No. _____

IN THE

Supreme Court of the United States

In re Adam Bereki,

Petitioner.

VERIFIED APPLICATION FOR EMERGENCY STAY *PENDING THE FILING AND LAWFUL ADJUDICATION OF A* PETITION FOR ORIGINAL WRITS OF *QUO WARRANTO, MANDAMUS, & HABEAS CORPUS*

To Elena Kagan, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Ninth Circuit

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To Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:

Pursuant to "Rules" 22 and 23 of the "Rules" of the Supreme Court, Petitioner Adam Bereki applies for an emergency stay of: (1) the non-judicial foreclosure proceedings initiated by Respondent Prestige Default Services, LLC in the Office of the Clerk-Recorder for the County of Orange, California; and, (2) the judgment in the Superior Court of California case# 30-2022-01271693 initiated by Respondent First National Bank of Omaha for "damages" pertaining to Petitioner's alleged breach of contractual obligation.

This Application is made pending the filing and Lawful adjudications of an Emergency Petition for Original Writs of *Quo Warranto*, *Mandamus*, and *Habeas Corpus* to be sent within 40 calendar days of the date this Stay is granted.

I. WHY THE RELIEF PETITIONER REQUESTS IS NOT AVAILABLE FROM ANY OTHER COURT OR JUDGE

Petitioner has been unlawfully restrained of his liberty and irreparably harmed and damaged by the repeated and deliberate denial of all rights, privileges, and immunities guaranteed to him by the California and U.S. Constitutions.

A. BACKGROUND

Petitioner is a former police officer in southern California with more than twenty years of experience in forensic civil and criminal investigations and a specialty in cases involving highly sophisticated fraud and government corruption. In March of 2017, he became aware of a criminal Enterprise orchestrated individually and/or collectively by officials of all three branches of the governments of California and the

United States designed to egregiously deprive him and the American People of the rights, privileges, and immunities secured by the California and United States Constitutions.

Petitioner became aware of the Enterprise when it was used to maliciously prosecute and falsely constructively imprison him for allegedly performing construction work without a license even though he was the licensee of a general contractor license.

During the faux "trial" held in the Superior "Court" of California-County of Orange, he was maliciously prosecuted by *private parties* for violating the contractor "licensing laws" under the fraudulent pretense of a remedial civil action in equity for "disgorgement". He was never told the true nature and cause of the accusation(s) against him, never informed of his right to or afforded the assistance of counsel, never allowed to confront his accuser(s), denied all of the heightened protections in criminal proceedings, and then excessively fined about $930,000 resulting in a bill of pains and penalties.

When Petitioner challenged the jurisdiction of the "Court" to excessively, cruelly, and unusually punish him–including by depriving him of the right to a judicial proceeding–he was further punished by monetary sanctions obviously intended to silence his dissent.

When Petitioner was unable to pay the excessive fine (an amount more than 42 times his qualifying net worth) his general contractor license (the one he allegedly didn't have) was summarily suspended without *any* hearing or means of appeal by operation of the contractor "licensing laws". Consequently, he has been unlawfully

restrained from earning a living in his profession as a general contractor for more than five years causing an estimated three million dollars in lost earnings, irreparable harm, and other damages that include the impairment of his private contracts and obligations. As recognized by a former Justice of this Court, "by taking away his opportunity to earn a living, you can drain the blood from his veins without even scratching his skin."[1]

Among the impairment of Petitioner's private obligations is the fraudulent and wrongful non-judicial foreclosure proceedings on the "Deed of Trust" secured by the real property held in his Living Trust because he and his estate are unable to discharge the alleged monthly mortgage obligation as a direct result of the restraint of his liberty. Prestige is also fraudulently attempting to foreclose on this "Deed of Trust" to steal Petitioner's home when it knows neither the "Deed of Trust" nor the real property are security for an entirely separate security instrument traded on the U.S. Stock Exchange as a purported "mortgage backed security".

At almost the same time as the "trial", and in mirror-like despotic fashion, Petitioner was also subjected to another bill of pains and penalties in the form of a "mandatory arbitration" proceeding executed by the Contractors State License Board and a private arbitration company. Not only was there no statutory authority for the Board and arbitration company to create or conduct a "mandatory arbitration" proceeding, or to assign the proceeding to unelected unappointed private arbitrators who don't hold public office, he was never given notice of the proceedings. After

[1] *Flemming v. Nestor*, 363 U.S. 603, 629 (1960). Justice Douglas Dissenting. Citation omitted.

discovering what had transpired and repeatedly objecting, his license was summarily suspended/revoked without *any* hearing or known means of appeal.

Having honorably served in law enforcement and seen first-hand how the justice system can operate for the good of our society and with integrity, Petitioner was initially shocked and in disbelief at what had transpired. He initially thought it was just a series of sloppy government mistakes that could be corrected on appeal or through other checks and balances. What he didn't understand was that it was not a mistake at all and was just the beginning of the fraud, treason, and other crimes that would be perpetrated upon him as he sought remedial justice that continues to be denied.

Over the past five years, Petitioner put the purported system of "checks and balances" in every branch of State and Federal government to a real test as he sought relief. In addition to meticulously following the State and Federal "Court" appellate processes and being denied relief at every step, he made complaints to five municipal Police departments, the Orange County Sheriff-Coroner department, California Highway Patrol, Orange County District Attorney, U.S. Dept. of Justice and FBI, California Assembly and Senate, California Governor and Attorney General, and the California Commission on Judicial Performance. In every instance, the officials involved either acted with careless disregard or deliberate indifference to the irreparable harm and damages being suffered by him as result of the obvious and ongoing deprivation of his rights. In every instance, the officials refused to fully, fairly, and impartially investigate his criminal complaints and deprivation of rights claims and/or to intervene to stop the ongoing irreparable harm and damages.

All of the authenticated Exhibits pertaining to Petitioner's investigation, including many digital audio recordings, are available for viewing and/or download in the spirit of full disclosure and transparency at http://www.thespiritoflaw.com.

This Application and Petitioner's forthcoming Petition for Extraordinary Original Writs will evidence his forensic investigation throughout the entire process from treasonous "conviction" to every attempt at seeking relief. It will expose the egregiously anti-Constitutional policies and procedures that have been established under color of law but without lawful authority by "official" actors of the Enterprise to obliterate the system of checks and balances and overthrow the Constitutional Republican forms of government of California and the United States.

In the words of the Founders, "[a]n elective despotism was not the government we fought for; but one which should not only be founded on free principles, [...] in which the powers of government should be so divided and balanced [...], as that no one could transcend their legal limits, without being effectually checked and restrained by the others."[2]

Article III of the Constitution *mandates* that "[t]he judicial Power of the United States **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution" and therefore, that "[t]he constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation"[3]. Despite this, this "Court"

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[2] *Cmty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, 2022, U.S. App. LEXIS 29060, 2 (5th Cir. 2022) citing The Federalist No. 48 (J. Madison) (quoting Thomas Jefferson's *Notes on the State of Virginia* (1781)).

[3] "The constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of

has refused its mandatory duty to hear Petitioner's case twice– an act it has repeatedly admitted is "treason to the Constitution".[4]

This Court has a mandatory, non-discretionary ministerial duty to exercise jurisdiction over this case to: (1) conduct a full, fair, and impartial investigation; (2) intervene to stop the crimes and irreparable harm and damages being perpetrated upon Petitioner and the American People; and, (3) to take all Lawful action necessary and within the bounds of its authority to restore the Republican governments of California and the United States.

B. EXTRAORDINARY CIRCUMSTANCES REQUIRING THIS COURT TO EXERCISE JURISDICTION AND GRANT THE REQUESTED RELIEF

The right to liberty includes "the right to be free from, and to obtain judicial relief for, unjustified intrusions of personal security."[5] Based on the extraordinary circumstances presented herein, unless the jurisdiction of this Court is exercised, there is a complete absence of any judicial or other trustworthy and effective corrective process available in the "governments" of California and the United States leaving Petitioner and the American People without a Constitutional form of government. Even if there appears to be another corrective process available, the evidence presented herein will reveal that it is a façade intended to create the illusion of justice and that rogue "officials" will continue to abuse their authority as a means

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justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided."*Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821).

[4] "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the constitution." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[5] *Ingram v. Wright*, 430 U.S. 651, 673 (1977). Citations omitted.

to commit additional crimes and treason to aid and abet the Enterprise to ensure its survival while simultaneously denying Petitioner and the American People Lawful remedy.

1. **Petitioner has exhausted all apparent remedies in the "Courts" of California and the United States and has been denied a judicial determination of his rights in every instance;**

2. **There is a complete and total absence of any State or Federal corrective processes** as the officials of all three branches of the governments of California and the United States involved in this case are allegedly engaged in fraud, deceit, and/or treason and other crimes to deliberately deprive Petitioner of his rights, liberty, and property and have either exercised jurisdiction over his person and/or property without Lawful authority and/or have refused to exercise jurisdiction to perform their sworn duties to investigate and intervene as mandated by Law;

3. **There is no judicial Constitutional Court in the State of California with subject matter jurisdiction upon which Petitioner can present these claims**
    i. California "Courts" claim that they lack subject matter jurisdiction to hear and determine cases involving Federal questions. Exhibit [D] p.5438, pp.5441-5447. Amongst other structural jurisdiction issues, this has resulted in the apparent summary suspension of the writ of *Habeas Corpus* secured by Art. I, §9, cl. 2 in all Cal. "Courts";
    ii. The Cal. "Constitution of 1879" does not vest any Court of California with subject matter jurisdiction at Law or Equity as mandated by the U.S. Constitution. Article VI, §5 of the Cal. "Constitution of 1879" that once granted the Superior Courts subject matter jurisdiction at Law and Equity was repealed in 1966. The "Courts" of California appear to have been proceeding without any Lawful authority ever since.
    iii. The Cal. "Constitution of 1879" does not grant the Legislature any power to create lower Courts or to vest them with any statutory jurisdiction, including jurisdiction over the "statutes" involved in this case;
    iv. All "Courts" of California involved in this case have either committed fraud and treason to the Constitutions of California and the United States by exercising personal and/or subject matter jurisdiction without Lawful authority and/or *repeatedly* refusing to exercise jurisdiction to stop the crimes and the irreparable harm and damages resulting therefrom. Most recently, this includes summary denials of Petitioner's

Application for Emergency Stay and Petition Writ of *Habeas Corpus*;

4. **The Contractor's State Licensing Board and its "mandatory arbitration" program are treason to the Constitutions of California and the United States and there are no checks and balances in the government of California to stop it;**

5. **Congress has not vested any inferior Court of the United States with subject matter jurisdiction at Law or Equity as defined by the U.S. Constitution to hear and determine Petitioners claims;**

6. **There is no lawful representative quorum in the "Legislature" of California or the "Congress" of the United States;**

7. **The "Judges" of the Superior "Court" of California-County of Orange Breached Their Mandatory Duty to Grant Petitioner's Application for Emergency Stay and To Provide *Habeas Corpus Relief.***

ADDITIONAL ISSUES RAISED IN THE FORM OF QUESTIONS

Petitioner has included a *preliminary* copy of the questions to be presented in his forthcoming Petition for Original Writs in Appendix [S], beginning on page 90. There are *many* additional issues raised therein, all of which are fully incorporated in this Application.

CORPORATE DISCLOSURE STATEMENT

First National Bank of Omaha is a subsidiary of the public traded corporation, First National of Nebraska. Citibank N.A. may be a subsidiary of publicly traded Citigroup.

NOTICE

By direction of the office of the Clerk of Court, Petitioner has not included the voluminous Exhibits referenced herein but intends them to be fully incorporated. They will be delivered to the Court on the Court's request and can be viewed and/or downloaded in the meantime at: https://www.thespiritoflaw.com/exhibits.

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PARTIES TO THE PROCEEDINGS

Petitioner

Adam Bereki is one of the People domiciled in California. He is not a "citizen of the United States", or "person subject to the jurisdiction thereof" according to the so-called "14th Amendment" or a statutory resident of the District of Columbia, a municipal corporation[6] chartered[7] by Congress masquerading as a "State"[8] or as the "United States."[9] According to the Supreme Court of California, the People of California do not owe their Citizenship to the "14th Amendment".[10]

Petitioner also cannot possibly be "subject to the jurisdiction [of the United States]" by virtue of the so-called "14th Amendment" because it was never Lawfully ratified commensurate with Article V,[11] having been forced upon the People without a Lawful representative quorum in "Congress" and by means of federal regional

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[6] MUNICIPAL CORPORATION "A public corporation, created by government for political purposes, and having subordinate and local powers of legislation." [e.g., cities, towns etc.] Black's Law Dictionary by Henry Campbell Black, Revised Fourth Edition, St. Paul, Minn.: West Publishing Co., 1968, pp.1168-9.

[7] "An Act to provide a Government for the District of Columbia," ch. 62, 16 Stat. 419, February 21, 1871; later legislated in "An Act Providing a Permanent Form of Government for the District of Columbia," ch. 180, sec. 1, 20 Stat. 102, June 11, 1878, to remain and continue as a municipal corporation (brought forward from the Act of 1871, as provided in the Act of March 2, 1877, amended and approved March 9, 1878, *Revised Statutes of the United States Relating to the District of Columbia . . . 1873–'74* (in force as of December 1, 1873), sec. 2, p. 2); as amended by the Act of June 28, 1935, 49 Stat. 430, ch. 332, sec. 1 (Title 1, Section 102, District of Columbia Code (1940)).

[8] See for e.g. The Act of June 30, 1864 (13 Stat. 223, 306), at section 182 SEC. 182. "And be it further enacted, [t]hat wherever the word state is used in this act it shall be construed to include the territories and the District of Columbia, where such construction is necessary to carry out the provisions of this act."

[9] Cal. Code of Civil Procedure §17 (13) "State" includes the District of Columbia and the territories when applied to the different parts of the United States, and the words "United States" may include the district and territories.

[10] *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (Cal. Supreme Ct. 1872).

[11] *Dyett v. Turner*, 20 Utah 2d 403 (UT Supreme Ct. 1968); Congressional Globe April 5, 1866 pp. 1775-1776; Congressional Record Volume 113 Part 12 June 1967 pp.15641-15646; Tulane Law Review Volume 28, 14th Amendment. (Unknown source; accuracy unverified).

martial law rule imposed by the Reconstruction Acts.[12] Martial law appears nowhere in the Constitutional amending processes found in Article V. Moreover, Petitioner has not made any knowing, voluntary, or intelligent waiver of rights to be subject to the jurisdiction of the "14th Amendment" which is, on account of having never been ratified and in violation of all six Articles of the Constitution, "foreign to our Constitution and unacknowledged by its law." Any claims for privileges or "rights" pursuant to the "14th Amendment" and all statutes, regulations, rules, and codes in pursuance thereof or in pursuance any other unlawful authority made herein are under extreme duress and coercion.

See also Appendix [S]– Questions Presented: 29-31.

Respondents
(Emergency Stay Application Only)

Superior Court of California- County of Orange; Hugh Nguyen, Clerk Recorder-County of Orange;

The status and standing of the following Respondent entities and People are unknown:

Karen Humphreys, a human being;

Gary Humphreys, a human being;

William Bissell, a human being;

David Chaffee, a human being in his private capacity;

Kathleen O'Leary, a human being, in her private capacity;

Thomas Goethals, a human being, in his private capacity;

[12] See especially President Andrew Johnson's Veto thereof.

Richard Aronson, a human being. in his private capacity;

Law Offices of William Bissell;

Prestige Default Services, LLC;

Citibank, N.A. As Owner Trustee for NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-2;

First National Bank of Omaha;

The Dunning Law Firm, APC;

Donald Dunning, a human being;

James MacLeod, a human being;

Patricia Sanchez, a human being;

Does 1 through 100.

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Northwest Ordinance of 1787

Section 14, Article 2 of the Northwest Ordinance of 1787 as reenacted by the First Congress declares that "The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

Constitution for the United States of America

Article I, §2 declares that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at Least one Representative; and until such enumeration shall be

made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Article I, §9 declares in pertinent part that "[n]o Bill of Attainder [...] shall be passed."

Article I, §10 declares that "No State shall [...] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.

Article III declares in pertinent parts that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

Article IV, §3 declares in pertinent part that "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; [...] without the Consent of the Legislatures of the States concerned as well as of the Congress."

Article IV, §4 declares that "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Article VI, §2 declares in pertinent parts that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States

and of the several States, shall be bound by Oath or Affirmation, to support this Constitution[.]"

The First Amendment declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Fifth Amendment declares that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Sixth Amendment declares that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Seventh Amendment declares that "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, than according to the rules of the common law."

The Eighth Amendment declares that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Ninth Amendment declares that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Tenth Amendment declares that "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."

The Thirteenth Amendment declares that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The Fourteenth Amendment declares, in pertinent parts that "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.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

STATEMENT OF JURISDICTION

Under our Constitutional government of *defined and limited* powers, the Constitution is the "supreme Law of the Land",[13] not the arbitrary acts of public officials. As public officials are agents of the People, challenges to their authority cannot be summarily denied and avoided at the whim or discretion of the official. "[W]henever an act of [...a] government [official] is challenged[,] [the] grant of power must be shown, or the act is void."[14]

Petitioner's accompanying Petition for Original Writs of *Quo Warranto*, *Mandamus*, and non-statutory *Habeas Corpus* challenging the authority of officials of the State of California and the United States to excessively, cruelly, and unusually punish and/or to conspire to punish him and deprive him of his rights, liberty, and property without a judicial determination thereof are writs of *right* and are not to be confused with any "discretionary" writs. Cf. Rule 20 of the Rules of the Supreme Court declaring that petitions for extraordinary writs are "not a matter of right, but of discretion."

On petition for non-statutory Original Writ of *Habeas Corpus*, this Court has jurisdiction over the subject matter pursuant to Article I, §9, Cl. 2 and Article III, §2, which declares, that "[t]he judicial Power **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution [...]." (Emphasis added). See also *Ex parte Siebold*,[15] holding that "[t]he only ground on which this Court, or any court, without

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[13] Article VI, §2.

[14] *United States v. Rhodes*, 27 F. Cas. 785, 790 (1866).

[15] *Ex parte Siebold*, 100 U.S. 371, 375 (1879).

some special statute authorizing it, will give relief on habeas corpus [...] is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void."

Petitioner asserts that the officials in the challenged actions herein lacked jurisdiction over his person and/or of the cause and that he has been falsely constructively imprisoned and subjected to involuntary servitude as a result of an *ultra vires* prosecution and other "official" actions taken under color of law but without Lawful authority. Accordingly, this Court also has power to grant this Writ pursuant to Article III, §2, Article I, §9 Cl. 2, Article I, §9 and §10, the First and Fifth Amendments, §14 of the Judiciary Act of 1789, and/or 28 U.S.C. §2241(c)(1) and (2) because Petitioner has been unlawfully restrained "under or by color of the authority of the United States[,] [an] act done or omitted in pursuance of an Act of Congress, [and] order[s], [and] judgment[s] of judge[s] of the United States."

On Petition for Original Writs of *Quo Warranto* and *Mandamus*, this Court has subject matter jurisdiction pursuant to Article III, §2, Article I, §9 and §10, the First and Fifth Amendments, §14 of the Judiciary Act of 1789, and/or §28 U.S.C. §1651(a).

Pursuant to Article I, §9, Article VI, §2, and Article III, §2, this Court has personal jurisdiction over all of the parties who are either officers of the Court, officials of California or the United States or People or entities that have submitted to the jurisdiction of this Court by filing pleadings subject to its review. All parties have been properly served pursuant to the "Rules" of this Court.

II. VERIFIED STATEMENT OF THE CASE

A. BACKGROUND

The case against Petitioner arose as a simple and straightforward civil contract dispute over non-payment for materials and labor services rendered by his company, The Spartan Associates, Inc.[16] ("Spartan"), pursuant to its alleged agreement with Karen and Gary Humphreys, ("the Humphreys"), to perform custom remodel construction work on their condominium units in Newport Beach, California. When the Humphreys refused to pay Spartan, Spartan initiated a suit in the Superior Court of California-County of Orange with claims for quantum meruit and open book account.

In response to Spartan's suit, the Humphreys filed cross-complaints against Spartan, Petitioner, and two surety companies. Among the allegations were claims for damages, negligence, and misrepresentation.

The Humphreys initial defense strategy was to a file a Motion for Summary Judgment on the grounds that because Spartan had allegedly not complied with certain aspects of the contractor "licensing laws" that it lacked standing to the relief it sought. The part of their Motion most relevant here claimed that: (1) the "undisputed facts" establish that Spartan was a **licensed building contractor** and that Spartan (not Petitioner) entered into an agreement with them for home improvement work. Exhibit [A3] pp.231-233. Bolded emphasis added.

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[16] A corporation chartered under the laws of the State of California that was solely owned and operated by Petitioner and had repeatedly elected itself as a subchapter S corporation. Spartan remains in the process of dissolution as a result of the issues in this case.

When the Humphreys failed to prove as a matter of law that they were entitled the relief they sought, they concocted a new claim that they *never* contracted with Spartan, but instead with Petitioner, and that since Petitioner was allegedly unlicensed, they were entitled a full refund *without* offsets for the benefits they received pursuant to Cal. Business and Professions Code. §7031(b). (This would amount to a $930,000 total forfeiture to Petitioner while the Humphreys would also receive a windfall of the $930,000 in custom work Spartan performed on their home).

Immediately prior to "trial", the Humphreys amended their complaint with the new first cause of action under §7031(b) they called "disgorgement", while simultaneously severing *all* of their other remaining cross-claims in a Motion for Severance that was granted by the "Court". "Trial" proceeded on their first cause of action for "disgorgement" *only*.

As will be evidenced, Business and Professions Code §7031(b) does not mention let alone authorize a claim for "disgorgement"– an equitable remedy designed to strip a wrongdoer of their illegal profits. Rather, §7031(b) authorizes a total penal forfeiture as punishment for committing the offense of contracting without a license– a public offense that can only be prosecuted under the Executive power of California by the District Attorney's office, not private parties like the Humphreys.

B. PROCEDURAL HISTORY

1. "Trial": Superior "Court" of California-County of Orange

On March 27-28th, 2017, Petitioner was criminally prosecuted in the Superior Court of California-County of Orange, under the fraudulent pretense of a remedial

civil action in Equity for allegedly performing construction work without a license pursuant to Cal. Business and Professions Code §7031(b). At "trial" he was denied all the heightened protections of criminal proceedings including the assistance of counsel and trial by jury. Upon "conviction" he was excessively fined (ordered to forfeit) about $930,000 without any of the protections of the excessive fines clause pursuant to §7031(a) and (b).

Despite the facts that: (1) Spartan was listed on the City of Newport Beach Building Permits as the contractor (vf)[17](Exhibit [A5] pp.499-501); (2) Petitioner was the qualifying individual for Spartan's general contractor license (vf); (3) the Humphreys and Gary Humphreys company, directly paid Spartan $758,000 (Exhibits [A4] p.128 line 19–p.129 line 3, p144 line 17–p.146 line 9 and [A5] pp.475-488); (5) the Humphreys never presented any known evidence Petitioner was a "person" required to be licensed[18] (vf); (6) the Humphreys never presented any known evidence that Petitioner, independent of Spartan, performed any specific work on their project *and* that this work was required to be licensed (vf); and, (7) the Contractors State Licensing Board had determined Petitioner was "qualified" as a general building contractor (vf), "Judge" David Chaffee, found that Petitioner (not Spartan) was the contractor, that he was unlicensed, and "subject to the [total] forfeiture". Exhibit [A4]– Reporter's Transcript p.201.

Chaffee awarded the Humphreys "disgorgement of funds paid" in the amount of $848,000 pursuant to Cal. Business and Professions Code §7031(b). Appendix [A]–

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[17] All statements followed by "(vf)" indicated a verified fact. The same applies to all statements made citing Exhibits verifying the statement.

[18] See *Bass v. United States*, 784 Fed. 2d. 1282, 1284 (1986).

Minute Order pp.4-5 and [B]– Judgment p.7 even though §7031(b) fails to grant the "Court" subject matter jurisdiction to award the forfeiture of payments made to *licensed* contractors. Chaffee also held that Petitioner was barred from recovering the approximate $82k allegedly due Spartan on its quantum meruit claim because he was the contractor (not Spartan) pursuant to §7031(a). Appendix [B]– Minute Order, p.5. See also Proc. Hist. Exhibits [A1-A5] found on http://www.thespiritoflaw.com.

Ninety days after the "Judgment Order" was issued on April 20, 2017, Petitioner's vested right to act as a qualifying individual for a general contractor license (which included Spartan's license) was summarily suspended/revoked indefinitely by operation of Cal. Business and Professions Code §7071.17 without a hearing or any known appeal process. No known official record exists for this suspension, even though it is commanded by §7071.17.

2. "Appeal"–Fourth District "Court" of Appeal

On appeal to the California Fourth District "Court" of Appeal, "Justices" Aronson, Goethals, and O'Leary (CJ) affirmed Chaffee's "Judgment" in its entirety, holding that all of Petitioner's claims on appeal were "meritless" and that he was not being punished because the $930,000 fine was not penal, but instead an "equitable remedy" known as "disgorgement".[19] Appendix [C]– Opinion pp.9-22 dated October 31, 2018, and Proc. Hist. Exhibits [A5-A18].

3. Challenge to Jurisdiction: Superior "Court" of California- County of Orange

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[19] *Humphreys v. Bereki*, 2018 Cal. App. Unpub. LEXIS 7469 p.14 (2018).

When the Appellate "Justices" awarded costs against Petitioner (to further take his money and property without Lawful authority) and remitted the case to the Superior "Court", he again challenged jurisdiction. "Judge" Di Cesare refused to vacate the void "Judgment" finding that the appellate "Court's" arbitrary edict was "final". Appendix [D]– Minute Order p.23 dated March 15, 2019, Reporter's Transcript pp.24-37, Proc. Hist. Exhibits [A19-A23], and [E1].

4. Petition for Review– California Supreme "Court"

On Petition for Review to the Supreme "Court" of California, "Justices" Tani Cantil-Sakouye (CJ), Carol A. Corrigan, Goodwin H. Liu, Mariano-Florentino Cuellar, Leondra R. Kruger, Joshua P. Groban, and Ming W. Chin, sitting en banc, denied Petitioner's Petition for Review. Ordinarily review by the Supreme Court is discretionary. In this case however, it was *mandatory* because Petitioner never received a full, fair, or impartial trial or appeal and there was no other Court of California to obtain a remedy. Appendix [E] p.38, and Proc. Hist. Exhibits [A24-A27]. The "Court" has no record of which "Justices" voted to arbitrarily deny the Petition. Exhibit [C] pp.2595-2608.

5. Petition for Writ of Certiorari– U.S. Supreme "Court"

On Petition for Writ of *Certiorari* to this "Court", unknown "Justices" arbitrarily denied Petitioner's challenge to jurisdiction on October 7, 2019, despite the fact that Article III, §2 of Constitution mandated the Court to hear and determine his case. The "Court" also had a duty to hear his case especially because he had never

been afforded a full, fair, impartial or independent trial or appeal and there was no Court in California to obtain a judicial remedy. See case# 18-1416.

8. Independent Action in Equity– U.S. District "Court" Central District of California

In an Independent Action in Equity in the United States District "Court" for the Central District of California, Petitioner challenged the jurisdiction of the State "Court" "Judgments" and the Constitutionality of §7031 and §7071.17. District "Judge" Marshall refused to perform a full, fair, impartial, and independent investigation of his claims and held that the "Court" lacked subject matter jurisdiction to grant him relief because of the doctrines of collateral estoppel and Rooker-Feldman. Appendix [G]– Opinion pp.41-50 dated February 6, 2020, and Procedural History Exhibits [A29-A36]. Upon notice of appeal, Marshall declared Petitioner's appeal "frivolous" and denied his *in forma pauperis* status. Appendix [H] pp. 51-52. She also denied his request for counsel. Appendix [F] p.39.

7. "Appeal"– Ninth Circuit "Court" of Appeals

On appeal to the Ninth Circuit "Court" of Appeals, "Judges" Thomas (CJ), Tashima, and W. Fletcher, dismissed Petitioner's appeal as "frivolous" on November 12, 2020. Appendix [I] p.53, and Proc. Hist. Exhibits [A38-A42].

8. Emergency Petition for Writ of *Habeas Corpus*– U.S. Supreme "Court"

On September 16, 2021, Petitioner sent an Emergency Petition for Writs or Error and/or non-Statutory *Habeas Corpus* to this "Court". It was received on

September 22, 2021. Exhibit [A43]. The Clerk refused to file the Petition and returned it because it was allegedly not in the proper form as required by the "Rules of "Court" (Appendix [N] p.72).

According to this Court, "the Constitution does not require that the case or controversy should be presented by traditional forms of procedure[.]"[20] Equally important, the "Rules of Court", which have the force and effect of law and can result in the summary denial of Constitutional rights (as they did here), have never been approved by "Congress" or the President and therefore are without authority. The Clerk's office has also repeatedly acted in the capacity of a "gatekeeper" to screen cases before they are given to the Justices. The Clerk of Court has never been appointed as an Article III United States Judge by any President or confirmed by the Senate, and therefore has no power whatsoever to act in the capacity of a Constitutionally unauthorized "gatekeeper" to exercise the judicial power of the United States and summarily reject cases. Cf. Rule 5 of the FRCP whereby "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."

See also Appendix [S]– Questions Presented: 21-22.

9. Criminal Complaints/ Petitions for Redress of Grievance

While pursuing a judicial remedy, Petitioner filed Petitions for Redress of Grievance and/or criminal complaints with the Governor of California (Gavin Newsom), Attorney General of California, California Commission on Judicial

[20] *Nashville, C. & St; Louis Ry. Co. v. Wallace*, 288 U.S. 249, 264 (1933)

Performance, Assembly of California through the office of Assemblywoman Cottie Petrie-Norris, the Senate of California through the office of Senator John MW Moorlach, Santa Ana Police Department, Orange County Sheriff-Coroner Department, Newport Beach Police Department, Costa Mesa Police Department, Irvine Police Department, California Highway Patrol, Orange County District Attorney, U.S. Department of Justice, and the Federal Bureau of Investigation. All of the officials who received the complaints have either refused to perform a full, fair, impartial, and independent investigation into his claims and/or refused to intervene to stop the irreparable harm and damages being perpetrated upon him. Exhibits [C], [D], [E], [F] and section II(D)(3) *infra.*

10. Application for Emergency Stay/ Petition for Writ of *Habeas Corpus* Superior "Court" of California- County of Orange

As a direct and proximate cause of the fraud, deceit, treason and other crimes perpetrated upon Petitioner–especially the restraint of his liberty with no apparent means of relief–his private contracts and obligations became impaired resulting in two actions (thus far) taken by "creditors". In the first action, Prestige Default Services, LLC, the (Trustee) for the "Deed of Trust" securing the "Promissory Note" for a "loan" pertaining to real property held in Petitioner's living trust, initiated non-judicial foreclosure proceedings on July 7, 2022 for non-"payment" of $37,958.42. Exhibit [D] pp.5225-5230. In the second action, First National Bank of Omaha sued Petitioner for "damages" for breach of credit card contract in the Superior "Court" of California, County of Orange, for failure to "pay" $13,052.87. See case #30-2022-01271693.

Petitioner responded to both actions by filing a Petition for Writ of *Habeas Corpus* in the Superior "Court" on September 7, 2022, challenging the personal and subject matter jurisdiction of the State of California and the United States to unlawfully prosecute and punish him and/or sanction this behavior, including denying him a remedy, republican form of government, and impairing the obligations of his private contracts. The requested relief included a request for expedited processing[21] and for an emergency stay of both of the above actions. Proc. Hist. Exhibit [A46]. The Deputy Clerk set a hearing date for the Petition for October 13, 2022.

Pursuant to Cal. Civil Code §2924(a)(2), the foreclosure redemption period is not less than three months, or about October 7, 2022, 90 days after July 7, 2022 when the Notice of Default was filed and six days *after* the hearing date for the *Habeas* Petition was set. Because Petitioner had been denied relief in every branch of government and could not cure the defaults by "payment", his only apparent recourse other than an emergency stay would be to file for bankruptcy involuntarily. To stop the irreparable harm and damages, including to avoid being forced into bankruptcy, he filed an *Ex parte* Application for Emergency Hearing on the Petition and set the hearing date for September 15, 2022. Proc. Hist. Exhibit [A47].

While the *appearance* of a hearing was conducted by Superior Court "Judge" Sandra Leal, Petitioner was denied a full, fair, and impartial hearing and judicial determination of his rights resulting in the summary denial of his Application and all claims for relief. On the record, Leal held that she "[didn't] find that there [were]

[21] Cal. Rules of Court, Rule 4.551(h).

exigent circumstances [...and] that a Petition for Writ of *Habeas Corpus* [was not] applicable in this situation." Appendix [R] p.89.

Pursuant to Cal. Penal Code §1473(a) "[a] person unlawfully [...] restrained of their liberty, **under any pretense**, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint." (Bolded emphasis added). Leal made no apparent meaningful inquiry. See also *In re Winchester*,[22] holding that *habeas corpus* is the proper remedy to collaterally attack a judgment [restraining liberty] in violation of fundamental constitutional rights, *In re McDonald*[23], *and Deshaney v. Winnebago County Dep't of Social Services*,[24] holding that:

> "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The affirmative duty to protect arises [...] from the limitation which [the State] has imposed on his freedom to act on his own behalf."

The Minute Order issued by Leal contains no Lawful authority or other substantive reasoning for her summary denial of not only Petitioner's right to *Habeas* relief, but to all his rights secured by the California and U.S. Constitutions that continue to be violated.

On October 13, 2022, the hearing initially scheduled for the Petition was commenced before Superior "Court" "Judge" Corey Cramin. Cramin summarily denied the Petition and requests for an emergency stay. Cramin's "Minute Order",

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[22] *In re Winchester*, 53 Cal 2d 528, 531 (1960).

[23] *In re McDonald*, 16 F. Cas. 17 (1861).

[24] *Deshaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 199-200 (1989).

like Leal's, contains no Lawful authority or other substantive reasoning for his summary denials. Appendix [R] p.90.

C. OVERVIEW OF THE CRIMINAL ENTERPRISE

The criminal Enterprise operates as a shadow government, what some have called "The Deep State", in interstate commerce and/or under Federal regional martial law rule, whereby it uses the appearance and facade of the Lawful California and U.S. Constitutional governments to carry out its agenda while committing crimes, treason, and acts of racketeering upon the People of California and America to systematically their Lawful governments. Many of these subversive acts also appear to be taking place under the guise of the "progressive" movement, apparently intent on overthrowing Republican forms of government with communist or totalitarian forms of government.

The principal ways the Enterprise functions and continues to expand its parasitic sphere of influence is either through the arbitrary exercise of power without Lawful authority and/or the refusal to exercise the Constitutionally mandated powers vested in the official offices occupied by members of the Enterprise.

D. ANTI-CONSTITUTIONAL POLICIES AND PROCEDURES OF THE ENTERPRISE/ EXTRAORDINARY REASONS RESULTING IN THIS COURT'S MANDATORY DUTY TO EXERCISE JURISDICTION AND GRANT THE REQUESTED RELIEF

1. Malicious Prosecution and False Imprisonment

a. Destruction of Inalienable Rights and Unlawful Creation of Fourth Branch of Government

To understand how Petitioner became subjected to the malicious prosecution for unlicensed contracting in the first place, it's imperative to examine how the contractor "licensing laws" under the California Business and Professions Code came into existence.

One of the primary reasons behind establishing our Constitutional forms of government of carefully defined and limited powers was to recognize and protect the inherent rights of People to life, liberty, and property, and to declare, without any ambiguity, that these rights were innate in the individual, antecedent to the formation of government, and could not be taken away by whichever way the political winds blew.[25] Put differently, these "creator-endowed inalienable rights" were not mere privileges subject to the arbitrary whim of government officials, democracies/mob majorities, commercial regulations, or "police powers".

As one of the checks and balances to ensure these private inalienable rights remained protected beyond their mere parchment declaration, the Judicial branch of government was established to adjudicate disputes involving them, but only through procedures that had been established over centuries that were firmly rooted in the common Law upon which every State (except Louisiana) had been admitted to the union. Many of these protections also became enumerated in the Bills of Rights of Constitutions.

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[25] "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943).

In the early 1900's, however, the "Legislature" of California, acting without any Lawful representative quorum or Lawful authority, began converting private inalienable[26] (not lienable, non-commercial) rights into revocable public privileges in interstate commerce.[27] While done under the guise of "protecting the public", the real agenda was to create and empower a centralized totalitarian[28] Police State ("total State" or "the Enterprise") by implementing a new authoritarian system of government under Roman civil law in direct violation of the California and U.S. Constitutions. The intent of this new "government"–as directly evidenced by the untold millions of rules, regulations, statutes, and codes it has since created–was to dominate and control nearly every aspect of the lives of the People of California while masquerading as a Lawful Republican, "free" form of government despite having no consent of the governed or Lawful authority.

The implementation of the total State/ Enterprise required three primary means: (1) for government "officials" to commit fraud, treason, and other crimes by either exercising powers without Lawful authority to create and enforce the new policies and procedures of the total State/Enterprise; (2) for government "officials" to

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[26] Secured by: Article I, §1 of the Cal. Constitution; Article I, §10 and the Ninth Amendment to the U.S. Constitution. See also *Hale v. Henkel*, 201 U.S. 43, 74 (1906) recognizing that "[t]he individual [...] is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State [...]."

[27] Inalienable rights secured on Land by the California and U.S. Constitutions are either not recognized or secured in interstate commerce governed by international law, Roman civil law, and/or Admiralty/Maritime jurisdictions where there is no Constitution/ Bill of Rights securing them. Commerce (com- with, mer- sea) is a jurisdiction dealing with commodities and things that doesn't recognize the inalienable rights of sentient beings.

[28] A form of government and a political system that prohibits all opposition parties, outlaws individual and group opposition to the State and its claims, and exercises an extremely high degree of control and regulation over public and private life. It is regarded as the most extreme and complete form of authoritarianism. In totalitarian States, political power is often held by autocrats, such as dictators and absolute monarchs, who employ all-encompassing campaigns in which propaganda is broadcast by state-controlled mass media in order to control the citizenry.

refuse to perform the sworn mandatory non-discretionary duties of their office, including, most specifically, those duties known as "checks and balances"; and, (3) for the People to refuse to perform their duties as principals of their government to keep their agents within the chains of the Constitution thereby stopping the usurpers of the total State/ Enterprise from implementing the takeover.

One of the most explicit acts of the Enterprise was to literally create a Fourth branch of government, without any authority whatsoever, that would combine the powers of all three of the existing Legislative, Executive, and Judicial branches Constitutionally made separate. These branches were intentionally made separate because the People and Framers, having just escaped the throes of tyranny, knew that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[29] And they "regarded [the separation of powers as a system of] checks and balances [and] self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other."

To this end, The California Constitution of 1849 established a tripartite Republican form of government that almost mirrors that of the United States government. Each branch was vested with certain "core" or "essential" functions that were not be usurped by another branch.[30] Article IV, Section 1 declares that "[t]he

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[29] *Northern Pipeline v. Marathon Pipeline*, 458 U.S. 50, 57 (1982) (Per curiam)(Internal quotations and citations omitted) citing The Federalist No. 47, p. 300 (H. Lodge ed. 1888) (J. Madison).

[30] *Northern Pipeline v. Marathon Pipeline*, 458 U.S. 50, 57-8 (1982) citing *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). (Per curiam).

legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly [...]" Article V, Section 1 declares that "[t]he supreme executive power of this State is vested in the Governor [and that] "[t]he Governor shall see that the law is faithfully executed". Article VI, Section 1 declares that "the judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record." Just to ensure this separation of powers was abundantly clear, Article III, Section 3 separately declares that "[p]ersons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."[31]

Despite the foregoing, one Fourth branch agency, known today as the Contractors State Licensing Board, sprung into existence to take total control of the construction industry in California and to create a means for the non-judicial determination of property rights in construction-related disputes by forcing parties into highly unconstitutional "mandatory arbitration" proceedings in direct violation of the separation of powers. The "mandatory arbitration program" was created by the Licensing Board and/or employees thereof treasonously exercising the Legislative and Executive powers of California that have never been conferred upon it/them.

To initially create and empower the Board, the "Legislature" had to effectively

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[31] See especially Justice Thomas' dissent in *Seila Law, LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2216 (2020). "The Constitution does not permit the creation of officers exercising "quasi-legislative" and "quasi-judicial powers" in "quasi-legislative" and "quasi-judicial agencies." No such powers or agencies exist. Congress lacks the authority to delegate its legislative power, and it cannot authorize the use of judicial power by officers acting outside of the bounds of Article III[.] Nor can Congress create agencies that straddle multiple branches of Government. The Constitution sets out three branches of Government and provides each with a different form of power[...]. Free-floating agencies simply do not comport with this constitutional structure.

rob[32] the People of California of their inalienable right to their time and labor (Cal. Const. Article I, §1) by denying them a hearing and judicial determination of their rights while simultaneously converting their inalienable rights into revocable privileges entirely subject to the "licensing laws" and "policies" of the Board. This policy was most clearly expressed by the Attorney General of California in Opinion 47-175:

> "Since a license to conduct any of the regulated activities [in California] is a mere statutory privilege [not an inalienable right]–a creature of statute–it is at all times subject to legislative control, including destruction or termination by the legislative process."

The destruction of inalienable rights at the hands of political majorities was exactly what the doctrine of separation of powers and checks and balances was intended to protect against. But the system of check and balances could only work if the Courts, Executive officials, and the People were steadfast in their duties. They weren't, and "The New Despotism"[33] in the form of the total State/ Enterprise was born. [34]

b. The "Legislature" of California Was Without Authority to Transfer the Executive Power of California to Private Parties Depriving the Superior Court of Subject Matter Jurisdiction

At first blush, Business and Professions Code §7031(b) appears to be civil remedial statute giving private parties the privilege of recovering compensation they

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[32] Robbery is the taking of property (such as rights) without Lawful authority by means of force or fear. See e.g. Cal. Penal Code §211. If a government official uses force and/or fear to take something (rights, liberty, property) without Lawful authority (Constitutionally prescribed due process), then they are committing the felonious crime of robbery.

[33] The New Despotism, Lord Hewart (London Ernest Benn Limited 1929), p.17.

[34] Petitioner has been unable to locate any official documents that these changes to California's form of government, in addition to having never been approved by the People, have ever been approved by Congress pursuant to Article IV, §3.

paid to an unlicensed contractor by commencing a civil suit. But §7031(b) is a wolf in sheep's clothing. It's really an action intended for private parties to commence an unlawful criminal prosecution disguised as a remedial civil action. To discover the wolf lurking behind the sheep's clothing, it's necessary to forensically examine the "Legislative" intent, the history of interpreting and enforcing §7031(b) claims by California "Courts", and most importantly, what the real effect of the statute has on an unlicensed contractor.

1. Business and Professions Code §7031 Imposes a Total Penal Forfeiture Not Equitable Disgorgement

California Business and Professions Code §7031(b) is a public regulatory penal statute that governs contractor licensing under California's contractor "licensing laws". It declares that:

> "a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract."

According to the Supreme "Court" of California, "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing **penalty** for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[35]

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[35] *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (Cal. Supreme Ct. 2005). Italicized emphases original. Internal quotations omitted. Bolded emphasis added.

More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture[36] because an unlicensed contractor is required to forfeit "all compensation paid" by a customer *without* offsets for the reasonable value of goods and services provided.[37] In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

One august authority addressing these precise issues is the *Town of Gilbert Prosecutors Office v. Downie*,[38] which Petitioner cited on appeal to the Fourth District. Exhibit [A6] pp.29-30. The *Gilbert* case involved "disgorgement" and the criminal prosecution of an unlicensed contractor where the Supreme Court of Arizona found that "a rule of total disgorgement [forfeiture] regardless of any benefit conferred on the victim [...] may lead to absurd or troubling results." Discussing the issue, the high Court found that "when determining the proper amount of restitution to be paid to a victim, consideration should be made for [the] value conferred on the victim;" *Id.* p.18. and, that restitution "should not compensate victims for more than their actual loss." *Id.* p.13. Citing both the Seventh[39] and Ninth[40] Circuit Courts of Appeal, the Gilbert Court declared that they "[found] no significant difference between returning cash,

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[36] *Asdourian v. Araj*, 38 Cal. 3d 276, 282 (Cal. Supreme Ct. 1985) "In view of the severity of this sanction and of the forfeitures which it necessarily entails [...]." Quotations and citation omitted; *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882, 895 (2015). "Because the remedies of subdivisions (a) and (b) of section 7031 are essentially two sides of the same coin in denying compensation to an unlicensed contractor, we will refer to the remedies jointly as forfeiture." Internal quotations omitted. See also *Austin v. United States*, 509 U.S. 602, 614 (1993) stating forfeit is the word the First Congress used for a fine.

[37] *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469 (2018) p.14, *Lewis & Queen v. N. M. Ball Sons*, 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957) "[T]he courts may not resort to equitable considerations in defiance of section 7031." *Ebbert v. Mercantile Trust Co.*, 213 Cal. 496, 499-500 (Cal. Supreme Ct. 1931).

[38] *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (2008).

[39] *United States v. Shephard*, 269 F. 3d 884 (7th Cir. 2001).

[40] *United States v. Matsumaru*, 244 F.3d 1092, 1109 (9th Cir. 2001). See also *People v. Fortune*, 129 Cal. App. 4th 790 (2005).

one form of value, and returning other forms of value, such as permits, chattels, services, or other property [and that the concept of] loss is [...] rooted in value, not solely in the exchange of money." *Id.* p.25.

In his concurring opinion, Justice Hurwitz added that under the pretense of a total forfeiture of "disgorgement" without offsets for the value conferred, "a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but would nonetheless also retain the work performed." He concluded "[i]t is impossible for me to view such a victim as having suffered any loss, economic or otherwise..." *Id.* p.30.

Notably, the Fourth District "Justices" refused to even acknowledge this case and found all of Petitioner's claims making these Lawful and rational arguments "meritless".

After Petitioner was purportedly found to be the unlicensed contractor (as opposed to Spartan), he was denied all offsets for the alleged $930,000 work that was performed by Spartan on the Humphreys project and ordered to pay the Humphreys an additional $848,000. He was also denied the right to compensation for the approximate $82,000 that the Humphreys refused to pay pursuant to §7031(a).

The legislative history of §7031(b) confirms this draconian punishment was indeed intended by the California "Legislature" and "Governor" upon its enactment. See Exhibit [B] p.860:

> "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor

and are then authorized by statute to sue to recover from the contractor all compensation paid."

As this Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over "[i]f the [intent] of the legislature was to impose punishment [...]."[41]

Other obvious indications of §7031's purely penal nature are: (1) that §7031(b) falls squarely within the definition of a crime or public offense as defined by Cal. Penal Code §15[42]; and, (2) that the same conduct is made criminal by Cal. Business and Professions Codes §7028 and §16240.

It should be carefully noted that the *maximum* fine for a first offense of unlicensed contracting under §7028 is $5,000, not $930,000.

Pursuant to a Public Records Request to the Orange County District Attorney, the ten most recent first-offense convictions for violating §7028 averaged a fine of $750 and a year of informal probation. Exhibit [C] pp.2550-2557.

Chaffee's "Judgment" was no accident or "harmless error". He had direct knowledge of §7031's penal nature by the fact that he was the trial "Judge" in the *MW Erectors* case that went to the Cal. Supreme "Court" where it found that §7031 imposed "a stiff all-or-nothing penalty". Chaffee also cited *MW Erectors* in his discussion of his "Judgment" at "trial", identified it as the "bellwether case on the issue of [...] unlicensed contractor responsibility" (Exhibit [A4]– Reporter's Transcript p.200) and admitted that he was imposing a forfeiture. *Id.* p.201.

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[41] *Smith v. Doe*, 538 U.S. 84, 92 (2003).

[42] "A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction [...][a] [f]ine."

2. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Award a Total Forfeiture Disguised as Equitable Disgorgement Because the Humphreys Never Stated a Claim for Disgorgement

Business and Professions Code §7031 mentions nothing about "disgorgement". Nor is an action for "disgorgement" defined anywhere by California statute. The word disgorgement is also *not* used *anywhere* in the legislative of history of §7031. Exhibit [B]. And, as previously evidenced, the "Legislature" and "Governor" (Gray Davis) were perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

According to this Court's recent decision in the case of *Liu v. SEC*,[43] a claim for "disgorgement" is an equitable remedy designed to strip a wrongdoer of illegal profits, *not* the total penal forfeiture of an entire transaction *without* offsets for benefits conferred.

Even assuming §7031(b) called for a true claim of equitable disgorgement, Petitioner is: (1) unaware of any evidence on the trial "Court's" record that he profited even one dollar let alone the $930,000 awarded by Chaffee to the Humphreys (vf); or, (2) that he was unjustly enriched by allegedly performing the custom remodel work requested by the Humphreys (vf). See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

> "Allegations that the defendant is a wrongdoer, and that the defendant's business is profitable, do not state a claim in unjust enrichment. By contrast, a claimant who is prepared to show a causal connection between defendant's wrongdoing and a measurable increase in the defendant's net assets will satisfy the burden of proof as ordinarily understood."

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[43] *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020).

The Humphreys evidenced that they (and Gary Humphreys company, Humphreys & Associates, Inc.) paid a total of $848,000 to Petitioner and Spartan, which was undisputed (vf). In an action for unjust enrichment, however, "[t]he emphasis is on the wrongdoer's enrichment, not the victim's [payments]".[44] Therefore, if §7031(b) actually provided a claim for disgorgement, Petitioner was entitled to offsets for the compensation that had *already* been returned to the Humphreys. Under the Maxims and Principles of Equity Adjudication, "[n]o one is presumed to give something for nothing. And no one can in reason and conscience expect to receive something for nothing."[45]

Not only does §7031(b) not authorize a claim for "disgorgement", the punishment provided by §7031(b) is neither equitable nor remedial. The Supreme "Court" of California and lower "Courts" have also repeatedly held that "courts may not resort to equitable considerations in defiance of section 7031"[46], evidencing it is not an equitable action. Consequently, the Humphreys never stated a claim for equitable disgorgement or unjust enrichment and Chaffee clearly imposed a total penal forfeiture.

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent–is to invoke a default rule, [...] not of flexibility but of omnipotence".[47]

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[44] *Meister v. Mensinger*, 230 Cal. App. 4th 381, 390 (2014) citing *County of San Bernardino v. Walsh*, 158 Cal. App. 4th 533 542-543 (2007). See also Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *h.*

[45] A Treatise on Suits in Chancery, Setting Forth the Principles, Pleadings, Practice, Proofs and Process of The Jurisprudence of Equity, Henry R. Gibson, Second Edition 1907, §43, p.37.

[46] *Lewis & Queen v. N. M. Ball Sons,* 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957).

[47] *Grupo Mexicano De Desarollo v. Alliance Bond Fund,* 527 U.S. 308, 322 (1999). Internal quotations omitted.

"Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."[48]

4. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Award a Total Penal Forfeiture Disguised as "Damages" Because the Humphreys Never Stated a Claim for Damages

Even though Chaffee's "Minute Order" stated that he awarded the Humphreys "disgorgement", the "Judgment Order" he later signed, Appendix [B] pp.7-8, is for "[d]amages". Petitioner is also unaware of any evidence on the trial "Court's" record of any "damages" even remotely commensurate with any State or Federal Court definition thereof (vf).

In *Birdsall v. Coolidge,*[49] this Court defined damages as "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and that "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

Under Cal. Civil Code §3281, which purportedly codified the common Law definition of damages in California, "[e]very person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages." "[A] [p]laintiff has [the] burden of proving, with reasonable certainty, damages actually sustained by him as result of defendant's wrongful act, and [the] extent of such damages must be proved

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[48] *Id.* p.333. Internal quotations omitted. See also *Liu v. SEC,* 140 S. Ct. 1936, 1941 (2020) holding "equity never lends it's aid to enforce a forfeiture or penalty." Internal quotations and citation omitted.

[49] *Birdsall v. Coolidge,* 93 U.S. 64 (1876).

as fact. [The] burden of proving damages placed on plaintiff is not lessened by his presentation of [a] prima facie case of negligence against [the] defendant"[50] "[and] [d]amages cannot be recovered if the evidence leaves them uncertain, speculative, or remote."[51]

According to the California Second District "Court" of Appeal's opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.*,[52] "the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law." In other words, the so-called "injury" from hiring an unlicensed contractor upon which the "licensing laws" are founded is purely hypothetical.

Under California law, "any provision by which money or property is to be forfeited without regard to the actual damage suffered calls for a penalty and is therefore void."[53] See also Cal. Civil Code §3275 and *Ebbert v. Mercantile Trust Co.*[54] requiring equitable relief from a penalty or forfeiture by compensation for damages

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[50] *Chaparkas v. Webb*, 178 Cal. App. 2d 257, 259 (1960).

[51] *Page v. Bakersfield Uniform & Towel Supply Co.*, 239 Cal App. 2d 762, 774 (1966). See also *Frustuck v. Fairfax*, 212 Cal. App. 2d 345, 368 (1963) "[a] wrong without damage does not constitute a cause of action for damages" and "nominal damages to vindicate a technical right cannot be recovered in a negligence action where no actual loss has occurred."

[52] *Eisenberg Village etc. v. Suffolk Construction Co., Inc.*, 53 Cal. App. 5th 1201, 1213 (2020). Internal parenthesis omitted.

[53] *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.*, 232 Cal. App. 4th 1332, 1357 (2015). Citation omitted.

[54] *Ebbert v. Mercantile Trust Co.*, 213 Cal. 496, 499-500 (1931).

actually suffered. No such relief was afforded to Petitioner.

The case against Petitioner was clearly not to remediate damages for an *actual* injury suffered by the Humphreys. The Humphreys severed their alleged claim for damages and proceeded to "trial" *only* on their first-amended claim for "disgorgement." At "trial" they introduced no evidence of damages, including any damages that arguably could have been caused by Petitioner's purported lack of a license. In other words, there was no evidence presented of a traceable connection or nexus between the Humphreys claim and the remedy they sought. Their non-existent "injury" was purely hypothetical and speculative and not based in reality. Accordingly, they failed to state a claim for "damages" and thereby deprived Chaffee of subject matter jurisdiction to award any.

See also Appendix [S]– Questions Presented: 1-10, 28, 41.

5. State and Federal "Court" History of Treason Involving §7031 Actions

The case against Petitioner is not an anomaly. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.*,[55] where the so-called "Judicial" Council of California sought a $22.7 million "dollar" forfeiture under the same false and fraudulent veil of equitable "disgorgement" against *Jacobs*, a company it hired to maintain the California "Court" buildings that had admittedly done a good job. In response to a public records request, the "Judicial" Council admittedly spent over $3 million "dollars" of the People's tax "money" in its attempts to prosecute, punish, and likely financially destroy *Jacobs*

[55] *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015).

due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. $3,307,408.78 to be exact. Exhibit [C] p. 1815. One has to wonder just what degree of sociopathy[56] it must take to spend more than 3 million "dollars" to try to ruin a company that provided quality service and caused no harm. This is precisely the lack of humanity and direct evidence of the severe mental illness that is rampant in the behavior of the "officials" of this case (and many others) to use one's position of honor, profit, and trust without empathy or fairness and as a weapon of domestic violence, treason, and oppression.

It is unknown exactly how many other similar cases like Petitioner's have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes like §7031, which has been in existence since 1929. The following are just a handful of other cases Petitioner was able to locate because an appeal was filed. (Please note that the facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.): (1) *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr, No. 10-41455-DS. ; (2) *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and "Court" costs awarded against *MW Erectors, Inc.* pursuant to §7031(a)

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[56] "Sociopathy refers to a pattern of antisocial behaviors and attitudes, including manipulation, deceit, aggression, and a lack of empathy for others."
Source: https://www.psychologytoday.com/us/basics/sociopathy.

upheld by the Cal. Supreme "Court", awarded by "Judge" Chaffee; (3) *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a); (4) *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against *Hydrotech* pursuant to §7031(a); and, (5) *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District "Courts" enforce these same Enterprise "policies". See e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*,[57] where the "Court" awarded a forfeiture in the amount of $168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a); and the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

In every case Petitioner examined, the so-called "Judges" not only refused to recognize the penal nature of the forfeiture they imposed–and consequently <u>any</u> protections guaranteed by State and Federal Constitutions (especially the excessive fines clause protections)–they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that "a private citizen lacks a judicially cognizable interest in the prosecution [...] of another."[58]

> *"We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would*

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[57] *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp,*. 2010 U.S. Dist. LEXIS 116566.

[58] *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

be treason to the Constitution."[59]

5. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Punish Petitioner Because Private Parties Lack State and National Constitutional Standing to Prosecute Other Private Parties

1. The History of Criminal Forfeiture Laws

In the case of *United States v. Seifuddin,*[60] the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

> "the classical distinction between civil and criminal forfeiture was founded upon whether the penalty assessed was against the person or against the thing. Forfeiture against the person operated *in personam* and required a conviction before the property could be wrested from the defendant. Such forfeitures were regarded as criminal in nature because they were penal; they primarily sought to punish. Forfeiture against the thing was *in rem* and the forfeiture was based upon the unlawful use of the *res*, irrespective of its owner's culpability. These forfeitures were regarded as civil; their purpose was remedial."

Applying this criteria to the instant case, it is plainly obvious that the action against Petitioner was an *in personam* forfeiture intended to punish him for allegedly committing the public offense of unlicensed contracting (even though he was licensed). A total forfeiture like this would be appropriate if he committed a robbery or defrauded the Humphreys by taking their money without conferring any value upon them. But that's clearly *not* what happened.

In *United States v. Shapleigh*, the Circuit Court of Appeals for the Eighth Circuit found that "[t]o protect the substantial rights of the parties [and] to wisely administer the law, courts must frequently look beyond the outward form to the real substance and nature of things."[61] "It is not the form, but the nature of the proceeding

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[59] *Cohens v. Virginia,* 19 U.S. 264, 404 (1821).

[60] *United States v. Seifuddin*, 820 F.2d 1074, 1076-7 (1987). Citations omitted.

[61] *United States v. Shapleigh*, 54 F. 126, 130 (1893).

that must determine the rule to be applied to it." *Id.*

2. The Humphreys Admitted Their Intent to Prosecute and Punish Petitioner

In their First Amended Trial Brief, the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish Petitioner for violating the "licensing law"s by seeking a $930,000 fine/total forfeiture upon him. They claimed that "Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028 [the criminal statute for unlicensed contracting]. As a consequence of Mr. Bereki's unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from cross-defendant Bereki all sums paid by [them] to Mr. Bereki, which sums total $848,000."

3. *The Humphreys Lacked Standing Under the California Constitution to Criminally Prosecute Petitioner*

While the California Constitution does not *overtly* have a case or controversy standing requirement like the U.S. Constitution, this standing requirement is implicit its separation of powers provisions.

The Humphreys lacked standing under the Cal. Constitution to prosecute Petitioner for the commission of a public offense because Article V, §1 vests the *entirety* of Executive power *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting

on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a [...] political society, and incorporates into a commonwealth."[62] Therefore, only officials of the Executive branch of California could prosecute Petitioner, not the Humphreys.[63] The "Legislature", therefore, was entirely without any authority to transfer the Executive power of the Governor to private parties.

See also Justice Thomas's concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, "[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights"–rights that involve duties owed to the whole community, considered as a community, in its social aggregate capacity. Such rights include [...] general compliance with regulatory law."[64] And that "[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community."[65]

The Humphreys neither alleged nor proved that they were caused any extraordinary damage and no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov't Code §100 to vest the

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[62] *Robertson v. Watson*, 560 U.S. 272, 282-3 (2010) citing Locke, Second Treatise §128, at 64. Internal quotations and brackets omitted.

[63] *Robertson v. Watson*, 560 U.S. 272, 273 (2010). See also Cal. Gov't Code §100(b) requiring that all prosecutions be conducted in the name of "The People of the State of California" and by their authority; and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

[64] *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations omitted. Citing Blackstone and Woolhandler & Nelson, 102 Mich. L. Rev. at 693.

[65] *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations and brackets omitted. Citing Blackstone.

Superior "Court" with personal and subject matter jurisdiction[66] to prosecute and punish Petitioner.

"A lack of standing is a jurisdictional defect."[67] As a result, Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.[68] Instead, he arbitrarily chose to proceed with a faux "trial", knowing or reasonably knowing he had no Lawful authority whatsoever to do so, thereby committing fraud upon Petitioner and his estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of his fraudulent *ultra vires* "Judgment Order".

4. The Humphreys Lacked Standing Under the U.S. Constitution to Criminally Prosecute Petitioner

Because the U.S. Constitution is the "supreme Law of the Land" (Art. VI, §2), the judicial power of the United States must be capable of acting upon *all* State action which comes into conflict with its superior authority. For how could a State and the Judges which are bound thereby transcend its authority by creating claims that the Article III power could not reach? This would especially be true when a defendant in State Court invokes the concurrent jurisdiction of the United States by claiming rights secured by the U.S. Constitution requiring the State Court Judge to sit in that

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[66] "[J]urisdiction of all justiciable matters can only be exercised [...] through the filing of pleadings which are sufficient to invoke the power of the court to act." *Buis v State*, 1990 OK CR 28, p.4 (1990). Internal quotations omitted. "A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court." *Albrecht v. United States*, 273 U.S. 1, 8 (1923). See also Cal. Penal Codes §949, §959.

[67] *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). Citation, brackets and internal quotation omitted.

[68] Cal. Penal Code §1382.

concurrent jurisdictional capacity. All State judicial action therefore, must meet the standing requirements of Article III. The same guarantee is made by Article I, §10 requiring a *judicial* proceeding.

The Humphreys claim under §7031(b) fails to meet even one of the Article III standing requirements as declared in *Steel Co. v. Citizens for a Better Env't* [69]. They presented no evidence of an injury in fact that was concrete and actual; no evidence of a fairly-traceable connection between their non-existent injury and Petitioner's conduct; and no evidence that their non-existent injury would be redressed by fining him $930,000.

The fact that the Humphreys claims fails to meet any of the Article III standing requirements is directly linked to all of the other standing issues raised by Petitioner. Had these Article III requirements been carefully considered by the Cal. "Legislature" and "Courts", §7031's unconstitutionality would have been blatantly obvious from the outset.

The deliberate refusal to abide Constitutional standing requirements–namely by creating claims for relief with hypothetical or fictitious injuries–appears to be one of the core issues at the heart of the implementation of the total State and its "public policies". Historically, claims at common Law (on Land)[70] were for actual injuries because they could be readily determined by witnesses and evidence. In stark contrast, claims involving presumptive injuries and *liquidated* damages were found in Admiralty or Maritime jurisdictions because they arose on the open sea (liquid) where there was likely to be no evidence of the incident or any witnesses to determine

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[69] *Steel Co. v. Citizens for a Better Env't*, 523 U.S 83, 102-3 (1998).

[70] The Constitution is the "supreme Law of the Land". Article VI, §2.

who to attribute fault to.

To specifically prevent against the abuses of Admiralty jurisdiction coming onto Land and being used to overthrow the Constitutional standing and due process requirements of claims at common Law, cases in Admiralty were specifically excluded from arising *under* the U.S. Constitution. State Courts were also forbidden from exercising Admiralty jurisdiction.[71] This is specifically why States cannot create claims such as those in Admiralty that transcend the case or controversy standing requirements of Article III that arise *under* the Constitution. Admiralty claims don't arise *under* the Constitution, they arise extra–Constitutionally under international law. See especially section II(4)(b)(i), *infra.*

This Court has repeatedly declared that the judicial power of the United States is "limit[ed] [...] to the resolution of cases and controversies[,]" "otherwise the power is not judicial."[72] As the power exercised against Petitioner is not judicial, it is clearly arbitrary and lawless.

c. Post "Trial" Acts of Fraud and Treason to Steal Petitioners Property and Further Punish Him by Restraining Him from Earning a Living in His Profession as a General Contractor

1. The Humphreys Filed a False and Fraudulent Abstract of Judgment and Commercial Lien

Following "trial", the Humphreys continued the conspiracy with their Attorney, William Bissell, and Chaffee, to steal Petitioner's money, property, and liberty by filing a false and fraudulent "Abstract of Judgment" with the Clerk-

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[71] Section 9 of the Judiciary Act of 1789, 1 Stat. 73, *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 546 (1828).

[72] *Valley Forge Christian College v. American United for Separation of Church & State*, 454 US. 464, 472 (1982). Internal quotations and citations omitted.

Recorder for the County of Orange on April 27, 2017 (Exhibit [D] pp.5249-5253) and a "commercial lien" with the Cal. Sec. of State on April 28, 2017 (file 177582830223). Exhibit [D] p.5439. The "Abstract" and "commercial lien" were false and fraudulent because they were based upon Chaffee's "Judgment Order" they collectively knew, or reasonably should of known, was without any Lawful authority whatsoever.

The "Abstract" became attached to the real property at 818 Spirit Costa Mesa, California held in Petitioner's living trust and thereby operated to unlawfully restrain him and his mother (the true and beneficial owner of the property) from their rights to the free and unrestricted use of the property and the equitable assets therein. This included their inability to sell or refinance the property to avoid the foreclosure sale or to meet other needs.

2. Petitioner's Vested Licensing Right Was Summarily Suspended/Revoked Without Any Hearing or Means of Appeal

As previously stated, Petitioner contends that he had an inalienable right to his time and labor in construction as recognized by Article 1, §1 of the Cal. Constitution. As a result, he could not be required to obtain a license and pay a recurring fee for the privilege of earning a living in an ordinary avocation of life.[73] The Cal. "Legislature" was therefore without authority to arbitrarily convert his inalienable (not lienable, non-commercial) right into a revocable commercial public privilege in interstate commerce. Even if this were not the case, the fact that he became a qualifying individual of a general contractor license was a vested right that

[73] See e.g. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

also could not be taken without judicial process[74] pursuant to Article I, §10.

The "State" had also previously determined Petitioner "competent" as a general contractor. It therefore remains unknown how he could be magically transformed "incompetent" by Chaffee at "trial" simply because he allegedly didn't have a license in his own name and/or didn't pay the licensing tax.[75] As the qualifying individual of a general contractor license, Petitioner was a licensee.[76]

Ninety days after the fraudulent "Judgment Order" was issued on April 20, 2017, Petitioner's vested right was summarily suspended/revoked by operation of Cal. Business and Professions Code §7071.17 without a hearing or any known appeal process because he was unable to pay the unlawful "Judgment" or meet any of the other requirements of §7071.17 to obtain or maintain a license. He was consequently deprived of all of the heightened protections of judicial criminal proceedings and the right to trial by jury on this issue, resulting in a bill of pains and penalties.

See also Appendix [S]– Questions Presented: 7, 11, 12.

2. Petitioner Has Exhausted All Apparent Remedies in the "Courts" of California and the United States and Has Been Denied a Judicial Determination of His Rights in Every Instance.

a. Denial of Judicial Remedy in All "Courts" of California

See Procedural History, *ante* pp.4-12.

b. Denial of Judicial Remedy in All "Courts" of the United States

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[74] *Ex Parte Garland,* 71 U.S. 333, 378 (1866). See also *Schomig v. Keiser*, 189 Cal. 596, 598 (Cal. Supreme Ct. 1922) holding that "[t]he portion of the act which authorizes the [Registrar of Contractors] to forfeit the license of a [contractor] and take it away from him is highly penal in its nature."

[75] See e.g. *Vlandis v. Kline*, 412 U.S. 441, 446-8, 452 (1973).

[76] Cal. Business and Professions Code §7096.

i. The "Justices" of this "Court" Breached Their Mandatory Duty to Exercise Jurisdiction by Refusing to Granting Petitioner's Petition for Writ of *Certiorari* and to Affordi Him Relief Mandated by Law

After a §7031 defendant discovers that there is no judicial remedy available in *any* "Court" of California, they might believe they had a right under the U.S. Constitution to an appeal in the U.S. Supreme Court. But this would be delusional.

Even though Article III of the Constitution *mandates* that the judicial power of the United States "**shall** extend to **all** Cases in Law and Equity" the "Justices" have created and enforced a "policy" whereby they believe they can arbitrarily vote on whether or not to hear a case and thereby determine who will or won't receive the protections guaranteed by the Constitution. [77] [78] Nowhere in Article III is there an arbitrary voting provision and "Congress" and this "Court" is without authority to amend the Constitution in violation of Article V to create one.

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[77] Emphasis added. See Commentaries on the Constitution (1833), Joseph Story §1584 "The judicial power, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose under the sanctions of the Constitution, they might defeat the Constitution itself. A construction which would lead to this result cannot be sound;" §1585-1589; *Martin v. Hunters, Lessee*, 14 U.S. 304, 331 (1816); Article 1, 9 (Bill of Attainder clause mandating the right to a judicial determination of rights); the First and Fifth Amendments (rights to Petition for Redress of Grievance and due process); and A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction by Akhil Reed Amar; Boston University Law Review Volume 65, Number 2, March 1985: p230.

[78] See e.g. https://www.supremecourt.gov/orders/courtorders/100719zor_m648.pdf. See also Office of the Clerk, Guide for Prospective Indigent Petitioners for Writs of Certiorari, July 2019 stating "It is important to note that review in this Court by means of a writ of certiorari is **not a matter of right**, but of judicial discretion. The primary concern of the Supreme Court is not to correct errors in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved." Bolded emphasis added. While this policy may be lawful if the applicant had a full, fair, and impartial judicial determination of rights in the first instance in State or Federal Court, it absolutely is not if this did not happen and the applicant has been deprived of Constitutionally protected rights. In such a case, review by the Supreme Court becomes mandatory and *not* discretionary pursuant to at least Article I, §9 or §10 and fundamental due process. Petitioner has never had a judicial determination of rights by any Court of California or the United States acting with Lawful subject matter jurisdiction/ within Constitutional bounds.

As declared by this Court more than two hundred years ago, "[t]he constitution gave to every person having a claim upon a State, a **right** to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided."[79]

On October 7, 2019, Petitioner's Petition for Writ of *Certiorari* was summarily denied without any Lawful authority.

ii. The U.S. District "Court" "Judge" Breached Her Mandatory Duty to Exercise Jurisdiction to Grant Petitioner Relief

In concert with this "Court's" "policy" to arbitrarily refuse to hear cases, the "Judges" of the U.S. District "Court" for the Central District of California and the U.S. "Court" of Appeals for the Ninth Circuit have arbitrarily created and enforced another "policy" whereby they also summarily deny all rights and protections guaranteed by the U.S. Constitution on the ground that they have no authority to provide relief in at least cases challenging State "Court" "judgments" that violate the U.S. Constitution.

The "policies" of this "Court" and the Ninth Circuit "Courts" not only result in giving the full faith and credit of the United States to the Lawless acts of State "officials", but also deny the People their right to a judicial determination of their rights under the U.S. Constitution. In this Court's own words, these "policies" amount

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[79] *Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821). Bolded emphasis added.

to "treason"[80] to the Constitution.[81] Without access to any judicial Court, every single "law" or "statute" whether lawfully enacted or not is a bill of attainder or pains and penalties and totally unenforceable pursuant to Article I sections 9 or 10.

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After this "Court" refused to grant his Petition for Writ of *Certiorari*, Petitioner filed a verified complaint in the form of an Independent Action in Equity in the United States District "Court" for the Central District of California. His First Amended Complaint rebutted the presumptive validity of the State "Court" "Judgements" and included a request for the assistance of counsel, declaratory relief, injunctive relief, and restitution. The case was assigned to District "Court" "Judge" Consuelo B. Marshall.

In response to his Complaint, the Humphreys filed a Motion to dismiss pursuant to FRCP Rules 12(b)(1), 12(b)(6), and 12(b)(7). Notably, they failed to address any of the issues relating to Petitioner's challenges to the lack of subject matter jurisdiction of the "Judgments" that rebutted their presumptive validity.

Assuming Marshall retained subject matter jurisdiction based upon her denial of Petitioner's request for assistant counsel (Appendix [F] pp.39), she had a mandatory, non-discretionary, ministerial duty to investigate Petitioner's claims that he was not given a full, fair, and impartial trial or appeal. Under this Court's precedents "the requirement of determining whether the party against whom an

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[80] "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[81] See also *Heck v. Humphrey*, 512 U.S. 477 (1994) whereby if anyone has been harmed as a result of an unconstitutional conviction or imprisonment, they are denied a claim for damages unless the sentence has first been declared invalid.

estoppel is asserted [has] had a full and fair opportunity to litigate is a most significant safeguard,"[82] and "collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate that issue in the earlier case."[83] "If a defendant were convicted and punished for an act that the law does not make criminal, there can be no room for doubt that such a circumstance inherently results in a complete miscarriage of justice and presents exceptional circumstances that justify collateral relief."[84]

Marshall refused to abide her sworn duty to perform the mandatory investigation and arbitrarily granted the Humphreys Motion to Dismiss *with prejudice* based on the collateral estoppel and Rooker-Feldman doctrines. Appendix [G] pp.41-50. Marshall's "ruling" declared that "[t]he purpose of the [Rooker-Feldman] doctrine is to protect state judgements from collateral federal attack," (Appendix [F] p.45, lines 19-20) and "[that Petitioner's] action is barred pursuant to the Rooker-Feldman doctrine because [he] seeks relief from the state court judgment and alleges legal error by the state trial and appellate court." Appendix [F] p.47, lines 25-28.

Marshall's "ruling" would be Lawful if the word "valid" were included, such that "the purpose of the Rooker-Feldman doctrine was to protect *valid* state judgements from collateral attack"– not just any State judgment, and certainly not one that is void for lack of personal and/or subject matter jurisdiction and in violation of the U.S. Constitition. "Unless a court has jurisdiction, it can never make a record

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[82] *Blonder-Tongue Labs v. University of Illinois Found,* 402 U.S. 313, 329 (1971).

[83] *Allen v. McCurry,* 449 U.S. 90, 95 (1980). Internal quotations and citations omitted.

[84] *United States v. Stoneman,* 870 F.2d 102, 104 (3d. Cir. 1989). Internal brackets, quotations, and citation omitted.

which imports uncontrollable verity to the party over whom it has usurped jurisdiction, and he ought not, therefore, to be estopped from proving any fact which goes to establish the truth of a plea alleging the want of jurisdiction."[85] "The constitutional provision that full faith and credit shall be given in each state to the judicial proceedings of other states, does not preclude inquiry into the jurisdiction of the court in which a judgment is rendered over the subject matter or the parties affected by it, nor into the facts necessary to give such jurisdiction."[86] The Federalist Papers also make mandatory Federal relief abundantly clear by declaring that "[t]he general government will at all times stand ready to check the usurpations of the state governments. If [the People's] rights are invaded by either, they can make use of the other as the instrument of redress."[87]

Marshall acknowledged Petitioner's claims: (1) that the State trial and appellate "Courts" violated due process; (2) lacked subject matter jurisdiction; and, (3) that §7031 was unconstitutional because it is penal in nature. Despite this, she declared that each of these issues "were actually litigated by [him] in the state court action[s] and necessarily decided in a final judgment," (Appendix [F] p.49, lines 16-17) concluding as a result that he was "collaterally estopped from bringing [the Federal Court] action." *Id.* p.49, lines 20-23. Despite these conclusions, her opinion fails to include any independent analysis, investigation, or resolution of these issues demonstrating that they were fully, fairly, and impartially adjudicated by the State trial and appellate "Courts" acting with personal and subject matter jurisdiction to

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[85] *Harris v. Hardeman*, 55 U.S. 334, 341 (1853).

[86] *Simmons v. Saul*, 138 U.S. 439 (1891). citing *Thompson v. Whiteman*, 85 U.S. 457, 467 (1873) and *Cole v. Cunningham*, 133 U.S. 107 (1890).

[87] Federalist No. 28. Alexander Hamilton; https://avalon.law.yale.edu/18th_century/fed28.asp.

render and affirm these "Judgments" and thereby make them "final". It is also unknown how the personal and/or subject matter jurisdiction of these "Courts" (if ever lawfully acquired) was also not lost through subsequent egregious due process violations and/or fraud committed during the proceedings in the procurement of subject matter jurisdiction.

Marshall's "ruling" also fails to cite any authority whereby an arbitrary void judgment in violation of the California and U.S. Constitutions can be collaterally estopped or is subject to the Rooker-Feldman doctrine. Because judgments rendered without personal or subject matter jurisdiction are void and not entitled to full faith and credit elsewhere, the doctrines of collateral estoppel and Rooker-Feldman do not apply and cannot be used to overrule or supersede the Constitution.[88] A fake "trial" put on by a "Judge" acting *coram non judice* cannot in any manner be considered a *judicial* proceeding whose fraudulent "Judgment Order" results in finality or full faith and credit. "[T]he principle of finality rests on the premise that the proceeding had the sanction of law [...]."[89] Furthermore, the supremacy clause *mandates,* and this Court has declared, that "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them–[including the doctrines of collateral estoppel and Rooker-Feldman]."[90]

As "[a] court is a place where justice is legally administered, [where a court lacks subject matter jurisdiction] the defendant has had no trial under the laws of

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[88] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877). "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere."

[89] *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) citing Restatement (second) of Judgments §12, Comment a.

[90] *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

the land."[91] This Court has also held that it is a "universal principle" that judgments can be collaterally attacked when questions of *power in the officer* or fraud in the party are raised.[92] A State can't transcend the U.S. Constitution and then claim its judgment is *res judicata* and/or collaterally estopped. But this is exactly what the freewheeling Ninth Circuit Enterprise "policy" and arbitrary Constitutional "Amendment" Marshall's edict intends.

This Court has repeatedly made it clear that District Courts can entertain independent actions that attack State Court judgments as void. See *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post *Rooker*); and *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre *Rooker*). See also *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 608–9 (1990) and *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

District Courts can also entertain independent actions to vacate void judgments when such claims are also authorized by State law. In *Parsons Steel Inc. v. First Alabama Bank,*[93] this Court held that pursuant to 28 U.S.C. §1738 (the Full Faith and Credit Act), a "federal court *must* give the judgment *the same effect* that it would have in the courts of the State in which it was rendered."[94] Under California law a void judgment is subject to attack at any time, either directly or by way of an independent action in equity.[95] See also Cal. Code of Civil Procedure §1916 whereby

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[91] *Ex Parte Giambonini*, 117 Cal. 573, 576 (Cal. Supreme Ct. 1897).

[92] *Vorhees v. Jackson*, 35 U.S. 449, 478 (1836) citing *U.S. v. Arredondo*, 31 U.S. 691 (1832).

[93] *Parsons Steel Inc. v. First Alabama Bank*, 474 U.S. 518 (1986).

[94] *Id.* at 523. Italicized emphasis added.

[95] *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998). Italicized emphasis original. Citations omitted.

"[a]ny judicial record may be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings."

On this issue, Marshall's "ruling" relies on the holding of the Supreme Court of California in the case of *DKN Holdings LLC v. Faerber,*[96] where the Court declared the circumstances in which collateral estoppel and issue preclusion apply: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." Not one of these constitutes a holding that collateral estoppel/issue preclusion applies to an arbitrary judgment by a "Court" acting without personal and/or subject matter jurisdiction. And none of these overrule Art. 6, §2 of the Constitution– "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."[97]

Marshall also arbitrarily denied Petitioner's challenges to the Constitutionality of Business and Professions Codes §7031(a), §7031(b), and §7071.17 on the grounds that the relief he sought was an "order vacating or voiding the state court judgment."[98] While Petitioner's prayer for relief admittedly requested vacating and declaring the State "Judgment" void, Marshall *omitted* the fact that his request also included "any other relief [that] the Court determine[d] reasonable and just." "[U]nder [a] general prayer, other relief may be granted than that which is

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[96] *DKN Holdings LLC v. Faerber,* 61 Cal. 4th 813, 825 (2015).

[97] *Miranda v. Arizona*, 384 U.S. 436, 491 (1966); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (1990) (Citations omitted). *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877).

[98] *Id.* p.47, lines 10-11.

particularly prayed for."[99]

Contrary to Marshall's arbitrary edict, *Feldman actually* held that the facial challenge to the constitutionality of a State statute could not be precluded because it "[does] not require review of a judicial decision in a particular case" and "is a challenge to the validity of the rule rather than a challenge to an application of the rule."[100] Petitioner therefore had a right to challenge the Constitutionality of these statutes and to a judicial remedy. "Whenever the legislature passes an act which transcends the limits of the police power, it is the duty of the judiciary to pronounce it invalid."[101] Furthermore, "an unconstitutional law is void and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment. [...] If laws are unconstitutional and void, the [...] Court acquired no jurisdiction of the causes [...]."[102]

Therefore, if §7031(a) or §7031(b) were found to be unconstitutional, declaring the judgments void would be the precise relief Marshall had a *mandatory* non-discretionary, ministerial duty to grant. "Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy."[103]

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[99] *English v. Foxall*, 27 U.S. 595, 612 (1829).

[100] *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

[101] *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

[102] *Ex parte Siebold*, 100 U.S. 371, 376-7 (1879).

[103] *Steel Co. v. Citizens for a Better Env't*, 523 U.S 83, 89 (1998).

Finally, while Petitioner's complaint was not captioned as a Petition for *non-statutory* writ of *habeas corpus* (Art. I, §9, Cl. 2), the *substance* was in fact a challenge to the jurisdiction of the State Courts to bind him indefinitely in constructive custody without remedy and financially destroy him amounting to civil capital punishment with prejudice. "The writ of *habeas corpus* is the fundamental instrument for safe-guarding individual liberty against arbitrary and lawless state action."[104] *Habeas* relief is also not barred by any of the estoppel doctrines asserted by the Marshall or the Humphreys.[105]

But Marshall's lawless assault on Petitioner's rights, liberty, and property did not stop there. On February 26, 2020, he filed a timely notice of appeal of her *ultra vires* "Order" granting the Humphreys Motion to Dismiss. In response, she filed another arbitrary and *ultra vires* "Order" on February 27, 2020, revoking his previously granted *in forma pauperis* status and declaring his appeal "frivolous". Appendix [H] pp.51-52. According to this Court, an appeal is frivolous if it lacks any arguable issue in law or fact.[106] As Petitioner's appeal contained arguable issues of law, it was clearly not frivolous.

iii. The Judges of the Ninth Circuit Court of Appeals Breached Their Mandatory Duty to Exercise Jurisdiction to Hear Petitioner's Appeal and Grant Him Relief Mandated by Law

On March 20, 2020, Petitioner filed a Motion for the Appointment of Assistant Counsel and to proceed *in Forma Pauperis* on appeal in the United States Court of

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[104] *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969); *Ex parte Siebold*, supra.

[105] *Noel v. Hall*, 341 F.3d 1148, 1151 (9th Cir. 2003).

[106] *Nietzke v. Williams*, 490 U.S. 319, 325 (1989).

Appeals for the Ninth Circuit. Exhibit [A38]. He also filed a "Statement of Why This Appeal Should Go Forward." Exhibit [A39]. His request for counsel was ignored.

While Petitioner's appeal was pending, this Court issued its decision in *Liu v. SEC*, supra, a case in which it vacated the Ninth Circuit's affirmation of the District "Court's" judgment imposing yet another *ultra vires* penal forfeiture disguised as "equitable disgorgement".[107] Pursuant to *Liu*, Petitioner immediately filed a Notice/Request for Consideration of Additional Authorities. Exhibit [A41].

Despite the resounding clarity evidencing the purported nature of "disgorgement" declared in *Liu*, and that Petitioner had in fact been subject to a penal forfeiture without Lawful authority, "Chief Judge" Sidney Thomas and "Associate Judges" Atsushi Tashima and William Fletcher arbitrarily dismissed his appeal as "frivolous" with no further explanation. Appendix [I] p.53.

See also Appendix [S]– Questions Presented: 18, 19.

3. There is a Complete and Total Absence of Any State or Federal Corrective Processes

In addition to there being no apparent judicial Constitutional "Courts" in California or the United States, and consequently no judicial remedies, Petitioner filed Petitions for Redress of Grievance with the following State and Federal agencies and officials, who, without authority either: (1) refused to perform a full, fair, impartial, and independent investigation of his criminal and/or deprivation of rights complaints; and/or, (b) refused to intervene to protect his rights, liberty, money, and property; and/or, (c) created and/or enforced an unwritten Enterprise "policy": (1) to

[107] See *SEC v. Liu*, 262 F. Supp. 3d 957 (2017) and *SEC v. Liu*, 754 Fed. Appx. 505 (9th Cir. 2018).

not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; and/or (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by the California and U.S. Constitutions; and/or, (3) to not investigate State and Federal "Court" "Judges" and members of the Cal. "Legislature" for criminal behavior and deprivation of Constitutionally protected rights.

a. City of Santa Ana Police Department
and Chief David Valentin, "Commander" Roberto Rodriguez, "Sergeant" Abel Alcanter, "Sergeant" Gil Hernandez, "Sergeant" Michelle Macchiaroli

See Appendix [K] p.56, Exhibits [E4. E5, E6, E7, E21]. Exhibit [C] pp.:1818-1836, 1856-1894, 1894-2106, 2120-2153, 2660-2673. Exhibit [D] pp.4205-4263, 4507-4509. With the exception of the Chief of Police, none of the officials acting in a supervisory capacity have subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 yet are acting in official capacities and accepting compensation from the public treasury.

b. City of Newport Beach, Newport Beach Police Department,
and Chief Jon Lewis, Deputy Chief Joseph Cartwright, Lieutenant Keith Krallman, City Attorney Aaron Harp, "Sergeant" Darrin Joe

See Appendix [M] pp.68-71, Exhibits: [E24-E27], [D], including pp. 4571-4904, 4796-4821, 5060-5068.

c. City of Irvine Police Department
and "Sergeant" Sean Paul Crawford

See Exhibits [D], including pp.5159-5202; [E31]. Crawford has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for the position of any office within the IPD (Exhibit [D] p.5200) and the IPD has an unwritten policy to "move away from signing Oaths of Office". Exhibit [D] pp.5159-5161.

d. City of Costa Mesa Police Department
and Chief Ronald Lawrence, "Lieutenant" Brian Wadkins, "Sergeant" Michael Manson, City Attorney Gregory Palmer

See Exhibits [E29, E30], Exhibit [D], including pp.5110-5158. Wadkins and Manson have not subscribed an oath of office pursuant to Cal. Const. Art. XX, §3 for the position of Sergeant (no records exist).

e. Orange County Sheriff–Coroner Department
and Sheriff Don Barnes, "Assistant Sheriff" Ross Caouette, "Under Sheriff" Jeff Hallock, "Lieutenant" Gary Knutson, Investigator Mike Leeb, "Sergeant" Alejandro Salceda, Deputy Sherry Demaio,

See Appendix [L] pp.57-67, Exhibits [E9, E11, E12, E13, E17, E18] [D], including pp.4348-4352, 4356-4363,4469-4506, 4531-4533, 4537, 4540 [C], including pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691. With of the Sheriff, none of the officials acting in a supervisory capacity have subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 yet are acting in official capacities and accepting compensation from the public treasury.

f. Orange County District Attorney
and Deputy District Attorneys, Christopher Duff, Bill Feccia, Clyde Von Der Ahe

See Appendix [L] pp.57-6, [M] pp.68-71; Exhibits: [E9, E11, E12, E13, E17, E18, E24-E27]; [C], including pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691; [D], including pp. 4348-4352, 4356-4363,4469-4506, 4531-4533, 4537, 45404571-4904, 5060-5068, 5204-5208.

g. California Highway Patrol
and Sergeant Ed Moran, Officer Ernesto Mejia

See Exhibit [D], including pp.4905-5010, 5069-5095; [E28].

h. California Commission on Judicial Performance
and Attorney Anjuli Fiedler

See Appendix [J] pp.54-55, Exhibit [D] including pp.4168-4201.

i. California Governor
and Gavin Newsom

See Exhibits: [E24-E27]; [D], including pp. 4089–4101; 4309-4334; 4348-4350;4356-4363; 4469-4506, 4510-4522; 4531-2; 4537; 4540; 4547-4551; 4556-4563; [C], including pp. 2559-2594.

j. California Department of Justice
and Attorney General Rob Bonta, Investigator Bill Wagner

See Appendix [P] p.80, Exhibit [C], [D] including pp. 4403-4411, 5378-5399 and all Exhibits under Orange County Sheriff-Coroner Dept.

k. Federal Bureau of Investigation
and Christopher Wray, unknown employees and agents thereof

See Exhibit [C], [D], [E3, E14, E19].

l. United States Department of Justice
and unknown agents thereof

See Exhibits [C], [D], including pp.4106-4166.

m. Contractors State License Board
and Registrar David Fogt, Arbitrator Don Fobian, Arbitration Mediation Conciliation Center, Inc, Karen Smith

See Exhibit [F]; Appendix [O] pp.73-79.

n. California Assembly and Senate
and Assemblywoman Cottie Petrie-Norris, fmr. Senator John M.W. Moorlach

See Exhibits [E2, E10, E15]; [C], including pp.2369-2381; [D], including pp.4164-S4166, 4335-4347, 4412-4467, 4552.

o. Superior Court of California- County of Orange

On August 16, 2022, Petitioner filed a judicial complaint with the Superior Court-County of Orange that was delivered to Presiding "Judge" Erick Larsh. Exhibit [D] pp.5511-5524.

The complaint alleged criminal activity, egregious deprivations of rights, and damages and irreparable harm directly caused by the unlawful behavior of Chaffee and the "Justices" of the Fourth District. The complaint was directed by Larsh to Layne Melzer, the Supervising "Judge" for the "Court's" civil panel. *Id.* p.5503.

Melzer responded in a letter dated October 31, 2022. *Id.* p.5503-5505.

Melzer told Petitioner that "each judicial officer of the court exercises independent judicial authority, and no judge – even judges who exercise some degree of supervisory authority – has the authority to review, overrule, intervene in, or otherwise affect the outcome of any matter proceeding before another judicial officer" (*Id.* p.5504), that "the Court is powerless to afford [...] the relief [he] requested", and "[t]he judgment is therefore final". *Id.* p.5505.

Melzer breached his mandatory, non-discretionary duty to conduct a full, fair, and impartial investigation into Petitioner's claims and to intervene to stop the irreparable harm and damages being perpetrated upon him. Notably, his response fails to acknowledge let alone address the substantive violations of Constitutional law evidenced by Petitioner.

Melzer's response and refusal to abide his sworn duties further evidences that even in the face of clear and unequivocal violations of Constitutional rights, it is not the will of the People and the Constitution that is the "supreme Law of Land", but the arbitrary and lawless acts of "officials" of the Enterprise, fraudulently purporting to be "Judges".

The Enterprise "policy" Melzer admits to is that either there is no Constitution of California or the United States, or that if there is, Enterprise "Judges" are not bound by it and therefore above it. The truth is "[t]he judiciary is but the creature of the Constitution [...]. It can not [sic] rise above the source of its own existence. If it could do this, it could annul the Constitution, instead of simply declaring what it means."[108] "[A Judge] must act judicially in all things, and cannot transcend the power conferred by law."[109] "[W]here the language of the Constitution is express and the intent plain, there is *no power* in the judicial department to set it aside [...]."[110] If a court transcends the limits of its authority, the resulting judgment would not be merely erroneous, but absolutely void.[111] Moreover, violating due process is a crime[112] and a crime cannot be committed to procure or maintain personal or subject matter jurisdiction.

The fraud, deceit, and treason being advocated by Melzer is not the Law under

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[108] *Ex parte Newman*, 9 Cal. 503, 511-512 (Cal. Sup. Ct. 1858).

[109] *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876), *Ex Parte Giambonini*, 117 Cal. 573, 576 (Cal. Supreme Ct. 1897).

[110] *Nougues v. Douglas, 7* Cal. 65, 66 (Cal. Sup. Ct. 1857). Italicized emphasis added.

[111] *Baar v. Smith*, 201 Cal. 87, 100 (Cal. Supreme Ct. 1927).

[112] 18 U.S.C. §242, Cal. Penal Code §211.

a Constitutional government of defined and limited powers–where exceptions from a power mark its extent [...]"[113]–but one under a different form of government entirely– a despotic and totalitarian form of government.

The root of this issue appears to stem from this "Court's" entire history of jurisprudence concerning the nature of subject matter jurisdiction and immunity doctrines in attempt to guarantee omnipotence to "Judges" and other Enterprise "officials" by transcending the sovereignty of the American People to grant immunity to "officials" who commit crimes and treason upon them.

The California and U.S. Constitutions were carefully crafted to provide absolute immunity too all officials who follow the Law. To create the Enterprise immunity "policies" that transcend Law, this "Court" has repeatedly violated the doctrine of separation of powers by exercising powers that are exclusively conferred upon Congress. The "Justices" even openly admit that their "qualified immunity precedents [...] represent precisely the sort of freewheeling policy choices that [they] have previously disclaimed the power to make."[114] Without the power to make a Law, there can consequently be no power to enforce it. Either would be a clear act of treason.

To obtain the omnipotence inherent in the fraudulent doctrine of "judicial immunity", this "Court" took the doctrines of subject matter jurisdiction and judicial immunity from a different Country ruled by a monarchy and no written Constitution,

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[113] *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824).

[114] *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1871 (2017), Thomas, J. concurring. Internal brackets, quotations, and citation omitted.

and, without any authority, "legislated" them into our nation's jurisprudence. In other words, this "Court" took the edicts of an arbitrary, despotic form of a government[115] and forced them into the "Laws" of our Republican form of government of defined and limited powers.

The purpose of the doctrine of judicial immunity when it was created in Britain was to end the collateral attacks on judgments and to remodel the Court system to match that of the hierarchical ecclesiastic Courts.[116] "The attractiveness of the ecclesiastical model lay in its hierarchical structure. [...The] hierarchical system enable[d] the [King's Courts] to authoritatively ascertain and declare legal precepts [...in] relation to the local courts[.] [To accomplish this,] they needed to monopolize the existing means of correcting errors"[117] by removing the complaint of false judgment against a Judge that could be brought by the People. A statute was thereby enacted which made the claim of false judgment a royal plea, which could only be heard in the King's Courts.[118]

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[115] "The British Constitution differs from our American Constitutions in one great leading feature. It only classifies and distributes, but does not limit the powers of government; while our Constitutions do both." *Ex parte Newman*, 9 Cal. 502, 512 (Cal. Supreme Ct. 1858). Burnett, J. concurring.

[116] "In the twelfth century, under the influence of the canon law, English- men became familiar with appeals *(appelationes)* of a quite other kind [than criminal appeals of felony]; they appealed from the archdeacon to the bishop, from the bishop to the archbishop, from the archbishop to the pope. The graduated hierarchy of ecclesiastical courts became an attractive model. The king's court profited by this new idea; the king's court ought to stand to the local courts in somewhat the same relation as that in which the Roman curia stands to the courts of the bishops." Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882 citing 2 F. Pollock and F. Maitland, The History of English Law 665, (2d ed 1898) p.664. Footnotes omitted.

[117] Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882. Citation omitted.

[118] Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882-3 citing Statute of Marlborough, 1267, 52 Hen. 3, c. 19 "None from henceforth, except our Lord the King, shall hold in his Court any Plea of false Judgement, given in the Court of his Tenants; for such Plea specially belongeth to the Crown and Dignity of our Lord the King."

Ending collateral attacks on false judgments and limiting the correction of errors to the hierarchical system were only the first two steps in the culmination of the judicial immunity doctrine. The third step involved extending the doctrine of sanctity of records to all the King's Courts. The doctrine of sanctity of records originated as a royal edict of the King known as a "prerogative" whereby whatever the King said happened in his presence in Court was "indisputable".[119] "When this [arbitrary] privilege was extended from the King to his judges, the court of record was born and the foundation for limited judicial immunity was set. Since the record of a court of record was incontrovertible, no party could allege that an act noted therein was wrong, and thus the source of the record–the judge–could not be subject to civil or criminal liability for an abuse of power."[120] "The record was a potent weapon to use in the political struggle because of the unimpeachable authority of its origins, the King himself. Impugning the integrity of the record verged on impugning the integrity of the monarch."[121]

The doctrine of the sanctity of records was clearly based on the delusional regal maxim that "the king can do wrong" and the divine right of Kings whereby Kings are only answerable to God. These delusions clearly were not intended to survive the

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[119]Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.206. See also Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5 p.883.

[120] Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.206. See also Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5 p.883.

[121] Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.207, citing 77 Eng. Rep. 1305, 1306 (Star Chamber 1607) "And the records are of so high a nature, that for their sublimity they import verity in themselves, and none shall be received to aver anything against the record itself."

American revolution. As poignantly recognized by this Court in the case of *Chisholm v. Georgia*[122], contemporaneously with this Country's founding:

> It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the Sovereign, and the people as his Subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a Court of Justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a Court of Justice, or subjected to judicial controul [sic] and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the Courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are Sovereigns without Subjects (unless the African slaves among us may be so called) and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.
>
> From the differences existing between feudal sovereignties and Governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Soverignty [sic] is the right to govern; a nation or State-sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the Prince; here it rests with the people; there, the sovereign actually administers the Government; here, never in a single instance; our Governors are the agents of the people, and at most stand in the same relation to their sovereign, in which regents in Europe stand to their sovereigns. Their Princes have personal powers, dignities, and pre-eminences, our rulers have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens.

"Judge" Melzer has it backwards. David Chaffee is not King and is answerable to Petitioner and the American People. In America "if [a Judge] act[s] without authority, [her] judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a

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[122] *Chisholm v. Georgia*, 2 U.S. 419, 471-72 (1793).

reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."[123]

This "Court" and the "Courts" of the Ninth Circuit's attempt to transplant the British doctrine of sanctity of records and the divine right of kings to this Country to amend the Constitution by ending the collateral attack of State judgments is without authority and void. The provisions of the California and U.S. Constitutions are mandatory and prohibitory (Cal. Const. Art. I, §26; Art. VI, 2). As emphatically declared by Alexander Hamilton in Federalist No. 28 "[t]he general government will at all times stand ready to check the usurpations of the state governments. If [the People's] rights are invaded by either, they can make use of the other as the instrument of redress."[124] Article III, §2 also mandates that "[t]he judicial Power of the United States "**shall** extend to **all** Cases, in Law and Equity, arising under this Constitution". (Bolded emphasis added).

See also Appendix [S]– Questions Presented: 14, 36-37.

4. There is No Judicial Constitutional Court in the State of California Vested with Subject Matter Jurisdiction Upon Which Petitioner Can Present These Claims

a. California "Courts" Repeatedly Admit That They Lack Subject Matter Jurisdiction to Hear and Determine Cases Involving Federal Questions.

See Exhibit [D] p.5438, pp.5441-5447, a Declaration and Exhibits provided to Petitioner by William Henshall. Henshall's Petition for Writ of *Habeas Corpus* to the

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[123] *Elliott v. Lessee Peirsol*, 26 U.S. 328, 340 (1828).

[124] Federalist No. 28. Alexander Hamilton; https://avalon.law.yale.edu/18th_century/fed28.asp.

Supreme "Court" of California was returned *unfiled* and thereby summarily denied by the Clerk of "Court" on the ground that "[t]he question raised by the petition are beyond the jurisdiction of California Courts [parenthetically all of them] as they appear to raise Federal issues. *Id.* p.5448.[125]

1. State Courts have had concurrent Federal Court jurisdiction since the inception of this Country. See e.g. *Claflin v. Houseman,*[126] declaring "State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it[.]"
2. Pursuant to the Cal. Constitution of 1849, which, according to the Cal. Secretary of State has never been repealed, Exhibit [K] p.98, the District Courts have original general jurisdiction in cases at common Law and Equity (Art. I, §6). Petitioner, however, has been unable to locate any "District Courts" or any other Courts of California vested with common Law general jurisdiction as these Courts appear to have been abolished. See section b below. It is also unknown how a litigant can possibly exhaust State *habeas* relief and raise Federal issues as purportedly required by 28 U.S.C. §2254, when there is no jurisdiction to do so.
3. There is nothing in the California Constitution that vests any of the judicial power of California in the Clerk of the Supreme "Court" to deny Petitions for Writs of *Habeas Corpus*. Nor has the Clerk been appointed to serve as a

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[125] See also his Petition submitted to the Superior Court of California- County of San Mateo dismissing the Writ on the same grounds. *Id.* p 5443. See also p.5446 another dismissal on the same ground by the Superior Court of California- County of San Francisco.

[126] *Claflin v. Houseman*, 93 U.S. 130, 136 (1876).

Justice of the Court.

When Henshall was unable to obtain *habeas* relief, he filed a Petition for Redress of Grievance with California Assemblyman Kevin Mullin and asked that he submit the Petition to the floor of the Assembly. Mullin refused, citing the Clerk of the Supreme "Court's" "determination" (p.5448) while adding that the issues presented were also "beyond the jurisdiction [of the] California Assembly." *Id.* p.5447.

b. The Cal. "Constitution of 1879" does not vest any Court with subject matter jurisdiction at Law or Equity as mandated by the U.S. Constitution

While the States admitted to the union of States known as the United States of America were purportedly comprised of separate sovereign bodies politic, as a unified entity, the States surrendered certain immunities to Federal supervision like those in Article I, §10 as another check and balance protection to guard against State official abuses of power. There is also a lesser-known limitation on the judicial power of the States found in Article III. Under Article III, there are *only* two jurisdictions that arise *under* the Constitution, Laws of the United States, and Treaties made *under* their authority. Those jurisdictions are Law and Equity.

At the time of America's founding, it was proceedings "according to the course of the common Law" [127] where the rights to jury trial by jury, due process of law, and many other rights, privileges, and immunities were recognized and later became enshrined in the Constitution. It was also why every State in the Union (with the

[127] Section 14, Article II Northwest Ordinance 1787 declaring "[t]he inhabitants of the said territory shall always be entitled to [...] judicial proceedings according to the course of the common law[.]"; 7th Amendment.

exception of Louisiana) was admitted under the common Law and not Roman civil law. California specifically repealed all Roman civil law in effect prior to its admission as a State.[128]

Another jurisdiction known as Admiralty (based on Roman civil law) was specifically excluded as a direct result of the abuses by King George III that became one of the principle causes of the American Revolution.[129] Consequently, the States were deprived of all judicial power to exercise Admiralty jurisdiction as it was vested exclusively in the Courts of the United States.[130] As States also had no authority to transcend the Constitution and subject the People thereof to a jurisdiction foreign to their Constitution, they are *only* empowered to vest their Courts with jurisdiction in cases at Law and Equity. Additionally, State Courts must have concurrent jurisdiction with the Courts of the United States to be so empowered to answer Federal questions arising in State cases. If State Courts are not vested with these jurisdictions, they cannot entertain Federal questions, as recognized by this Court in the case of *Claflin v. Houseman*, 93 U.S. 130, 136 (1876).

Up until recently, the California Constitution of 1849 and the purported Cal. "Constitution of 1879" vested the Courts of California with the separate and distinct jurisdictions of Law and Equity. However, as part of the Enterprise scheme to (1) abolish proceedings according to the course of the common Law (section II(D)(6),

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[128] *Fowler v. Smith*, 2 Cal. 568 (Cal. Supreme Ct. 1862).

[129] "He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation". Declaration of Independence. The British parliament "claiming a power, of right, to bind the people of America by statutes in all cases [...] and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county". Declaration of Resolves of the First Congress, October 14, 1774.

[130] Section 9 of the Judiciary Act of 1789, 1 Stat. 73, *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 546 (1828).

infra); (2) amalgamate Law, Equity, and Admiralty into one "civil action" (section II(D)(6), *infra*); and, (3) to impose Roman civil law upon the People of California and the United States, common Law jurisdiction was removed from the "Constitution of 1879" by the repeal of Article VI, §5. (Please confirm that there is no Article VI, §5 in the current version of the "Constitution of 1879"). This "repeal" is akin to removing Article III, §2, Cl. 1 from the U.S. Constitution.

Today, the "Constitution of 1879" vests the Superior "Courts" of California with jurisdiction in "all other causes". "All other causes" is not a jurisdiction known to the Constitution, history and laws of California or the United States and does not reveal the form or nature of the proceedings by which the Superior "Courts" exercise subject matter jurisdiction. "All other causes" is also not defined anywhere in the "Constitution of 1879" or by Lawfully enacted statute.

Consequently, there is no Court in California with subject matter jurisdiction in any case at Law or Equity arising *under* the U.S. Constitution in order grant Petitioner any relief thereby, including by Writ of *Habeas Corpus*. See *Cleveland Trust Co. v. Nelson,* [131] holding that "[a] mere assumption of jurisdiction by a court, however long continued, cannot confer a jurisdiction otherwise nonexistent under the constitutional grant of judicial power" and *State ex rel Wernmark v. Hopkins*, 213 Ore. 669 (Supreme. Ct. 1958).

See also Appendix [S]– Questions Presented: 15, 24, 26.

i. Superior Courts of California Lack Subject Matter Jurisdiction in Cases of Admiralty Jurisdiction

[131] *Cleveland Trust Co. v. Nelson*, 51 F.2d 276, 277 (1931).

As all competent jurists know, money and Law operate as opposite sides of the same coin. In other words, there are different forms of money and each of these circulates under different modes of proceedings or subject matter jurisdictions of law. Therefore, one's choice of money determines what rights, privileges, and immunities as well as the means and methods of adjudicating disputes that arise thereunder. For this reason, the Founding Fathers specifically chose gold and silver coin (also known as "specie") as the *only* "tender for payment of debts" under the Constitution and laws of the United States.[132] Another form of tender such as checks, money orders, promissory notes, and other negotiable instruments also known as "commercial paper" were specifically excluded.

Unlike gold and silver coin that circulate according to the course of the common Law, commercial paper circulates in commerce/Admiralty[133] and international law and *not* under the Constitution and Laws of the United States. See Art. III, §2 carefully noting that (1) cases in Admiralty jurisdiction do not arise *under* the Constitution and laws of the United States;[134] and, (2) that the judicial power for all cases arising under the Constitution and Laws of the United States extends *only* to cases in Law and Equity.

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[132] See especially Exhibit [G]– Memorandum of Law: The Money Issue by Larry Becraft, the 7th Amendment whereby "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved", and *Calder v. Bull*, 3 U.S. 386, 390 (1798) declaring that "[t]he prohibitions not to make any thing but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted [in the Constitution] to secure private rights [...]." Underlined and italicized emphasis added.

[133] "The exclusive jurisdiction in admiralty cases was conferred on the national government, as closely connected with the grant of the commercial power." *New Jersey Steam Navigation Co. v. Merchants' Bank*, 47 U.S. 344, 392 (1848). "The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde*, 2 Burr. R. 883, 887, to be in a great measure, not the law of a single country only, but of the commercial world." *Swift v. Tyson*, 41 U.S. 1, 19 (1842).

[134] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

Because commerce involves the relationship between debtors and creditors, commercial paper (ie Federal Reserve Notes) *cannot* be made tender for the *payment* of a debt *under* the Constitution because commercial paper can only *discharge* an obligation.[135] But most importantly, in cases arising at Law or Equity *under* the Constitution the judicial power of all State and United States Courts is incapable of acting upon any case involving commercial paper because it does not circulate at Law or Equity.[136]

Article I, §8, Cl.5 gives Congress the power to "coin money" which means to "stamp pieces of metal for use as a medium of exchange [...] according to fixed standards of value."[137] It does *not* give "Congress" or this "Court" the power: (1) to unilaterally Amend the Constitution in violation of Article V by making commercial paper (such as Federal Reserve Notes) legal tender; (2) to delegate this non-existent power to the President or to a private banking institution such as the Federal Reserve Bank; or, (3) to subject the American People to a jurisdiction foreign to their Constitution and unacknowledged by its laws. Furthermore, the People's contracts cannot be impaired by forcing them to accept debt instruments or to be bound to a currency in which they cannot Lawfully pay their debts, and by virtue thereof, become indentured servants or slaves to an ever expanding "national debt" upon which they have not consented to and purportedly cannot question (e.g. section 4 of the "14th

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135 "Let it be that the act of discharging the debt is a mere nullity and that it is still due". *Cohens v. Virginia*, 19 U.S. 264, 403 (1821). See also *Bank of Columbia v. Okely*, 17 U.S. 235 (1819).

136 "The case of a State which pays off its own debts with paper money, no more resembles this than do those to which we have already adverted. The Courts have no jurisdiction over the contract. They cannot enforce it, nor judge of its violation." *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

137 The General Principles of Constitutional Law in the United States of America by Thomas M. Cooley, Little Brown and Company 1880, p.79.

Amendment"). Not only was there no Lawful representative "Congress" to authorize the "Federal Reserve Act of 1913" or the "14th Amendment", there is no Lawful representative "Congress" to authorize *any* expenditures on behalf of the American People to bind them in any way whatsoever.

Federal Reserve Notes (that can *only* discharge an obligation) are not Lawful money and cannot be made legal tender like gold and silver coin that actually pay a debt.[138] Federal Reserve Notes are also *undefined* in American law and are not "dollars" as defined by the Coinage Act of 1792.

Federal Reserve Notes have no intrinsic value as true "credit" and are only evidence of the so-called "national debt". According to Marriner S. Eccles, former chairman of the Federal Reserve Board "if there were no debt in our money system [...] [t]here wouldn't be any money."[139] See also Congressional Record– House, August 19, 1940, pp.10548-10555 stating that "the Federal Reserve System is a private banking system, and every dollar of credit it puts into circulation is based on someone's debt [...]") *Id.* p.10550. In other words, if the national debt were "repaid," there wouldn't be any "money".

With the exception of Louisiana, all of the American States were admitted to the Union under English/American common Law, not Interstate Commerce/ Admiralty/ Roman civil law. Absent an unequivocal knowing, voluntary, and intelligent waiver of rights and Constitutional Amendment, neither Petitioner nor

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[138] See H.J.R. 192 and the Coinage Act of 1792 (1 Stat. 246) defining dollar "to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver."

[139] Hearings Before the Committee on Banking and Currency, House of Representatives, Seventy-Seventh Congress, First Session on H.R. 5479, Revised, Part 2,p.1338.

any of the American People can have their Republican form of government based on the rule of common Law altered to be subjected to Roman civil law/Interstate Commerce/Admiralty. Petitioner has not made any such waiver of rights, including to be subjected to the modern codified version of the law merchant/Interstate Commerce in the form of the Uniform Commercial Code.

Based on the facts that: (1) all of the transactions involved in this case involved negotiable instruments circulating in Interstate Commerce/Admiralty; (2) claims for setoff that are recognized in cases at common Law and Equity were denied; (3) Admiralty cannot entertain pleas of setoff;[140] (4) the proceedings were not according to the course of the common Law or Equity (and thereby *not* a case arising *under* the Constitutions of California or the United States); and, (5) Petitioner was subjected to strict liability akin to claim for *liquidated* damages, the case against him clearly arose and proceeded according to the course of Roman civil law in Admiralty jurisdiction for which the State of California lacks subject matter jurisdiction. "The case of a State which pays off its own debts with paper money [...has] no jurisdiction over the contract. They cannot enforce it, nor judge of its violation."[141]

See also Appendix [S]– Questions Presented: 38, 39.

c. The Cal. "Constitution of 1879" Does Not Grant the Legislature Any Power to Create Lower Courts or to Vest Them with Any Statutory Jurisdiction Including Jurisdiction Over the Statutes Involved in This Case

Another structural jurisdictional issue is that the "Constitution of 1879" does not vest the "Legislature" with any authority to create lower or inferior statutory

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[140] *Bains v. James and Catherine*, 2 F. Cas 410, 412 (1832).

[141] *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

Courts or to vest them with any special statutory jurisdiction.[142] Article VI, §1 of the *original* "Constitution of 1879" which purportedly conferred judicial power on inferior Courts established by the Legislature, and Article VI, §13, which vested power in the Legislature to define the subject matter jurisdiction of these Courts,[143] have both been repealed.

Unless the power or authority of a Court to perform a contemplated act can be found in the Constitution or laws enacted thereunder, the "legislature cannot either limit or extend that jurisdiction."[144] Consequently, the Superior "Courts" of California lack subject matter jurisdiction in all cases arising under Business and Professions Code §7031 (and apparently all other statutory cases whatsoever).

Furthermore, the aforementioned "Amendments" to the "Constitution of 1879", and many others substantively altering California's form of government, have not, in Petitioner's research, been approved by "Congress" pursuant to Article IV, §3. Nor is there any apparent Lawful "Congress" to approve such changes.

See also Appendix [S]– Questions Presented: 16, 17

5. The Contractor's State Licensing Board's "Mandatory Arbitration" Program is Treason to the Constitutions of California and the United States

On November 21, 2014, Petitioner was subjected to a "mandatory arbitration" proceeding by another conspiracy of the Enterprise to deprive him of his rights to

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[142] "Article VI, §10 is silent to any jurisdiction-setting power of the Legislature" *Communities for a Better Environment v. Energy Resources Conservation & Development Com.*, 57 Cal. App. 5th, 786, 798 (2020).

[143] See also *In re Application Guerrero,* 69 Cal. 88, 99 (Cal. Supreme Ct. 1886).

[144] *Pacific Tel. & Tel. Co. v. Eshleman*, 166 Cal. 640, 647 (Cal. Supreme Ct. 1913). Citations omitted.

judicial proceedings, trial by jury, and his money, property, and liberty without Lawful authority. Appendix [O] pp.73-79, Exhibit [F]. According to the arbitrary "Award", Appendix [O] p.73, the proceeding occurred under the authority of Cal. Business and Professions Code §7085. Appendix [Q] pp.86-87.

§7085 does *not* authorize the Contractors State License Board and the Arbitration Mediation Conciliation Center, Inc. ("AMCC"), to create and/or enforce a "mandatory arbitration" proceeding. Rather, it purports to authorize a *voluntary* arbitration process requiring "the concurrence of both the licensee and the complainant".[145] Petitioner did not and has never made any knowing, voluntary, or intelligent waiver of any rights to be subjected to this or any other "mandatory arbitration" proceeding as recognized by the CSLB in a document it apparently created stating "THE CONTRACTOR DID NOT RETURN A "SUBMISSION TO MANDATORY ARBITRATION". Appendix [O] p.74.

When Petitioner failed to comply with the "Award", his vested right to remain the qualifying individual of a general contractor license was arbitrarily suspended without a judicial hearing or known process of appeal by operation of Cal. Business and Professions Code §7085.6. Appendices [O] pp.75-78 and [Q] pp. 87-88. He has thereby been restrained from earning a living in his profession as a general contractor ever since with no apparent remedy and no access to a judicial Court.

In comparison, when members of the State Bar of California[146] are faced with

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[145] The CSLB admits to referring 8,275 mandatory arbitration cases to the AMCC since January 1, 2006. Appendix [O] p.79.

[146] Another vehicle of the Enterprise by and through which it creates and executes its "policies" is membership by "Legislators", "Executives", and "Judges", whether active or not, in the malevolent monopolies of Bar Associations like the State Bar of California. For example, §7031(b) was: proposed to the Cal "Legislature" by an attorney serving as a "Judge" (Quentin Kopp); ratified by attorneys in

discipline or a licensing suspension or revocation, there is a full-time State Bar "Court" comprised of trial judges and a three-judge appellate "Court" that makes recommendations to the Supreme "Court" of California who is the final arbiter of attorney discipline.[147] No such substantive and equal protections exist for contractors–or any other known regulated profession–in Commiefornia. Nor is review by the Supreme "Court" of California mandatory prior to licensee discipline like it is for attorneys.

See also Questions Presented: 13 Appendix [S].

a. The Contractors State License Board is Unconstitutional

The separation of powers of the California Constitution flatly forbids the Cal. "Legislature" from combining the Legislative, Executive, and Judicial powers of California in any way to create a fourth branch of government in the form of the agency known as the Contractors State License Board. This fundamental change to California's Republican form of government has not, in Petitioner's research, ever been authorized by a Lawful quorum in either the "Legislature" of California or "Congress" in violation of Article IV, §3 Article IV, §4 and Article I, §10.

The "Legislature" was also without any authority to transfer the judicial power

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the "Legislature"; signed into law by an attorney occupying the office of Governor (Gray Davis); prosecuted by attorneys, (such as William Bissell) and adjudicated by "Judges" (such as David Chaffee). The State Bar of California and its members, along with the Orange County Bar Association, have also played an active role in the creation of the Civil Jury Instructions. Exhibit [C] pp.1621-1642, 2625-2651. §7031(b) "Judgments" are enforced by the office of the Governor (such as fmr. Governor Edmund G. Brown, Jr.). Members of the Bar also sit on the Contractors State License Board (Kevin Albanese) and prosecute "mandatory arbitration" proceedings (Jamie Handrick). They also occupy seats in "Congress" (Adam Schiff). As officers of the "Court", Bar members are flatly forbidden by the doctrine of separation of powers from serving in multiple branches of government intentionally designed to be separated as a check and balance, whether their status in the Bar is active or not.

[147] Cal. Business & Professions Codes §6078, §6097.1 and §6086.65.

of California to the AMCC to conduct arbitration hearings, especially by unelected and unappointed "arbitrators" who don't hold public office.

6. Congress Has Not Vested Any Inferior Court of the United States with Subject Matter Jurisdiction at Law or Equity as Defined by the U.S. Constitution to Hear and Determine Petitioner's Claims

28 U.S.C. §1331 also known as "Federal question jurisdiction" declares that: "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." According to the United States House of Representatives Committee on Revision of the Laws,[148] the "[w]ords 'all civil actions' were substituted for 'all suits of a civil nature, at common law or in equity' to conform with Rule 2 of the Federal Rules of Civil Procedure, ["FRCP"]". FRCP Rule 2 states "There is one form of action—the civil action."

In further explanation of the meaning of "the civil action", the 1966 Amendment to the FRCP in the Notes of the Advisory Committee on Rules, declares that "[t]his is the fundamental change [of the FRCP] necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty."[149]

The obvious problem here is that the Constitution does not confer the judicial power of the United States in any jurisdiction known as "the civil action". The principles and distinctions between Law, Equity, and Admiralty upon which the judicial power of the United States is vested and *separately* and *exclusively*

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[148] Revision of Title 28, United States Code, Report from the Committee on Revision of the Laws, House of Representatives, 79th Congress, 2d Session, House Report No. 2646. p. A111.

[149] https://www.law.cornell.edu/rules/frcp/rule_1; US Code.

distributed by Article III cannot be "abolished", "unified", or blended together in one suit known as "the civil action". This is not only because "[a] case in Admiralty does not [...] arise under the Constitution or laws of the United States,"[150] but also because the Constitution specifically sets out the procedures for making amendments in Article V and these procedures have *not* been followed. Moreover, "Congress" is without any authority to delegate its law-making power to the Judicial branch to create and enact these "rules" that have the force and effect of law.[151]

"The Constitution of the United States [...] recognize[s] and establish[es] the distinction between law and equity. The remedies in the courts of the United States are, at common law or in equity [...] according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles."[152] See also *Mc Faul v. Ramsey*,[153] holding that "[i]n those States where the courts of the United States administer the common law,[154] they cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either." "While in many of the states statutes exist which permit the joinder

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[150] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

[151] On June 19, 1934, "Congress" (the one allegedly without a lawful representative quorum to do any business) purportedly enacted the Rules Enabling Act, (48 Stat. 1064, Pub. Law 73-416) to give the U.S. Supreme Court the power to promulgate the Federal Rules of Practice and Procedure to "govern the conduct of trails, appeals, and cases under Title 11 of the United States Code." The creation and revision of these rules, "which have the force and effect of law[,]" is usually carried out by the Judicial Conference's Committee on Rules of Practice and Procedure and it's five advisory committees. https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works.

[152] *Thompson v. R.R. Cos.*, 73 U.S. 134, 137 (1867); See also *Scott v. Neely*, 140 U.S. 106, 111 (1891). Superseded on other grounds; *Robinson v. Campbell*, 16 U.S. 212 (1818); *Fenn v. Holme*, 62 U.S. 481 (1858).

[153] *McFaul v. Ramsey*, 61 U.S. 523, 526 (1857).

[154] California was admitted as a free State under English common Law having repealed the Roman civil law then in effect, as held by the Supreme Court of California case of *Fowler v. Smith*, 2 Cal. 568, 568-9 (1852).

of causes of action at law and in equity in the same suit, this course is not permissible in the federal courts. In truth, the difference between causes of action at law and in equity is matter of substance and not of form, and no legislative enactment can really remove it. In the national courts this meradicable [sic eradicable] difference is as sedulously preserved in the forms and practice available for their maintenance as it is in the natures of the causes themselves and in the principles upon which they rest."[155]

"Courts created by the general Government [of the United States other than the U.S. Supreme Court] possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general Government will authorize them to confer."[156] Without being vested with a jurisdiction as precisely declared by the Constitution (either Law or Equity), "the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."[157] See also *Mayor v. Cooper*,[158] holding that "two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and a [Constitutional] act of [Congress] must have supplied it. Their concurrence is necessary to vest it. [...] It can be brought into activity in no other way."

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[155] *Schurmeier v. Connecticut Mut. Life Insurance Co.*, 171 F. 1 16-17 (8th Cir. 1909). Numerous citations omitted.

[156] *United States v. Hudson& Goodwin*, 11 U.S. 32, 33 (1812). See also *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) holding that federal courts, being courts of "limited jurisdiction," "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Citations omitted.

[157] *Ex Parte McCardle*, 74 U.S. 506, 512 (1869).

[158] *The Mayor v. Cooper*, 73 U.S. 247, 252 (1867).

The means of properly conferring subject matter jurisdiction vested by the Constitution upon an inferior Court can be found in section 11 of the Judiciary Act of 1789 (1 Stat. 73), whereby the Circuit Courts of the United States were vested with subject matter jurisdiction of all suits of a civil nature "[...] at common law or in equity[...]" with omitted exceptions.[159]

Finally, the Federal Rules of Civil Procedure which "have the force and effect of law"[160] were not given "any affirmative consideration, action, or approval of the rules by Congress or by the President"[161] as required by Article I, §7, Cl.2.

Consequently, Congress has not vested any inferior Court of the United States with the judicial Power of the United States in any case at Law or Equity recognized under the Constitution, leaving this Court the only Constitutional Court of the United States in which to present this case. See also section II(b)(ii-iii), *infra,* whereby even if the District "Court" were, despite the foregoing, vested with jurisdiction at Law or Equity, the "Court" claimed it lacked subject matter jurisdiction to vacate a void judgment of a State in violation of the U.S Constitution, which are fundamental powers of both Courts of Law and Equity.

See also Appendix [S]– Questions Presented: 23, 27.

7. There is No Lawful Representative Quorum in the "Legislature" of California or the "Congress" of the United States

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[159] By no coincidence Circuit Courts have been abolished as part of this scheme.

[160] https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works. Accessed 8/16/22.

[161] 374 U.S. 865-66.

Since at least 1929, "Congress" has refused to apportion the number of representatives in the House to the population of the People of the States leaving them without any representative government based on the rule of Law or consent of the governed.

One of the chief complaints of the American colonists at the time of the Revolution was that they believed they were not represented in British Parliament that consistently took adverse actions to their interests and without their consent. The famous political slogan "no taxation without representation" originated at this time. Consequently, the Declaration of Independence declared that the newly established governments of the thirteen united States of America were to "deriv[e] their just powers from the consent of the governed[.]"

As one of the checks and balances subsequently framed into the Constitution to ensure this consent and the representation of the People, Article I, §2, Cl. 3 clearly and unambiguously set forth a minimum and maximum ratio of representation in the House of Representatives of Congress. In 1929 however, "Congress", acting without any lawful representative quorum, arbitrarily decided to "amend" the Constitution in violation of the procedures set forth in Article V by fixing the number of "representatives" at 435. Consequently, there has been no Lawful representative quorum in "Congress" for nearly 100 years. Today, with a population nearing 330,000,000 People, a proper ratio of representation in the House of Representatives would be close to 11,000 members, not 435. Cf. Section 14, Article II of The Northwest Ordinance of 1787 guaranteeing that even the inhabitants territories "shall always be entitled to [...] a proportionate representation of the people in the legislature[.]

A similar situation has occurred in the "Legislature" of California with its 80 "representatives" for nearly 40 million people. No apportionment according to population has been made since at least 1879 despite being mandated by Article I, §14 of the Constitution of 1849 declaring that "representation shall be apportioned according to population."

See also Appendix [S]– Questions Presented: 29-34

8. The "Judges" of the Superior "Court" of California-County of Orange Breached Their Mandatory Duty to Grant Petitioner's Application for Emergency Stay and To Provide *Habeas Corpus Relief*

Upon the filing of Petitioner's verified *Ex parte* Application for Emergency Stay and Petition for Writ of *Habeas Corpus*, Superior "Court" "Judges" Leal, and subsequently, Cramin, had a mandatory, non-discretionary, ministerial duty to (1) fully, fairly, and impartially investigate his claims; and, (2) upon determination of their validity, to grant him all requested relief as mandated by Law. The refusal/ "denial" to abide these sworn mandatory duties is not a Lawful action because all Judge's lack discretion and subject matter jurisdiction to violate the Constitution.

a. First National Bank of Omaha ("FNBO")

On April 12, 2022, FNBO was given notice of the issues pertaining to Petitioner and his estate's inability to discharge the alleged mortgage obligation due to the crimes being perpetrated upon him and his estate by public "officials" and private parties in conspiracy therewith, in a recorded phone call he made to FNBO. During the call, Petitioner provided the address to his website, http://www.thespiritoflaw.com, where FNBO could find and verify his claims.

Despite providing this evidence to FNBO, FNBO directed its attorneys, The Dunning Law Firm, APC ("Dunning Firm") and the Dunning Firm's apparent employees, Donald Dunning and James MacLeod, to sue Petitioner in the Superior "Court" of California-County of Orange on or about July 25, 2022. In other words, FNBO and its attorneys intended to obtain relief from the same entity accused of committing crimes against Petitioner that were the direct and proximate cause of his inability to meet his private obligation with FNBO.

Upon being served with FNBO's complaint, Petitioner filed a timely Challenge to Jurisdiction/ Petition for Writ of *Habeas Corpus* and *Ex Parte* Application for Emergency Stay. Exhibits [A46 and A47].

Amongst numerous claims, the Petition and Application challenged FNBO's standing on the grounds that: (1) because the State of California had deprived Petitioner of due process and was actively engaged in depriving him of his liberty, the judicial power of California could not be used to further take his money or property until he was afforded due process on the previous claims that were the proximate cause of damages in the alleged claim by FNBO; (2) that because all of the purported transactions occurred in interstate commerce, the State of California was entirely without subject matter jurisdiction over the case; and, (3) that even if Petitioner had failed to discharge the alleged obligation that it could not result in the claim of "damages" made by FNBO (Exhibit [D] p.5483) because, as this Court has declared, "the act of discharging the debt is a mere nullity and that it is still due."[162]

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[162] *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

FNBO's opposition and MacLeod/ Dunning Firm's declaration in support thereof (Exhibit [D] pp.5461-5467) failed to meaningfully and substantively address these issues and thereby failed to sustain FNBO's burden of proof to standing on direct jurisdictional attack.

Based upon the *verified* claims and evidence filed by Petitioner, FNBO had two apparent options so as not to violate its ordinary duty of care[163] owed to Petitioner, or to become complicit in the conspiracy against him. FNBO could either (a) present authenticated evidence that Petitioner's claims were false and the Court thereby lacked a mandatory duty to fully, fairly, and impartially investigate his claims and grant him the mandatory relief he requested; or, (b) to (1)unequivocally declare that it had no intention of using the Court's jurisdiction as a means of causing Petitioner harm; (2) by affirming that the Court had a mandatory duty to investigate Petitioner's claims; and, (3) by refusing to exercise the Court's jurisdiction until the requisite fair and impartial due process was afforded to Petitioner. The position to effectively support Petitioner in achieving a Lawful resolution that could also lead to the Lawful resolution of FNBO's claims would in no way hinder the Dunning Firm or MacLeod or Dunning's duty to represent FNBO. On the contrary, it would have protected them and FNBO from aiding and abetting the conspiracy.

The Superior "Court's" jurisdiction cannot be used as a sword on the one hand to commit crimes and deprivations of Petitioner's rights, while on the other, as a shield to refuse to grant him the relief mandated by Law. Put differently the "Court"

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[163] See e.g. Cal. Civil Code §1714(a). In this same light, private parties can be liable under 42 U.S.C. §1983 when they conspire with State officials in the deprivation of rights secured by the U.S. Constitution. *Lugar v. Edmundson Oil Co., Inc.*, 457 U.S. 922 (1982).

cannot use its authority to unlawfully restrain Petitioner while consequently finding him guilty of the "damages" resulting from that restraint that he didn't cause.

As officers of the Court, Dunning and MacLeod also had a sworn mandatory duty to support the Constitutions of California and the United States (Cal. Bus. & Prof. Code §6067) and not to war against them by either directly or indirectly advocating the fraud, treason, and other crimes being perpetrated upon Petitioner or by being involved in additional substantive due process violations to violate his rights and take his money or property without Lawful authority.

FNBO, The Dunning Firm, Dunning, and MacLeod (collectively hereafter "FNBO") decided war to against Petitioner and the California and U.S. Constitutions by: (1) advocating that Petitioner had no right to the relief he sought (Exhibit [D] pp.5461-5467); (2) by violating due process in failing to meaningfully and substantively respond to the direct jurisdictional attack and substantiate each of the issues raised by Petitioner to evidence their standing and the Court's subject matter jurisdiction[164] to award the relief they sought and were eventually awarded. (At the very least this included providing competent authority that none of the alleged transactions occurred in interstate commerce and by substantiating exactly what jurisdiction they occurred in, if not interstate commerce); (3) by MacLeod lying to the "Court" under oath, on the Dunning Firm and FNBO's behalf, that Petitioner had not presented authenticated evidence of his claims (Exhibit [D] p.5467, line 8) even

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[164] See e.g. *McNutt v. Gen. Motors Accep. Corp.*, 298 U.S. 178 (1936). Additionally, having not been vested with common Law general jurisdiction, the Superior "Court" could not be sitting in that capacity and thereby its jurisdiction had to be affirmatively stated, proved, and on the record. See *Ex Parte Knowles*, 5 Cal. 300, 306 (Cal. Supreme Ct. 1855), *Parsons v. Tuolumne Co. Water Co.*, 5 Cal. 43 (Cal. Supreme Ct. 1855), *In re Estate of Strong*, 119 Cal. 663, 666-7 (1898), *Estate of Scarlata*, 193 Cal. App. 2d 35, 41 (1961), *Cohen v. Barrett*, 5 Cal. 195, 210 (Cal. Supreme. Ct. 1855), *Cent. Ill. Pub. Serv. Co. v. Indus. Comm'n*, 293 Ill. 62, 65-6 (Ill. Supreme Ct. 1920).

though Petitioner had (Proc. Hist. Exhibit [A46] pp.8-9); (4) by MacLeod/The Dunning Firm violating due process by failing to provide Petitioner with a Declaration and Exhibits filed in the "Court" to support FNBO's "damages" claim when Petitioner directly notified MacLeod that he never received service of the documents (Exhibit [D] pp.5499-5502) and still has not; (5) by MacLeod/ The Dunning Firm requesting the "Court" to award judgment in FNBO's favor even though they knew, that Petitioner never received a full, fair and impartial judicial determination of his rights, not to mention on his *Ex Parte* Application and *Habeas* petition hearings (Exhibit [D] pp.5452-5459) and in the action commenced by FNBO;[165] (6) by MacLeod/ The Dunning Firm falsely and fraudulently telling Petitioner that final "Judgment" had been entered by the Court when he/they knew that due process had not been followed for all of the above reasons, including the fact that Petitioner was not given any opportunity to meet the evidence of FNBO's "damages" claim because the Deputy Clerk issued "Judgement" *on the same day* (October 21, 2022) that FNBO filed its Declaration and supporting evidence. Exhibit [D] pp.5450-51. This was this same evidence that MacLeod/ The Dunning Firm refused to provide Petitioner a copy of after he informed them that he had never received service. MacLeod/ Dunning Firm refused to provide Petitioner copies of the Declaration and supporting evidence on the grounds that "default ha[d] [already] been entered[,] [he (Petitioner)] was not before the Court", and his "fee waiver was denied." *Id.* None of these responses preclude

[165] "[I]f [a Court] act[s] without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers." *Elliott v. Lessee Persol*, 26 U.S. 328, 329 (1828).

Petitioner's fundamental due process right to be served process and to have an opportunity to meet and oppose all claims against him.

By conspiring with State "officials" to violate due process to receive a "Judgment" in its favor FNBO has become directly involved in the conspiracy to take Petitioner's money and property without Lawful authority.

By denying Petitioner mandatory relief yet exercising jurisdiction to award FNBO relief "Judges" Leal and Cramin also aided and abetted the conspiracy by amongst other crimes, committing treason by refusing to exercise the "Court's" jurisdiction to fully, fairly, impartially, investigate his claims and to grant him the relief mandated by Law.

In a final apparent act to silence Petitioner and prevent him from continuing to defend himself because he was unable to afford to pay the "Court" filing fees, "Judicial Officer" June Jee An denied his Fee Waiver request on the ground that his "savings account amounts may cover [the Court] fees." Exhibit [D] p. 5480. Petitioner does not have a savings account and did not indicate anywhere on the Fee Waiver form that he had any money in a savings account. Exhibit [D] pp.5471-5478. His monthly income was listed at $4,721.60 while his monthly expenses totaled more than $9,000. There is no known process to appeal a Fee Waiver denial. It should also be noted that all of Petitioner's previous Fee Waiver applications had been approved in every State action.

b. Citibank N.A. Not in its Individual Capacity But Solely as Owner Trustee For New Residential Mortgage Loan Trust 2018-2[166] ("Citibank N.A.")

On March 7, 2022, shellpoint–a company purporting to be the servicer (Exhibit [D] pp.5040-1) of the mortgage pertaining to the "Deed of Trust" (*Id.* pp.5288-5303) and "Promissory Note" (*Id.* pp.5330-5331) allegedly executed by Petitioner–was given notice of the issues pertaining to Petitioner and his estate's inability to discharge the alleged mortgage obligation due to the crimes being perpetrated upon them by public "officials" and private parties in conspiracy therewith, in a recorded phone call. During the call, Petitioner provided the address to his website, http://www.thespiritoflaw.com, where shellpoint could find and verify his claims.

Despite the foregoing notice, Prestige Default Services, LLC, ("Prestige") the purported "Trustee" of the Deed of Trust (*Id.* p.5222) initiated non-judicial foreclosure proceedings by filing a "Notice of Default" in the Office of the Clerk-Recorder for the County of Orange pursuant to Cal. Civil Code §2924 on July 7, 2022. Exhibit [D] p.5225-5230.

In response, Petitioner filed a Petition for Writ of *Habeas Corpus* and Application for Emergency *Ex parte* hearing. Proc. Hist. Exhibits [A46 and A47]. Amongst numerous claims, the Petition and Application challenged Prestige's standing on the grounds that: (1) because the State of California had deprived Petitioner of due process and was actively engaged in depriving him of his liberty, the judicial power of California could not be used to further take his money or property

[166] Exhibit [D] pp.5218-19.

until he was afforded due process on the previous claims that were the proximate cause of "damages" in the alleged claim by Prestige[167]; (2) because all of the purported transactions occurred in interstate commerce, the State of California was entirely without subject matter jurisdiction over the case; and, (3) Petitioner could not be subjected to non-judicial foreclosure proceedings in violation of Article 1, §10 because he never made a knowing, voluntary, or intelligent waiver of rights.

Prestige failed to oppose Petitioners direct jurisdictional challenges entirely.

Shellpoint, Citibank N.A., and Prestige have also all refused to substantively respond to Petitioner's repeated requests under the Fair Debt Collection Practices Act and the Freedom of Information Act for information and documentation pertaining to the alleged "loan" and mortgage at issue in the foreclosure proceedings. Exhibit [D] pp.5334-5339, 5503.

Petitioner is not in possession of any authenticated evidence: (1) that Citibank N.A. or any other bank "loaned" him anything; or (2) that Citibank N.A. has standing to foreclose on the "Deed of Trust" given the facts that (a) the alleged security Prestige relies upon is not the "Deed of Trust" executed by Petitioner, but an entirely different security instrument listed on the U.S. Stock Exchange[168], that not only does not secure the "Promissory Note" but is also not secured by the real property located at 818 Spirit Costa Mesa, California; (b) the "Promissory Note" has become separated from the "Deed of Trust", by repeated transfers that were all made without the "Note"

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[167] Pursuant to the obligations of the "Promissory Note", Petitioner and/or his estate have a duty "to keep of the promises made in [the] Note, including the promise to pay the full amount owed." Exhibit [D] p.5331.

[168] https://sec.report/Document/0000891092-18-003130/

(Exhibit [D] p.5218-19, 5287) that by Law cannot be rejoined. See e.g. *Carpenter v. Longan*,[169] declaring that "[a]n assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity" and Restatement (Third) of Property (Mortgages) §5.4 (1997) March 2019 Update:

> "[I]t is nearly always sensible to keep the mortgage and the right of enforcement of the obligation it secures in the hands of the same person. This is so because separating the obligation from the mortgage results in a practical loss of efficacy of the mortgage [...]. When the right of enforcement of the note and the mortgage are split, the note becomes, as a practical matter, unsecured."

The "Deed of Trust" that purports to be secured by the real property located at 818 Spirit Costa Mesa, California is not listed on the U.S. Stock Exchange.Whomever the beneficiaries of the New Residential Mortgage Loan Trust 2018-2 are, they do not have a known beneficial interest in the "Deed of Trust" secured by the real property located at 818 Spirit Costa Mesa, California. What they apparently have is a limited partnership interest in a completely separate security instrument on the U.S. Stock Exchange. The "Deed of Trust" is also not a security for the security listed on the U.S. Stock Exchange.

In the same way that a stockholder *only* possesses a property interest in the shares held, the owner(s) of the security held by New Residential Mortgage Loan Trust 2018-2 *only* possess an interest in the instrument it holds, which is not the "Deed of Trust" Prestige has sought to foreclose on.

There is also no known authority under California or Federal statute by which a mortgage created under California statute can be converted into and governed by

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[169] *Carpenter v. Longan*, 83 U.S. 271, 274 (1872).

Federal statute and traded on the U.S. Stock Exchange. Any conversion of the "Deed of Trust" into different security instrument or foreign venue renders the original a nullity.

Despite the foregoing, Patricia Sanchez, "Trustee Sale Officer" for Prestige filed a "Notice of Trustee Sale" in the Office of the Clerk-Recorder for the County of Orange on October 31, 2022. Exhibit [D] pp.5508-5510. The sale date is scheduled for December 12, 2022.

Petitioner has no apparent remedy in any other Court of California or the United States. Even filing bankruptcy will not afford him any protection as the United States Bankruptcy Court for the Ninth Circuit has repeatedly been involved in the fraud surrounding §7031 actions and is not empowered to adjudicate his Article III claims. And the District "Court" has already dismissed his claims with prejudice on the grounds it lacked subject matter jurisdiction to adjudicate them.

See also Appendix [S]– Questions Presented: 40.

9. The Constitutions of California and the United States Mandate a Judicial Determination of Rights and Redress of Grievance in the *First Instance*, Not a Multi-year Expedition to Find An Official Willing to Abide Their Sworn Duties. Petitioner Cannot be Subjected to Involuntary Servitude to Continue to Seek Relief From "Government" Agencies and "Officials" Who Have *Repeatedly* Demonstrated Their Engagement in Crimes and Acts of Treason

10. The Entity Purporting To Be The Lawful De Jure State: California Is Not California and Has Never Been Admitted To The Union of States Known As The United States of America In Violation of Article IV, §3 and §4

Based on all of the issues presented, Petitioner contends: (1) there is no judicial Constitutional Court of California and no apparent judicial officer willing to abide

their sworn duties pertaining to at least the issues presented in this case; (2) no Lawful representative quorum in the "Legislature"; (3) no apparent Executive official willing to abide their sworn duties pertaining to at least the issues presented in this case (from the "Governor", Gavin Newsom, to any other "official" in State or local law enforcement); (4) that the Republican form of government of California admitted as a State under English/American common Law has been overthrown or replaced by a municipal form of government under Roman civil law[170] without the consent of the People, a Lawful representative quorum in the Cal. "Legislature" and "Congress" and is currently operating without the required system of checks and balances outside of the California and U.S. Constitutions; (5) that the Republican form of government of California in the "City of Costa Mesa" where Petitioner is domiciled has been overthrown or replaced by a municipal "council-manager form of government"[171] based on Roman civil law that operates outside of the California and U.S. Constitutions; (6) that none of the sovereign People of California appear to occupy any office of California "government" or Congress, having been denied access (Appendix [S] Questions:29-31); (7) that only another foreign body politic known as a "citizen of the United States" or "United States citizen" that has no recognized

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[170] CIVIL LAW. The "Roman Law" and the "Civil law" are convertible phrases, meaning the same system of jurisprudence; it is not frequently denominated the "Roman Civil Law."

. . . 1. The system of jurisprudence held and administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors . . . as distinguished from the common law of England and the canon law.

2. That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself ; more properly called "municipal" law, to distinguish it from the "law of nature" and from international law. Henry Campbell Black, A Dictionary of Law (St. Paul, Minn.: West Publishing Co., 1891), 207.

[171] Charter of the City of Costa Mesa:
https://www.costamesaca.gov/home/showpublisheddocument/6014/636490563866670000

sovereign inalienable rights appears to occupy all offices of "California" and United States "government" (Appendix [S] Questions:29-31 and e.g. U.SA. The Republic Is The House That No One Lives In); (7) that the entity pretending to be the Lawful de jure State: California, has, without any Lawful authority, either been overthrown or unadmitted from the union of States known as the United States of America; (8) that these issues result in a violation of all six Articles of the U.S. Constitution; and, (9) that Petitioner has been denied all applicable protections of the California and United States Constitutions.

III. CONCLUSION

Ernst Huber, a leading Nazi theorist, in a definitive presentation of the Nazi political-legal position wrote:

> "The authority of the Fuhrer is complete and all-embracing; it unites in itself all the means of political direction; it extends into all fields of national life; it embraces the entire people, which is bound to the Fuhrer in loyalty and obedience. The authority of the Fuhrer is not limited by checks and controls, by special autonomous bodies or individual rights, but is free and independent, all-inclusive and unlimited."[172]

On what happens to personal liberty in the "total state", Huber stated:

> "Not until the nationalistic political philosophy had become dominant could the liberalistic idea of basic rights be really overcome. The concepts of personal liberties of the individual as opposed to the authority of the state had to disappear; it is not to be reconciled with the principle of the nationalistic Reich. There are no personal liberties of the individual which fall outside the realm of the state and which must be respected by the state ... There can no longer be any question of a private sphere, free of state influence, which is sacred or untouchable before the political unity. The constitution of the nationalistic Reich is therefore

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[172] National Socialism: Basic Principles, Their Application by the Nazi Party's Foreign Organization, and the Use of Germans Abroad for Nazi Aims" U.S. Department of State, U.S. Govt. Printing Office (1943) as cited in the Objectivist Newsletter February 1969, p.37, 50

> not based upon a system of inborn and inalienable rights of the individual... *Id.* p.50.

In such regimes "there is no longer any distinction between private matters and public matters"; there are no private matters. "The only person who is still a private individual in Germany," declared Robert Ley, a member of the Nazi hierarchy, ... "is somebody who is asleep."[173]

IV. RELIEF

Pursuant to Article III of the Constitution this Court has a mandatory, non-discretionary ministerial duty to exercise jurisdiction over this case. "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution."[174]

You will please grant this Application for the Emergency Stay of: (1) the "foreclosure proceedings" of the "Deed of Trust" secured by the real property located at 818 Spirit Costa Mesa, California; and (2) enforcement of the "Judgement" in Superior "Court" of California-County of Orange case #30-2022-01271693; pending this Court's Lawful adjudication of all of the issues presented in Petitioner's Petition for Original Writs of *Quo Warranto, Mandamus, and Habeas Corpus* to be sent to the Court within forty days of the date of the Stay Order. Petitioner should also be allowed to present his Petition in 8.5 x11 format without any page restrictions with all applicable fees waived.

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[173] The Fascist New Frontier, The Ayn Rand Column, 98.

[174] *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

This Court will please also exercise its inherent Equity powers or those of supplemental jurisdiction to grant Petitioner emergency restitution so that he will be able to fully meet his needs and obligations; be fairly compensated for a preliminary portion of his time and all expenses having been forced into involuntary servitude to perform this multiyear forensic investigation.

Petitioner has spent an average of eight hours per day, five days per week, for 291 weeks (the week of April 3, 2017 through November 4, 2022) conducting this investigation. The rate he should reasonably be paid is the same rate for legal services provided by a lawyer, such as Mr. Bissell (the Humphreys counsel), whose customary rate is $300 per hour (Exhibit [A3] p.123). At this rate, the compensation due Petitioner is about $3,540,000.

Petitioner has also incurred a *preliminary* estimate of $350,000 in expenses that include "Court" and attorney's fees; office expenses (paper, toner, postage, envelopes, printers, scanner, filing cabinets, 3-ringed binders, computer, software, paper cutter, website and domain hosting, cloud storage, part time assistant, etc...); research (law and history books, repeated consultations with expert legal historians); and medical (regular psychotherapy, acupuncture, and other specialist visits and professional consultations to help cope and treat extreme levels of stress resulting from the intentional infliction of emotional distress by "officials").

Pending further adjudication, which will incur additional time and expenses, Petitioner feels it is fair and reasonable that he be immediately compensated ten percent of the balance for his time (approx. $354,000) and all expenses (to be accounted for in a Motion sent within five calendar days upon granting the Stay). The

Court will equitably apportion the amount due between Respondents Karen and Gary Humphreys, William Bissell, the Law Offices of William Bissell, David Chaffee, Kathleen O'Leary, Richard Aronson, and Thomas Goethals. All payments are to be made in Lawful money and are not in any way to way be considered as settlement or waiver of any of Petitioner's claims at Law or in Equity against these People or any others. The amounts paid will however be deducted from any additional claims upon which they are found to be liable.

DECLARATION

I, Adam Bereki, declare under penalty of perjury of the laws of California and the United States of America that: (1) the foregoing statements of fact are true and correct to the best of my knowledge and belief; and, (2) that all Exhibits and Appendix documents referenced herein and/or found on http://www.thespiritoflaw.com are true and correct copies with the exception of any non-substantive notes, numbering, redactions, or other marks I may have made thereon.

Signed on the 5th day of November, 2022 in Orange County, California.

Adam Bereki