

USSC No.: 20-7321

IN THE SUPREME COURT OF THE UNITED STATES

ALAN DOUGLAS, Petitioner - Appellant, vs. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Respondent-Appellee,	Writ of Cert to USCA 9 th Cir on COA Medical Malpractice Injury <i>Res Ipsa Loquitur</i> USSC No.: 20-7321 and Related 20-6881, 20-7424, 20-7654; USCA 9 th Cir No.: 20-56105 D.C. No.: 2:20-cv-07524-RSWL-AS 2 nd District Court of Appeal-CA No. B294801=S265908 Sup Ct-CA Los Angeles County Super. Ct. Cases No. BC657529/BC696685
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On Petition for Panel Rehearing -- WRIT of Certiorari to USCA 9th Circuit No 20-56105 - COA

In re ALAN DOUGLAS, Petitioner (Fed. R. App. P. 21(a)(2)(A))
Appeal from the US District Court, Central District of California
Western Division Case No.: 2:20-cv-07524-RSWL-AS; Phone: (213) 894-1565
[1] US District Court 0973-2 -- FRAP 9th Circuit Rule 21-2(a)

PUBLISHED OPINION REQUESTED:

**PETITION FOR PANEL REHEARING FOR WRIT OF CERTIORARI, *Sua sponte*
“irreparable” injury or harm and cause immediate danger**

Alan Douglas In Pro Se
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Los Angeles, CA 90028-8823
Home: (323)822-5141
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NON-Capital--Personal Injury Medical Malpractice

The Questions Presented for Review - US Sup Ct Rule 14.1(a)

REQUEST for Panel Rehearing on US Supreme Court ORDER issued on May 3, 2021 Denying Review for Petition on Writ for Certiorari to USCA 9th Circuit on COA without decision on the Merit and no JUDGE name on the ORDER - Probably Judicial Clerical ERR entry

I. The Relief Sought - Reverse and Settle Personal Injury [9th Circuit FRAP 21(a)(2)(B)(i)]

II. The issues (The Questions Presented for Review) [9th Circuit FRAP 21(a)(2)(B)(ii)]
See below [1], [2], [3], [4], [5], [6] and [7].

[1] Appellant's US Constitutional and Civil Rights Violation;

[2] Reverse Judgment issued on Feb.19, 2019 in favor of Timothy J. Daskivich, MD by TJ;

[3] Reverse Judgment issued on Feb.14, 2019 in favor of CSMC by TJ in LASC;

[4] Reverse Judgment issued on Jan. 18, 2019 in favor of Nancy Zimmerman, NP and Jay Neal Schapira, MD by TJ in LASC;

[5] Court Order for AWARD based on Documents presented, which is just and proper;

[6] Reassignment the Cases to Settlement Court if No Award is granted;

[7] Reverse, remand, reassignment and Trial Judge Disqualification based on plain ERRORS, bias with gross prejudice, willful misconduct and adverse personal reaction with cruelty.

III. The Facts necessary to understand the issue presented by the Petition.

[9th Circuit FRAP 21(a)(2)(B)(iv)]

IV. The reasons why the writ should issue [9th Circuit FRAP 21(a)(2)(B)(iv)]

Every year, about **805,000 Americans** have a heart attack. Of these, 605,000 are a first heart attack 200,000 happen to people who have already had a heart attack - The Appellant's Case

About **1 in 5 heart attacks is silent**—the damage is done, but the person is not aware of it. Heart disease costs the United States about **\$219 billion** each year from 2014 to 2015.

.....Nationwide, the Problem with 2DES [two Drug Eluted Stands] is not solved or exist Legal Regulation. The Appellant [Alan Douglas] is Victim of Medical Malpractice, because Medical Staff do not follow American Heart Association Guide Line for Procedure with Patient with implanted 2DES. The Lower Court Staff was incompetent to properly Rule and usually Summary Denied Request for Review without Decision on the Merit.

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

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

May 3, 2021

Clerk
United States Court of Appeals for the Ninth
Circuit
95 Seventh Street
San Francisco, CA 94103-1526

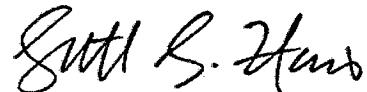
Re: Alan Douglas
v. Superior Court of California, Los Angeles County
No. 20-7321
(Your No. 20-56105)

Dear Clerk:

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

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

The Los Angeles County Superior Court
Superior Court Case No.: BC657529/BC696685
List of Superior Court Judges on Both Cases

1. Hon. Benny C. Osorio – Dept.97, Room 630
2. Hon. Dennis Landin – Dept.93 Superior Court
3. Hon. Elaine Lu – Dept. 5 PI [Personal Injury] Court
4. Hon. William F. Fahey – Dept. 69, Room 621 Superior Court, Independent Calendar,
last Judge assigned for all purposes
5. Hon. Stephen I. Goorvitch – Supervising Judge for PI Court
6. Hon. Ruth Ann Kwan – Dept.1 – Supervising Civil Cases in Superior Court
7. Hon. Richard J. Burge Jr. – Dept. 1 – Supervising Civil Cases in Superior Court
8. Hon. Yolanda Orozco – Dept. 5 PI [Personal Injury] Court in Superior Court
9. Hon. Joseph R. Kalin – Dept. 21, Central District-Stanley Mosk Courthouse
10. Hon. Samantha Jessner – Dept.1, Central District- Stanley Mosk Courthouse,
- Supervising Judge Civil
11. 2DCA - Second District Court of Appeal of California
12. Supreme Court of California - en Banc - for many writs;

<p>List of Opposite Counsels for LASC Cases BC657529 and BC696685</p>

1. Kathryn S.M. Mosely, Esq., State Bar No.: 92852 => LASC BC657529 and BC696685
2. Lee M. Moulin, Esq., State Bar No.: 232843 => LASC BC657529 and BC696685
3. Robert C. Reback, Esq., State Bar No.: 58092 => LASC BC696685
4. Stephen A. Diamond, Esq., State Bar No.: 176735 => LASC BC696685

No.: 20-7321

IN THE SUPREME COURT OF THE UNITED STATES

ALAN DOUGLAS, Petitioner - Appellant, vs. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Respondent-Appellee,	Writ of Cert to USCA 9 th Cir on COA Medical Malpractice Injury <i>Res Ipsa Loquitur</i> U USCA 9 th Cir No.: 20-56105 D.C. No.: 2:20-cv-07524-RSWL-AS 2 nd District Court of Appeal-CA No. B294801=S265908 Sup Ct-CA Los Angeles County Super. Ct. Cases No. BC657529/BC696685
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Petition for a WRIT of Certiorari to USCA 9th Circuit No 20-56105 on COA

In re ALAN DOUGLAS, Petitioner (Fed. R. App. P. 21(a)(2)(A))
 Appeal from the US District Court, Central District of California
 Western Division Case No.: 2:20-cv-11208-RSWL-AS; Phone: (213) 894-1565
 US District Court -- FRAP 9th Circuit Rule 21-2(a)

PUBLISHED OPINION REQUESTED:

MEMORANDUM OF POINTS AND AUTHORITIES

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Witkin, *New California Rules on Appeal* (1944) 17 SO. CALIF. L. REV. 79, 232.....

California Code of Civil Procedure 2018, Snape Legal Publishing.....

BIBLIOGRAPHY

BIBLIOGRAPHY

1. William J. Morton, MD, JD; Medical Malpractice – Handling Urology Cases, 1990 by McGraw Hill, Inc.

2. John Snape, California Code of Civil Procedure 2018

3. California Code of Civil Procedure 2020 [updated on Line California State Legislature]

4. Vickie L. Milazzo, RN,MSN, JD; Medical Malpractice *Case Report* Cardiology – Myocardial Infarction; by Vickie Milazzo Institute, National Alliance of Certified Legal Nurse Consultants, Houston, Texas, 1996.

5. Jonathan I. Epstein, MD [Professor Department of Pathology and Oncology, The John Hopkins Medical Institution, Baltimore, MD;

George J. Netto, MD [Associate Professor, Department of Pathology, Urology and Oncology; The John Hopkins Medical Institution, Baltimore, MD “Biopsy Interpretation of the Prostate”

Epstein, Jonathan I.

Biopsy Interpretation of the Prostate/Jonathan I. Epstein, George J. Netto – 4th Ed, 2008

6. American Nurses Association. Nursing: Scope and Standard of Practice – 2nd E Nursesbooks.org, The Publishing Program of ANA, © 2010, Silver Spring, MD.

7. Guide to the Code of Ethics for Nurses: Interpretation and Application/ Marsha D. M. Fowler, Editor by Nursesbooks.org, The Publishing Program of ANA, © 2008, Silver Spring, MD.

OTHER SOURCES - Related Cases

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LASC Clerk’s Transcript for Case No.: BC657529 – Vol.1 – Vol.12 [2DCA-B294801]

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STATEMENT OF THE CASES BC657529/BC696685 – 2DCA B294801

Appellant -Alan Douglas in *propria persona* filed an initial complaint as of April 11, 2017 [4/11/2017], the statute of limitations for allegations of Medical Malpractice Negligence is tree years under the *Cal. CCP § 340.5* cite: ”In an action for injury or death against a health care provider based upon such person’s alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers.” This is because a claim of professional negligence of a dependent adult or an elder is analogous to similar torts of assault, battery or injury to others. *See Benun v. Superior Court*, 123 Cal. App. 4th13, 126 (2004). Appellant alleging professional negligence, medical malpractice and recklessness done by Medical Doctors, Nurses and CSMC - [TJ’ ERR]. The Appellant in these LASC Cases BC657529/BC696685 is a Victim of Medical Malpractice on event happened on January 29, 2016. The Defendants moved for Motion for Summary Judgment and TJ granted in favor of Defendants.

JURISDICTION Statement of Appealability

The judgment entered pursuant to the Superior Court’s order granting the motion for summary judgment for LASC Cases BC657529/BC696685 are an appealable final judgment pursuant to Code of Civil Procedure sections 904.1.(1).The US District Court notified Appellant for its opinion on Jan.15, 2021-See Appendix. In addition to that USCA 9th Circuit issued Order Denying Motion for Reconsideration on Feb.12, 2021. So, the Petition is filed on timely manner and The Supreme Court of United Stated has Jurisdiction on the Appellant’s Petition for Writ of Certiorari to USCA 9th Circuit on COA.

PRAYER [The Relief Sought]

The Relief Sought - Reverse and Settle Personal Injury [9th Circuit FRAP 21(a)(2)(B)(i)]

REASONS FOR GRANTING THE PETITION

[1] Appellant's US Constitutional and Civil Rights Violation

Appellant's US Constitutional and Civil Rights Violation

(1) US Constitutional Rights:

Appellant do not have Jury Trial-The case was terminated by Trial Judge and violated

Appellant's Constitutional right for equal protection by the Law- US Constitution -- Amendment VII (1791) ... "the right of trial by jury shall be preserved"; Amendment IX (1791)-Appellant's right to Settle the Medical Malpractice Cases in LASC; Amendment X (1791); Amendment XIV (1868) Section 1. All persons born or naturalized in the United States ... "nor deny to any person within its jurisdiction the equal protection of the laws" *Brown v. Board of Education;*]

[FRAP 9th Circuit Rule 30-1.4(a)(vi)]. *See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 188.* USA Constitution Amendment VII (1791) In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law. *See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 189.* USA Constitution Amendment IX (1791) The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. *See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 190.* USA Constitution Amendment X (1791) The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. *See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 191.* USA Constitution Amendment XIV (1868) Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 192.* The Equal Protection Clause is from the text of the Fourteenth Amendment to the United States Constitution. In

United States constitutional law, a Due Process Clause is found in both the Fifth and Fourteenth Amendments to the United States Constitution, which prohibits arbitrary deprivation of life, liberty, or property by the government except as authorized by law. See [1] *Madison, P.A.* (2 August 2010). "Historical Analysis of the first of the 14th Amendment's First Section". *The Federalist Blog*. Archived from the original on November 18, 2019. Retrieved 19 January 2013. [2] "The Bill of Rights: A Brief History". *ACLU*. Archived from the original on August 30, 2016. Retrieved 21 April 2015. [3] "Honda Motor Co. v. Oberg, 512 U.S. 415 (1994), at 434". *Justia US Supreme Court Center*. June 24, 1994. Retrieved August 26, 2020. The U.S. Supreme Court interprets these clauses broadly, concluding that they provide three protections: procedural due process (in civil and criminal proceedings); substantive due process, a prohibition against vague laws; and as the vehicle for the incorporation of the Bill of Rights.

[2] Mistake in Law and Erroneous Decision in Intermediate Court - 2DCA

Please, refer to Appellant-Alan Douglas -- Petition for Writ of Certiorari--filed on Jan.4, 2021 under USSC Docket No.: 20-6881 pages 19 - 33.

[3] The facts on the Record entitled Appellant for Extraordinary Relief

Please, refer to Appellant's explanation in USSC Docket No.: 20-6881 pages 33 - 37.

[4] Reason for granting Appellant's Petition for a WRIT of Certiorari to USCA 9th Circuit are presented in USSC Case 20-6881 pages 17- 37.

[5] Appellant's ARGUMENTS " Why Writ of Certiorari to USCA 9th Circuit shall be granted ? "

The Questions Presented for Review - US Sup Ct Rule 14.1(a) in this Petition Appellant construed as [7] Reverse, remand, settle or reassignment the Cases BC657529/BC696685 to Settlement Court and T Judge Disqualification based on plain ERRORS, bias with gross prejudice, willful misconduct and adverse personal reaction with cruelty.

ARGUMENTS - PETITION FOR WRIT OF CERTIORARI TO USCA 9TH CIRCUIT ON COA

[1] Introduction and Proceeding for Certificate of Appealability [COA]

(1) Background

The District Court dismissed without prejudice Alan Douglas's Petition for a Writ of Habeas Corpus, which is Summary Denial without decision on the merits. Summary

dismissal is appropriate only where the allegations in the petition are "vague [or] conclusory" or "palpably incredible", "patently frivolous" or "false," *Blackledge v. Allison*, 431 U.S. 63, 75-76, 97 S.Ct. 1621, 1629-30, 52 L.Ed.2d 136 (1977) ; *Hendricks v. Vasquez*, 974 F. 2d 1099 - Court of Appeals, 9th Circuit 1992. The Appellant's Petition for Writ of Habeas Corpus does not meet the standard for summary dismissal. Alan Douglas set forth his claims for relief with specificity, and included Amended "Notice of Appeal." [28 U.S.C §§ 2252, 2253]. His claims, when unanswered, cannot be characterized as so incredible or frivolous as to warrant summary dismissal.

(2) Predecessor to the COA Statute:

Starting in 1908, a state prisoner seeking to appeal a federal trial court's denial of a petition for a writ of habeas corpus under 28 U.S.C. § 2254 was required to obtain a certificate of probable cause authorizing an appeal. See Act of March 10, 1908, ch. 76, 35 Stat. 40 (current version at 28 U.S.C. § 2253). Congress added the CPC requirement because of delays in state capital cases caused by perceived "frivolous" appeals in federal habeas cases. See *Barefoot v. Estelle*, 463 U.S. 880, 892, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983). However, at the time of the 1908 statute, federal circuit courts did not possess appellate jurisdiction over a district court's denial of a habeas petition and subsequent CPC. Instead, an appeal of the denial of habeas relief went directly to the Supreme Court. See, e.g., *Grammer v. Fenton*, 268 F. 943, 946-47 (8th Cir. 1920).

When Congress enacted AEDPA, it replaced the CPC requirement with the closely related COA provision. Although the legislative history of AEDPA includes no commentary about the COA provision, the Supreme Court has stated that "Congress confirmed the necessity and the requirement of differential treatment for those appeals deserving of attention from those that plainly do not." *Miller-El*, 537 US at 337. Section 2253 provides the current statutory framework for appeals seeking federal habeas relief, beginning with a general grant of jurisdiction in § 2253(a). 8 USC § 2253(a). The subsequent sections narrow and define that jurisdiction. Subsection (c)(1) states that "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding." 28 USC § 2253(c)(1). Next, subsection (c)(2) specifies that "[a] certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a

constitutional right.” 28 USC § 2253(c)(2). This provision adopts the standard set forth by the Supreme Court in *Barefoot* but requires that the petitioner show the denial of a constitutional, rather than a federal, right. In light of the similarity between the CPC and COA requirements, the Court extended the *Barefoot* standard to COAs in *Slack v McDaniel*, 529 US 473 (2000) holding that the COA’s “substantial showing” requirement “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Id at 483–84. *Slack* permits the issuance of a COA not only when the district court has rejected a substantial, debatable constitutional claim but also when the district court has rejected the petition on a substantial, debatable procedural ground, so long as the petitioner can also show an underlying debatable constitutional issue. Id at 484. Finally, subsection (c)(3) provides that a COA “shall indicate which specific issue or issues satisfy the showing required by paragraph (2).” 28 USC § 2253(c)(3). In other words, the COA must specify a substantial, debatable constitutional issue. This Comment focuses primarily on the (c)(3) requirement, although subsections (c)(2) and (c)(3) are necessarily interdependent.

First, when a habeas corpus petitioner seeks to initiate an appeal of the dismissal of a habeas corpus petition after April 24, 1996 (the effective date of AEDPA), the right to appeal is governed by the certificate of appealability (COA) requirements now found at 28 U. S. C. § 2253(c) (1994 ed., Supp. III). This is true whether the habeas corpus petition was filed in the district court before or after AEDPA’s effective date.

Second, when the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue (and an appeal of the district court’s order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel* 529 U.S. 473 (2000)

[2] Legal Argument to Support Appellant’s Request for COA

Non-Prisoners. [Appellant-**Alan Douglas** is **NON-Prisoner**] Habeas corpus proceedings are characterized as civil in nature. See e.g., *Fisher v. Baker*, 203 U.S. 174, 181 (1906). However, under Fed. R. Civ. P. 81(a)(2), the applicability of the civil rules to habeas

corpus actions has been limited, although the various courts which have considered this problem have had difficulty in setting out the boundaries of this limitation. See *Harris v. Nelson*, 394 U.S. 286 (1969) at 289, footnote 1. Rule 11 is intended to conform with the Supreme Court's approach in the *Harris* case.

Accordingly, to 28 U.S.C. § 2254 COA - Rule 11. Certificate of Appealability: Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. The Magistrate Judge in US District Court do not ask Appellant –Alan Douglas to submit additional Evidence and do not produce [R&R]. The statute then specifies that a COA “may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right,”[28 U.S.C. § 2253(c)(2) (2012)] and that the COA “shall indicate which specific issue or issues” on which a satisfactory showing has been made.[28 U.S.C. § 2253(c)(3) (2012)] “Despite the language of [the statute], . . . Rule 22(b) [of the Federal Rules of Appellate Procedure] permits a district judge to issue a COA.” [See FED. R. APP. P. 22(b)]. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. §2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

JURISDICTION AND STANDARD OF REVIEW

“The COA statute establishes procedural rules and requires a threshold inquiry into whether the circuit court may entertain an appeal.” *Slack v. McDaniel*, 529 U.S. 473, 482, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). Appellant ask this Court for De Novo questions of statutory interpretation. See *United States v. Cabaccang*, 332 F.3d 622, 624-25 (9th Cir.2003) (en banc). In construing federal statutes, Petitioner presume that the ordinary meaning of the words chosen by Congress accurately express its legislative intent. *Brower v. Evans*, 257 F.3d 1058, 1065 (9th Cir.2001).

Appellant believes that , “[a] court may grant a certificate if the applicant makes a ‘substantial showing of the denial of a constitutional right.’” *Arredondo v. Huibregtse*, 542 F.3d 1155, 1165 (7th Cir. 2008) (quoting 28 U.S.C. § 2253(c)(2)). Alan Douglas

argue that “[a]n applicant has made a ‘substantial showing’ where ‘reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.”’ Id. (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Appellant’s [Alan Douglas] Appeal is not frivolous, because substantial Constitutional rights are violated. Please, refer to Attached Stamped copy: Case 2:20-cv-07524-RSWL-AS Document 15 Filed 10/16/20 Page 2 of 65 Page ID #:378.

Previously in this matter, the Magistrate Judge do not issue a Report and Recommendation [R&R] recommending the summary denial of Petitioner’s [Alan Douglas] Petition for Writ of Habeas Corpus, and the dismissal of this case without prejudice. Petitioner filed timely Amended ‘Notice of Appeal’ filed on 9/16/2020 by US Court of Appeal for the 9th Circuit. Appellant ask US District Court to amend the Report and Recommendation, which are now pending. At this juncture, the Court has not yet ruled on the Appellant’s amender Notice of Appeal.. However, pursuant to the 2009 amendment to Rule 11 of the Rules in Section 2254 cases, the district court must issue or deny a Certificate of Appealability [COA] when it enters an order adverse to applicant. Hence, in the event that the district court accept and review Appellant amended Notice of Appeal, Petitioner respectfully requests the issuance of a Certificate of Appealability [hereafter “COA”].

The issues on which a COA is sought are set forth in § II, infra.

The legal standard applicable to granting or denying a COA is set forth in § III, infra.

A summary of the grounds for issuance of a COA in this matter is provided in § IV, infra. This request is also based upon the files and records in this case, including but not limited to the Petition and supporting Appendices filed as separate files to this Motion for Reconsideration, and the Objections to Report and Recommendation [R&R], which are recently filed.”

END of the PETITION

CONCLUSION

Based on the above, Appellant believe that his “*Petition for Panel Rehearing -- WRIT of Certiorari to USCA 9th Circuit on COA*” shall be granted.

Award may be granted based on Document presented in USSC Case 20-6881. Accordingly, correct Direction shall be given to California State and any other remedies in favor of Appellant he may be entitled to them as just and proper.

All parties shall bear their own costs. (Solberg v. Superior Court of San Francisco, 19 Cal. 3d 182,561 P.2d 1148, 137 Cal. Rptr. 460, 1977 Cal.)

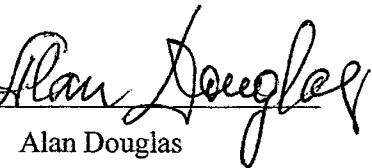
Respectfully submitted,

Dated: May 5 , 2021

Los Angeles, CA

Signed by:

Alan Douglas



VERIFICATION

I am Petitioner/Plaintiff/Appellant In Pro Se in this case. I have read the foregoing Appellant's "*Petition for Panel Rehearing -- WRIT of Certiorari to USCA 9th Circuit on COA*" and know its contents. The facts alleged in the Appellant's Petition are within my own knowledge and I know these facts to be true. I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on this 15th day of February, 2021 at Los Angeles, California.

DATED: May 5, 2021
Los Angeles, CA

The signature is handwritten in black ink. It consists of the first name "Alan" and the last name "Douglas". The "A" in "Alan" and the "D" in "Douglas" are capitalized. The signature is fluid and cursive. Below the signature, the name "ALAN" is printed in a smaller, sans-serif font. To the left of the signature, the word "Sign" is written in a small, plain font.

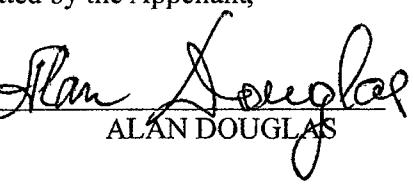
CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATION
United States Supreme Court Rule 14

Pursuant to *United States Supreme Court Rule 14*, I hereby certify that this **APPELLANT'S** "Petition for Rehearing--WRIT of Certiorari to USCA 9th Circuit on COA" contain 2,636 words, including footnotes. In making this certification, I have relied on the word count of the Microsoft WORD for Mac2019 Word processing Program used to prepare this Petition for Writ of Certiorari.

(Petition for Rehearing must not exceed 3,000 words - USSC Rule 14)

Respectfully submitted by the Appellant,

DATED: May 5, 2021
Los Angeles, CA

Signed by: 
ALAN DOUGLAS

CERTIFICATE OF COUNSEL

I - Alan Douglas In Pro Se- Appellant in the USSC Case No.: 20-7321 -- "Douglas v. Superior Court of California, County of Los Angeles" Certify that the Petition for Rehearing is presented in good faith and not for delay according to USSC Rule 44.1 and Rule 44.2.

1. The attached Petition for Rehearing briefly stated its ground limited to intervening circumstances of substantial and controlling effect not previously presented. [Rule 44.1]

2. I declare under penalty of perjury that this "Certificate of Counsel" to support Appellant's Petition for Rehearing is true and correct and that this verification was executed on this 5th of May, 2021 in Los Angeles, CA.

3. Proof of Service of this "Certificate of Counsel" is attached.

Dated: May 5, 2021
Los Angeles, CA

Signed by: 
Alan Douglas In Pro Se

End of Appellant's PETITION