioner was taken aback at each stage in this very long series of disasterous court proceedings. Though petitioner was not able to decode or understand the shorten and altered docket entries and local rules of the district and circuit courts, The herein complained of irregularities could never have and should never have escaped NOTICE of a proper Circuit Court review. In stead, what has transpired is the lower courts have utilized and misapplied procedural rules, like circuit rules 21-4 and 27-1. Which has prevented a full and fair examination of the proceedings, in the lower

courts. This kind of utilization of rules, has been expressly found to be an unconstitutional application of a valid rule. First cited in LOGAN v. ZIMMERMAN BUSH CO. 455 US 422 (1971) and later in JAMES v. U.S., supra.

> "[T]he application of...rules to penalize an uncounseled and incarcerated criminal defendant for clerical errors that was none of his doing and of which he had no knowledge would seem to be not only unduly harsh but resoundingly unjust."
> LOGAN v. ZIMMERMAN, 455 US 422 (1971)

In any case, if either the district court or the circuit court wanted to truly afford petitioner/appellant an opportunity for redress. Such action could have been done by either the 2017 rule 60(b) or Recall of Mandate filings.

It only stands to reason, that the Circuit court could and should have RECALLED its mandate. And remanded with instructions to correct errors complained of in court docket. Or for district court to explain why correction was not warranted. Most needed in the proceedings below was an explanation of why the filing of the NOA/COA (doc. 20) against the non-appealable order (doc.17), did not create unique and extraordinary circumstances? As illustrated in the James decision:

> "Court of Appeals have held that in certain 'unique' or 'extraordinary' circumstances it would not be inconsistent with the rules or the intent of congress for the district court to vacate and reenter the original order to create a fresh judgment from which timely appeals could be prefected."
> JAMES v. UNITED STATES, 459 US 1044, 103 S. Ct. 495.

In this analysis of the ninth circuit's treatment of the petition for recall of mandate. We see no application of law to the facts of this case. We are left to conclude that the court's decision was with out consideration of the facts.

III.

WHETHER DISTRICT COURT ERRORS AND OVERSIGHT CREATED EXTRAORDINARY CIRCUMSTANCES FOR RECALL.

There are listed above, some fourteen different errors, omissions and alterations in the district court docket. Which were cited and complained of in petitioner's Recall of Mandate. Therefore the ninth circuit's sua sponte

Dismissal of recall of mandate would seem to be contrary to long standing Supreme Court precedent. Was there any honest search done for unique or extraordinary circumstances? In the JAMES court there was only cited a single example of a clerical error. Which gave rise to this court's decision:

> "Rather than sua sponte dismissing petitioner's appeal, the court of appeals might thus have considered whether the circumstances of this case warranted both treating petitioner's request to the district court...as a motion...to vacate and reenter its...order allowing the notice of appeal to be filed..." Moreover, I would not regard the court of appeals failure to take that course as foreclosing petitioner's right."
> JAMES v. UNITED STATES, 459 US 1044, 103 S. Ct. 455.

Petitioner filed multiple 60(b) motions, in the district court. Though petitioner was unclear as to what had rendered his appeal without 9th Circuit jurisdiction. This confusion on petitioner's part, was finally cleared-up in the June 13, 2014 60(b) motion Rejected attempted filing. Which was recieved but not filed by order of, not the assigned district judge, but by the Chief District Court Judge G. King. see Appendix "G".

Judge King seems to imply in his order that petitioner's 60(b) motion (doc 33) and the received but not filed 60(b) motion address the same issues. But a reading of Judge King's 01-26-2014 order denying the 2013, 60(b) motion. Appendix "I" Shows: "Petitioner contends that because the court vacated the September 2009 judgment and order dismissing the action with prejudice pursuant to rule 60(a), the January 2010 judgment and order dismissing the action with prejudice (ECF nos 15, 16) and the order denying the issuance of a COA (ECF no 17) are void. see Appendix "I" page 3 second paragraph.

In contrast to the 2013 60(b) motion's contentions. Was the June 13, 2014, 60(b) motion's contentions. Which are: "The court denied petitioner's habeas, in a final order, dated January 12, 2010 (doc. 16)...Petitioner filed his Notice of Appeal and Certificate of Appealability, February 22, 2010...The court record shows that the NOA (doc. 20) was applied to an order (doc. 17) denying COA. re: abandoned NOA (doc. 8) relating to previously VACATED dimissal

of the action (doc. 7)." see Appendix "G" 60(b) motion pages 1-2.

Though both motion surround the same series of events. And despite petitioner's grossly misunderstanding of the facts and law relating to what had ocurred, in the district court. Judge King could and should have seen the error in the residing district judge's filing a valid NOA/COA (doc. 20) on a NON-APPEALABLE denial of a non-existent COA. Never-the-less, the received but not filed 60(b) motion specifically states that the petitioner's NOA/COA (doc. 20) was applied to a non-appealable order (doc. 17). Any on record examination of that factual contention could have only led to the correcting of the record, by refiling the NOA/COA (doc. 20) on the final order (doc. 16), [App K] dismissing the habeas. Something the Chief district court judge was unwilling to do, The court then used C.D. Cal. rule 7-18 to deny petitioner redress.

> "our cases further establish that a statute or rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in legitimate exercise of state power is beyond question...[T]he right to meaningful opportunity to be heard within the limits of practicality, must be protected against denial by particular laws."
> BODDIE v. CONNECTICUT, [1971] 401 US 371, 379, 29 L. Ed. 2d 113.

If the circumstances complained of here are either common occurrences or lawful practices. Then petitioner will stand corrected for his misguidance.

IV.

IS PUBLIC POLICY SERVED WHEN CIRCUIT COURT ISSUES SUA SPONTE DISMISSAL WHEN THERE'S BEEN NO BRIEFING OR FULL DEVELOPMENT OF FACTS OF CASE.

On 06-16-17, petitioner filed a verified petition for Recall of Mandate. No briefing schedule was set. Nor evidentiary expansion ordered. Some 25 months later, the Circuit Court issued a sua sponte ruling stating = "The motions and supplemental motions to recall the mandate...are denied because there are no 'extraordinary circumstances' to support such relief. see Calderon v. Thomson 523 US 538, 660"

Yet as had been laid out in the Recall of Mandate, (App. B), and this verified Statement of Case, there was before the court some 14 occurences of unexlained irregularities in district court actions. Which at the very least, could only be listed as "clerical errors". Which the Calderon court cited as possible basis for Recall of Mandate. But with NO examination by the court, on the factual predicates of the contentions made in the Recall of Mandate. The sua sponte dismissal would in petitioner opinion seem without due consideration.

> "The new rule that the court today announces - that our opinions rendered without full briefing and argument, have a diminished stare decisis effect - may well turn out to be the principal point for which the present opinion will be remembered. It can be expected to affect the treatment of many significant per curiam opinions by the lower courts, and the willingness of justices to undertake summary disposition in the future.
> HOHN v. UNITED STATES, 141 L. Ed. 2d. 242, 524 US 236, 260.

The ninth circuit's decision, in this case, is void of any detailed consideration and plenary processing of claims. Which is an abandonment of a reviewing court's function, under the first amendment and duty imposed on the court to explain legal rulings. The Public Policy demands that there be a uniform application of provisions of the U.S. constitution. And that courts safeguard the people's rights and trust in the court system. Among these rights are the right to full and fair examination of facts, in this most hollowed forum. This duty of the court has not been afforded to this case. This abandonment of the rule of law, remains an injustice within our legal system.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Clarence L. Hearns, JR.

Date: August 29, 2019