

22-5757

ORIGINAL

No. _____

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DALTON — PETITIONER
(Your Name)

vs.

KOENIG — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Ninth Circuit, #22-15229
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alvin Dalton
(Your Name)

P.D. BOX 689
(Address)

Soledad, CA 93960-0689
(City, State, Zip Code)

(831) 678-3951
(Phone Number)

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QUESTION(S) PRESENTED

1. Prisoners are entitled to have their permanent records file free from falsified legal documents, illegal enhancements, and phaves substituting as state's statute.
2. State's statutes that create liberty interests entitle prisoners to the equitable provisions and procedural safeguards of federal law, of which state official's discretion is binded by the "mandatory language" test.
3. Law of the case doctrine precludes states officials to make true findings entries in prisoners permanent records file, that are not proven beyond a reasonable doubt, and without the substantiation of a prior jury determination.
4. State's officials denial of prisoners access to the court and opening prisoners "confidential" legal mail outside of their presence with impunity and no consequences of law.

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:

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19

3 Cal. Gov. Code § 1134 et seq.

24

4 Cal. Gov. Code § 11349.1

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5 28 U.S.C. § 1443(1)

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6 42 U.S.C. § 1983

19

7 Const. amend 14

11

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 is unpublished.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 8/3/2021

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 _____ (date) on _____ (date) in Application No. A _____.

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 INVOLVED

1. Cal. Penal Code (P.C.) §§ 115, 132, 135, 471; Const. amend 14; Carlo v. City of Chino, 105 F.3d 493 (9th Cir. 1997); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541, 84 L.Ed. 2d 494, 105 S.Ct. 1487 (1985); Vitek v. Jones, 445 U.S. 480, 488, 63 L.Ed. 2d 552, 100 S.Ct. 1254 (1980).
2. Mendoza v. Blodgett, 960 F.2d 1425, 1429 (9th Cir. 1992); Allen v. Board of Pardons, 792 F.2d 1404, 1408 (9th Cir. 1986).
3. Cal. P.C. §§ 969.5, 1025, 1158, 667(a)(c), 1170.1(f), 1102; People v. Mitchell, 81 Cal. App. 4th 132 (2000).
4. [Cal. P.C. § 1158]; Monge v. Calif., 524 U.S. 721 [118 S.Ct. 2246, 141 L.Ed. 615] (1998); People v. Monge, 1b Cal. 4th 826 [66 Cal. Rptr. 2d 853, 941 P.2d 1121] (1997); People v. Pacini, 120 Cal. App. 3d 877, 887 [174 Cal. Rptr. 820] (1981); U.S. v. Oppenheimer, 242 U.S. 87-88 [37 S.Ct. 69] (1916).
5. In re French, 106 Cal. App. 3d 74, 84, 85 [164 Cal. Rptr. 800] (1980).

1 b. Bell v. Wolfish, 441 U.S. 520, 550 [60 L.Ed. 2d 447, 475-476,
2 99 S.Ct. 1861] (1979); Cal. P.C. § 2600; In re Arias, 42 Cal. 3d 667, 689,
3 691 [230 Cal. Rptr. 505, 725 P.2d 64] (1986).

4
5 7. Mechum v. Fano, 427 U.S. 224 (1976); Block v. Rutherford, 468
6 U.S. 576 [104 S.Ct. 3227; 82 L.Ed.2d 438] (1984).

7
8 8. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460-
9 463 [104 L.Ed.2d 506, 514-517, 109 S.Ct. 1904] (1989); Bell v. Wolfish,
10 supra.

11
12 9. 42 U.S.C. § 1983; C.C.C. § 52.3; U.S. v. Mottaz, 476 U.S. 834, 850,
13 106 S.Ct. 2224, 2233, 90 L.Ed.2d 841 (1986).

14
15 10. Kotteakos v. U.S., 328 U.S. 750 (1946); [Cal. P.C. §§ 115, 132, 135,
16 471]; Arizona v. Fulminante, 111 S.Ct. 1265 (1991).

17
18 11. Chapman v. Calif., 386 U.S. 18, 23 (1967); Brecht v. Abrahamson,
19 113 S.Ct. 1710 (1993).

20
21 12. Amadeo v. Zant, 486 U.S. 214, 228 n.6 (1988).

22
23 13. Blackledge v. Allison, 431 U.S. 63, 75-76 (1977); Tennard v. Dretke,
24 542 U.S. 274, 124 S.Ct. 2562 (2004); Harris v. Reed, 489 U.S. 255 (1989);
25 Coleman v. Thompson, 111 S.Ct. 2546, 2561 (1991); Mooney v. Holohan, 294 U.S. 103, 112 (1935).

26
27 14. Cal. P.C. §§ 5058(a), 5076.2(a); Cal. Gov. Code § 1134 et seq.;

1 American Friends Service Committee v. Procunier, 33 Cal. App. 3d
2 252 [109 Cal. Rptr. 22] (1973); Cal. Gov. Code § 11349.1.

3
4 15. 28 U.S.C. § 1443(1); [Const. amend 14]; Equal Protection
5 Clause; Somers v. Superior Court, 92 Cal. Rptr. 3d 116, 172 Cal.
6 App. 4th 1407 Cal. App. 1 Dist. (2009); In re Mary G., 59 Cal.
7 Rptr. 3d 703, 151 Cal. App. 4th 184 Cal. App. 4 Dist. (2007).

8
9 16. Brittingham v. U.S., 982 F. 2d 378, 379 (9th Cir. 1992); [C.C.C.
10 § 52.3]; Foster v. Skinner, 70 F. 3d 1084, 1088 n.7 (9th Cir. 1995);
11 Memphis Community School Dist. v. Starhura, 477 U.S. 299, 308
12 [106 S.Ct. 2537; 91 L.Ed. 2d 249] (1986); Kennedy v. Los Angeles
13 Police Dept., 901 F. 2d 702, 707 (9th Cir. 1989); Carey v. Piphus,
14 435 U.S. 247, 264 [55 L.Ed. 2d 252, 98 S.Ct. 1042] (1978).

STATEMENT OF THE CASE

On 2/9/2018, Petitioner's application for family visits, at Correctional Training Facility (CTF), was denied by Correctional Counselor (CC1) A. Scarson, due to a Cal. P.C. § 192 violation, referencing "but is not limited to" as a California statute, and a Cal. P.C. § 667.5 violation (Appendix (Ap.) px.) D, "Amended" Order to Show Cause, Exhibits E, H, I).

Petitioner appealed the denial and exhausted all administrative remedies through the CTF grievance procedure on 6/12/2018 (Appx. F, Reply to Defendant's First Amended Complaint, Exhibit L, CTF # 18-00514).

Petitioner filed a Civil Complaint (CC) in Monterey County Superior Court (MCSC), No. 18CV003880, and sought

1 \$100,000.00 in compensatory and punitive damages, on
2 10/12/2018, the Hon. M.O. Anderson presiding. Petitioner's
3 Motion for Appointment of Counsel was filed, on 11/19/2018, and
4 denied in a, 2/25/2019, hearing (Appx. D, Exhibit O). MCSC post-
5 denied petitioners Case Management Conference twice in 2019,
6 (Appx. D, Exhibit P). At a hearing, on 7/2/2019, MCSC stated
7 that it had no record of the petitioner's case, but it would
8 issue him an Order to Show Cause (OSC), due on 10/13/2020,
9 (Appx. D, Exhibit Q).

10 Petitioner was denied access to attend, via telephone, the
11 OSC hearing by CTF institutional staff, on 10/13/2020,
12 (Appx. C, 9th Cir. # 21-16727 (11/1/2021), Opening Brief, pg. 4,
13 III. Background, lines 9-27, pg. 5, lines 1-13).

14 MCSC rejected petitioner's original CC and Answer to OSC
15

1 and ordered an "Amended" CC to be filed. On 12/29/2021,
2 petitioner filed an "Amended" CC, (Appx. D). Less than a
3 week later, MCSC took leave to reject petitioner's CC for
4 the second time¹, this time, the Hon. C.M. Panetta presiding.
5

6 On 1/12/2022, petitioner filed a Motion to Withdraw his CC
7 from MCSC, (Appx. D, Exhibit R). MCSC took notice in a
8 Minute Order (Appx. D, Exhibit S).

9 Petitioner filed a motion to transfer his CC to U.S. Northern
10 District Court of California (DC), on 1/12/2022, (Appx. B, Ex-
11 hibit A), presided by the Hon. J.S. White. DC granted peti-
12 tioner In Forma Pauperis (IP), on 1/26/2022, #22CV00434-
13 JSW, (Appx. B, Exhibit B). DC dismissed plaintiff's complaint
14 on 1/26/2022, (Appx. B, Exhibit C). DC denied plaintiff's IP
15 on 2/17/2022, (Appx. B, Exhibit D).

16 1. and returned his CC back to him unfiled.
17

1 Defendant filed an Administrative Motion for Extension of
2 Time to file a Motion for Summary Judgement or Other
3 Dispositive Motion on 6/17/2022, (Appx. B, Exhibit E). DC
4 Ordered, on 6/21/2022, Plaintiff to reply to oppose Defendant's
5 motion(s) within 28 days after it is filed, (Appx. B, Exhibit F).

6 Defendant filed a Motion of Deposition of the Plaintiff, on
7 7/18/2022, (Appx. B, Exhibit G). On 7/25/2022, Plaintiff filed
8 a Motion for Leave of the Court, (Appx. B, Exhibit H); Reply to
9 Defendant's Answer to First Amended Complaint, (Appx. F); Re-
10 plied to General Denial, (Appx. G); Motion for Subpoena Duces
11 Tecum of Interrogatories (I), (Appx. E, Exhibit A, Motion
12 for Appointment of Counsel, Exhibit B, Motion for Evidentiary
13 Hearing, Exhibit C, Motion for Dispersal of Damages).

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28 On 8/1/2022, Defendant mailed a letter (Appx. E, Exhibit D)

1 claiming that his "I" was defective. On 8/7/2022, Plaintiff filed
2 a Motion to Subpoena All Witnesses Requested (Appx. E, Exhibit F).
3

4 On 2/16/2022, Petitioner filed a Notice of Appeal, from the dismis-
5 sal with the DC, to the U.S. 9th Circuit Court of Appeals (9th Cir.).
6

7 The 9th Cir. ordered Opening Briefs due, on 4/18/2022, # 22-
8

9 15229. [On 2/17/2022], DC revoked Plaintiff's IP. On 2/22
10

11 2022, 9th Cir. Ordered a Stay on proceedings, precluding Pe-
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13 titioner from filing his Opening Brief (Appx. A, Exhibit C). On
14

15 3/2/2022, Petitioner filed Motion to Proceed IP (with no
16

17 found deficiencies, according to the 9th Cir.) and a Statement
18

19 That the Appeal Should go Forward. On 7/12/2022, the Hon. Silver-
20

21 man, Callahan, and Collins, Circuit Judges, dismissed the
22

23 Plaintiff's case, (Appx. A, Exhibit B), and the 9th Cir. Mandated that the
24

25 Dismissal takes effect, on 8/3/2022, (Appx. A, Exhibit A).
26

27

REASONS FOR GRANTING THE PETITION

1. Protected Liberty Interest

Cal. P.C. §§ 115, 132, 135, 471, clearly establishes that procuring a false instrument for a record, offering a false record, willfully concealing or preventing correct evidence of a lawful record, and false entry in a record rise to the level of a liberty interest protected by the procedural mandate of Const. amend 14; Carlo v. City of Chino, 105 F.3d 493 (9th Cir. 1997).

Falsifying prisoners permanent records file violates a process provided by California statute, which is sufficient to satisfy constitutional due process that violates a federal constitutional right, Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541, 84 L.Ed.2d 494, 105 S.Ct. 1487 (1985).

1 The U.S. Supreme Court has "repeatedly held that state sta-
2 tutes may create liberty interests that are entitled to the pro-
3 cedural protections of the Due Process Clause of the Four-
4 teenth Amendment; " Vitek v. Jones, 445 U.S. 480, 488, 63 L.Ed.
5 2d 552, 100 S.Ct. 1254 (1980). We hold that the California statute
6 creates such a liberty interest.

7 Petitioner has no prior convictions and [Cal.P.C. § 192] does not
8 exist in his controlling case.

9 2. Mandatory Language Test

10 The Ninth Circuit has used mandatory language test to de-
11 termine that state statutes or regulations have created a
12 liberty interest within the meaning of the Fourteenth
13 Amendment; Mendoza v. Blodgett, 960 F.2d 1425, 1429 (9th
14 Cir. 1992). In finding a state-defined protected liberty in-
15

1 terest, the court noted that the regulation contained par-
2 ticularized standards and criteria, and used "explicitly
3 mandatory" language, that binds state officials discre-
4 tion to abide by those laws, Allen v. Board of Pardons, 792
5 F.2d 1404, 1408 (9th Cir. 1986)

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10 3. Law of the Case

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12 Cal. P.C. § 969.5, requires prior conviction sentence enhance-
13 ment be tried by a jury impaneled for that purpose. Cal. P.C. §
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15 1025, implies if defendant denies having suffered an al-
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17 leged prior conviction, the question whether or not he has
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19 suffered such previous conviction must be tried by the ju-
20
21 ry which tries the issue upon the plea.

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24 Cal. P.C. § 1158, states if defendant found guilty of an offense
25 charged in an accusatory pleading that also alleges that the
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27
28

1 defendant suffered a prior conviction, the jury must find
2 whether or not he has suffered such previous conviction.
3

4 Id., also requires that the trier of fact enter a verdict or
5 finding upon the charge of previous conviction of either
6 true or not true.
7

8 Cal. P.C. §§ 667(a)(c), 1170.1(f), require that the People plead
9 and prove prior serious felony conviction allegations be-
10 fore they can effect the sentence imposed. To meet such re-
11 quirements, the People bear the burden of proving such
12 sentencing allegations beyond a reasonable doubt.
13

14 Cal. P.C. § 1102, follows in proceedings on the truth of prior
15 conviction allegations, the rules of evidence apply, and de-
16 fendants enjoy right against self-incrimination as well
17 as the right to confront and cross-examine witnesses
18

1 against them. Jeopardy attaches to the trial of prior con-
2 viction allegations when the jury is sworn to try the un-
3 derlying current offenses.
4

5 The Court of Appeal reversed the trial court's true finding on
6 the prior and remanded with directions to enter not true
7 findings and to resentence defendant, [§§], are protected
8 liberty interests, People v. Mitchell, 81 Cal. App. 4th 132 (2000).
9

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14 4. Res judicata, Collateral estoppel

15 The Court of Appeal reversed the trial court's true finding on
16 the prior and remanded with directions to enter findings
17 of not true and to resentence defendant. The court held
18 that equitable principles, including res judicata and colla-
19 teral estoppel and California's decision to accord proce-
20 dural safeguards to defendants facing lengthy senten-
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ces based on recidivist enhancements, compelled the conclusion that fundamental fairness and finality require reversal and/or remand, with the entry of a not true finding, [Cal. P.C. § 1158]; Monge v. Calif., 524 U.S. 721 [118 S.Ct. 2246, 141 L.Ed. 2d 615] (1998) and People v. Monge, 16 Cal. 4th 826 [66 Cal. Rptr. 2d 853, 941 P.2d 1121] (1997).

State's evidence is insufficient to prove defendant's prior conviction was a serious felony is, at the very least, the law of the case, which is also conditioned upon equitable considerations applies in both civil and criminal cases, People v. Pacini, 120 Cal. App. 3d 877, 887 [174 Cal. Rptr. 820] (1981); U.S. v. Oppenheimer, 242 U.S. 87-88 [37 S.Ct. 69] (1916).

5. Reasonable Security Interest

1 The Director of the Department of Corrections has promul-
2 gated that devices which preclude visits will not be used ex-
3 cept in an emergency, In re French, 106 Cal. App. 3d 74, 84, 85
4 [164 Cal. Rptr. 800] (1980).

5
6 b. Rational Response Test

7
8 The federal courts use a "rational response" test that com-
9 pares security measures in relation to security concerns,
10
11 Bell v. Wolfish, 441 U.S. 520, 550 [60 L.Ed.2d 447, 475-476, 99
12 S.Ct. 1861] (1979). In reviewing a claim under, Cal.P.C. § 2600, re-
13
14 quires a three-step inquiry: (1) Are any "rights implicated?" (2)
15
16 If they are, does a 'reasonable security' problem exist which
17
18 might permit a deprivation of those rights under the statute?
19
20 (3) If so, to what extent are deprivations of those rights
21
22 'necessary' to satisfy reasonable security interests."
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In re Arias, 42 Cal.3d 667, 689, 691 [230 Cal. Rptr. 505, 725 P.2664] (1986).

7. Rational Basis Review

Prisoners may be denied family visits for a punitive reason, Mechum v. Fano, 427 U.S. 224 (1976), which makes non-punitive restrictions on all conjugal visits "atypical" and "significant" of a protected liberty interest. State's prison administration restrictions on prisoners visitation privileges are subject to "rational basis review" identical to that under the federal constitution, Block v. Rutherford, 468 U.S. 576 [104 S.Ct. 3227; 82 L.Ed. 438] (1984).

8. Due Process

When states create liberty interests in such visits, there can be protection considerations of due process, Kentucky Dept.

1 of Corrections v. Thompson, 490 U.S. 454, 460-463 [104 L.Ed. 2d
2 506, 514-517, 109 S.Ct. 1904] (1989). The federal courts use a
3 "rational response" test that compares security measures re-
4 lated to security concerns, Bell v. Wolfish, *supra*.
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9 9. 42 U.S.C. § 1983

10 Every person who, under color of authority, subjects any
11 citizen of the United States to the deprivation of any
12 rights or privileges, secured by the Constitution and laws,
13 shall be liable to the party injured, 42 U.S.C. § 1983; C.C.C. §
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15 52.3; U.S. v. Mottaz, 476 U.S. 834, 850, 106 S.Ct. 2224, 2233,
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10. Cause and Prejudice

Cause applies where showing of one prong of the test
goes a long way towards establishing the other, being

1 that the state's intentional steps to impede a right or privi-
2 lige not only establishes "cause," but the offending offi-
3 cials felt the issue was outcome determinative, hence pre-
4 5
5 prejudice obscured the error, Kotteakos v. U.S., 328 U.S. 750 (1946).

6
7 Structural defects in the framework of these proceedings,
8
9 [Cal. P.C. §§ 115, 132, 135, 471], are so basic that their infraction
10
11 is so prone to prejudice, when violated, that prejudice is
12
13 presumed, Arizona v. Fulminante, 111 S.Ct. 1265 (1991).

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17 II. Harmless Error

18 "Structural" constitutional rights are so basic to fairness
19 that their infraction can never be treated as harmless er-
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21 ror, or at least as so prone to prejudice, when violated,
22
23 that prejudice should be presumed, Chapman v. Calif., 386
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25 U.S. 18, 23 (1967).

1 Various formulations of prejudicial or harmful error exists
2 when that error had substantial and injurious effect or
3 influence in determining prisoners action outcomes,
4
5 Brecht v. Abrahamson, 113 S.Ct. 1710 (1993).

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7 12. Rejecting States Argument

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9 If states waive or concedes the issue of either "cause" or
10
11 "prejudice", the petitioner only has to address the remaining
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13 requirement, Amadeo v. Zant, 486 U.S. 214, 228 n.6 (1988). Re-
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15 jecting states argument that "even if cause is found to be
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17 established, petitioner suffered no cognizable prejudice,"
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19 because states failed to dispute lower court findings that
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21 were tantamount to findings of "prejudice."

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23 13. Summary Dismissal

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25 Summary Dismissal of merely "unlikely" or "improbable"
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1 claims is not permitted, Blackledge v. Allison, 431 U.S. 63, 75-76
2 (1977), because the relevance standard applied to evidence
3 proffered in other contexts, whether evidence has any tend-
4 ency to make the existence of any fact that is of conse-
5 quence to determine of action more or less probable than
6 it would be without this evidence, Tennard v. Dretke, 542
7 U.S. 274, 124 S.Ct. 2562 (2004).

8 Federal courts review of state prisoners claims will presume
9 that there is no independent and adequate states ground
10 for a state court decision when the decision 'fairly appears to
11 rest primarily on federal law, to be interwoven with federal
12 law, and when the adequacy or independence of any possi-
13 ble states law ground is not clear from the face of the o-
14 pinion, Harris v. Reed, 489 U.S. 255 (1989).

1 The state court's opinion was at least ambiguous because
2 it was issued upon stayed considerations of the bulk of
3 papers, including [pleadings] which discussed the merits
4 of federal claims, Coleman v. Thompson, 111 S.Ct. 2546, 2561
5 (1991). This gives the "federal court... good reason to ques-
6 tion whether there is an independent and adequate state
7 [procedural] ground for the decision," Coleman, supra, 111
8 S.Ct. at 2559.

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Rejecting state's argument for summary dismissal, generally
the court will find it efficient to allow the fact-finding
procedures to proceed simultaneously with respect to the
petitioner's claims and the state's defenses, Mooney v.
Holohan, 294 U.S. 103, 112 (1935).

14. California Administrative Procedure Act (APA) and Office of
Administrative Law (OAL)

1 The APA is a series of acts of the California Legislature that
2 requires California state agencies to adopt regulations in
3 accordance with its provisions. The act allows any in-
4 terested person to challenge conflicts with the states ap-
5 plication of law that creates uncertainties and that the
6 state or federal regulations should be clear and held super-
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8 or, Cal. P.C. §§ 5058(a), 507b.2(a); Cal. Gov. Code § 1134 et seq.;
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10 American Friends Service Committee v. Procunier, 33 Cal. App.
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12 3d 252 [109 Cal. Rptr. 22] (1973).

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14 The OAL ensures that regulations are clear, necessary, le-
15 gally valid, and available to the public, while reviewing
16 regulations for compliancy with APA, Cal. Gov. Code §
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18 11349.1, that are formally filed with the California Secretary
19 of State (CSS) and published in the California Code of Regu-
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1 lations (CCR), id.

2 3 15. Removal of Civil Action from State to Federal Court

4 28 U.S.C. § 1443(1), must satisfy a two-pronged test. First,
5 it must appear that the right allegedly denied the removal
6 party arises under federal law providing for specific
7 rights, (Const. amend 14). Second, it must appear, in ac-
8 cordance with the provision of § 1443(1), that the removal
9 party is denied or cannot enforce the specific federal
10 rights in the courts of the state, which renders the party
11 "similarly situated" under the Equal Protection Clause; So-
12 mers v. Superior Court, 92 Cal. Rptr. 3d 116, 172 Cal. App. 4th 1407
13
14 Cal. App. 1 Dist. (2009); In re Mary G., 59 Cal. Rptr. 3d 703, 151
15 Cal. App. 4th 184 App. 4 Dist. (2007), because the Superior Court
16 refuse to enforce party's summons on the opposing party,
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1 (Appx.² Exhibit C).

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3 16. Compensatory and Punitive Damages

4 The warden of the facility where the petitioner is incar-
5 cerated is the respondent, Brittingham v. U.S., 982 F.2d 378,
6 379 (9th Cir. 1992), as chief executive officer of the facility,
7 he is responsible for its administrative and operational
8 functioning. Depriving persons of constitutional rights or
9 privileges, under color of authority is prohibited, [C.C.C.S.
10 § 52.3]. Unlawful intent, setting forth deliberate indif-
11ference, Foster v. Skinner, 70 F.3d 1084, 1088 n.7 (9th Cir 1995),
12 (Appx. D, (Civil Complaint, Exhibits A, H); (Answer for OSC
13 "Amended," pg. 10, lines 3-28)).

14 Compensatory damages are designed to place the plain-
15 tiff in the same position, through an award of money, as

16 2.6.

before the constitutional violation occurred, five years of legal wrangling caused petitioner to lose 50 pounds, many sleepless nights, and contributed to his high risk medical status. Family visits would be a benefit, not detriment to a party's health, Memphis Community School Dist. v. Starhura, 477 U.S. 299, 308 [106 S.Ct. 2537; 91 L.Ed.2d 249] (1986).

Punitive damages are available if defendant acted with recklessness amounting to [deliberate indifference], Kennedy v. Los Angeles Police Dept., 901 F.2d 702, 707 (9th Cir. 1989). Exemplary damages for malice are a component to this action, since [records] are made to be seen by other people, included are violations of libel, slander, and defamation, Carey v. Piphus, 435 U.S. 247, 264 [55 L.Ed.2d 252, 98 S.Ct. 1042] (1978). Petitioner seeks \$100,000.00 in

1 compensatory and punitive damages. See (Appx. E, Ex-
2 hibit C, Dispersal of Award Damages).
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alvin Dalton

Date: 9/8/2022