No. 25-5300 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE ONOFRE SERRANO,

Petitioner

PETITION FOR WRIT OF MANDAMUS

Onofre Serrano
CDCR # BX0044
44750 60th Street
Lancaster, CA. 93536

QUESTION(S) PRESENTED

1. Whether the Ninth Circuit arbitrarily concluded that Petitioner has not made a substantial showing of the denial of a Constitutional right?

2. Whether reasonable jurist could debate the district court's conclusion that Petitioner committed a public offense as opposed to presumptive lawful activity under N.Y. State Rifle & Pistol Ass'n v Bruen?

3. Whether reasonable jurist could debate the district court's procedural holding that Petitioner had the opportunity to litigate his claim under Stone v Powell and Townsend v Sain?

4. Whether the Deputy District Attorney ("DDA") failure to produce evidence relating to the purported resisting, underlying suspicion and officer Rardin's credibility at preliminary hearing/ motion to suppress evidence constituted a violation of Petitioner's rights as described in Brady v Maryland and/or Napue v Illinois?

5. Whether there was reasonable or probable cause and/or all the elements satisfied at trial based on sufficient evidence under Bunkley v Florida and/or Fiore v White?

LIST OF PARTIES

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

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Alex Villanueva, Sheriff Los Angeles County; and,

2. US Court of Appeals, Ninth Circuit.

RELATED CASES

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STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully requests that his writ issue granting a COA.

OPINIONS BELOW

[x] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 22, 2024.

[x] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[x] An extension of time to file the petition for a writ of certiorari was granted to and including Sept. 20, 2024 (date) on July 22, 2024 (date) in Clerk of the Supreme Court correction notice.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1651(a).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment II to the US Constitution, which provides:

> A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

US Const., amend. II

This case also involves Amendment IV to the US Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

US Const., amend. IV.

This case further involves Amendment XIV § 1to the US Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

US Const., amend. XIV.

STATEMENT OF THE CASE

The Petitioner's Writ of Habeas Corpus alleged that he was unconstitutionally committed for trial and thereafter convicted. It further alleged that no public offense has been alleged due to the lawful activity to the right to bear arms and unlawful performance of duty by Officer Michael Rardin due unnecessary force, lack of specific intent and false evidence covering up the lack of reasonable suspicion, probable cause and/or racial profiling.

Petitioner alleged that he was denied the opportunity for a full and fair hearing due to false evidence and the failure to disclose said false exculpatory evidence. Officer Rardin testified at the preliminary hearing/motion to suppress evidence that Petitioner was wearing baggy clothing which was false and, that in reality Petitioner had been actually assaulted by the officer without justification.

Petitioner was concivted of being a felon in possession of a firearm and ammunition in violation of California Penal Code §§ 29800(a) and 30305(a), as well as misdemeanor resisting or delaying a peace offcier in violatioin of Penal Code § 148(a)(1), but was acquitted of felony resisting and executive officer by means of force pursuant to Penal Code 69. After determining that Petitioner had a prior "strike" under California's Three Strikes Law (Pen. Code §§ 667(a)(1), 667.5(b), and sentenced him to four (4) years in state prison. Petitioner's direct appeal described the unreasonable search and seizure and the stated reasons for the lack of reasonable suspicion and/or probable cause was affirmed by the state court of appeal. The Petition for Review was denied by the California Supreme Court.

Petitioner next sought collateral attack via state Writ of Habeas Corpus. Petitioner alleged that the credibility determination during the evidentiary hearing with regard to Officer Rardin was predicated upon false testimony. Hence, Riverside Municipal Code ("RMC") § 9.04.300 did not support detention or resisting thereof for standing on the sidewalk and/or running away, as there was no evidence

of specific intent that Petitioner was loitering and, thus, a failure to head a officer's commands could not support a finding of probable cause by the magistrate and/or a conviction under Penal Code § 148(a)(1), for delaying or obstructing the officer. However, Petitioner's writ was denied in both the state court of appeal and supreme court.

The district court denied the Petitioner's Writ of Habeas Corpus as only neither contrary to, nor involved an unreasonable application of, clearly established federal law, as determined by the US Supreme Court (i.e., not whether it resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding). Further, the district court denied the Certificate of Appealability ("COA"). The US Court of Appeals for the Ninth Circuit also denied the COA.

Petitioner is applying to this Court for a COA. Petitioner has no other plain, speedy or adequate remedy in the ordinary course of law other than this petition. Petitioner applied to this Court for a COA in a Petition for Writ of Certiorari one day late of the deadline due to mistake and/or miscalculation.

REASONS FOR GRANTING THE PETITION

I. SECOND AMENDMENT CLAIM

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

Petitioner contends that the court of appeals has entered a decision in conflict with the decision of another US Court of Appeals for the Third Circuit on the same important matter; has decided an important federal question in a way that conflcits with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. Sup. Ct. Rule 10.

The denial of a COA by the US Court of Appeals for the Ninth Circuit sanctions the lower court's decision that Petitioner, as a felon, is categorically different from the individuals who have a fundamental right to bear arms (US v Vongxay 594 F3d 1111 (9th Cir.), cert. den. Vongxay v US 2010 US LEXIS 7235)(citing District of Columbia v Heller 128 S.Ct. 2783, 2816 n. 25)) and the State of California's holding that the Second Amendment's right to bear arms does not apply to the state (In re Rameriz 193 Cal. 633, 651; see, i.e., Peoeple v Flores 169 CA4th 568, 573 n. 4 (4th App.)) in direct conflict with relevant decisions of this Court. N.Y. State Rifle & Pistol Ass'n Bruen 597 US 1; McDonald v City of Chicago 130 S.Ct. 3020; see Binderup v AG of United States 836 F3d 336 (3rd Cir.) cert.den. 2017 US LEXIS 4091.

This case presents a fundamental question of the interpretation of this Court's decision in McDonald v City of Chicago, supra, 130 S.Ct. 3020; see, e.g., N.Y. State Rifle & Pistol Ass'n v Bruen, supra, 597 US 1. The question presented is of great public importance because it affects the administration of justice in all fifty (50) states, the District of Columbia, and hundreds of cities and counties. In view of the large amount of criminal proceedings that may result in incarceration and/or fines.

II. FOURTH AMENDMENT CLAIM

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

Petitioner contends that the US Court of Appelas for the Ninth Circuit entered a decision in conflict with another US Court of Appeals on the same important question as to call for an exercise of this Court's supervisory power. Sup. Ct. Rule 10.

The denial of the COA by the court of appeals sanctions the lower court's decision. The appeals court denial of the COA is premised upon Ninth Circuit jurisprudence that the relevant inquiry is whether Petitioner had the opportunty to litigate his claim, not whether he did in fact do so or even whether the claim was correctly decided. Ortiz-Sandoval v Gomez 81 F3d 891, 899 (9th Cir.); see also Gordon v Duran 895 F2d 610, 613 (9th Cir.)("Under California law, a defendant can move to suppress evidence on the basis that it was obtained in violation of the Fourth Amendment. See Cal. Penal Code § 1538.5"); Newman v Wengler 790 F3d 876, 880 (9th Cir.)("Under Stone, exclusionary rule claims were barred if the petitioner had a full and fair opportunity to litigate them below whether or not they were actually adjudicated on the merits and whether or not they involved an unreasonable application of Supreme Court law or unreasonable determination of the facts); Mack v Cupp 564 F2d 898, 902 (9th Cir.)(The Supreme Court has not yet delineated the perimeters of full and fair litigation of a Fourth Amendment claim).

The issues importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted Stone v Powell 428 US 465. Review of this important question of law by this Court is necessary to give guidance to the trial and appellate courts because there is currently a split of authority among the courts of appeal regarding the extent to which a Petitioner has been provided an opportunity for a full and fair litigation of a Fourth Amendment claim (cf. Townsend v Sain 372 US 293, overruled on other grounds by Keeney v Tamayo-Reyes 504 US 1) although the US Supreme Court has not directly addressed the question.

The Supreme Court in Stone did not elaborate on the substance of the "opportunity" required. In a footnote to the summary of its holding this Court did indicate that Townsend v Sain, supra, is of some relevance to the question whether an adequate opportunity has been provided. See Stone v Powell, supra, 428 US at 494 n. 36. Townsend technically applies only in determining whether a state court has granted Petitioner a full and fair evidentiary hearing-a hearing limited to findings of fact. This Court established six (6) circumstances under which there is presumptively no full and fair hearing at the state level (Id.) In any event, "courts have focused on the "opportunity aspect of the Stone standard. In general, issues concerning the 'opportunity' element of the standard involve procedural questions, that is, whether state trial and review procedures afforded defendant an opportunity to raise or litigate his claim, or whether a failure to raise or litigate his claim, or whether a failure to raise or litigate his claim, or whether a failure to raise such claim at some stage of trial or failure to make timely objection constitutes a waiver or exercise of opportunity and thus satisfies the requirement of 'Opportunity for Full and Fair litigation'" (McDaniel v Oklahoma 582 F2d 1242 (10th Cir.)); see e.g., Gates v Henderson 568 F2d 830 (2d Cir.)(en banc), cert. den. 434 US 1038; Tisnado v US 547 F2d 452 (9th Cir.).

This Court should take review to afford more definitive guidance to the district courts and appellate courts to settle the split of authority. The Seventh Circuit is split with the Ninth Circuit in deciding whether the state has afforded the Petitioner an opportunity for full and fair litigation: The presentation of a claim is frustrated by a failure in the state procedural mechanism if there has been no "meaningful inquiry by the state court's" into the Fourth Amendment claim either because the state court did not carefully and thoroughly address the factual basis of the Petitioner's claim or because the state court did not apply the proper constitutional case law to the facts as developed. US ex rel. Bostic

v Peters 3 F3d 1023, 1027-1029 (7th Cir.); cf. Young v Conway 698 F3d 69, 77 (2d Cir.), cert. den. sub. nom. Unger v Young 134 S.Ct. 20.

The common sense understanding of "full and fair hearing" is the right to be heard and nothing in Stone and Townsend suggest otherwise. Both cases acknowledge that there are concerns that may require relitigation of the Fourth Amendment claim(s) in the federal district court. Stone v Powell, supra, 428 US 465, 494 n. 36; Townsend v Sain, supra, 372 US 293, 315-316, overruled on other grounds by Keeney v Tamayo-Reyes 504 US 1. An increasing number of circuits believe that Townsend should not be applied literally as the "sole measure" of "opportunity for full and fair litigation." Johnson v Meachum 570 F2d 918 (10th Cir.)(per curiam); Mack v Cupp, supra, 564 F2d 898, 900-901 (9th Cir.); Graves v Estelle 556 F2d 743, 746 (5th Cir.); O'Berry v Wainwright 546 F2d 1204, 1211-1212 (5th Cir.), cert. den. 433 US 911; see US ex rel. Petillo v New Jersey 562 F2d 903, 906-907 (3rd Cir.).

III. FOURTEENTH AMENDMENT CLAIM, BRADY/NAPUE

A. IMPORTANCE OF QUESTION PRESENTED

This case presents a fundamental question of the interpretation of this Court's decision in Stone v Powell, supra, 428 US 465, 494 n.36 (citing Townsend v Sain, supra, 372 US 293, [overruled on other grounds by Keeney v Tamayo-Reyes supra, 504 US 1]). Review of this important question of law by this Court is necessary to give guidance to the trial and appellate courts because there is currently a split of authority among the court of appeal regarding the extent to which a Petitioner has been provided an opportunity for a full and fair litigation of a Fourth Amendment claim although the US Supreme Court has not directly addressed the question.

The denial of a COA by the US Court of Appeals for the Ninth Circuit sanctions the lower court's decision. However, Petitioner was denied a full and fair hearing on a motion to suppress evidence due failure and/or refusal to provide discovery of evidence favorable to Petitioner with regard to false evidence before the preliminary examination. Stone v Powell, supra, 428 US 465, 494 n.36 (citing Townsend v Sain, supra, 372 US 293 [overruled on other grounds by Keeney v Tamayo-Reyes, supra, 504 US 1]); see Brady v Maryland, supra, 373 US 83, 87; Napue v Illinois, supra, 360 US 264, 269; Magallan v Superior Court 192 CA4th 1444, 1462-1463 n.8 (6th App.); Currie v Superior Court 230 CA3d 83, 96 (4th App.); Stanton v Superior Court 193 CA3d 265, 269 (3d App.); People v Mackey 176 CA3d 177, 185-186 (1st App.). Petitioner asserts that in order to escape a Brady sanction, disclosure must be made at a time when disclosure would be of value to the accused. Thus, the failure to disclose discovery, the presentation of the Motion to Suppress Evidence was in fact frustrated by a failure of that mechanisn. US ex rel. Bostic v Peters, supra, 3 F3d 1023, 1027 (7th Cir.). Consequently, "the fact-finding employed by the state court was not adequate to afford a full and fair hearing" (Townsend v Sain, supra, 372 US 293, 296, overruled on other grounds by Keeney v

Tamayo-Reyes, supra, 504 US 1); see Stone v Powell, supra, 428 US 465, 494 n.36.

The state court of appeals agrees in part finding that Petitioner was not wearing unusually baggy clothes.[1] Miller-El v Cockrell 537 US 322, 341; Marshall v Lonberger 459 US 422, 431-437; Summer v Mata 455 US 591-593; 28 USC § 2254(e)(1). The video and pictures are favorable to the Petitioner because they constitute favorable impeachment evidence. Norton v Spencer 351 F3d 1, 6 (1st Cir.). The video and pictures establishes that Officer Rardin lied about his purported reason to use force upon the Petitioner. Graham v Connor 490 US 386, 397; Nelson v City of Davis 685 F3d 867, 883 (9th Cir.); Ciminillo v Streicher 434 F3d 461, 467 (6th Cir.). Here, with the strongest piece of evidence against the [Petitioner] directly called into question, the prosecution's case would have collapsed" (Sykes v Anderson 625 F3d 294, 320 (6th Cir.)). If the fact finder simply believed that Officer Rardin did not have a lawful reason to use force and fabricated the

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1. The Brady/Napue analysis employs a different standard of review than does the test utilized bt the state court of appeal. This was not a case where the evidence against the Petitioner was strong. It was entirely premised on the credibility of Officer Rardin which the photographs and body camera video calls into question. In determining whether the suppression of impeachment evidence is sufficiently prejudicial to rise to the level of a Brady violation, a court must analyze the totality of the undisclosed evidence in the context of the entire record. The cumulative effect of all the undisclosed evidence may violate due process and warrant habeas relief under the AEDPA. Maxwell v Roe 628 F3d 486, 512 (9th Cir.).

justification i.e., false evidence that Petitioner's attire was "baggy" to cover up the illegal use of force, lack of reasonable suspicion and/or probable cause, thus, the favorable impeachment evidence "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict" (Kyles v Whitley 514 US 419, 435). Additionally, prosecutors may not knowingly present false testimony and have a duty to correct testimony they know to be false. Napue v Illinois, supra, 360 US 264, 269; Giglio v US 405 US 150, 152-155.

Petitioner asserted flight as a self-defense manuever to Officer Rardin's unnecessary/excessive force (i.e., twisting Petitioner's arm). US v Moore 332 F.Supp. 919, 920 (ED Vir.); CALCRIM No. 372 Defendant's Flight; see Badillo v Superior Court 46 C2d 269, 273. Flight as a form of self-defense is a alternative exclusive to a felon in California. People v King 22 C3d 12, 24. The law in California is that a person may not use force to resist any arrest or detention, lawful or unlawful, except that he may use reasonable force to defend life and limb against excessive force. Robinson v City of San Diego 954 F.Supp. 1010, 1023-1024 (SD Cal.). Petitioner challenges the presumption of correctness to the state court findings of fact with regard to Officer Rardin's credibility. Miller-El v Cockrell, supra, 537 US 322, 341; Marshall v Lonberger, supra, 459 US 422, 431-437. The withholding of impeachment evidence that Officer Rardin lied was prejudicial to the defense. Napue v Illinois, supra, 360 US 264, 269; Rodriguez v McDonald 872 F3d 908, 920 (9th Cir.); Maxwell v Roe, supra, 628 F3d 486, 512 (9th Cir.).

IV. FOURTEENTH AMENDENT CLAIM, INSUFFICIENT EVIDENCE

A. IMPORTANCE OF THE QUESTION PRESENTED

This case presents a fundamental question of the interpretation of this Court's decision in California v Hodari D., supra, 499 US 621. See also Torres v Madrid 141 S. Ct. 989. The question is of great public importance. In light of the large amount of litigation with regard to conduct of police officers and citizens, guidance on this question is of great public importance.

The issues importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted California v Hodari D., supra. See also Illinois v Wardlaw 528 US 119. This Court reasoned in California v Hodari D., supra, that a person may run away from the police. Id., 499 US at pg. 623 n. 1. Hence, running is not inherently criminal. The Court reiterated this point in Illinois v Wardlaw, supra, 528 US at pg. 125 ("Respondent and amici also argue that there are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity. This fact is undoubtedly true,") and added that no authorization for temporary detention will be sanctioned per se for anyone who flees at the mere sight of a police officer.Cf. Badillo v Superior Court 46 C3d 269, 273 ("defendant's flight out the front door and attempted disposal of the evidence was the direct result of Officer Getchell's illegal entry,")(citing Silverthorne Lbr. Co. v US 251 US 385, 392); Illinois v Wardlaw, supra, 528 US 119, 123 n.1 ("The state courts have differed on whether unprovoked flight is sufficient grounds to constute reasonable suspicion"). The Supreme Court in Illinois v Wardlaw, supra, "granted certiorari solely on the question of whether the initial stop was supported by reasonable suspicion. Therefore, [] express[ing] no opinion as to the lawfulness of the frisk independently of the stop" (Id., 528 US at pg. 124 n.2).

The Court should correct this misinterpretation and make it clear that it is possible for an officer to be in violation of law (e.g., racial profiling, pursuing individuals without cause, etc.,) and, thus, not be properly discharging an official

duty while wearing a uniform and driving a police vehicle.[2] See US v Conerly 75 F.Supp.3d 1154, 1163 (ND Cal.)("that stop depends on whether the officers had reasonable suspicion to detain Conerly when they saw him flee from the sight of the police car...officers did not witness Conerly engage in any behavior suggestive of criminal activity prior to his flight"); cf. Velazquez v City of Long Beach 793 F3d 1010, 1022 n.11 (9th Cir.)(Abuhadwan might simply have been upset at being subjected to what he believed to be mild sarcasm or disrespect, and that Abuhadwan then arrested Velazquez for the "offense of 'contempt of cop,' in which officers charge resisting arrest or failure to obey or other minimal procedural offenses simply to punish or exact retribution on disrespectful or non-submissive individuals." Erin Murphy, Manufacturing Crime: Process, Pretext, and Criminal Justice, 97 Geo.L.J 1435, 1451 n.50 (2009)); Johnson v Bay Area Rapid Transit District 724 F3d 1159, 1178 (9th Cir.)("the officer 'lacked both 'probable cause to believe that plaintiffs had committed any underlying criminal violation,' and 'raesonable suspicion to detain plaintiffs for investigatory purposes,' the officer 'also lacked probable cause to arrest Greer for violating Section 148'"); Duran v City of Douglas 904 F2d 1372, 1374-1378 (9th Cir.)(citing Houston v Hill 482 US 451, 461-463)(Duran was traveling "late at night on a deserted road," and there was no evidence "that he had committed or was about to commit any other illegal act")

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2. The prosecution in the "People's opposition to Defendant's Motion to Set Aside the Information Pursuant to Penal Code Section 995"; "II. The Preliminary Hearing Provided Sufficient Evidence to Support Counts 1, 2 and 3 of the Information"; "C. Count 3 Resisting an Executive Officer with Force [Pen. C § 69]" indicated that "[t]he defense has pointed out that the '[d]efendant cannot be convicted of an offense against an officer engaged in the performance of official

The lower court's reasoning that the element of lawful performance of duty maybe relieved by the use of a presumption that "[t]he duties of a Riverside Police Officer include responding to calls for service regarding loitering" as added to CALCRIM No. 2652 is error compound. Francis v Franklin 471 US 307, 313 (relieved the state of it's burden of proof); see Sullivan v Louisiana 508 US 275, 277-278; In re Winship 397 US 358, 364. The denial of the COA by the court of appeals sanctions the lower court's decision. Petitioner contends that the Magistrate's report concluding "Petitioner has presented no facts that undermine the state court's determination that the officer acted lawfully in this instance" is clearly erroneous.

Officer Rardin was not lawfully performing his duties when he grabbed Petitioner's arm. Boyes v Evans 14 CA2d 472, 479 (3d App.); cf. Badillo v Superior Court, supra, 46 C2d 267, 273; California v Hodari D., supra, 499 US 621, 631 n.6, 632 n.7 (Stevens, J., dis.opn., Marshal, J., joined); US v Koon 34 F3d 1416, 1447 n.25 (9th Cir), vacated in part on other grounds by Koon v US 518 US 81; US v Moore 332 F.Supp 919, 920 (ED. Vir.). Petitioner asserts that the officer was not lawfully performing his duties when he used unnecessary and excessive force (via grabbing ahold of Petitioner's arm) immediately upon exiting his service vehicle.

Further, Petitioner asserts that Officer Rardin was not lawfully performing his duties when he chased Petitioner (California v Hodari, D., supra, 499 US 621, 627, 630-631 n.5 (Stevens, J., dis.opn. Marshal, J., joined); People v Washington 192 CA3d 1120, 1128 (1st App)) around the parking lot, since claiming "officer safety" which apparently dissipated once Petitioner peacefully left the scene.

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2. (cont...) duties unless the officer was acting lawfully at the time.' (Defense at 28.) However, the defense failed to provide a citation as to where this rule arose from"

Cf. US v Driver 776 F2d 807, 810 (9th Cir.)(threat to police safety created by improper conduct by the police may not be relied upon); see, Nelson v City of Davis 685 F3d 867, 883 (9th Cir.)(seizure unreasonable when officers fired pepper spray ay plaintiff and force was not justified by government interest in dispersing crowd); Ciminillo v Streicher 434 F3d 461, 467 (6th Cir.)(seizure unreasonable when officer shot plaintiff with bean bag propellant as plaintiff attempted to leave scene of riot because plaintiff committed no crime, posed no safety risk, and was not attempting to evade arrest). The record is silent with regard to any objective factor(s) articulating Officer Rardin's, desertion of the other three (3) people, believing as articulated; that by being outnumbered carried the day.

In addition, police activities during an investigatory stop must be reasonably related to the circumstances that initially justified the stop. Officer Rardin was not lawfully performing his duties when during his encounter he changed the inquiry to probation and/or parole which obviously went beyond the purported initial mission of the alleged pedestrian stop. US v Taylor 634 F.Supp.3d 690, 698 (ND Cal.) "A parole search is not a ministerial act dictated by judicial mandate, [] but a matter of discretion" (People v Mc Williams 14 C5th 429, 435). A probation/parole revocation for cause, which includes, violating any general or special condition(s) of probation/parole is an administrative function of police officers. People v Mc Williams, supra, 14 C5th 429, 451 (Liu., J., conc.opn.) ("Empirical studies have shown that 'the conditions under which implicit biases translate most readily into discriminatory behavior are when people have wide discretion in making quick decisions with little accountability"); People v Hernandez 45 C4th 295, 299; People v Heoninghaus 120 CA4th 1180 (6th App.), rev. den. 2004 Cal.LEXIS 9703; People v Hester 119 CA4th 376, 388 (5th App.), rev. den. 2004 Cal.LEXIS 9147; People v Bowers 117 CA4th 1261 (1st App.), rev. den. 2004 Cal.LEXIS 7519; People v Washington, supra, 192 CA3d 1120, 1128 (1st App.). Petitioner did not indicate he was on probation or parole. It appears law

enforcement only poses the probation/parole inquiry to minorities. Marshal v Columbia Lea Regional Hospital 345 F3d 1157, 1169-1170 n.8 (10th Cir.). However, Petitioner's company Andrew Jackson (appearing to be white) indicated he was on probation. In any event, Officer Rardin was determined in his racial profiling of Petitioner only. Benigni v Hemet 879 F2d 473, 477 (9th Cir.); Lacy v Villeneuve 2005 US Dist. LEXIS 31639 *11-*12 (WD Wash.); Shqeirat v US Airways Group, Inc., 642 F.Supp.2d 765, 785 (D Minn.); Davis v Strata 242 F.Supp.2d 643, 649 (DND); People v Bower 24 C3d 638, 646; Bonds v Superior Court 99 CA5th 821, 829-830 n.11 (4th App.); People v Durazo 124 CA4th 728, 735-736 (2d App.).

Furthermore, an officer is not lawfully performing his duties when he detains an individual without reasonable suspcion[3] or arrests an individual without probable cause. Velazquez v City of Long Beach, supra, 793 F3d 1010, 1019 (9th Cir.)(citing Garcia v Superior Court 177 CA4th 803, 819 (6th App.))

First, the record in this case reveals that Officer Rardin did not have sufficient grounds to temporarily detain Petitioner to investigate the reported purported loitering pursuant to RMC § 9.04.300.[4] People v Gerberding 50 CA5th Supp. 1, 10 n.6 (Fresno App.Dept.). RMC § 9.04.300 does not support Petitioner's detention to investigate him for briefly standing on a public street without more. Papachristou v City of Jacksonville 405 US 156, 163; People v Teresinski 30 C3d 822, 830 (specific intent is a required element for the offense of loitering); rev. on other grounds in California v Teresinski 449 US 914; see e.g., Edgerly v City &

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3. Petitioner has not found a case that addresses probation/parole searches in the context of Penal Code § 148(a)(1).

4. Petitioner requests the court take judicial notice of RMC § 9.04.300 pursuant to F.R.E. 201(d). Borden's Farm Products Co., 293 US 194, 209. See People v Krohn 149 CA4th 1294, 1298 n.3 (4th App.); Cal. Evid. Code § 452(b).

County of San Francisco 599 F3d 946, 953 (9th Cir.)("Generally, officers need not have probable cause for every element of the offense, but they must have probable cause for specific intent when it is a required element").

The record evidence does not provide sufficient proof of identity or description of Petitioner to investigate him. Here, the police dispatcher testified at trial that Petitioner was not sufficiently identified as a suspect by the citizen's report. (1 RT 66-126).[5] The lack of physical description, etc., is tantamount to a "general warrant" (West v Cabell 153 US 78, 85 (holding that defendant's Constitutional rights were violated when he was arrested with a warrant that named another individual)); see, e.g., US v Doe 703 F2d 745, 747 (3rd Cir.)("John Doe" warrants fail to honor the principals embedded in the Fourth Amendment and Rule 4: even assuming that the officer swearing out a "John Doe" warrant has demonstrated probable cause to arrest someone, the warrant, by its terms, will allow the executing officer to make hos own inferences in effecting an arrest. For these reasons, "John Doe" warrants consistently have been held illegal); Powe v Chicago 664 F2d 639, 647 (7th Cir.)(A John Doe warrant must contain the best description possible of the suspect, which may consist of his appearance, occupation, residence and any other circumstance through which he could be identified. But whatever description is given, needless to say, it must be accurate); People v Robinson 47 C4th 1104, 1142.

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5. The Reporting Citizen did not identify themselves as either "the owner, the owner's agent, or the person in lawful possession" "[n]or a peace officer at the request of the owner, owner's agent or the person in lawful possession" of the private property. See RMC § 9.04.300 A and D.

Second, any such resistance and corresponding probable cause arose out of the initial purported loitering pursuant to RMC § 9.04.300 which has a Dispersion Clause. Cf. Nelson v City of Davis, supra, 685 F3d 867, 883 (9th Cir.); Ciminillo v Streicher, supra, 434 F3d 461, 461 (6th Cir.); White v City of Laguna Beach 679 F.Supp.2d 1143, 1151 (SD Cal.)(L.B.M.C § 10.10.060 ("No person shall remain standing in a stationary position upon any sidewalk, boardwalk or other public thoroughfare so as to obstruct free pedestrian traffic thereon after being requested by a peace officer to move on" [emphasis added])); People v Pulliam 62 CA4th 1430, 1436 (4th App.). The State of California presented no video/audio evidence, etc., --whether at the preliminary hearing/motion to supress or at trial-- that Officer Rardin ordered or requested Petitioner to disperse and/or move on prior to grabbing ahold of his arm. California v Hodari D., supra, 499 US 621, 625; Graham v Connor 490 US 386, 397; Florida v Royer 460 US 491, 496-497; Maxwell v County of San Diego 708 F3d 1075, 1086 (9th Cir.); LaLonde v County of Riverside 204 F3d 947, 958 n.16, 959 n.17 (9th Cir.); People v King 22 C3d 12, 24; Badillo v Superior Court, supra, 46 C2d 269, 273; Evans v City of Bakersfield 22 CA4th 321, 331 (5th App.)(excessive force triggers the individual's right of self-defense). The state had the burden of proving the lawfulness of Officer Rardin's purported enforcement of RMC § 9.04.300.[6]

Third, the record also reveals that Officer Rardin did not have reasonable

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6 . The lawfulness of Officer Rardin's conduct forms part of the corpus delicti of the offense. Cf. Evans v Luebbers 371 F3d 438, 442-443 (8th Cir.); see May v Arnold 2015 US Dist. LEXIS 157385 (SD Cal.); People v Powers-Monachello 189 CA4th 400, 405-406 (1st App.); People v Miranda 161 CA4th 98, 107 (3rd App.); People v Henderson 58 CA3d 349, 359 (2d App.).

suspicion to pat search Petitioner during the initial encounter. Ybarra v Illinois 444 US 85, 92-93; Sibron v New York 392 US 40, 64. Here, the officer alleged as justification for the search as necessary for "officer safety" reasons, based upon coded language disguised as purported opinion testimony, whereas he implies Petitioner[7] is a sort of "zoot suiter," i.e., who wore "baggy clothes" (1 CT pp. 113-114, 124-125, 131-132). This hepcat, pachuco, mob descrition implies the open racial war with African-American, Mexican, Filipino, Italian, or Japanese counter culture.[8] Officer Rardin's credibility in accurately articulating reasonable suspicion to detain, physically restrain, and pat search during the initial encounter is evidently significant. Reid v Georgia 448 US 438, 441 (per curiam); Brown v Texas 443 US 47,

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7. The state court of appeal indicated that "[w]hen asked during the trial what [Petitioner] did for a living, [Petitioner] testified he was chief executive officer of Legal Eagle Documents, located in Torrance, California....[Petitioner] stated that his training for the business included working with attorneys, attending...College, with a major in Administration of Justice, and...majoring in paralegal studies" (App E pgs. 16-17).

8. This fact is also of consequence in determining the resisting charge and/or the Fourth Amendment claim, and it is therefore relevant. FRE 401; Robles v Salvati __ F.Supp.3d __,__ No. 3:19-cv-566 (CSH), 640 F.Supp.3d 224, 2022 US Dist.LEXIS 203954, 2022 WL 16833103, at *4-5 (D. Conn. Nov. 9, 2022)(holding evidence of racial profiling relevant to officers' credibility in case alleging violation of constitutional rights during traffic stop); cf. People v Edmonds 2019 Cal. App. Unpub. LEXIS 4732 *16 (2d App.)(when a police officer 'acts outside his jurisdiction he is generally acting as a private person), rev.den. 2019 Cal. LEXIS 7798.

51-52.

Officer Rardin provided no information or even opinion to suggest any reason to believe Petitioner was engaged in drugs or burglary or other criminal activities. When Officer Rardin arrived, Petitioner was standing on the sidewalk; he was not one of the people sitting on the curb in front of the restaurant. (1 CT pp. 110-112, 114). At that point, Officer Rardin did not know how long Petitioner had been standing there and/or whether, as Petitioner explained to the officer he was simply passing through. (see 1 RT p. 176).[9] The officer stated that the area was primarily commercial and that Petitioner was on the sidewalk in front of the restaurant. (1 CT pp. 110-112, 114).

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9. Petitioner interpreted the situation as Officer Rardin pulled up, asked if anyone is on probation or parole, and saying "sit down," implies that all other people move on, and, if not moving along (so as to disperse the small crowd) have a seat on the pavement. Petitioner made an attempt to leave the scene peacefully. The transients camping who were already sitting apparently had no intention of "getting up to [go] away" (Brendlin v California 551 US 249, 262). In any event, Mr. Jackson was the focus of probation compliance. US v Taylor, supra, 634 F.Supp.3d 690, 698 (ND Cal.). Officer Rardin indicates that his intention was to confront Mr. Jackson. People v Bower, supra, 24 C3d 638, 646; cf. People v McWilliams, supra, 14 C5th 429, 451 (Liu., J., conc.opn.); People v Heoninghaus, supra, 120 CA4th 1180 (6th App.); People v Bowers, supra, 117 CA4th 1261 (1st App.). However, as Officer Rardin is white, Mr. Jackson is white, and on probation; Petitioner is of red complexion and not on probation/parole, flew in the face of his stereotype whereas at this point racial profiling becomes evident. US v Brignoni-Ponce, supra, 442 US 873, 886; Benigni v Hemet, supra, 879 F2d 473, 477 (9th Cir.); Lacy v Villeneuve, supra, 2005 US Dist.

Moreover, Officer Rardin provides additional coded language indicating the the encounter occurred in a high crime area. US v Conerly, supra, 75 F.Supp.3d 1154, 1164 (ND Cal.)(High-crime areas requires a careful examination by the court, because such a description, unless properly limited and factually based, can [10] easily serve as a proxy for race or ethnicity); cf. People v Bower, supra, 24 C3d 638, 646. Officer Rardin's testimony clearly uses language that triggers negative stereotypes without the stigma of explicit racism.

Officer Rardin could articulate only an unparticularized suspicion or hunch based on racial profiling that Petitioner was armed and dangerous. Cf. Florida v J.L. 529 US 266, 271; see Ybarra v Illinois, supra, 444 US 85, 92-93; cf. US v Brignoni-Ponce, supra, 442 US 873, 885 n.10; see Sibron v New York, supra, 392 US 40, 63. Absent the coded language the record as a whole does not support a justification to pat frisk Petitioner. US v Brignoni-Ponce, supra, 442 US 873, 885 n.10; Townsend v Sain, supra, 372 US 293,

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9.(cont...) LEXIS 31639 *11-*12 (WD Wash.); People v Durazo, supra, 124 CA4th 728, 735-736 (2d App.); People v Washington, supra, 192 CA3d 1120, 1128 (1st App.).

10. Petitioner requests the Court take judicial notice of the following relevant addresses pursuant to FRE 201, 801, 803: a) Chinese restaurant, 3948 University Avenue, Riverside, CA. 92501; b) US District Court, 3470 Twelfth Street, Riverside, CA. 92501; c) Court of Appeal, Fourth Appellate District, 3389 Twelfth Street, Riverside CA. 92501; d) Andrew Jackson, 4122 Eleventh Street, Riverside CA. 92501; e) Riverside Police Department, 3200 Eleventh Street, Riverside CA. 92501; f) Lake Alice Trading Co., 3616 University Avenue, Riverside CA. 92501.

1. PETITIONER'S INVOLVEMENT WAS INVOLUNTARY (I.E., NOT A WILLFUL) ACT AS A COMPONENT TO COUNT THREE

To do a thing willful is to do a thing knowingly. Assumptions of fact without evidentiary support, or on speculative or conjectural factors, has no evidentiary value. Tot v US 319 US 463, 467-468. The state had the burden of production and persuasion to provide sufficient evidence that Petitioner "willfully" and "unlawfully" prevented or detered Officer Rardin from performing his purported duty in conducting a records check on Mr. Jackson.[11] CALCRIM No. 2651; Ohio v Reiner 532 US 17, 21-22; Apprendi v New Jersey 530 US 466, 488-492; Harris v Roderick 126 F3d 1189, 1201 (9th Cir.); see People v Smith 57 C4th 232, 240-245 (resisting an officer pursuant to Pen. Code § 148(a)(1) is not a lesser included offense); In re Chase C., 243 CA4th 107, 115 (4th App.); see generally LaFave, CRIMINAL LAW § 1.8 (5th ed.); Wigmore, Evidence (3d ed.) § 2486; Witkin Cal. Evidence ([]) § 56(b).

CALCRIM No. 2651 Trying to Prevent an Executive Officer from Performing Duty (Pen. Code § 69) defines element no. 1:

> 1. The defendant willfully and unlawfully used (violence/[or] a threat of violence) to try to (prevent/[or] deter) an executive officer from performing the officer's lawful duty;...
>
> Someone commits an act willfully when he or she does it willingly or on purpose. [12]

CALCRIM No. 2652 Resisting an Executive Officer in Performance of Duty (Pen. Code § 148(a)(1) defines element no. 2:

> 2. The defendant willfully resisted, or obstructed Michal Rardin

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11. See Footnote No. 3, supra.

12. To avoid overbreadth, this instruction requires that the Petitioner act both "willfully" and "unlawfully." People v Atkins 31 CA5th 963, 979 n.9 (6th App.).

> in the performance or attempted performance of those duties as a peace officer....
>
> Someone commits an act willfully when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.
>
> The People allege that the defendant resisted, or obstructed, or delayed Michael Rardin by doing the following: running away from him.

The defense has proved contradictory facts for the element of a willful act. The "willfully" as used in criminal statutes implies that the person knows what he or she is doing, intends to do it, and is a free agent. The Pen. Code § 7 definition is entirely dependent upon the act to which "willful" is appended. Its significance therefore is wholly dependent upon the grammar of the specific offense in which the term is employed. People v Hönig 48 CA4th 289, 322 n.12 (3d App.); see Lozano v Workers' Comp. Appeals Bd. 236 CA4th 992, 999 (2d App.); Williams v Russ 167 CA4th 1215, 1225 (2d App.); Jambazian v Borden 25 CA4th 836, 846 (2d App); Hepp v Lockheed-California Co., 86 CA3d 714 (2d App.); Exchequer Acceptance Corp. v Alexander 271 CA2d 1, 13 (2d App.); People v Martin 13 CA 96, 103 (1st App.).

Petitioner may also testify in support of his own version of events. As a defendant, the defense is not limited to trying to disprove what the state claims are facts. To prevail Petitioner need not convince the judge that the defense version is correct; the defense simply need to offer enough evidence to lead the judge to doubt that the state have met the required burden of proof as to a wilfull act. People v Uhlemann 9 C3d 662, 667; Griffin v Superior Court 196 CA4th 943 (2d App.); Birt v Superior Court 34 CA3d 934, 938 (3d App.).

2. NO SPECIFIC INTENT PROVEN AT PRELIMINARY HEARING

Evidence of each element of a crime must be proved at the preliminary hearing. Garabedian v Superior Court 59 C2d 124, 126-127. The crime of resisting arrest requires specific intent. Penal Code § 69 (the "attempting to deter" offense) is a specific intent crime, requiring proof of a specific intent to interfere with the executive officer's performance of his or her duties. People v Hines 15 C4th 997, 1060-1061 n.15; cf. People v Quach 116 CA4th 294, 302 (4th App.). Hence, among the elements is the mental state required to commit the offense. People v Guerra 40 C3d 377, 386; People v Abahamian 45 CA5th 314, 335 (2d App.); People v Astalis 226 CA4th Supp. 1, 9 (LA App.Dept.).

The state did not present any evidence of specific intent at the preliminary hearing. There must be some factual showing as to each element of the crime. People v Caffero 207 CA3d 678, 685-686 (3d App.); People v Medrano 42 CA5th 1001, 1014-1015 (5th App.). In addition, Petitioner presented a defense with sufficient evidence explaining and/or discrediting the prosecution's theory and/or prima facie. Consequently, although proof may be by circumstantial evidence, it must be by substantial evidence, and evidence that leaves the determination of these essential facts in the realm of mere speculation and conjecture is insufficient. Bowan v Wyatt 186 CA4th 286, 314 (2d App.); Leslie G., v Perry & Asso., 43 CA4th 472, 484 (2d App.); Tot v US, supra, 319 US 463, 467-468.

3. NO GENERAL INTENT PROVEN

The state did not prsent any evidence of general intent at the preliminary hearing and/or at trial. Assumptions of fact without evidentiary support, or on speculative or conjectural factors, has no evidentiary value. Tot v US, supra, 319 US 463, 467-468.

The state is required to prove general intent. A defendant's wrongful intent and his physical act must be motivated by the intent. Rodriguez v Superior Court 159 CA3d 821, 826 (1st App.); see e.g., People v Dawson 172 CA4th 1073, 1093 (1st App.)(The law punishes a person for a criminal act only if he is morally responsible for it.). Depending upon the crime, a requirement of guilty knowledge may mean that defendants are innocent unless they know the facts making their conduct criminal. Stark v Superior Court 52 C4th 368, 393 ("We have contrued criminal statutes to include guilty knowledge requirement even though the statutes did not expressly articulate such a requirement"); People v Lara 44 CA4th 102, 108, 110 (2d App.)(The accident defense amounts to a claim that the defendant acted without forming the mental state necessary to make his or her actions a crime).

Petitioner need only disprove or prevent the state from proving one element of their claim. In essence, Petitioner only have to raise enough doubt in the judge's or jury mind about any one element to prevent a guilty verdict and/or a finding of probable cause committing Petitioner for trial.

The Court of Appeals for the Ninth Circuit arbitrarily concluded that Petitioner has not made a substantial showing of the denial of a constitutional right. 28 USC § 2253(c)(2). That court cites Miller-El v Cockrell 537 US 322, 327. Here, the Ninth Circuit phrased its determination in proper terms. However, does not indicate Petitioner's claims are not reasonably debatable, or that jurists of reason could not disagree with the district court's resolution of the constitutional claims (Buck v Davis 580 US 100, 115-118), or does not indicate that jurists of reason would not find debatable whether the district court was correct in its procedural ruling. Slack v McDaniel 529 US 473.

CONCLUSION

The Petition for Writ of Mandamus should be granted.

Respectfully submitted,

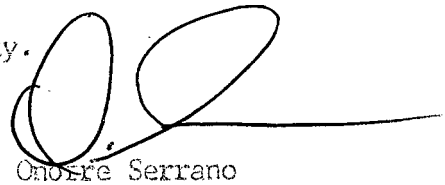
Onofre Serrano

Date: June 26, 2025

CERTIFICATE OF COMPLIANCE

As required by Supreme Court rule 33.2(b), I certify that Petitioner is an unrepresented party and states that his principle petition does not exceed 40 pages. The petition is reproduced by a process that yields a clear black image on light paper.

I declare by God, Most Gracious that the foregoing is true and correct. Executed on June 24, 2025 in Los Angeles County.



Onofre Serrano
Petitioner