19-7378

No. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

OCTAVIO DIAZ,

Petitioner,

v.

COUNTY OF SAN BERNARDINO, a political subdivision, JOHN McMAHON, as Sheriff, ROBERT OAKLEAF, as Sheriff's Deputy, DEP. CASEY, as Sheriff's Deputy, DEP. LEACH, as Sheriff's Deputy, COREY EMON, as Sheriff's Deputy, DEP. IZQUIERDO, as Sheriff's Deputy, SGT. WILSON, as Sheriff's Deputy, DEP. MacKEWEN, as Sheriff's Deputy, MICHAEL A. RAMOS, as District Attorney, LISA MUSCARI, as Deputy District Attorney, and BRYAN STUMREITER,

Respondents.

Case No.: S256784
(COA No. 4th Civ. E068838)
(SBSC No. CIVDS 1417767)

PETITION FOR WRIT OF CERTIORARI.

On Petition for Writ of Certiorari from the Judgment
Of the California Court of Appeal
Fourth Appellate District, Division Two.

OCTAVIO DIAZ
62381 Belmont St.
Joshua Tree, CA., 92252
TEL.: (760) 401-4828
Petitioner in Pro Se

QUESTIONS PRESENTED.

Petitioner's case was wrongly affirmed by the California Court of Appeal for reasons of "probable cause", despite the fact that *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017), allows the Superior Court to review a lack of probable cause, despite the fact he was later found not guilty by a Jury. The Petitioner's complaining witnesses were drug addicts, one of them was a convicted felon, a fact that was not disclosed until the criminal trial in violation of *Brady v. Maryland,* 373 U.S. 83, 3 S. Ct. 1194; 10 L. Ed. 2d 215 (1963). This Court also summarily reversed the case of *Sanders v. Jones,* 845 F.3d 721, 733-735, and fn. 7 (6th Cir. 2017), *Certiorari granted and summarily rev'd on Jan. 8, 2018,* where the Sixth Circuit also wrongly affirmed because the plaintiff in that case was indicted before a Grand Jury before her criminal case was dismissed.

Petitioner presents the following questions:

1. Was the California Court of Appeal in conflict with ***now,*** the Second, Third, *Fifth,* Sixth, *Seventh,* and Tenth Circuits, and the Oklahoma Court of Civil Appeals when the California Court of Appeal affirmed the Order Sustaining Demurrer and Order granting Summary Judgment based on the alleged fact that there was "probable cause" even though Petitioner was exercising his Second Amendment rights, contrary to *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017), when Petitioner was deprived of his evidence that was truthful, and under *Brady v. Maryland,* 373 U.S. 83, 3 S. Ct. 1194; 10 L. Ed. 2d 215 (1963)?
2. Was the California Court of Appeal without jurisdiction to solely rely on a false hearsay-laden Police Report in order to affirm the Order Sustaining Demurrer and Order granting Summary Judgment based on the alleged fact that there was "probable cause" even though Petitioner was exercising his Second Amendment rights, contrary to *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017)?

3. Was the California Court of Appeal without jurisdiction, and in conflict with the Ninth Circuit, in that the Respondent Sheriff and the Respondent Deputies are local (not State) officers under California law?
4. Was the California Court of Appeal without jurisdiction, and in conflict with the Ninth Circuit, in that Petitioner was allowed to be free from a discriminatory arrest under 42 U.S.C., §§1985(2) and (3), and 1986?
5. Was the California Court of Appeal without jurisdiction, and in conflict with the Ninth Circuit, in that Petitioner was subjected to discrimination under the Americans with Disabilities Act when Respondent Deputies assigned Petitioner to an upper bunk contrary to both said Act and a Court Order?

CORPORATE DISCLOSURE STATEMENT.

None of the Parties hold any stock in any corporation.

LIST OF PREVIOUS CASES.

Although Petitioner asserts that none of Justices participated in the cases below, Petitioner has been involved in the following cases:

1. *Octavio Diaz v. Synthia Curnutt,* San Bernardino Superior Court Case No. UDMS 1300301. Petitioner was the Plaintiff.
2. *Octavio Diaz v. Cynthia Curnutte,* San Bernardino Superior Court Case No. UDMS 1400045. Petitioner was the Plaintiff.
3. *People of the State of California v. Octavio Diaz,* San Bernardino Superior Court Case No. FMB 1400019. Petitioner was the Defendant.
4. *Octavio Diaz v. County of San Bernardino, et al.,* CIVDS 1417767. Petitioner was the Plaintiff.
5. *Octavio Diaz v. County of San Bernardino, et al.,* California Court of Appeal Case No. 4th Civ. E068838. Petitioner was the Appellant.
6. *Octavio Diaz v. County of San Bernardino, et al.,* California Supreme Court Case No. S256784. Petitioner was the Petitioner in that Case.

TABLE OF CONTENTS.

TABLE OF CASES.

TABLE OF AUTHORITIES.

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CITATIONS.

The Judgment was granted against Petitioner in the case of *Diaz v. County of San Bernardino* (2019), dated May 31, 2019.

STATEMENT OF JURISDICTION.

The Judgment was granted against Petitioner in the case of *Diaz v. County of San Bernardino* (2019), dated May 31, 2019 (Apx. 1a-20a). Petitioner timely filed his Petition for Review before the California Supreme Court on July 8, 2019. Review was denied by the California Supreme Court on August 21, 2019 (Apx. 21a). On November 8, 2019, Petitioner filed an Application for Extension of Time to file this Petition with the Hon. Elena Kagan, Associate Justice of this Court, and Circuit Justice in Application No. 19A536. The Hon. Justice Kagan granted the Application on November 14, 2019, extending time to January 18, 2020. This Court has jurisdiction pursuant to 28 U. S. C., §1257(a).

STATUTORY PROVISIONS.

United States Constitution, Fourth, Fifth, and Fourteenth Amendments , and 42 U. S. C., §§1983, 1985(2) and (3), and 1986 (Apx. 109a-111a).

STATEMENT OF FACTS.

Octavio Diaz ("Petitioner") had one tenant at his house at 62425 Belmont St., Joshua Tree, California, 92252[1], by the name of Cynthia Cornutt. She brought in a person named Joel Gomez in June 2013, and in the same month, she brought in Defendant Brian Stumreiter, who is White and claimed to be the boyfriend, and later, the "husband" of Cornutt. Cornutt did not pay the rent for June, July, and August 2013, nor the rent deposit (CT 151:4-9).

On August 15, 2013, Petitioner served a 30 Day Notice to Quit at 8:45 a. m. Stumreiter came out with the dogs. One of the dogs bit Petitioner. Petitioner then told Stumreiter that Petitioner wanted to serve Cornutt with the Notice. Stumreiter was

[1] That tenant has since been evicted.

argumentative, hostile, and tried to attack Petitioner. The Notice was given to Stumreiter. Petitioner called 911 to report the dog bite. Petitioner went to his house, and was told by the 911 Operator to wait outside for an investigator. A Deputy Sheriff arrived. The Deputy took the picture of the dog bite. Afterwards, Petitioner asked the Deputy if Cornutt received the Notice. The Deputy said Cornutt received the Notice. The Deputy gave Petitioner the Report Number, and the Deputy told Petitioner to remain calm, keep the peace, and in 30 days, call the Sheriff's office. Three days after, Petitioner picked up the copy of the Police Report (CT 151:10-21).

On September 18, 2013, Petitioner called the Sheriff's Department. They asked him to wait outside of the property. Another Deputy showed up, and he looked at the paperwork. The Deputy told Petitioner that Petitioner had to go to Court, so that Petitioner could have Cornutt removed from the premises (CT 151:22-25).

On September 19, 2013, Petitioner filed his Unlawful Detainer Action against Cornutt in the case of *Octavio Diaz v. Synthia Curnutt,* San Bernardino Superior Court Case No. UDMS 1300301. Petitioner had another person substitute-serve Cornutt. Cornutt did not respond to the Complaint (CT 152:1-4).

On October 22, 2013, a hearing was held, and a Default was entered in Petitioner's favor, because Cornutt did not appear (CT 152:5-6).

On October 23, 2013, Petitioner went to Sheriff's Court Services, and paid the Sheriff's the fees for the Writ of Possession (CT 152:7-8).

Just before November 4, 2013, Cornutt filed an Ex-Parte Application to Vacate the Default Judgment. Cornutt did NOT notify by telephone or mail of the Application. The Superior Court continued the Hearing to November 18, 2013. The Superior Court postponed the Judgment in the Unlawful Detainer Action against Cornutt. On November 4, 2013, Sheriff's Court Services called Petitioner and told him that the November 7, 2013 lockout was cancelled. He received written notice of the cancellation by mail the next day (CT 152:9-15).

On November 8, 2013, Petitioner received a large unmailed manila envelope in his mail box from Cornutt. It was Cornutt's Answer and various other papers regarding her alleged claims that she did all the repairs (CT 152:16-18).

On November 18, 2013, Cornutt's Hearing was held. Petitioner's pictures showed that the house was in working order. Cornutt then claimed that the roof leaked, there was mold in the house, and the water heater was broken. The Superior Court ruled that Cornutt's pictures were more "credible", and that it ordered Petitioner to make the repairs. The Superior Court ordered that the rent be lowered in half ($300) until the repairs were made (CT 152:19-24).

On November 25, 2013, Cornutt paid $1,080 per Court Order in the Superior Court. Cornutt also tried to ask for Petitioner's account number, and Petitioner refused, because she and Stumreiter have also forged various checks (CT 153:1-3).

On November 26, 2013, Petitioner had to repair the water heater outside at the premises (CT 153:4-5).

On December 5, 2013, Petitioner had to make the repairs in the premises. When Cornutt and Stumreiter refused to answer the door, Petitioner had to get the Deputies over. When the Deputy arrived, Stumreiter allowed the Deputy and Petitioner in. In the house with the Deputy and Petitioner inside, Stumreiter was underneath the spot where roof allegedly leaked, and that Cornutt and Stumreiter were sprawled out, high on drugs. Petitioner then made the two other repairs. However, Petitioner did not get the rent, half the amount or otherwise from Cornutt (CT 153:6-12).

On December 12, 2013, Petitioner had served another 30 Day Notice to Quit on Cornutt and Stumreiter. Petitioner later saw his attorney, and he was told to wait until January 12, 2014, for Cornutt and Stumreiter to move out (CT 153:13-15).

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On January 13, 2014, Petitioner went to the premises at 62425 Belmont St, Joshua Tree, California, 92252[2], and Stumreiter said that Cornutt was laying down. Petitioner stated that he needed to talk to her. Stumreiter said that Petitioner wanted to talk to Cornutt, and Stumreiter. Petitioner asked when they were going to move out. Stumreiter stated "when you see me outside, that is the day." Petitioner said that it wasn't fair. Stumreiter said "that's it", and he wanted Petitioner to leave "his (sic) property", and that he was going to let loose his dogs. Petitioner then headed to his pick-up, and Stumreiter let both his dogs out. Petitioner had his cell phone camera on, but put it in his pocket. He pulled his gun out and shot at the dogs and the dogs ran. Stumreiter took off his jacket, and shouted obscenities at Petitioner. Petitioner fired a warning shot at the side of Stumreiter, but Stumreiter kept on coming with a tire iron. They collided, and then the gun went off. Stumreiter was hit by the gun, but no bullet entered Stumreiter's head. Petitioner then went to the back seat of his truck, put the gun back in his truck (CT 153:16-154:3).

He drove to Rosa Cobos' house in Joshua Tree, California. Petitioner asked Rosa, a Latina, to call the Sheriff's. Rosa called the regular number. Cornutt also called 911. Petitioner went and parked in the street, and waited for the Sheriff. When he got out, the Deputies on their loudspeakers told Petitioner to get out of the car. Petitioner wanted to show the eviction papers and other papers and photos. The Deputies insisted that he get out and lay on the ground. Petitioner wanted to explain that Stumreiter assaulted him and that he was trying to evict them. The Deputies refused to ***LISTEN.*** The Deputies wanted to listen to Stumreiter because he was White. The Deputies refused to listen to Petitioner, despite the fact that he was a landlord, and because he was a Latino. Petitioner told Rosa to record on her cell phone. When Rosa started recording, Deputies put her on the ground, and handcuffed Rosa, took her cell phone, threw it on the ground, and crushed the phone. The Deputies also threw Appellant's papers and cell phone to the ground, and

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[2] See Footnote 1.

the wind carried some papers away. The Deputies lacked probable cause and a warrant to seize the cell phones, and the cell phones were taken, and in the case of Cobos', destroyed to prevent the filming of an illegal arrest, without probable cause, all based on the statements of Defendant Stumreiter, a member of the Hell's Angels, a trespasser, and a person that was previously convicted of three or more serious felonies under the California Three Strikes Law (CT 154:3-22).

The Deputies handcuffed and arrested Petitioner, but did not read them his *Miranda* rights. The Deputies then searched the house without a warrant looking for the gun that Petitioner put in his truck. About a half-hour later, Rene Diaz, Petitioner's son, and a Latino, went past the yellow tape, minding his own business and coming home from work, and was arrested. When Stumreiter was questioned by the Deputies, Stumreiter falsely told them that Cornutt and Stumreiter were Petitioner's tenants for two years. Stumreiter was in Prison for some of those two years. Petitioner for about four hours tried to tell the Deputies where the gun was. After the four hours, Petitioner was able to tell the Deputies where the gun was. One of the Deputies then said "why didn't you tell us where the gun was?"; even though Petitioner tried to get their attention for the longest. The Deputies took Petitioner out of the car, and he showed them with his foot where the gun was in the truck. The Detective told the other Deputies to record Petitioner's statements. They wanted Petitioner to incriminate himself, but Petitioner wanted to see a lawyer. At no time was Petitioner read his Petitioner's rights. The Deputies were eager to have Petitioner arrested and make incriminating statements, despite the fact that Defendant (and convicted felon) Stumreiter was the one who sicked his dogs on Petitioner. The Deputies wanted Petitioner to sign papers he did not understand. Petitioner was then taken to the Joshua Tree Sheriff's Station, and stayed there for five days (CT 154:23-155:15).

The Deputies also prepared a police report that wholly or mostly false. It did not disclose that complaining witness Defendant Stumreiter was a convicted felon, drug addict, a member of Hell's Angels, and a trespasser. Petitioner was also trying to serve an

eviction notice on Cornutt and Defendant Stumreiter, and used his gun for protection because Defendant Stumreiter used his dogs to assault and maul Petitioner (CT 155:16-20).

The Deputies that were present on January 13, 2014, were Respondents Robert Oakleaf, Dep. Casey, Dep. Leach, Corey Emon, Dep. Izquierdo, Sgt. Wilson, and Dep. MacKewen. All of the Deputies, except for Izquierdo, were White (CT 155:21-23).

On January 15, 2014, a Felony Complaint was filed against Petitioner in *People v. Octavio Diaz,* San Bernardino Superior Court Case No. FMB 1400019, charging Petitioner with Attempted Murder, and Assault with a Firearm (CT 155:24-26).

Petitioner was taken to West Valley Detention Center on January 17, 2014, and then sent back to Joshua Tree Sheriff's Station three days later. They sent Petitioner back on weekends to West Valley about 20 times (CT 156:1-3).

On March 4 and 6, 2014, Petitioner's Deputy Public Defender, Dale L. Armitage, tried to obtain evidence from the District Attorney's office, but the Sheriff's Department refused to disclose the evidence. When the Superior Court heard that there was no cooperation, it ordered Respondent Deputy District Attorney Lisa Muscari, who was White, to have the evidence produced, but it was produced slowly. The Trial Date was continued several times, because Armitage did not have all of the evidence (CT 156:4-9).

While, at West Valley, on March 9, 2014, Petitioner slept with cockroaches all over his bedding. Petitioner felt a cockroach in right ear. Petitioner submitted a Health Service Request for this matter on the next day (CT 156:10-12).

When Petitioner received no medical help, he made another Health Service Request March 10, 2014 (CT 156:13-14).

On March 11, 2014, Petitioner submitted a grievance relating to the cockroach infestation (CT 156:15-16).

On the same day, the medical staff put solution in his right ear (CT 156:17).

On March 12, 2014, the DOE medical staff member put solution in his right ear and then unsanitarily inserted a thumb in the right ear, and then put solution again, and broke his ear drum (CT 156:18-20).

On March 13, 2014, the medical staff put solution in his right ear again, and did not examine the ear condition, or damage done by the cockroach, and the Medical Staff (CT 156:21-22).

On March 14, 2014, the medical staff flushed Petitioner's right ear several times, and then the cockroach came out of his right ear, and one of the Filipina nurses said that Petitioner's nickname was "cockroach". The medical staff also tried to destroy the cockroach. It is believed that some of the DOE Medical Staff were Filipino, or other Asian descent (CT 156:23-157:2).

On the same day, Petitioner, along with inmates Hassan A. Davis (who is believed to be an African-American) and several others, submitted a grievance relating to the cockroach infestation (CT 157:3-5).

On March 17, 2014, Petitioner received a Response to his March 11, 2014 grievance, stating that it was "appropriately addressed" (CT 157:6-7).

On March 18, 2014, Petitioner received a Response to a grievance, stating that the grievance was referred to maintenance (CT 157:8-9).

On March 20, 2014, Petitioner was in a fight with inmate Steven Lewis, who was White that Lewis started. Lewis is a known friend of Cornutt and Stumreiter. The Deputies knew or should have known that Lewis was a known friend of Cornutt and Stumreiter, but was allowed access to Petitioner. The DOE Deputies acted with deliberate indifference when they let Lewis, who has a similar criminal record as Defendant Stumreiter, near Petitioner. Petitioner was denied privileges for 10 days because of the fight. Deputy District Attorney Muscari later used this incident to falsely claim that Petitioner was "vicious" (CT 157:10-17).

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On about March 24, 2014, Petitioner received a wristband with the words "HEARING (HARD)" on it. This wristband protected Petitioner from physical assaults from Deputies most of the time, but without it, he would had been subjected to more assaults (CT 157:18-21).

On April 7, 2014, Petitioner submitted a Health Services Request, because Petitioner still has his right ear hurt, and still has loss of hearing (CT 157:22-23).

On April 9, 2014, the Superior Court ordered that Petitioner be assigned to the bottom bunk. This was because the doctor stated that Petitioner suffered from vertigo, tinnitus, and deafness, due partly to the cockroach in his right ear (CT 157:24-26).

On April 12, 2014, Petitioner submitted another Health Services Request, because Petitioner still has his right ear hurt, and still has loss of hearing (CT 158:1-2).

On April 15, 2014, the Deputies reassigned the psychotic inmates to other dorms, and one of the psychotic inmates was assigned to Petitioner's cell. The psychotic inmate, believed to be White, then assaulted Petitioner. The DOE Deputies acted with deliberate indifference when they let the psychotic inmate near Petitioner (CT 158:3-6).

On April 19, 2014, Petitioner, contrary to the April 9, 2014 Order of the Court and the Doctor's orders, was illegally ordered by DOE Deputies to sleep on the top bunk, despite the fact that Petitioner suffered from dizziness, vertigo, tinnitus, and other ear related damage. That night, Petitioner fell off the top bunk, which permanently disabled his right leg, requiring him to wear a brace. On April 22, 2014, Petitioner made another Health Services Request because he hurt his right leg, right arm, and right shoulder. Because of the fall, Petitioner had to wear a brace on his right leg, and continues to do so this day. While Petitioner was in custody, Appellant had to take off the brace each time he was transported to Court and back. At each of those times, Petitioner had to sit on the floor to put the brace back on without the help of the Deputies. Since April 19, 2014, the DOE Deputies failed and refused to reasonably accommodate Petitioner's hearing loss (CT 158:7-18).

On May 8, 2014, Petitioner filed a Grievance Appeal over the cockroach and mold problems in West Valley. Inmate Alex Rodriguez (a Latino) was also a State-licensed pest control worker who could verify that there were cockroaches in Petitioner's area of the Jail (CT 158:19-22).

On or about May 18, 2014, Petitioner was assailed by severe allergic reactions to cockroaches, black mold, and insecticide causing's throat to swell up. The Medical Staff gave Petitioner Benadryl pills for only four days (CT 158:23-25).

On or about June 3, 2014, Petitioner was given only Benadryl cream, which did nothing for his inability to breathe freely (CT 159:1-2).

Until the Trial, Respondent Deputy D. A. Muscari coached Stumreiter to identify the gun, because he did not see the gun that was allegedly used on January 13, 2014. Muscari also told Stumreiter that the Public Defender can only present what he has, not what he doesn't have, meaning that the District Attorney was still withholding evidence, including *Brady* evidence. Muscari also told Stumreiter that the hardest part of the case was the Judge and Jury, and that it was better not to disclose all the evidence to them. Muscari also told Stumreiter that he had to come to Court with a haircut, dress shirt, tie, and a jacket. When in Court, Stumreiter had to get a Deputy to put his tie on, because Stumreiter did not know how to put a tie on. Muscari also asked Stumreiter how many years Appellant should serve in Prison, and Stumreiter said eight years. There were more incidents by Muscari's statements, that Petitioner does not have, but notes were given to Armitage. After the Trial, Rosa Cobos found pictures with "Hell's Angels" in Cornutt's old house. These pictures show that Stumreiter may be a member of Hell's Angels, which was not disclosed by Muscari. Muscari was almost removed by the Superior Court, and replaced by another Deputy District Attorney or the State Attorney General's Office for Muscari's misconduct (CT 159:3-19).

Muscari and the Sheriff's Department at various times did not disclose exculpatory and impeaching evidence in favor of Petitioner in violation of *Brady v. Maryland,* 373 U.S. 83, 3 S. Ct. 1194; 10 L. Ed. 2d 215 (1963). Both Cornutt and

Stumreiter were convicted felons, and their felony convictions and felonious conduct should have been disclosed to Petitioner and Armitage. At the Trial in June 2014, Cornutt appeared at various times in wheelchairs, oxygen tank, and a cane when she didn't suffered any maladies other than her methamphetamine addiction. When both Cornutt and Stumreiter testified, both contradicted each other's testimonies (CT 159:20-160:2).

On June 19, 2014, Petitioner was found ***NOT GUILTY*** of all charges in Case No. FMB 1400019, and released from custody (CT 160:3-4).

Because of the vertigo, loss of hearing, and disabled right leg, Petitioner can no longer work as a handyman, and cannot climb ladders, because of the loss of use of his right leg (CT 160:5-7).

Petitioner has also sought treatment after being found not guilty. On July 21, 2014, Petitioner was examined by Sohail Ahmad, M. D. Dr. Ahmad did acknowledge the damaged ear drum, and damaged right knee (CT 160:8-10).

On August 4, 2014, Petitioner also had his ears checked by Michael R. Gatto, M. D. (CT 160:11).

On August 12, 2014, Petitioner also had another consultation with Dr. Gatto (CT 160:12).

In summary, the following rights were violated:

a. Petitioner's and Cobos' (both Latino) First Amendment rights were violated when the Deputies destroyed the cell phones, and Petitioner's eviction papers.
b. Petitioner's Equal Protection rights were violated because the Deputies, nearly all White, were prejudiced against Petitioner who was Latino, and in favor of Cornutt and Stumreiter who were White.
c. Petitioner's Due Process and Equal Protection rights were violated when the Deputies refused to do a proper investigation of the facts; such investigation would had disclosed that Stumreiter assaulted Appellant by sicking his dogs at Petitioner.

d. Petitioner's son's Due Process and Equal Protection rights were violated when the Deputies when they arrested Rene Diaz (the son who is a Latino) for going to his own home. Since the Claim was filed, Respondent Ramos and his Deputies have filed charges against Rene Diaz, even though he was minding his own business, and there was no probable cause to cordon off access to Rene Diaz' home and also to arrest Petitioner in the first place. Respondent Ramos and his Deputies have also intended to file additional groundless charges against Rene Diaz in retaliation of Petitioner filing his Claim in the first place.

e. Petitioner's Fourth Amendment rights were violated when they searched his home without a warrant looking for the gun that was in Appellant's pick-up.

f. Petitioner's Sixth Amendment rights were violated when they did not read Petitioner's *Miranda* rights.

g. Petitioner's Due Process and Equal Protection rights were violated when Petitioner's jail cells at West Valley Detention Center were full of cockroaches and mold.

h. Petitioner's Due Process and Equal Protection rights were violated, and suffered damage by the medical staff's medical malpractice and battery when they destroyed his hearing in his right ear by inserting one of their thumbs deep in his ear, in addition to the cockroach in his right ear while sleeping.

i. Petitioner's Due Process and Equal Protection rights were violated when the Deputies committed Contempt of Court by making Petitioner, who suffered from vertigo, tinnitus, and deafness, due partly to the cockroach in his right ear and his broken ear drum, to sleep on the top bunk, instead of the bottom bunk, causing Petitioner to fall, and requiring him to wear a brace on his right leg.

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j. Petitioner's Due Process and Equal Protection rights were violated when at least two believed-to-be-White inmates, one psychotic, and the other, a friend of Cornutt and Stumreiter, fought Petitioner, and were not prevented by the Deputies.

k. Petitioner's Fifth, Sixth, and Fourteenth Amendments were violated when Muscari did not disclose all of the *Brady* evidence, and coached Stumreiter.

l. Petitioner's Fifth, Sixth, and Fourteenth Amendments were violated when Petitioner was falsely charged, and incarcerated for five months on charges pressed by a White Hell's Angels biker, and three-strike felon, and was found ***NOT GUILTY*** by a Jury (CT 160:13-162:4).

STATEMENT OF THE CASE.

Petitioner filed his Original Complaint on November 25, 2014 (CT 3).

On May 8, 2015, Petitioner filed his First Amended Complaint (CT 21-71). Petitioner alleged that his civil rights were violated under 42 U. S. C., §1983 (CT 24:15-37:16), alleged malicious prosecution under 42 U. S. C., §1983 (CT 37:17-41:5), alleged abuse of process under 42 U. S. C., §1983 (CT 41:6-42:19), alleged injunctive relief under 42 U. S. C., §1983 (CT 42:20-44:5), alleged conspiracy to violate civil rights under 42 U. S. C., §1985(2) (CT 44:6-48:2), alleged conspiracy to violate civil rights under 42 U. S. C., §1985(3) (CT 48:3-50:4), alleged that his civil rights were violated under 42 U. S. C., §1986 (CT 50:5-51:22), alleged violations of the Americans with Disabilities Act (CT 51:23-55:11), alleged invasion of privacy (CT 55:12-57:7), alleged false imprisonment (CT 57:8-58:25), alleged medical malpractice (CT 59:1-60:21), alleged medical battery (CT 60:22-62:22), alleged intentional infliction of emotional distress (CT 63:1-64:7), alleged violations of Civil Code §51.7 (CT 64:8-65:23), and alleged violations of Civil Code §52.1 (CT 66:1-67:17).

On June 8, 2015, Respondents filed their Demurrer to the First Amended Complaint (CT 72-100). Respondents argued that the Police Report of Petitioner's arrest (CT 366-372) established "probable cause" for Petitioner's arrest (CT 83:2-12, 85:21-

86:17, 88:24-89:17, 90:10-91:9). Respondents also argued that Respondent County is not a "person" under 42 U. S. C., §1983 (CT 92:7-24).

On July 1, 2015, Petitioner filed his Opposition to Respondents' Demurrer (CT 113-135). Petitioner argued that Judicial Notice should not be taken of the Police Report (Apx. 36a:22-39a:17), that the Respondents lacked probable cause to arrest and charge Petitioner (Apx.40a:11-41a:19), that Petitioner could plead causes of action for malicious prosecution and abuse of process (Apx. 42a:17-43a:14), and that the issue of qualified immunity cannot be determined on a Demurrer (Apx. 43a:15-44a:6).

On July 8, 2015, Respondents filed their Reply to the Opposition to Demurrer (CT 136-144).

On July 15, 2015, the Trial Court issued it's ruling on the Demurrer (Apx.22a-23a). That Court ruled that it sustained the Demurrer without leave to amend on the First through Third Causes of Action under 42 U. S. C., §1983 (Apx. 22a)[3], and that some of the other causes of action were either overruled or sustained with leave to amend (Apx.22a-23a).

On August 3, 2015, Petitioner filed his Second Amended Complaint (which is operative) (CT 148-190).

On November 12, 2015, Respondents filed their Answer to the Complaint (CT 191-198).

On February 21, 2017, Respondents filed their Motion for Summary Judgment (CT 199-227).

As Respondents continue to misstate facts, they stated that Defendant Stumreiter was going to pay Petitioner the rent (CT 209:9-10). However, Petitioner stated that Cornutt and Defendant Stumreiter didn't pay the rent (CT 1112:5). When Stumreiter stated that he was shot (CT 209:17-19), it was after Stumreiter chased Petitioner with a

[3] As it would be explained in the Argument portion of this Petition, issues on lack of probable cause can be litigated in the Trial Court under *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017).

crowbar (CT 1117:11, 13). As for Petitioner's neighbor, Rosa Cobos, what the Respondents won't say in their Motion (CT 210:1-7) is that Cobos did try to explain what happened between Petitioner and Stumreiter, but they didn't listen, and the Respondent deputies yanked her cell phone from her, threw the phone on the ground, and smashed it with their feet (CT 1122:7-13). Stumreiter then lied about paying the rent (CT 210:12-15) where he actually sweating (CT 1113:23), and angry with wide open eyes (CT 1113:25), and said to Petitioner "That's it and I don't want to see you on my property [sic]. If you don't leave, then I'm going to let my dogs go" (CT 1114:5-7). Contrary to Respondent Oakleaf's claim that he had probable cause to arrest Petitioner (CT 211:14-17), Stumreiter not only chased Petitioner with his dogs and a crowbar, but Stumreiter had a lengthy arrest record (CT 1187-1215), and he was sentenced to State Prison in 2011 (CT 1407, 1415). During the six months in West Valley, a cockroach did enter into Petitioner's right ear which the nurse jammed her thumb and broke his right ear drum; Petitioner was present in his criminal case where the Deputy Sheriff's were ordered by the Judge in Petitioner's criminal case to place Appellant on the bottom bunk (CT 1142:24-1143:5, 1143:8).

Respondents argued that there was no conspiracy to violate Federal Civil Rights laws (CT 213:6-218:10), that Petitioner was not discriminated under the Americans with Disabilities Act (CT 218:11-220:11), that there was "probable cause" to search for the gun and to arrest Petitioner (CT 220:12-223:15), that there was no extreme and outrageous conduct to support a claim for emotional distress (CT 223:16-225:10), and that Petitioner did not sustain injuries under Civil Code §51.7 (CT 225:11-226:16) or Civil Code §52.1 (CT 226:17-227:20).

Also on February 21, 2017, Respondents filed their Separate Statement in Support of the Motion for Summary Judgment (CT 228-293).

Also on February 21, 2017, Respondents filed the Declaration of Adam L. Miederhoff in support of the Motion for Summary Judgment (CT 294-594).

Also on February 21, 2017, Respondents filed the Declarations of Corey Emon (CT 595-597), Matthew Izquierdo (CT 598-600), Steve Wilson (CT 601-603), Cathy MacKewen (CT 604-605), Jeff Casey (CT 606-608), and Robert Oakleaf (CT 609-613). In the Oakleaf Declaration, Oakleaf claimed that Stumreiter was "shot in the head" which was impossible (CT 610:12-14), since Oakleaf later talked to Stumreiter, a convicted felon and drug user, that day on January 13, 2014 (CT 610:19-27). Stumreiter claimed that Petitioner shot at him three times despite the fact that he chased Petitioner with a crowbar and Stumreiter's dogs (CT 610:25-27). What Oakleaf does not mention in his Declaration is that one of the Deputies, probably Respondent Casey, took Cobos' cellphone and smashed it with his feet (CT 611:17-22). Stumreiter also lied to Oakleaf (CT 611:25-27) in that Petitioner never rented to Stumreiter since he came to Cornutt's home as a trespasser, and since he came from State Prison in July 2013 (CT 1109:8-14). All this time, Oakleaf and the rest of the Deputies never interviewed Petitioner and Cobos about the incident. For the false basis, Oakleaf stated that he had "probable cause" to arrest Petitioner (CT 612:21-24).

Also on February 21, 2017, Respondents filed their Request for Judicial Notice of the April 9, 2014 Minute Order of Petitioner's criminal case (CT 614-618). However, the Minute Order does not reflect what Petitioner heard in his criminal case in that the Judge ordered Petitioner to be placed on the bottom bunk (CT 1142:24-1143:5).

On February 24, 2017, Petitioner filed his Motion for Summary Judgment (CT 623-624).

Also on February 24, 2017, Petitioner filed his Memorandum of Points and Authorities in Support of the Motion for Summary Judgment (CT 625-643). Petitioner stated that he was an innocent Latino man, spent from January 13, 2014, to June 19, 2014, falsely imprisoned for an attempted murder he did not commit, namely against a White Hell's Angels biker and Defendant Bryan Stumreiter (CT 1126:8, 11-12). Stumreiter is White (CT 1109:19), a three-strike felon (CT 1109:13-14, 1186-1215), and trespasser who was staying with Cynthia Cornutt, also White, Petitioner's only tenant

(CT 1112:7, 9). Instead of protecting Petitioner's health and well-being, since Stumreiter sicked his dogs on Petitioner (CT 1114:5-9, 1115:2), Petitioner was arrested by numerous Deputy Respondents, mostly White. The arrest totally lacked probable cause, especially after:

1. Petitioner's cell phone was destroyed after he and neighbor Rosa Cobos, a Latina, were filming the arrest (CT 1122:11-13, 1163:20-21).
2. There was no probable cause to search Petitioner's house.
3. There was no probable cause to cordon off the area near Petitioner's house, and arrest Petitioner's son, also a Latino.
4. There was no probable cause to search for Petitioner's shotgun.
5. Petitioner's *Miranda* rights were not read to him (CT 1123:5-7).[4]

In light of the six months in the West Valley Detention Center Petitioner had to spend in, he suffered physical injuries of a different kind.[5] Because the DOE Medical Staff inserted the thumb in Petitioner's right ear, the thumb, broke and wrecked the ear drum in that ear, it resulted in loss of hearing, vertigo, etc., in said ear (CT 1135:11). As a result of that, and failure to comply with the Court's Order keeping Petitioner on the bottom bunk at West Valley (CT 1146:16-17), Petitioner fell off the top bunk on April 19, 2014, and injured ***his entire right leg, NOT "just his right foot"*** (CT 1147:21, 1185).

Since the People/County did not disclose all of the evidence favoring Petitioner (CT 1129:22, 1130:23-25, 186-1215), and that Defendant Stumreiter and his girlfriend's testimony contradicted each other, Petitioner was found not guilty by a Jury on June 19, 2014 (CT 891). However, if the Deputies were not racially and otherwise biased,

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[4] Respondents even assert the "facts" contained in the Police Report are "true". Absolutely not. As stated later in this Petition, a Police Report is not subject to Judicial Notice, and can be contradicted by other facts in this case.

[5] Petitioner does not allege he was beaten by the Deputies in West Valley in the Eighth Cause of Action. The battery alleged was that of "medical battery" which is use of a medical procedure without Petitioner's consent that harmed his body.

Petitioner should not been charged, and instead Stumreiter should had been charged with assault with a deadly weapon (his crowbar and his dogs) (CT 630:3-631:7).

Petitioner argued in his Motion for Summary Judgment that he was falsely arrested because he is a Latino, that he acted in self-defense, and that the Deputies should have inquired about the earlier dog-biting incident (Apx. 47a:12-49a:2). He argued that he was disabled at West Valley and that the Deputies could have prevented him from falling from a top bunk (Apx. 49a:3-50a:3). He also argued that his invasion of privacy was violated when there was no probable cause to arrest him after he used self-defense (Apx. 50a:4-25). He argued that he was falsely imprisoned by Respondents (Apx. 51a:1-26). He argued that the DOE Nurses committed medical malpractice and battery (CT 636:1-18). He argued that he suffered emotional distress (CT 636:19-639:17). Finally, he argued that he suffered damages under the State's Civil Rights laws (CT 639:18-642:24).

Also on February 24, 2017, Petitioner filed his Separate Statement in Support of the Motion for Summary Judgment (CT 644-761).

Also on February 24, 2017, Petitioner filed his Declaration of Moises A. Aviles in Support of the Motion for Summary Judgment (CT 762-874).

Also on February 24, 2017, Petitioner filed his Request for Judicial Notice showing that he was found Not Guilty of the crimes charged against him (CT 875-894).

On April 18, 2017, Petitioner filed his Opposition to Respondents' Motion for Summary Judgment (CT 897-917). Petitioner stated the facts similar to his own Motion for Summary Judgment (CT 903:3-904:7). Petitioner argued in his Opposition that he was falsely arrested because he is a Latino, that he acted in self-defense, and that the Deputies should have inquired about the earlier dog-biting incident (Apx. 52a:12-53a:26). He argued that he was disabled at West Valley and that the Deputies could have prevented him from falling from a top bunk (Apx. 54a:1-55a:2). He also argued that his invasion of privacy was violated when there was no probable cause to arrest him after he used self-defense (Apx. 55a:3-59a:3). He argued that he was falsely imprisoned by Respondents (Apx. 59a:4-60a:20). He argued that he suffered emotional distress (CT

912:21-915:17). Finally, he argued that he suffered damages under the State's Civil Rights laws (CT 915:18-917:19).

Also on April 18, 2017, Petitioner filed his Separate Statement in Opposition to Respondents' Motion for Summary Judgment (CT 918-1102).

Also on April 18, 2017, Petitioner filed his Declaration of Moises A. Aviles in Opposition to Respondents' Motion for Summary Judgment (CT 1103-1242).

On April 27, 2017, Respondents filed their Opposition to Petitioner's Motion for Summary Judgment (CT 1243-1261). Respondents argued that Petitioner has not proven facts in support of his Federal Causes of Action (CT 1249:11-1250:28). They argued that Petitioner failed to prove discrimination under the Americans with Disabilities Act (CT 1251:1-1252:7). They also argued that Petitioner had no basis to claim any invasion of privacy (CT 1252:7-1254:14). They argued that Petitioner has not proven that he was falsely imprisoned (sic) (CT 1254:15-1255:25). They argued that Petitioner has not proven medical malpractice or medical battery (CT 1256:1-15). They further argue that Petitioner has not proven emotional distress (CT 1256:16-1257:16). They argue that Petitioner has not proven facts to support his claim under Civil Code §51.7 (CT 1257:17-1258:21) or Civil Code §52.1 (CT 1258:22-1259:22). Finally, they argue that Respondents are immune from any injury to a prisoner (CT 1259:23-1260:18).

Also on April 27, 2017, Respondents filed their Separate Statement in Opposition to Petitioner's Motion for Summary Judgment (CT 1262-1342).

Also on April 27, 2017, Respondents filed their Objections to Petitioner's Evidence in Opposition to Petitioner's Motion for Summary Judgment (CT 1343-1355), which the Court did not rule on.

On May 3, 2017, Respondents filed their Reply to Petitioner's Opposition to Respondent's Motion for Summary Judgment (CT 1356-1366).

On May 4, 2017, Petitioner filed his Reply to Respondents' Opposition to Petitioner's Motion for Summary Judgment (CT 1367-1372).

Also on May 4, 2017, Petitioner filed his Declaration of Moises A. Aviles in Reply to Respondents' Opposition to Petitioner's Motion for Summary Judgment (CT 1373-1390).

Also on May 4, 2017, Petitioner filed his Declaration of Rosa Cobos in Reply to Respondents' Opposition to Petitioner's Motion for Summary Judgment (CT 1391-1393). Cobos stated that there was a prior incident that Stumreiter committed the night before (CT 1392:8-19), and that her cell phone was smashed the day Appellant was arrested (CT 1392:20-1393:3).

Also on May 4, 2017, Petitioner filed his Declaration of Gilbert Alvarez in Reply to Respondents' Opposition to Appellant's Motion for Summary Judgment (CT 1394-1395). Alvarez stated that he saw Defendant Muscari coached Stumreiter as to what the gun looked like, and it was easier for Petitioner's Deputy Public Defender not to have the evidence disclosed to him (CT 1394:24-1395:11).

Also on May 4, 2017, Petitioner filed his Request for Judicial Notice Reply to Respondents' Opposition to Petitioner's Motion for Summary Judgment (CT 1396-1417)

On May 8, 2017, the Trial Court granted Respondents' Motion for Summary Judgment (CT 1422-1436). It specifically stated that the Respondent Deputies had "probable cause" to arrest Petitioner (CT 1424:15-24, 1425:2-4, 8-11).

On May 30, 2017, the Trial Court granted Judgment against Petitioner (CT 1426-1433).

On June 7, 2017, Respondents served and filed the Notice of Entry of Judgment (CT 1434-1445).

On July 31, 2017, Petitioner filed his timely Notice of Appeal (CT 1446-1457).

On January 8, 2018, Petitioner filed his Opening Brief (AOB 1-56). Petitioner argued that there was no probable cause to arrest Petitioner (Apx. 61a-68a), that the Police Report is not subject to judicial notice (Apx. 68a-70a), that Respondents County and McMahon are local, not State Parties (Apx. 70a-73a), that Petitioner had to be free

from discriminatory arrest (Apx. 73a-74a), and that Petitioner's rights were violated under the Americans with Disabilities Act (Apr. 75a-76a).

On April 4, 2018, Respondents filed their Respondents' Brief (RB 1-39). Respondents argued that there was no error in taking judicial notice of the Police Report which caused the Trial Court to sustain the Demurrer against Petitioner's §1983 Cause of Action (RB 18-22), that *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017) does not apply in this case (RB 23-24), there was no discrimination as to Petitioner's arrest (RB 24-28), or as to his rights under the Americans with Disabilities Act (RB 29-30).

On April 20, 2018, Petitioner filed his Reply Brief (ARB 1-36). Petitioner argued that there was no probable cause to arrest Petitioner (Apx. 77a-80a), that the Police Report is not subject to judicial notice (Apx. 80a-83a), that Respondents County and McMahon are local, not State Parties (Apx. 83a-84a), that Petitioner had to be free from discriminatory arrest (Apx. 85a-86a), and that Petitioner's rights were violated under the Americans with Disabilities Act (Apr. 87a-89a).

On May 31, 2019, the California Court of Appeal ruled against Petitioner (Apx. 1a-20a).

On July 8, 2019, Petitioner filed his Petition for Review in the California Supreme Court (PFR 1-57). Petitioner argued that there was no probable cause to arrest Petitioner (Apx. 89a-96a), that the Police Report is not subject to judicial notice (Apx. 96a-98a), that Respondents County and McMahon are local, not State Parties (Apx. 98a-101a), that Petitioner had to be free from discriminatory arrest (Apx. 101a-103a), and that Petitioner's rights were violated under the Americans with Disabilities Act (Apr. 103a-104a).

On July 26, 2019, Respondents filed their Answer to the Petition for Review (APFR) where Respondents argued that Petitioner did not properly present his Petition.

On August 13, 2019, Petitioner filed his Reply to the Answer to the Petition for Review (RAPFR 1-12) where Petitioner argued that there was still no probable cause to arrest Petitioner (Apx. 105a-108a).

On August 27, 2019, the California Supreme Court denied the Petition for Review (Apr. 21a).

REASONS FOR GRANTING THE WRIT.

I. THE CALIFORNIA COURT OF APPEAL WAS WITHOUT JURISDICTION, AND IN CONFLICT WITH THE SUPREME COURT PRECEDENT OF *MANUEL V. CITY OF JOLIET,* 137 S.CT. 911 (2017), AND THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, AND TENTH CIRCUITS, AND THE OKLAHOMA COURT OF CIVIL APPEALS IN THAT THE DEMURRER TO THE FIRST AMENDED COMPLAINT SHOULD HAVE BEEN OVERRULED, PETITIONER'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED, AND RESPONDENTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED IN THAT THE TRIAL COURT'S RULINGS IN THAT THERE WAS NO PROBABLE CAUSE TO ARREST PETITIONER FOR THE ATTEMPTED MURDER OF STUMREITER, SINCE PETITIONER ACTED IN SELF-DEFENSE AND THAT DETERMINATION OF PROBABLE CAUSE SHOULD BE HEARD BY A JURY.

It may be said that Petitioner had a Second Amendment right to defend himself. Based on the Complaint, and not on a disputed, and falsely prepared Police Report, Petitioner was trying to serve an eviction notice on Stumreiter, a trespasser, and Cornutt. After Stumreiter refused to leave, he, not Petitioner, sicked the dogs on Petitioner, and assaulted Petitioner with a crowbar. Petitioner had every right to protect himself. Instead of protecting the rights of a landowner, Respondents took the report of a ***convicted three-strikes felon*** as gospel, and arrested Petitioner. ***Defendant Stumreiter is still alive and coherent. NO bullet entered his drug-addicted head.*** There are no facts that Respondents actually investigated Petitioner and all the witnesses to get the true facts of the incident. It

was "to [arrest] first and ask questions later." Even under Federal and California law, there was still no probable cause to arrest Petitioner for the "attempted murder" of a Hell's Angels biker.

It should be noted that the Supreme Court has denied Certiorari as to whether a plaintiff may file suit after the prosecution scared one of her witnesses away at her criminal Trial. *Park v. Thompson,* 851 F.3d 910 (9th Cir. 2017), *Certiorari denied Jan. 8, 2018.*

The Supreme Court stated that a plaintiff has under the Fourth Amendment a cause of action for damages in malicious prosecution. The case of *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017), explains that:

> "For that reason, and contrary to the Seventh Circuit's view, Manuel stated a Fourth Amendment claim when he sought relief not merely for his (pre-legal-process) arrest, but also for his (post-legal-process) pretrial detention. [Footnote omitted.] Consider again the facts alleged in this case. Police officers initially arrested Manuel without probable cause, based solely on his possession of pills that had field tested negative for an illegal substance. So (putting timeliness issues aside) Manuel could bring a claim for wrongful arrest under the Fourth Amendment. And the same is true (again, disregarding timeliness) as to a claim for wrongful detention—***because Manuel's subsequent weeks in custody were also unsupported by probable cause, and so also constitutionally unreasonable.*** ... The judge's order holding Manuel for trial therefore lacked any proper basis. And that means Manuel's ensuing pretrial detention, no less than his original arrest, violated his Fourth Amendment rights. Or put just a bit differently: ***Legal process did not expunge Manuel's Fourth Amendment claim because the process he received failed to establish what that Amendment makes essential for pretrial detention—probable cause to believe he committed a crime.***[8]
>
> "FN. 8. The dissent goes some way toward claiming that a different kind of pretrial legal process—a grand jury indictment or preliminary examination—does expunge such a Fourth Amendment claim. See post, at 9, n. 4 (opinion of ALITO, J. (raising but 'not decid[ing] that question'); post, at 10 (suggesting an answer nonetheless). The effect of that view would be to cut off Manuel's claim on the date of his grand jury indictment (March 30)—even though that indictment (like the County Court's

> probable-cause proceeding) was entirely based on false testimony and even though Manuel remained in detention for 36 days longer. See n. 2, supra. Or said otherwise—even though the legal process he received failed to establish the probable cause necessary for his continued confinement. We can see no principled reason to draw that line. Nothing in the nature of the legal proceeding establishing probable cause makes a difference for purposes of the Fourth Amendment: ***Whatever its precise form, if the proceeding is tainted—as here, by fabricated evidence—and the result is that probable cause is lacking, then the ensuing pretrial detention violates the confined person's Fourth Amendment rights, for all the reasons we have stated."*** (Emphasis added.)

Other cases that support *Manuel* include *King v. Harwood,* 852 F.3d 568, 588 (6th Cir. 2017), *Certiorari denied Jan. 8, 2018, Margheim v. Buljko,* 855 F.3d 1077, 1084-1085 (10th Cir. 2017), *Spak v. Phillips,* 857 F.3d 458, 461, fn. 1 (2nd Cir. 2017), *Halsey v. Pfeiffer,* 750 F.3d 273, 291 (3rd Cir. 2014), *Winfrey v. Rogers,* 901 F.3d 483, 496, fn. 4 (5th Cir. 2018), *Cole v. Carson,* 935 F.3d 444 (5th Cir. 2019), *Hurt v. Wise,* 880 F.3d 831 (7th Cir. 2018), and *Taylor v. City of Bixby* (Okla. Civ. App. 2017) 415 P.3d 537.

The Supreme Court also summarily reversed a Decision of the Sixth Circuit in *Sanders v. Jones,* 845 F.3d 721, 733-735, and fn. 7 (6th Cir. 2017), where the Supreme Court ordered the Sixth Circuit to rule in compliance with *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017). The Sixth Circuit originally ruled in Sanders that even if the police report and grand jury testimony were false, the defendant was entitled to qualified immunity. However, *Manuel* was cited by the Supreme Court in summarily reversing in Certiorari because if there was still a lack of probable cause after a grand jury indictment or after a Preliminary Hearing, a plaintiff still had an Action under 42 U.S.C., §1983. In an astonishing number of cases, police fabricated evidence implicating the innocent.[6]

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[6] Covey, *Police Misconduct as a Cause of Wrongful Convictions,* 90 Wash.U.L.Rev. 1133, 1139-41 (2013) (Texas vacated 50 convictions obtained when agent falsely claimed he bought cocaine from 20% of black residents); Gross, *Exonerations in the United States,* 1989-2012 at 40 (2012),

Police access evidence and witnesses before judges and prosecutors, search homes and citizens, call on laboratories for forensic evidence, and choose which leads to pursue. These powers used lawfully are essential to public safety. But as Judge Kozinski explained recently, these powers also give police "a unique opportunity to manufacture or destroy evidence, influence witnesses, extract confessions, and otherwise direct the investigation so as to stack the deck against people they believe should be convicted." Criminal Law 2.0, 44 GEO. L.J. ann. REV. GRIM. PROG iii, x (2015). Fabricated evidence takes many forms, including false reports, physical evidence, confessions, and witness accounts.7

In this case, Petitioner was still a victim of a false police report, despite his Not Guilty verdict in his criminal case. Not only he lost six months of his liberty, but he lost all hearing in his right ear, and use of his right leg, because of Respondents' false police report, and the false statements by Stumreiter, a drug user and convicted felon.

Furthermore, since Petitioner acted in self-defense, he committed no crime. There was no probable cause for Respondents to arrest Petitioner, and the District Attorney Respondents had no authority to withhold the *Brady* evidence showing that Stumreiter

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https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf (51% of wrongful convictions involve false accusations); *id.* at 80-84 (fabrications led to group exonerations in at least 1,100 cases); Saks, *Model Prevention and Remedy of Erroneous Convictions Act Preface,* 33 Ariz.St.L.J. 665, 673-74 (2001) (police misconduct contributed to 44% of wrongful convictions); Chemerinsky, *An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal,* 34 Loy. LA.L.Rev. 545, 549 (2001) (describing perjury and planting evidence by L.A. police); Chin & Wells, *'Blue Wall of Silence/* 59 U.Pitt.L.Rev. 233, 235 (1998) (Mollen Commission found "police falsification" in New York was one of "most common forms of police corruption facing the nation's criminal justice system").

[7] Garrett, *Innocence, Harmless Error, and Federal Wrongful Conviction Law,* 2005 Wis.L.Rev. 35, 95-98; Giannelli, *Wrongful Convictions and Forensic Science,* 86 N.C.L.Rev. 163, 168-69 (2007); Schwartz, *Compensating Victims of Police-Fabricated Confessions,* 70 U.Chi.L.Rev. 1119, 1126-29 (2003); Slobogin, *Testilying,* 67 U.Colo.L.Rev. 1037 (1996).

was convicted of numerous felonies. The case of *Sialoi v. City of San Diego,* 823 F.3d 1223, 1232-1233, (9th Cir. 2016), explains that:

> "Taking the facts in the light most favorable to the plaintiffs, the officers did not have probable cause to arrest the three teenagers. ... The police determined almost immediately after approaching G.S., however, that the gun was, in fact, a toy, and at that point any suspicion that the teenagers were engaged in a crime dissipated. [Footnote omitted.] Not only did none of the teenagers possess a gun, but none of them in any way matched the apartment manager's description of the suspects. They were three Samoan teenagers, not two black adults, and none of the boys was wearing either a brown shirt or a hooded long-sleeved T-shirt. ... At a minimum, then, the officers violated the Fourth Amendment by continuing the seizure beyond the point at which they determined that G.S. had not in fact had a weapon in his hand. See *Lopez,* 482 F.3d at 1037."

See also the case of *People v. Espino* (Cal. App. 6 Dist. 2016) 247 Cal.App.4th 746, 760, *review dismissed,* which explains that:

> "Defendant argues he was no longer lawfully under arrest once police determined the object in his pocket was not crack cocaine, but a diamond. We agree with defendant that, once police realized the object was a diamond, they lacked probable cause to keep him under arrest for drug possession. The only other basis for the arrest—a vague and uncorroborated claim by an informant—did not constitute probable cause. (*People v. Ramey* (1976) 16 Cal.3d 263, 269 [probable cause not established by conclusory information]; *People v. French* (2011) 201 Cal.App.4th 1307, 1318 [conclusory statements by confidential informants insufficient to support a warrant]; cf. *Illinois v. Gates* (1983) 462 U.S. 213, 244 [probable cause supported by totality of the circumstances where details of informant's tip were corroborated by police investigation].)"

The latest case from the California Court of Appeal, *Cornell v. City and County of San Francisco* (Cal App. 1 Dist. 2017) 17 Cal. App. 5th 766, 780-781, explains that:

> "...That analysis drives the probable cause analysis, for if there was no objectively reasonable basis to believe Cornell had violated Penal Code section 148, subdivision (a) or any other law, probable cause to arrest was lacking as well. (*Casares, supra,* 62 Cal.4th at p. 838 ['The detention being

unlawful, the subsequent searches of defendant's person and the car he had been sitting in were also unlawful.'].)

"We agree with the trial court that there was no reasonable suspicion to detain and hence no probable cause to arrest. This incident took place in broad daylight in one of the most heavily used public recreation areas in San Francisco. The jury found that when the chase commenced, Officers Brandt and Bodisco knew little more than that they had seen Cornell at a location where drug crimes often took place, but with nothing connecting him to any criminal activity. The man had nothing in his hands, made no furtive movements, and was speaking to no one. Nothing about the way he was dressed indicated he might be hiding something under his clothing, and Officers Brandt and Bodisco gave him no directions that he disobeyed. (See *Casares, supra,* 62 Cal.4th at p. 838 ['[officer] described no furtive movement or other behavior by defendant suggestive of criminal activity'].) They did not claim they recognized Cornell as someone with previous involvement in criminal activity. They had no tip that a drug transaction was about to take place in which he fit the description of someone likely to be involved. And they saw no activity on Hippie Hill, by anyone, indicating that drug activity was currently taking place or about to take place there."

As *Cornell* applies here, Respondent Deputies only interviewed Stumreiter and Cornutt, the former being a convicted felon. They had obtained no other witnesses and refused to *Mirandize* Petitioner or interview Cobos. Since Petitioner was entitled to use self-defense (*Valerie G. v. Louis G.* (Cal. App. 4 Dist. 2017) http://www.courts.ca.gov/opinions/documents/D070495.PDF, at 8-9), he should never be arrested at all, and be released the night of his arrest.

The case of *B. B. v. County of Los Angeles* (Cal. App. 2 Dist. 2018) 25 Cal.App.5th 115, 132-133, *rev. granted, and depublication denied,* further explains that:

"The court in *Cornell* reached largely the same conclusion regarding *Shoyoye* and the statutory text. The Bane Act claim in *Cornell* arose from a wrongful arrest. On appeal, the defendants, relying on *Shoyoye,* argued the evidence was insufficient to establish liability because the plaintiff failed to show a separately coercive act apart from the arrest itself. (*Cornell, supra,* 17 Cal.App.5th at p. 795.) In rejecting the argument, the *Cornell* court 'acknowledge[d] that some courts ha[d] read *Shoyoye* as having announced

"independen[ce] from [inherent coercion]" as a requisite element of all [Bane Act] claims,' but concluded 'those courts misread the statute.' (*Cornell,* at p. 799.) The court explained: 'By its plain terms, [the Bane Act] proscribes any "interfere[nce] with" or attempted "interfere[nce] with" protected rights carried out "by threat, intimidation or coercion." Nothing in the text of the statute requires that the offending "threat, intimidation or coercion" be "independent" from the constitutional violation alleged. Indeed, if the words of the statute are given their plain meaning, the required "threat, intimidation or coercion" can never be "independent" from the underlying violation or attempted violation of rights, because this element of fear-inducing conduct is simply the means of accomplishing the offending deed (the "interfere[nce]' or `attempted ... interfere[nce]"). That is clear from the structure of the statute, which reads, "If a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion," a private action for redress is available.' (*Id.* at pp. 779-800, italics omitted.)

"While it declined to adopt *Shoyoye*'s 'independent from inherent coercion test,' the *Cornell* court agreed that the Bane Act required '"more egregious conduct than mere negligence"' to impose liability. (*Cornell, supra,* 17 Cal.App.5th at pp. 796-797.) In that regard, the court reasoned that 'the statutory phrase "threat, intimidation or coercion" serves as an aggravator justifying the conclusion that the underlying violation of rights is sufficiently egregious to warrant enhanced statutory remedies, beyond tort relief.' (*Id.* at p. 800.) However, the *Cornell* court saw 'no reason that, in addition, the required "threat, intimidation or coercion," whatever form it may take, must also be transactionally "independent"' from a properly proved civil rights violation. (*Ibid.,* italics omitted.)

"The *Cornell* court suggested the 'better approach' was to 'focus directly on the level of scienter required to support a Section 52.1 claim.' (*Cornell, supra,* 17 Cal.App.5th at p. 799.) Thus, the court held that, where a civil rights violation has been 'properly pleaded and proved, the egregiousness required by Section 52.1 is tested by whether the circumstances indicate the [defendant] had a *specific intent to violate the [plaintiff's civil rights],* not by whether the evidence shows something beyond the coercion "inherent" in the [violation].' (*Cornell,* at pp. 801-802, italics added.)

"The Ninth Circuit recently adopted *Cornell*'s specific intent standard in an excessive force case brought under the Bane Act. (*Reese v. County of Sacramento* (9th Cir. 2018) 888 F.3d 1030, 1043 (*Reese*).) In

concluding there was 'no "convincing evidence that the [California] supreme court likely would not follow" *Cornell,*' the appeals court observed, '*Cornell* correctly notes that the plain language of Section 52.1 gives no indication that the "threat, intimidation, or coercion" must be independent from the constitutional violation.' (*Reese,* at p. 1043.) Conversely, 'the specific intent requirement articulated in *Cornell* is consistent with the language of Section 52.1, which requires interference with rights by "threat, intimidation or coercion," words which connote an element of intent.' (*Reese,* at p. 1044.)"

Here, Petitioner was falsely arrested for attempting to murder Stumreiter. There was nothing by any of the Respondents to have Petitioner arrested and tried for a crime he did not commit.

Furthermore, the issue of probable cause should have been heard by a jury. The case of *Deary v. Three Un-Named Police Officers* 746 F.2d 185, 191-192 (3rd Cir. 1984), explains that:

"To grant judgment for the defendant police officers at this juncture, therefore, would be to usurp the role which a jury must play in fact finding — here, determining the ultimate fact of probable cause or the lack of it.[7] *See also B.C.R. Transport Co., Inc. v. Fontaine,* 727 F.2d 7, 10 (1st Cir.1984) ('... whether or not probable cause exists in any given case invariably depends on the particular facts and circumstances of that case, a question to be resolved by the trier of fact.'); *Reeves v. City of Jackson,* 608 F.2d 644, 651 (5th Cir.1979) (probable cause presented jury question on record of this case); *Gilker v. Baker,* 576 F.2d 245, 246-47 (9th Cir.1978) (existence of probable cause is for jury where reasonable persons might reach different conclusions about the facts)."

Here, there was no determination by a Trial Jury as to whether there was probable cause to arrest Petitioner. The Judges in the Trial Court erroneously made this determination without having the case tried by a Jury.

As to the lack of probable cause, Petitioner's Not Guilty verdict in his criminal case eliminated the finding of probable cause. Even though the Trial Court took judicial notice of the police report, and in his criminal case, Petitioner had his Preliminary Hearing, any finding of "probable cause" is extinguished by his Not Guilty Verdict (CT

160:3-4). The case of *Mills v. City of Covina,* 921 F.3d 1161, 1169-1170, and fn. 2 (9th Cir. 2019), explains that:

> "Mills argues he is not collaterally estopped from litigating the issue of probable cause here because his reversed conviction was not final. We agree. Under California law, '[f]or purposes of issue preclusion, final judgment includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.' *People v. Cooper,* 149 Cal.App.4th 500, 520, 57 Cal.Rptr.3d 389 (2007) (quoting *Border Bus. Park, Inc. v. City of San Diego,* 142 Cal.App.4th 1538, 1564, 49 Cal.Rptr.3d 259 (2006).) (internal quotation marks omitted). 'A final judgment is defined as one that is free from direct attack. Stated differently, [t]o be final for purposes of collateral estoppel the decision need only be immune, as a practical matter, to reversal or amendment.' *Id.* (internal quotation marks omitted). It follows from this that a conviction or judgment that has been reversed on appeal and vacated cannot serve as collateral estoppel in a later proceeding.[2] Accordingly, Mills's reversed conviction and the factual determinations underlying that conviction lack conclusive effect here.
>
> "FN. 2. This is also the federal rule. *See, e.g., Ornellas v. Oakley,* 618 F.2d 1351, 1356 (9th Cir. 1980) ('A reversed or dismissed judgment cannot serve as the basis for a disposition on the ground of res judicata or collateral estoppel.')"

Here, Petitioner was found not guilty. Any findings that there was probable cause in his criminal case was extinguished by the not guilty verdict.

Furthermore, just because there were 11 Deputies does not mean that probable cause even existed. Respondent Deputies did not interview Petitioner, his family members, his friend, Rosa Cobos, as to what actually happened. Respondents just took the word of a tall White, drug-addicted three-strike felon, who's a member of Hell's Angels and his drug-addicted girlfriend over a short Latino landlord. Petitioner brought a gun to protect himself from a dangerous criminal and his dogs. The facts were not there to support an attempted murder charge where the criminal dog-sicker intended to harm Petitioner again.

As to lack of jurisdiction, Petitioner was found not guilty. He also was not given any *Brady* discovery in his criminal Trial. That and he fact that he was innocent of attempting to kill a three-strike felon goes in his favor of a malicious prosecution Cause of Action under 42 U.S.C., §1983, and the case of *Manuel v. City of Joliet,* 137 S. Ct. 911, 919-920, and fn. 8 (2017).

Petitioner was innocent in the first place, and lost hearing in his right ear, and use of his right leg, because of the time he spent at the substandard West Valley Detention Center for the six months he was in custody.

II. THE CALIFORNIA COURT OF APPEAL WAS WITHOUT JURISDICTION IN THAT A FALSE, AND HEARSAY-LADEN POLICE REPORT IS NOT SUBJECT TO TAKING OF JUDICIAL NOTICE.

Evidence Code §452 states that:

> "Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:
>
> "(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.
>
> "(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.
>
> "(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.
>
> "(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.
>
> "(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.
>
> "(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.
>
> "(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.
>
> "(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

Certain items contained in a Police Report are not facts where the Court may take judicial notice as "true". Respondents insisted that the Trial Court accept the Police Report as "true" because it is attached to the Original Complaint. It was attached to the Original Complaint to state that a criminal case was proceeding, ***NOT*** to admit facts by lying Sheriff's Deputies bent on arresting a short, elderly Latino, and not a White Hell's Angel biker.

The case of *People v. Jones* (1997) 15 Cal.4th 119, 171, fn. 17, 61 Cal.Rptr.2d 386, 931 P.2d 960, explains that:

> "Despite the State Public Defender's rather surprising contention that a police report is a 'source[] of reasonably indisputable accuracy,' we decline to take judicial notice of the truth or accuracy of an entry in a police report, because such a report is reasonably subject to dispute. (*See People v. Medina, supra,* 51 Cal.3d 870, 890.)"

The case of *Ramsden v. Western Union* (Cal. App. 2 Dist. 1977) 71 Cal.App.3d 874, 879, also explains that:

> "On demurrer the complaint must be liberally construed with a view to substantial justice between the parties. (Code Civ. Proc., § 452.) A demurrer lies only for defects appearing on the face of the complaint or from matters of which the court must or may take judicial notice. (Code Civ. Proc., § 430.40.) On demurrer the allegations of the complaint are assumed to be true. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. It would be inappropriate for us to rely upon the arrest report for the purposes suggested by defendants. Although in ruling on a demurrer courts may take judicial notice of files in other judicial proceedings (*Saltares v. Kristovich,* 6 Cal.App.3d 504, 510 [85 Cal.Rptr. 866]), ***this does not mean that they take judicial notice of the truth of factual matters asserted therein.*** (*Beckley v. Reclamation Board,* 205 Cal.App.2d 734, 741 [23 Cal.Rptr. 428]; *People v. Long,* 7 Cal.App.3d 586, 591 [86 Cal.Rptr. 590].) As stated in *Day v. Sharp,* 50 Cal.App.3d 904, 914 [123 Cal.Rptr. 918]," (Emphasis added.)

Here, the Police Report is not listed in Evidence Code §452, but it was improperly used to sustain the first three Causes of Action of the First Amended Complaint on the basis of "probable cause" and qualified immunity. The County assumes that the Police Report attests to the truth to the facts surrounding Petitioner's arrest. That is absolutely not the case, since the Police Report is full of lies and hearsay. The Police Report does show only that a report was taken on the day of the arrest. The Report was taken based on the Respondent Deputies bent on arresting Petitioner, not Defendant Strumreiter, a

trespasser, three-strike felon, and a member of Hell's Angels, who sicked his dogs on Petitioner, and assaulted Petitioner with a crowbar. Since the arrest was based on the bias of a felon, and further based on racial bias, the County wanted to have the Trial Court sustain the Demurrer based on ***judicially disputed facts.*** The Police Report is further based on bias and hearsay, and such a Report was given to Defendants Ramos and Muscari who did not use their independent judgment when prosecuting Petitioner on behalf of the People. There are no undisputed facts that involve the facts of Petitioner's arrest. Facts contained in a biased, perjurious, and hearsay-laden Police Report cannot be used in support of sustaining a Demurrer, or in support of a Motion for Summary Judgment.

III. THE CALIFORNIA COURT OF APPEAL WAS WITHOUT JURISDICTION, AND IN CONFLICT WITH THE NINTH CIRCUIT, IN THAT RESPONDENTS COUNTY AND McMAHON ARE NOT IMMUNE FOR THE ACTIVITIES THAT ARE CLEARLY ***LOCAL*** IN NATURE.

Respondent John McMahon, the Sheriff of the County of San Bernardino, is a locally elected County Official (California Constitution, Article XI, §1(b)). He is subject to recall by the County voters. His budget is approved by the County Board of Supervisors. His office does not have jurisdiction in places like Los Angeles or Riverside. Ultimately, Respondents are seeking relief with the case of *McMillian v. Monroe County,* 520 U.S. 781, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997), where the U. S. Supreme Court interpreted the Alabama Constitution to mean that Sheriffs are State Officers in Alabama. The California Constitution has no provision that makes the County Sheriffs as State actors.

The case of *Streit v. County of Los Angeles,* 236 F.3d 552, 560-561 (9th Cir. 2001), explains that:

> "The appellants erroneously urge that *only* state law controls this appeal. In particular, the appellants rely almost exclusively on *County of Los Angeles v. Superior Court (Peters),* 68 Cal.App.4th 1166, 80 Cal.Rptr.2d 860 (Ct.App. 1998), as the controlling authority. [Footnote

omitted.] Although we must consider the state's legal characterization of the government entities which are parties to these actions, ***federal law provides the rule of decision in section 1983 actions.*** *See Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425, 430 n. 5, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997) (finding that 'the question whether a particular state agency has the same kind of independent status as a county . . . is a question of federal law . . . [b]ut that federal question can be answered only after considering the provisions of state law that define the agency's character.'); *City of St. Louis v. Praprotnik,* 485 U.S. 112, 124, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988) (noting that 'the identification of policymaking officials is a question of state law'). And, although it may be instructive on questions of liability in certain specific contexts, ***state law does not control our interpretation of a federal statute.***" (Emphasis added.)

The case of *Brewster v. Shasta County,* 275 F.3d 803 (9th Cir. 2001), further states that:

"The California Code also provides that California sheriffs are elected county officers. *Id.* at 562 (citing Cal. Gov. Code §§ 24000(b); Cal. Elec. Code §§ 314). Sheriffs are required to maintain their offices at the county seat with other county officers. *Id.* (citing Cal. Gov. Code §§ 24250). Sheriff vacancies are filled in the same manner as other elective county officers. *Id.* (citing Cal. Gov. Code §§ 24205). The services of the sheriff may be contracted out by the county--not the state. *Id.* (citing Cal. Gov. Code §§ 53069.8). We found that '[t]hese various state provisions lead inexorably to the conclusion that the [sheriff] is tied to the County in its political, administrative, and fiscal capacities.' *Id.*

"...

"It requires little extension of *Streit* for us to conclude that the Shasta County Sheriff acts for the County, not the state, when investigating crime in the county. As we explained in *Streit,* the California Constitution clearly identifies the sheriff as a county officer. *Streit,* 236 F.3d at 561 (citing Cal. Const. art. XI, §§ 1(b))."

Here, Respondent McMahon is a local official, not a State official. His actions as Sheriff are local in nature. Article II, §6 of the San Bernardino County Charter also states that:

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> "Any County officer other than supervisor may be removed from office in the manner provided by law; also any such officer ***may be removed by a four-fifths vote of the Board of Supervisors,*** for cause, after first serving upon such officer a written statement of alleged grounds for such removal, and giving him a reasonable opportunity to be heard in the way of explanation or defense." (Emphasis added.)

It is further explained in *Penrod v. County of San Bernardino* (Cal. App. 4 Dist. 2005) 126 Cal.App.4th 185, 190, 23 Cal.Rptr.3d 717, that:

> "San Bernardino became a charter county in 1913. (Stats. 1913, Ch. 33.) The Constitution recognizes 'Home Rule' described as 'the right of the people of a charter county to create their own local government and define its powers within limits set out by the Constitution.' (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1218; *see Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 869.) The Constitution requires that a county charter shall provide for an elected sheriff. The Constitution also requires the charter to provide for the 'compensation, terms and removal' of the sheriff. (Const. art. XI, § 4.) Government Code section 24000, subdivision (b), enumerates county officers, including the sheriff. Sections 24009 and 24205 require the sheriff be elected by the county's electorate. ***The sheriff is a county officer, not a state official.***" (Emphasis added.)

If the County Sheriff may be removed by the Board of Supervisors for cause, when does the Sheriff become a State Official? It belies logic. Since Respondent McMahon and his Deputies violated Petitioner's rights, they were not State Officials when Petitioner was falsely arrested.

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IV. THE CALIFORNIA COURT OF APPEAL WAS WITHOUT JURISDICTION, AND IN CONFLICT WITH THE NINTH CIRCUIT, IN THAT PETITIONER HAD THE RIGHT TO BE FREE FROM HIS DISCRIMINATORY ARREST, SINCE HE IS A LATINO AND DEFENDANT STUMREITER IS WHITE, *AND* PETITIONER HAD ACTED IN SELF-DEFENSE AFTER BEING ATTACKED BY STUMREITER'S DOGS EARLIER ON AUGUST 15, 2013; SOMETHING THE RESPONDENT DEPUTIES SHOULD HAD INVESTIGATED BEFORE COMPLETELY BELIEVING STUMREITER'S AND CORNUTT'S VERSION OF THE JANUARY 13, 2014 INCIDENT.

Stumreiter is White, and a convicted felon (CT 1109:13-14, 19, 1186-1215). Petitioner completely owned his property, and his only tenant was Cornutt (*Id.*). Stumreiter had no business being on the property. On August 15, 2013, it was Stumreiter who sicked his female dog on Petitioner (*Id.*). It was that reason why Petitioner brought his weapon to ***his*** property on January 13, 2014, to prevent another dog bite (*Id.*). On January 13, 2014, Stumreiter sicked the dogs again, and Petitioner shot by the dogs. Stumreiter then got a crowbar and attacked Petitioner. Petitioner shot at Stumreiter, but no bullet entered his head (*Id.*).[8] Without reading Petitioner's *Miranda* rights, and interviewing Petitioner, the Respondent Deputies never got Petitioner's side of the story.

Any reasonable peace officer would had determined that a Hell's Angel biker, and three-strike felon, such as Stumreiter, would be more guilty than Petitioner of anything. It would defy logic that a trespasser, such as Stumreiter, would have more "rights" than Petitioner has when it was Stumreiter that instigated both attacks on Petitioner with his dogs, and that Stumreiter, as well as Cornutt (CT 1123:5-7), would also take illegal drugs. Since Petitioner is a Latino, and Stumreiter is White, clearly showed that the

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[8] It defies logic for Respondents to claim that Stumreiter was "shot in the head" when he and Cornutt completely gave their version of events on January 13, 2014. Later on, Stumreiter was able to discuss the case with D. D. A. Lisa Muscari, and later testified at Plaintiff's criminal trial.

Respondents favored a White, Hell's Angels three-strike felon and trespasser over a Latino property owner who only rented to Stumreiter's girlfriend (CT 1109:19).

The case of *Elliot-Park v. Manglona,* 592 F. 3d 1003, 1006-1007 (9th Cir. 2009), explains that:

> "Instead, the officers argue that individuals don't have a constitutional right to have police arrest others who have victimized them. But Elliott's equal protection claim isn't based on some general constitutional right to have an assailant arrested. Rather, she argues Babauta was given a pass by the police because of the officers' alleged racial bias not only in favor of Babauta as a Micronesian, but also against her as a Korean. And while the officers' discretion in deciding whom to arrest is certainly broad, it cannot be exercised in a racially discriminatory fashion. For example, a police officer can't investigate and arrest blacks but not whites, or Asians but not Hispanics. Police can't discriminate on the basis of the victim's race, either. ... *see also DeShaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 197 n. 3, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989)* ('The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause.')."

Here, Petitioner was attempting to serve eviction papers on Stumreiter and Cornutt when Stumreiter attacked Petitioner with his dogs, and a crowbar on January 13, 2014. Since Stumreiter is a trespasser and a paroled felon, he had zero right to be on the premises, and ***he was the one who should had been arrested.*** Instead, Respondents listened to two White criminals, instead of the Latino property owner. Petitioner was deprived of his liberty for six months due to his race and was exercising his rights as a property owner. The County's Motion for Summary Judgment should be denied in favor of Petitioner as to his claims under 42 U.S.C., §§1985(2) and (3), and 1986.

V. THE CALIFORNIA COURT OF APPEAL WAS WITHOUT JURISDICTION, AND IN CONFLICT WITH THE NINTH CIRCUIT, IN THAT PETITIONER HAD A DISABILITY UNDER THE AMERICANS WITH DISABILITY ACT WHILE AT THE WEST VALLEY DETENTION CENTER.

Petitioner is not claiming that he had a disability when he was arrested. He did not suffer from loss of hearing, vertigo, etc., until the DOE White female medical staff member inserted her thumb in his right ear, permanently damaging his right ear drum.

It is against proper medical procedures to insert one's thumb, be it Petitioner's or anybody else's, into one's ear canal. See "Why you shouldn't use cotton swabs to clean your ears", http://www.cnn.com/2017/01/03/health/earwax-cleaning-guidelines. Despite proven medical advice, Petitioner suffered further injuries at the West Valley Detention Center, because of damage to Petitioner's right ear drum.

Despite receiving the Superior Court Order requiring that he use the bottom bunk due to his dizziness and vertigo as a result to the damage to Petitioner's right ear drum, the Deputies still forced Petitioner to use the top bunk. Whether or not the Order existed, he ***later fell and damaged his right leg, NOT "just his right foot",*** despite the dizziness, and inability to hear. Petitioner's attorney in the case below has also seen his right ***leg*** with the brace on it. The disability is more than a mere sore foot. The case of *Cohen v. City of Culver City,* 754 F.3d 690, 695 (9th Cir. 2014), explains that:

> "To prevail under Title II, the plaintiff must show that: (1) he is a qualified individual with a disability; (2) he was either ***excluded from participation in or denied the benefits of a public entity's services, programs, or activities,*** or was otherwise discriminated against by the public entity; and (3) this exclusion, denial, or discrimination was by reason of his disability. *Weinreich v. L.A. Cnty. Metro. Transp. Auth.,* 114 F.3d 976, 978 (9th Cir. 1997). Title II authorizes private suits for money damages. [Footnote omitted.] 42 U.S.C. § 12133; *see Tennessee v. Lane,* 541 U.S. 509, 517 (2004)." (Emphasis added.)

Here, there was a ***Court Order*** requiring Plaintiff to be on the bottom bunk and the Order was obtained in the criminal case (CT 1142:24-1143:5, 1143:8), because Petitioner suffered from dizziness and vertigo. It was the County's (through its Sheriff's Deputies) fault that Petitioner's ***LEG, not "just his foot",*** was injured by a fall from a top bunk at the West Valley Detention Center. Petitioner does not have to prove discrimination, but prove either, exclusion, denial, and/or discrimination, since he was excluded from using, and denied use of a bottom bunk due to his lack of hearing, Court Order or not.

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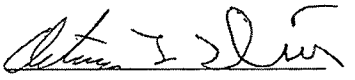
CONCLUSION.

Petitioner requests that the Judgment be reversed with Costs to Petitioner.

Dated this 20th day of December, 2019

Bv: 

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