

DOCKET NO: 23-6111

IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

ALICIA M. RICHARDS & LAWRENCE REMSEN,

Plaintiffs, et al.

- Against -

KATHLEEN ALLISON, Secretary, California
Department of Corrections & Rehabilita-
tion; JENNIFER SHAFFER, Exec. Officer of
the State's Parole Agency; ROB BONTA, as
State Attorney General; GAVIN C. NEWSOM,
Governor of California

Defendants, et al.

ON PETITION FOR REHEARING UPON WAIVER OF
STATES OPPOSITION TO RESPOND.

PETITION FOR REHEARING ON CERTIORARI

ALICIA M. RICHARDS & LAWRENCE REMSEN
CIM Alpha - Seven
P.O. Box - 3100
Chino, CA 91708

BRIEFLY AND DISTINCTLY STATED SUBSTANTIAL
GROUNDS NOT PREVIOUSLY PRESENTED

- 1 1. Defendants illegal and excessive incarceration of Plaintiff violates
2 the Due Process rights to consortium with Plaintiff's parents and
family members (See Appendix # 2 at benefits of SB-42 at Para. #12.)
- 3 2. Certiorari was denied two days prior to this Courts receipt of
4 Defendants Waiver of Opposition to the claims advanced in the Petition
(See: 23-6111).
- 5 3. Plaintiff's suffered the loss of their sentence reducing Good-Time
6 credits without Notice and without a Hearing in violation of USSC
authority, which was ignored by the lower court.
- 7 4. The states Parole Agency is a non-constitutional ministerial state-
8 wide Board/Agency which continues to usurp, execute and wrongly abuse
Judicial and Legislative powers.

9 LOWER COURTS HAVE REPUDIATED AND IGNORED USSC CONTROLLING
10 AUTHORITIES NOT PREVIOUSLY PRESENTED IN CONTEXT

- 11 1. Alleyne v. United States, 570 U.S. 99, 103 [133 S.Ct. 2151] (2013) Re:
12 Any fact advanced that keeps a person beyond the "MINIMUM TERM" must
be found true in a court of law; and,
- 13 2. Arbaugh v. Y H Corp., 530 U.S. 500, 502-506 [126 S.Ct. 1235] (2006)
14 Re: jurisdiction over the cause may be brought up at anytime and in
this case, the State court lacked jurisdiction to sentence people
under a repealed laws sentencing structure as pled throughout these
proceedings; and,
- 15 3. Ylst v. Nunnemaker, 501 U.S. 797, 801-801 [111 S.Ct. 2590] (1991) Re:
16 Ninth Circit held and USSC confirmed that because the California
Supreme Court did not 'clearly and expressly' state a decision on
17 underlying merits of claims, We granted certiorari (citation); Cf.
Cal. Const. Art. VI § 13 & 14; and,
- 18 4. Zinerman v. Burch, 494 U.S. 113, 127 [110 S.Ct. 975] (1990) Re: right
19 to a hearing before being deprived of a vested right; and,
- 20 5. Wolff v. McDonnell, 418 U.S. 539, 555-557 [94 S.Ct. 2263] (1974) Re:
21 right to a hearing before the taking of earned credits and the right
of damages for the wrongful taking of earned credits without due
22 process and in violation of equal protection of the law; and,
- 23 6. Twin City Pipe Line v. Harding Glass Co., 283 U.S. 353, 357-58 [51
24 S.Ct. 476] (1931) Re: The Legislatively declared Determinate
Sentencing Public Policy of Good-Time Credits for early parole and
that all prisoners with like sentences must be equally enforced as
25 mandated by the Legislative Declaration in Penal Code § 1170(a)(1) and
that Legislative Declaration contract must be followed

Docket # 23-6111
BRAND-NEW QUESTIONS PRESENTED SUPPORTING INTERVENING CIRCUMSTANCES
AND CONTROLLING EFFECT ON REHEARING EN BANC TO THE
UNITED STATES SUPREME COURT (USSC)

1. Is it a Federal Due Process Violation as well as an Intervening circumstance for the USSC to deny Certiorari even after the State Waived Opposition? Without this Court's intervention, U.S. Citizens will continue to be wrongly incarcerated and more will die in prison from blatant and illegal over incarceration and when the State and Federal Taxpayers should not be spending money on over incarceration when those same funds could be used to better address rampant homelessness in California; and,
2. Does Nunnemaker Infra. provide controlling effect to Plaintiff's claim "Specifically, the Ninth Circuit held that because the California Supreme Court did not 'clearly and expressly state it's reliance on Nunnemaker's procedural default' [in this docketed case the lower courts default was failure to address the merits] the federal court could not say that the Supreme Court's order 'was based on a procedural default rather than on the underlying merits of Nennemakers's claims' (Citation). We granted certiorari (citation) Y1st Nunnemaker, 501 U.S. 797, 801-803 [111 S.Ct. 2590] (1991); Cf. Cal. Const. Art. VI § 13 & 14.
3. Is it a Controlling Intervening Circumstance as well as Federal Fourth & Fourteenth Amendment violation when a government official continues to hold a person after the original legal justification and the purpose and policy for the persons incarceration ceases to exist? (See: Aradon v. Snohomish Cnty., 2023 U.S. Dist. LEXIS 50817 at *40 [2023 WL 2958313] (2023); and,
4. Is it a Controlling Intervening Circumstance as well as a Fourteenth Amendment Substantive Due Process violation of a parent's right to consortium and to know when they are coming home including to have their son's and daughter's well established liberty interest protected before their rights are violated? (See: Aradon, Infra, at *4); and,
5. Is it a Controlling Effect Circumstance when a person is imprisoned beyond his contractually earned release date, based on facts not tried or found true by a jury, such as is the case here; rise to the level of Due Process and Equal Protection of the law violations because they are entitled to a hearing before they are deprived of the most fundamental protected interest (See: Zinermon v. Burch, 494 U.S. 113, 127 [110 S.Ct. 975] (1990) Cf. Wolff v. McDonnell, 418 U.S. 538, 553-57 [94 S.Ct. 2063] (1974); Cf. Alleyne v. United States, Supra, at Pg.103 and,
6. Does the Controlling Effect Circumstance warrant review when a Denial of Cert. decision was made by the Court even though the Court was not in possession of the Defendants explicit Waiver of opposition to respond to the Petition by Governor Gavin Newsom; Chief Executive of the Parole Board, Jennifer Shaffer; Chief Executive of the California Department of Corrections and Rehabilitation, Kathleen Allison and the State Attorney General, Rob Bonta?

PETITION FOR REHEARING ON GROUNDS NOT PREVIOUSLY PRESENTED

1. Please take notice that this Petition for rehearing on the merits is timely filed pursuant to USSC Rule 44 and the USSC Prison Mail Box rule. Petitioners herein advance the following facts and authority showing grounds not previously presented in the Petition.

CERTIORARI MUST BE GRANTED TO PREVENT ONGOING IRREPARABLE
HARM TO INMATE FAMILIES AND STATE & FEDERAL TAXPAYERS

2. The merits of this Petition are irrefutable simply because every state court has refused to address the credibility and refused to follow California Supreme Court precedent and that of the United States Supreme Court which allowed the continuation of a "Mass Jurisdictional Sentencing Defect" that has resulted in a "Structural Sentencing Error". For Example, Because all State Courts have refused to rule on its own repealed laws, this continues to cost Taxpayers Billions of dollars and U.S. Citizens continue to be illegally sentenced under a repealed sentencing law; whereby the same branch of government charged with the person's prosecution is also deciding punishment for crime in violation of the State Constitution and the Fourteenth Amendment to the United States Consitution (See: Cal. Const. Art. I § 26 & Art. III § 3.)

3. In addition to the harm caused by an unconstitutional Initiative where the drafter adopted a sentencing structure from a repealed law in violation of Cal. Const. Art. IV § 9, Cf. Cal. Gov. Code § 9609; accord, Prop.7's drafter adopted a repealed laws sentencing structure without reenacting the repealed law; as specifically and more thoroughly documented in the Petition for Cert., (denied on 01/08/24, prior to USSC reciept of States Waiver of opposition See: Appendix # 1). Now, family members of the over 30,000 plus State Prisoners suffer and some have

1 passed-away due to the fact that they are denied the legislatively
2 declared right codified in the Enrolled Bill Report (See: Appendix # 2)
3 and signed into law by the Governor so that prisoner families know at the
4 time of sentencing when their loved one is coming home. For example,
5 Petitioner's previous Cert. claims were submitted by the Taxpayers and the
6 prisoners but no one considered that when a incarcerated family member is
7 not at home to assist an elderly parent the added stress leads to early
8 death and disablement of that U.S. Citizen parent. Additionally, this
9 wrongly lost companionship is sinfully caused by the State actors who have
10 known of the excessive and illegal incarceration of the parents son or
11 daughter. This ongoing and blatant governmental misconduct is a strong
12 Due Process and Equal Protection violation for multiple reasons and the
13 Fourth Amendment is also equally violated:

14 "An unconstitutional "prolonged seizure" under the Fourth
15 Amendment occurs when a government official continues to hold a
16 person after the original legal justification for the seizure
17 ceases to exist. (Brewster v. Beck, 859 F.3d 1194, 1196 (9th Cir.
18 2017). A Fourteenth Amendment procedural due process violation
19 occurs when a person is denied the opportunity to be heard "at a
20 meaningful time and in a meaningful manner" Armstrong v. Manzo,
21 380 U.S. 545, 552 [85 S.Ct. 1187]1965); Fuentes v. Shevin, 407
22 U.S. 67, 82 [92 S.Ct. 1983] (1972). (the procedural due process
23 guarantee protects against "arbitrary takings," or in the exercise
24 of power without any reasonable justification in the service of a
25 legitimate governmental objective). (See: Ardon v. Snohomish
26 Cnty., 2023 U.S. Dist. LEXIS 50817 at *40 [2023 WL 2958313]
27 (2023)).

28 4. Should the USSC fail to review this case, more people will be
illegally sentenced and some wrongfully incarcerated inmates will die,
while more family members suffer from pre-mature death and loss of
companionship; and all the while Taxpayers from the most highly taxed
state in the nation will continue to be irreparably harmed by more
billions of excessive taxation from the costs of imprisoning more of the
voiceless class members under a "repealed" body of laws that has never

1 been lawfully reenacted. Petitioner's posit that the reason these illegal
2 acts have been allowed to continue is for the subversive benefit and
3 enrichment of those that have tried to recreate the mass incarceration
4 class from the repealed and never reenacted Indeterminate Sentencing Law
5 (ISL).

6 DEFENDANT/RESPONDENTS BLATANTLY VIOLATED PETITIONERS DUE PROCESS AND
7 EQUAL PROTECTION FOURTEENTH AMENDMENT RIGHTS BY CONFISCATING CONTRACT
8 CLAUSE RIGHTS AND LIBERTY INTEREST ENTITLEMENTS WIIHOUT A HEARING

9 5. Petitioners, did not address the taking of credits without a
10 hearing in their original Petition, but only advanced P.C. § 2931 credits
11 as a form of sentencing reduction provided by legislative policy under the
12 DSL. Furthermore, it has been this country's and this Courts Watershed
13 common law authority for over 100 years that an individual cannot have
14 rights or property taken without a meaningful hearing before the
15 deprivation of the rights or property takes place:

16 "For more than a century the central meaning of procedural due
17 process has been clear 'parties whose rights are to be affected
18 are entitled to be heard; and in order that they may enjoy equally
19 fundamental that the right to notice and an opportunity to be
20 heard 'must be granted at a meaningful time and in a meaningful
21 manner'" See: Zinermmon v. Burch, 494 U.S. 113, 127 [110 S.Ct. 975]
22 (1990); accord (See: Fuentes v. Sheven, 407 U.S. 67, 80 [92 S.Ct.
23 1983] (1972)).

24 6. Please take Notice that this case shows that no hearing,
25 meaningful or otherwise, was offered prior to Petitioner's Penal Code §
26 2931 Good Time and Participation credits being taken to reduce their
27 sentence in violation of multiple USSC authorities (See: Wolff v.
28 McDonnell, 418 U.S. 538 553-557 [94 S.Ct. 2063] (1974).) Failure to grant
Certiorari would essentially fail to enforce over a century of procedural
due process controlling authority, specifically on point. This is
especially true when state actors ignore and/or take retroactively earned

1 credits without a required hearing in violation of the Public Policy for
2 the DSL which specifically provided for Good-Time credits to reduce ones
3 sentence.

4 "The principle that contracts in contravention of public policy
5 are not enforceable should be applied with caution and only in
6 cases plainly within the reasons on which the doctrine rests,
7 'particularly where the party attacking the contract 'has had the
8 benefit of performance by the other party' and now seeks to avoid
9 his own promise.' (Citation) ('the promisor may not avoid
preforming a perfectly legal promise because he has also made a
separate, illegal undertaking') (Citation) ('It is only in clear
cases that contracts will be held void [for illegality]. (See:
Smith v. Seaport Marine Inc., 981 F.Supp.2d 1188, 1207 [2013 U.S.
Dist. LEXIS 157358] (2013)).

10 7. Please take notice that this Courts and California state authority
11 confirms that once a Legislative Policy is established (Pen. Code § 2931
12 Credits Cf. P.C. § 1170(a)(1) & Prop.7's Title) that policy is not subject
13 to modification via referendum or initiative, which the Executive and
14 Judicial branches continue to ignore:

15 "The agency's acts thereafter fall within the executive or
16 administrative functions' And case authority makes it 'clear that
17 once the legislative policy is established ... the administrative
18 act following therefrom are not subject to referendum' (Citations)
(See: PR/JSM Rivara LLC v. Community Redevelopment Agency, 180
Cal.App.4th 1475, 1482 [104 Cal.Rptr.3d 52] (2009)).

19 8. It is a sad day in lower class and minority America when Senator
20 Briggs and other culpable legislators from both parties seek to enrich
21 themselves receiving thousands of dollar's by way of campaign financing by
22 using subterfuge and misdirection. This unlawful enrichment continues to
23 this day by discarding the Rule of Law and disregarding the State and
24 Federal Constitutions; which has had the unlawful effect of denying equal
25 protection of the law and erasing contractually earned Penal Code § 2931
26 credits and imposing uncertain punishments for many, mostly black, brown
and illiterate inmates, all without a hearing on the taking:

1 "In other words, in the majority's view, the Legislature's own
2 actions have by indirection caused this initiative statute to be
erased from the books, to say the least, I find such a constitu-
tional approach troubling." (See: In re Marriage cases, 43 Cal.4th
757, 869 [183 P.3d 384] (2008)).

3 9. The substantive Federal Constitutional violations are also massive
4 and blatant. For example, Justice is only possible when one actually
5 refrains from wrongful procedural barring of a meritorious complaint which
6 validates the irrefutable facts and actually reviews and analyzes the
7 weight from both a state and federal law perspective. Like the state law
8 cited ante, federal authority also prevented Senator Briggs and his
9 cronies from manipulating the referendum process which he his temporality
10 achieved through the "Void on its Face" Prop.7 Initiative:

11 "Applying this [federal] test, the Court usually has held that the
12 Constitution requires some kind of a hearing before he [or she] is
deprived of any significant protected interest", hearing required
before termination". (See: Zinermon v. Burch, 494 U.S. 113, 127
13 [110 S.Ct. 975] (1990) (Emphasis added)).

14 10. Please take Notice that because a hearing was never provided
15 before § 2931 credits were unlawfully confiscated, or the final imposition
16 of the punishment imposed by a court of law pursuant to Penal Code § 12 &
17 13, Respondents may attempt to wrongly argue that those granted Contract
18 Clause/Liberty Interest rights were taken away as passed by the voters
19 after Prop. 7 was promulgated. This conduct is illegal and void. Under
20 either state or federal law one cannot modify their own contract Clause or
21 Liberty Interest entitlement to take away benefits already provided to the
22 individual:

23 "Under the California constitution, a law impairing the obligation
24 of contracts may not be passed (See: Cal. Const. art.1, § 9.)
Similarly, under the federal constitution, No state shall ... pass
25 any ... law impairing the obligation of contracts.. U.S. Const.
art 1, § 10, cl. 1.)" (Citations). The contract clause limits the
26 power of public entities to, by enacting a law, unilaterally
modify their own contracts with other parties." (See: Fry v. City
27 of Los Angeles, 245 Cal.App.4th 539, 549 [199 Cal.Rptr.3d 694]
(2016)).

1 11. Please take notice that this case squarely presents the question
2 of how the Due Process and Equal Protection violations affects inmates
3 denied a pre-deprivation hearing on mandatory § 2931 contractually earned
4 Liberty Interest credits to shorten final imposition of their prison
5 sentence; or how the denial negatively effects vested rights of the
6 elderly parent who was given by statute documented in the Enrolled Bill
7 Report (See: Appendix # 2) the right to know when their son or daughter
8 would be returned to them for the right of companionship and consortium
9 with family; both sets of facts implicate major Equal Protection
10 constitutional violations:

11 "The Equal Protection Clause of that amendment does, however, deny
12 to state the power to legislate that different treatment be
13 accorded to persons placed by a statute into different classes on
14 the basis of criteria wholly unrelated to the objective of that
15 statute. A classification must be reasonable, not arbitrary, and
16 must rest upon some ground of difference having a fair and
17 substantial relation to the object of the legislation, so that all
18 persons similarly circumstanced shall be treated alike" (Citation)
19 (See: Eisenstadt v. Baird, 405 U.S. 438, 447 [92 S.Ct. 1029]
20 (1972)).

21 12. The massive volume of unequal treatment between prisoners of
22 equal classification of their criminal misconduct is blatantly shown in
23 this petition for rehearing by comparing People v. Shoenfeld, 111
24 Cal.App.3d 671, 683 [168 Cal.Rptr. 672 (1980)] to the Case of Petitioner
25 Remsen with one life sentence who had remained disciplinary free and has
26 not been paroled after over 40 years in Prison, and James Shoenfeld who
27 had 29 Life sentences and was paroled after 27 years (1.2 years per life
28 sentence); this result should be impossible in light of the fact that the
States Parole Agency had the term fixing powers expressly repealed for
abuse (See: Repealed Statutes, P.C. §§§ 671, 3020-3025 ect.)

13. Petitioners ask this Court to consider the fact that within its

own precedent it states "jurisdiction can be challenged at any time" as in this request for rehearing when the State Parole Agency had it's jurisdiction repealed allowing any of Remsen's five family members to attack the lack of jurisdiction used to sentence Remsen under a repealed sentencing law and deny them their vested right to know at the time of sentencing, the same as all other family members within the class for which the sentencing law was created, the right to know when their family member was coming home (See: Cal. Pen. Code § 1170(a)(1), Stats 1977 Ch.165 § 15 Legislative Declaration; Cf. Twin City Pipe Co. v. Harding Glass Co., 283 U.S. 353, 357 [515 S.Ct. 476] (1931); accord Thome v. Macken, 58 Cal.App.2d 76, 81 [135 P.2d 116] (1943) Cf. Arbuthnot v. Y H Copr., 546 U.S. 500, 506-507 [126 S.Ct. 1235] (2006) (Re: Jury Trial is proper trier of contested facts when jurisdiction is challenged).

CONCLUSIONS

14. Please take notice that if what was declared as the Legislative Policy in Pen. Code § 1170(a)(1) is true, then Prop. 7 could not be used to defeat that policy and no matter what the circumstances, because once that policy is made, all other statutes must conform and if the Legislature does not follow its own policy and/or the courts do not impose the final punishment to be served at the time of sentencing, a fundamental constitutional structural error has occurred (See: Twin City Pipe Line Co. v. Harding Glass Co., Supra. at Pg. 357 and Thome v. Macken, Supra, at Pg. 81 Re: Declaration of Purpose & Policy).

15. Based on the critical issues we raised in our prior Petition for Cert. and those contained therein we posit that a "Structural Defect" has been committed and that ALL the State Court Judgments imposing "Term to Life" sentences after repeal of the ISL Effective July 1, 1977, are

1 "void ab inito" for uncertainty in the term and the conflict with Cal.
2 Const. Art. III § 3 and Pen. Code § 1170(a)(1)'s Legislative Declaration.
3 This is so because the courts lack of jurisdiction to impose uncertain
4 punishments that cannot exist under California Law without its "Ways,
5 Means, Purpose & Policy"; so that all offenders whose crime was committed
6 on or after July 1, 1977, serve the same punishment as fixed by the
7 Legislature and imposed to a certainty by a court of law (See: Pen. Code
8 §§§ 1170(a)(1), 2931, & 3000, Stats 1977 Ch.165 §§§ 15, 38, & 42; Cf. AB-
9 476 at Pg.17, lines 21 thru 36 & Pen. Code §§ 12 & 13).

10 16. Please take notice that notwithstanding all of Plaintiffs'
11 substantive Law Claims, proving that due to a fraud and conspiracy to
12 receive kick-back money from Special Interest Groups in violation of §
13 501(c)(3) of the Federal Income Tax Code for personal enrichment, has gone
14 to support a "Mass Incarceration Policy". In short, unless this Honorable
15 Court intervenes, thousands of United States Citizens will continue to be
16 sentenced to uncertain punishments by the States Judicial Branch in
17 violation of Pen. Code §§§ 1170(a)(1), 2931 3000 Cf. Stats 1977 Ch.165 §§§
18 15, 38, & 42; Cf. Pen. Code §§ 12 & 13, after the States' Parole Agency
19 had its jurisdiction and authority to decide uncertain punishments for
20 crime "repealed" creating a "Structural Defect" by the failure to follow
21 the "Rule of Law" and this Honorable Courts precedent (See: Appendix # 3,
22 letter to Senate Whip Nancy Skinner). This is so simply because under both
23 State and Federal Law, the Fourteenth Amendment to the United States
24 Constitution is violated every time a person is sentenced to serve
25 uncertain punishment or greater burdens for the same crime left to be
26 decided by a ministerial agency which had its jurisdiction removed for

1 misconduct. Furthermore, it is highly illegal that the same branch of
2 government charged with one's prosecution is now also extending the term
3 of confinement beyond the minimum with out any facts being found true by a
4 jury (See: Cotting v. Kansas City Stock Yards Co. v. State of Kansas, 183
5 U.S. 79, 106 [22 S.Ct. 30] (1901); Cf. Alleyne v. United States, 570 U.S.
6 99, 103 [133 S.Ct. 2151] (2013).

7 17. Please take notice that Petitioner's posit that case comes to
8 this court on Cert., to resolve important issues of fact and law that were
9 never decided on their merits when one State Appellate Court refused to
10 enforce this Court's precedent which raises the question that if this
11 Court won't enforce its own decisions who will and will justice continue
12 to be denied in this country against the State Taxpayers, Inmate Family
13 Members, and all those who have been unlawfully sentenced and imprisoned
14 under a repealed law.

15
16 Date: 03/12/24

Respectfully Submitted



Lawrence Remsen
Petitioner in Pro Se'

17
18 Date: 03/12/24

/s/

Alicia Richards
Petitioner in Pro Se'