No. 19-7793

In the

Supreme Court of the United States

Michael Deuschel,

Petitioner

v.

The City of Long Beach,

Respondents.

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second District

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PETITION FOR WRIT OF CERTIORARI

Michael Deuschel
P.O. Box 1694
El Segundo, CA 90245

Petitioner, Propria Persona

Prefatory Perspective

Regarding §1983 actions, courts are conflicted over whether the judge or jury decide municipal liability for a widespread custom at variance with policy and employee deprivation of plaintiffs' state and federal rights. Here, the judge blocked the jury from fulfilling its duty.

California's Judicial Council's court forms, literature and court rules conflict with Appellate Law and the Americans with Disability Act. They erroneously inform courts they can deny an ADA request if they perceive its form or timing as flawed and have discretion to reduce the extent of and even deny accommodation—sometimes contrary to submitted medical evidence—though aware of the exacerbated disability—without engagement—and thereby exclude the person needing accommodation from full-equal-fair judicial services.

For both matters, federal supremacy must prevail

Questions Presented:

1. **Due Process:** (a) Whether the City's 1 ½ year-long *custom* of illegal seizure, *fraudulent* post-storage notice, denied hearing, turning a blind eye and auction of Petitioner's pick-up truck, and/or, (b) the judge's granting case-dispositive pretrial motion in limine, trial-exclusion of probative evidence and preclusion of a jury trial by a non-suit ruling, and/or (c) appellate indifference toward Petitioner's §1983 municipal liability theory of unconstitutional custom and affirmation of the judicial errors, violated his state and federal rights and due process?
2. **Discrimination:** Whether the Courts violated Petitioner's state and federal ADA Civil Rights when the trial court denied his three ADA requests for accommodation, and/or, when the appellate court claimed Petitioner forfeited his ADA rights by complying with the judge's demand that he proceed to trial, despite his exacerbated disabilities?
3. **Retroactivity:** Whether new laws are retroactively applicable during adjudication?

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PARTIES TO THE PROCEEDING

Petitioner Michael Deuschel, propria persona, is a person with disabilities, and was the plaintiff in the superior court proceedings and appellant in the court of appeals proceedings.

Respondent City of Long Beach, a California municipal corporation governed by the council-manager form of government as per their City Charter, was the defendant in the superior court proceedings and appellees in the court of appeals proceedings. The City of Long Beach is a person for the purpose of § 1983 actions.

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RELATED CASES

There are no related cases.

Daily,

I pray to God

My Lord Christ

My Father and Friend

For the Spirit to carry Me

Beyond Contrived Barriers.

For You to give me Strength

To be your just Servant.

Throughout and Within

By Life's Challenges

Your Infinite Breadth

You make me Strong.

With much Ahead

By Your Mercy

We call Upon

You Spirit

To Bring

Us All

Home

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PETITION FOR A WRIT OF CENTIORARI

Michael Deuschel, propria persona with disabilities, petitions for a writ of certiorari to review the California Court of Appeal, Second District affirmation of California Los Angeles County Superior Court non-suit judgment.

OPINIONS BELOW

June 19, 2019, the California Court of Appeal affirmed the trial court's non-suit. *A-1.*

September 18, 2019, the California Supreme Court denied Petitioner a review. *A-3.*

July 8, 2019, the California Court of Appeal denied Petitioner a rehearing. *A-4.*

November 22, 2019, the Supreme Court of the United States granted an Extension to and including February 15, 2020, to file this Petition. *A-5.*

JURISDICTION

August 19, 2015, the California Los Angeles Superior Court ruled non-suit. June 19, 2019, the Court of Appeal issued its unpublished affirmation. July 8, 2019, the Court of Appeal denied a Motion for Rehearing. September 18, 2019, the California Supreme Court denied petitioner's petition for review. November 22, 2019, the Supreme Court of the United States extended the time for Petitioner to file his Petition by sixty days to and including February 15, 2020, Application No. 19A584. The jurisdiction of this Court is invoked under 28 U.S.C. §1245(1).

CONSTITUTIONAL PROVISIONSAND STATUTES INVOLVED

1. **The Civil Rights Act of 1871,** Federal statute, 42 U.S.C. § 1983, allows people to sue the government for civil rights violations. It applies when someone acting "under color of" state or local law deprives a person of rights created by the U.S. Constitution or federal statutes.

2. **Under the Fourth Amendment** of the U.S. Constitution," in general, the deprivation of life, liberty and property without due process is prohibited by the fifth and fourteenth amendments to the United States Constitution. "The right of the people to be secure ... against unreasonable searches and seizures, shall not be violated ..." (U.S. Const. amend. IV.)

3. **Under the Fifth Amendment** of the U.S. Constitution, "Nor shall any person be deprived of life, liberty, or property, without due process of law."

4. **Under the Eighth Amendment** of the U.S. Constitution, "[E]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

5. **Under the Fourteenth Amendment** of the U.S. Constitution, a state is prohibited from depriving "any person of ... property, without due process of law."

6. **The Americans with Disabilities Act of 1990**, is a civil rights law prohibiting discrimination based on disabilities in employment, public services and accommodations, telecommunications and state and local government services.

7. **California Government Code Section 11135,** prevents discrimination on the basis of "race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability" under any program "conducted, operated, or administered by the state or by any state agency, funded directly by the state, or receives any financial assistance from the state."

8. **California Rule of Court, rule 1.100**, state a person with disabilities may make an ADA request for accommodation by ex parte, in writing or orally.

INTRODUCTION AND STATEMENT OF THE CASE

Municipal employees defied their lawful responsibilities through 'off-book' customs; supervisors and officials, concurrently turned a blind eye and thereby ratified the customs; together, they violated their civic duty. Yet, Petitioner was helpless because California's application of §1983 case law deconstructed municipal liability for unconstitutional actions and customs into nihilistic oblivion where they were rendered meaningless.

California history of judicial application/interpretation of §1983 actions effectively encourages the implausible deniability exercised by the very City employees, supervisors and policymakers tasked by their assumption of office and sworn oaths to protect and serve its citizenry in accordance with state and national constitutions.

Emphasis on formal rather than functional characteristics of an employees' role has made it far too easy for the culpable municipality to avoid liability as long as they have in place contrarian written policy. Current rulings celebrating the deliberate indifference encourage this civic-less duplicity as unscrupulous municipal risk management teams snicker at the public and rely on the courts to absolve them of their constitutional sin.

In this staunched reversal, the aggrieved became the threat to be eradicated by deception, denial and denouncement as he represented a risk to city employees and officials' continued receipt of their 'perks.' This way, the City of Long Beach stole Petitioner's pick-up truck, denied him a meaningful post-storage hearing, and auctioned his truck for their fraudulent gain.

It was the City's practice to allow employees to set and maintain customs and make their actions uncontestable. It aggressively denied Petitioner timely reconsideration by a hearing officially known as a post-storage hearing, regardless of the numerous petitions he made throughout its tiered bureaucracy.

Thereafter, the City "hid" behind the claim that the offending employees lacked any 'policymaker' authority as a formal matter. Yet, because officials turned a blind eye once notified of the employees' unconstitutional actions and thereby ratified and perpetuated the unconstitutional custom for another 1 ½ years, and because City employees acted with the color and force of the law, the City must be held liable under §1983. Also, because most civil rights violations occur in the 'town squares' throughout this great country, the time and place to protect the constitution is here and now.

Then, while Petitioner pursued legal remedy, the courts repeatedly erred. The trial court denied Petitioner's ADA requests for accommodation to stay matters *three* times, while he received spine surgeries and suffered a severe cranial infection. Then, the appellate court falsely asserted he failed to present his ADA requests to an ADA Coordinator; he was accommodated; and he forfeited his ADA rights by complying with the judge's threat to dismiss the case if he did not proceed to trial, despite his exacerbated neurological disabilities.

Please accept this petition in order to reset civic trust in California and throughout the United States and to protect some of the most vulnerable people of this Country.

I. Underlying 1 ½ Year-Long Municipal Unconstitutional Custom:

1. On November 25, 2009, the day before Thanksgiving, the City of Long Beach seized Petitioner's pick-up truck. The City's Public Works employee deceitfully hammered a "No Parking," sign into the ground alongside Petitioner's pick-up truck and the City tow truck operator hitched the tow chains to the truck's undercarriage and towed it away, but only after the supervising officer took a polaroid of the charade to create false evidence.

2. Petitioner visited the "City Tower," administrators and council members. The City Manager's staff instructed him to meet the post-storage officer at the Police Department.

He met the post-storage officer in the police lobby and requested a hearing to contest the unlawful seizure. The same-day encounter with Officer Everett was not meaningful in either manner or timing. Indeed, she denied Petitioner's request. Instead, she fanned her polaroid photo and stated, "I have a Polaroid, what do you have?" She insisted it was a lawful tow. The encounter was not commensurate with the unconstitutional seizure of his $10,000 pick-up truck.

That evening Mr. Bill Pederson provided a written statement to the lack of 'no parking' signs on the west side of Orizaba St. where Petitioner parked overnight. *A-31.*

3. November 30, 2009, Petitioner visited City Tower, again and several administrators signed his petition. *A-32.*

4. November 30, 2009, Internal Affairs assured Petitioner they would bring his complaint to the Captain's attention but refused to address the denial of a hearing. Claiming that was Officer Everett's jurisdiction, they reduced his complaint to one of "rudeness." *A-33*

5. December 1, 2009, Petitioner attended the monthly City Council meeting and notified the mangers, mayor and Council Members of the Police Dept's denials of a meaningful hearing. They turned a blind eye. Instead of disciplining the unsupervised officer, and providing him a meaningful hearing, they tried to coerce him to accept a 'back-room' deal. *A-34.*

6. December 2, 2009, the City mailed Petitioner a, 'Right to Hearing Notice,' two days late of the November 30, 2009, deadline. Their own Right to Hearing Notice stated Petitioner had ten days from its date to request a post-storage hearing, December 12, 2009. *A-35.*

Yet, City actors perpetuated the false assertion that an impromptu meaningless encounter on November 25th, seven days *prior* to the City's December 2nd Notice—through a spectacular '*retroactive*' defiance of space and time—fulfilled state and federal duties to provide a post-storage hearing upon Petitioner's request *after* he received the Right to Hearing Notice!

7. In her December 2, 2009, email to her colleague Diko Melkonian—copied to Jim Kuhl, Eric Sund, Amy Burton, Leslie Horikawa-Thiede, Taylor Honrth, Broc Corward and Dan Ramos—Cheryl Black, Supervisor of Parking Enforcement, stated, (*A-36.*)

> "I was just notified by the PD Maggie Everett, who does *our* post storage hearings *per our agreement* prior to moving over to PW, that Mr. Sund is trying to reduce a storage fee from 597.00 to 75.00 after they (PD) ruled it was a valid tow. Can he do this? I thought he was FM not PW. It is my understanding this isn't the first time Mr. Sund has made special exceptions for people. My concern is because he is trying to do this, PD will not continue to honor *our agreement*. Please advise, Thanks." [Emphasis added.]

She confirmed their custom to acquiesce to the Police and turned a blind eye. Petitioner repeatedly asked to meet with her but she refused—her staff rejected him at the security window.

8. December 7, 2009, Petitioner received the notice in the mail and visited the Police Dept. He requested directions from the Officers to the room listed on the Right to Hearing Notice. They advise him that it did not exist. Instead, Petitioner requested to speak to Officer Everett's supervisor. He met Sergeant Kohnlein, supervisor of the post-storage program.

Sergeant Kohnlein escorted Petitioner into a confined, windowless interrogation room. The Sergeant explained he was away on leave at the time of the seizure. Petitioner provided him with his petition and the City's Right to Hearing Notice. Petitioner requested a hearing in accordance with the Notice. Oddly, he demanded Petitioner present his evidence. Petitioner requested time to present statements from multiple witnesses. *A-32.*

9. December 7, 2009, residents of Orizaba St. singed statements confirming there were no, "no parking," signs on Orizaba street prior to the wrongful seizure and the City employees set signs alongside Petitioner's pick-up truck on November 25, 2009, the morning of the seizure, including Donald Russel, Bill Klemm, Kim Donohue, Alicia Gerken, and Bill Pederson. *A-37.*

10. December 15, 2009, Internal Affairs confirmed their on-going investigation. *A-38.*

11. February 18, 2010, Petitioner asked City Attorney Mr. Charlie Parkin to return his pick-up truck. He scuffed, "That's never gonna happen," and turned his back on Petitioner. *A-39.*

12. March 3, 2010, the CA DMV denied the City's request for a lien sale. *A-40.*

13. March 15, IA claimed the facts were, "Insufficient to permit resolution." *A-41.*

14. March 31, 2009, the City issued a, "Vehicle Towing and Storage Notice of Balance Due," for $6,019.00. *A-42.*

15. April 5, 2010, Internal Affairs provided notice that their investigation was complete but the results were confidential. *A-43.*

16. April 22, 2010, the City provided a, "Parking Citation Hearing." The trier of fact collected Petitioner's evidence and recorded his testimony. He ruled in Petitioner's favor and rescinded the underlying parking citation, establishing his pick-up truck was lawfully parked.

The City had in place a custom to provide a hearing for the $40 ticket, but a contrarian custom for a much more valuable $10,000 pick-up truck. *A-44.*

17. May 10, 2010, Petitioner submitted his tort claim to the City. *A-45.*

18. June 3, 2010, the City refunded Petitioner's $46 for the rescinded citation. *A-46*

19. July 20, 2010, the City rejected Petitioner's Tort Claim, as policy. *A-47.*

20. November 24, 2010, Petitioner filed a Complaint against the City's Law Enforcement with the California Attorney General with 41 pages of supporting documentation. *A-48.*

21. May 21, 2011, the City's penultimate act: Notice of intent to auction his truck. *A-49.*

22. June 10, 2011, Petitioner objected to the Impound Supervisor about the tow. *A-50*

23. June 11, 2011, *1 ½ years* later, the City's ultimate act in its pervasive unconstitutional custom: The Auction. One-and-a half-years after they seized it, the City auctioned it for their fraudulent gain, and at their hand, Petitioner suffered an unconstitutional loss. *A-50.*

II. JUDICIAL HISTORY:

A. The Superior Court:

The judge violated Petitioner's right to full ADA accommodation, thrice. Yet, other judges granted Petitioner's same contemporaneous ADA Requests. He also excluded probative evidence—twenty-four exhibits and testimony—proving the City's unconstitutional custom of operating fraudulent post-storage notices and hearings, and, ruled non-suit and thereby prevented the jury from deliberating on the legal material, including City customs that had the force of law.

B. The Court of Appeal:

Justices falsely denied Petitioner went through the ADA Coordinator(s) and made ADA requests, falsely asserted his medical incapacitation was accommodated and he forfeited his right to appeal because he capitulated to the judge's threat to dismiss the case if he did not proceed with trial, despite his brain injury, and, he failed to prove *inadequate training* for his sole §1983 cause of action, though his §1983 action was actually based on the City's unconstitutional custom of a fraudulent Right to Hearing Notice, denial of a meaningful post-storage hearing and concurrent and retroactive ratification by City Officials and Policymakers' turning a blind eye.

REASONS FOR GRANTING THE PETITION

I. LEGAL DISCUSSION:

A. Introduction

How many officers, managers, supervisors and officials does it take to screw in a light bulb—or—a custom in place of a policy or a conscientious civil servant in place of an apathetic one? How many have to be involved before their actions constitute a custom?

At any time during the year following the rescission of the parking ticket, the tort claim, and the DMV protest, the City could have provided Petitioner a meaningful post-storage hearing.

The three issues at hand: wrongful seizure, ADA accommodation and §1983 actions fall under federal jurisdiction. This case has national significance; it pertains to and directly impacts the preservation of Constitutional law; it has precedential value; it is recurrent and will persist if not resolved; the blatant state disregard undermines the desired uniformity of federal law; the lower court's unjust rulings are otherwise definitive; the State Supreme Court's rejection of the matter, Appellate decisions and the trial court's actions blatantly conflict with controlling U.S. Supreme Court precedents; theirs are not merely errors in the application of state and federal law but an outlandish disregard of State Supreme, Federal District and U.S Supreme Court case and statutory law, especially considering the high incidence of trial and appellate courts' violations and state supreme court rejection of the three vital federal matters; the State Appellate and Supreme Court actions, decisions and rejections terminated this matter in California and makes it unlikely for the legal conflict to arise out of California and rise to this Court, again; and finally, this Court's resolution will control the outcome of the case.

This Court should grant this petition because all areas of the country must operate under the same law. The United States Supreme Court is The Protector of Promises. Our Civil Rights are a promise of civility, lawfulness and individual dignity that California finds insignificant and its rogue municipalities violate on a daily basis. Together, they call for correction.

Here, the City's 1 ½ year-long unconstitutional custom of wrongful seizure, denied post-storage hearing and auction of Petitioner's pick-up truck was a series of interrelated, interdepartmental, strata traversing actions/inactions constituting objectively obvious deliberate indifference. Yet, it was the California courts' eight year-long objectively obvious judicial indifference that telegraphed approval of the City's fraud and served as leaven for the rise of future municipal corruption and for these vital matters to rise to this Court's consideration.

B. The U.S. Supreme Court's Responsibility: Protection

"[Our courts] retain their traditional responsibility to guard against police misconduct which is over-bearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires.) *Terry v. Ohio*, 392 U.S. 1, 8-9 88 S.Ct. 1868, 1873 (1968), at 15

In 2019, in *Timbs v. Indiana*, No. 17-1091, 2019 WL 691578 (U.S. Feb. 20, 2019).) the Court unanimously held that the State may have violated the 8th Amendment's Excessive Fines Clause when it seized a man's vehicle because he had committed a drug crime. The Court recognized government-imposed fines must "not be so large as to deprive [an offender] of his livelihood," and that no one shall have a larger fine than their "circumstances or personal estate will bear." (*Timbs*, 2019 WL 691578 at *3-4.) (page 34, Towed Into Debt, https://wclp.org/wpcontent/uploads/2019/03/TpwoedIntoDebt.Report.pdf.)" [Emphasis added.]

In 2018, 1990 and 1983, the U.S. Supreme Court repeatedly recognized punishing a person for poverty—and punishing nonpayment when a person is *unable* to pay—violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. (*Bearden v. Georgia*, 461 U.S. 660, 668 (1983); *In re Humphrey*, 19 Cal. App. 5th 1006, 1026 (Ct. App. 2018); *Doe v. Angelina Cty.*, Texas, 733 F. Supp. 245, 25254 (E.D. Tex. 1990).) (page 35, Towed Into Debt.)

In 2008 and 1988, in the context of vehicle tows, courts have recognized that people have an important right in continued possession of their cars. *Clement v. City of Glendale*, 518 F.3d 1090, 1094 (9th Cir. 2008); *Scofeld v. City of Hillsborough*, 862 F.2d 759, 762 (9th Cir. 1988) ("The uninterrupted use of one's vehicle is a significant and substantial private interest. As we note ..., "[a] person's ability to make a living and his access to both the necessities and amenities of life may depend upon the availability of an automobile when needed.") [Emphasis added.]

In 2001 and 1993, the courts decided before towing a privately-owned vehicle, government agencies must either get a warrant, or meet one of the few exceptions to the requirement. (*United States v. Hawkins*, 249 F.3d 867, 872 (9th Cir. 2001) (*Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (Warrantless seizures are "per se unreasonable.").)

Wrongful seizure laws were already in place, and, the most recent ones must be retroactively applied, while his complaint is adjudicated. Even California knew better.

Effective January 1, 2019, the California legislature passed a law clarifying that "[a]ny removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence." (Cal. Veh. Code § 22650(b).)

In 2019, even the California Appellate Court realized, "[I]mposing these assessments upon indigent defendants without a determination that they have the present ability to pay violates due process under both the United States … and California Constitution. … [P]oor people must face collection efforts [that others do not] solely because of their financial status, an unfair and unnecessary burden that does not accomplish the goal of collecting money." *People v. Dueña*s, 30 Cal. App. 5th 1157, 1167,1168 (Ct. App. 2019) [Emphasis added.]

C. There Are Four Ways to Sue Under §1983: [1]

The first method is exemplified by *Monell v. Dep't of Social Services of the City of New York,* 436 U.S. 658 (1978) where the plaintiffs pointed to an *officially adopted, written regulation (policy)* of New York City that required pregnant employees to stop working at a given point in time.

[1] Blum, Karen, The Theory of Municipal Custom and Practice, April 2016, Toro Law Review, Vol. 16, No. 3, Article 8. https://digitalcommons.tourolaw.edu/cgi/

A second method of establishing municipal liability is through the attribution of *certain decisions or conduct by final policymakers*. In its *Pembaur/Praprotnik/Jett* line of cases, the Supreme Court held, "*a single decision or act by a final policymaker in that area* could be attributed to the local government entity for purposes of liability under Section 1983."

A third method of establishing municipal liability: demonstrating the *deliberate indifference* on the part of the municipality to *recurring* constitutional violations committed *by non-policymaking employees,* ***or,*** deliberate indifference to a very strong likelihood that constitutional rights will be violated as a result of failing to train, *supervise* ***or*** *discipline* in certain areas where the need for such training [supervising or discipline is obvious.

The fourth method of establishing municipal liability is based upon the "*custom or practice*" theory of liability. This involves a custom, practice or usage that is so widespread and so persistent that it has the force of law. [Emphasis added to the above citations.]

D. Vehicle Owners' Oppressed Perspective:

The meaning of the aforementioned words and any concept built upon them is not objective but a function of a subjective perspective. Government seizure of personal property yields a classic juxtaposition of dominant versus subordinate perspectives.

The dominant perspective—not to be confused with 'correct' perspective—is the one from looking down by the oppressor—the City confiscators backed by armed forces.

The subordinate perspective is the one from looking up by the oppressed—the citizen and owner of the unlawfully seized pick-up truck.

Britton v. Maloney 901 F. Supp. 444 (D. Mass. 1995) describes the difference between a formal policy and a custom. A "Policy," is established by the top-down affirmative decision-making of a policymaker, whereas a "Custom," develops from the bottom up. (*Id.* at 450.)

Consistent with the subordinate perspective, it is lower level, non-policymaking employees that engage in a certain custom or practice which becomes, "The way things are done—with the force or color of law." (*Id.*)

Merriam-Webster Dictionary defines, "Widespread," as, "Something that is distributed over a *large* area or *number of people*;" and is related to the synonyms: prevalent, pervasive and persistent. Persistent means, "Continuing to exist or endure over a *long period of time*." Here, "Area," refers to the City's bureaucratic structure and customs. The terms "Number," "Time," and "People," are not defined. Likewise, the intended perspective is left unprescribed.

E. Constitutional Intent Dictates Valid Perspective:

Perspective is a function of intent and establishes whether the concept of a widespread series of events is defined by the tortfeasor or the victim, clarifies if it relates to multiple victims or one; and if the "people," in question are the victims or perpetrators.

The Judge's and City's bias that their liability as per § 1983 must be established by a *history* of constitutional violations of *multiple* victims, separate owners of separate vehicles wrongfully towed at *separate* times, is culprit-centric and therefore flawed.

Whereas, from Petitioner's perspective as the victim, the requisite widespread custom involves multiple separate city employees and officials he actually encountered, engaging in a series of municipal actions over a long period of time against one person, Petitioner, the victim.

The Fourth, Fifth, Eighth and Fourteenth constitutional amendments and the American with Disabilities Act of 1990 were not written to protect the *violators* of the constitution and citizens' civil rights but to protect the *citizens* from an overreaching government. App-

The City's unconstitutional custom was not a singular event but a *pervasive series of coordinated actions* that transpired over *1 ½ years*, enacted by an array of *employees*—entry

staff to supervisors to managers to policymakers—the actual range of employees it takes to make a City function. A reasonable person would conclude from these facts that the illegal seizure, fraudulent post-storage notice and hearing and denial of a proper one was a widespread unconstitutional custom that culminated in June 2011 when Petitioner was too ill to fight anymore and the City auctioned his seized pick-up truck for their fraudulent financial gain.

F. § 1983 Argument:

1. Petitioner had a Constitutional Right to a *Meaningful* Post-Storage Hearing:

Municipal towing ordinance authorizing the assessment of towing fees and storage charges without notice and opportunity for hearing violates due process. *Remm v Landrieu*, 418 F. Supp. 542 (E.D. La. 1976)

The Court concluded that the ordinance deprived the owner of two property interests: (1) the access to and use of the vehicle; (Id. at 545) and (2) an interest in the fees collected before the vehicle is released. (*Id.*) Relying primarily on *Fuentes v Shevin*, 407 U.S. 67 (1972), it found the New Orleans City Towing Ordinance to violative of the Federal Constitution because it denied the owner of the impounded vehicle procedural due process. (418 F. Supp. At 548.)

Furthermore, the Court found that a temporary and non-final deprivation denies a person his possessory interest even if it appears that the result of a final hearing would deprive the person of permanent possession. (407 U.S. at 84-87.)

Regardless of the type of hearing granted, the opportunity for a hearing "granted at a meaningful time and in a meaningful manner," is essential to due process. *Biddie v. Connecticut*, 401 U.S. 371, 378 (1971). See *Armstrong v Manzo* 380 U.S. 545, 552 (1965). [Emphasis added.]

Here, Petitioner was deprived of the use of his vehicle, his interest in the fines, and temporarily and permanently, of his possessory right.

2. Municipal Policymakers' Single and Multiple Actions Delegated Authority:

In *Penbaur v. City of Cincinnati* 475 U.S. 469 (1986), a majority of the Court held that *a single decision* by an official with policy-making authority in a given area could constitute official policy and be attributed to the government itself under certain circumstances. The Court described the "appropriate circumstances," in which a policy maker's single decision may give rise to municipal liability. Justice William J. Brennan, Jr., writing for the plurality, concluded, "Whether an official possesses policy-making authority with respect to particular matters will be determined by state law. Policy-making authority may be bestowed by legislative enactment, *or it may be delegated* by an official possessing policy-making authority under state law."

Here, City officials *delegated* their authority when they *ignored* Petitioner's complaint that Officer Everett impromptu, 'Now or Never,' encounter was not legitimate post-storage hearings and instead subsequently ratified it and *delegated* the matter to their Financial Manager.

3. City's Custom and Practice was at Variance with Its Formal Policy:

Although mentioned in passing without elaboration, the Court's reference to "custom or usage having the force of law" is significant. In *Praprotnik*, Justice O'Connor's plurality opinion and Justice Brennan's concurring opinion recognized that municipal liability may be based on a practice that is at variance with a formally adopted announced policy. *Praprotnik*, 485 U.S. at 130-131 (plurality opinion), 145 n.7 (Brennan, J., concurring).

The existence of a custom or practice normally presents an issue of fact for the *jury*. (*Worsham v. City of Pasadena*, 881, F.2d 1336, 1344 (5th Cir. 1989) (Goldberg, J. Concurring in part and dissenting in part).

In *Mandel v. Doe* 888 F.2d 783, 793 (11th Cir. 1989), the Eleventh Circuit stated that "[t]he court should examine not only the relevant positive law, including ordinances, rules and

regulations, but also the relevant customs and practices having the force of law." (See also *Gros v. City of Grand Prarie*, 181 F.3d 613, 616 (5th Cir. 1999).) [Emphasis added.]

In *Monell v. Department of Social Services*, the Court recognized §1983 municipal liability may be based on a municipal "custom or usage" having the force of law, even though it has "Not received formal approval through the body's official decision-making channels." *Monell* encompasses other officials "whose acts or edicts" could constitute official policy (*Pembaur*, 475 U.S. at 480 (citing Monell, 436 U.S. at 694). Where a government's *authorized decision maker* adopts a particular course of action, the government may be responsible for that policy "whether that action is to be taken *only once* or to be taken repeatedly." (*Id.* At 481.)

In *Bd. Of County Comm'rs v. Brown*, 520 U.S. 397, 404 (1997), the Court acknowledged that "[a]n act performed pursuant to a 'custom' that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so wide-spread as to have the force of law." [Emphasis added.]

In *Sorlucco v. New York City Police Department*, 971 F.2d 864 (2d Cir. 1992), the Second Circuit concluded that "while discrimination by the Commissioner might be sufficient, it was not necessary." (*Id.* At 871.) Although the court did not elaborate, it apparently meant that although a final decision of a municipality policy maker provides a potential basis for imposing municipal liability, so does a widespread custom or practice, even if of subordinates. (*Id.*)

In *Gillette v. Delmore*, (9th Cir. 1992) 979 F.2d 1342, 1346-1347, the Court ruled liability may be based on the official's subsequent ratification of the acts or decision of another.

In *Gold v City of Miami*, 1998 WL 54803 (11th Cir. 1998) and *City of Canton v. Harris*, 489 U.S. 378 (1989); the Courts ruled a government entity is liable when the unconstitutional action was committed pursuant to its custom.

The City's liability is based upon a widespread custom that was at variance with its formally adopted policy. Its custom clearly had the force of law, even though it may not have received formal approval through the body's official decision-making channels. Police with guns carried it out. For 1 ½ years, Petitioner approached police officers, Officer Everett, Supervisor Sergeant Kohnlein and Internal Affairs (Captain), City Manager, Financial Manager, Supervisor of Impound, Supervisor of Parking Enforcement, City Attorney, Mayor and Council Members—policymakers as per the City Charter. Individually and collectively, the actions and inactions of this large group of employees and officials formed a pervasive custom.

Here, when City officials repeatedly declared the November 25, 2009, impromptu, 'Now or Never,' encounter between the Post-Storage Officer Everett and Petitioner fulfilled their duty, they subsequently ratified their custom of providing fraudulent post-storage notices and hearings.

4. The City Inadequately Trained or Supervised or Disciplined Staff

In *City of Canton v. Harris* 489 U.S. 378 (1989), the Court found §1983 municipal liability may be based upon inadequate training "where failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact," and indifference was the moving force of the violation of plaintiff's federally protected right. (*Id.* 388)

The plaintiff must show that "the need for more or different training was so obvious, and the inadequacy so likely to result in the violation of constitutional rights," as to amount to a municipal policy of indifference to citizens' constitutional rights. (*Id.*)

In *Farmer v. Brennan* 511 U.S. 825, 828-29 (1994) (*Id.* See supra Part IV.H.), the Court stressed the "objective obviousness" deliberate indifference standard for municipal liability for inadequate training differs from the standard for deliberate indifference in excessive force scenarios for which officials must be "subjectively" aware of the risk of "serious harm."

For 1 ½ years, City employees, police officers and supervisors and IA, City managers, mayor as well as Council Members and Police Captain—policy makers as per the City Charter—*delegated* authority and turned a blind eye. The City had a well-established *custom* of allowing Officer Everett to "Run the show." Police officers, supervising sergeant, Internal Affairs repeatedly stated Officer Everett's word was "Gold[en]," and the last word on the subject, demonstrating they condoned her training, failed to supervise her and failed to discipline her. Instead, they awarded her the Officer of the Year award.

Sergeant Kohnlein trained Officer Everett to believe, and apparently believed himself, that an impromptu encounter in the police lobby on the same day of the tow, *seven days prior to their own Right to Hearing Notice*, that was not meaningful in manner or timing, let alone commensurate with the unconstitutional seizure of Petitioner's $10,000 pick-up truck, fulfilled California Vehicle Code 22852 and would not violate his state and federal constitutional rights.

Sgt. Kohnlein, Internal Affairs and City Council confirmed they left her to her own discretion, unsupervised—Sgt Kohnlein was away during the seizure. The need for more or different training or supervision or discipline was so obvious, and the inadequacy of the City's oversight duties was so likely to result in constitutional violations, it amounted to a municipal policy of objective obviousness deliberate indifference to Petitioner's constitutional rights.

"Objective obviousness" deliberate indifference standard for municipal liability inadequate training-supervision-discipline applies to this set of facts. Key point: Supervising Sgt. Kohnlein had a separate duty to provide a post-storage hearing meaningful in manner and timing. Instead, he exercised blatant deliberate indifference and failed at his duty by denying Petitioner a meaningful post-storage hearing. *Both* the officer and sergeant's actions were unconstitutional.

For ten years, from the day of the tow to the end of appeal, the City—and trial and appellate courts—defended Officer Everett's unconstitutional actions and inadequate training when they continually argued/ruled her actions fulfilled their constitutional obligations. Yet, they ignored Sgt. Kohnlein's independent unconstitutional act of failing to provide a hearing, once Petitioner requested one in accordance with their issued Right to Hearing Notice.

Their multiple denials constituted multiple violations of Petitioner's right to due process.

The case law establishes it is not just about 'training,' but *supervising or disciplining*, as well. These three phases are a function of time: training *before* a police officer assumes a post; supervising *while* the officer maintains her post; disciplining *after* an infraction is discovered.

Yet, who trains, supervises and disciplines the officer, managers, supervising sergeant, Internal Affairs and City Council Members after they refuse to investigate and turn a blind eye?

5. The City's Actions Shock the Conscience:

County of Sacramento v. Lewis 523 U.S. 833 (1998) divided executive actions into two categories. When the executive official had time to deliberate, but was nevertheless deliberately indifferent, the deliberate indifference *shocks the conscience and violates substantive due process*. Petitioner stated a substantive due process claim. Here, the City police officers, supervisors, managers, mayor and council members acted with purpose, unrelated to a legitimate law enforcement interest, had time to reflect but instead turned multiple blind eyes.

The Court has applied a "professional judgment" standard to certain substantive due process claims and articulated this standard in *Younberg v. Romeo* 457 U.S. 307 (1982), (involuntary commitment) holding state officials are liable if their decisions were "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate the persons responsible did not base the decision on such judgment." (*Id.* At 323)

G. Trial Court Wrongfully Excluded Probative Evidence:

1. First Exclusion of Probative Evidence:

The evidence Petitioner initially submitted to the court, twenty-five exhibits, was returned to him upon the fourth transfer of the case from Los Angeles back to Long Beach.

2. Second Exclusion of Probative Evidence—Eight Months Later:

The Long Beach judge excluded (1) twenty-four of the twenty-five exhibits; (2) prohibited (a) any reference to the excluded 24 exhibits; (b) the rescinded parking citation; and, (c) any testimony about any remark/statement by any City actor.

Oddly, the judge allowed the City Attorney to ask questions he knew Petitioner was prohibited from answering, and, to describe the parking citation hearing in a false manner.

The City Attorney asked Petitioner why he requested a post-storage hearing *only once*? Of course, he repeatedly requested a hearing throughout the City's bureaucracy but he was prohibited by the judge from citing the evidence and facts to the contrary. He also falsely asserted Petitioner had received two post-storage hearings. He cited the same-day-as-the-tow encounter with Post-Storage Officer Everett, (November 2009), and, a "second post-storage" hearing for the parking ticket, (April 2010). He thereby misled the jury while Petitioner was forbidden from presenting the facts, which led to a malformed, agonizing, biased trial.

3. Consequence of Exclusion of Evidence—Case Dispositive:

The judge prohibited Petitioner from testifying to both Officer Everett's and Sgt. Kohnlein's refusals to schedule a hearing—he falsely asserted it was hearsay.

In fact, the prohibited testimony about opposing City employees' remarks made to Petitioner was probative evidence of an opposing party's admission/statements. (California Evidence Code section 403, 1220.) First, Officer Everett refused to schedule a hearing and no

hearing was scheduled. Second, and independently, Sgt. Kohnlein subsequently failed to schedule one. This testimony and facts were essential elements of liability.

Non-suit based on a motion in limine, last-minute trial exclusion of evidence and blanket mischaracterization of testimony as hearsay was abuse of discretion and case dispositive. The process and orders did not comply with law and justice, violating Cal. Code Civ. Proc. § 128(a).

4. Admission of Only One Piece of Probative Evidence:

At the trial, Petitioner was allowed to present the Right to Hearing Notice to demonstrate: (1) The City mailed the notice two days late on December 2nd, instead of November 30, 2009; (2) It provided ten days from its date to request a post-storage hearing, December 12, 2009; (3) It directed Petitioner to a Post-Storage Hearing Room that did not exist.

Ironically, the City Attorney acknowledged Petitioner asked Sgt. Kohnlein for a post-storage hearing. When combined with the submitted singular piece of evidence, the jury had sufficient evidence to reasonably find the City liable, *if* it had the opportunity.

H. Conflict Between Judge and Jury—10 out of 12 Jurors Wanted to Vote:

1. The Judge Identifies the Policymakers but the Jury Decides if the City Deprived Petitioner of His Constitutional Rights:

In *City of St. Louis v. Praprtonik*, 485 U.S. 112 (1988), the Court again attempted to deterimin[e] when isolated decisions by municipal officials *or employees* may expose the municipality itself to liability under [section] 1983. (Id, at 114) Justice O'Connor, writing for a plurality, reinforced the principle articulated in *Pembaur* that state law will be used to determine policy-making status. (*Praprotnik*, 485 U.S. at 124) Furthermore, identifying a policy-making official is a question of law for the court to decide by reference to state law, not one of fact to be submitted to a jury. (*Id.*) [Emphasis added.]

In *Jett v. Dallas Independent School District*, 491 U.S. 701 (1989) the Court stated,

> "As with other questions of state law relevant to the application of federal law, the identification of those officials whose decisions represent the official policy of the local government unit is itself a legal question to be resolved by the trial judge before the case is submitted to the jury. Reviewing the relevant legal materials, including state and local positive law, as well as "'custom or usage' having force of law" ..., the trial judge must identify those officials of government bodies who speak with final policy-making authority for the local government actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue. Once those officials who have the power to make official policy on a particular issue have been identified, it is for the *jury to determine* whether their decisions have caused the deprivation of rights." (638) [Emphasis added.]

2. Potential Tension Between Court Holdings:

There is then the potential tension in *Jett* between the Court's holding that the identification of final policymakers is a question of law for the court, and its statement that the *jury* should determine whether city decisions caused the deprivation of rights, including a "'custom or usage' having the force of law."

Due to judicial prejudice against "custom and usage," the third and fourth §1983 legal theories, judge and justices failed to identify the unconstitutional post-storage notices; non-existent/meaningless hearing; the 'off-book' custom that usurped written policy; the policy makers; the officials' delegation of their authority and turning a blind eye.

The judge failed to advance the matter to the jury and the justices failed to review his errors. Thus, petitioner was denied due process despite the law that states the existence of a custom or practice normally presents an issue of fact for the jury. Judge and justices precluded it because their deliberate indifference to §1983 custom-liability was too strong to overcome.

After the non-suit dismissal, ten of twelve jurors approached Plaintiff and stated they not only wanted to vote but concluded the City was wrong and intended to vote in his favor.

II. National Importance—Unconstitutional Towing Across the Country:

A. Municipality Predatory & Discriminatory Towing Practices in Los Angeles:

Originally, out here in the wild, wild west, a person's life depended upon his horse. A century later, the car is no less critical in this golden land of promise now crisscrossed by highways. A person's employment, safety and well-being (health) remains dependent upon his/her vehicle. Now, with the rise in homelessness, people's lives literally depend upon their vehicle as they may be living in them. Several times, Petitioner, a person with disabilities receiving an inordinate number of surgeries due to the iatrogenic injury of Gadolinium Toxicity, has been homeless and suffered because the City of Long Beach stole his pick-up truck. Its camper-shelled cargo bed could have housed him safely at the time of his dire post-surgical needs. Instead, after spine and brain surgeries, he slept in parks and construction sites.

In, "Towed into Debt," [2] the authors analyze the crisis municipalities are inflicting upon the poor residents of this rich state—a disproportionate financial burned upon the poor.

> "In just one month in Los Angeles alone, government agencies towed 9,400 vehicles and sold 2,500 towed vehicles. In 2016, the City of San Francisco ordered more than 42,000 tows and sold more than 5,300 vehicles at lien sales. Analysts estimate that public agencies in California towed nearly one million vehicles in 2016."

The day before Thanksgiving, Long Beach Public Works crew were trimming trees on Orizaba Street and wanted to set a dumpster on the opposite side of the street where Petitioner's truck was parked. So, the City towed his truck away and he could not afford to pay the extortion.

> "The most minor reasons for tow are some of the most common, and have the most devastating results. Statewide, over one-fourth of tows are conducted just because the owner had unpaid parking tickets, lapsed registration, or parked in one place for 72 hours. Vehicles towed for these reasons are 2-6 times more likely to be sold at lien sale than the average towed car."

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[2] https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf.

One and a half years later, Petitioner's clean-titled, well maintained, registered, ticketless pick-up truck that he parked lawfully the night before on November 24, 2009 was auctioned to pay a concocted bill of storage and fees of $6,000 that accumulated before the City fraudulently auctioned Petitioner's $10,000 truck for about $5,000, in June of 2011.

> "In San Francisco, 50% of vehicles towed for unpaid tickets and 57% of vehicles towed for lapsed registration were sold by the tow company, while only 9% of all vehicles towed were sold. ... Getting a car back after a tow is expensive. As a result of all the add-on and administrative fees, the average price people must pay after a debt-collection tow is over $1,100."
>
> "Tow fees are often unfair. Daily storage rates at California tow lots are at least twice as expensive as the daily rates at parking garages in the same part of town, and in some cases, up to twelve times higher than market rates." (Page 4, Towed into Debt.)
>
> "Middle class and low-income vehicle owners suffer devastating economic consequences when their cars are towed and impounded. ...According to a recent federal report, 46% of American adults lack the savings necessary to cover an unanticipated expense of $400 or more. [3]
>
> "An unexpected impound can be one of the most unanticipated expenses. Thus, for many vehicle owners, a single impound may put their car out of reach for good. They will not be able to pay to retrieve their car from the tow lot, and their car will be sold." (Pg. 7, Towed into Debt.)

B. Lawsuit Aims to Stop Cities from Towing Their Homes

Published September 3, 2018, "With Thousands of People Living in their Vehicles, a Lawsuit Aims to Stop Cities from Towing their Homes," [4] David Gorn, tells the crisis Sean Kayode experienced, "Watched his whole world roll away from him at 3 in the morning," and why he filed a law suit: It was not only his home but how he earned a living delivering food.

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[3] Board of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2017*, at 21 (2018), *available at* https://www.federalreserve.gov/publications/fles/2017-report-economic-well-beingus-households-201805.pdf.

[4] https://calmatters.org/housing/2018/09/lawsuit-homeless-vehicle-tow-california-impound/

In October 2018, the Federal Court ordered the City of San Francisco to return Mr. Kayode's car because the tow raised serious questions under the Fourth Amendment.

> "In 2018, the East Bay Express reported on the towing crisis in Oakland and reviewed the towing details of over 26,000 tows. They mapped the data and found that the Oakland Police Department towed vehicles more often from neighborhoods in East Oakland, which are predominantly Latinx and Black communities, than anywhere else in its jurisdiction." [5]

> "Wages of a Hispanic household with car access is almost 50% higher than those of a household without a car, and if African-American car ownership rates were equivalent to white household ownership rates, the disparity in racial employment rates would decrease by forty-three percent. But the state's current towing practices that strip low-income people of their vehicles take away even this opportunity for economic advancement and increased racial equality"

C. Impounds Burden Poor Long Beach Residents

December 3, 2012, Patrick Moreno published his essay, "Impound[s] Burden Poor Long Beach Residents." He shared the story of downtown Long Beach resident Samira Mingos who had trouble taking her kids to school after her car was impounded.

She explained, "People in Long Beach are already in a tough financial situation, and they don't really give you any options." Mingos' vehicle was towed less than 24 hours after it broke down near her home, as it was only partially registered. [6] In addition to the average towing fee of $150, Long Beach charges $50 per day. Mingos paid $546, and then paid for car repairs.

She shared, "It's Christmas time, and they don't even give people a break, you have to pay all of it at once, and they add more every day."

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[5] (Josh Slowiczek, *The East Bay's Tow Hustle*, East Bay Express, Nov. 14, 2018, https://www.eastbayexpress.com/oakland/the-east-bays-tow-hustle/Content?oid=22699510.)

[6] https://voicewaves.org/2012/12/impounds-burden-poor-long-beach-residents/

By the time Petitioner could visit the impound yard, the City demanded about $576. The City of Long Beach has 12 tow trucks and 25 people in their towing division. They run a you-tube channel advertising their lien sales. [7] In 2009, they towed 53,000 vehicles and grossed about $5,000,000. October 20, 2009, the City's Impound Yard was found guilty of financial improprieties. [8] [9] [10] A month later, they wrongfully towed Petitioner's pick-up truck and denied him a proper post-storage hearing. The City of Long Beach has been exercising its unconstitutional custom of wrongful seizures and post-storage fraudulent notices and hearings for so long, it has come to believe the *old wrong is the new right.*

D. Analysis of Post-Storage Hearings:

1. California:

"Towed Into Debt," presents a scathing report of the futility many victims face when seeking a post-storage hearing subsequent to the seizure of their vehicle—it matches Petitioner's constitutional violations. In, "The Due Process Clause of the Fourteenth Amendment Requires … Opportunity to Contest the Tow," and, "Tow Hearings Don't Work," the authors present:

> "Although local governments do permit an owner to request a "tow hearing" after the tow has already occurred, those hearings are essentially shams. … In addition, hearing officers do not make an independent determination of the necessity of towing a particular vehicle; instead, hearing officers consider simply whether the tow was authorized by statute." (page 33-34)

Something is very wrong with California's municipalities when "justice" is towed out from under its citizens and the law is the tow chain and the tow truck is the City.

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[7] https://www.youtube.com/watch?v=AoZ5RR7pNj8
[8] Dave Wielenga, All Our Trucks in a Tow, District Weekly, 01/27/2010
[9] City of Long Beach Towing Operations, Cash Handling Oct 20, 2009 https://algaonline.org/DocumentCenter/View/404
[10] http://www.tlimagazine.com/sections/fleet-management/2378-city-of-long-beach

2. Chicago, Illinois

Chicago's WBEZ [11] reported, in Chicago's main Sacramento Lot (one of six impound lots),

"One out of every four cars will never make it back to its owner. Chicago sold nearly all of them to a private company, some for as little as $143."

"This expansive system is also founded on questionable public policies and executed by private towing contractors long-tainted by scandals. More troubling, the financial sustainability of Chicago's towing relies largely on squeezing huge sums of money from communities that have the least ability to pay.

"In 2017, the city towed and impounded nearly 93,857 vehicles. It sold just under 24,000 of them—an average of 66 cars a day—each for less than $200.

"Chicago improperly towed a wheelchair lift van belonging to a woman with multiple sclerosis. The city sold the van, valued at $15,000, to URT [United Road Towing, the private company] for $15. It was crushed."

"Hazards and abandoned cars accounted for about one-third of impounded vehicles, but the majority of tows (and many of the eventual sell-offs) are associated with practices that are in themselves suspect or problematic."

"The city sells thousands of vehicles belonging to sofflaws—drivers who owe money to the city for tickets. None of the proceeds go toward paying off the debt the vehicle's owner accrued during ticketing, booting and towing.

"Chicago sold more than 8,000 cars from scofflaws in 2017. For context, that's an average of about 22 cars a day. Advocates say this practice deprives low-income residents of transportation and access to jobs.

"Taking away people's transportation is a job-killer," said Eric Halvorson, a policy and communications associate for the Chicago Jobs Council, a nonprofit employment advocacy group.

"Chicago has a program [the Vehicle Impound Program (VIP)] to automatically impound vehicles used in the commission of some crimes, including possession or use of illegal fireworks, solicitation, possession of drugs, driving under the influence, driving on a suspended license, or even littering or playing loud music. Often, these drivers are never charged with a crime, but can still be stuck with thousands of dollars in fines and towing and storage fees."

"The police department initiated more than 22,000 VIP tows in 2017. The vast majority involve police stopping drivers for suspended licenses. Many of these suspensions are likely from ticket debt. The fees are so high that many lose their cars to the VIP. Of the VIP cars towed in 2017, the city eventually sold 8,295. Suspended licenses were involved in 6,293 of these sales."

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[11] (https://www.chicago.gov/city/en/depts/streets/provdrs/traffic/svcs/auto_pound_locations.html)

"One problem with the VIP is that it hits Chicago's West and South Sides particularly hard. Trust between residents and the police enforcing these ordinances has broken down—the addition or lingering costs to infractions that are ultimately not prosecuted in court doesn't help."

"Sam Gedge, an attorney for the Institute for Justice, helped litigate *Tyson v. Timbs*, the U.S. Supreme Court case that declared a low-level drug offense in Indiana violated the Eighth Amendment's prohibition against excessive fines."

"Economic sanctions like fines and forfeitures has this built-in incentive whereby the government has this kind of hydraulic pressure to take property, take money and not necessarily to do justice, but rather to bolster their own budgets," Gedge said. [Emphasis added.]

"Fines and fees for VIP tows keep mounting; in 2017 they stood at more than $28.4 million. As of today, VIP debt is larger than what residents owe for building code violations or unpaid water bills. Many VIP have accrued storage fees in excess of $10,000, and some as high as $30,000 - $40,000—in addition to thousands in interest and collection fees."

"Jacie Zolna, a lawyer for Myron M. Cherry & Associates, is responsible for lawsuits on excessive fines for city stickers and license plates. His suit on tickets for red-light cameras forced the city into a $38.5 million settlement in 2017. He calls red-light cameras and tickets the city's golden goose."

"It will stop at nothing to collect that money even from our most vulnerable citizens and even when it actions by any objective measure are morally reprehensible," he said.

"Somewhere along the way, the City lost its soul."

3. Salem, Virginia:

In 2017, in Salem, Virginia, a couple sued the City over a car that was wrongfully impounded and then sold. (https://www.roanoake.com/news/local/casey-salem-couple-sues-over-that-was-impounded-then/article_59f2403c-3cba-5010-9146-726c17512ce.html)

The "woman who lost her car in part [due] to a glitch in the Department of Motor Vehicles computer is challenging a Virginia law that allowed a towing company to auction off the car before the charges against her were dropped."

"The end result is, the traffic charges get dropped and you're continuing payments on a car you no longer own—because you don't want to compound this legal travesty by ruing your credit."

""The story here is, can a person who is completely innocent have their car impounded and then sold out from under them before having a hearing in court?" Roanoke attorney Matt Broughton said. "This is an amazingly ridiculous statute. It really hurts people of modest means.""

4. New York City, New York:

An account of an unlawful tow in New York City, in January 2019, is eerily similar to Petitioner's experience (https://jalopnik.com/new-york-woman-gets-car-towed-after-no-parking-sign-is-1831641805):

> "A woman who lives in Queens, [New York,] told local news outlets she came home one night last week and parked where she has for a decade, only to see her car hauled off by a New York City Police Department tow truck in the morning—along with a new "no parking" sign that had been installed about two hours before the tow."
>
> "She also has $300 in fines to deal with, since her parking spot was legal when she left the car there and illegal a few hours later."
>
> "Nicole Laveglia told CBS New York she parked in her usual spot when she got home from the gym at around 8:30 p.m. locally on Jan. 2, and that a neighbor was knocking on her door by 9 a.m. the next day. That's when she saw her car going down the block behind a tow truck, and two new "No Standing Anytime" signs that had just been installed by the city's Department of Transportation."
>
> "No Standing" signs in NYC means the only time you can really stop a car in the area is to load or unload passengers, and the passengers better be ready to go—there's no waiting. There's definitely no parking, either, like Laveglia's car was."
>
> "Laveglia got a $185 towing fee and a $115 ticket, according to CBS New York, and the story said the signs were gone a few days after.
>
> "From CBS New York: It's a headache, it's a hassle," she said. "I just feel like I was robbed."
>
> "The signs were removed from a nearby corner by workers who dug them right out of the ground just a few days later.
>
> "They just said that it was a mistake," Laveglia said.
>
> "Surveillance footage with timestamps shows the installation at 9 a.m. and the tow at 10:44 a.m. on Jan. 3, and the local Spectrum News branch reported that time stamps were off by an hour."

Wrongful seizure of vehicles is a national epidemic that is visited upon the poor and vulnerable, disproportionately. The imposed fines and penalties are not only disproportionate to the alleged offense but excessive when considered in relation to the owner's abilities to pay, and, when combined with the loss of use of the vehicle, they inflict profound injury upon the person. In petitioner's case, it prevented him from reaching medical care for his exacerbated disabilities.

III. The Judge Denied Petitioner's Three ADA Requests for Accommodation:

A. Petitioner's First ADA Request for Accommodation, Written:

1. Trial Court:

Early January 2015, Petitioner visited the Court's ADA Coordinator and clerks and requested their assistance to make an ADA Request for Accommodation to stay all matters while he received and recovered from spine surgeries. He explained his attorney did not want to accommodate his disabilities and instead wanted to withdraw, and therefore refused to make the ADA request. [12] No law prevented him from making an ADA request directly and it must be confidential. They instructed him to write a letter to the judge and presiding Judge and explain his conflict with his lawyer to explain why *he* was making the ADA request.

January 6, 2015, Petitioner submitted his confidential ADA request. The staff reviewed it, stamped it "received," and assured him they would present it to the judges. *A-10.*

January 9, 2015, the Judge explained in open court that he sealed it *without* reading it and pathologized Petitioner and claimed, "He tried this before." Yet, he invited Petitioner to speak. Petitioner described himself as disabled and requested full accommodation. He offered the medical letter but the judge refused it, again in violation of Petitioner's ADA rights. *A-11.*

2. Appellate Court:

The Justices stated they unsealed and read the written January 2015 ADA request for accommodation. They stated it was flawed and claimed Petitioner did *not* go through the ADA Coordinator. Yet, since 2015, dozens of his ADA requests have been stamped "Received," by court clerks; only once has he submitted one to the ADA coordinator, via email. The Justices

[12] December 2014, the lawyer tried to withdraw but the Judge invited Petitioner to write an objection. When he reviewed it and learned Petitioner was a person with disabilities and faced complex spine surgeries, he denied the lawyer's withdraw.

statement was patently false. The ADA coordinators should have informed him about *any* error in form and assisted to correct it. *ADA Coordinators exist to assist not eliminate persons with disabilities requesting assistance; likewise with judges*.

As recently as May 2019, the LASC Lead ADA Coordinator, Mr. George Ellis, acknowledged that in 2015, poorly trained ADA coordinators were instructing applicants to make Ex Parte ADA Requests. They have since ceased all such flawed instructions.

The Justices *ignored* the law: The judge was obligated to read any ADA request submitted to the court *at the time of receipt*. If it was flawed, *he* must make that ruling—in writing—at the time of its submission—*not the Justices, four years later*. (CRC rule 1.100.) It was the judicial refusal to read it that violated Petitioner's state and federal ADA rights. No post-facto appellate criticism can assuage the judge's failure to simply read Petitioner's ADA plea.

B. Petitioner's Second ADA Request for Accommodation, Orally Presented:

1. Trial Court:

a. An Oral Request at the Same January 2015 Hearing

January 9, 2015, at the judge's invitation, Petitioner spoke at the podium and objected to the judge's disregard of the written ADA request. He then made an *Oral* ADA Request for Accommodation and offered the medical letter but the judge failed to accept it. Without *any* explanation, Judge Klein acknowledged Petitioner's request but grossly mischaracterized it as, "Medical Issues," and granted only partial accommodation —33%—and—struck four months of the prescribed six-month recovery—67% and **set trial for April 13, 2015**. He cited his decision in his minute order, but without any explanation for the unwarranted reduction, in violation of CRC rule 1.100 which clearly states, if the accommodation is denied in part, the response must be in writing and include the reason. *A-12*.

He abused his discretion and failed to identify it as an ADA Request and refused the medical letter. Once Petitioner declared himself a person with disabilities in December 2014 and during the present hearing, the judge was obligated to accommodate him as per state and federal ADA laws. Instead, he discriminated against him and denied him full-equal-fair judicial services.

b. The Discriminatory March & April 2015 Hearings:

On March 18, 2015—22 days after Petitioner's two spine surgeries—Judge Klein held a hearing knowing Petitioner was unable to attend. He was recovering and receiving treatment for post-surgical complications in San Francisco. Contrary to his original denial of the attorney's request to withdraw in December 2014, in March 2015, while Petitioner was absent due to his exacerbated disabilities, Judge Klein continued the trial to mid-August—based upon false information from the hostile lawyer—to facilitate his withdrawal. *A-14.*

April 23, 2015, the court invented a justification for the withdraw that Petitioner, "has been unwilling to cooperate with Counsel Newkirk." It is utterly impossible for a person with disabilities, recovering three hundred miles away from spine surgeries and post-op complications of speech impairment and cranial infection, to *willfully* not cooperate with anyone. His was the consummate example of discrimination: Utter denial of the nature of being a person with disabilities receiving surgeries and deliberate indifference toward lawful accommodation. *A-14.*

c. The Court Set Petitioner at a Severe Legal Disadvantage:

By April 2015, Judge Klein violated Petitioner's ADA rights and compromised his legal standing three times: An unjust denial, unjust partial accommodation (33%) without explanation and unjust hearings without Petitioner's participation, when legal abandonment was at issue. He set Petitioner at a disadvantage that would continue to unfold up to and throughout the August 2015 trial—scheduled about a week before his prescribed recovery would be complete.

d. Petitioner Could Not Find New Counsel Until It Was Too Late:

Petitioner did learn about the withdrawal until months later. While incapacitated, he was disadvantaged and could not search for new counsel, let alone prepare for trial on his own.

August 4, 2015, two weeks before the trial, Petitioner found attorney Mr. Cliff Schneider by an internet search and called him. Mr. Schneider visited him, retrieved the case file, accepted, and kindly agreed to request a stay, and if denied, to preserve his client's right to an appeal.

2. Appellate Court

Petitioner's second, oral ADA request was authorized by CRC rule 1.100. Appellants are entitled to submit all trial court evidence accepted or denied by the trial court to the Court of Appeal. When it comes to ADA matters, medical letters were evidence wrongfully excluded by the trial court judge.

Petitioner submitted the refused January 2015 UCSF medical letter to the appellate court. The Justices failed to note the partial accommodation—two months instead of six; the judge's indifference to the spine surgeon; and, the judge's scheduling of trial *before* Petitioner's full recovery, in violation of CRC, rule 1.100 and the federal ADA.

The Justices failed to acknowledge the oral ADA request, which the judge confirmed in his minute orders. He abused his discretion, refused to identify it as an ADA request and granted only partial accommodation, without any written explanation. Two key points:

First, four other judges at Los Angeles Superior Court granted the same contemporaneous ADA request for accommodation, Case #BC471655, #BC574947, presented in the same manner. Petitioner declared himself a person with disabilities requesting ADA accommodation in five Courts. Only Judge Klein refused to acknowledge his ADA rights and denied him. Second, any suggestion that Petitioner was not vocal about his protected status in *all* courts is patently false.

C. Petitioner's Third ADA Requests for Accommodation

1. Trial Court:

August 14, 2015, at the Final Status Conference, Mr. Schneider requested a stay of the trial due to Petitioner's post-surgical complications. Petitioner suffered a severe cranial infection that destroyed the surgically installed neurostimulator protheses and attacked his cranial nerves.

Plaintiff could not attend the FSC. He was in San Diego. The University of California's neurosurgeon who performed his previous brain surgeries treated his cranial infection.

2. Appellate Court:

The Justices ignored the third ADA request that the last-minute lawyer Mr. Cliff Schneider made at the FSC on his client's behalf in accordance with the CRC, rule 1.100. *In re Marriage of James M and Christine J.C.* (2008) 158 Cal.App.4th 1261, clearly establishes the right to make a same-day ADA request, let alone five days prior to the trial. The judge failed to provide a court reporter for the critical FSC but defensively set up his end play and provided one for the trial that was already set asunder by his pre-trial discriminatory decisions. *A-28.*

Attorney Schneider signed an affidavit testifying to his request to stay the trial. Petitioner submitted it as an augmentation to the record on appeal. Though crucial to the furtherance of justice for a person with exacerbated disabilities forced to go to trial, the Justices refused it. They then failed to acknowledge the denied third ADA request, let alone discuss it as the structural error it represented that called for the case to be remanded upon appeal. At the very least, the Justices could have believed Petitioner's testimony. Instead, they falsely claimed he forfeited his ADA rights when he capitulated to the judge's coercion—he threatened to dismiss the case if Petitioner did not proceed with trial! Yet, no individual forfeits his right to appeal a violation of his civil rights by complying with an unreasonable demand—it is an act of respect for the law.

The Justices ignored the judicial deliberate indifference and the fatal impact of the judicial discrimination. Instead, they oddly blamed Petitioner for the courts' failures to properly train their ADA Coordinators. Also, their claim that ADA requests must go through ADA coordinators is patently false. To this very day, the LASC protocol directs applicants to submit their requests to the Administrative Office and/or to the trial judge's department clerk; Petitioner has executed this exact procedure twenty times without controversy or adverse repercussions.

D. Predictable Results of the January-April-August Judicial ADA Errors:

January through April, Judge Klein placed Petitioner, a person with disabilities surviving complex spine surgeries and post-opt speech impairment and cranial infection, in a legally compromised state—a judicial equivalence to his neurological injuries. He forced Petitioner to testify at trial but Petitioner could not understand the proceeding, could not comprehend questions and could not adequately express himself, which did not serve justice but served the City's agenda to dismiss the complaint. Yet, even CRC rule 3.1332(c)(2) clearly states good cause for continuance of trial is the unavailability of a party because of illness.

The trial was a charade conducted to cast the appearance of justice when in truth, disability-based exclusion and violation of due process was the judicial custom. California's judicial exclusion is injurious not only to Petitioner but the entire nation who has labored to build a body of laws that establish full inclusion and equal rights. Early September through December, Petitioner received six surgeries to address his cranial infection and destroyed neurostimulator.

The Court's actions also violated the ADA, 42 U.S.C §12101, §12131 - §12134, C.F.R. §35.130, §35.160, §35.164, and, California's CRC rule 1.100, Cal. Gov. Code § 11135.

IV. Conflict Between California Case Law, California Rules of Court and Federal ADA:

Appellate case law, *In re Marriage of James M and Christine J.C.* (2008) conflicts with CRC rule 1.100. The former clearly states an ADA request for accommodation can be made on the same day of the start of the needed accommodation, even during trial. Whereas the latter contradictorily asserts a pronounced discriminatory limitation on the form and timing of the request. CRC rule 1.100 asserts an ADA request must be made at least five days prior to the start of the accommodation. This conflict in law has led to conflict with the Courts, judicial animosity, inconsistent rulings and discrimination against Petitioner. Here, this unresolved conflict had an adverse impact upon Petitioner's need for ADA accommodation as it provided a false justification for the judge's discriminatory denial to stay the trial.

V. Rampant Judicial Disability-Based Discrimination

Petitioner, just *one* person with disabilities, was engaged in seven complaints and seven subsequent appeals where he suffered more than twenty violations of his ADA rights. This is a dreadful pattern of judicial disability-based discrimination and unconstitutional exclusion of a person with disabilities because administrators, clerks, judges, presiding judge, court attorneys and justices implement and interpret the ADA laws and court rules in disparate and discriminatory manner—actually using the ADA rules against persons with disabilities.

When Petitioner repeatedly made the courts aware of his disabilities, they had a duty to accommodate him but they failed or refused and thereby excluded him from full-equal-fair judicial services. These events are evidence of a judicial custom of disability-based discrimination. If one person with disabilities can encounter such a preponderance of violations, it is reasonable to extrapolate: Disability-based discrimination is rampant in California courts.

VI. Judicial Council Propagates Instructions that Conflict with the ADA:

October 1, 2019, Mr. Thomas F. Coleman, the legal director of Spectrum Institute, a nonprofit organization advocating for seniors and people with developmental disabilities, published his "Perspective," in the Los Angeles Daily Journal. He stated,

> "The judicial branch of California still does not understand [the ADA] and as a result courts throughout the state are not implementing it properly. ... Actions of this rulemaking body are violating Title II of the ADA—provisions that apply to state and local courts."
>
> "Judicial council has been misinforming the judiciary about the requirements of the ADA since the time it adopted Rule 1.100 (formerly Rule 989.3) in 1996. It is time for the chief justice of California and other members of the judicial council to acknowledge this problem and take corrective action."
>
> "Essentially, the error rests on its insertion of a premise into the ADA that does not exist. The Judicial Council believes that unless a request for an accommodation is made by a litigant or witness or other user of court services, that judges and court staff have no obligation under the ADA. That is a false premise."
>
> "Reports, brochures and other materials on the website of the judicial branch *all* give the impression that courts have ADA *obligations only when requests for accommodations are made.* In fact, one brochure comes right out and states, "If no request for accommodation is made, courts need not provide one. You can't get more explicit than that." [Emphasis added.]
>
> "[This] misunderstanding of the ADA permeates everything that CJER has produced on the topic."
>
> "The statutory language of the ADA says nothing about requests for accommodation. Regulations adopted by the Department of Justice to implement Title II also do not mention the need for a request. Numerous federal court decisions have clarified that a request is not required in order for service providers to have a duty to provide an accommodation."
>
> "To reiterate, statutory provisions, DOJ regulations and a long line of federal precedents all send the same message to state and local courts: requests are not required.
>
> "Rather, federal law tells courts they have a duty to provide an accommodation, even without a request, when they know that a litigant has a disability that interferes with effective communication of meaningful participation in a court proceeding. It is the knowledge of such a condition, not a request, that triggers ADA duties.
>
> "State and federal law could not be clearer. Any programs or activities that are funded by the state shall meet the protections and prohibitions of Title II of the ADA and federal rules and regulations implementing the ADA. (Government Code Section 11135.) The Judicial Council, appellate Courts and superior courts are funded by the state."

"A public entity must offer accommodations for known physical or mental limitations. (See Title II Technical Assistance Manual of DOJ.) Even without a request, an entity has an obligation to provide an accommodation when it knows or reasonably should know that a person has a disability and needs modification. See DOJ Guidance memo to Criminal Justice Agencies (January 2017)."

"A public entity's duty to look into and provide accommodations may be triggered when the need for accommodation is obvious. *Updike v Multnomah County*, 930 F.3d 939 (9th Cir. 2017.)

"It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty, not a request. *Pierce v. District of Columbia*, 128 F.Supp.3d 250 (D.D.C. 2015)"

The import of the ADA is that a covered entity should provide an accommodation for known disabilities. ... To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protection of the ADA. *Brady v. Walmart*, 531 F.3d 127 (2d. Cir 2008)."

"Despite this knowledge, judges and court staff are not conducting an assessment of what those accommodations should be. Instead, relying on erroneous advice from the Judicial Council, they do nothing."

California's Judicial Council's actions, including its publishing and the material they publish, their court forms and their instructions to California judges and justices, conflict with the ADA, 42 U.S.C §12101, §12131 - §12134, C.F.R. §35.130, §35.160, §35.164, and, California's CRC rule 1.100, Cal. Gov. Code § 11135. Nor are they complying with Cal. Const., Art. I §VI(6)(d) and CRC rules 1.3, 3.1332 and 10.1. Their rules are inconsistent with state and federal statutes, Code of Federal Regulations and the ADA.

VII. Judicial Inclusion and Access to Full-Equal-Fair Judicial Services is Mandatory:

There now exists a gaping hole in law so big municipalities can drive a tow truck through it, medical centers can throw-out the disabled, judges and justices can exclude the disabled, district attorneys can set-up the innocent, police can swing batons and fire lead through it until someone lies dead, but as the whirling lights and muzzle flash light-up this dark world, they reveal a deep judicial pit, and at its bottom, a rising tide of victims. [13]

[13] See *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988), Justice Brennan.

As California slides into this steep Orwellian sink-hole, the 30-year-young American with Disabilities Act will fall victim to its filicide without this Court's help. When Petitioner had the temerity to survive and pursue justice, California Courts violated constitutional law and his ADA civil rights to exclude him in order to maintain status quo; they kept the disenfranchised out of the third branch of government but through their customs, undermined democracy.

Within California courts there exists an undercurrent of hostility toward pro pers, particularly ones with disabilities. This July is the thirty-year anniversary of the ADA. This is an opportunity to reinforce its importance and correct the errors and customs of its detractors.

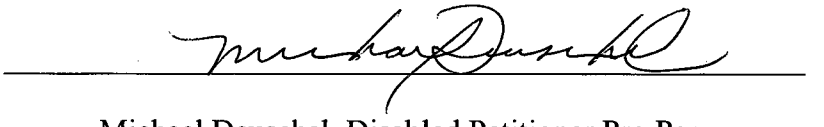
Though an IFP Petition for Certiorari has about ½ of 1% chance of success, Petitioner must believe the highest court of his country still cares and his country is indeed ruled by law. Please, protect people from municipal and state unconstitutional customs and get his truck back.

CONCLUSION:

For the forgoing reasons, Petitioner requests that this Court grant this petition for writ of certiorari.

Date: February 14, 2020

Respectfully Submitted,



Michael Deuschel, Disabled Petitioner Pro Per