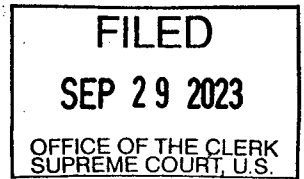


23 - 6717



IN THE
SUPREME COURT OF THE UNITED STATES

Steve Van Horne,

Petitioner,

v.

Judge Robert Jones, *also known as* Bob Jones; Tyler
Cagel, *Assistant District Attorney*, Justice of the Peace
Precinct 2,

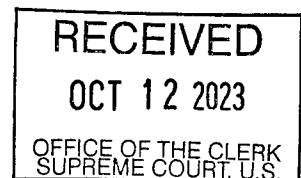
Respondents.

Case Numbers: No. 23-10593 US Court of Appeals of the 5th Circuit
No. 1:23-cv-00017-H-BU The United States District Court For The Northern District Of Texas,
Abilene Division

THE UNITED STATES COURT OF APPEALS OF THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Steve Van Horne
3242 Beltway South
Abilene, Texas 79606
Phone #: 325.692.2481
Ahfl3242@aol.com
APPEARING PRO PER



A. QUESTIONS PRESENTED FOR REVIEW

1. Do the circumstances surrounding Petitioner, Steve Van Horne's filing of a late appeal from the United States District Court of the Northern District to the United States Court of Appeals fifth qualifies as a Surprise, Excusable Neglect and other Compelling Circumstances that justify an exception. Fed. R. Civ. P. Rule 6(b)(1)(B), 60(b)(1),(c)

2. Was the Petitioner, Steve Van Horne denied due process of law by the Courts wherein the Courts ignored the fact that his pleadings must be read and construed liberally. See Haines v. Kerner, 404 US at 520 (1980); Birl v. Estelle, 660 F.2d 592 (1981), and that the court has a responsibility and official duty to protect any and all of Plaintiff's constitutional rights. See United States v. Lee, 106 US 196, 220 [1882] and that the court's interest is to rule on the merits of the case whenever possible and not technicalities which frustrates justice?

3. Did the district court abuse its discretion by entering two time sensitive court orders (one dismissing the case), during the time period that the Petitioner had previously notified the court that he would not be available to correspond with the court, due to the fact that he was away on religious matters?

4. Should the Petitioner's Appeal be reinstated or alternately, should the case be reinstated in the district court due to the fact that the Petitioner' untimely was due to excusable neglect forced upon him by the actions of the district court?

B. LIST OF PARTIES

The parties involved in this case are:

Judge Robert Jones, *also known as* Bob Jones;
Tyler Cagel, *Assistant District Attorney*,
Justice of the Peace Precinct 2
The United States District Court For The Northern District Of Texas, Abilene
Division The United States Court of Appeals of the Fifth Circuit

All parties appear in the caption of the case on the cover page.

C. TABLE OF CONTENTS & CITED AUTHORITIES

1. TABLE OF CONTENTS

A. QUESTIONS PRESENTED FOR REVIEW.....	Page 2
B. LIST OF PARTIES.....	Page 3
C. TABLE OF CONTENTS & CITED AUTHORITIES.....	Page 4
1. Table of Contents.....	Page 4
2. Cited Authorities.....	Page 7
D. CITATION TO OPINION BELOW.....	Page 9
E. BASIS FOR JURISDICTION.....	Page 9
F. CONSTITUTIONAL PROVISIONS AND LEGAL PRINCIPLES INVOLVED.....	Page 10
G. STATEMENT OF THE CASE.....	Page 10
FIRST VIOLATION OF DUE PROCESS.....	Page 22
SECOND VIOLATION OF DUE PROCESS QUESTIONS PRESENTED FOR REVIEW # 1, 3, & 4.....	Page 24
THIRD VIOLATION OF DUE PROCESS QUESTIONS PRESENTED FOR REVIEW # 2 & 4.....	Page 24
H. REASONS FOR GRANTING THE WRIT.....	Page 27
I. CONCLUSION.....	Page 29

INDEX TO APPENDICES

APPENDIX: A

Court of Appeals dismissed Petitioner's appeal on July 14, 2023.
Cause No. 23-10593

APPENDIX: B

United States District Judge dismissed the action without prejudice to Petitioner refiling and paying the filing fee of \$402.00 On May 1, 2023.
Cause No. 1:23-cv-00017-H-BU

APPENDIX: C

Motion for reconsidering was thereafter denied, by Court of Appeals on August 14, 2023

APPENDIX: D

Copy of the citation from sheriff deputy to the justice court
Cause No. C20-14854712 & C20-14854812

APPENDIX: E

Brief to Justice Court expressing his religious beliefs

APPENDIX: F

Warrant issued by County Court of Law 2 for Petitioner's arrest
Cause No: 2-284-21 & 2-285-21

APPENDIX: G

Petitioner's arrest documents

APPENDIX: H

Pre prepared document Petitioner was forced to sign under duress pleading no contest

APPENDIX: I

Notice Petitioner never received, filed with the County Court Clerk on January 5, 2022, the day Petitioner was arrested

APPENDIX: J

Order Denying Petitioner's Application to Proceed in District Court Without Prepaying Fees or Costs and ordering the Petitioner to pay the filing fee of \$402.00 by April 06 2023. Page 4, last paragraph. Filed on March 07, 2023

APPENDIX: K

District courts order denying Petitioner's Motion to Ar
Judgment - delivered by USPO mail during the time period

notified the court that he would *not be available to reply to the court*. Filed on March 31, 2023

APPENDIX: L

The district court entered another order while the petitioner was unavailable to respond. Filed on April 11, 2023

APPENDIX: M

District Court's order filed on June 12, 2023 to file an amended motion with required information

APPENDIX: N

District Court acknowledges payment of filing fee would create a financial hardship for Petitioner and grants him to proceed IFP on appeal on July 7, 2023. Page 2, Paragraph 2.

APPENDIX: O

The Court of Appeals filed an answer that motion for extension of time should be taken up with the District Court filed on August 02, 2023.

APPENDIX: P

District Court stated in its filed answer that Petitioner *was required to file a notice of appeal challenging the dismissal of the lawsuit within 30 days of the entry of that order, OR BY JUNE 1. Filed August 03, 2023. Last Paragraph.*

APPENDIX: Q

The court stated that it had already issued its final ruling on August 07, 2023. Filed on September 12, 2023

APPENDIX: R

Additional Persecution, Oppression, Judicial Misconduct, Abuse of Discretion.

2. CITED AUTHORITIES

Birl v. Estelle, 660 F.2d 592 (1981)	Page 2
Brown v. Levee Com'rs, 50 Miss. 468.....	Page 25
Burdick v. People, 36 N.E. 948, 949, 149 Ill. 600 (1894).....	Page 25
Cargill, Inc. v. Sears Petroleum & Transp. Corp. 334 F. Supp. 2d 197, 247 (NDNY 2014)	Page 21
Dartmouth College v. Woodward, 4 Wheat. 518.....	Page 26
Davidson v. New Orleans.....	Page 25
Dupuy v. Tedora, 204 La. 560, 15 So.2d 886, 890 (1943).....	Page 25
Ekern v. McGovern, 154 Wis. 157, 142 N.W. 595, 620 (1913)	Page 25,26
Ervine's Appeal, 16 Penn. St. 256.....	Page 25
Ex Parte Rhodes, 79 So. 462 (Ala. 1918) page 70.....	Page 25
French v. Barber Asphalt, 181 U.S. 324, 330 (1900).	Page 25
Gizzo v. Gerstman, 245 Md.App. 168 (2020).....	Page 21
Haines v. Kerner, 404 US at 520 (1980)	Page 2
Hale v. Henkel, 201 U.S. 43, 74 (1905)	Page 25
Hoke v. Henderson, 4 Dev. 1.)	Page 25
Miller vs. U.S., 230 F. 486, 489.....	Page 27
Montgomery v. State 45 So. 879 55 Fla. 97.....	Page 10,26
Murray's Lessee v. Hoboken Imp. Co., 18 How. (59 U.S.) 272, 276 (1855)	Page 25
National Auto Corp. v. Barfod, 289 Pa. 307, 311.....	Page 25
Newgen, LLC. v. Safe Cig, LLC, 840 F.3d 606, 616 (9 th Cir. 2016).....	Page 20
Orton Crane & Shovel Co. v. Federal Reserve Bank of Chicago, 409 Ill. 285, 289.	Page 22
Pioneer Investment Services Co. v. Brunswick Associates, Ltd. Partnership, 507... ..	Page 20
Rabin v. Dep't of State, No. 95-4310,1997 U.S. Dist. LEXIS 15718.....	Page 10
Reetz v. Michigan, 188 U.S. 505, 508.....	Page 25
Rohn v. Harris, 130 Ill. 525.....	Page 25
Rodriguez v. Village Green Realty, LLC, 788 F.3d 31, 47 (2d. Cir. 2015)	Page 21
Rosenblum v. Rosenblum, 42 N.Y.S. 2d 626, 630, 181 Misc. 78.....	Page 23
Pettit v. Penn., La.App., 180 So.2d 66, 69.	Page 26
Santo v. Santo , 448 Md. 620, 625-26, 141 A.3d 74 (2016).....	Page 21
Senó v. Francke, 20 Ill. 2d 70, 74.....	Page 22
Sherar vs. Cullen, 481 F. 946.....	Page 27
Solesbee v. Balcom, 339 U.S. 9 (1950).....	Page 24
Stuart v. Palmer, 74 N.Y. 183.	Page 26
Taylor v. Porter, 4 Hill, 140.	Page 25
United States v. Lee, 106 US 196,220 [1882]	Page 2
Vaughn v. State, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883.	Page 24

b. Statutes

5 th Cir. R. 27	Page 20
Tex. R. Civ. P. Rule 103.3	Page 23
Tex. R. Civ. P. Rule 124.	Page 23
28 U.S. Code § 2101(c).	Page 9
Fed. R. Civ. P. Rule 6(b)(1)(B), 60(b)(1),(c).....	Page 9,20

Federal Rules of Evidence Rule 201 (c)(2),(d)	Page 16
-----------------------------------------------------	---------

c. Other Authorities

12 C.J., Constitutional Law, § 957, p. 1193, notes 76, 77.....	Page 26
16 C.J.S., Constitutional Law, Sect.202, p.987.....	Page 24
Black's Law Dictionary, 5th ed.....	Page 23
Black's Law Dictionary, 6th Edition.	Page 24
Blackstone's Commentary 134.....	Page 23
Bovier's Law Dictionary, 1914 ed.....	Page 23
Hare, Constitution __Pg. 777.....	Page 23
Memorial and Remonstrance Against Religious Assessments, in Selected Writings of James Madison.....	Page 27,30

Scriptural Authorities

Exodus 12:49.....	Page 28
Exodus 19:5.....	Page 28
Exodus 23:32.....	Page 28
Exodus 34:12.....	Page 28
Genesis 17:9.....	Page 28
Judges 2:2.....	Page 28

The Petitioner, Steve Van Horne, requests that the Court issue its Writ of Certiorari review of the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on July 14, 2023, and August 7, 2023, and the District Court order entered on May 01, 2023. And upon review reinstate the appeal or alternatively remand the case to the District Court for trial.

D. CITATION TO OPINION BELOW

Steve Van Horne, Appellant v. **JUDGE ROBERT (BOB) JONES et, al**, Appellate Cause Numbers: No. **23-10593** Court of Appeals, Cause No. 1:23-cv-00017-H-BU District Court.

On July 14, 2023 the Court of Appeals dismissed Petitioner's appeal for want of jurisdiction, citing that the final day for filing a timely appeal would have been May 31, 2023. (Appendix: A).

On May 1, 2023 The United States District Judge dismissed the action without prejudice to Petitioner refiling and paying the filing fee of \$402.00. (Appendix: B)

E. BASIS FOR JURISDICTION

The date on which the United States Appeals Court dismissed the case was July 14, 2023. A copy of that decision appears in Appendix A. An untimely Motion for reconsidering was thereafter denied on August 14, 2023. (Appendix: C).

The jurisdiction of the Court is invoked under 28 U.S. Code § 2101(c).

F. CONSTITUTIONAL PROVISIONS AND LEGAL PRINCIPLES INVOLVED

The U.S. Constitution Article III provides that the judicial power shall extend to all cases, and the U.S. Constitution Article VI states that the Constitution is the Supreme Law of the Land and judges are bound thereby.

The United States Constitution's First Amendment guarantees the right of the people to be free in the exercise of their religious beliefs. The founders understood this right to be natural and inalienable, meaning that the authority over religious worship was not granted and could not be granted to government authorities. This is echoed by Article 1, Sec. 6 of The Texas Constitution.

The U.S. Constitution Fifth Amendment provides for due process of law, which is process in accordance with the United States Constitution and the Common Law. And the U.S. Constitution 14th Amendment applies these protections to the States.

G. STATEMENT OF THE CASE

The Petitioner asks the Court to take judicial notice of the fact that he is without counsel, is not schooled in law and legal procedures, and is not licensed to practice law. The court noted that pro se plaintiffs should be afforded "special solicitude." *Rabin v. Dep't of State*, No. 95-4310, 1997 U.S. Dist. LEXIS 15718.

Further Petitioner believes that this court has a responsibility and duty to protect any and all of Petitioner constitutional and statutory rights. See *Montgomery v. State* 45 So. 879, 55 Fla. 97

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

Petitioner, on behalf of himself, hereby petitions for a writ of certiorari to review the judgments of the United States District Court For The Northern District Of Texas, Abilene Division and United States Court of Appeals for the Eleventh Circuit. There was abuse of discretion and no fair support for Petitioner's complaint or good faith determination in either Court, in Dismissing Petitioner's suit.

1. Factual Background

Petitioner is a minister and member within an unincorporated self-governed, free religious society which does not accept benefits or privileges from secular governments as part of our faith. Our Society is not a member of the legislative or judicial procedural construct of the state of Texas. However, Petitioner has been victimized for years by a system of administrative and judicial misconduct and oppression, which refuse to allow him to assert his constitutionally protected rights, of which all are retained, according to natural law and natural justice by command of his Heavenly Father.

On November 11, 2020, Petitioner was stopped at by a sheriff deputy in Abilene Texas for a defective blinker. The deputy asked for Petitioner's driver's license and proof of financial responsibility. Petitioner did not produce either, and conveyed to the officer that he is a member of a religious organization that is

governed separately from the secular society and based upon his religious beliefs he is commanded to retain all his natural right and function separately from the secular system, accepting no benefits, or privileges and acquiring a license is a privilege of the state that would move him against his conscience.

While choosing to remain in the safety of his truck, the deputy called for backup and two other deputies showed up. After approximately 40 minutes of being detained the deputy that made the stop issued a citation for “driving without a license,” and “failure to maintain financial responsibility”, which the Petitioner did not sign.

The Petitioner then sent the original copy of the citation to the court with the writings “*REFUSED FOR CAUSE, WITHOUT PREJUDICE, WITHOUT DISHONOR, WITHOUT RECOURSE*” (Appendix: D) along with a brief expressing his religious beliefs, stating that he was exercising rights granted by his Creator whom commanded him to function separately from secularism, and also stating why he did not need a license to engage in locomotion. (Appendix: E) However, within the justice court’s reply was the following statement:

“Failure to appear at date and time listed above will constitute warrants being issued for your arrest...”

The trial was on April 14, 2021, at which time the Petitioner again challenged the court jurisdiction over his person more than once, the judge said “ok” but did not attempt to prove the court’s jurisdiction and proceeded into a bench trial, without ever giving Petitioner the option of a jury trial at any time during the

process. The judge allowed the prosecutor to call the deputy that issued the citation as a witness.

After the prosecutor was finished asking his questions the Judge asked Petitioner if he had any questions for the witness. Petitioner at that time stated that he will question the witness with the understanding that he retains all of his rights. In an attempt to assert his rights, Petitioner told the judge that he wanted to give the witness the documents that he had previously sent to the court. At that time the Judge stated that he did not receive anything. However, the prosecutor had the document before him on his desk.

The prosecutor then stated that he had forgotten to give the document to the judge. The judge then allowed the document to be given to the witness, but did not ask for a copy.

As Petitioner began to have the witness read a certain part of the document in order to assert his rights, the prosecutor objected and told the judge the brief was irrelevant at this stage as it is for appeals and not that court. The judge agreed and asked Petitioner if he had any other questions. Petitioner stated that his questions would come from the document which was handed to the witness. However, the judge repeatedly denied the Petitioner from asking any questions from the document or having the witness read from it, while the Petitioner attempted to explain why it was important that to his case that the witness read selected areas of

the document and questioned on it. While the judge repeatedly denied Petitioner's request, he kept asking Petitioner if he had any other questions for the witness.

Upon the Petitioner answering: "*not unless I could have the witness read the document and answer the questions,*" the court proceeded in what was consequently a criminal conviction for the Petitioner.

Petitioner appealed the decision in The County Court of Law No. 2. However that Court did not hear the case, it issued a warrant for his arrest (Appendix: F), arrested him (Appendix: G), and falsely imprisoned him in a room, where he was forced to sign pre prepared documents and pay under threat, duress, and against his will, pleading no contest (Appendix: H). The Court claimed to have sent Petitioner two notices dated November 9, 2021 for a special setting on December 17, 2021. The notices, which the Petitioner never received, were supposed to be cc'ed to the county court clerk the same date they were sent to Petitioner. However, they were only filed with the County Clerk two months later on January 5, 2022, the very day Petitioner was arrested (Appendix: I). Indicating, that the notices could not have been sent to the Petitioner before his arrest, and said notices were never meant for him to receive, if they were cc'ed to the county clerk on or sometime shortly after November 9, 2021, but filed on January 05, 2022, the date of his arrest.

Petitioner then filed a complaint against the justice court, judge, and the prosecutor for 14 counts in Federal District Court Court under 42 U.S. Code §

1983 - Civil action for deprivation of rights and 1985- Conspiracy to interfere with civil rights.

Petitioner also filed a complaint against the county judge with the State Commission on Judicial Conduct (CJC No: 22-0958) on February 05, 2022. They returned a Dismissal Letter on 6-10-2022.

Petitioner filed his original Complaint against the justice court on January 18, 2023, stating that Defendants violated various personal liberty rights of his which are constitutionally protected, which was accompanied by an Affidavit to proceed in forma pauperis.

On February 08, 2023, Findings, Conclusions and Recommendation (FCR) were entered in this action denying Petitioner's Application to Proceed in US District Court Without Prepaying Fees or Costs.

Believing that his application was misunderstood by the court, he filed an objection to the February 08, 2023 Order.

On March 07, 2023, an order adopting the FCR was entered; Order Denying Petitioner's Application to Proceed in District Court Without Prepaying Fees or Costs and ordering the Petitioner to pay the filing fee of \$402.00 by April 06 2023.

(Appendix: J)

Not having personal money to pay \$402.00, Petitioner sent his motion dated, March 20, 2023, to reconsider and amend court's order and judgment, accompanied by a note to the court, in which he stated:

*"Due to schedule and prior obligations, I will be going on a spiritual retreat from Friday, March 31 to Friday, May 26 2023. I will not be available to reply to any correspondence which the court sends during this time."*¹

However, the court responded on *March 31, 2023*, which was on the very first day that Petitioner had expressed to the court that he would be away on religious matter and would not be able to correspond with the court, denying Petitioner's Motion to Amend Order & Judgment. (Appendix: K). The court's response was delivered by USPO mail during the time period that Petitioner notified the court that he would *not be available to reply to the court*.

On April 11, 2023, having already received notice that the Petitioner would not be available to respond to the court, the court entered another order while the petitioner was unavailable to respond stating the following:

"Thirty days have come and gone, and the plaintiff still has not paid the required fee. The plaintiff must therefore pay the filing fee of \$402.00 by no later than April 25, 2023. The plaintiff is warned that refusal to comply with this order may result in dismissal of his claims without prejudice." (Appendix: L)

On May 1, 2023 The United States District Judge dismissed the action without prejudice to the Plaintiff's refiling and paying the requisite fee, by mail (Appendix: B). However, this was still during the same time period that the Petitioner had already stated to the court that for religious reasons, he would *not be available to*

1. This is acknowledged in the footnotes of the court's order on May 01, 2023. (Appendix: B). However, the court did not accept the judicial notice. See Federal Rules of Evidence Rule 201 (c)(2), (d).

reply to any correspondence which the court sends. Therefore, there was no response from Petitioner, and the court could not possible believe that it would get a response.

After Petitioner's religious obligation was over, he returned late May 26, 2023, rested on the Sabbath day (Sunset to sunset, as it is his religious practice). He saw the court's order on May 27 2023, which was a surprise and totally unexpected, knowing that he had disclosed his unavailability to the court in his note dated March 20, 2023.

Nevertheless, seeing that he had little time, Petitioner in good faith, worked to get his appeal to the court. The Court and Post Office were closed the following two days (Sunday and Memorial Day).

Petitioner **mailed** his appeal to the court via USPO on May 30, 2023, which was post marked that day. The Appeal was accompanied by an Affidavit dated May 29, 2023, clearly stating that his *absence was due to his religious practice*, which is an excusable neglect.

The court filed the appeal on June 1, 2023 after receiving the Petitioner's mailed Appeal from May 30, 2023.

On June 12, 2023, without mentioning anything about an untimely filing of Petitioner's Appeal, the court then ordered Petitioner to file an amended motion

with required information by June 19. This was after the due date of May 31, 2023 had passed, as the court felt Petitioner's appeal was deficient. (Appendix: M).

Petitioner replied within the 7 days period given for his answer, mailing one Amended Appeal to the District Court and one to the Court of Appeals by USPO on June 19, 2023. The District Court filed their copy on June 22, 2023 and the Court of Appeals received their copy on June 23, 2023 and forwarded it to the District Court. The discourse on page 2, paragraph 2 of the District Court magistrate's August 3, 2023 order (see Appendix: L), cites the court's June 22 filing as a 'Notice of Appeal' and the June 23 filing forwarded from the Appeals court as an 'Amended Notice of Appeal'. However, for clarity, they are the same Amended Appeal which was ordered by the District Court. Besides that, both were largely the same appeal that the Petitioner mailed on May 30, 2023, which the court filed on June 1, 2023.

On July 7, 2023, the court acknowledged that payment of the filing fee would create a financial hardship for Petitioner and grants him the opportunity to proceed IFP on Appeal. (Appendix: N, second to last paragraph).

On July 14, 2023 the U.S. Court of Appeals for the 5th District dismissed the Appeal for want of jurisdiction as the final day for filing a timely appeal would have been May 31, 2023. (Appendix: A)

However, the filing of the Appeal was untimely, due to the fact that Petitioner:

1. *Was surprised by the timing of the court denial of his Motion to Amend Order & Judgment during the time he disclosed to the court he would not be available to respond to the court.*
2. *Was surprised by the timing of the court dismissing the lawsuit for not paying a filing fee which he had no personal monies to pay, and notifying him during the time period he disclosed to the court he would not be available to respond to the court.*
3. *Had only 2 days, instead of 30 days to respond to the court after he returned from his religious obligation, and acted in good faith to comply, which is an excusable neglect.*

On July 24, 2023, Due to the fact that he had only received 2 days to respond to the District Court, Petitioner mailed a Motion for an extension of time to file his appeal to the District Court and a copy to the Court of Appeals.

On August 02, 2023, the Court of Appeals filed an answer that the matter should be taken up with the District Court. (Appendix: O)

On August 03, 2023, the District Court filed an answer. (Appendix: P). The US Magistrate Judge's order while denying Petitioner's Motion for an extension of time to file his appeal, on page 2, paragraph 3 through its end, states in last paragraph that Petitioner "*was required to file a notice of appeal challenging the dismissal of the lawsuit within 30 days of the entry of that order, **OR BY JUNE 1, 2023***," which Petitioner did.

The District Court filed the Appeal **by June 1, 2023**, which both courts acknowledges, and would mean that the Appeal was filed timely on June 01, 2023, according to the US Magistrate Judge's order on August 3, 2023.

Petitioner then filed a motion to reconsider. However on August 14, 2023, the Court of Appeals refused to take action stating that the time for such filings under 5th Cir. R. 27 had expired. (Appendix: C)

On September 05, 2023, Petitioner mailed a Motion to Reinstate Suit due to surprise, excusable neglect, and other compelling circumstances that justify an exception for relief pursuant Fed. R. Civ. P. Rule 6(b)(1)(B), and 60(b)(1),(c) to the court of appeals.

On September 12, 2023, the Court filed a response which stated that the court had already issued its final ruling on August 07, 2023 (Appendix: Q), which brings us to this Writ of Certiorari.

In the *Pioneer Investment Services Co. v. Brunswick Associates, Ltd. Partnership*, 507 U.S. 380, 395 (1992) case, the U.S. Supreme Court has provided guidance on what constitutes excusable neglect:

- (1) Whether granting the delay will prejudice [any party]; (*Emphasis added*)
- (2) The length of the delay and its impact on efficient court administration;
- (3) Whether the delay was beyond the reasonable control of the person whose duty it was to perform;
- (4) Whether the [Petitioner] acted in good faith; (*Emphasis added*) and
- (5) Whether [Petitioner] should be penalized for [the Court's] mistake or neglect." *Emphasis added in order to relate to this case.*

One of the underlying premises of the excusable neglect doctrine is that it exists to prevent victories by default. *Newgen, LLC. v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016) (observing that it is "*the general rule that default*

judgments are ordinarily disfavored). And that (“Cases should be decided upon their merits whenever reasonably possible.” *Eitel* , 782 F.2d at 1472.)

The Court then looked to the following factors:

- (1) The possibility of prejudice to the Petitioner,
- (2) The merits of Petitioner's substantive claim,
- (3) The sufficiency of the complaint,
- (4) The sum of money at stake in the action;
- (5) The possibility of a dispute concerning material facts;
- (6) Whether the default was due to excusable neglect, and
- (7) The strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Consequently, cases should, in the main, be decided *on the merits*, not on technicalities. *Rodriguez v. Village Green Realty, LLC*, 788 F.3d 31, 47 (2d. Cir. 2015) (citing *Cargill, Inc. v. Sears Petroleum & Transp. Corp.*, 334 F. Supp. 2d 197, 247 (NDNY 2014) and observing that there is a strong preference for resolving disputes on the merits).

In effect the District Court’s rulings so far has “inappropriately penalized” Petitioner for his actions, which was forced by that Court, initiating the filing time for the Petitioner to be cut short by 28 days. Hence, that District Court’s action not only prejudiced Petitioner, by allowing the violation of his protected rights perpetrated by the justice court, even though there was clearly an excusable neglect, but by abusing its discretion².

Therefore, to take this matter fairly and justly, the Petitioner should have been

2. An abuse of discretion may occur when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court. See, e.g. , *Santo v. Santo* , 448 Md. 620, 625-26, 141 A.3d 74 (2016).cited by *Gizzo v. Gerstman*, 245 Md.App. 168 (2020)

allotted ample time to attend to his religious practices if the court could in any manner accommodate him that his lawsuit is not dismissed. But the District court did not act in good faith with the Petitioner in regard to considering his religious obligations, when entering orders where it was aware there would be no response, adding to the abuse of due process initiated by the sheriff deputy and justice court, depriving Petitioner of his natural right of locomotion. The Court of Appeals further compounded the matter when it dismissed the case and refused to reconsider based upon court rules.

FIRST VIOLATION OF DUE PROCESS

However, due process of law does not depend upon legislative or judicial rules.

Due process is defined as an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. (Seno v. Francke, 20 Ill. 2d 70, 74; Orton Crane & Shovel Co. v. Federal Reserve Bank of Chicago, 409 Ill. 285, 289.)

Petitioner is a private individual who is not a resident of Texas, exercising his constitutionally protected right of locomotion when stopped by the peace officer. He could not have been committing a statutory crime under the Texas Transportation Code simultaneously with exercising a constitutionally protected right.

Under the Texas Transportation Code, which is essentially created to regulate commercial activity on the Texas roadways, officers may give a citation to one engaging in business for hire, however, not to one exercising their constitutionally protected common right of locomotion. Plaintiff was not and does not operate

under the Texas Transportation Code and has not consented to it due to conscience reasons, religiously mandated. Therefore, he was not constitutionally served through a valid service of process on any level of this process to fulfill due process of law required by the constitution. He was not served by the officer making the traffic stop, as the person making the complaint cannot serve, being a representative of the state and thus, a party to and of interest in the outcome.

Tex. R. Civ. P. Rule 103.3 Who May Serve

Process—including citation and other notices, writs, orders, and other papers issued by the court—may be served anywhere...

(3) "...But no person who is a party to or interested in the outcome of a suit may serve any process in that suite."

And according to the ***Tex. R. Civ. P.*** there can be no judgment without process:

Tex. R. Civ. P. Rule 124. No Judgment Without Service

"In no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process, or upon an appearance by the defendant, as prescribed in these rules..."

The right of Locomotion is a part of one's Personal liberty.

"Personal liberty -- consists of the power of locomotion, of changing situations, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due process of law." *Bovier's Law Dictionary, 1914 ed., Black's Law Dictionary, 5th ed.; Blackstone's Commentary 134; Hare, Constitution Pg. 777*

The Petitioner did not receive service of process nor did he appear voluntarily before the Justice court, nor did he submit to its jurisdiction at any time.

Without service of process within the State or voluntary appearance in court or submission to its jurisdiction, no court of a State acquires jurisdiction of the person of a non-resident defendant or can grant a personal judgment enforceable by execution against his person or property. *Rosenblum v. Rosenblum, 42 N.Y.S.2d 626, 630, 181 Misc. 78.*

Yet Petitioner was convicted in a forced bench trial at the justice level, without the opportunity to assert his right and defend himself.

SECOND VIOLATION OF DUE PROCESS QUESTION PRESENTED FOR REVIEW # 1, 3 & 4

When Petitioner filed a complaint with the US District Court, the court acted in bad faith by deliberately sending court orders to Petitioner during the time he had previously judicially notified the court that he would not be available to correspond with the district court due to religious obligations. This was a prejudicial act which was not fair to the Petitioner and therefore, was a violation of due process.

Due process may be interpreted to mean fundamental fairness and substantial justice. Vaughn v. State, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883." Black's Law Dictionary, 6th Edition, page 500.

It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply embedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Solesbee v. Balcom, 339 U.S. 9 (1950)

The district court's actions, consequently resulted in the Petitioner not having enough time to file a timely appeal according to the legislatively enacted or court rules governing the court.

THIRD VIOLATION OF DUE PROCESS QUESTIONS PRESENTED FOR REVIEW # 2 & 4

The US Court of Appeals likewise dismissed the Appeal according to the rules governing that court. However, due process of law is to protect private and natural rights, such as those being exercised by Petitioner, and does not depend upon rules which are passed by vote, if they interfere with rights of personal liberties.

"Personal liberty, or the Right to enjoyment of life and liberty, is one of the fundamental or natural Rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, or dependent on, the U.S. Constitution, which may not be submitted to a vote and may not depend on

the outcome of an election. It is one of the most sacred and valuable Rights, as sacred as the Right to private property ... and is regarded as inalienable." 16 C.J.S., *Constitutional Law*, Sect.202, p.987

Due process does not dependent upon enacted rules of the court.

"Due process of law does not mean merely according to the will of the legislature, or the will of some judicial or quasir judicial body upon whom it may confer authority. It means according to the law of the land, including the constitution with its guaranties and the legislative enactments and rules duly made by its authority, so far as they are consistent with constitutional limitations. It excludes all mere arbitrary dealings with persons or property. It excludes all interference not according to the established principles of justice, one of the most familiar of them being the right and opportunity for a hearing, to meet opposing evidence and oppose with evidence, according to the established principles of fair investigation to determine the justice of the case, before judgment affecting personal or property rights shall be pronounced." Ekern v. McGovern, 154 Wis. 157, 142 N.W. 595, 620 (1913), cases cited.

It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative, as well as on the executive and judicial, powers of the government, and cannot be so construed as to leave Congress free to make any process "due process of law," by its mere will. Murray's Lessee v. Hoboken Imp. Co., 18 How. (59 U.S.) 272, 276 (1855); French v. Barber Asphalt, 181 U.S. 324, 330 (1900).

Thus, involved is the principle of due process of law, the constitutional provision with reference to which was designed to exclude oppression and arbitrary power from every branch of the government, and, with respect to judicial proceedings, contemplates a course of proceedings according to rules and principles which have been established in our system of jurisprudence for the conduct and enforcement of private rights. Thus, as pointed out in Dupuy v. Tedora, 204 La. 560, 15 So.2d 886, 890 (1943),

Judicial Process and its rules are not synonymous with due process.

"due process is not synonymous with judicial process:" National Auto Corp. v. Barford, 289 Pa. 307, 311; Reetz v. Michigan, 188 U.S. 505, 508.

"any process is not "due process," merely because a Legislature or a municipality has attempted to authorize it." Ex Parte Rhodes, 79 So. 462 (Ala. 1918) page 70

An Act of the legislature is not necessarily the "law of the land." A State cannot make anything "due process of law" which, by its own legislation, it declares to be such. An Act of the legislature, which transfers the property of one man to another without his consent, is not a constitutional exercise of legislative power, because, if effectual, it operates to deprive a man of his property without "due process of law." (Davidson v. New Orleans, supra, Taylor v. Porter, 4 Hill, 140 ; Rohn v. Harris, 130 Ill. 525; Ervine's Appeal, 16 Penn. St. 256; Hoke v. Henderson, 4 Dev. 1.) Burdick v. People, 36 N.E. 948, 949, 149 Ill. 600 (1894).

Due process of law predates the Constitution and every State of the Union.

His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Hale v. Henkel, 201 U.S. 43, 74 (1905).

These phrases in the constitution do not mean the general body of the law, common and statute, as it was at the time the constitution took effect; for that would seem to deny the right of the legislature to amend or repeal the law. They refer to certain fundamental rights, which that system of jurisprudence, of which ours is a derivative, has always recognized. Brown v. Levee Com'rs, 50 Miss. 468.

No right can be taken from Petitioner without Due Process of Law.

"None of our liberties are to be taken away except in 'accordance with established principles; none can be forfeited except upon the finding of legal cause, after due hearing.'" Ekern v. McGovern, 154 Wis. 157, 142 N.W. 595, 620 (1913), cases cited.

"It means that no person shall be deprived of life, liberty, property, or of any right granted him by statute, unless the matter involved shall first have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings. It forbids condemnation without a hearing." Pettit v. Penn., La.App., 180 So.2d 66, 69. (Emphasis supplied.)

Due process of Law is enmeshed in common law and natural justice.

"The law of the land," as used in the constitution, has long had an interpretation, which is well understood and practically adhered to. It does not mean an Act of the Legislature; if such was the true construction, this branch of the government could at any time take away life, liberty, property and privilege, without a trial by jury. The words just quoted from the constitution, are substantially the same as those found in chapter 29 of Magna Carta, from which they have been borrowed, and incorporated in the federal constitution, and most of the constitutions of the individual States. Lord Coke, in commenting on this chapter, says, "no man shall be disseized, & unless it be by the lawful judgment, that is, a verdict of equals, or by the law of the land; that is, (to speak once for all) by the due course and process of law." Coke, 2 Inst. 46. Blackstone says, 1 Com. 44, "and first it, (the law,) is a rule, not a transient sudden order from a superior, to or concerning a particular person; but something permanent, uniform and universal." Chancellor Kent *172 says, Lecture 24, p. 9, vol. 2, "it may be received as a self-evident proposition, universally understood and acknowledged, throughout this country, that no person can be taken, or imprisoned, or disseized of his freehold, or liberties, or estate, or exiled, or condemned, or deprived of life, liberty or property, unless 'by the law of the land' or the judgment of his peers." The words by the law of the land, as used in Magna Carta in reference to this subject, are understood to mean due process of law; that is, by indictment, or presentment of good and lawful men." Judge Story, in 3 Com. on Constitution, § 1783, says, "the clause, by law of the land, in effect affirms the right of trial according to the process and proceedings of the common law." Dartmouth College v. Woodward, 4 Wheat. 518

Due process requires that a person be not deprived of life, liberty or property without an opportunity to be heard in defense of his right. The rule is founded on principles of natural justice. (Stuart v. Palmer, 74 N.Y. 183.) It was interwoven in common law and found expression in Magna Charta (12 C.J., Constitutional Law, § 957, p. 1193, notes 76, 77).

It has been entrusted in the courts and officers of this land to guard, protect, and enforce every right granted or secured by the Constitution to the Petitioner and anyone in his position.

The Constitution of the United States, within its limited sphere is the supreme law of the land; and it is the duty of all officials, whether legislative, judicial, executive, administrative or ministerial, to so perform every official act as not to violate the constitutional provisions.

The duty rests upon all courts, state and national, to guard, protect, and enforce every right granted or secured by the Constitution of the United States, whenever such rights are involved in any proceeding before the court and the right is duly and properly claimed or asserted. Montgomery v. State. 45 So. 879 55 Fla. 97

Under color of law, the Justice Court and Assistant District Attorney have converted the Petitioner's right to exercise locomotion into a privilege and if Petitioner acts according to the dictates of his conscience and exercise his right of locomotion, he is forced into court and convicted of crimes. This Court has consistently ruled against such actions against the people.

"The claim and exercise of a constitutional Right cannot be converted into a crime." Miller vs. U.S., 230 F. 486, 489

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights." Sherar vs. Cullen, 481 F. 946

H. REASONS FOR GRANTING THE WRIT

1. To determine whether fundamental constitutionally protected Rights such as religious persons right to worship the Heavenly Father according to the dictates of their conscience, their right to exercise their personal liberty in locomotion, and their right to due process of law under the Common Law, can be denied to Religious individuals by the administrative, judicial, or legislative governments.

2. James Madison wrote that:

It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society (At 1). Memorial and Remonstrance Against Religious Assessments, in Selected Writings of James Madison.

And...

"...much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society and that Religion is wholly (100%) exempt from its cognizance. Emphasis added. Ibid.

The Petitioner has relied on these this document and similar ones by the founding fathers. Yet time and time again Petitioner and other religious persons,

including those of his faith, are forcibly prosecuted and oppressed under statutory laws which undermined their constitutionally protected and guaranteed Natural Common Law rights (See Appendix: R).

The U. S. Supreme Court should grant this petition because throughout the United State of America there are tens of thousands of religious persons who, due to matters of their conscience, desire to exercise their constitutionally protected right of locomotion, and do not want to accept the state defined privileges of driving or applying for a driving license.

In the Petitioner's faith and doctrine alone, which has over fifteen thousand followers throughout the USA, it is made very clear by scriptural references that we **MUST** keep the covenant with our Heavenly Father³. Part of that covenant demands that we make no compacts with secular governments.⁴

However, the overwhelming majority of our members are discouraged, as they are manipulated by the justice system that they simply pay the fines for exercising the common right of locomotion. Some can't afford it and have had warrants issued for their arrest for exercising their right. Still others are afraid to exercise their right due to the dread of being arrested.

Local state and federal governments appear to be part of what seem to be a concerted effort to deprive the people of these basic rights. It has reached a constitutional crisis at this point, as we see children of those who fought and died

3. **YOU MUST KEEP MY COVENANT**— you and your descendants in the generations after you." *Genesis 17:9*
"One covenant shall apply to both the native and the foreigner who sojourns among you." *Exodus 12:49*

"Now if you will indeed obey My voice and keep My covenant, you will be My treasured possession out of all the nations—for the whole earth is Mine." Exodus 19:5

4. You shall make no covenant with them. Exodus 23:32

Be careful not to make any agreements with the inhabitants of the land you are entering, lest they become a snare in your midst. Exodus 34:12

you are not to make a covenant with the people of this land. Judges 2:2

for their liberty terrified to exercise the rights their forefathers fought for, for them to have due to the fact that a government that is supposed to protect that very right, persecutes them if they dare try to exercise it.

The Supreme Court could grant relief to tens of thousands of religious persons, including the Petitioner and members of his faith, to make this great wrong, right, by providing direction and reaffirming the liberties of religious persons to worship according to their conscience. The Supreme Court could also providing direction and reaffirming the right of the citizen to exercise their rights of locomotion on the roadways of this nation if they have not given it up to engage in the business of transportation (commerce).

Hundreds of thousands of citizens who use the road ways, and do not engage in business for hire, do not desire to secure a driver's license (religious reasons and not), have been intimidated by the police power, and the courts into giving up their right of locomotion, and the religious have paid great fines just because they worship according to the dictates of their conscience. This is a violation of the inalienable rights of the citizen which are guaranteed to be protected by the United States Constitution.

I. CONCLUSION

The man termed as the father of the Constitution wrote:

*Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. **Memorial and Remonstrance Against Religious Assessments, in Selected Writings of James Madison***

This is a case of deprivation of due process of law and the right to practice religion according to one's conscience. Petitioner and tens of thousands more, at the administrative, and the judicial levels, are essentially being religiously persecuted, as we are deprived of worshipping our Creator according to the dictates of our conscience or forced to pay great fines when we are found doing it.

It is apparent that this State has engaged in the systematic deprivation of rights under color of law. Therefore, the Supreme Court should review this case and reaffirm the principle that due process of law and the right to practice religion according to one's conscience are personal right that the founders of this nation fought for that every individual lawfully living here may be freely entitled to.

The Petitioner requests that the Court grant this Petition for Writ of Certiorari based upon the foregoing argument.

Respectfully submitted on September 29, 2023,

By: /s/ Steve Van Horne
Steve Van Horne
3242 Beltway South
Abilene, Texas 79606
325 692 2481
Ahfl3242@aol.com
Pro Per Petitioner