

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Arthur Lopez — PETITIONER
(Your Name)

Costa Mesa Police Department
vs. _____
et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 9th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR *Reconsideration*

Arthur Lopez
(Your Name)

P.O. Box 13081

(Address)

Newport Beach, Ca 92658

(City, State, Zip Code)

(Phone Number)

Certificate of Counsel

I, Arthur Lopez, hereby Certify that this Petition for Reconsideration is presented in Good Faith and Not For Delay.

Furthermore, this Petition for Reconsideration grounds are limited to Intervening Circumstances of a Substantial Controlling Effect on this case and Substantial grounds not previously presented as per Rule 44(1)+(2) of the Supreme Court Rules.

October 30th, 2020

Arthur Lopez
ARTHUR LOPEZ
Pro Se litigant

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Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 5, 2020

Mr. Arthur Lopez
P.O. Box 13081
Newport Beach, CA 92658

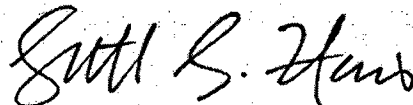
Re: Arthur Lopez
v. Costa Mesa Police Department, et al.
No. 20-5229

Dear Mr. Lopez:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Sincerely,



Scott S. Harris, Clerk

Appendix A

RIGHT/LEFT: biceps 3+/3+; brachioradialis 3+/3+; triceps 3+/3+; positive Hoffman's bilaterally, positive Inverted radial reflexes bilaterally.

TESTS: negative Spurling's;
positive L'Hermite's.

Thoracic Spine/Upper Back:

INSPECTION: within normal limits.

VERTEBRAL SPINE TENDERNESS: absent.

KYPHOSIS: absent.

SCOLIOSIS: none.

PARASPINAL MUSCLE SPASM: absent bilaterally.

Back:

INSPECTION: normal contour, no swelling, no visible mass, no previous incision.

PALPATION: non-tender throughout.

RANGE OF MOTION: , limited secondary to pain, pain on extremes of motion.

MOTOR STRENGTH: RIGHT/LEFT: hip flexion 5/5; quad 5/5; tibialis anterior 5/5; extensor hallucis longus (EHL) 5/5; gastroc/soleus 5/5.

SENSATION OF LIGHT TOUCH: intact and equal bilaterally.

REFLEXES: RIGHT/LEFT:

patellar 3+/3+; Achilles 3+/3+; negative Babinski's sign, no clonus.

GAIT: normal.

NERVE TENSION SIGNS: negative straight leg raise, bilaterally.

Surgeon Samuel Bederman
Assessment: of Petitioner Arthur Lopez Spine Injuries 5/27/20

Assessment:

1. Cervicalgia - M54.2 (Primary)

2. Lumbago - M54.5

In summary, this is a 49-year-old gentleman, who had a transient quadriplegic episode after a fall on December 22, 2015 consistent with a stinger type of injury. He has signs and symptoms of cervical myelopathy. Likely, he had a mild central cord syndrome. He has residual symptoms of myeloradiculopathy. His imaging shows severe central stenosis at C4-5 with signal change and bilateral foraminal stenosis as well as some foraminal stenosis at the C3-4 and C6-7 levels. I do not feel there is any role for continued nonsurgical management as he has subjective and objective evidence of spinal cord compression. Rather I would recommend an anterior cervical discectomy and fusion at C4-5 with instrumentation. I explained him the goals of surgery are to decompress the spinal cord and prevent further deterioration. Risks of surgery were explained to the patient in detail including, but not limited to infection, bleeding, requiring transfusion, expanding hematoma, nerve injury, spinal cord injury, spinal fluid leak, graft migration, hoarseness, swallowing difficulties, Horner syndrome, and longer term risks such as nonunion, adjacent level degeneration, the need for possible revision or future surgery. Medical risks also explained to the patient in detail including, but not limited to pneumonia, urinary tract infection, thromboembolism, myocardial infarction, stroke, blindness, and even death. The alternatives of nonsurgical management were also explained to the patient in detail, including the possibility of quadriplegia that is permanent if he sustained any future trauma to the cervical spine. As the surgery was strongly recommended, he prefers to think about it and contact our office if he decides to proceed.

Plan:

1. Cervicalgia

Imaging: X ray : C-Spine 4V

2. Lumbago

Imaging: X ray : L-Spine 4V

Labs:

Lab: 203689CT Scan : 3D Reconstruction

Procedure Codes: 72050 X-RAY, CERV/NECK, AP/LATERAL/OBL, 40R5 VIEWS, 72110 X-RAY, LUMBAR-SACRAL, MIN 4V

Follow Up: prn

Surgeon
S. Samuel Bederman,
MD

lph Appendix
B

1 of 2

Provider: S. Samuel Bederman

Patient: Lopez, Arthur **DOB:** 02/07/1967 **Date:** 05/27/2016

Appendix B

2 of 2

2593991

OPEN ADVANTAGE MRI

We scan with compassion

Spine MRI

Patient Name:	LOPEZ, ARTHUR	Study Date:	2 Mar 2016
Patient ID:	0A3018803	Study Time:	18:04:04
Patient Gender:	M	Study ID:	1
Patient Age:	49Y	Patient DOB:	07 Feb 1967
Referring MD:	MADRID, PHILIP	Modality:	MR

Exam: MRI OF THE LUMBAR SPINE:

HISTORY: Low back pain, body paralysis. Loss of sensation, tingling and prickling in fingers.

TECHNIQUE: MRI of the lumbosacral spine was performed on the Siemens Concerto MRI scanner using the following pulse sequences: Sagittal T2-weighted, sagittal T1-weighted, axial T2-weighted, axial T1-weighted and coronal T2-weighting.

FINDINGS: Five non-rib-bearing lumbar-type vertebral bodies are present. The conus terminates at L1 and is normal in appearance. The alignment of the lumbar spine is anatomic. The vertebral body heights are normal. The marrow signal is normal. Disc desiccation is present at L3-4 and L4-5. The remaining intervertebral discs are normal in appearance.

The visualized paraspinal and abdominopelvic soft tissues are normal in appearance.

T12-L1: No significant extradural defects are identified. There is no evidence of significant disc herniation or protrusion. The neural foraminal exit zones are intact. No canal stenosis is identified.

L1-2: No significant extradural defects are identified. There is no evidence of significant disc herniation or protrusion. The neural foraminal exit zones are intact. No canal stenosis is identified.

L2-3: 1-2 mm broad-based disc bulge is present which does not result in canal stenosis or neural foraminal compromise.

L3-4: 2-3 mm broad-based disc bulge, facet and ligamentum flavum hypertrophy are present which result in canal stenosis and bilateral neural foraminal narrowing.

MAR 04 2016

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Santa Ana
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Tel 714/479-0400
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Fax 714/256-9755
10 Pointe Drive
Suite 110
Brea, CA 92821

Sacramento
Tel 916/929-2178
Fax 916/929-6078
800 Howe Avenue
Suite 230
Sacramento, CA 95825

Appendix B

**O P E N
ADVANTAGE
MRI**

We scan with compassion

L4-5: 3 mm broad-based disc bulge, facet and ligamentum flavum hypertrophy are present which result in canal stenosis and moderate bilateral neural foraminal narrowing.

L5-S1: 1-2 mm broad-based disc bulge and bilateral facet arthrosis are present which result in bilateral neural foraminal narrowing without canal stenosis.

IMPRESSION:

- 1) L2-3: 1-2 mm broad-based disc bulge is present which does not result in canal stenosis or neural foraminal compromise.
- 2) L3-4: 2-3 mm broad-based disc bulge, facet and ligamentum flavum hypertrophy are present which result in canal stenosis and bilateral neural foraminal narrowing.
- 3) L4-5: 3 mm broad-based disc bulge, facet and ligamentum flavum hypertrophy are present which result in canal stenosis and moderate bilateral neural foraminal narrowing.
- 4) L5-S1: 1-2 mm broad-based disc bulge and bilateral facet arthrosis are present which result in bilateral neural foraminal narrowing without canal stenosis.

Thank you for referring this patient to our office.

Dictated by: Jamil Muasher, M.D.

Electronically signed by: Jamil Muasher, M.D.
(signature on file)

JM: jv
DD: 03/03/2016
DT: 03/03/2016
JN: 9780

CORPORATE
Santa Ana
Toll Free 800-479-0488
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Sacramento
Tel 916/929-2178
Fax 916/929-6078
800 Howe Avenue
Suite 230
Sacramento, CA 95825

Appendix B

Spine MRI

Patient Name:	LOPEZ, ARTHUR	Study Date:	24 May 2016
Patient ID:	GA3018803	Study Time:	11:52:39
Patient Gender:	M	Study ID:	1
Patient Age:	49Y	Patient DOB:	17 Feb 1967
Referring MD:	HARIRI, AL	Modality:	MR

Exam: MRI OF THE CERVICAL SPINE:

HISTORY: Neck and low back pain. Status post injury 12/22/2015.

TECHNIQUE: MRI of the cervical spine was performed on the Siemens Symphony 1.5T MRI scanner using the following pulse sequences: Localizer, T2 coronal, T1 SE sagittal, T2 TSE sagittal, T2 ME2D transaxial, T2 transaxial.

COMPARISON: None.

FINDINGS: Straightening of the cervical spine is noted. There is about 2 mm retrolisthesis of C4 over C5, the rest of the vertebral bodies are satisfactorily aligned. No significant marrow abnormalities are noted. There is no prevertebral soft tissue swelling. The cervical spinal cord is of normal size and signal characteristics. The visualized portions of the cervicomedullary junction and cerebellar tonsils appear unremarkable. The visualized portions of the hypopharynx appear unremarkable.

C1-2 level: The atlantoaxial alignment is normal. No central spinal canal stenosis is noted.

C2-3 level: The disc is normal in height and signal intensity. There is no disc bulge, herniation, central or nerve root canal stenosis. No significant facet joint or uncovertebral joint hypertrophy is noted.

C3-4 level: Loss of disc signal is noted. There is a 2-3 mm disc osteophyte complex with right foraminal, right central and right lateral focality. This is indenting the thecal sac without causing central spinal canal stenosis, there is a moderate degree of right foraminal exit zone compromise.

* C4-5 level: Disc desiccation is noted. There is a 4-5 mm diffuse disc bulge which is compressing the thecal sac, with moderate degree of central spinal canal stenosis (AP diameter 8 mm), this is extending into the foraminal exit zones bilaterally with moderate bilateral foraminal exit zone compromise noted. There is mild facet joint hypertrophy.

C5-6 level: Disc desiccation is noted. There is a 2-3 mm diffuse disc bulge which is effacing the ventral subarachnoid space contributing to borderline central spinal canal stenosis and bilateral right greater than left foraminal exit zone compromise. Facet joint hypertrophy is noted.

C6-7 level: Disc desiccation is noted. There is no disc bulge, herniation, central or nerve root canal stenosis. No significant facet joint or uncovertebral joint hypertrophy is noted.

C7-T1 level: The disc is normal in height and signal intensity. There is no disc bulge, herniation, central or nerve root canal stenosis. No significant facet joint or uncovertebral joint hypertrophy is noted.

There is heterogeneity of the signal within the thyroid, with small foci of intermediate to T2 hyperintense signal noted, these are likely due to thyroid nodules.

IMPRESSION:

- 1) There are no significant marrow signal abnormalities, no fracture is noted.
- 2) C6-7 level: Disc desiccation is noted. There is no disc bulge, herniation, central or nerve root canal stenosis. No significant facet joint or uncovertebral joint hypertrophy is noted.
- 3) C5-6 level: Disc desiccation is noted. There is a 2-3 mm diffuse disc bulge which is effacing the ventral subarachnoid space contributing to borderline central spinal canal stenosis and bilateral right greater than left foraminal exit zone compromise. Facet joint hypertrophy is noted.
- 4) C4-5 level: There is a 4-5 mm diffuse disc bulge which is compressing the thecal sac, with moderate degree of central spinal canal stenosis (AP diameter 8 mm), this is extending into the foraminal exit zones bilaterally with moderate bilateral foraminal exit zone compromise noted. There is mild facet joint hypertrophy.
- 5) C4-5 level: There is a 4-5 mm diffuse disc bulge which is compressing the thecal sac, with moderate degree of central spinal canal stenosis (AP diameter 8 mm), this is extending into the foraminal exit zones bilaterally with moderate bilateral foraminal exit zone compromise noted. There is mild facet joint hypertrophy.
- 6) C3-4 level: There is a 2-3 mm disc osteophyte complex with right foraminal, right central and right lateral focality. This is indenting the thecal sac without causing central spinal canal stenosis, there is a moderate degree of right foraminal exit zone compromise.
- 7) Thyroid ultrasound may be considered for further workup.

Thank you for referring this patient to our office.

Dictated by: Anita M. Bajaj, M.D.

Electronically signed by: Anita Bajaj, M.D.
(signature on file)

AMB: js

DD: 05/24/16

DT: 05/24/16

JN: 12068

10 Pointe Drive
Suite 110
Brea, CA 92821

ADVANTAGE⁺
MRI
Excellence in High Field Imaging

Phone 714/256-9754
Fax 714/256-9755

Spine MRI

Patient Name:	LOPEZ, ARTHUR	Study Date:	2 Jun 2016
Patient ID:	OA3018803	Study Time:	11:42:18
Patient Gender:	M	Study ID:	2
Patient Age:	49Y	Patient DOB:	07 Feb 1967
Referring MD:	MADRID, PHILIP	Modality:	MR

Exam: MRI OF THE THORACIC SPINE:

HISTORY: Mid back pain. Status post injury 12/22/2015.

TECHNIQUE: MRI of the thoracic spine was performed on the Siemens Symphony 1.5T MRI unit using the following pulse sequences: T2 coronal, T1 TSE sagittal, T2 TSE sagittal, T2 transaxial.

FINDINGS: There is generalized loss of signal at all visualized disc spaces consistent with disc desiccation and degeneration.

At the T3-4 level, there is seen to be a 3-4 mm disc protrusion which is paracentral extending to the right. This is resulting in moderate to marked mass effect upon the right lateral aspect of the cord with flattening of the cord demonstrated. This is seen to extend into the right neural foraminal exit zone. Facet hypertrophic changes are noted. In addition to spinal stenosis, there is moderate right neural foraminal exit zone compromise seen.

At the T4-5 level, posterior ligamentous hypertrophic changes are seen. Disc space narrowing is present. Borderline spinal stenosis is seen.

At the T7-8 level, there is a 2-3 mm broad disc protrusion present. This is resulting in subtle mass effect upon the cord. No significant neural foraminal exit zone compromise is seen.

At the T9-10 level, disc desiccation and degeneration are present. No significant anterior extradural defects are seen.

At the T10-11 level, there is a 1-2 mm broad disc protrusion. This does not appear to be resulting in significant neural foraminal exit zone compromise or spinal stenosis.

IMPRESSION:

1) At the T4-5 level, posterior ligamentous hypertrophic changes are seen. Disc space narrowing is present. Borderline spinal stenosis is seen.

2) At the T7-8 level, there is a 2-3 mm broad disc protrusion present. This is resulting in subtle mass effect upon the cord. No significant neural foraminal exit zone compromise is seen.

www.advantageplusmri.com

Appendix B

1 of 2

10 Pointe Drive
Suite 110
Brea, CA 92821

ADVANTAGE⁺
MRI
Excellence in High Field Imaging

Phone 714/256-9754
Fax 714/256-9755

- 3) At the T9-10 level, disc desiccation and degeneration are present. No significant anterior extradural defects are seen.
- 4) At the T10-11 level, there is a 1-2 mm broad disc protrusion. This does not appear to be resulting in significant neural foraminal exit zone compromise or spinal stenosis.

Thank you for referring this patient to our office.

Dictated by: Larry Chespak, M.D.
Electronically signed by: Larry Chespak, M.D.
(signature on file)

LC: jv
DD: 06/02/2016
DT: 06/02/2016
JN: 12368

2 of 2

www.advantageplasmri.com

Appendix B

xii

Santa Ana

St. Joseph Heritage Medical Group, 2212 East Fourth Street
Santa Ana, CA 92705
(714) 288-3230

Spine MRI

Patient: LOPEZ, ARTHUR
PO BOX 13081
NEWPORT BEACH, CA 92658-5084

Age/Sex/DOB: 53 yrs M 07-Feb-1967
EMRN: 2593991
OMRN: 2593991
Home: (949) 467-0937
Work:

Results

Lab Accession # SCA_RAD_2593991_DI2019050
Ordering Provider: MADRID, PHILIP
Performing Location: ST JOSEPH RADIOLOGY

Collected: 05/07/2019 12:45:00PM
Resulted: 05/07/2019 1:59:00PM
Verified By: MADRID, PHILIP
Auto Verify: N

MRI Cervical Spine - C spine without contrast

Stage: Final

Result 05/07/2019 10:56:00PM MADRID, PHILIP

Annotations: Please read the finding and impression carefully. You will notice effacement of the thecal sac, and narrowing at several levels.
You can get an epidural steroid to decrease the edema that was found.
You can also consult with a neurosurgeon if you would consider having surgery

Test	Result	Units	Flag Reference Range
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MRI CERVICAL SPINE WO IV

Outpatient Pavilion
1140 W. La Veta Avenue
Orange, CA 92868

Imaging Services

Patient Name: LOPEZ, ARTHUR DOB: 02/07/1967
Account #: AA0095062075 Age/Sex: 52/M
Unit #: MM02736060 Location: SJPMRI

Admitting Dr:
Ordering Dr: Madrid, Philip E MD
Admit Date/Time: 05/07/19 1219

Exam Performed: MRI Cervical Spine wo IV
Exam Date/Time: 05/07/19 1245
Date of Service: 05/07/19 1300
Req #: 0507-0051
Accession #: 10137636.001SJM
Dictating Dr: E. Jane Cambray-Forker DO
Primary Dr: Madrid, Philip E

History: Neck pain.

Comparison: None.



Technique: Imaging of cervical spine performed in a variety of sequences and

Patient: LOPEZ, ARTHUR

EMRN: 2593991

<u>Test</u>	<u>Result</u>	<u>Units</u>	<u>Flag Reference Range</u>
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imaging planes without contrast.

Findings:

Cervical spine alignment and curvature are within normal limits. Vertebral body height and marrow signal are unremarkable.

Prevertebral and paraspinous soft tissues are unremarkable.

There is subtle T2 high signal within the cervical spinal cord absence C4-5 consistent with edema and/or myelomalacia.

Cerebellar tonsils are normally positioned

At C2-C3 there is no significant disc bulge, central canal stenosis, or neural foraminal stenosis.

At C3-C4 there is a small central/right paracentral disc protrusion with mild effacement of the thecal sac. There is facet degenerative change and mild canal stenosis. There is uncovertebral joint hypertrophy with mild right foraminal narrowing. Left foramen is patent.

At C4-C5 there is disc bulge and/or spur with facet degenerative change and severe canal stenosis. There is effacement of the thecal sac and spinal cord with mild cord compression. There is uncovertebral joint hypertrophy with moderate to severe bilateral foraminal stenosis..

At C5-C6 there is disc bulge and/or spur with uncovertebral joint hypertrophy and facet degenerative change. There is mild central canal stenosis. There is severe right foraminal narrowing. There is minimal left foraminal stenosis..

At C6-C7 there is uncovertebral joint hypertrophy. The central canal is patent. There is minimal right foraminal narrowing..

At C7-T1 there is no significant disc bulge, central canal stenosis, or neural foraminal stenosis.

IMPRESSION:

1. Disc bulge and/or spur at C4-5 with facet degenerative change with severe canal stenosis (and mild cord compression). There is mild cord edema and/or myelomalacia.

2. Multilevel disc and facet degenerative change, most severe from C3 to C6. There is multilevel moderate to severe foraminal narrowing. See above.

Authenticated By:
05/07/19 1405

E. Jane Cambray-Forker DO

Report #: 0507-1643
Dictated date/time: 05/07/19 1359
Transcription date/time: 05/07/19 1359
Transcriptionist: POWERSCRIB

Appendix B

X IV

Outpatient Pavilion
1140 W. La Veta Avenue
Orange, CA 92868

Spine MRI

Imaging Services

Patient Name: LOPEZ, ARTHUR
Account #: AA0095062075
Unit #: MM02736060

DOB: 02/07/1967
Age/Sex: 52/M
Location: SJPMRI

Admitting Dr: Ordering Dr: Madrid, Philip E MD
Admit Date/Time: 05/07/19 1219

Exam Performed: MRI Cervical Spine w/o IV
Exam Date/Time: 05/07/19 / 1300
Req #: 19-0329401
Accession #: 10137636.001SJM
Dictating Dr: E. Jane Cambray-Forker DO
Primary Dr: Madrid, Philip E

History: Neck pain.

Comparison: None.

Technique: Imaging of cervical spine performed in a variety of sequences and imaging planes without contrast.

Findings:

Cervical spine alignment and curvature are within normal limits. Vertebral body height and marrow signal are unremarkable.

Prevertebral and paraspinal soft tissues are unremarkable.

There is subtle T2 high signal within the cervical spinal cord at C4-5 consistent with edema and/or myelomalacia.

Cerebellar tonsils are normally positioned

At C2-C3 there is no significant disc bulge, central canal stenosis, or neural foramen stenosis.

At C3-C4 there is a small central/right paracentral disc protrusion with mild effacement of the thecal sac. There is facet degenerative change and mild canal stenosis. There is uncovertebral joint hypertrophy with mild right foraminal narrowing. Left foramen is patent.

* At C4-C5 there is disc bulge and/or spur with facet degenerative change and severe canal stenosis. There is effacement of the thecal sac and spinal cord with mild cord compression. There is uncovertebral joint hypertrophy with moderate to severe bilateral foraminal stenosis..

At C5-C6 there is disc bulge and/or spur with uncovertebral joint hypertrophy and facet degenerative change. There is mild central canal stenosis. There is severe right foraminal narrowing. There is minimal left foraminal stenosis..

Imaging Services Report

Report Status: Signed

Unit #: MM02736060

Report #: 0507-1643

Page: 1 of 2

Patient Name: LOPEZ, ARTHUR

Account #: AA0095062075

Dictating Dr: E. Jane Cambray-Forker DO

Appendix B

KV

Spine MRT

At C6-C7 there is uncovertebral joint hypertrophy. The central canal is patent. There is minimal right foraminal narrowing..

At C7-T1 there is no significant disc bulge, central canal stenosis, or neural foraminal stenosis.

IMPRESSION:

1. Disc bulge and/or spur at C4-5 with facet degenerative change with severe canal stenosis and mild cord compression. There is mild cord edema and/or myelomalacia.
2. Multilevel disc and facet degenerative change, most severe from C3 to C6. There is multilevel moderate to severe foraminal narrowing. See above.

Dictated by: E. Jane Cambray-Forker DO
05/07/19 1359

Electronically Signed
Cambray-Forker, E. Jane
05/07/19 1405
Signed

Co-signature

Report #: 0507-1643
Transcribed Date/Time: 05/07/19 1359
Transcriptionist: POWERSCRIB

CC: Philip E Madrid MD

Appendix B

xvi

Spine MRI

Santa Ana

St. Joseph Heritage Medical Group, 2212 East Fourth Street
Santa Ana, CA 92705
(714) 288-3230

Patient: LOPEZ, ARTHUR
PO BOX 13081
NEWPORT/BEACH, CA 92658-5084

Age/Sex/DOB: 53 yrs M 07-Feb-1967
EMRN: 2593991
OMRN: 2593991
Home: (949) 467-0937
Work:

Results

Lab Accession # SCA_RAD_2593991_DI2020071
Ordering Provider: MADRID, PHILIP
Performing Location: ST JOSEPH RADIOLOGY

Collected: 07/09/2020 5:15:00PM
Resulted: 07/10/2020 7:25:00AM
Verified By: <Unverified>
Auto Verify: N

MRI Cervical Spine - Cspine without contrast

Stage: Final

Test

MRI CERVICAL SPINE WO IV

Result

Units

Flag Reference Range

Outpatient Pavilion
1140 W. La Veta Avenue
Orange, CA 92868

Imaging Services

Patient Name: LOPEZ, ARTHUR
Account #: AA0098118551
Unit #: MM02736060

DOB: 02/07/1967
Age/Sex: 53/M
Location: SJPMRI

Admitting Dr:
Ordering Dr: Madrid, Philip E MD
Admit Date/Time: 07/09/20 1626

Exam Performed: MRI Cervical Spine wo IV
Exam Date/Time: 07/09/20 1715
Date of Service: 07/09/20 1700
Req #: 0709-0078
Accession #: 12574066.001SJM
Dictating Dr: Mark N Masotto MD
Primary Dr: Madrid, Philip E
History: RADICULOPATHY, CERVICAL REG/SUBLUXATION OF UNSP CERVICAL VERT.

Comparison: 5/7/2019.

Technique: Utilizing the Siemens superconducting 1.5 Tesla magnet, T1, T2, gradient echo, STIR, diffusion and various other pulse sequences were obtained in the sagittal, axial and coronal planes. Gadolinium based contrast was not injected intravenously, dose based on patient weight.

Findings:

The cervical spine alignment and curvature are within normal limits. There is diffuse disc dehydration throughout the cervical spine, similar to 2019. The

Patient: LOPEZ, ARTHUR

EMRN: 2593991

Spine MRI

Test	Result	Units	Flag Reference Range
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vertebral body height and marrow signal are unremarkable. The prevertebral and paraspinal soft tissues are unremarkable. There is mild edema in the cord at the C4-5 level, similar to 2019.

At C2-C3 the central spinal canal and neural foramina are patent.

At C3-C4 there is a 3 to 4 mm posterior central disc protrusion resulting in moderate central canal stenosis and compression of the ventral cord. Facet and uncovertebral arthropathy resulting in severe right and moderate left foraminal narrowing, similar to 2019.

At C4-C5 there is a 5 mm broad-based posterior disc marginal osteophyte resulting in severe central canal stenosis with compression of the cord. There is mild cord edema, similar to prior. Facet and uncovertebral arthropathy resulting in severe bilateral neural foraminal narrowing, similar to prior.

At C5-C6 there is a 3 mm broad-based posterior disc bulge with facet and uncovertebral arthropathy. There is severe right and mild left foraminal narrowing. The central canal is mildly narrowed, unchanged.

At C6-C7 there is no significant central canal or foraminal stenosis. Similar to prior.

At C7-T1 there is no significant central canal or foraminal stenosis. Similar to prior.

IMPRESSION:

Chronic multilevel degenerative disc disease results in spinal stenosis. The cervical spine is similar to the prior MRI from 5/7/2019. There is significant central canal narrowing with compression of the cord and mild cord edema at C4-5 as delineated above.

Authenticated By:
07/10/20 0736

Mark N Masotto MD

Report #: 0710-0110
Dictated date/time: 07/10/20 0725
Transcription date/time: 07/10/20 0725
Transcriptionist: POWERSCRIB

Appendix B

Outpatient Pavilion
1140 W. La Veta Avenue
Orange, CA 92868

Spine MRI

Imaging Services

Patient Name: LOPEZ, ARTHUR
Account #: AA0098118551
Unit #: MM02736060

DOB: 02/07/1967
Age/Sex: 53/M
Location: SJPMRI

Admitting Dr:
Ordering Dr: Madrid, Philip E MD
Admit Date/Time: 07/09/20 1626

Exam Performed: MRI Cervical Spine w/o IV
Exam Date/Time: 07/09/20 / 1700
Req #: 20-0412340
Accession #: 12574066.001SJM
Dictating Dr: Mark N Masotto MD
Primary Dr: Madrid, Philip E

History: RADICULOPATHY, CERVICAL REG/SUBLUXATION OF UNSP CERVICAL VERT.

Comparison: 5/7/2019.

Technique: Utilizing the Siemens superconducting 1.5 Tesla magnet, T1, T2, gradient echo, STIR, diffusion and various other pulse sequences were obtained in the sagittal, axial and coronal planes. Gadolinium based contrast was not injected intravenously, dose based on patient weight.

Findings:

The cervical spine alignment and curvature are within normal limits. There is diffuse disc dehydration throughout the cervical spine, similar to 2019. The vertebral body height and marrow signal are unremarkable. The prevertebral and paraspinal soft tissues are unremarkable. There is mild edema in the cord at the C4-5 level, similar to 2019.

At C2-C3 the central spinal canal and neural foramina are patent.

At C3-C4 there is a 3 to 4 mm posterior central disc protrusion resulting in moderate central canal stenosis and compression of the ventral cord. Facet and uncovertebral arthropathy resulting in severe right and moderate left foraminal narrowing, similar to 2019.

At C4-C5 there is a 5 mm broad-based posterior disc marginal osteophyte resulting in severe central canal stenosis with compression of the cord. There is mild cord edema, similar to prior. Facet and uncovertebral arthropathy resulting in severe bilateral neural foraminal narrowing, similar to prior.

At C5-C6 there is a 3 mm broad-based posterior disc bulge with facet and uncovertebral arthropathy. There is severe right and mild left foraminal narrowing. The central canal is mildly narrowed, unchanged.

At C6-C7 there is no significant central canal or foraminal stenosis. Similar to prior.

At C7-T1 there is no significant central canal or foraminal stenosis. Similar to prior.

Imaging Services Report
Report Status: Signed
Unit #: MM02736060
Report #: 0710-0110
Page: 1 of 2

Patient Name: LOPEZ, ARTHUR
Account #: AA0098118551
Dictating Dr: Mark N Masotto MD

Appendix B

X (X)

IMPRESSION:

Chronic multilevel degenerative disc disease results in spinal stenosis. The cervical spine is similar to the prior MRI from 5/7/2019. There is significant central canal narrowing with compression of the cord and mild cord edema at C4-5 as delineated above.

Dictated by: Mark N Masotto MD
07/10/20 0725

Electronically Signed
Masotto, Mark N
07/10/20 0736
Signed

Co-signature

Report #: 0710-0110
Transcribed Date/Time: 07/10/20 0725
Transcriptionist: POWERSCRIB

CC: Philip E Madrid MD

Imaging Services Report
Report Status: Signed
Unit #: MM02736060
Report #: 0710-0110
Page: 2 of 2

Patient Name: LOPEZ,ARTHUR
Account #: AA0098118551
Dictating Dr: Mark N Masotto MD

appendix B

x 4

Santa Ana

St. Joseph Heritage Medical Group, 2212 East Fourth Street
Santa Ana, CA 92705
(714) 288-3230

Spine MRT

Patient: LOPEZ, ARTHUR
PO BOX 13081
NEWPORT BEACH, CA 92658-5084

Age/Sex/DOB: 53 yrs M 07-Feb-1967
EMRN: 2593991
OMRN: 2593991
Home: (949) 467-0937
Work:

Results

Lab Accession # SCA_RAD_2593991_DI2019121
Ordering Provider: MADRID, PHILIP
Performing Location: ST JOSEPH RADIOLOGY

Collected: 12/12/2019 5:15:00PM
Resulted: 12/12/2019 4:14:00PM
Verified By: MADRID, PHILIP
Auto Verify: N

MRI Lumbar Spine without contrast

Stage: Final

Result 12/12/2019 7:39:00PM MADRID, PHILIP
Annotations: Please review your MRI findings notably at the L3 and L4 levels showing spinal stenosis.

Test

MRI LUMBAR SPINE WO IV

Outpatient Pavilion
1140 W. La Veta Avenue
Orange, CA 92868

Result

Units

Flag Reference Range

Imaging Services

Patient Name: LOPEZ, ARTHUR DOB: 02/07/1967
Account #: AA0096762291 Age/Sex: 52/M
Unit #: MM02736060 Location: SJPMRI

Admitting Dr:
Ordering Dr: Madrid, Philip E MD
Admit Date/Time: 12/12/19 1442

Exam Performed: MRI Lumbar Spine wo IV
Exam Date/Time: 12/12/19 1715
Date of Service: 12/12/19 1500
Req #: 1212-0070
Accession #: 11479366.001SJM
Dictating Dr: Mark N Masotto MD
Primary Dr: Madrid, Philip E
History: Low back pain.

Comparison: None.

Technique: Utilizing the Siemens 1.5 Tesla superconducting MR scanner coronal, sagittal T1, sagittal T2, sagittal STIR, axial T1 and T2 weighted images were obtained. Intravenous contrast was not administered.

Findings:

Outpatient Pavilion
1140 W. La Veta Avenue
Orange, CA 92868

Imaging Services

Patient Name: LOPEZ,ARTHUR
Account #: AA0096762291
Unit #: MM02736060

DOB: 02/07/1967
Age/Sex: 52/M
Location: SJPMRI

Spine MRI

Admitting Dr:
Ordering Dr: Madrid, Philip E MD
Admit Date/Time: 12/12/19 1442

Exam Performed: MRI Lumbar Spine wo IV
Exam Date/Time: 12/12/19 / 1500
Req #: 19-0890044
Accession #: 11479366.001SJM
Dictating Dr: Mark N Masotto MD
Primary Dr: Madrid, Philip E

History: Low back pain.

Comparison: None.

Technique: Utilizing the Siemens 1.5 Tesla superconducting MR scanner coronal, sagittal T1, sagittal T2, sagittal STIR, axial T1 and T2 weighted images were obtained. Intravenous contrast was not administered.

Findings:

Lumbar spine alignment and curvature are within normal limits. There is no compression fracture or marrow infiltrative process. The paraspinal soft tissues, muscles and fascial planes are normal. There is no adenopathy. There is diffuse disc dehydration throughout the lumbar spine. There is mild to moderate associated disc marginal osteophytosis and facet arthropathy.

At T12-L1 the central canal and neural foramina are patent.

At L1-L2 the central canal and neural foramina are patent.

At L2-L3 the central canal and neural foramina are patent.

At L3-L4 disc bulge/disc marginal osteophytosis and facet arthropathy results in central canal and bilateral neural foraminal narrowing.

At L4-L5 disc bulge/disc marginal osteophytosis with facet arthropathy results in moderate central canal stenosis and moderate bilateral neural foraminal narrowing.

At L5-S1 the central canal and neural foramina are patent.

IMPRESSION:

Mild degenerative disc disease L3-4 and L4-5 results in spinal stenosis as described above.

Dictated by: Mark N Masotto MD

Imaging Services Report

Report Status: Signed

Unit #: MM02736060

Report #: 1212-2298

Page: 1 of 2

Patient Name: LOPEZ,ARTHUR
Account #: AA0096762291
Dictating Dr: Mark N Masotto MD

Appendix B

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. SA CV 17-00488-VBF-MRW

Dated: Friday, April 7, 2017

Title: *Arthur Lopez, Plaintiff v. Newport Beach Police Department, City of Newport Beach, Josh Vincelet (Newport Beach Police Department, in individual capacity), Conner Miller, and Does 1-100, Defendants*

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, SENIOR U.S. DISTRICT JUDGE

Linda Kanter
Courtroom Deputy

N/A
Court Reporter

ATTORNEYS PRESENT FOR PETITIONER

ATTORNEYS PRESENT FOR RESPONDENT

N/A

N/A

PROCEEDINGS (in chambers): ORDER

Denying Document #9 (Plaintiff's Request for Leave to Proceed In Forma Pauperis On Appeal from Magistrate's March 23, 2017 Order re Service);

Advising Plaintiff that He May Ask the U.S. Court of Appeals for Leave to Proceed IFP on Appeal

On March 17, 2017, plaintiff filed the complaint and a request to proceed in forma pauperis ("IFP") in this Court. See CM/ECF Documents 1 and 3. On March 21, 2017, the Magistrate Judge issued an order granting plaintiff leave to proceed IFP in this Court (Doc 5). After conducting the initial screening required by 28 U.S.C. § 1915(e)(2), the Magistrate issued an Order on March 23, 2017 that stated in pertinent part as follows:

1. The Complaint will be filed. Plaintiff is authorized to serve the complaint on Officer Josh Vincelet in his individual capacity only as to Plaintiff's Fourth Amendment claims of malicious prosecution / false arrest / false imprisonment. The Court concludes that Plaintiff's allegations

MINUTES FORM 90, CIVIL - GEN

Initials of Deputy Clerk lk

Appendix D

X XV

against this individual at this stage of the case are sufficient to state a plausible cause of action that warrants service of process.

* * *

4. A separate Order requiring the Marshals Service to serve defendant Vincelet without cost to Plaintiff will be issued. * * *

5. The Court declines to order service on Officer Miller, the other policeman named in the caption of the complaint. Nowhere in the text of the complaint does Plaintiff provide any facts linking this individual to his circumstance. * * *

6. The Court also will not authorize on the City of Newport Beach or its police department. Although unclear, Plaintiff appears to allege some sort of *Monell*-type claim against those entities * * * Plaintiff offers no factual explanation regarding the existence or implementation of any policy by the city police department that plausibly led to his [allegedly] wrongful arrest. Plaintiff's conclusory statements are insufficient to state claim. * * *

7. * * * Plaintiff may file a first amended complaint on or before April 17, to attempt to remedy the deficiencies discussed above. * * * [T]he Court will be required to conduct an additional review of the First Amended Complaint after it is filed.

8. Alternatively, plaintiff may elect to proceed only against the Defendant for whom the Court authorizes service of process without filing an amended complaint. No further pleading will be necessary to maintain the action against Officer Vincelet alone.

Doc 6 at 1-3 (underlining and boldface omitted).

On March 27, 2017, plaintiff filed Document 10, a notice of appeal to the United States Court of Appeals for the Ninth Circuit from that March 23, 2017 Order. The Circuit acknowledged the appeal as No. 17-55422 by Notice issued March 29, 2017 (Doc 11), and directed plaintiff to file his opening brief by September 17, 2017.

On March 28, 2017, plaintiff filed Document 9, a motion for leave to proceed IFP on said appeal. For the reasons that follow, the Court will deny plaintiff's motion.

Plaintiff Fails to Identify Any Appellate Argument, Let Alone One that is Not "Plainly Frivolous"

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed *in forma pauperis*. See Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. "The party must attach an affidavit that (1) shows in detail 'the party's inability

Appendix D

xxvi

Name: ARTHUR LOPEZAddress: 2251 Bloomfield LnCORONA, CA 92882Phone: 949.903.4982

Fax: _____

In Pro Per

2017 FEB 17 PM 3:55

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARTHUR LOPEZ

Plaintiff

CASE NUMBER:

SACV 17-00297 JLS (RAO)

v.
COSTA MESA POLICE DEPARTMENT,
CITY OF COSTA MESA,
CHRISTOPHER WALK, ISIDRO
GALLARDO, et al. DOES 1-100
Defendant(s).Re: MOTION FOR COURT
APPOINTED COUNSEL

I Respectfully Submit THIS MOTION for Appointment of Counsel under the authority of the United States Constitution, 14th Amendment which guarantees equal protection under the law and no person is to be deprived of Life, Liberty, or Property without Due Process. Furthermore, I have no income and have sustained serious injury to my neck and back causing me to be disabled

Beyond all of this I am not able to obtain Legal representation for Civil Rights matters in the State of California or outside of the state.

Respectfully submitted,

Arthur Lopez

ARTHUR LOPEZ

2/17/17

Appendix E

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: SA CV 17-00297 JLS (RAO) Date: February 22, 2017
Title: Arthur Lopez v. Costa Mesa Police Department, et al.

Present: The Honorable ROZELLA A. OLIVER, U.S. MAGISTRATE JUDGE

Gay Roberson
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

N/A

N/A

Proceedings: (In Chambers) **ORDER DENYING PLAINTIFF'S MOTION FOR
APPOINTMENT OF COUNSEL [3]**

Before the Court is Plaintiff Arthur Lopez's ("Plaintiff") Motion for Appointment of Counsel. (Dkt. No. 3.) After considering the motion, the Court DENIES Plaintiff's Motion without prejudice.

There is no constitutional right to appointment of counsel in Section 1983 litigation. *See Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *accord Campbell v. Burt*, 141 F.3d 927, 931 (9th Cir. 1998). The decision to appoint counsel is within "the sound discretion of the trial court and is granted only in exceptional circumstances." *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004) (internal quotation marks omitted). To decide whether exceptional circumstances exist, the court must evaluate both "the likelihood of success on the merits [and] the ability of the [pro se litigant] to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (internal quotation marks omitted).

At this time in the litigation, the Court cannot say that Plaintiff lacks the ability to articulate his claims without the assistance of counsel. Neither the facts nor the legal issues involved in this case are unusually complex.

In sum, Plaintiff's Motion is DENIED WITHOUT PREJUDICE. Nothing in this Order is intended to preclude Plaintiff from retaining counsel on his own.

IT IS SO ORDERED.

Initials of Preparer gr

Appendix E

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Arthur Lopez,

v.

PLAINTIFF(S)

Newport Beach Police Department et al.,

DEFENDANT(S)

CASE NUMBER

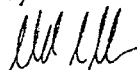
SA CV 17-488 VBF (MRW)

ORDER RE REQUEST TO PROCEED
IN FORMA PAUPERIS

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

March 21, 2017

Date



Michael R. Wilner

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

- ☐ Inadequate showing of indigency
☐ Legally and/or factually patently frivolous
☐ Other: _____

- ☐ District Court lacks jurisdiction
☐ Immunity as to _____

Comments:

Date

United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

- ☐ GRANTED
☐ DENIED (see comments above). IT IS FURTHER ORDERED that:
☐ Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
☐ This case is hereby DISMISSED immediately.
☐ This case is hereby REMANDED to state court.

Date

United States District Judge

Appendix E

XXIV

FILED

1 Name: ARTHUR LOPEZ
 2 mailing Address: 2251 Bloomfield Ln.
 3 CORONA, CA 92882
 4 Phone: 949. 903.4982
 5 Fax: _____
 6 In Pro Per

2016 DEC 28 PM 3:49

CENTRAL DISTRICT OF CALIFORNIA
SANTA ANABY: USA

7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

ARTHUR LOPEZ

CASE NUMBER:

SACV 16-02267 VBF(MRW)

Plaintiff

Re: MOTION FOR COURT

Appointed Counsel (Contingency)

v.

13 NEWPORT BEACH POLICE DEPARTMENT
 14 City of NEWPORT BEACH, et al
 15 Does 1-100 Defendant(s)

(Enter document title in the space provided above)

17 I respectfully submit This motion for Appointment
 18 of counsel under the authority of the United States
 19 Constitution, 14th Amendment which guarantees
 20 equal protection under the law and no person
 21 shall be deprived of life, liberty or property
 22 without due process. The court should know
 23 that an attorney on this type of Civil Rights
 24 case can not be hired in CALIFORNIA as
 25 I have attempted to do so for years without
 26 success.

27 The appointment of counsel may be on a
 28 contingency basis since there certainly has been

1
 Page Number

xxx

1 much injury.
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19 Respectfully submitted,
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24 Arthur Lopez
25
26

27 12/28/16
28

2

Page Number

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. SA CV 16-02267-VBF-MRW

Dated: Tuesday, January 17, 2017

Title: Arthur Lopez, Plaintiff v. Newport Beach Police Department et al.,
Defendants

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, SENIOR U.S. DISTRICT JUDGE

John M. Brendel
Courtroom Deputy

N/A
Court Reporter

ATTORNEYS PRESENT FOR PETITIONER

ATTORNEYS PRESENT FOR RESPONDENT

N/A

N/A

PROCEEDINGS (in chambers): ORDER Denying Document #4 without Prejudice

Earlier today, this Court issued an order denying plaintiff's application to proceed in forma pauperis and dismissing his complaint with leave to amend by February 20, 2017. *See* Case Management / Electronic Case Filing System Document ("Doc") 6. The Court will now deny plaintiff's motion for appointment of counsel without prejudice. This means that plaintiff will be free to file a renewed motion for appointment of counsel if he timely files an amended complaint.

Plaintiff's motion for appointment of counsel [Document #4] is DENIED without prejudice.
IT IS SO ORDERED.

MINUTES FORM 90, CIVIL - GEN

Initials of Deputy Clerk jmb

Appendix E

xxxii

1 Name: ARTHUR LOPEZ
 2 Mailing Address: 2251 BLOOMFIELD LN
 3 CORONA, CA 92882
 4 Phone: 949.903.4982
 5 Fax: _____
 6 In Pro Per

7 UNITED STATES DISTRICT COURT
 8 CENTRAL DISTRICT OF CALIFORNIA

9 ARTHUR LOPEZ

10 Plaintiff

CASE NUMBER:

11 SACV 16-02267 VBF (MRW)

12 NEWPORT BEACH ^{v.} POLICE DEPARTMENT,
 13 CITY OF NEWPORT BEACH,
 14 et al., Does 1-100
 15 Defendant(s).

16 Re: MOTION FOR COURT
 17 APPOINTED COUNSEL

18 I Respectfully Submit THIS MOTION for Appointment
 19 of Counsel under the authority of the United States
 20 Constitution, 14th Amendment which guarantees equal
 21 protection under the law and no person is to be deprived
 22 of Life, Liberty, or Property without Due Process. Furthermore,
 23 I have no income and have sustained serious injury
 24 to my neck and back causing me to be disabled

25 Beyond all of this I am not able to obtain Legal
 26 representation for Civil Rights matters in the State
 27 of California or outside of the state.

28 Respectfully submitted,

Arthur Lopez

Page 3

ARTHUR LOPEZ

2/20/17

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **SA CV 16-02267-VBF-MRW** Dated: Monday, February 27, 2017

Title: ***Arthur Lopez, Plaintiff v. Newport Beach Police Department et al.,
Defendants***

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, SENIOR U.S. DISTRICT JUDGE

John M. Brendel
Courtroom Deputy

N/A
Court Reporter

ATTORNEYS PRESENT FOR PETITIONER

ATTORNEYS PRESENT FOR RESPONDENT

N/A

N/A

PROCEEDINGS (in chambers): **ORDER**

**Concluding that Court Has Jurisdiction
Notwithstanding Plaintiff's Pending Appeal;**

**Denying Doc. #15 (Plaintiff's February 21, 2017 Motion
for Appointment of Counsel) as Unsupported;**

**Granting in Part and Denying in Part Doc. #16
(Plaintiff's "Request for Further Clarification" of
Magistrate's Feb. 22, 2017 Order and Opposition to
Jan. 17, 2017 Dismissal);**

Finding the First Amended Complaint to Be Timely Filed

By Order issued January 17, 2017, this court denied plaintiff's application to proceed in forma pauperis without prejudice and dismissed his complaint with leave to amend by February 20, 2017. *See* Case Management / Electronic Case Filing System Document ("Doc") 6. Later that same day, the Court issued an Order (Doc 7) stating, "The Court will now deny plaintiff's [December 28, 2016] motion for appointment of counsel without

MINUTES FORM 90, CIVIL - GEN

Initials of Deputy Clerk jmb

Appendix E

XXXIV

prejudice. This means that plaintiff will be free to file a renewed motion for appointment of counsel if he timely files an amended complaint.”

On January 19, 2017, plaintiff Lopez filed Document 8, a notice of appeal to the United States Court of Appeals for the Ninth Circuit (“the Circuit”) from the January 17, 2017 order denying the IFP request and the January 17, 2017 order denying without prejudice his first motion for appointment of counsel. The Ninth Circuit acknowledged the appeal as No. 17-55078 by Notice issued January 20, 2017 (Doc 11). That appeal is still pending.

About four weeks after filing that notice of appeal, on Tuesday, February 21, 2017, plaintiff filed three documents – first, a document entitled Motion for Extension of Time to Amend Complaint (Doc 12). By Order issued Wednesday, February 22, 2017 (Doc 13), the Magistrate declined to consider the extension motion on the ground that plaintiff filing a notice of appeal had divested the district court of jurisdiction over matters subsumed within that appeal and “prevents Plaintiff from simultaneously pursuing relief in both the trial and appellate courts.” See Doc 13 at 1 (citing *Natural Resources Defense Council, Inc. v. Southwest Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001)).

Also on February 21, 2017, plaintiff timely filed a First Amended Complaint (“FAC”) (Doc 14).

Finally on February 21, 2017, plaintiff Lopez also filed a renewed motion for appointment of counsel (Doc 15). For the reasons that follow, the Court will exercise jurisdiction over the motion to appoint counsel despite the pendency of plaintiff’s appeal, but will deny the motion.

This Court agrees that “[a]s a general rule, the filing of a notice of appeal divests a district court of jurisdiction over those aspects of the case [that are] involved in the appeal.” *Keller v. Kirkegard*, 2017 WL 658236, *1 (D. Mont. Feb. 16, 2017) (Dana Christensen, C.J.) (quoting *Stein v. Wood*, 127 F.3d 1187, 1189 (9th Cir. 1997)). See, e.g., *In Re Burrell, Petitioner*, 626 F. App’x 33, 35 (3d Cir. 2015) (per curiam) (“[T]he District Court reasonably refrained from acting on Burrell’s in forma pauperis motion during the pendency of this appeal in view of the fact that most appeals divest a district court of its jurisdiction to act.”) (citing *Venen v. Sweet*, 758 F.3d 117, 120-21 (3d Cir. 1985)).

MINUTES FORM 90, CIVIL - GEN

Initials of Deputy Clerk jmb

TABLE OF AUTHORITIES CITED

* United States Supreme Court / U.S. (out of Appeals)
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- 1) Mathews v. United States, 485 U.S. 58, 63 (1988)
- 2) Jacobsen v. United States, 503 U.S. 540, 548 (1992)
- 3) Sherman v. United States, 356 U.S. 369 (1958)
- 4) Sonell v. United States, 287 U.S. 435 (1932)
- 5) United States v. Howell, 37 F.3d 1197, 1204 (7th Cir. 1994)
- 6) United States v. Barta, 776 F.3d 931 (7th Cir. 2015)
- 7) United States v. Magfield, 771 F.3d 417 (7th Cir. 2014)
- 8) United States v. Kapstein, 759 F.3d 168 (2d Cir. 2014)
- 9) United States v. McGill, 754 F.3d 452 (7th Cir. 2014)
- 10) STATUTES AND RULES Black, 750 F.3d 1053 (9th Cir. 2014)
- 11) United States v. Cortes, 757 F.3d 850 (9th Cir. 2013)
- 12) United States v. Pillado, 656 F.3d 754 (7th Cir. 2011)
- 13) United States v. Theogene, 565 F.3d 911 (5th Cir. 2009)
- 14) United States v. Luisi, 482 F.3d 43 (1st Cir. 2007)
- 15) United States v. Sandoval-Mendoza, 472 F.3d 645 (9th Cir. 2006)
- 16) Bradley v. Duncan, 315 F.3d 1091 (9th Cir. 2002)
- 17) United States v. Mendoza-Prado, 314 F.3d 1099 (9th Cir. 2002)
- 18) United States v. Thomas, 134 F.3d 975 (9th Cir. 1998)
- 19) United States v. Duran, 133 F.3d 1324 (10th Cir. 1998)
- 20) OTHER United States v. Sligh, 142 F.3d 761 (4th Cir. 1998)
- 21) United States v. Burt, 143 F.3d 1215 (9th Cir. 1998)
- 22) United States v. Joast, 92 F.3d 7 (1st Cir. 1996)
- 23) United States v. Montanez, 105 F.3d 36 (1st Cir. 1997)
- 24) United States v. Gamache, 156 F.3d 1 (1st Cir. 1998)

TABLE OF AUTHORITIES CITED (Cont.)

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CASES:

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- 25.) United States v. Rodriguez, 858 F.2d 809 (1st Cir. 1988)
- 26.) United States v. Bradley, 820 F.2d 3 (1st Cir. 1987)
- 27.) United States v. Khulani, 791 F.2d 260 (2nd Cir. 1986)
- 28.) United States v. Berkery, 889 F.2d 1281 (3rd Cir. 1989)
- 29.) United States v. Fedoroff, 874 F.2d 178 (3rd Cir. 1989)
- 30.) United States v. Pervez, 871 F.2d 310 (3rd Cir. 1989)
- 31.) United States v. Bradfield, 113 F.3d 515 (5th Cir. 1997)
- 32.) United States v. Sandoval, 20 F.3d 134 (5th Cir. 1994)
- 33.) United States v. Kang, 934 F.2d 621 (5th Cir. 1991)
- 34.) STATUTES AND RULES Cantu, 876 F.2d 1134 (5th Cir. 1989)
- 35.) United States v. Robinson, 887 F.2d 651 (6th Cir. 1989)
- 36.) United States v. Graham, 856 F.2d 756 (6th Cir. 1988)
- 37.) United States v. Hollingsworth, 27 F.3d 1196 (7th Cir. 1994),
enhance
- 38.) United States v. Fusko, 869 F.2d 1048 (7th Cir. 1989)
9 F.3d 593 (7th Cir. 1993)
- 39.) United States v. Martinez, 122 F.3d 1161 (9th Cir. 1997)
- 40.) United States v. Ramirez-Rangel, 103 F.3d 1501 (9th Cir. 1996)
- 41.) United States v. Beece, 60 F.3d 660 (9th Cir. 1995)
- 42.) United States v. Sterner, 23 F.3d 250 (9th Cir. 1994)
- 43.) United States v. Lessard, 17 F.3d 303 (9th Cir. 1994)
- 44.) OTHER States v. Mkhrstian, 5 F.3d 1306 (9th Cir. 1993)
- 45.) United States v. Keese, 992 F.2d 1001 (9th Cir. 1993)
- 46.) United States v. Becerra, 992 F.2d 960 (9th Cir. 1993)
- 47.) United States v. Skaric, 971 F.2d 317 (9th Cir. 1992)
- 48.) United States v. Tallmadge, 829 F.2d 767 (9th Cir. 1987)
- 49.) United States v. Beal, 961 F.2d 1512 (10th Cir. 1992)

TABLE OF AUTHORITIES CITED (cont.)

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 CASES: PAGE NUMBER

- 50.) United States v. Collozo, 885 F.2d 813 (11th Cir. 1989)
- * 51.) Raley v. Ohio, 360 U.S. 423 (1959)
- * 52.) Cox v. Louisiana, 379 U.S. 559 (1965)
- * 53.) United States v. Pennsylvania Indus. Chemical Corp., 411 U.S. 655 (1973)
- 54.) United States v. Albertine, 830 F.2d 985 (9th Cir. 1987)

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- 2) *Gibson v. United States*, 671 F.2d 204 (6th Cir. 1982)
- 3) *Resendez v. United States*, 993 F.2d 884 (4th Cir. 1993)
- 4) *Wilborn v. Escaladon*, 789 F.2d 1328 (9th Cir. 1986)
- 5) *Aggeman v. Cor. Corp. of America*, 390 F.3d 1101 (9th Cir. 2004)
- 6) *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2nd Cir. 1997)
- 7) *Hodge v. Police officers*, 802 F.2d 58, 60, 61, 62 (2nd Cir. 1986)
- 8) *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 174 (2nd Cir. 1989)
- 9) *Flowers v. Baca*, 670 F.App'x 561 (9th Cir. 2016)
- 10) *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009)

1. Timely petitions

§ 3. Generally

[Cumulative Supplement]

The general rule that if a motion or petition for a rehearing is properly and seasonably made or presented and entertained by the court, the period limited for instituting appellate proceedings does not begin to run until the motion or petition is disposed of, where the statute or court rule provides in general terms that appellate proceedings shall be instituted within a certain time from the rendition or entry of the order, judgment, or decree, is supported by the following cases: Brockett v. Brockett (1844, US) 2 How 238, 11 L ed 251; Slaughterhouse Cases (1870, US) 10 Wall 273, 19 L ed 915; Cambuston v. United States (1877) 95 US 285, 24 L ed 448 (recognizing rule); Texas & P. R. Co. v. Murphy (1884) 111 US 488, 28 L ed 492, 4 S Ct 497; Aspen Mining & Smelting Co. v. Billings (1893) 150 US 31, 37 L ed 986, 14 S Ct 45; Voorhees v. John T. Noye Mfg. Co. (1894) 151 US 135, 38 L ed 101, 14 S Ct 295; Northern Pacific R. Co. v. Holmes (1894) 155 US 137, 39 L ed 99, 15 S Ct 28; Northern Pacific R. Co. v. O'Brien (1894) 155 US 141, 39 L ed 100, 15 S Ct 300; Kingman & Co. v. Western Mfg. Co. (1898) 170 US 675, 42 L ed 1192, 18 S Ct 786 (dictum recognizing rule); Cherokee Nation v. Whitmire (1912) 223 US 108, 56 L ed 370, 32 S Ct 200 (dictum recognizing rule); Chicago Great Western R. Co. v. Basham (1919) 249 US 164, 63 L ed 534, 39 S Ct 213; Citizens' Bank v. Opperman (1919) 249 US 448, 63 L ed 701, 39 S Ct 330; Morse v. United States (1926) 270 US 151, 70 L ed 518, 46 S Ct 241, reh den 295 US 768, 79 L ed 1709, 55 S Ct 828 (recognizing rule); Gypsy Oil Co. v. Escroe (1927) 275 US 498, 72 L ed 393, 48 S Ct 112; National Labor Relations Board v. Mackay Radio & Tel. Co. (1938) 304 US 333, 82 L ed 1381, 58 S Ct 904; Department of Banking v. Pink (1942) 317 US 264, 87 L ed 254, 63 S Ct 233, reh den 318 US 802, 87 L ed 1166, 63 S Ct 850; Leishman v. Associated Wholesale Electric Co. (1943) 318 US 203, 87 L ed 714, 63 S Ct 543, reh den 318 US 800, 87 L ed 1163, 63 S Ct 758 (recognizing rule); Market Street R. Co. v. Railroad Commission (1945) 324 US 548, 89 L ed 1171, 65 S Ct 770, reh den 324 US 890, 89 L ed 1438, 65 S Ct 1020 (recognizing rule); Andrews v. Thum (1894, CA1st Mass) 64 F 149; Andrews v. Thum (1896, CA1st Mass) 72 F 290; Idaho Irrig. Co. v. Gooding (1922, CA9th Idaho) 285 F 453, mod on other grounds 265 US 518, 68 L ed 1157, 44 S Ct 618; Montgomery Ward & Co. v. Banque Belge Pour L'etranger (1924, CA9th China) 298 F 446 (recognizing rule); Thomas Day Co. v. Doble Laboratories (1930, CA9th Cal) 41 F2d 51; Mortgage Loan Co. v. Livingston (1930, CA8th Mo) 45 F2d 28; Sauri v. Sauri (1930, CA1st Puerto Rico) 45 F2d 90; The Astorian (1932, CA9th Cal) 57 F2d 85; Parkin Packer Co. v. Hinderliter Tool Co. (1932, CA10th Okla) 60 F2d 491; Mitchell v. Maurer (1933, CA9th Cal) 67 F2d 286 (rule applied to interlocutory order made appealable by statute); McIntosh v. U.S., 70 F.2d 507 (C.C.A. 4th Cir. 1934) (recognizing rule); McIntosh v. U.S., 70 F.2d 507 (C.C.A. 4th Cir. 1934) (recognizing rule); Luce & Co. v. Cintron (1934, CA1st Puerto Rico) 73 F2d 481 (recognizing rule); Clarke v. Hot Springs Electric Light & P. Co. (1935, CA10th Wyo) 76 F2d 918, cert den 296 US 624, 80 L ed 443, 56 S Ct 147 (recognizing rule); Saginaw Broadcasting Co. v. Federal Communications Com. (1938) 68 App DC 282, 96 F2d 554, cert den 305 US 613, 83 L ed 391, 59 S Ct 72 (recognizing rule); Ortiz v. Public Service Com. (1940, CA1st Puerto Rico) 108 F2d 815 (recognizing rule); Suggs v. Mutual Ben. Health & Acci. Asso. (1940, CA10th Okla) 115 F2d 80 (recognizing rule); Warren v. Hawaii (1941, CA9th Hawaii) 119 F2d 936; Partridge v. St. Louis Joint Stock Land Bank (1942, CA8th Mo) 130 F2d 281 (recognizing rule); Denholm & M. Co. v. Commissioner (1942, CA1st) 132 F2d 243 (recognizing rule); Mosier v. Federal Reserve Bank (1942, CA2d NY) 132 F2d 710; Alexander v. Special School Dist. (1943, CA8th Ark) 132 F2d 355; Safeway Stores v. Coe (1943) 78 App DC 19, 136 F2d 771, 148 ALR 782 (recognizing rule); Fernandez v. Carrasquillo (1944, CA1st Puerto Rico) 146 F2d 204; United States v. Muschany (1946, CA8th Mo) 156 F2d 196 (recognizing rule); Fleming v. Borders (1947, CA9th Or) 165 F2d 101; Meloy v. Central Nat. Bank (1888, DC) 6 Mackey 444; Magraw v. McGlynn (1867) 32 Cal 257, And see Washington, G. & A. R. Co. v. Bradley (Washington, G. & A. R. Co. v. Washington) (1869, US) 7 Wall 575, 19 L ed 274; Memphis v. Brown (1877) 94 US 715, 24 L ed 244.

The foregoing rule is based upon the reasoning that a timely petition for rehearing operates to suspend the finality of the lower court's judgment pending that court's further determination whether its judgment should be modified so as to alter its adjudication of the rights of the parties. The rule applies alike to petitions filed in the trial court and in an intermediate court, its application in the several courts being discussed infra, §§ 4, 5.

Also holding or recognizing that where statute or court rule provides that appeal must be instituted within certain time from rendition of decision, period for instituting appeal does not begin to run until motion or petition properly and seasonably made is disposed of: US

- 78 Wolfsohn v. Hankin, 376 U.S. 203, 84 S. Ct. 699, 11 L. Ed. 2d 636, 8 Fed. R. Serv. 2d 59B.1, Case 1 (1964)
 - 46 Communist Party of Indiana v. Whitcomb, 414 U.S. 441, 94 S. Ct. 656, 38 L. Ed. 2d 635 (1974)
 - 50 Lopez v. Corporacion Azucarera de Puerto Rico, 938 F.2d 1510, 30 Wage & Hour Cas. (BNA) 769, 119 Lab. Cas. (CCH) P 35521 (1st Cir. 1991)
 - 51 Terrasi v. South Atlantic Lines, 226 F.2d 823, 1955 A.M.C. 2193 (2d Cir. 1955) (citing annotation)
 - 52 Raughley v. Pennsylvania R. Co., 230 F.2d 387 (3d Cir. 1956)
 - 53 Gainey v. Brotherhood of Ry. and S. S. Clerks, Freight Handlers, Exp. and Station Emp., 303 F.2d 716, 45 Lab. Cas. (CCH) P 17645 (3d Cir. 1962)
 - 54 Nilson Van & Storage Co. v. Marsh, 755 F.2d 362, 1985-1 Trade Cas. (CCH) ¶ 66411 (4th Cir. 1985)
 - 55 Hicklin v. Edwards, 222 F.2d 921 (8th Cir. 1955)
 - 56 Atkinson-Baker & Associates, Inc. v. Kolts, 7 F.3d 1452 (9th Cir. 1993)
 - 57 Livernois v. Medical Disposables, Inc., 837 F.2d 1018, 2 I.E.R. Cas. (BNA) 1832, 10 Fed. R. Serv. 3d 943 (11th Cir. 1988)
 - 58 W. E. Owens Lumber Co. v. Holmes, 277 Ala. 557, 173 So. 2d 99 (1965)
 - 59 U.S. Fire Ins. Co. v. State, 843 S.W.2d 283 (Tex. App. Austin 1992), writ denied, (Mar. 31, 1993)
- The following additional authority is relevant to the issues discussed in this section:

Appendix C

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xv xxi

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- United States Constitution Civil Rights, 1st, 4th, 6th, 7th, 8th and 14th Amendments.
- United States 42 U.S.C. §§ 1983 and 1985.
- U.S. Title 28 § 1415 (a) (1) + (d)

Petition For Reconsideration

Most honorable United States Supreme Court
pursuant to Rule 44 (1.) and (2.) of the
Supreme Court Rules Petitioner Arthur Lopez
humbly Petitions for Reconsideration of this
court's October 5th, 2020 Denial of Petitioner's
Motion for Leave to Proceed in forma pauperis
and Dismissal of the Petition for Writ of Certiorari
related to Arthur Lopez v. Police Department

This petition is filed within 25 Days from
the court's October 5th, 2020 order and is
supported by Intervening Circumstances of a
Substantial Controlling Effect on this case
substantial grounds not previously presented.

- 1.) First with the denial of Petitioner's motion for leave
to proceed in forma pauperis, the court cited
Supreme Court Rule 39.8 and asserting repeated

Additionally, petitioner remains without employment income as such and only source of fixed assistance is from Social Services - SHEL and General Relief, hence by literal definition "Indigent" with no home. In addition, all previous filings with this court have been in Good Faith, void of any malice and of a non-frivolous nature. Furthermore, Petitioner has been compelled to submit all previous petitions to this court with no possible alternative for relief for the Deprivation of Civil Rights that is systemic and systematic in California. As a further matter this case involving not only deprivation of Civil Rights, Unlawful Stop and Seizure, but also collusion with neighboring police precincts and municipalities to conspire to deprive Petitioner of his Civil Rights is criminal. The following facts related to these entrapment schemes and the applicable entrapment defense(s) with an abundance of supporting case law/points of authority, enormously solidifies this case as non-frivolous nor malicious.

Additionally, petitioner remains without employment income as such and only source of fixed assistance is from Social Services - SSI and General Relief, hence by literal definition "Indigent" with no home. In addition, all previous filings with this court have been in Good Faith, void of any Malice and of a non-frivolous nature. Furthermore, Petitioner has been compelled to submit all previous petitions to this court with no possible alternative for relief for the Deprivation of Civil Rights that is systemic and systematic in California. As a further matter this case involving not only deprivation of Civil Rights, Unlawful imprisonment, unlawful arrest, malicious prosecution, it also collusion with neighboring police precincts and municipalities to conspire to deprive Petitioner of his Civil Rights is criminal. The following facts related to these entrapment schemes and the applicable entrapment defense(s) with an abundance of supporting case law/points of authority, enormously solidifies this case as non-frivolous nor malicious.

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2.) In the beginning, on or about April 7, 2011 while Plaintiff traveled with his then spouse, who was approximately 3 months pregnant with their fourth child and second boy "Lake Jesus", and his two younger children ages 6 and 4 in the City of Irvine, California he was falsely cited for a "bogus" booster seat infraction by (CVC 27360) motorcycle Police officer Stephen Myer who after issuing the bogus ticket proceeded to demand remove Petitioner's pregnant wife and two minor children from the vehicle and prevented them from continuing in the vehicle with Petitioner. He further demanded Petitioner drive to neighboring City of Tustin to retrieve a booster seat from his home for his younger child "Noah Abraham" (whose Birthday so happens to be July 17th which correlates with a Bible scripture from the Book of Genesis Chapter 8. The verse refers to Noah's Ark coming to rest on Mt. Ararat on the same date, seventeenth day of the seventh month; this passage also reflected in the Jewish Faith Holy Book possibly). However, the citing officer never disclosed or documented that under subdivision (c) of Ca Vehicle Code 27360 the absence of a booster seat when a parent is a passenger in the vehicle is not applicable as an infraction. This is to say no violation of law had occurred and moreover "Noah" ~~was~~ properly restrained with a seat belt and shoulder harness and being of a taller and heavier size than his 18 month older sister in the car for which no Booster was required under this vehicle code.

Therefore, Irvine Police Department officer Myer not only wrote a bogus ticket for a non-existent infraction but also unlawfully and unconstitutionally seized Petitioner's Family forcing them to the street and violating United States Constitutional Civil Rights under the Fourth Amendment. Consequently, Petitioner filed a formal complaint with the Irvine Police Department the same day and seven months later the Chief of Police - David Maggard responded via a letter with lies about no wrongdoing by Officer "Myer" and in essence brushing all of the events under the rug. Furthermore, Petitioner later learned that lying Chief of Police Maggard also held the office of President with the California Police Chief's Association and moreover was made liaison for the State of California to the National Police Chief Association. Unfortunately, the harassment by Police in Irvine, Santa Ana, Newport Beach, Tustin, Costa Mesa, Corona and many others did not end there. In fact, after reporting these abuses to the United States Department of Justice the Tustin Police Department (directly neighboring city / municipality and Police Jurisdiction) during an encounter less than a year later, the Police Department summoned Archie's Tow for Road Assistance (a contracted Agent of the Dept) and without any knowledge of the Petitioner who was traveling with his son Noah, the tow truck driver placed Diesel fuel in Petitioner's automobile which is a Hybrid-Gas only burning Engine vehicle causing over \$10,000. - in permanent damages.

The damage extended to the vehicle's four catalytic converters and as such ~~in~~ both The ~~Trustin~~ Police and its agent have refused to pay for the repairs and replacement of these converters.

These facts are most relevant to this case since as a direct result a Smog Check, much less a Smog Certificate, can not be ascertained. In fact, since the vehicle's "Check Engine" remains lit permanently while the converters remain unreplaced a Certified Smog Check Station is not even permitted to perform a Smog Inspection as per California Code, all of which became effective and mandatory on Plaintiff's Hybrid vehicle in 2016. Consequently, Ca Department of Motor Vehicle refuses to provide a tag/sticker annually for placement on Plaintiff's Vehicle License Plate (Rear) despite all registration fees being paid fully up to date and the vehicle being registered with Arthur Lopez as the sole Registered Owner since the vehicle's purchase in 2007 as new through the present. These facts are further relevant since Ca Vehicle Code 4000(b) outlines these two prerequisites as conditions to operate the vehicle on the road. Nevertheless, despite both conditions having been fully met - registration fees being paid and Arthur Lopez as the Registered Owner and with these defendants having full knowledge of these unambiguous facts, they have engaged in an Entrapment scheme to extort excessive fines, with the issuance of bogus citations(s).

The entrapment schemes have included Newport Beach and Costa Mesa Police Department among others. Costa Mesa Police Department in fact has even had a Communication Supervisor Officer reside on the same street as Petitioner's Parents have owned and resided since 1990-91 through 2018 located @ 2251 Bloomfield Lane; Corona, Ca 92882. This same Costa Mesa Police Department employee colluded with Corona Police Department to unlawfully seize Petitioner's vehicle in 2017. All the while Newport Beach Police Department has also targetted Petitioner and also unlawfully seized the same Lexus vehicle from Petitioner years before and more recently have also unlawfully stopped Petitioner twice three days ~~*Apant~~ using the issue of the unascertainable smog tag, despite the vehicles registration fees and the vehicle and petitioner being on record/registered with Ca DMV, as a pretext to unlawfully stop, unlawfully detain and intimidate, badge and threaten seizure of the vehicle. In fact, Petitioner invoked these entrapment schemes from the very beginning of the events related to this case. In the matter of Newport Beach PD and Joshua Vincellet the entrapment defense was disclosed from the very first conversation with the defendant (which was recorded) in early August of 2016, since Petitioner regularly frequented the Corona Del Mar area for Physical Therapy and Dr. ordered Therapy at the State Beach and no effort or police inquiry was ever made of these facts.

As to Costa Mesa Police Department, et al, the entrapment scheme and entrapment defense was also invoked and cited by Petitioner from the onset in writing and verbally in the initial filing @ the Police Department of the formal complaint in Feb of 201. Furthermore, the United States Supreme Court has held in *Sorrells v. United States*, 287 U.S. 435 (1932) whereby the Justices unanimously recognized the Entrapment defense and the Majority Opinion by Chief Justice Charles Evans Hughes located the Key to entrapment in the defendants' Predisposition or lack thereof to commit a crime (offense). In fact, the prosecution must show the defendant had a predisposition to commit the crime (offense) if an entrapment defense is raised. Neither of which these defendants ever fulfilled in moving forward with their prosecution efforts against Petitioner. Also, in *Mathews v. United States*, 485 U.S. 58 (1988) this court held the Entrapment defense has two related elements of (a) Government Inducement of a Crime (offense), and (b) Lack of Predisposition on the defendant's part to engage in such criminal (offense) conduct. Moreover, the court held in *Mathews* that the defendant is entitled to present inconsistent defenses including: "I didn't do it" and "If I did was entrapped." Here in both the Costa Mesa P.D., et al matter certainly Petitioner was induced by government not only was the markings inducing to making a left turn into the gas station but was also lawful according to the vehicle code and in the

Newport Beach P.D., et al case Petitioner clearly stated to the defendant detective of his frequency at the alleged citing spot (Lomadelmar) but also had no knowledge of the accusers whereabouts ever and further even the Penal Code used to charge petitioner also required Petitioner to Knowingly commit a violation of the stay away order in order to be found in contempt of said order which was never substantiated by any evidence submitted by the charging officer to the contrary he withheld exculpatory evidence (in itself a "Brady" violation) hence the vindication by dismissal of the petitioner with case closed without a trial.

Additionally, the Supreme Court in *Jacobson v. United States* 503 U.S. 540 (1992) held: "the government must prove beyond a reasonable doubt that a defendant was predisposed to commit a crime (offense) prior to any contact with government agents in order to overcome an Entrapment Defense." In this case not only did the government not prove beyond a reasonable doubt that petitioner was predisposed to commit a crime (offense) prior to coming in contact with government agents but in fact deprived petitioner of due process, equal protection under Law, unlawfully seized and maliciously prosecuted petitioner. In fact, this court also ruled in *Raley v. Ohio*, 360 U.S. 423 (1959) that the defendant's Due Process Clause of the Fourteenth Amendment Rights were violated since they were entrapped by being convicted for exercising a privilege which the Commission had

led them to believe was available to them. Additionally in *Cox v. Louisiana*, 379 U.S. 559 (1965) the appellant was found to in effect been advised by the City Police official his actions of demonstration were permitted and then was subsequently convicted for accepting this official's clearance, hence the lower court's conviction was reversed since it was determined that allowing the conviction would be violative of the Due Process clause. Further in *United States v. Pennycuik Industrial Chemical Corp.*, 411 U.S. 655 (1973) this court held that the Government's - U.S. Corp of Engineers inconsistently regulated the obstructions to Navigation (§13) and as such deprived Respondent of fair warning as to what conduct would be deemed criminal thus remanding the case to the district court. Additionally, this Supreme Court held in *Sherman v. United States*, 356 U.S. 369 (1958) that the government can not overcome entrapment defense by dissociating itself from informant's conduct such as that of Irvine and Justin Police Departments unlawful actions cited in this case (SACV 17-00752 ^{VBF (mew)} and SACV 17-00496 - VBF (mew)]. In addition, the 9th Circuit found in "*U.S. v. Lessard*", 17 F.3d 303 (9th Cir. 1994) that the trial court's ambiguous jury instruction on the Entrapment subject, whereby a defendant who is initially entrapped by the government can not then become unentrapped during the same course of conduct, the defendant's predisposition must exist prior to any contact between the defendant and the government, continued participation in the scheme.

would be tainted by the same entrapment, case must be reversed and remanded. Petitioner also submits nearly 50 additional U.S. Court of Appeals points of authority in support of this Petition all of which are included in the attached Table of

Authorities under Entrapment. Additionally Court erred in *Banning City of Newport Beach, Newport Beach Police Department* as defendants, see App. D and see *Monell v. N.Y.C. Dep't of S.S.*, 436 U.S. 658 (1978).

3.) The Third Cause for Reconsideration is the Lower Court's Repeated error in denying a Court appointed Attorney as Repeatedly Requested by Indigent Petitioner in 2016, 2017 and 2017 and as provided under U.S. Title 28 § 1915 (d)(e)(i): "The Court may request an attorney to represent any person unable to afford counsel." In fact, petitioner was granted *In Forma Pauperis* due to his indigent status, see Appendix E. Also, see *Johnson v. Williams*, 788 F.2d 1319, 1322-1323 (9th Cir., 1986) whereby the Appellate Court held "the district Court erred when it denied Plaintiffs motion for counsel solely because the plaintiff did not raise factually complex issues." "although factual complexity is certainly a relevant factor for a district court to consider in determining an indigent litigant's need for appt. of counsel it is not the only factor."

Also citing *Maclin v. Freake*, 650 F.2d, 885, 888 (7th Cir 1981): "We Believe that in addition to factual complexity, the district Court should also consider the ability of the indigent to investigate the facts", id citing *Shields v. Jackson*, 570 F. 2d 284 (8th Cir 1978) and *Peterson v. Nadler*, 452 F 2d 754 (8th Cir 1971), the existence of conflicting testimony, *Maclin*, 650 F. 2d 888, citing *Manning v. Lock*, 623 F. 2d 536 (8th Cir 1980), the ability of an indigent to present his claim, *Maclin*, 650 F 2d 889, citing

Furthermore, the 8th Circuit, U.S. Court of Appeals under Nelson v. Redfield Lithograph Printing, 728 F. 2d 1003 (1984) stated "There has been reluctance by some judges to request lawyers to appear in Pro Bono litigation. We disapprove of such reluctance." They also went on to say "We think it incumbent upon the Chief Judge of each District to seek the cooperation of the bar associations and the federal practice committees of the judge's district so as to supply the court with competent attorneys who will serve in pro bono situations."

However, in this case no such Pro Bono attorney was cited or made available. The appellate court also quoted Title 28 U.S.C. §1915(d), "The court may request an attorney to represent any such person unable to employ counsel..."

Moreover, in Reynolds v. Force, 771 F. 2d 1179 (8th Cir. 1985) the Appellate Court held in agreement with Appellant that the District Court erred in denying his motion for appointment of counsel because Appellant failed to submit a statement in support of his motion. In this case, Petitioner even submitted facts in support of his motion seeking appointment of counsel see Appendix 'E'.

Similarly, in Shields v. Jackson, 570 F. 2d 284 (8th Cir. 1978) the Appellate Court remanded the case with directions

to appoint counsel, stating "We take this action because it is clear that Shields is indigent and not in a position to adequately investigate the case, and because we believe that the complaint states a cause of action and that the appointment of counsel will advance the proper administration of justice," citing *Peterson v. Nadler*, 452 F. 2d 754 (8th Cir. 1971) (per curiam). The 8th Circuit Appellate Court also stated in *Peterson v. Nadler*, 452 F. 2d 754, "In the overall interest of the proper administration of justice we think this case presents circumstances requiring appointment of counsel. The complaint states a fraudulent conversion of plaintiff's property.... Plaintiff is admittedly an indigent. For obvious reasons he alone cannot investigate the case or hope to obtain evidence to prove his allegations. The court will be aided by appearance of counsel at all proceedings. These circumstances fully justify the appointment of counsel to represent plaintiff and the failure to do so here would amount to an abuse of discretion." These assessments relate to this present case verbatim.

Additionally, the findings in *Abdullah v. Ginter*, 949 F. 2d 1032 (8th Cir. 1991) found the district court

erred by denying Plaintiff's first request for appointment of counsel. "We held that the district court should have appointed plaintiff counsel..., once the district court found claim to be meritorious."

The Ninth Circuit has also weighed in on this issue in *Flowers v. Baca*, 670 F.App'x 561 (2016) Whereas they held: "We remand with instructions that the district court appoint counsel to represent Flowers. See *Palmer v. Valdez* 560 F.3d 965, 970 (9th Cir. 2009) ([a] court may under 'exceptional circumstances' appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1))." (quoting *Aggeman v. Cons. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004)).

Exceptional circumstances exist in this case of the form of petitioner's limited ability to articulate his claims pro se, the complexity of the legal issues involved, and the possible merit of Flowers's claims." Case in point precisely since here Petitioner Arthur Lopez was precluded from investigating the facts related to his case as an indigent.

In closing petitioner submits Points of Authority In support under Tables of Authority Appt. of Counsel Attached.

Conclusion

The Petition for Reconsideration
should be granted

Respectfully submitted,

Arthur Lopez

October 30th, 2020