

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAYMOND EUGENE PEYTON — PETITIONER
(Your Name)

vs.

EDMUND G. BROWN, Jr., et al; — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH U.S. CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RAYMOND EUGENE PEYTON
(Your Name)
R.J. DONOVAN CORRECTIONAL FACILITY
480 Alta Road,
(Address)
Bldg. #: 24 / Bed #: 201, 1-1
San Diego, California 92179
(City, State, Zip Code)
(619)-661-6500
(Phone Number)

QUESTION(S) PRESENTED

- *-Did the circuit court err in upholding the district court's opinion that plaintiff's civil action was 'frivolous' and 'not taken in good faith' ^(5/16/17) when four years previous, (and with considerably less legal backing); the 9th ruled the same suit was taken in good faith and remanded it back to the district court? ^{-(11/19/13)}
^{-(see exh. 'A')}
- *-Was plaintiff denied 'De Novo' review by the circuit court?
- *-Did the circuit court 'misapply federal law' and create an 'intracircuit conflict' with it's duplicitous rulings on plaintiff's ability to sue 'supervisory personnel'?
- *-Did the circuit court violate that court's decision in UNITED STATES v. HARDESTY, 977 F.2d. 1347, 1348 (9th Cir. 1992) in choosing to deny plaintiff 'en banc' review of his claims?
- *-Do the decisions of the 9th Circuit Court and Central District Court result in plaintiff being left in an on-going violation of his 5th, 6th, 8th, 13th, & 14th Amendment rights with no remedy at law? ^{-(see exhibits 'A' & 'B')}
- *-Were the district and circuit courts 'deliberately indifferent' and did they 'abuse their discretion' by leaving plaintiff in an "on-going" 8th Amendment violation, counter to this court's long established ruling in WEEMS v. UNITED STATES, 217 U.S. 349, 382 (1910)?
- *-Did the State of California violate the 'Separation of Powers Act' and act outside their jurisdiction by giving plaintiff an 'unauthorized' sentence violative of the 8th Amendment?

QUESTIONS.....(Cont.):

*-Did the district and circuit courts violate plaintiff's federal rights by not upholding the decision of the California Supreme Court that a sentencing error under CUNNINGHAM v. CALIFORNIA, 548 U.S. 270, 166 L.Ed. 2d. 856 127 S. CT. 857 (2007), (such as in the instant action); violates the 6th Amendment to the U.S. Constitution?

*-Did the district and circuit courts err in stating the trial judge enjoyed 'absolute immunity' during allocution despite being in an 'administrative' rather than a 'judicial' capacity?

-*-Because this court determined in BROWN v. PLATA, 563 U.S.____, 131 S. CT. 1910, 1922, 1940, 1947 179 L.Ed. 2d. 969 (2011) that California must reduce it's prison population to 137.5% of design capacity, that the overcrowding was violating the 8th Amendment rights of all California inmates, that release was "the only remedy," that all California inmates are at risk, that nothing had to have personally happened to them for release to be appropriate, that the violation is on-going, and that release could not be limited only to members of the 1990's class-action lawsuit; did the district and circuit courts err by not releasing plaintiff despite the on-going 8th Amendment violation that has rendered his sentence 'unauthorized?'

*-If the sentence is 'unauthorized' because of the addition of 8th Amendment 'cruel & unusual' punishment, is this not structural error, reviewable at anytime, prejudicial per se, & requiring of complete reversal?

*-Is said sentence an 'egregious error' & a 'miscarriage of justice?'

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- HECK v. HUMPHREY, 114 S. CT. 2364 (1994)
- HELLING v. MCKINNEY, 509 U.S. 25, 33-34 (1993)
- JUDIE v. HAMILTON, 872 F.2d. 919, 920 (9th Cir. 1989)
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- LITTLE v. U.S. FIDELITY GUARANTY CO., 217 Miss. 576, 64 So. 2d. 697
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- MIRELES v. WACO, 112 S. CT. 286 at 288 (1991)
- MISSOURI v. JENKINS, 491 U.S. 274, 280 (1989)
- MONROE v. PAPE, 365 U.S. 167, 183 (1961)
- NELSON v. MURPHY, 44 F.3d. 497, 502 (7th Cir. 1995)
- OREGON v. ICE, 555 U.S.____, 129 S. CT. 711 L.Ed. 2d. 517 (2009)
- O'NEAL v. PRICE, 531 F.3d. 1146, 1151 (9th Cir. 2008)
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- PEOPLE v. WHEELER, 22 C.3d. 258, 283 148 CR 890 (1978)
- RANKIN v. HOWARD, 633 F.2d. 844 (9th Cir. 1980)
- RHODES v. CHAPMAN, 452 U.S. 337, 347-348 (1982)
- ROBINSON v. CALIF., 370 U.S. 660 82 S. CT. 1417
- RUTLEDGE v. AZ. BD. OF REGENTS, 660 F.2d. 1345 (9th Cir. 1981)
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SWINT v. CITY OF WADLEY, 51 F.3d. 988, 999 (11th Cir. 1995)

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& n. 10

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ZELLER v. RANKIN, 101 S. Ct. 2020, 451 U.S. 939 68 L.Ed. 2d. 326

5th Amendment

6th Amendment

8th Amendment

11th Amendment

13th Amendment

14th Amendment

FEDERAL COURTS IMPROVEMENT ACT-(Statute 110, Stat 3847, Sect. 309(c))

CALIFORNIA CIVIL CODE-Div. 3, Pt. 2, Chptr. 3, Sect. 1589

CALIFORNIA PENAL CODES 4900-4906

EX-POST FACTO CLAUSE

P.L.R.A.-(Prison Litigation Reform Act)

Doctrine of Double Jeopardy

Doctrine of Equitable Principle

Doctrine of Laches

Separation of Powers Act

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.) EDMUND G. BROWN, Jr., Governor of California
 - 2.) SCOTT KERNAN, Director of the California Department of Corrections and Rehabilitation
 - 3.) JEFFREY BEARD, Former Director of the California Department of Corrections and Rehabilitation
 - 4.) SCOTT FRAUENHEIM, Warden of Pleasant Valley State Prison
 - 5.) CONNIE GIPSON, Former Warden of Corcoran State Prison
 - 6.) RAUL LOPEZ, Former Warden of Chino State Prison and Corcoran State Prison
 - 7.) DANIEL PARAMO, Warden of the R.J. Donovan Correctional Facility.
 - 8.) DAVE DAVEY, Warden, Corcoran State Prison

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

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

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

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

☐ For cases from **state courts**:

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

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

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

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 16th, 2017.

☐ 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: August 29th, 2017, and a copy of the order denying rehearing appears at Appendix A.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT V of the U.S. Constitution: "No person shall be deprived of life, liberty, or property without due process of law."

AMENDMENT VI of the U.S. Constitution: As determined by the California Supreme Court in upholding this court's decision in CUNNINGHAM v. CALIFORNIA, 548 U.S. 270, 166 L. Ed. 2d. 856 127 S. CT. 857 (2007)

AMENDMENT VIII of the U.S. Constitution: 'Cruel and unusual punishment shall not be inflicted.'

AMENDMENT XI of the U.S. Constitution. (Alleged immunity for state officials).

AMENDMENT XIII of the U.S. Constitution: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.-(emphasis added)

AMENDMENT XIV of the U.S. Constitution: "No state shall deprive any person of life, liberty, or property without due process of law."

FEDERAL COURTS IMPROVEMENT ACT-(Statute 110, Stat 3847, Sect. 309(c))

CALIFORNIA CIVIL CODE-(Div. 3, Pt. 2, Chptr. 3, Sect. 1589)

EX-POST FACTO CLAUSE

P.L.R.A.-(Prison Litigation Reform Act)

SEPARATION OF POWERS ACT

DOCTRINE OF 'DOUBLE JEOPARDY'

STATEMENT OF THE CASE AND
STATEMENT OF THE COGNIZABLE CLAIMS OF LEGAL 'FACT':

The following facts are undisputed:

The affirmation by a federal three-judge panel of the findings in PLATA v. BROWN, 3:01-cv-01351-TEH (2010) and the resultant loss on appeal by the State of California and it's Governor Brown before the U.S. Supreme Court in BROWN v. PLATA, 563 U.S.____, 131 S. CT. 1910, 1922, 1940, 1947 179 L.Ed. 2d. 969 (2011), have inadvertently resulted in all California inmates' sentences being rendered 'unauthorized.' BROWN v. PLATA, (supra), determined that all California inmates' 8th Amendment rights against 'Cruel & Unusual Punishment' were being violated by the state's overcrowded penal system which peaked at 190% of design capacity in 2006. Reduction to 137.5% was ordered by the nation's top court and the state missed all three deadlines.

The addition of constitutionally violative punishment atop an already existing sentence renders that sentence 'unauthorized' and is reviewable at anytime, is structural error, is prejudicial per se, and requires complete reversal.--(see: AZ. v. FULMINANTE, 499 U.S. 279, 309 111 S. CT. (1991), PEOPLE v. BARAZZA, 30 CA4th 114, 35 CR 2d. 377 (1994) PEOPLE v. SNOW, 44 CA 3d. 216, 226 242 CR 477 (1987) & PEOPLE v. WHEELER, 22C3d. 258, 283 148 CR 890 (1978)). Said 'unauthorized' sentence also violates the 'Due Process' protections afforded by the 5th and 14th Amendments to the U.S. Constitution in addition to the 6th Amendment 'Fair Trial' guaranty. Also, because plaintiff is illegally detained and working in a prison job for no pay, the 13th Amendment protection against peonage/slavery is usurped. This protection may only be suspended for 'authorized'/legal sentences.

BROWN v. PLATA, (supra), ruled that "all California inmates are at

risk," that "nothing need to have personally happened for release to be appropriate," and that "release is the only remedy." It further stated that release could "not be limited strictly to the members of the 1990's class-action suit without unduly limiting the state's ability to determine whom should be released." Though release is normally the province of a Habeas Corpus, because plaintiff seeks cessation of the violation of a federal right, and because the top court has ruled that release is "the only remedy," it is properly sought here. In fact, former C.D.C.R. Director Jeffrey Beard stated to the federal three-judge panel that: "more than low-risk offenders will need to be released to meet the population reduction goals."

Once released on a constitutional violation, retrial would be barred per YICK WO v. HOPKINS, 118 U.S. 356, 30 L. Ed. 220, 6 S. CT. 1064 (1886) as well as the doctrine of 'Double Jeopardy.'

When California failed to meet the last federal deadline to reduce the overall prison population, the feds were to begin releasing inmates. Neither event has transpired! With no write-ups in his 11th year of incarceration, presently housed in an 'Honor Building' with the further 'honor' of being single-celled, plaintiff wonders why he is not considered appropriate for release, especially in-light of the fact that he has served more than his legal term.....(if his sentence were legal!)

In CUNNINGHAM v. CALIFORNIA, 548 U.S. 270, 166 L. Ed. 2d. 856 127 S. CT. 857 (2007), the U.S. Supreme Court deemed California's three-tiered sentencing scheme as 'unconstitutional.' Under CUNNINGHAM, plaintiff should have received 4-midterm sentences run concurrently at 85% as the 'maximum exposure' for a first-time felon. Instead, he was given an 'unauthorized' sentence of four 15-Life terms run consecutively,

followed by lifelong parole instead of three years of parole which should have culminated in April of 2015.

The California Supreme Court has ruled a CUNNINGHAM sentencing error to be a 6th Amendment violation. (Yet another civil right violated).

With regard to the 8th Amendment violation, the top court ruled that "it is better for inmates to be released than to face an on-going 8th Amendment violation."-(see: WEEMS v. UNITED STATES, 217 U.S. 349, 382 (1910)).

The lower courts have consistently ruled that this appeal has no 'cognizable legal claim.' That is because this is a first of it's kind case! It is the first to note the anomaly caused by the U.S. Supreme Court's ruling that all California inmates' 8th Amendment rights are being violated and, (as such); it is precedent-setting. Any 'narrowly drawn' relief emanating from this suit will become the bellwether. 'cognizable legal claim' from that time onward. This action affects all California inmates and some 90% of U.S. inmates similarly housed in overcrowded systems. It's effect nationally cannot be overstated.

California's penal system was declared in a 'state of emergency' due to overcrowding as far back as 2006 by then Gov. Schwarzenegger.

In November of 2016, the Department of Corrections stated that they were currently housing some 128,000 inmates or 142% of design capacity while anticipating that level to rise to 145% by 2020. This is the level recommended by the department's own review board but rejected by the U.S. Supreme Court who mandated the elusive 137.5%.

Though threatened with contempt by the 3-judge federal panel, Gov. Brown continues to demonstrate 'deliberate indifference' to the ruling of the top justices, in direct violation of PLATA v. BROWN, (supra), &

FARMER v. BRENNAN, 511 U.S. 825, 833-834 (1994).

Why won't the courts uphold the law of the land and their sworn oath to uphold the U.S. Constitution? Such 'deliberate indifference' on their parts is the precise standard required of this civil action.

This 'indifference' occurs in the federal courts each time they allow the violations elucidated. Such negligence cannot be excused as 'harmless error' under CHAPMAN v. CALIFORNIA, 386 U.S. 18, 24, 17 L. Ed.2d. 705, 710 87 S. CT. 824 (1967). No. This is egregious error.

Since all California inmates are "at risk" from the overcrowding, since they must be kept from "even the risk of future harm"-(see:FARMER v. BRENNAN, (supra)), since "nothing has to have personally happened to them for release to be appropriate," and since the violation is on-going, it follows logically that the 'atmospheric conditions of confinement' have risen to an unconstitutional level.-(see: RHODES v. CHAPMAN, 452 U.S. 337, 347-348 (1982) & HELLING v. MCKINNEY, 509 U.S. 25, 33-34 (1993)).

Plaintiff cannot be accused of speaking in broad principles of 8th Amendment law, proportionality, etc. Rather, plaintiff speaks in specifics backed by rulings of the 9th Circuit and U.S. Supreme Courts.

Therefore, plaintiff is not making 'conclusory allegations.' To the contrary, plaintiff makes statements of legally based FACT.

Just as the lower courts have 'abused their discretion,' so too did Trial Judge Schwartz. No judge in any court has the jurisdiction nor discretion to issue a sentence in violation of the U.S. Constitution. HARLOW v. FITZGERALD, 457 U.S. 800, 818 (1982) ruled that a judge is not shielded from civil suits if they violate the U.S. Constitution.

Judge Schwartz violated the 'Separation of Powers Act' when he used his state bench to withhold a federally protected right!

Judge Schwartz had the required 'Mens Rea' owing to his knowledge of, or the fact that he should have reasonably been expected to have been aware of, the state of emergency in the California prisons caused by overcrowding. BROWN v. PLATA, (supra), required him to "explore a wide range of sentencing options when dealing with overcrowding." He failed to do so in the instant action stating: "I'll make sure you never see the light of day as a free man again!," before consigning plaintiff to the unconstitutionally overcrowded state prison system.

In so doing, he violated his oath to uphold the Constitution and placed additional, (Cruel & Unusual); punishment atop the legally authorized sentence thus making said sentence 'unauthorized.'

Judge Schwartz only enjoys 'absolute immunity' at trial, when there are contesting parties. At allocution, (where the violation occurred); he ~~was~~ acting in his 'administrative' rather than his 'judicial' capacity ~~and~~, as such; enjoys only 'limited immunity.'-(see: FORRESTER v. WHITE, 484 U.S. (1993) & RUTLEDGE v. AZ BD. OF REGENTS, 660 F. 2d. 1345 (9th Cir. 1981)). Additionally, Judge Schwartz lost 'absolute immunity' when he exceeded his jurisdictional authority and issued an illegal and 'unauthorized' sentence.-(see: MIRELES v. WACO, 112 S. CT. 286 at 288 (1991), LITTLE v. U.S. FIDELITY GUARANTY CO., 217 Miss. 576, 64 So. 2d. 697 and RANKIN v. HOWARD, 633 F. 2d. 844 (1980)).

Therefore, Judge Schwartz failed to uphold his sworn duty as do all officials who fail to uphold plaintiff's well-pled, legally backed Constitutional claims. They, along with Judge Schwartz, now have the required 'Mens Rea' to be 'deliberately indifferent.'-(see: FARMER v. BRENNAN, (supra)).

Further, state officials lose all 11th Amendment immunity because California takes substantial monies from the federal government.-(see:

PAPASAN v. ALLAIN, 478 U.S. 265, 278 106 S. CT. (1986), MISSOURI v. JENKINS, 491 U.S. 274, 280 (1989), HAFFER v. MELO, 502 U.S. 21, 25-29 (1991), and the California Civil Code, Div. 3, pt. 2, Chptr. 3, Sect. 1589)).

FORRESTER v. WHITE, (supra), which the 9th Circuit Court upheld; makes it clear that a judge lacks 'absolute immunity' during allocution.

The 9th Circuit Court has ruled that plaintiff may not sue 'supervisory personnel' such as the governor, the state prison director, and the warden. However, in an October 2016 ruling the 9th Circuit did allow a civil action to proceed to trial against the warden of the California Institute for Women at Chino. (Warden, Guillermo Garcia).

This ruling directly contradicts the court's ruling in the instant action creating an 'intracircuit conflict' and logically issuing one ruling that is a 'misapplication of federal law.' This duplicitous decision-making must be corrected with the instant case.

So, plaintiff finds himself in an on-going constitutional violation with contradictory rulings, misapplication of federal law, and to date, no remedy at law in a case that is precedent-setting and affects literally millions of prisoners in California & the entire United States! This is precisely the domain of the U.S. Supreme Court. Still, plaintiff reminds the justices that the top court has already ruled on these issues. It is time for the lower panels to follow the edicts of their brothers and sister in Washington, D.C.

Moving plaintiff to a less crowded prison does nothing to end the violations because the entire system is in violation.-(see: BROWN v. PLATA, (supra), and BOAG v. MACDOUGALL, 454 U.S. 364, 364-365 (1982)).

Therefore, plaintiff cannot remain in the California penal system

with an 'unauthorized' sentence requiring complete reversal and release. Even IF plaintiff's sentence were authorized, the overcrowding violates the Constitution, nothing is being done to correct the situation, and plaintiff's alledged 'Lifer' status precludes transport out of state. Therefore, as the top court has stipulated; the "only remedy is release!"

Because of the 'intracircuit conflict' generated by the duplicitous rulings of the 9th Circuit, en banc review is not only requested, it is mandated.-(see: UNITED STATES v. HARDESTY, 977 F.2d. 1347, 1348 (9th Cir. 1992)).

Plaintiff/appellant cannot be 'dismissed' and left in an on-going violation of his federal rights. For this court to so do, (given their 'Mens Rea'); would demonstrate 'deliberate indifference,' be an 'abuse of their discretion,' a 'misapplication of federal law,' a failure to uphold their sworn oath of office to defend the Constitution, and leave plaintiff with no remedy at law thereby exposing plaintiff to malice, oppression, and prejudice.-(see: STARR v. BACA, 652 F.3d. 1202, 1207 (9th Cir. 2011) & MEDINA v. HORNING, 396 F.3d. 372, 877 (9th Cir. 2004)).

Per California Penal Codes 4900-4906, plaintiff is owed a mandatory \$140.00 for each day of said 'unauthorized' sentence.-(see: 'California Penal Codes-2015').

Plaintiff is due injunctive relief, the aforementioned fiscal recompense, and punitive redress per the P.L.R.A.-(see: 18 U.S.C. §3626 (a)(1)(i)(ii)(iii), 18 U.S.C. §3626(a)(1), 18 U.S.C. §3616(a)(3)(i)(ii) (B)(C)(E), & (b)(3)).

After more than 4 and 1/2 years of trickery & gamesmanship the time is past due for a well-reasoned adjudication of these claims which,

because of multiple missed federal deadlines, qualify for expediting per 9th Circuit Rule 34-3.

Finally, since plaintiff/appellant is questioning the constitutionality of the procedures resulting in his 'unauthorized sentence,' HECK v. HUMPHREY, 114 S. CT. 2364 (1994) does not apply in the instant action.-(see: EDWARDS v. BALISOK, 520 U.S. 641, 645 (1997) & WILKINSON v. DOTSON, 544 U.S. 74, 82 (2005)).

Petitioner begs this court for relief and the upholding of federal law and the Constitution he has been denied in all other courts. ~~(CRUZ v. BETO, 405 U.S. 319, 321 (1972)).~~

#

REASONS FOR GRANTING THE PETITION

For all of the reasons stated in the 'STATEMENT OF THE CASE/
STATEMENT OF COGNIZABLE CLAIMS OF LEGAL FACT.'

Basically, BROWN v. PLATA, (supra), determined the following:

a.) The overcrowding in the California Penal System is the primary cause of the loss of all California inmates' 8th Amendment rights.

b.) The addition of 'cruel & unusual' 8th Amendment punishment on top of a sentence renders said sentence 'unauthorized'-(see: AZ. v. FULINANTE, (supra))

c.) An 'unauthorized' sentence is reviewable at anytime, is structural error, prejudicial per se, and requires complete reversal.- (see: PEOPLE v. BARAZZA, (supra), PEOPLE v. SNOW, (supra), PEOPLE v. WHEELER, (supra)).

d.) Because inmates must be kept from even the 'risk' of future harm.- (see: FARMER v. BRENNAN, (supra))

e.) Because all California inmates are "at risk."-(see: BROWN v. PLATA, (supra))

f.) Because release is "the only remedy" and may not be limited only to the class-action members.- (see: BROWN v. PLATA, (supra))

g.) Because the feds were to begin releasing inmates if California missed the deadline....and they missed all three resulting in an on-going 8th Amendment violation.

h.) Because this court has deemed it is "better for inmates to be released than face an on-going 8th Amendment violation."-(see: WEEMS v. UNITED STATES, (supra))

i.) Because petitioner also suffered a 6th Amendment violation

at sentencing per the California Supreme Court.--(see: CUNNINGHAM v. CALIFORNIA, (supra)) (Also requiring complete reversal).

j.) Because the district court tried to say petitioner should have been sentenced under OREGON v. ICE, 555 U.S. ___, 129 S. CT. 711 L. Ed. 2d 517 (2009) despite it not becoming law until two years after petitioner's sentencing and thus violating Ex-Post Facto.

k.) Because nothing personally has to have happened to petitioner for release to be appropriate.--(see: BROWN v. PLATA, (supra))(*also infra)

l.) Because simply the 'atmospheric conditions of confinement' may rise to an 8th Amendment violation.--(see: RHODES v. CHAPMAN, (supra) and HELLING v. MCKINNEY, (supra))

m.) Because the trial judge and all named defendants had mens rea and, (in the case of the gov.); were even threatened with contempt by the federal three-judge panel overseeing population reduction.

n.) Because the lower courts have failed to uphold their own rulings as well as the rulings of this court, thereby abusing their discretion and going outside their jurisdiction. Further, they misapplied federal law by issuing duplicitous rulings on the subject of suing 'supervisory personnel' from the same bench in differing cases.

o.) Because Trial Judge Schwartz did not have discretion nor jurisdiction to issue a sentence violative of the U.S. Constitution.--(see: HARLOW v. FITZGERALD, (supra))

p.) Because, at allocution Judge Schwartz enjoyed only 'limited immunity.'--(see: FORRESTER v. WHITE, (supra), RUTLEDGE v. AZ. BD. OF REGENTS, (supra), MIRELES v. WACO, (supra), LITTLE v. U.S. FIDELITY GUARANTY CO., (supra), and RANKIN v. HOWARD, (supra)).

q.) Because state officials lose all 11th Amendment immunity

when said state receives large sums of federal monies.--(see: PAPASAN v. ALLAIN, (supra), MISSOURI v. JENKINS, (supra), and HAFFER v. MELO, (supra) in addition to the California Civil Code-Div. 3, Pt. 2, Chptr. 3, Sect. 1589))

r.) Because, as a so-called 'Lifer,' petitioner may not be moved out of state, yet he cannot remain in a state system violative of the 8th Amendment, and moving to another prison changes nothing since the entire system is in violation.--(see: BROWN v. PLATA, (supra) and BOAG v. MACDOUGALL, (supra))

s.) Because the 9th Circuit failed to give petitioner 'De Novo' review, misapplied federal law in it's ruling on suing 'supervisory personnel,' and left petitioner in an on-going violation of his 8th Amendment right in opposition to the decisions of this court. Additionally, petitioner was denied mandatory 'en banc' rehearing per UNITED STATES v. HARDESTY, (supra).

t.) Because the aforementioned action exposed petitioner to malice, fraud, and oppression.--(see: STARR v. BACA, (supra), and MEDINA v. HORNING, (supra)).

u.) Because it is mandated in the P.L.R.A.

v.) Because it is mandated per California Penal Codes 4900-4906.

w.) Because HECK v. HUMPHREY, (supra) does not apply in the instant action as it deals with the constitutionality of the procedures leading to petitioner's sentencing.--(see: EDWARDS v. BALISOK, (supra) and WILKINSON v. DOTSON, (supra)).

x.) Because petitioner is illegally detained and forced to work for no pay in violation of the 13th Amendment.

y.) Because even though relief must be narrowly drawn, (per 18 U.S.C. §3626); precedents do not suggest that a proper remedy for a Constitu-

tional violation is invalid simply because it will have collateral effect. --(see: BROWN v. PLATA, (supra))

2.) Because this case applies to all California inmates and the 90% of U.S. inmates in similarly overcrowded prison systems whose 8th Amendment rights continue to be violated. --*(infra)

For all the aforementioned reasons, petitioner seeks the following relief:

1.) Release from prison. (Though normally available only on a Habeas, it is required here because this court stated that "release is the only remedy" to end the on-going 8th Amendment violation).- (see: BROWN v. PLATA, (supra)) Cessation of the violation of his 8th Amendment right is the impetus behind petitioner's civil claim.

2.) Destruction of his 'unauthorized' criminal record. Expungement, and restoration of all rights of citizenship.

3.) \$140^{.00} for each day of his 'unauthorized' state prison sentence as mandated by California Penal Codes 4900-4906.

4.) \$8.5-million dollars from defendants in their 'individual' capacities with defendants paying all applicable taxes and court fees. *(including restitution)*

*-This case therefore is precedent setting nationwide and seeks to become the bell-wether, 'cognizable legal claim.'

The aforementioned claims constitute 'egregious error.'

#

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Raymond E. Peyton

Date: February 27th, 2018

