

19-7358
No. 19-16527

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Joshua Neil Hassell — PETITIONER
(Your Name)

vs.
Fairfield Police Department, 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

Joshua Neil Hassell, CDCR# BH7394
(Your Name)

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ORIGINAL

QUESTION(S) PRESENTED

1. Was the courts rigid application of a time limitation for filing the "Notice of Appeal" unfair, affecting Petitioners rights to Due Process and Equal Protection under the Fourth and Fourteenth Amendments to the United States Constitution?
2. Was there "Excusable Neglect" and "Extraordinary Circumstances" caused by the Prisons delay in mail and difficulty scheduling time in the Law Library for Petitioners delay in filing the Notice of Appeal?
3. Has the District Court deprived the Petitioner of his Fourth and Fourteenth Amendment Due Process by the determination the Complaint and Amendments failed to state a claim for relief against the following defendants:
 - 1) Officer J. Bondoc of the Fairfield Police Dept.
 - 2) GM Towing And Automotive, Inc. / GM Towing, LLC.
4. Was there an unreasonable seizure of "The Subject Vehicle" affecting the Petitioners Fourth and Fourteenth Amendment Due Process?
5. Did the tow truck company GM Towing And Automotive / GM Towing, LLC. act under the color of law by the direction of officer J. Bondoc and in agreement with the Fairfield Police Dept.?

LIST OF PARTIES

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

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

1. Officer, J. Border, of the Fairfield Police Dept.
2. GM Towing And Automotive, Inc. / GM Towing, LLC
3. Kenny Saroff, tow truck driver: (GM Towing, LLC.)
4. Guy McIntyre, owner of: (GM Towing And Automotive, Inc. / GM Towing, LLC.)

RELATED CASES

1. Joshua Neil Harrell v. GM Towing And Automotive Inc.
Solano County Superior Court No. FCM144989
2. Joshua Neil Harrell v. Fairfield Police Dept., et al.,
United States District Court, Eastern Dist. of California No. 2:15-cv-00693 MRE AC
3. Joshua Neil Harrell v. Fairfield Police Dept., et al.,
United States Court of Appeals, For The Ninth Circuit No. 19-16527

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795 F.2d 780, 783 (9th Cir. 1986)

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So. Ref.
798 F.2d at 364

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682 F.2d at 1322

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Stupman
557 F.2d at 1341

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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 E, G 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 A, C 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 August 8, 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: October 25, 2019, and a copy of the order denying rehearing appears at Appendix G.

☐ 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

Fourth Amendment - that prohibits unreasonable seizures and the issuance of warrants without probable cause.

Fourth Amendment - Due Process

Fifth Amendment - providing that a person cannot be deprived of life, liberty, or property without due process of law.

Fourteenth Amendment - that prohibits states from denying due process and equal protection.

F.R.A.P. 4(a) - Excusable Neglect

49 U.S.C. 14501(c)(1) - related to price, route, or service of motor carriers.

49 U.S.C. 14501(c)(2)(C) - Nonconsensual Tow

Cal. Civ. Code, § 3336 - conversion

Cal. Veh. Code, § 22658 - regulations on nonconsensual tows requiring notice to registered and legal owner.

Cal. Veh. Code, § 22658(1) - excessive tow & storage fees

Cal. Veh. Code, § 22659 - public safety purpose... safety exceptions

Cal. Veh. Code, § 22651(o) - related to "abandoned vehicles"

Cal. Const. Art. 1, § 13 Unreasonable seizure, warrant

42 U.S.C. § 1983

STATEMENT OF THE CASE

On or about August 8, 2014, my 1989 Jayco Fifth Wheel Trailer (hereinafter "The Subject Vehicle") was unreasonably seized by Officer J. Bondoc (Fairfield Police Dept.) and towed away under his direction by the tow truck company GM Towing And Automotive, Inc. / GM Towing, LLC.

I never received a proper prior notice that "The Subject Vehicle" was going to be towed. Only a short time before it was towed I learned from a non-party to this action "Karen" (a resident who lived near where "The Subject Vehicle" was parked) that the Fairfield Police Dept. intended to tow it. "Karen" told me that some officers of the Fairfield Police Dept. told her that "The Subject Vehicle" needed to be moved or they were going to tow it away. Karen, was not the legal or Registered Owner, the Petitioner was.

After receiving the message from "Karen", I began making an effort to have it towed away. A family member allowed me to use a AAA Membership to have it towed. The first tow truck that AAA sent, did not have a Fifth Wheel attachment needed to tow "The Subject Vehicle". As this first tow truck was leaving, Officer J. Bondoc, of the Fairfield Police Dept., arrived at the scene.

I tried explaining to Officer J. Bondoc that I was in the process of having "The Subject Vehicle" moved to another location. I was on the phone with the AAA dispatcher, who was in the process of sending another tow truck with the Fifth Wheel attachment needed. I even offered to let J. Bondoc talk to the AAA dispatcher. Officer J. Bondoc would not listen to my pleas.

The Subject Vehicle was legally parked, on the side of the roadway, on Coolidge Street Fairfield, California, and I was inside of it when J. Bondac arrived.

Officer J. Bondac ordered me out of "The Subject Vehicle" and forced me to sit on the curb while tow truck driver Kenny Siroff (GM Towing, LLC.) towed "The Subject Vehicle" away, under his direction, and in agreement with the Fairfield Police Dept. The Subject Vehicle towed was my home and everything I owned was inside of it.

The Subject Vehicle was towed to GM Towing, LLC and I went there to retrieve my Personal Property that was left inside, but tow truck driver Kenny Siroff refused to allow me to get any of my Personal Property, only the paperwork needed to have it registered at the DMV.

I did everything I could in attempts of getting "The Subject Vehicle" out of tow: I had it insured with Sky Blue Insurance, I paid over \$700.00 for current registration with the DMV, and I paid the Fairfield Police Dept, the required fees for its release.

After paying all of the fines and fees for the release of "The Subject Vehicle", the owner Guy McIntire (of GM Towing And Automotive, Inc., GM Towing, LLC.) was imposing an excessive tow and storage fee exceeding \$3,200.00 for its release. I was never able to pay the excessive amount, GM Towing And Automotive, Inc., never sent me the Notice Of Pending Lien Sale either, and I was the Legal and Registered Owner.

There was a conversion of "The Subject Vehicle" by Guy McIntire GM Towing And Automotive, Inc. I was never able to retain it (or) any of my personal property that was inside of it. I was forced to roam the streets homeless for several days until I was eventually arrested and incarcerated.

Procedural History

The U.S. District Court, Eastern District of California screened out my original, first amended and second amended complaint finding that I failed to state a claim which relief can be granted. (Appendix A)

The district court's judgment was entered on June 12, 2019. I did not receive the entry of judgment until the middle of July due to the prison delay in mail and I had difficulty scheduling time in the prison's law library. I was not able to deliver my Notice of Appeal to the prison officials until July 29, 2019.

The U.S. Court of Appeal for the Ninth Circuit ruled the untimely appeal gave them lack of jurisdiction (Appendix G)

I timely filed a motion for reconsideration (Appendix F) and it was denied (Appendix H)

REASONS FOR GRANTING THE PETITION

1. It is unfair to the Petitioner, the Court's rigid application of a time limitation filing the "Notice Of Appeal" that is effecting Petitioner's rights to Due Process and Equal Protection of the Fifth and Fourteenth Amendments to the United States Constitution. See e.g., *United States v. Thomas*, 713 F.3d at 174 (3d Cir. 2013) (citing *Pobon v. Mahony*, 654 F.3d 385, 397 (3d Cir. 2011)).
2. The Court should grant the petitioner "Excusable Neglect" for the Petitioner's delay in filing the "Notice Of Appeal" caused by the prisons delay in the mail and difficulty scheduling time in the Law Library. See e.g., *Levilaysia Moss Hoover Superintendent of SCI Cambridge Springs, et al.*, 2018 U.S. Dist. LEXIS 197462, Civil Action No. 17-2665 (November 19, 2018) (Court granted "excusable neglect" for the delay in Notice Of Appeal 16 days to late).
3. The Petitioner has been deprived of his Fourth and Fourteenth Amendment Due Process and Equal Protections that continues with the District Court's determination the original complaint, first amendment, and second amendments, fail to state a claim which relief can be granted. Furthermore, the District Court erred in the Findings and Recommendations that the Petitioner failed to state a claim against the following defendants:
 - a. There was an unreasonable seizure of "The Subject Vehicle" caused by Officer J. Bader of the Fairfield Police Dept.The court erred in the findings that the removal of "The Subject Vehicle" was warranted under Veh. Code, § 22651 (c) *Scotfield v. Hillsborough*, 862 F.2d 757, 764 (9th Cir. 1988).

The salient difference in this case and the authorities cited by District Courts Findings and Recommendations is that Veh. Code, § 22651 (a); *Seaford v. Hillsborough*, pertains to an abandoned vehicle. When in this instant matter "The Subject Vehicle" was not abandoned at the time of the towing, Petitioner was inside of it and it was legally parked on the side of the roadway. I was in the process of having it towed by AAA. Officer J. Bondar forced Petitioner out of "The Subject Vehicle" and made me sit on the curb in handcuffs while it was towed away under his direction. There was an unreasonable removal of my vehicle. See e.g. *Karim-Ranahi v. Los Angeles Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988); *Soldal v. Cook County*, 113 S.Ct. 538, 543-48 (1992).

I am entitled to my Fourth and Fourteenth Amendment Due Process. "The Subject Vehicle" was my home and everything I owned was inside.

b. The tow truck companies acted under the color of law.

The District Court erred in the determination that the tow truck companies did not act under the color of law. The tow truck companies GM Towing, LLC / GM Towing And Automotive, Inc. acted under the color of law by the directions of Officer J. Bondar and in agreement with the Fairfield Police Dept. for the nonconsensual tow of "The Subject Vehicle". See e.g. *West v. Atkins*, 487 U.S. 42, 50 (1987); *McRae v. Shimoda*, 795 F.2d 780, 783 (9th Cir. 1986).

There have been cases, as in this case, where private towing companies that act at the behest of police may be liable under

1983. See e.g. *Soffer*, 798 F.2d at 364; *Goichman*, 682 F.2d at 1322; *Stupman*, 557 F.2d at 1341.

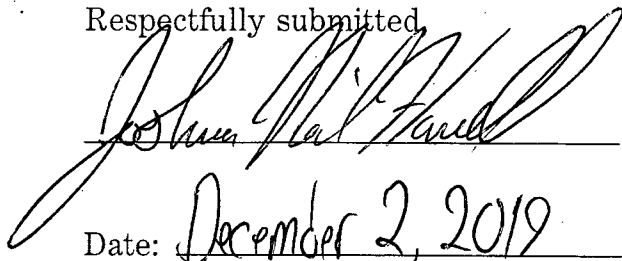
The tow truck company acted under the color of law by instructions of Officer J. Bondar and in agreement with the Fairfield Police Dept. The District Court erred in its determination the tow truck company did not act under the color of law.

The Petitioner is entitled to Fourth and Fourteenth Amendment Due Process and Equal Protections.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted


Date: December 2, 2019