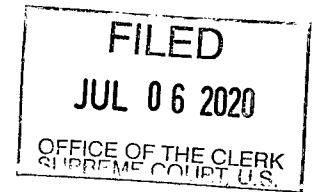


No. 20-5230 ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Arthur Lopez — PETITIONER
(Your Name)

Newport Beach Police ^{VS} RESPONDENT(S)
Department, Joshua Vincelot, et al
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Arthur Lopez
(Your Name)

P.O. Box 13081
(Address)

Newport Beach, California 92658
(City, State, Zip Code)

949. 467. 0937
(Phone Number)

QUESTION(S) PRESENTED

Should the Unlawful and Unconstitutional Seizure and subsequent Imprisonment and Malicious Prosecution of Male Born in the United States with a Mexican-Heritage and Hispanic Latino Race, with Catholic-Christian Religion/Religious Beliefs, Father of Four Minor Children Petitioner be Actionable under United States Statute 42 U.S.C. § 1983 for the Deprivation of U.S. Constitutional Civil Rights including The Fourth Amendment?

Should the municipality known as the City of Newport Beach and its Police Department and Chief with a Litany of Grievances from Petitioner related to the systemic deprivation of Civil Rights by their Police Chief, Police officers and Staff confirming the failure to train amounts to the deliberate indifference to the United States Constitutional Rights of those the Police comes into contact be permitted to remain as defendants for actionability under United States Statute 42 U.S.C. §§ 1983, 1988 in this case, City of Canton, Ohio v. Harris, 489 U.S. 378 (1989)?

LIST OF PARTIES

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

RELATED CASES

- Superior Court of California (County of Orange) Case # 16HM10451
(N.B.P.D. Case # 16-006716 and 15-10461)
- United States Supreme Court Docket 19A941
Arthur Lopez v. Costa Mesa Police Department, et al
U.S. Court of Appeals for the Ninth Circuit Case No. 18-55521
(D.C. Case No. SACV 17-00297 v BF (MRW))
- U.S. Court of Appeals Case No. 19-55231
for the Ninth Circuit
Arthur Lopez v. Corona Police Department, et al
- Superior Court of California, County of Orange Case # 15HM1225
(Newport Beach Police Case #s 16-006716 and 15-10461)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	<i>Arthur Lopez v. Newport Beach Police Department No. 18-5645, United States Court of Appeals for the Ninth Circuit February 6, 2020 Memorandum affirming lower courts Dismissal and Mandate of February 28, 2020</i>
APPENDIX B	<i>United States District Court for the Central District of California SACV 17-00488 (VBF-MPW) October 18, 2018 Dismissal Order</i>
APPENDIX C	<i>Superior Court of California, County of Orange Register of Actions - Minutes Case # 16 HM10451</i>
APPENDIX D	<i>United States District Court for the Central District Order and Documents Related TO Motion For leave to Amend Complaint Dated 11/1/2017, 11/30/2017 and 12/5/2017.</i>
APPENDIX E	<i>Declaration of Eye Witness, Co Passenger - Erika Tsimbaliou Contradicting Declaration of Complainant Cheryl Lopez related to events of July 29th, 2016 - Confirming absence of Probable Cause</i>
Appendix F	<i>False Statements from Chief of Police Newport Beach Police Department - Jay R. Johnson and Deputy Chief David M. G. Letter Dated August 18, 2015 and a Litany of Documentation Related To Deprivation of Rights Events contradicting the Falsehood Letter of the Police Chief</i>
appendix G	<i>False Police Report Prepared by Defendant Joshua Vincelot reflecting Misrepresentations, Lies and Concealment of evidence including the absence of a declaration of witness Erika Tsimbaliou</i>

Index To Appendices (continued)

Appendix H January 19, 2017 Written Information
From Core Performance Physical Therapy
That No attempts were made by Defendants
Including Joshua Vincet to reach them to
confirm Petitioners Physical Therapy Regular
Visits to their Center located @
15 Corporate Plaza Drive, Newport Beach, CA 92660
At Anytime Before or after The Unlawful ^{Surre 130} Seizure,
False Arrest (9/12/16), False Imprisonment (9/12/16 -
October 18, 2016) or Malicious Prosecution.

Appendix I January 11, 2020 and January 14, 2020
Bogus - Unconstitutional/Unlawful Stops by
Two Newport Beach Police Officers under
Case/Citation #'s NBR 99466 and
NBE 00034772 Respectively for which
Petitioner is certainly Not Guilty and
for which Arrangements To Enter Plea
Has Been Denied but yet They are
Demanding Money Due without hearing
or trial - In fact, on The January 14, 2020
Petitioner was Detained for over an hour,
Compelled To Produce a DMV Cash Receipt
By Sorting Through Hundreds of File Documents
Contained within Dozens of Federal Case Fil
Under Threat of Unlawful/Unconstitutional
Seizure of Petitioner's Automobile with
tow Truck @ Front Bumper and Despite
Permanent Disabilities.

Index To Appendices (Continued)

Appendix G United States Marshall Service
Salvaged Service of Summons and
Complaint -- Order Issued March 23, 2017.
1st Proof of Service reflects April 7, 2017
Service but not submitted to Court until
July 25, 2017. However, this service is
ruled Squashed by Magistrate Judge Wilner.
2nd Proof Service submitted September 14, 2017

TABLE OF AUTHORITIES CITED

CASES :

PAGE NUMBER

United States Supreme Court -

- a) Harlow v. Fitzgerald 457 U.S. 800 (1982)
- b) Droh v. Ramirez 540 U.S. 551 (2004)
- c) Albright v. Oliver, et al 510 U.S. 266, 70 (1994)
- d) Gerstein v. Pugh, 420 U.S. 103 (1975)
- e) Illinois v. Gates, 462 U.S. 213 (1983)
- f) Heck v. Humphrey, 512 U.S. 477 (1994)
- g) City of Canton v. Harris, 489 U.S. 378 (1989)
- h) Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)
- i) Haines v. Kerner, 404 U.S. 519, 520 (1972)
- j) Monell v. New York City Department of Social Services (1978)
436 U.S. 658, 436 U.S. 694
- k) Elijah Manuel v. City of Joliet, Illinois No. 14-9496 (2017)
580 U.S. — (2017)
- l) Monroe v. Pape 365 U.S. 167, 171 (1961)
- m) Bailey v. United States, 568 U.S. 186 (2013)
- n) Foman v. Davis, 371 U.S. 178 (1962)
- a) Hartman v. Moore, 547 U.S. 250 (2006)

Table of Authorities(cont.)

Cases:

United States Court of Appeals -

- a.) Sykes v. Anderson, 625 F.3d 294 (2010)
- b.) Marcus Simpson + Michael Glover v. Village of Linden Heights, et al
No. 15-4318 (May 21, 2018 - 6th Circuit)
- c.) Edward Lee Dunn v. The State of Tennessee, et al
No. 81-5217, 697 F.2d 121, 1982 U.S. - 6th Circuit
- d.) Byron Halsey v. Frank Pfeiffer No. 13-1549 and
No. 13-2236 (Argued 12/18/13) - 3rd Circuit
- e.) Cortez Nathaniel Meadows v. John Wetzel +
The Board of County Commissioners No. 06-6211; 10th Cir
- f.) Lanning v. City of Glenn Falls, 908 F.3d - 2nd Circuit
2018
- g.) Billy Julian v. Sam Hanna No. 13-1203 - 7th Circuit
- h.) Shawn Williams and Roy Buchner v. Juan D. Reyes, Frank Jacoby,
Michael Fenner - No: 06-2245 and No: 06-2260, 10th Circuit
- i.) * Court of Appeals - State of Maryland:
Prince George's County, Maryland, et al v. Keith Longtin
No 35, 2010 - 19 A.3d 859 (2011) 419 Md. 450
- j.) * Court of appeals - State of California
Hernandez v. City of Napa 781 F. Supp. 2d 975
(N.D. Cal. 2011)
- k.) Carpenter v. Nutter, 59 P. 301 (Cal 1899) (A. Supreme Court)

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 6, 2020

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including July 5th, 2020 (date) on February 25, 2020 (date) in Application No. 119 A 942.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory Provisions

- Table of Authorities (cont.) -

Statutes:

Federal: United States Constitution First, Fourth, Fifth, Eighth and Fourteenth Amendments

i) U.S. Title 18 U.S. Code § 241, 242

ii) U.S. Title 18 U.S. Code § 1001

iii) U.S. Title 42 U.S. Code § 1983

iv) U.S. Title 42 U.S. Code § 1985

State

i) California Penal Code: 166(c)(1)

ii) California Penal Code: 1203.3

STATEMENT OF THE CASE

Most honorable United States Supreme Court
this case arises from the systemic and systematic
standard operating procedure of the defendants,
Joshua Vincelet, Newport Beach Police Department,
City of Newport Beach, Jay Johnson and Connor Miller
of depriving minority petitioner Arthur Lopez of
his Civil Rights including the protections provided
under the Fourth Amendment which specifically
led to the false arrest, false imprisonment
and malicious prosecution of petitioner including
37 days in jail for no wrongdoing whatsoever as
ultimately was confirmed having been vindicated by
the complete Dismissal of all charges and Dismissal of
the case by presiding Honorable Judge Robert Gannon
without having to go through a jury trial. The
false arrest occurred on September 12, 2016 and
the 37 days of incarceration ensued uninterrupted
@ Theo Lacey Men's Jail Facility in Orange, California
with an outlandish set bail of \$25,000. - This
false imprisonment came to an end on October 18, 2016
and Case #16 HM10451 (Superior Court and Newport Beach Police
#16-06716) was finally dismissed on October 19, 2016.
Through these fraudulent schemes and processes ^{Appendix C}
defendant Joshua Vincelet repeatedly lied and
misrepresented the facts with the deliberate intent
to falsely arrest, falsely imprison and maliciously
prosecute petitioner. Moreover, defendant
concealed material, exculpatory evidence to
promote his unlawful acts. This is a clear dereliction
of duty and oath and in opposition to United States
Supreme Court Brady v. Maryland, 373 U.S. 83 (1963)
requiring the prosecution to relinquish all evidence

that may exonerate the defendant. Specifically the defendant withheld witness Erika Trimblov's, Appendix E, eye account and declaration from the court and from his police report. In fact the false statements on the police report and ensuing, Appendix G, proceedings by defendant Josh Vincelet are punishable/actionable criminally under United States Title 18 U.S. Code § 1001 which states it is a Crime To: 1.) Knowingly and willfully; 2.) make any materially false, fictitious, or fraudulent statement or representation; 3.) in any matter within the jurisdiction of the executive, legislative or judicial branch of the United States. This Eye Witness, Appendix E, omission is significant since this witness' declaration directly contradicts the defendant's informant/complainant account and false accusations made against petitioner. Moreover, the facts omitted solidify that no probable cause ever existed to justify any of the actions taken by the defendants against Petitioner, Arthur Lopez's Civil Liberties, but instead reiterates the discriminatory policy of these defendants against a Mexican Heritage Latino, Catholic-Christian Male. In addition, these facts serve to highlight the absence of any sensibility or reasonable conduct by the defendants and also the lack of application to the "Totality of the Circumstances and facts." See *Sykes v Anderson*, 625 F.3d 294 (2010) Malicious Prosecution was proper since officers provided misrepresentations, falsehoods to the prosecutor and committed "Brady" violations in not turning over exculpatory evidence to the defendant.

On or about the mid part of August 2016, defendant Joshua Vincelet contacted Petitioner by phone requesting to speak about an alleged citing of Petitioner in his car on July 29th, 2016 near Corona Del Mar State Beach area 5pm by his former wife - Cheryl Lopez from whom he had been separated from since November 22, 2015 and from whom he had petitioned a Dissolution of Marriage on or about February 16, 2016. Petitioner was also represented by a Public Defender at the time regarding matters involving an ongoing Appeal Misdemeanor case that defendant Newport Beach Police Department had been involved in and defendant Joshua Vincelet had first hand knowledge of these facts since a No Contact - Protective Order had been issued @ the conclusion of the January 2016 Trial. This order directed Petitioner Arthur Lopez to not have any contact with his former wife for a three year period that ended January 14th, 2019 with no violations. Throughout the phone conversation with defendant Vincelet petitioner made it abundantly clear that he never saw his former wife nor did he have any knowledge of her whereabouts on the day of the alleged citing. Furthermore, Petitioner also made it abundantly clear he frequented Corona Del Mar not only for his twice a week physical Therapy but also frequented the State Beach due to his doctor's therapy advisement related to his permanent injuries. Petitioner also provided the name, address and telephone number to

the physical therapy center to confirm the regular sessions multiple times a week. Petitioner offered the name and location of the local Catholic Church where he attended daily morning mass so as to establish the regular presence in this general area. In addition, the State Beach has and had a functioning security camera in direct view of the walking area. Petitioner would cross multiple times on his visits to the State Beach ~~which~~ had been allegedly cited on July 29, 2016 by someone who did not frequent this area but instead had allegedly been participating in a job related picnic of sorts on a Friday afternoon during their standard business hours which had been 8-5pm when Petitioner was still spoused with the complainant. In addition, the complainant's office job was located in Irvine, California approximately 7 miles away from the State Beach - Corona Del Mar. To make matters even more outlandish the complainant alleged having seen my car on a public street and acknowledged no contact was ever made. Furthermore, the complainant stated she was travelling in a coworker's automobile when the alleged citing occurred and petitioner's automobile was at all times in front of the coworker's car. In fact, the coworker who was driving stated that the very first encounter with petitioner's automobile was at a 4-Way stop and without any unusual occurrence. Rather Petitioner made ~~no~~ indication he was even aware of their presence but instead was traveling on the main artery to and out of the State Beach to Pacific Coast Highway - Marguerite Ave. (Appendix "E")

while her car was @ the 4-Way stop and it was after she proceeded from the stop-intersection that the complainant startled her by jumping up and in surprise stated petitioner's car was travelling ahead of them in the same direction towards Pacific Coast Highway in a single lane. Moreover, upon reaching PCH Petitioner proceeded Left-Northbound and they did as well but in different lanes since PCH has two lanes traveling in each direction. Petitioner's car remained in the left lane while the coworkers car remained in the right lane behind at all times behind petitioner's vehicle. It is worthwhile noting that these events allegedly transpired circa 5-5:30 pm on a Friday and as such this segment of PCH through the city/town of Corona Del Mar is usually congested as a "rush-hour" of sorts and consequently traffic with the multiple traffic lights within a short distance of $\frac{1}{2}$ mile creates a slow moving pace for the congested traffic flow. This is consistent with the coworker's account of the travel of the cars below the speed limit, however, at no time was there ever any contact or crossing of petitioner, his car and the complainant or the vehicle she was traveling in. Hence, if the alleged citing of Petitioner's car occurred on this given day it was without any knowledge or will on the Petitioner's part but rather a coincidental passing of automobiles on a public street near a State Beach and a State Highway given that the Complainant's Employer

chose to have a picnic @ a location Petitioner had frequented for months regularly as had been conveyed to his Physical Therapy Center - Core Performance Therapy located @ 15 Corporate Plaza Drive N. Beach, Ca 92660 and to his Medical Doctor - Philip Madrid - St. Joseph Heritage Medical Center. Unfortunately, defendant Joshua Venelet did not act sensibly or reasonably in his Detective Role - Responsibilities having never contacted this Physical Therapy Center as confirmed by Carolyn in a written message dated January 19th, 2017; Appendix H. Moreover, defendants failed to produce the security video requested by the petitioners of the State Beach security cameras @ the main entrance to the parking lot or any other street surveillance cameras from PCH to corroborate petitioners statements or support the false accusations from the complainant. Clearly defendants discriminatory policy to ignore the evidence and ignore the "Totality of the Circumstances" is in contradiction to not only United States Supreme Court Case Law / History such as Illinois v. Gates, 462 U.S. 213 (1983) "The rigid 'two-pronged test' under Aguilar and Spinelli for determining whether an informant's tip establishes probable cause for issuance of a warrant is abandoned, and the 'totality of the circumstance' approach that traditionally has informed probable cause determination is substituted in its place." Also see Groh v. Ramirez, 540 U.S. 551 (2004), "unreasonable search under the 4th amendment as warrant was invalid. No Reasonable officer could believe that a non-compliant warrant not meeting requirements was valid; but the defendants bias conduct is also reckless, malicious and deliberate with

an indifference to the U.S. Constitutional Civil Rights of minority petitioners whom the Police contacts, see *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989), holding Title 42 U.S. Code §§ 1983 Actionability of a Municipality's failure to train: The Inadequacy of Police Training as a Basis for a § 1983 liability where the failure to train in a relevant respect amounts to a deliberate indifference to the Constitutional Rights of persons with whom the Police come into contact." "Deliberate Indifference" standard is most consistent with rule of "*Monell v. New York City, Department of Social Services*, 436 U.S. 658 (1978) the Supreme Court holding that Municipalities could be liable for the infringement of constitutional rights as a policy or custom as the moving force behind the Constitutional violation. Consequently, defendant(s) proceeded to execute their assault against Petitioner during a scheduled hearing on September 12, 2016 @ the Harbor Justice Superior Court of California @ Newport Beach, California which had been scheduled with the purpose of obtaining approval from the court to modify the existing stay away order to allow petitioner and his children (at least 3 of the four) to establish direct contact as is permitted under California Penal Code 1203.3(b)(6)- "The court has authority at any time during the term of probation ... may limit or terminate a protective order ..."; moreover this modification of the order curbing Petitioner's Parental Rights as to three of his four children who were non-victims in the matter related to Case #15HM12251 is further supported by established California Case Law under "*People v. Carlos Reginald De La Rosa-Landa* (2014 DJBAR 7959)

whereby the Court held a Protective Order is Improper when it Bars Father from contacting his children who were not victims in the related case.

Nevertheless, defendants with conspiring Orange County ^{9 mother} District Attorney Deputy Nathaniel Barnett (#307587) concocted a baseless scheme to unlawfully and unconstitutionally seize Petitioner @ his scheduled hearing by presenting a criminal complaint under Case #16-06716 NBPD J - Superior Court Case #16HM10451-Appendix alluding a violation of California Penal Code 166(c)(1) (Violation of a Protective Order) which Reads: "... a 'Willful' and 'Knowing' violation of a protective order stay-away court described as follows shall constitute contempt of court, ... hours Before the September 12, 2016 hearing set with the purpose of clearing a path to Petitioner and his 3 youngest minor children reuniting/reestablishing contact. The timing of the defendants execution is telling of the ulterior motive the defendants maliciously and deliberately sought to further harm Petitioner by since Judge Stephanie George in Department H13, who herself was arrested by the Orange County Sheriff short time after the September 12th hearing, remanded petitioner into custody and proceeded to immediately deny the sought after modification to the protective order that unlawfully has barred Petitioner from contact with his children for over 4 1/2 years now. Moreover, following the seizure/arrest of Petitioner he remained incarcerated without any fault of wrongdoing for 37 days. During this false incarceration Petitioner's Appeal Public Defender who was present @ the September 12, 2016 hearing did not contact petitioner in anyway and also failed to file

an appeal for the denial of the motioned modification of the protective order and since Petitioner was incarcerated over 30 days he was denied his subsequently filed appeal on grounds that the 30 day Statute of Limitations was exceeded and then this Appeal Public Defender named Daniel Kim abandoned Petitioner's standing Appeal by permission of the Superior Court since he claimed a conflict. As for the conclusion to the 37 day false imprisonment, this was made possible by the Dismissal Order of presiding Hon. Judge Robert Shannon considering the nature of the charge, the minimal evidence of guilt provided by the prosecution, including the outline of the Peoples evidence as set forth in the Peoples Trial Brief, the Constitutional Rights of the Petitioner (Defendant) to Due Process, the fact that defendant had been in custody for a period of 36 actual days since arraignment, the interest of society and Furtherance of Justice. The Dismissal Order was issued October 19, 2016 and Case # 16HM10451 finally came to a close granting Petitioner an unequivocal vindication/exoneration of any and all wrongdoing as had been falsely alleged from the onset and as had been refuted stated by Petitioner all along and had been corroborated by eye Complainant - Witness - coworker and copassenger Erika Tsimbakov in her declaration that contradicted the complainant's account from the very beginning. see Appendix E. In consequence, the defendants having falsified the police report by fabricating statements from petitioner's account of the alleged citing by Complainant on July 29, 2016 wherein he made reference to Petitioner following the complainant which was in direct contradiction to only the complainant's other coworker who was driving the car as well since they both stated petitioner's car was ahead of theirs at all times. Moreover, petitioner always maintained he frequented

the Corona Del Mar area due to his physical therapy but unambiguously stated he was not aware of the complainant's whereabouts having never seen her and also stated he could not say with certainty whether or not he was even there that day and was not aware of what day of the week July 29th, 2016 even was when he spoke to defendant Joshua Vincelot by phone mid August 2016 (Audio Recordings part of Record). However, defendant not only omitted these facts but also provided false statements in his Police Report and he also omitted Eye Witness Erika Tsimbakov's account of the alleged citing, please see False Police Report Appendix B and Erika Tsimbakov's Declaration contradicting Complainant's account and false accusations - Appendix E. These unlawful, malicious acts by the defendants is very much consistent with the operating custom of the defendant's City of Newport Beach Police Department as the Chief of Police - Jay R. Johnson and Deputy Chief Division Commander David W. McGill also as a standard policy falsify records and provide untruths in their signed correspondence as was provided on August 18, 2015 - See Appendix F whereby the response to Petitioner's request for records related to the unlawful seizure of his automobile in September 2012 (Case #s 12-8327 and B138145270) and harassment complaints related to other Newport Beach Police Department Personnel was unfounded or rather it did not occur or did not involve Police Department personnel, all of which was a lie since the grievances were submitted all in writing and involved Inv. Keith Krallman (Badge #1198) - 11/15/11 and off. Psorob (Badge #1139) and staff - Mary Valle who all refused to provide the identity and badge # of motorcycle officers harassing petitioner while he dropped off his children @ school @ 7:55 am. in Newport Beach, report was filed with the Human Resources Dept of the City - 10/29/15

Additionally Grievances had been filed related to Det./Sgt. Keith Krullman Badge 1198 on a fraud matter on 1/30/2013 (CA Penal Code 484); Moreover, on May 13, 2015 Grievance Related to Sgt. Anderson (Badge 107) and Bush Badge #1079 was filed submitted 9/23/12 after unlawful seizure of Petitioner's automobile. Appendix 'F'. These facts and history of Due Process Violations under the 14th amendment are introduced as part of this petition since the United States Court of Appeals for the Sixth Circuit has held in "Kimberly Sykes v. Derrick Anderson, 625 F.3d 294 (2010)" where police officers submitted flagrant misrepresentations, exaggerations and omissions + also withheld exculpatory evidence and provided at least two false statements that liability of the Police officers for Malicious Prosecution was proper because they provided the prosecutor with investigatory materials which contained knowing misstatements and the prosecution relied on many of the falsehoods in proceeding against plaintiffs. Moreover, the other police officer was properly found liable for many "Brady" violations because there was no evidence in the record indicating that Plaintiffs possessed any of the facts that would have enabled them to uncover the withheld evidence, which was favorable to them, and Plaintiffs suffered prejudice as a result. These findings well describe exactly what prejudicial circumstances these defendants are very much guilty of in this case.

Furthermore, the United States Supreme Court has held in "Albright v. Oliver, 510 U.S. 266 (1994)" that a 14th amendment claim under 42 U.S.C. § 1983 is actionable without probable cause when accompanied with incarceration. Also in *Berstein v. Pugh*, 420 U.S. 103 (1975) the court held the Fourth amendment requires a judicial determination of probable cause as a prerequisite to extend restraint of liberty following arrest. However, here no Probable Cause ever existed,

14

and petitioner's Public Defender Amber Poston (#245437) was not present and Petitioner was not allowed to speak while the entire process was a sham of sorts and pleas for a speedy trial were ignored citing Ms. Poston was on another assignment. Additionally in *Heck v. Humphrey*, 512 U.S. 477 (1994) the court concluded "an individual bringing a claim under 42 U.S.C. § 1983 must base the pursuit of damages for an unconstitutional conviction on the reversal or invalidation of the conviction." This case also paralleled the matter before the court since Petitioner was exonerated from any wrongdoing despite being incarcerated and maliciously charged and prosecuted by the defendants deliberate unlawful acts. By the same token this court has also ruled in *Elijah Manuel v. City of O'Fallon, Illinois, et al*, 580 U.S. ____ (2017) that the Fourth Amendment prohibits government officials from detaining a person absent probable cause. And where legal process has gone forward, but also when it has done nothing to satisfy the probable cause requirement, it can not extinguish a detainee's Fourth Amendment claim. That was the case here: Because the judge's determination of probable cause was based solely on fabricated evidence it did not expunge Manuel's Fourth Amendment claim. As such petitioner's matter before this court today is as stated so eloquently above by Supreme Court Justice Kagan.

Furthermore, the California Supreme Court has also weighed in on this subject of Malicious Prosecution as stated in "Carpenter v. Nutter, 59 P301 (Cal. 1899)

"In actions for Malicious Prosecution it must be alleged that the prosecution is at end, either by alleging that defendant was acquitted of the charge or by alleging facts showing the legal termination of the prosecution comprised of in favor of defendant prior to the commencement of the action."

Next, in as far as Qualified Immunity for Police Officers goes, it has been ruled to hinge on the existence of Probable Cause determined by a Reasonable Person believing that an offense was being or had been committed based on the known facts and totality of the circumstances; see United States Supreme Court, "Brinegar v. United States" 338 U.S. 160 (1949) which defines "probable cause" as "where the facts and circumstances within the officer's knowledge, and of which they have reasonably trustworthy information are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed." Moreover in Harlow v. Fitzgerald, 457 U.S. 800 (1982) this court held that "Qualified Immunity" is conditioned on conduct that does not violate clearly established statutory or constitutional rights of which a Reasonable person would have known. Therefore, in this matter of Arthur Lopez v. Newport Beach Police Department, City of Newport Beach, Joshua Vneclet, Jay Johnson and Connor Miller where the defendants have

engaged in a False Police Report, Misrepresented Multiple Facts, omitted Material Key Evidence, failed to provide Exculpatory Evidence as custom, manipulated the testimony of petitioner and misrepresented this to the court and prosecution with the deliberate and malicious intent to harm petitioner by false arrest, false imprisonment and to derail the modification of the existing protective order so as to deny petitioner his Parental Rights, 4th and 14th amendment rights and 1st and 5th amendments; ^{rights} (see Appendix E, F, J and H - please note the Declaration of Ericka Tsimbalov along with "Marriage of Lopez-Responsive Declaration of Cheryl Lopez" was obtained by Petitioner through the Dissolution of Marriage Processess, not from these defendants as should have been the case), and therefore no reasonable man or woman would conclude that probable cause ever existed. Additionally, in *Manuel v. City of Detroit*, 580 U.S. (2017) this court also stated that "Manuel's" Fourth amendment claim was proper because his arrest was made without probable cause. Furthermore, the United States Supreme Court also held in "*Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), that an implied cause of action existed for an individual whose Fourth Amendment freedom from Unreasonable search and seizure had been violated by the Federal Bureau of Narcotics. The victim of such deprivation could sue for the violation of the Fourth Amendment itself despite the lack of any federal statute authorizing such a suit. The existence of a remedy for the violation was implied by the importance of the right violated.

Most relevant to these proceedings is the fact that defendant Joshua Vincelet is no amateur to the law enforcement field as he's been employed by more than one police department and has been with co-defendant Newport Beach Police Department since 2013 and was formerly employed by the Astoria Police Department in Northern California. However, defendant Vincelet was compelled to relocate to a new police agency after he and his partner shot an unarmed Latino parolee named "David John Lopez" six times causing his death @ 26 years of age according to San Francisco U.S. District Court civil suit filings under Case # 13-1610 - Northern District of California filed by surviving Father, Mr. Lopez and surviving mother Mrs. Kathryn Harvey and although the case was mutually dismissed by all parties involved agreeing to cover their own attorney fees, the full extent of the settlement is not known. Nonetheless it should be noted that the coroner's unusual inquest decision it was concluded the defendants, Vincelet and partner accidentally shot Mr. Lopez to death, accidentally with six bullets and the mortal shot was to the back of the head. Furthermore defendant Vincelet status with codefendants is above entry level and includes above police officer average authority and expectation. In addition, to "having" killed an unarmed 26 yr. old Latino named "Lopez", defendant Vincelet was compelled to undergo a thorough investigation, one would expect by Internal Affairs related to the officer involved shooting protocols. Following this review he was sued and subjected

to the Federal Jurisdiction and exposed to the media including the San Francisco Chronicle. These revealing episodes propelled defendant to relocate 600 miles away where he landed a new job with Newport Beach Police Department and just one or two years later he encounters another Latino named "Lopez" and true to the defendant's discriminatory and abusive nature he immediately engages in a scheme to unlawfully seize Petitioner and subject him to an unlawful arrest, unlawful imprisonment and moreover a malicious prosecution to assassinate his character and deprive him of his Constitutional Rights under the 4th, 14th, 1st, 5th, and 8th amendments including depriving him of his Parental rights by derailing the modification of the existing protective order. In fact, defendant Vandel knows very well the tricks to his trade under the leadership of Police Chief Jay Johnson who also falsely stated in letter of 8/18/2015 that actual events within his precinct never occurred, unbelievable as it may sound see Appendix F. This false document attempted to conceal (along with a database purge of sorts as per department staff disclosed March 29th, 2017) the unlawful seizure of plaintiff's automobile despite Superior Court Judge Goy Markman's 9/12/12 order from hearing in Dept. H14 @ the Harbor Justice Center in Newport Beach granting Petitioner through 12/12/12 to resolve Registration matters under Case # LG87389 and moreover a Master Parking Permit being in full view on the vehicle's front windshield when the vehicle was hauled away on September 22, 2012 from Petitioner's residence while it was legally parked and without a warrant #12-8327 + #B138145270)

Unfortunately, these are not isolated incidents with these defendants for on November 22, 2015 two other members of the Newport Beach Police Department, Mathew Biagi and Detective Shawn Dugan both concealed material evidence and failed to turnover exculpatory evidence as well on matters related to petitioner's misdemeanor trial under case # 15HM12251 in January of 2016, just eight months before the events of this case. The evidence involved the complainant having been the initiating aggressor who assaulted petitioner and caused cuts to his face and the conveyed request to press charges. These facts were later supported by the prosecutors key witness who testified the complainant had been the initiating aggressor during her testimony @ Trial leading to 3 Not Guilty Verdicts being rendered by the Jury in favor of petitioner. Nevertheless, the two officers involved never offered this evidence nor did they file charges against the aggressor. In fact, one of these rogue officers - Mathew Biagi was also involved in the shooting of Mr. David Lirith on April 15, 2017 in front of his home while having followed instructions and laid motionless on the pavement at one point before being shot to his death. Mr. Lirith was 56 yrs old. Biagi was not charged by the O.C. District Attorney nor was a taser utilized according to Daily Pilot and other news reports. The following is a list of other recently filed Civil Right Violation cases against these defendants City of Newport Beach, Newport Beach Police Department and Jay Johnson not involving petitioner but serve as further affirmation of the Unconstitutional Customs with these under color of law upon the people the police come in contact.

- 1.) Bennett Vos v. City of Newport Beach, ^{etal} #16-56791
U.S. Court of Appeals for the Ninth Circuit (DC # 15-00768)
This case involves the shooting of Mr. Vos by police.
- 2.) Connie Barraclough v. City of Newport Beach, ^{etal}
SACV 16-00733 - Involving 52 yr old Female Abuse
- 3.) Paul McAdams v. Newport Beach Police, ^{etal}
SACV 19-00615 - Involving Excessive Force

In addition, these defendants have been compelled to settle several lawsuits brought forth by their own agents including a sexual harassment complaint filed against Police Chief - Defendant Jay Johnson in which the Dispatcher - spouse of a former police officer employed at one time by the defendants. These two former Police Department married employs are Sergeant John Horgan and Dispatcher Christine Horgan who received \$500,000.⁰⁰ from the defendants in January of 2015 according to the Daily Press. Furthermore, three additional Newport Beach Police Department officers also demanded, sued and were paid nearly \$1,000,000.⁰⁰ for abuses within the network of the department. These officers are Craig Frizzell who received \$420,000.⁰⁰, Steve Shulman who received \$420,000.⁰⁰ and Rob Morton who received \$110,000.⁰⁰ according to the Newport Beach Independent in February of 2014. Additionally, NBPD officer Eric Peterson filed a lawsuit against these defendants Jay Johnson and City of Newport Beach (#SACV 16-00240).

More recently and directly involving petitioner two unlawful stops and bogus citations were [appendix] issued three days apart by these defendants, Newport Beach Police Department officers. The first under Citation # NBR99466 involved a patrol vehicle who initiated pursuit without a moving violation having occurred as petitioner exited Northbound a Shell gas station @ Jambooree + San Joaquin Hills in Newport Beach on January 11, 2020 just an hour before Petitioner's daughter's birthday of 1/12. Petitioner was cited for an alleged violation of 4000(a)(1) VC (Registration) but in fact Petitioner's Veh. Registration is paid up to date through September 8 of 2020 and Petitioner has always been the only Registered Owner since the vehicle was purchased new in Sept. of 2007, the DMV record currently, and on 1/11/20, reflected Petitioner as the Registered Owner. Petitioner was most definitely Racially profiled since the pursuit was initiated as the vehicle was traveling perpendicular to the patrol vehicle as it passed the second driveway of the gas station the police officer came out of and as such had no way of seeing petitioner's vehicle license plate as it is only displayed in the rear of his vehicle and he was traveling in excess of 30 miles per hour. Three days later another officer from Newport Beach Police Dept while having his motorcycle facing in the opposite direction Petitioner was traveling and while the officer stood stationary directing oncoming traffic made a UTURN TO Pursue petitioner after hearing a horn from a second vehicle and cited petitioner under # NBE00034772 also among other bogus items included 4000(a)(1) VC (Registration) as an infraction despite Petitioner's Registration fees being paid up to date through 9/8/20 and in neither case

has petitioner been permitted an arraignement so as to enter a not guilty plea 5 1/2 months after the citations were issued and demands for fines continue. Requests for a hearing date have gone unanswered. In any case, the elements of Malicious Prosecution include the following:

- 1.) The institution or continuation of a civil or criminal proceeding against the Plaintiff
- 2.) Abetted maliciously by the Defendant/Prosecutor
- 3.) Termination of the prior proceeding in favor of Plaintiff
- 4.) Absence of Probable Cause.
- 5.) Malice as the primary purpose for the prior action and
- 6.) Injury / Damage to the Plaintiff as a result of the prior action

Therefore, as has been unambiguously outlined herein all six of these elements have unequivocally been met and preceding these Petitioners United States Constitutional Civil Rights have been deprived in multiple levels including the 4th, 14th, 5th and 1st amendment to name a few. Just the same Probable Cause never existed as any reasonable man would conclude with the totality of the circumstances being considered as the abundant Points and Authorities presented from several jurisdictions including this United States Supreme Court. Undisputably, NO Resident of our United States of America should ever be incarcerated without a violation of law and Equal Protection

Under Law remains a 14th amendment guarantee and law enforcement agents are only afforded qualified immunity, albeit in contradiction to Equal Protection under Shaw Constitutional guarantee, when conduct does not violate clearly established Statutory or Constitutional rights of which a Reasonable person would have known, Harlow v. Fitzgerald, 457 U.S. 800 (1982) and Manuel v. City of Joliet, 580 U.S. — (2017). Hence, NO Reasonable person given all the information provided and available and without violating Brady v. Maryland, 373 U.S. 83 (1963) and U.S. Constitutional Rights, well Known Rights, would believe a crime had been committed. There is only one correct outcome to this Petition for Writ of Certiorari and that is clearly that it is Granted by your Honors.

Lastly, the lower courts made numerous errors to get us to this point and one of those is first not granting leave to amend complaint in adding Jay Johnson as a Defendant since not only did he reportedly deprive Plaintiff of his Constitutional Rights but he also established a standard of lawlessness whereby lying and falsifying documents was permissible and moreover he exemplified an indifference to the U.S. Constitutional Rights of minorities specifically Mexican-Heritage Hispanic Latin Catholic Christian, Male Father of Four with permanent injuries and Permanent Disabilities that include a spine

Compression. Additionally a motion for leave to amend had been submitted to the District Court October 30, 2017 and remained in play with a court designated Motion Hearing set for December 13, 2017 when Plaintiff provided a copy of the amended complaint a second time on 11/30/17 and was properly served upon defendants' counsel. Furthermore, the court had understood Plaintiff was not represented by counsel and following the October 30th, 2017 Motion for Leave the court issued order stating that it would accept the deficient pleading since it did not provide a hearing date since Petitioner / Plaintiff was not entirely familiar with how to obtain a date @ that juncture. Just the same being that the Motion had been submitted and remained calendared for December 13th, 2017, Plaintiff proposed adding Defendant Jay Johnson for an abundance of good cause and given this court's holding in *Haines v. Kerner* 404 U.S. 519 (1972) that Pro Se Litigants should be held to a lower standard than attorneys in matters of pleadings and for the facts herein contained the lower court and the Court of Appeals erred in mistakenly citing a motion had not been attached to the amended complaint - See Appendix D and see *Foman v. Davis*, 371 U.S. 178 (1962) whereby the Supreme Court held the Court of Appeals erred in narrowly reading the second Notice of Appeal as applying only to the denial of petitioner's motions, since petitioner's intention to seek review of both the dismissal of the complaint and the denial of her motions was

manifest from the record as a whole. 2.)

The Court of Appeals erred in affirming the District Court's denial of Petitioner's Motion to vacate the judgement of dismissal in order to allow amendment of the complaint since it appears from the record that the amendment would have done no more than state an alternative theory of recovery. Federal Rules of Civil Procedure 15(a) declares that leave to amend "shall freely be given when justice so requires," and denial of motion without any apparent justifying reason was an abuse of discretion. - Reversed!!!

Just the same as has been the circumstances in Petitioner's case since the Magistrate most certainly continuously abused his discretion in everything related to Petitioner's cases. Accordingly, the same conclusion by this Court should be rendered by your Honors - Reversed - Petition Granted.

In closing, these defendants have framed Petitioner in two separate instances, first November 22, 2015 (withholding material evidence - Exculpatory Evidence to manipulate the outcome of Trial under 154M1225) and secondly on September 12th, 2016 (again the same unlawful manipulations to effect the outcome of the attempted prosecution maliciously). In both instances the ulterior or secondary motive has been to interfere with Petitioner's Parental Rights barring even all contact with his four minor children through their unconstitutional/unlawful

schemes through this day. Moreover, these defendants have targetted petitioner relentlessly depriving him of his Constitutional rights due to his Minority - Mexican Heritage, Religion, Male Gender and also for seeking redress through various efforts to include filing of grievances with the Department of Justice @ the State and Federal Level. Retaliation for exercising his Constitutional Rights to Redress and Relief through Administrative Channels is unlawful as well, see United States Supreme Court case *Hartman v. Moore*, 547 U.S. 250 (2006) holding that Retaliatory Motive - prosecution is unlawful without Probable Cause. In fact, these defendants continue with Their Obstruction of Justice, harassment and intimidation antics through this day since over the past week in preparing this petition they have found it necessary to show up @ petitioners place of worship, Our Lady Queen of Angels Catholic Church in Newport Beach. Watch Commander L T E Peters became defensive when contacted July 2nd in the a.m. following the appearance of two marked police vehicles directly in front of the Blessed Sacrament Chapel and although he claimed to have them relocate they (1 vehicle) returned mid day as Petitioner was worshipping @ the same location forcing him to contact the local office of the FBI.

@ 1:18pm (714) 939-8644 during which the infringement on Religious liberties was conveyed also discussed was the deprivation of Equal Protection Under Law as it pertained to the absence of any assistance with the felony assault upon petitioner on August 31, 2019 under Case # 19-7012 which was also a Hate Crime by assailant @ a Pavillion's Grocery store in Newport Coast.

For all these reasons, facts and violations by these defendants upon Petitioner this Most Honorable United States Supreme Court should Grant this Petition for Writ of Certiorari

Respectfully,

July 3rd, 2020

Arthur Lopez
Arthur Lopez
Arthur Lopez

REASONS FOR GRANTING THE PETITION

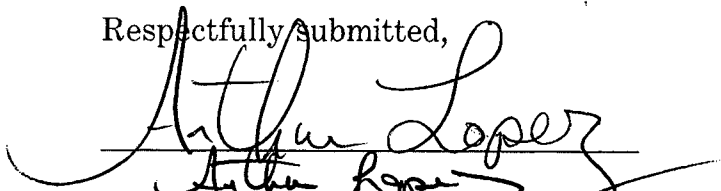
This Petition Should be Granted To Stem The Wave of Police Abuse of Authority, Racial Bias-Discrimination Against Minorities - Latinos, African Americans - Blacks, et. Moreover, this Court should make a resounding statement to all Law Enforcement Agents that Malicious schemes to Unlawfully and Unconstitutionally Seize Residents, falsely imprison and maliciously prosecute U.S. Residents without reasonable Probable Cause Can Not Be Tolerated.

Furthermore, Acts of judicial manipulation for the purpose of interfering with child custody Family matters is Criminal and as such punishable and actionable as a Crime.

CONCLUSION

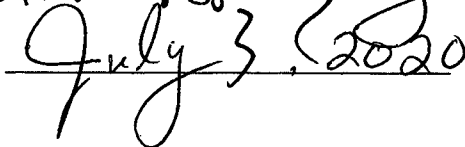
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Arthur Lopez

Date:



July 3, 2020