

No. 25-5574

IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

FILED

AUG 21 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

In Re PAUL PATRICK JOLIVETTE — PETITIONER  
(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

Paul Patrick Jolivette, # T-40846

(Your Name)

4001 Kings Avenue

(Address)

Corcoran California 93212

(City, State, Zip Code)

(Phone Number)

## QUESTION(S) PRESENTED

1. Did the united states magistrate judge dennis M. Cota abuse and usurp his authority and jurisdiction when he denied Petitioner' Motion to Disqualify Judge Kimberly J. Mueller, due to conflict of interest by Judgment in Favor of Petitioner and against the United States District Court of California, & Kimberly J. Mueller, in Case No 1:22-CV-022222-AJ, ?
2. Did The United States Court District Magistrate Judge Dennis M. Cota, usurp his authority and jurisdiction when he denied Petitioner' motion for entry of the Respondents Default filed on 12/27/2023, for the Attorney General's failure to timely answer the order to show cause, that was due on 1/02/2024, by a qualified response due to fatal jurisdictional defect by JUDGMENTS in Case No(s) 23-CIV-05133: 25-CIV-01407: 3:14-MS-8001-RS, and lack of standing, as there could be NO legitimate valid judgment of the trial court in case noFCR211674, to which an appeal may be taken due to fatal jurisdictional defect non existant Plaintiff by judgment ?
3. Did the USDC Magistrate Judge Dennis M. Cota, not aid and **abet** the continued false imprisonment **by** the Petitioner by failing to issue a **writ** of habeas corpus to **discharge** the Petitioner from invalid and Unconstitutional deprivation of Liberty by calculated design in complete usurpation of authority/jurisdiction and in breach of Constitutional Oath of Office, and treason upon one of the people of poserity ?
4. Did The United States District Court Judge Kimberly J. Mueller not usurp her authority and jurisdiction and breach her Constitutional oath of Office by failing to honor the noticed motion for disqualification, and failure of recusal was an intentional act of treason upon her post to purposely inflict injury, irreparable harm, continued false imprisonment by a sitting judge in aid and abet of petitioners' false imprisonment by calculated design, knowingly , and intentionally causing the Petitioner an intentional tort, ?
5. Did The United States District Judge Kimberly J. Mueller , not conspire with the Attorney General, Nancy A. Dabiza, to enter an invalid motion in 'Abstention, knowing there was no valid judgment of conviction from which a valid appeal may be taken, making any alleged state proceeding moot as A MATTER OF LAW, making all orders entered by the Judge Kimberly J. Mueller, knowingly, wilfully and intelligently entering orders in complete disregard for authority, jurisdiction and the rule of law, knowingly ?
6. Did The United States District Judge Kimberly J. Mueller not enter an order of dismissal without prejudice in contravention of the Standing judgement as identified above, as a knowing, intentional act of bias and abuse of authority and jurisdiction, to aid and abet the continued false imprisonment of the Petitioner ?
7. Did The United States Court of Appeals For The Ninth Circuit error in its denial of the petition for writ of mandate, after petitioner provided clear and undisputable right by Judgments to an extraordinary remedy of mandate to correct a plain miscarriage of justice, continued false imprisonment, and acts by the USDC, done in bad faith and with unclean hands in complete dishonor, and in contravention of the standing authority by expressed judgment in favor of the Petitioner as evidenced by the Judgments lodged in the offical record ?

## LIST OF PARTIES

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

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:

Respondent: UNITED STATES DISIRICT COURT OF CALIFORNIA FOR THE EASTERN DISTRICT  
DENNIS M. COTA, AND KIMBERLY J. MUELLER DISTRICT JUDGE

Real Party In Interest: STATE OF CALIFORNIA, THE PEOPLE OF THE STATE OF CALIFORNIA, EDWARD J. SILVA, WARDEN, CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION, RICK HILL, WARDEN, ET AL. SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SOLANO, WENDY G. GETTY, AND DONNA STASHYN, ET AL.

## RELATED CASES

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SOLANO, IN CASE NO FOR211674:  
PEOPLE OF THE STATE OF CALIFORNIA, V PAUL PATRICK JOLIVETTE.

SUPERIOR COURT OF CALIFORNIA for the County of San Mateo, In Case No 23-CIV-05133:  
PAUL PATRICK JOLIVETTE v THE STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION, SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SOLANO, WENDY G. GETTY, AND DONNA STASHYN, ET AL. Solano County Recorders #202500029787. 7/01/2025

PAUL PATRICK JOLIVETTE v THE PEOPLE OF THE STATE OF CALIFORNIA, ET AL, IN Case No. 3:14-CV-80001-RS:  
UNITED STATES DISIRICT COURT OF CALIFORNIA FOR THE NORTHERN DISTRICT. Solano County Recorders #2025

UNITED STATES DISTRICT COURT OF NEVADA, IN CASE NO 2:13-MS-00091;  
PAUL PATRICK JOLIVETTE, v THE PEOPLE OF THE STATE OF CALIFORNIA, ET AL.

THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN MATEO, in Case No 25-CIV-01407:  
PAUL PATRICK JOLIVETTE v CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION, RICK HILL WARDEN, ET AL.

UNITED STATES COURT OF APPEALS FOR THE NINIH CIRCUIT, In Case No 24-6594: D.C No 2:23-cv-01732-KJM-DMC  
IN RE PAUL PATRICK JOLIVETTE, v UNITED STATES DISTRICT COURTER THE EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO,  
SUPREME COURT OF THE STATE OF CALIFORNIA, IN Case No S287509, IN RE: PAUL PATRICK JOLIVETTE, Denied w/o  
Opinion Nov 26, 2024.

First District Court of Appeals for The State Of California, in Case No A171283, Denies 10/17/2024,  
without opinion. In RE PAUL PATRICK JOLIVETTE.

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	STANIE STAPLE SECURITY INSTRUMENT
APPENDIX B	ABSTRACT OF JUDGMENT RECORDED IN SOLANO AND KINGS COUNTIES
APPENDIX C	ABSTRACT OF JUDGMENT RECORDED IN SOLANO AND KINGS COUNTIES
APPENDIX D	ORDER 1/17/2024, ECF 16, DENYING DISQUALIFICATION: AND ECF 15, 19, 20, 21:
APPENDIX E	ORDER 9/16/2024 ecf 30, 34, & 35
APPENDIX F	ORDER 12/23/2024, UNITED STATES COURT OF APPEALS FOR THE NINIH CIRCUIT.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Golden v Google LLC, 2024 U.S. Dist Lexis 97260	4
Roberts v Marshall, 672 F 3d 768	4
United States v Hernandez, 109 F 3d 1450 1453 1454 (9th Cir 1998)	4
Doran Millard Dev Co , 159 Cal App 2d 322 323	5
Jackson v San Diego, 121 Cal App 3d 579	5
Allison v County of Ventura, 68 Cal App 3d 689	5
Buzayan, 2009 U.S. Dist Lexis 17393	6
Rose v Hodges, 423 U.S. 19 21 (1975)	8
Vitek v Jones, 445 U.S. 480 488 489	8
Wolf v McDonnel, 418 U.S. 539 : Dent v West Virginia, 129 U.S. 114 123 (1889)	8
STATUTES AND RULES	
28 USC §§ 144, and 455	4
CCP 1572 (A), 1710 (2), Gov Code 820	5
Penal code §§ 1202 a, 1207, 1213, 236, and 207 (a)	5
28 USC § 2254 (a), (B)(i), (ii)	8
OTHER	
UNITED STATES CONSTITUTION ART I, § 10, First, Fourth, Fifth, & Fourteenth Amendments	
Treaties, the ADJUDICATOR ACT OF 1871, Holmes Treaties	

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

Petitioner respectfully prays that a writ of mandamus issue.

**OPINIONS BELOW**

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

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

- [ ] reported at 24-6594, Dec 23, 2024 filed. ORDER ; 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 \_\_\_\_\_ 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 Dec 23, 2024, in Case No 24-6594

- 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 \_\_\_\_\_.  
\_\_\_\_\_
- 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 Nov 26, 2024.  
A copy of that decision appears at Appendix \_\_\_\_\_. S287509

- 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).

## STATEMENT OF CASE

1 Petitioner asserts this action originates from the Respondent initiation of prosecution by a  
2 invalid and defective "Felony Complaint" an illegal charging instrument that failed to state a claim  
3 upon which relief could be granted, nor properly obtain jurisdiction personal or subject matter, in  
4 complete deprivation of Constitutional Guarantees under the 5th, and 14th Amendments to Due Process  
5 of law Full Disclosure and Equal Protection. Constituting "Void Process" that may be challenged at  
6 any time, which has resulted in a complete miscarriage of justice and orders entered in excess of  
7 authority and jurisdiction as a matter of law.

**STATEMENT OF FACTS**

- 11 1. Petitioner was brought into court by Respondents use of deceptive methods in contravention of  
12 California and United States Constitutional mandates for the initiation of prosecution by the issuance  
13 of an impermissible "Felony Complaint" unvarified charging instrument that failed to state a claim  
14 upon which relief could be granted, nor properly obtain authority both personal and subject matter  
15 jurisdiction, to convey authority to the court, making all orders entered void for want of jurisdiction  
16 as a matter of law.

17 2. Petitioner has initiated a new action by causing to be served upon the Attorney General Office  
18 a Summons and Verified Cross Complaint to ascertain the Respondent's authority both personal and  
19 subject matter, by making a special appearance to invoke a challenge to the Respondent's and court's  
20 jurisdiction as stated above, by an independent third party as required by law.

21 3. Petitioner asserts the Respondents have failed to properly respond within the allotted time and  
22 no request for an extension was received timely and Default has been recorded in the record.

23 4. Petitioner has obtained a Default Judgment for Liquidated Money Damages and Specific Performance  
24 Judgment as expressed in the Non-Response Section of the Complaint served and the Judgment entered  
25 in favor of the Petitioner and against the Respondents, as the Respondent's concession of failing to  
26 obtain authority and jurisdiction in the first instance making all orders entered by the trial court  
27 entered in excess of authority and jurisdiction, null and void, as a matter of law.

1 5. Petitioner asserts for the record that an Independant Third Party served the Attorney General's  
2 Office a Motion For Entry of Default and Petition For Entry of Default Judgment, with notice of the  
3 Respondent's right to appeal, and no appeal has been taken therefrom, making the Judgment entered  
4 Final on the merits, as a matter of law.

5 6. Petitioner asserts "Once Default has been entered into the official record, the Respndents are  
6 officially out of court and cannot take any steps in any case effecting the Petitioner right of  
7 action, as the entry of Default cuts off the Respondents right to answer or other wise oppose in any  
8 action due to lack of standing, unles and until the Default has been set aside in the original tribun  
9 -al, as a matte of law. However, the judgment entered is final on the meirts and the time for appeal  
10 has long since lapsed.

11 7. Petitioner asserts the judgment enered is enforceable and binding on the Respondent and the  
12 court under the full faith and credit clause, to honor and enforce contractual obligations.

13 8. Petitioner asserts he has exhausted state court remedies by presenting a writ of habeas Corpus  
14 to the higest state court the California Supreme Court as evidenced by Case No. S281275, filed on  
15 8/02/2023, and denied on 9/28/2023, and received at Corcoran State Prison on 10/06/2023, as evidenced  
16 by CDC-119, in coming and out going mail log, mandating this courts exculsive Equity Jurisdiction,  
17 Specific Performance, based on conflict of laws, i.e., Default Judgment in favor of Petitioner as  
18 stated above."New Evidence."

19 9. Petitioner herein provides notice of Disqualification of Chief Judge Kimberly J. Mueller, the  
20 entire Attorney Generals office due to joinder to claims for breach of contractual obligation, by  
21 filing opposition in want of standing as once Default Judgments were entered into the official record  
22 the above stated parties were officially out of court, and lack standing to effect Petitioner's right  
23 of action to enforce said judgments as stated above, mandating sanction for these individuals breach  
24 of contractual obligation, and failure of recusal as mandated by law. "New Evidence." entered  
25 in the record on 12/01/2023, Motion For Disqualification of Kimberly J. Mueller, by Judgment in case  
26 No 1:22-CV-002222-AJ, entered 3/28/2022.

27 28 Statement of Facts

1 On motion made after the time has expired if the party failed to act because of excusable neglect.

2 10. Petitioner asserts there is no verified evidence in the record that Petitioner did not receive  
3 notice of the entry of the 9/16/2024, order and judgment that mailed out on 9/26/2024, and received  
4 by the PETITIONER on 10/03/2024, at 10:30 PM, therefore, based on this excusable neglect by the clerk  
5 of the court, due to no fault of the Petitioner, whom is then entitled to a later tolling date of  
6 10/04/2024, as the trigger date of the entry of the order and judgment entered, based on equitable  
7 tolling pursuant to Rule 77 (d)(1), Service, "immediately after entering an order or judgment, the  
8 clerk must serve notice as provided by rule 5 (b), on each party who is not in default," and Petition  
9 er denies any verified evidence exists to the contrary.

10 11. Petitioner asserts there is no verified evidence in the record that Petitioner does not further  
11 qualify for the "Mailbox Rule Exception" as under the Mailbox Rule when a pro se prisoner gives prison  
12 authorities a pleading to be mailed to the court, the court deems the pleading constructively filed  
13 on the date it is signed by the receiving officer." (Roberts v Marshall, 672 F 3d 768 770 n 1 (9th  
14 Cir 2010), and the Petitioner denies any verified evidence exists to the contrary.

15 16. Petitioner asserts there is no verified evidence in the record that Petitioner did not consent to  
17 the Magistrate Judge by signing the form provided under 28 USC § 636(c), and since the Petitioner is  
18 the only party with standing to make such a determination and no other due to entry of Default and  
19 Default Judgment as stated above, and the Petitioner denies any verified evidence exists to the  
20 contrary.

21 13. Petitioner asserts there is no verified evidence in the record that Petitioner did not move to  
22 Disqualify Judge Kimberly J. Mueller, under (28 USC §§ 144, & 455: Golden v Google LLC, 2024 U.S. Dist  
23 Lexis 97260; U.S. v Hernandez, 109 F 3d 1450 1453 1454, (9th Cir 1998), by an affidavit which is legal  
24 ly sufficient where a reasonable person with knowledge of all the facts would conclude that the judge  
25 impartiality might reasonably be questioned." and the Petitioner denies any verified evidence exists  
26 to the contrary.

27

28

1 14. Petitioner asserts there is no verified evidence in the record that Petitioner has not obtained  
2 several judgments in favor of the Petitioner and againsts the Respondent and Real Party in Interest  
3 as the stipulated agreement between the parties of the Respondents and Real Party in Interest concess  
4 -ion of intiating prosecution in complete excess of authority and jurisdiction as evidenced by the  
5 Judgments rendered in case no 23-CV-05133, PAUL PATRICK JOLIVETTE, v STATE OF CALIFORNIA, SUPERIOR  
6 COURT OF THE COUNTY OF SOLANO, CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION, ET AL; and  
7 Petitioner denies any verified evidence exists to the contrary.

8 15. Petitioner asserts there is no verified evidence in the record that Respondent has not knowingly  
9 deprived the Petitioner of due process and equal protection under the law, as wellas false imprisonmen  
10 -t in violation of (Gov Code § 820.4; CCP. § 1710 (2), & 1572 (2); Doran Millard Dev Co., 159 Cal App  
11 2d 322, 323), and Petitioner denies any verified evidence exists to the contrary.

12 16. Petitioner asserts there is no verified evidence in the record that Respondent has not been  
13 properly served and provided notice of the Judgments rendered in favor of the Petitioner and against  
14 Respondent and Real Party in Interest, in addition to Notice and Demand for Specific Performance, a  
15 "True Bill" for the Petitioner's release and discharge from invalid and unconstitutional custody to  
16 no avail, in violation of (Penal Code §§ 1202a, 1207, 1213, 236, & 207 (A): DOM §§ 72020.4.1, 72020.5.  
17 1.,; Jackson v San Diego, 121 Cal App 3d 579: Allison v. Conty of Ventura, 68 Cal App 3d 689) and  
18 Petitioner denies any verified evidence exists to the contrary.

19 17. Petitioner asserts Respondent's denial of due process "No Signed Judgment of Conviction on record  
20 are extraordinary cicumstances of irreparable harm and injury "False Imprisoment in absence of any  
21 valid authority" and in complete contravention of the standing judgment of record as stated in paragra  
22 -ph 14 above, for the record., and Petitioner denies any verified evidence exists to the contrary.

STATEMENT OF FACTS / ARGUMENT

- 1 18.. Petitioner has exhausted state remedies by the systematic denials without opinions, in case No (S)  
2 A171283, 9/15/2024 filed and denied 10/17/24, nad S287509, denied on Nov 26, 2024.
- 3 19. Petitioner filed a petition for writ of habeas corpus on 8/16/2023, in Case No 2:23-cv-01732-KM  
4 CMC, USDC Eastern district of California, Respondent, that issued an order to show cause why if any  
5 the writ should not issue an October 30, 2023, for the A.G. to file a response by 01/02/2024, and on  
6 12/27/2023, Petitioner filed a Motion to Enter the A.G. Default as evidenced by the record, and it  
7 should be noted that no timely qualified response was filed with the court, due to the A.G.'s lack  
8 of standing upon entry of Default Judgment, making the jan 16, 2024, filing moot as a matter of law.
- 9 20. Petitioner asserts there is no verified evidence in the record that on June 25, 2024, the Magist  
10 -rate Judge did not usurp his authority and jurisdiction by recommending the case by dismissed as state  
11 court proceedings related to petitioner's resentencing were not yet final", as the Magistrate judge is  
12 well aware, no valid state proceedings from a judgment that lacked authority and jurisdiction as  
13 evidenced by the record by Judgment in Case no 23-CIV-05133, Superior court of California for San  
14 Mateo County; USDC Northern District of California in Case No 3:14-MS-80001-RS, and USDC Nevada  
15 Judgment in Case No 2:13-MS-0004, PAUL PATRICK JOLIVETTE THE PEOPLE OF THE STATE OF CALIFORNIA, CCR,  
16 ET AL, AND Domesticated in the Superior Court of California for The County of Riverside in Case No  
17 RIC 161515, making any alleged state proceeding moot for lack of jurisdiction as a matter of law, and  
18 Petitioner denies any verified evidence exists to the contrary.
- 19 21. Petitioner asserts there is no verified evidence in the record that the court's adoption of the  
20 magistrate judge's findings and recommendation in full and issuance of a judgment in favor of the  
21 Defendant, by order 9/16/2024, ECF 34-35, was not by calculated design in breach of contractual obliga  
22 -tion by Judgments, and a complete usurpation of authority and jurisdiction to aid and abet Petitioner  
23 's continued false imprisonment, and Petitioner denies any verified evidence exists to the contrary.
- 24 22. Petitioner asserts there is no verified evidence in the record that Petitioner's Objection to the  
25 order enter as stated above was not timely filed based on the 'Mail Box' Rule" within Five (5) days of  
26 Receipt, as evidenced by the signature on the back of the envelop received by the court for the record,  
27 (Buzayan, 2009 U.S. Dist Lexis 17393), and Petitioner denies any verified evidence exists to the contr  
-ary.

- 1 23. Petitioner asserts there is no verified evidence in the record that the Respondent USDC did not  
2 abuse its authority by calculated design to aid and abet Petitioner's continued false imprisonment  
3 by the order of denial (s) [4] Motion for Preliminary Injunction, [6] Motion For Release, [12] Motion  
4 to Release, [26] Motion to strike, [27] Motion for Preliminary Injunction, by adopting the F & R in  
5 Full, granting [20], in violation of Article I, § . 10, "Impairment of Contractual Obligation" by  
6 JUDGMENTS, and Petitioner denies any verified evidence exists to the contrary
- 7 24. Petitioner asserts there is no verified evidence in the record that Respondent USDC Eastern  
8 District of California, did not knowingly, Intelligently, and willingly engage in legal simantics  
9 to circumvent the rule of law, in complete dishonor of Oath bound judicial officers of the court, as  
10 stated above warranting and mandating this courts intervention to correct a complete miscarriage of  
11 justice, false imprisonment, and deprivation of liberty in wanton disregard for authority and jurisdiction,  
12 BY JUDGMENTS, and Petitioner denies any verified evidence exists to the contrary.
- 13 25. Petitioner asserts there is no verified evidence in the record that Petitioner has not invoked  
14 exclusive Equity Jurisdiction of the court to obtain a remedy due to extrinsic circumstances of Fraud  
15 by judicial oath bound officers of the court, in contravention to the standing authority by Judgments  
16 in favor of the Petitioner and AGAINST THE Respondents, and real parties in interest, in breach of  
17 Contractual obligations, by expressed judgments, recorded in the Solano County Recorders office, and  
18 Petitioner denies any verified evidence exists to the contrary.
- 19 26. Petitioner asserts there is no verified evidence in the record that Petitioner writ of mandate  
20 filed with the Ninth Circuit United States Court of Appeals, in case No 24-6594, denied on Dec, 23  
21 2024, was not entered in contravention of standing authorities, as the petition liberly construed  
22 and Certified Judgments Lodged in the court record, was substantial evidence demonstrating breach of  
23 contractual Obligation by court bound officer, whom deal with contract enforcement on a daily basis  
24 as expressed by judgment, mandating this court's intervention, as it is an evil day for this private  
25 citizen, non enemy belligerent combatant's liberty if the theory of a government outside supreme law  
26 finds lodgment in our constitutional jurisprudence, as no higher duty rests upon the courts than to  
27 exert its full authority to prevent all violations of the principles of the U.S. Constitution, and  
Petitioner denies any verified evidence exists to the contrary.

1 27. Petitioner asserts there is no verified evidence in the record that Petitioner is not a person  
2 in state custody pursuant to an invalid Judgment rendered by a state court in waton disregard for  
3 authority and jurisdiction and confessed by Judgment in favor of Petitioner and against the Respondant  
4 and Real Party In Interest, as evidenced by the Certified Records attached and lodged with the court,  
5 as indisputable substantial evidence that Petitioner is in custody in violation of the U.S. Constitut  
6 ion, laws and treaties of the United States, and Petitioner asserts there is no verified evidence  
7 exists to the contrary. (28 USC § 2254(a): Rose v Hodges, 423 U.S. 19, 21, (1975).)

8 28. Petitioner asserts there is no verified evidence in the record that the court has not argued that  
9 "Nor is Petitioner entitled to relief for his general claims that state court lacked jurisdiction"  
10 "[I]t is generaaly accepted that a claim alleging that a state trial court lacked jurisdiction under  
11 state law is not cognizable on Federal Habeas review" incorrectly... as it is not correct to say that  
12 the Defendants interest in the trial court exercise of authority / jurisdiction, that simply did not  
13 exists is merely a matter of stateprocedural law., and Petitioner denies any verified evidence exists  
14 to te contrary.

15 29. Petitioner asserts there is no verified evidence in the record that Petitioner does not have a  
16 substantial and legitimate expectation that he has been deprived of his liberty in violation of the  
17 14th Ameri, which preseves Petitioner's rights against arbitrary deprivation by the state (Vitek v  
18 Jones, 445 U.S. 480 488-489: Wolf v McDonnell, 418 U.S. 539) for such arbitrary disregard, and Petitio  
19 ner denies any verified evidence exists to the contrary.

20 30. Petitioner asserts there is no verified evidence in the record that The Supreme Court of The Unit  
21 ed States has not repeatedly held that "State Infringement creates a liberty interest that are entitle  
22 d to the procedural protections of Due Process Clause of the Fourteenth Amendment: We think a persons  
23 liberty interest is equally protected, even when the liberty itself is a statutory creation of the  
24 state. The touchstone of Due Process is protection of the individual [\*\*\*26] against arbitrary action  
25 of government, (Dent v West Virginia, 129 U.S. 114 123 (1889), and the Petitioner denies any verified  
26 evidence exists to the contrary.

1 31. Petitioner asserts there is no verified evidence in the record that the A. G. and Judge  
2 Kimberly J. Mueller, do not have a Conflict of Interest and have exhibited discrimination, bias, and  
3 prejudice toward Petitioner which are apparent from the court record, and a reasonable probability  
4 exists that both actors have failed to exercise their discretionary function in an evenhanded manner  
5 (People v. Conner, 34 Cal. 3d 141 P 148) Thus, there is no need to determine whether a confl  
6 -ict is "actual" or only gives an appearance of conflict.

7 The A. G. is obligated not only to prosecute with vigor, but also to seek justice. This  
8 theme was stressed almost half a century ago by the United States Supreme Court in (Berger v United  
9 States, (1935) 295 U.S. 78 88 [\*9]. "The Attorney General in the Representative not of an ordinary  
10 party to a controversy, but of a Sovereignty whose obligation to govern impartially is as compelling  
11 as its obligation to govern at all: And whose interest, therefore, in a criminal prosecution is not  
12 that it shall win a case, but that justice shall be done."

13 "As such, S/he is in a peculiar and very definite sense a servant of the law. The two fold aim of  
14 which is that guilt shall not escape or innocence suffer. S/he may prosecute with earnestness and  
15 vigor - indeed, s/he should do so, but while s/he may strike hard blows, s/he is not at liberty to  
16 strike foul ones. It is as much his/her duty to refrain from improper methods calculated to produce  
17 a wrongful conviction as it is to use every legitimate means to bring about a just one."

18 In the case at bar, Petitioner has obtained Several Judgments in favor of the Petitioner and  
19 against the Respondent, Court, and Real Party in Interest, which is highly probable that any court  
20 would be justified in assuming their non-existence, and Petitioner's Inalienable Right to Enforcement  
21 (Fitter v. United States, 258 F. 567 573.)

22 Moreover, we have not here a case where the misconduct of the "COURTS" or "Prosecuting Attorney"  
23 was slight or confined to a single act or instance, but one where such misconduct was pronounced and  
24 persistent, with probable cumulative effect, which cannot be disregarded as inconsequential. (N.Y.  
25 Central Railroad Co. v Johnson, 279 U.S. 310.)

1 32. Petitioner asserts there is no verified evidence in the record that The Separation of powers  
2 doctrine doe not limit the authority of the three branches of government to arrogate to itself the  
3 core functions of another branch. The courts have long recognized the primary function of the separat  
4 -ion or powers doctrine is to prevent the combination in the hands in a single person or group of the  
5 basic or fundamental powers of government. To serve this purpose, courts have hesitated to strike  
6 down provisions of law that either accrete to a single branch powers more appropriate diffused among  
7 scarce judicial resources on deciding cases within the scopeof their authority. (People v Chavez (

8 2018) 4 Cal App 5th 771 779).

9 A court lacks jurisdiction in a fundamental sense when it has no authority at all over the  
10 subject matter or the parties or when it lacks power to hear or determine the case. "When a court  
11 lacks fundamental jurisdiction, its ruling is void." (Chavez @ P 780):Auto Equity Sales Inc. v Superior  
12 Court (1962) 5 Cal App 4th 450: In Re Clark (1993) 5 Cal. 4th 850: Montgomery v Louisiana (2016)  
13 577 U.S. Ct 193 L Ed 2d 599). "A judgment rendered without authority is regarded as a legal nullity  
14 and void." (5 USC § 336 (d)), "When challenged the burden/onus is on the government." and Petitioner  
15 denies any verified evidence exists to the contrary.

16 33. Petitioner asserts there is no verified evidence in the record that Petitioner does not herein  
17 invoke the rule of "Equity Jurisdiction" as a friend of the court, a non enemy belligerent combatant  
18 claiming absolute Paramount and Superior perfected security interest and title by the recorded UCC-1,  
19 Financing Statement lodged in the court record, and the Beneficiary of the state created constructive  
20 trust, *ens legis*, for the record, and Petitioner denies any verified evidence exists to the contrary.

22 34. Petitioner asserts there is no verified evidence in the record that Petitioner does not the  
23 Beneficiary / accomodation party and canot engage in Martial Trading with the Enemy Act, as an enemy  
24 belligerent combatant, Petitioner moves this court for an Order to Show Cause why a Private National  
25 with Registered Political status should be commingled with enemy billigerent combatants in the public  
26 domain, sealing all private and public records and provided to the Petitioner, and Petitioner denies  
any verified evidence exists to the contrary.

1       35. Petitioner asserts there is no verified evidence in the record that this United States Supreme  
2 Court should not issue a writ of mandate in this action in honor of the principles of Chancery and  
3 invoked exclusive Equity Jurisdiction, as the standing law for Petitioner's immediate use in this  
4 action at bar, based on what appears to be a conflict of laws, under The Adjudicature Act Of 1871,  
5 jurisprudence doctrine and principles which substantiate Petitioner' undisputed Valid Claim by Judgment  
6 that is conclusive on the merits, binding on this court, and enforceable to full satisfaction and  
7 accord to all conditions, terms, stipulations, and Liquidated Damages award granted, (Griffin v.  
8 Illinois (1956) 351 U.S. 12: Plaut v Spend Thrift Farm Inc, 514 U.S. 211 218-219), and Petitioner  
9 denies any verified evidence exists to the contrary.

10      36. Petitioner asserts there is no verified evidence in the record that the United States Supreme  
11 Court has not held that " a court abuses it's discretion when it effectively deprives a Petitioner's  
12 Inalienable Right to liberty without due process, equal protection and the principles of fundamental  
13 fairness under the law, to enforce a 'contractual obligation' (Payne v Tennessee 501 U.S. 808 825:  
14 Rent A Center West Inc v Jackson, 561 U.S. 63 76), and the Petitioner denies any verified evidence  
15 exists to the contrary.

16      37. Petitioner asserts there is no verified evidence in the record that Due Process and Equal Protec-  
17 tion are not so lay as to allow to stand the unlawful decisions of several biased judge's who  
18 dishonestly suppressed substantial verified evidence of factual and actual innocence, as impartial  
19 decision makers whose actions are clothed with the dignity of the court, and is a direct assault with  
20 prejudicial impact upon the Petitioner causing additional irreparable injury, false imprisonment, and  
21 Unconstitutional Deprivation of Liberty interest, (Edwards v Bailisok, 520 U.S. 641 647 117 S Ct 1584  
22 : Durre v. Darpsey 869 F 2d 543 548 (10th Cir 1989), and Petitioner denies any verified evidence  
23 exists to the contrary.

24      38. Petitioner asserts there is no verified evidence in the record that the Judgments lodged in the  
25 court record are not final on the merits and conclusive as a matter of law, mandating this court's  
26 action and legal duty with an obligation to conform to legal standards of reasonable conduct in  
27 light of petitioner's apparent Risk of Imminent danger and continued false imprisonment (Karrar v  
28 Barry County Road Comm'n 127 Mich App 821 339 N.W. 653 657, and Petitioner denies any verified

1 - evidence exists to the contrary.

2 39. Petitioner asserts there is no verified evidence in the record that this court does not have a  
3 mandatory legal duty , obligatory preformance conduct and service for which all judicial officers of  
4 the court must perform recognized by law requiring actors to conform to certain standards of conduct  
5 for the protection of others i.e. "Petitioner" against unreasonable risk of continued unlawful false  
6 imprisonment,(Heley v King 220 Tenn 189 415 S.W. 2d 136), and Petitioner denies any verified  
7 evidence exists to the contrary.

8 40. Petitioner asserts there is no verified evidence in the record that Court Oath Bound Officers  
9 have not knowingly, wilfully and intentionally cause Petitioner to suffer,unlawful false imprisonment,  
10 irreparable injury, damages, and prejudice, warranting an Intentional Tort Action, persuant to the  
11 Restatement Second Tort § 7, based on the intentional negligence of court officers whom are bound to  
12 perform a duty imposed by law, promis or contract, binding upon all parties, and the courts, as an  
13 undertaking to perform which constitutes a "legal duty" and renders a person liable to coercion and  
14 punishment for neglecting to perform in accordance thereto, (Schwartz V California Claims Services, 52  
15 Cal App 2d 47 125 P 2d 883 888) 'Liabilities created by contract or law.' (Rose v W.B. Worthen Co,  
16 186 Ark 205 53 S.W. 2d 15 16), and Petitioner denies any verified evidence exists to the contrary.

17 41. Petitioner asserts there is no verified evidence in the record that Petitioner is not a person in  
18 state custody by a defective order rendered in excess of all authority as confessed by Judgments in  
19 violation of the U.S. Const, laws, & Treaties, which is cognizable on Federal Habeas Review, which  
20 preserves Petitioner's rights against arbitrary deprivation by the state(28 USC §2254(a):Rose v Hodges  
21 423 U.S. 19 21 (1975): Vitek v Jones 445 U.S. 480 488-89: Wolf v McDonnel 418 U.S. 539), As the United  
22 States Supreme Court has repeatedly Held, " State Infringment creates a Liberty Interest that are  
23 entitled to the orocertrial protections of Due Process of The Fourteenth Amendment, we think a persons  
24 liberty interest is equally protected, even when the liberty itself is a statutory creation of the  
25 state. The Touchstone of Due Process is protection of the individual [\*26] against arbitrary action  
26 of Government, (Dent v West Virginia, 129 U.S. 114 123 (1889), and Petitioner denies any verified  
27 evidence exists to the contrary.

28

1. Petitioner asserts there is no verified evidence in the record that Petitioner has not demonstrated by clear and indisputable material evidence a right to extraordinary remedy of Mandamus, (In Re Marsh, 6 F 4th 892 997 (9th Cir 1977), in accordance to the five factors outlined, (In Re Bauman v United States District Court, 557 F 2d 650 (9th Cir 177), and the Petitioner denies any verified exists to the contrary.
2. Petitioner asserts there is no verified evidence in the record that a review of the Supreme Court and Ninth Circuit Court cases pertaining to the appellate use of peremptory writ does not disclose some general admonitory language and five guiding and principles. The ~~Admonitory~~ language has been partially collected in the ~~Supreme~~ Court's most recent cases on the subject, (Kerr v U. S. District Court, 426 U.S. 394 96 S Ct 2119 48 L Ed 2d 725, (1976), Affg, 511 F 2d 192, (9th Cir 1975), and the Petitioner denies any verified evidence exists to the contrary.
3. Petitioner asserts there is no verified evidence in the record that the remedy of Mandamus is not a drastic one to be involved only in extraordinary situations, (Will v United States, 389 U.S. 90 95 [88 S Ct 269 273 19 L Ed 2d 305]) "The writ has traditionally been used in federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction, or to compel it to exercise its authority when it is its duty to do so." (Supra at P 273), quoting, (Riche v Evaporated Milk Assn, 319 U.S. 21 26) "The fact still remains that only exceptional circumstances amounting to a 'judicial usurpation of power' will justify the ~~invocation~~ of this extraordinary remedy" (Ibid), such as the case at bar, as demonstrated by the official court record, and the Petitioner denies any verified evidence exists to the contrary.

21 Five Specific Guidelines:

- 22 A. The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief he or she desires, (Kerr v SEC, supra);
- 23 B. The Petitioner will be damaged or prejudiced in a way not correctable on appeal, (Arthur Young & Co., v SEC, 523 F 2d at P 691-692);
- 24 C. The District Court's order is clearly erroneous as a matter of law, (Arthur, supra);
- 25 D. The District Court is oft - repeated error or manifest a persistent disregard of Federal Rules, (Ra Put v Howes Leather Co, 352 U.S. at p 255-260);

- 1       D. The District Court's is oft - repeated error or manifests a persistent disregard of Federal  
2       Rules, (Ra Buy v Howes Leather Co, 352 U.S. @ 255-260):  
3       E. The District Court's order raises new and important problems or issues of law of first  
4       impression, (Schlagerhauf v Holder, 379 U.S. 104):  
5       4. Petitioner asserts there is no verified evidence in the record that Respondent has not violated  
6       the rules of court rule 144, and 455, for failure to honor the timely disqualification for conflict of  
7       interest by Default Judgment in Favor of Petitioner and against the USDC, Kimberly J. Mueller, Judge  
8       official and individual capacit, in addition to joinder to the claim for breach of contractual obligat  
9       -ions in case No 2:24-CV-070124-04-AJ, JOLIVETTE v USDC, KIMBERLY J. MUELLER, OFF/IND CAP, and has  
10      rendered orders/judgments in excess of jurisdiction, as a matter of law, which are quite clearly  
11      erroneous based on the record and judgments in favor of the Petitioner the only person in this action  
12      with " Standing " due to the Respondents Default Judgment the Respondent is officially out of court,  
13      and cannot take any steps to affect the Petitioner's / Gross Plaintiff's right of action as a matter  
14      of law, mandating this courts intervention by writ of mandate, as without extraordinary relief  
15      Petitioner would continue to suffer false imprisonment, unconstitutional denial of liberty, without  
16      a valid judge signed judgment of conviction (P.C. §§ 1202a, & 1207), in complete excess of jurisdiction  
17      and a new judgment in favor of Petitioner has been entered in JOLIVETTE v STATE OF CALIFORNIA, ET AL.,  
18      in Case No 23-CIV-05133, Judicial Notice is requested,(FRCP R 902), causing Petitioner to suffer injury,  
19      irreparable harm, and prejudice, and Petitioner denies any verified evidence exists to the contrary.  
20  
21      5. Petitioner asserts there is no verified evidence in the record that Petitioner has not declined  
22      consent for judge kimberly J. Mueller, as the only person with standing in the action at bar, 28 USC  
23      § 636(c), and timely filed a motion for Disqualification, as stated above, and the judge's assumption  
24      of jurisdiction over Petitioner was clearly erroneous and has amounted to judicial usurpation of power  
25      which clearly demonstrates Petitioner has no avenue for an appeal, (Hartland, 544 F 2d 992) and  
26      Petitioner denies any verified evidence exists to the contrary.  
27  
28      6. Petitioner asserts there is no verified evidence in the record that the Judge's actions and  
      decisions are not clearly wrong in light of prior case decisions and standing authority, 'Repeated  
      errors of this magnitude may be corrected by mandamus, (523 F 2d 1087) and Petitioner denies any verifi  
      ed evidence exists to the contrary.

1 Officers of The Court Have no Immunity From Liability

2 When Violating Constitutional Guaranteed Rights

- 3 1. Petitioner asserts there is no verified evidence in the record that Petitioner does not retain  
4 Inalienable Private Rights to Contract and join officers of the court for failing to perform in accord-  
5 -ance to their "Contractual Obligation as expressed in the Judgment" and Petitioner denies any verif-  
6 -ied evidence exists to the contrary.
- 7 2. Petitioner asserts there is no verified evidence in the record that Petitioner does not retain  
8 the right of a action created by statute relating to deprivation, under "color of law" of a right  
9 secured by the Constitution and the laws of the United States, and some claims which are based solely  
10 on statutory violations of Federal law, and applies to claims that claimant has been deprived of his  
11 rights, in some capacity to which they were entitled, (Owens v Independence, 100 Vol Supreme Court  
12 Reporter 1398 (1982); Main v Thiboutot, 100 Vol Supreme Court Reports 2505 (1982), and Petitioner  
13 denies any verified evidence exists to the contrary.
- 14 3. Petitioner asserts there is no verified evidence in the record that Title 18 USC, Sections 241,  
15 and 242: Title 42 USC Sections 1983, 1985, and 1986, do not clearly establishes the right to sue  
16 "ANYONE" who violates your Constitutional Guaranteed Rights, he who would unlawfully jeopardize your  
17 property, loses his property to you, and that is what justice is all about. Judge's are deemed to  
18 know the law and are sworn to uphold it, and can hardly claim they have acted in good faith for will-  
19 ful deformation of a law, and certainly cannot plead ignorance of the law, for that would make them  
20 look unintelligent for a knowledgeable judge to claim ignorance of a law, when a citizen on the  
21 street cannot claim ignorance of the law. Therefore, there is No Judicial Immunity, and Petitioner  
22 denies any verified evidence exists to the contrary.
- 23 4. Petitioner asserts there is no verified evidence in the record that it is not the Duty of The  
24 Courts to be watchful for constitutional rights of the citizens against any stealthy encroachments  
25 thereon, (Boyd v United States, 116 U.S. 616 635) and Petitioner denies any verified evidence exists  
26 to the contrary.
- 27

1 5. Petitioner asserts there is no verified evidence in the record that it is not an evil day for  
2 American Citizens of the United States liberty if the theory of a government outside supreme law finds  
3 lodgment in our constitutional jurisprudence. No higher duty rests upon the courts than to exert its  
4 full authority to prevent all violations of the principles of the Constitution. (Downs v Bidwell 182  
5 U.S. 244 (1901), and Petitioner denies any verified evidence exists to the contrary.

6 6. Petitioner asserts there is no verified evidence in the record that Judges of the court have no  
7 more right to decline the exercise of jurisdiction which is given, than to usurp that which is not  
8 given. The one or the other would be treason to the Constitution, (Cohen v Virginia (1821) 6 Wheat 264  
9 :U.S. v Will, 449 U.S. 200), and the Petitioner denies any verified evidence exists to the contrary.

10 7. Petitioner asserts there is no verified evidence in the record that it is not the obnoxious thing  
11 in its mildest form, however, illegitimate and unconstitutional practices get their first footing in  
12 that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can  
13 only be obviated by adhering to the rule that constitutional provisions for the security of persons  
14 and property should be liberally construed. A close and literal construction deprives them of half  
15 their efficiency, and leads to gradual depreciation of the right, as if it consisted more in sound, than  
16 in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizens  
17 -ens, and against stealthy encroachments thereon. Their motto should be Obsta Principiis, (Boyd v  
18 United States, 116 U.S. 616, at 635, (1885), and the Petitioner denies any verified evidence exists  
19 to the contrary.

20 8. Petitioner asserts there is no verified evidence in the record that Petitioner has not been  
21 subjected to plain denial of due process, full disclosure and equal protection, prejudicial bias,  
22 and judicial misconduct by several judge's and various Deputy Attorney Generals whom have knowingly  
23 colluded to deprive Petitioner of his right of enforcement of Judgments in Petitioner's favor as  
24 expressed contractual obligations between the parties, i.e. Respondent, and Petitioner denies any  
25 verified evidence exists to the contrary. (False Imprisonment Gov Code § 820.4)  
26  
27  
28

## NEW EVIDENCE OF ACTS IN EXCESS OF JURIDICATION FOR LACK OF STANDING

1. Petitioner asserts there is no verified evidence in the record that Petitioner has not obtained the Attorney General, ie Respondents confession to acts in want of standing by fraud upon the court when the Respondent submitted any moving papers once Default has been entered against them, as the Judgment entered is binding on this court and all parties of interest as a matter of law, and evidence by the record. moreover, "Any aggrieved person may petition for reconsideration, upon one or more of the following grounds;

- A. The order, decision or award made and filed by the judge, the court acted without or in excess of its power;
  - B. The order, decision or award was procured by fraud;
  - C. The evidence does not justify the findings of fact;
  - D. The Petitioner has discovered new material evidence;
  - E. The findings of fact does not support the order, decision or award;

2. Petitioner asserts under Rule 60 (B), the following additionally apply;

1. Excusable Neglect;
  2. Newly Discovered Evidence;
  3. Fraud;
  4. Extraordinary Circumstances;

5. The judgement is Void, entered in excess of jurisdiction;

3. Petitioner asserts there is no verified evidence in the record that Petitioner has not Joined Respondents to the Claim and JUDGMENT entered in favor the Petitioner/Cross Plaintiff, for "Breach of Contractual Obligation" and "Committing Fraud Upon this Court", as evidenced by judgments in case Numbers: 2:22-CV-021622-03-AJ [23-CIV-05133], 1:24-CV-010824-04-AJ, and 2:24-CV-070124-03-AJ; for mandatory judicial notice Cal Evid Code 902, and Petitioner denies any verified evidence exists to the contrary.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 PETITIONER IS ENTITLED TO A WRIT OF MANDATE

4 California Code of Civil Procedure, § 1085 states:

5 "It may be issued by any court, except a municipal or justice court, to  
6 any inferior tribunal, corporation, board, or person, to compel the  
7 performance of an act which the law specially enjoins, as a duty resulting  
8 from an office, trust, or station; or to compel the admission of a party  
9 to the use and enjoyment of a right or office to which he is entitled,  
10 and from which he is unlawfully precluded by such inferior tribunal,  
11 corporation, board, or person."

12 California Code of Civil Procedure, § 1086 states:

13 "The writ must be issued in all cases where there is not a plain, speedy,  
14 and adequate remedy, in the ordinary course of law. It must be issued upon  
15 the verified petition of the party beneficially interested."

16 Discretion granted to a court by statute is not an arbitrary discretion to  
17 do abstract justice according to the popular meaning of that phrase, but is a  
18 discretion governed by legal rules to do justice according to the law and is to  
19 be exercised in the light of all attending circumstances.

20 In exercising its discretion, a court is to be governed by the body of law  
21 defining those standards. *People v. Arnold* (1976) 50 Cal. App. 3d Supp. 1. In a  
22 legal sense, discretion is abused whenever in the exercise of its discretion the  
23 court exceeds the bounds of reason and all of the circumstances before it being  
24 considered. *State Farm Inc. Co v. Superior Court* (1956) 47 Cal. 2d 428, 432, 304  
25 *P. 2d 13; National life of Florida v. Superior Court* (1971) 21 Cal. App. 3d 281;  
26 *San Diego Whls. Credit v. Superior Court* (1973) 35 Cal. App. 3d 458; *Pacific Indem.*  
27 *Co. v. Superior Court* (1966) 246 Cal. App. 2d 63. Writ of mandate is available to  
28 correct abuse of discretion. *Baldwin-Lime-Hamilton v. Superior Court* (1962) 208  
Cal. App. 2d 803, 823.

29 Writ of mandate is the proper remedy in the present case, as there is no

1 appeal petitioner can exercise and or any appeal available will not allow timely  
2 resolution of the controversy presented in this petition. *Winton v. Municipal*  
3 *Court (1975) 48 Cal. App. 3d 228; Running French Corp. v. Superior Court (1975)*  
4 *51 Cal. App. 3d 400; Phelan v. Superior Court (1950) 35 Cal. 2d 363, Pettis v.*  
5 *Municipal Court (1970) 12 Cal. App. 3d 1029.* The exercise of jurisdiction by a  
6 court in a mandate proceeding rests to a considerable extent in the wise discretion  
7 of the court. *Wheelright v. Marin County (1970) 2 Cal. 3d 448*, appeal dismissed,  
8 cert. denied, 404 U.S. 807, 91 S. Ct. 65, 27 L. ED. 2d 37. Thus, a court may deny  
9 relief to a petitioner where the person's rights are otherwise protected.  
10 *Bartholomne oil Corp. v. Superior Court (1941) 18 Cal. 2d 726, 730.* However, where  
11 a petitioner shows compliance with the requirements for the issuance of a peremptory  
12 writ, the court has no discretion to exercise and must issue the writ as a matter  
13 of right. (Emphasis is added). *Flora Crane Service, Inc. v. Ross (1964) 61 Cal.*  
14 *2d 199, 203; May v. Board of Directors (1949) 34 Cal. 2d 125, 133-134.* Petitioner  
15 has a clear, present, and beneficial right to the performance of the respondent's  
16 duty to obey state and federal law. Therefore, this petition is necessary to enforce  
17 and protect petitioner's legal rights to be free from arbitrary and illegal action  
18 of respondent. *America Friends Service Committee v. Procunier (1973) 33 Cal. App.*  
19 *3d 252, 256.* A writ of mandate is also proper to compell a governmental official  
20 to perform a ministerial act. *California Educational Facilities Authority v.*  
21 *Present (1964) 12 Cal. 2d 593, 598; Flora Crane Service, Inc. v. Rose (1964) 61*  
22 *Cal. 2d 199, 204.* Finally, a writ of mandate is proper when the action taken by  
23 an official is so palpably unreasonable and arbitrary as to indicate that it  
24 has abused its discretion as a matter of law. *Sanders v. Los Angeles (1961) 55*  
25 *Cal. 2d 626.*

26 Petitioner has a beneficial interest as described in the petition, and a writ  
27 is necessary to protect the substantial rights of petitioner. As alleged in this  
28 petition, substantial damage will be suffered if the writ is denied.

EQUITABLE MAXIM AS TO EQUAL EQUITIES OF LITIGANTS

1       The equities are equal between persons who have been equally diligent and innocent. Interest  
2       are deemed to be equal where they are entitled to the same amount of recognition and protection  
3       because they possess to an equal degree, those elements of right and justice that are recognized  
4       and aided by courts of equity.

5       Moreover, if substantial equitable interests in a particular subject have been created, no  
6       inequity of relationship can arise among them from the form or mode of their creation, since equity  
7       gives preference to substance instead of form. Further, several maxims deal with the respective  
8       rights of parties whose equities are equal. However, for the official record, a legal title will  
9       prevail over an equitable title or interest. (30 Cal Jur § 37.)

10       Established grounds for equitable intervention include fraud, mistake of facts, mistake of law,  
11       absence of adequate legal remedy, and prevention of a multiplicity of suits. In the absence of such  
12       equitable grounds as fraud, accident, mistake, or oppression, the court can neither modify, nor  
13       annul a contract that the parties themselves have deliberately entered into, although its provisions  
14       may be hard and unreasonable.

15       Court's have fundamental inherent equity powers. The essence of a courts equity power lies in its  
16       inherent capacity to adjust remedies in a feasible and practical way to eliminate the condition or  
17       redress the injuries caused by unlawful action. A trial courts discretion to grant equitable relief  
18       is broad. However, judicial discretion to grant relief becomes a judicial duty to grant it under  
19       some circumstances, and the grace which equity should bestow then becomes a matter of right. Courts  
20       sitting in equity have a duty to arrive at a just solution, especially when Petitioner's cause has  
21       substantial merits, as in the action at bar. Furthermore, a court rendering an equitable decree  
22       may reserve jurisdiction to take steps to carry it into effect, and Petitioner request retention  
23       of jurisdiction for enforcement to full satisfaction and accord as expressed in the abstract of  
24       judgment on file in the court record.

25       Petitioner asserts ther is no verified evidence in the record that Petitioner does not hold a  
26       perfected superior title and registered paramount security interest in the PAUL PATRICK JOLIVETTE

1 Cestui Que Trust, registered on a UCC-1, Financing Statement, as the Beneficiary in this action and  
2 Petitioner denies any verified evidence exists to the contrary.

3 Petitioner asserts there is no verified evidence in the record Petitioner does not hold a  
4 superior expressed judgment, i.e. the law of the case, which determines the rights of the parties  
5 equity is without power to decree the relief which has been denied them by law, and Petitioner  
6 denies any verified evidence exists to the contrary.

7 Petitioner asserts there is no verified evidence in the record Petitioner and Beneficiary does  
8 not herein appoint the court Trustee whom shall on annual basis provide an accounting of all assets  
9 within the trustee's power and control as special assets on deposit, all income received, generated,  
10 expenditures or other transactions completed in the proceeding year. Such accounting shall be submitted  
11 to the accounting firm provided within thirty (30) days of the end of the Calendar year, or  
12 such other 12 month period agreed upon by the persons who are to receive such accounting. This  
13 requirement does not limit or replace the right of specified persons to submit a court petition for  
14 an accounting, as provided by law. Such accounting may be waived by all persons who are to receive  
15 them, but in no event shall waivers be given for any two consecutive accounting periods, and Petitioner  
16 denies any verified evidence exists to the contrary.

17 Petitioner asserts there is no verified evidence in the record Petitioner does not herein invoke  
18 the courts ancillary Equity Jurisdiction as the power of a court to hear, adjudicate and determine  
19 matters incidental to the exercise of its primary jurisdiction in an action, (20Am Jur cts § 100.)  
20 a distinct department of the Equity Jurisdiction which arose at an early day from the imperfection  
21 of the legal procedure exercised, not obtained in any equitable remedy, nor to establish any equit  
22 able right or estate, but to aid in maintaining a legal right and in prosecuting actions pending  
23 or to be brought in a court of law, and Petitioner denies any verified evidence exists to the  
24 contrary.

25 Petitioner asserts there is no verified evidence in the record Petitioner has not presented an  
26 equitable cause of action based on the foregoing mandating this courts equity jurisdiction as a  
27 matter of law, and Petitioner denied any verified evidence exists to the contrary.

1. Petitioner appears Ex Parte as Respondent lacks standing to contest Petitioner's Notice and  
1 Demand for an order to show cause why if any, the writ of 'mandate . . should not be granted in its  
2 entirety, due to entry of Default Judgment - Respondent's concession the the State lacked personal  
3 and subject matter jurisdiction to prosecute the Petitioner in the first instance, as evidence by the  
4 record, Take Judicial Notice (FRCP R. 902), PAUL PATRICK JOLIVETTE v STATE OF CALIFORNIA, ET AL, in  
5 case No. 23-CIV-05133; 3:14-CV-800001-RS, 2:13-MS-00004: Lodged in the record.

6. 2. Petitioner's action originates from an illegal charging instrument, i.e. "Felony Complaint" that  
7 failed to properly obtain personal and subject matter jurisdiction, in plain deprivation of constitut  
8 -ional guarantees of due process, full disclosure and equal protection under the law. 5th and 14th  
9 Amendments United States Constitution: Article I, Section 7 (a) of the California constitution, and  
10 in violation of Art. I, Section 14, thereof constituting "void process" that may be challenged at any  
11 time, which has resulted in a complete miscarriage of justice and orders entered in excess of jurisdic  
12 -tion by a court in want of authority.

13. 3. Petitioner's denial of due process has caused the Petitioner irreparable harm, injury, damage,  
14 False Imprisonment, and prejudice, without a lawful remedy at law, and therefore invokes Exclusive  
15 Equity Jurisdiction, as it appears a conflict of laws exists, under the Judicature Act of 1873, to  
16 set aside a void order of the Superior Court of California, in case no. FOR211674.

17. 4. Petitioner asserts a void judgment is subject to collateral attack at any time. It is a fundament  
18 -al miscarriage of justice that has occurred and cannot be questioned that a judgment that is void for  
19 lack of subject matter jurisdiction, is subject to a collateral attack. Moreover, lack of jurisdiction  
20 will render the judgment void and subject not only to reversal on appeal, but to collateral attack by  
21 motion to vacate, or extraordinary writ. (2 Cal Proc (4th), Jurisdiction, § 387: 8 Cal Proc (4th) § 6,  
22 Attack on Judgment, & Extraordinary Writs §§ 39, & 50: 6 Cal Crim Law (3d) Crim Writs, § 85: 4, Witkin  
23 Epstein Cal Crim Law, *supra*, Jurisdiction & Venue, § 1, p 86.) Lack of jurisdiction in its most  
24 fundamental sense means entire absence of power to hear or determine the case, i.e. and absense of  
25 authority both personal and subject matter jurisdiction. (People v Vasilyan, 174 Cal App 4th 443 450.)

1. Petitioner asserts there is no verified evidence in the record that it is not the Respondent's  
2 and court's responsibility to prove the court has personal and subject matter jurisdiction on the  
3 record, and where a judge arbitrarily claims the court has jurisdiction, s/he is violating the  
4 Petitioner/Defendant's rights to due process of law, as it is the Plaintiff's responsibility to prove  
5 the existence of jurisdiction on the record, as Petitioner has invoked a challenged by Cross Complain  
6 -t and Summons in a collateral Administrative Proceeding that has resulted in judgment in favor of  
7 the Petitioner and against the Respondent and Trial Court, whom have acquiesced by tacit procuracy  
8 to Due Process violation of the 14th Amend. Cal and U.S. Const., which is now the record of the case,  
and Petitioner denies any verified evidence exists to the contrary.

9. Petitioner asserts there is no verified evidence in the record that Petitioner has not invoked a  
10 legal challenged to the Respondent's and Trial Court's as stated above making the order/judgment  
11 entered "VOID" : while a voidable order are readily appealable and must be attacked directly through  
12 the appeal process, "VOID" order / judgment may be circumvented by collateral attack and remedied by  
13 writ of Mandamus, (Sanchez v Hester, 911 S.W. 2d 173 (Tex App Corpus Christi 1995); USCA Const 5th  
14 Amend: Hays v. Louisiana Dock Co, 452 N.E. 2d 1383 (Ill App 5th Dist 1983), and the Petitioner denies  
15 any verified evidence exists to the contrary.

16. Petitioner asserts there is no verified evidence in the record that the judge of this court does  
17 not have a legal duty to enforce Judgments as the contractual obligation between the parties, which  
18 is now the record of the case, since there is no contradictory record before the court, nor does the  
19 judge enjoy discretion when it comes to vacating a void judgment, as relief is not discretionary, but  
20 mandatory, (Omer v Shalala, 30 F 3d 1307 (Colo 1994), and Petitioner denies any verified evidence  
21 exists to the contrary.

22. Petitioner asserts there is no verified evidence in the record Petitioner has not been deprived  
23 of Constitutional guarantees under the 14th Amend Cal, & U.S. Const. as the law provides that "once  
24 State or Federal jurisdiction has been challenged, the State must prove jurisdiction on the record,  
25 (Auto Equity Sales Inc. v Superior Court, 57 Cal 2d 450: Main Thiboutot, 100 S Ct 2502 (1980), Void  
26 judgment under State or Federal law is one in which the rendering court lacked personal or subject  
27 matter jurisdiction over the parties or dispute, or acted in a manner inconsistent with due process  
28 of law or otherwise acted unconstitutionally in entering orders, and Petitioner denies any verified  
evidence exists to the contrary.

Defendant asserts that the Judgment entered in favor of Defendant and against STATE is clear and precise in the relief granted for the specific performance to reverse, set aside judgment of conviction with prejudice and to discharge Defendant from custody and all terms of supervised release. *Korea Water Resources Corp. v. Lee* (2004) 115 Cal.App.4<sup>th</sup> 389; *Muzzy Ranch Co. v. Solano County Airport Land Use Co.*, (2007) 41 Cal.4th 372, 379-380 fn, and Defendant denies any verified evidence exists to the contrary.

Defendant asserts there is no verified evidence in the record that this court does not have a legal duty to honor the Default Judgment entered and registered in the Adjudicator Court (ADR) serving as the STATE'S confession that no jurisdiction had been properly obtained in a criminal proceeding and, as a matter of law, making any and all orders entered invalid, unconstitutional and moot, *Main v. Thiboutot* (1980) 448 U.S. 1, 100 S. Ct. 2502, 65 L.Ed.2d 555; *Serbian Orthodox Diocese v. Millivojevich* (1976) 426 U.S. 696; *Hoyle v. Dimond* (WDNY 2009) 612 F. Supp. 2d 225. "A court cannot confer jurisdiction where none exists, and cannot make a void proceeding valid, and is to correct all injustices in the record on the court's own motion, 'Sua Sponte'", *Thomas v. Ponder* (9<sup>th</sup> Cir. 2010) 611 F.3d 1144; "after a challenge to an erroneous order/judgment entered based on a procedural error." *Butz v. Mendoza Powers* (9<sup>th</sup> Cir. 2007) 474 F.3d 1193, and Defendant denies any verified evidence exists to the contrary.

Defendant asserts that there is no evidence in the record that any of THE STATE's intervention/objection to Defendant's motion would not appear to seek to re-litigate a matter resolved by Judgment, and since the right to appeal has long since expired and the Judgment is final, that the principles of res judicata and collateral estoppel do not apply as a conclusive bar to re-litigation and Double Jeopardy; and in addition, that the Final Judgment is not enforceable as a matter of law, *Rent-A-Center, West Inc. v. Jackson* (2010) 561 U.S. 63, 67; and, Defendant denies any verified evidence exists to the contrary

1 Furthermore, that as a matter of law, the STATE does not "lack standing" to file any  
2 Motion/briefs/objection/opposition whatsoever due to entered Default Judgment confessing lack  
3 of personal and subject-matter jurisdiction in the first instance re Defendant's unlawful  
4 arrest/imprisonment by STATE and that the United States Supreme court has not held, "A  
5 prosecutor is the representative not of an ordinary party to a controversy, but of a sovereignty  
6 whose obligation to govern impartially is as compelling as its obligation to govern at all; and  
7 whose interest therefore, in a criminal prosecution is not that it shall win a case, but that justice  
8 shall be done... while he may strike hard blows, he is not at liberty to strike foul ones. It is as  
9 much his duty to refrain from improper methods calculated to produce a wrongful conviction as  
10 it is to use every legitimate means to bring about a just one." *Berger v. United States* (1935) 295  
11 U.S. 78, 88; *People v. Williams* (2000) 170 Cal.App.4<sup>th</sup> 578, 628 and Defendant denies that any  
12 verified evidence exists to the contrary.

13 Defendant asserts there is no verified evidence in the record that the Judicial Council has  
14 not adopted standards and ethic requirements for this expressed purpose to promote public  
15 confidence, as it would seem intolerable to permit the STATE to "Play Fast and Loose" with the  
16 administration of justice by deliberately standing by without responding and thereby allowing  
17 Judgment to be entered against STATE, and now may contest and avoid the consequences  
18 thereof in this court... as "a judgment conclusively resolves the case" because "a judicial Power"  
19 is one to render dispositive judgments. ... By retroactively commanding [permitting] the federal  
20 courts to reopen final judgments, Congress has violated this fundamental principle." *Plaut v.*  
21 *Spend Thrift Farm Inc.* 514 U.S. 211, 218-219 (1995), and Defendant denies any verified  
22 evidence exists to the contrary.

23  
24  
25  
26  
27 //  
28

*Absence of felony complaint jurisdiction violates California Constitution Article I § 14 and the United States Constitution's 5<sup>th</sup> and 14<sup>th</sup> Amendments*

In the case at bar, a preliminary examination in Superior Court was held pursuant to a "Criminal Complaint" charging a felony brought by a prosecutor on behalf of The State; i.e., no grand jury.

Defendant asserts that there is no evidence in the record that, prior to filing Criminal Complaint at bar The STATE did not have foreknowledge that THE STATE's first pleading in any case prosecuting Defendant for a felony, and specifically the instant case at bar must be either an indictment or an information as required by law, and that without which one or the other, the court lacked personal and subject-matter jurisdiction to try Defendant; thus, rendering Defendant's prosecution unlawful. "Prosecution for felonies in this state, so far as the mode of prosecution is concerned, are governed by the constitution of the state, which in section 8 [14] article I provides for prosecution either by information or indictment. The Penal Code, conformity with the constitution, outlines the procedure of prosecution by indictment as well by information." *People v. Wallach*, (1926) 79 Cal.App. 605, 608. 'Accordingly, the first pleading by the prosecution, in a felony case may be either an indictment or information.'

19 pleading by the prosecution, in a felony case may be draft  
20 Witkin & Epstein, Cal.Criminal Law (3d Ed. 2000) Pre-trial Proceedings, § 169, p. 374;  
21 emphasis in original.)" *Guillory v. Superior Court*, (2003) 31 Cal.4<sup>th</sup> 168, 173-174. See  
22 Criminal Complaint, attached hereto and incorporated herein as Defendant's Exhibit A.  
23 evidencing "Criminal Complaint" was filed as the first pleading by the prosecution initiating  
24 a felony case at bar in the Superior Court; NOT an indictment nor an information, and the  
25 // Defendant denies any verified evidence exists to the contrary.  
26

26 // Defendant denies any verified evidence exists to the claim,

1 Under California and federal law, no court can acquire jurisdiction to try a person for an  
2 offense unless he is charged in the particular form and mode required by law. And, a person may  
3 not be punished for a crime without a formal and sufficient accusation. *Albrecht v. United States*,  
4 273 U.S. 1, 8 (1927); *People v. Vasilyan*; (2009) 174 Cal.App.4th 443, 449-450.

5 "Here, there is no argument a valid information was not filed at the outset of the case. ...  
6 Failure to file an information is an irregularity of sufficient importance to the functioning of the  
7 courts that the parties cannot cure the irregularity by their consent to the proceedings. (See, *In re*  
8 *Griffin*, (1967) 67 Cal.2d 343, 348.) The Superior Court did not have jurisdiction to accept  
9 appellant's guilty plea or enter judgment against him. The judgment is reversed." *People v. Smith*,  
10 (1986) 187 Cal.App.3d 1222, 1224.

11 This Court is asked to determine whether there is state constitutional or statutory  
12 authority (standing) for The State to initiate a felony prosecution by felony complaint rather than  
13 by a private person (person other than one holding public office, e.g., District Attorney) as  
14 required by law, as there appears to be no plea available to a defendant to answer a felony  
15 complaint brought by The State. See *Penal Code (PC) §§ 806, 948, 949, 1002 and 1016*.

16 Our Courts hold: *People v. Talle* (1952) 111 Cal.App.2d 650, 678-679 ["If a conviction is  
17 secured by means not sanctioned by law, the conviction cannot stand"]; *Rupley v. Johnson*  
18 (1953) 120 Cal.App.2d 548, 552, citing C.J.S. Criminal Law § 303, pp. 456, 457; *People v. Viray*  
19 (2005) 134 Cal.App.4<sup>th</sup> 1186, 1201, 1205 "the government may not even be involved in the  
20 preparation, investigation and filing of a felony complaint ... a commitment from which only a  
21 court can grant relief"; *Serna v. Superior Court*, (1985) 40 Cal.3d 239, 257 "felony complaint ...  
22 does not confer trial jurisdiction"; 22 C.J.S Criminal Law, § 324, p. 390.

1 Apparently, an information was not available to the State for felony prosecution.  
2 (*Government Code § 26502*). *Guillory v. Superior Court* (2003) 31 Cal.4<sup>th</sup> 168, 173-174; *Carter*  
3 *v. McCarthy* (9<sup>th</sup> Cir. 1986) 806 F.2d 1373, 1376, fn.2; *People v. Vasilyan* (2009) 174  
4 Cal.App.4<sup>th</sup> 443, 450.

5 Therefore, vacation of judgment is required on this ground alone, *Sua Sponte*.  
6

7 ***Absent Judgment State Lacks Authority to Imprison***

8 *Release is proper remedy for violation of due process guarantee of the California Constitution,*  
9 *Article I § 7(a), for lack of judgment of conviction on record: Unlawful imprisonment.*

10 Defendant asserts that the California Legislature's intent is clearly drafted at Penal Code,  
11 Title 8, Chapter 1, mandating that loss of personal liberty is possible ONLY where a superior  
12 court criminal trial judge personally signs a "judgment of conviction" for certification and  
13 immediate entry on record by the court clerk. (PC §§ 1202a, 1207; *Code of Civil Procedure* §§  
14 1635, 664.)

15 Our courts agree, there are no legislative or judicial shortcuts, excuses, creations, loop-  
16 holes, exceptions, deviations by which to imprison any sane adult citizen in the absence of a  
17 "judgment of conviction". *People v. Banks* (1959) 53 Cal.3d 370, 383; *People v. Crow* (1971) 4  
18 Cal.3d 613, 618; *People v. John* (2019) 36 Cal.App.5<sup>th</sup> 168, 175. "Judgment of conviction is one  
19 signed by the judge." *Payne v. Madigan*, (1960 CA 9 Cal.) 274 F.2d 702, affmd (1961) 366 U.S.  
20 761, 6 L.Ed.2d 853, 81 S.Ct. 7, re. den. (1961) 368 U.S. 871, 7 L.Ed.3d 72, 82 S.Ct. 2 et seq.  
21 A judgment of conviction must exist to imprison, which in the instant case, **does not**.  
22 "What shall be final process in criminal actions is prescribed in the four hundred and sixty-third  
23 section of the Act which regulates proceedings in criminal cases. It is a certified copy of the  
24 judgment as entered in the minutes of the court." *Ex parte Gibson*, 31 Cal. 619, 622 (Cal. 1867).

## *Collateral Consequence – Appeals to be Dismissed*

*Appeal is available from a judgment or order. (PC § 1237.)*

In the instant case at bar, the "notice of appeal" is invalid or a nullity and a judgment was not included in the record on appeal. Judicial notice is requested (Cal. Evid. Code § 452I):

1. That California Rules of Court, Rule 8.100(a)(2), in part provides: "This notice is sufficient if it identifies the particular judgment or order being appealed";

2. of this court's record, "Notice of Appeal" wherein no judgment or order is identified;

3. of this court's record that the Court Clerk did not include a judgment or order in the Clerk's record on appeal as required by Court Rule 8.320(b): "Clerk's transcript – The Clerk's transcript must contain: (b)(8) The judgment or order appealed from and any abstract of judgment or commitment" (emphasis added); and

4. of this court's record evidencing the inclusion of "Felony Abstract of Judgment(s)" wherein Clerk complies with Rule 8.320(b)(8) in part, noting absence of judgment without which there can be no valid abstract, and wherein the Clerk does not include "the judgment or order appealed from" in the Clerk's transcripts.

judgment or order appeared \_\_\_\_\_.  
Apparently, a written judgment of conviction signed by the judge was not available to the Clerk for entry in the record --confer Federal Rules of Criminal Procedure, Rule 32(k)(1) applicable to the state under the Fourteenth Amendment to U.S. Constitution; (*Payne v. Madigan*, *supra*)-- and for inclusion in the Clerk's transcript on appeal.

1. Petitioner asserts there is no verified evidence in the record that the Respondent has not abused  
2 its discretion by failure to vacate a VOID JUDGMENT based on the foregoing facts and discharge the  
3 Defendant - where the only authority for execution (imprisonment), (Penal Code Title 8, Chapters 1, &  
4 2) which does not exists in the case at bar in the official record, and Petitioner denies any verified  
5 evidence exists to the contrary.

6. Petitioner asserts there is no verified evidence in the record that Respondent's denial order  
7 doe not appear to ignor both legislative intent and published opinions, as cited above too, as it has  
8 long been settled that there is no commitment authority " in the absence of a judge signed judgment  
9 of conviction on the record." (In re Rick (1952) 112 Cal App 2d 410 413) Hawiian courts are in accord  
10 following California, ( State v Buffalo (1983) 4 Haw App 646 649, [1983 Haw App Lexis 154; citing,  
11 In re Black (1967) 66 Cal 2d 881; People v Prater, 71 Cal App 3d 695 703, [1977 Cal App Lexis 1640],  
12 and Petitioner denies any verified evidence exists to the contrary.

13. Petitioner asserts there is no verified evidence in the recrod that Respondent's denial did not  
14 deny Petitioner a substantial right to due process and equal protection under the law, (People v.  
15 Konow (2004) 32 Cal 4th 995 1002), as the Defendant has met his burden to provide the facts to the  
16 court, pointing out the absence of a Judge signed judgment of conviction in the court's own record,  
17 which is a valid defect and a fatal defect in the record, (People v Lee (2008) 161 Cal App 4th 124  
18 129) and Petitioner denies any verified evidence exists to the contrary.

19. Petitioner asserts there is no verified evidence in the record that Respondent did not fail to  
20 enter a valid judgment signed by the judge into the trial court record, for which a valid appeal may  
21 be taken, the proper remedy to correct this miscarraige of justice is a motion to vacate the void  
22 judgment rendered in excess of jurisdiction and discharge of the Defendant from invalid custody forth  
23 -with, for violations of due process guarantees by the California Constitution, Art I, § 7 (a), for  
24 lack of a valid judgment of conviction on the record, and Petitioner denies any verified evidence  
25 exists to the contray.

26. Wherefore, based on the foregoing reasons, lack of a judge signed judgment of conviction by a  
27 superior court judge entered on the record, pursuant to legislative mandate, the court shall vacate  
28 the order/judgment and ordered the Defendant discharged from custody, sua sponte.

Extraordinary Circumstances

1. Petitioner asserts ther is no verified evidence in the record that Petitioner has not herein  
2 presented Extraordinary Circumstances as it is well established that the deprivation of constitutional  
3 guaranteed rights 'unquestionably constitutes irreparable injury' (Hernandez v Sessions, 872 F 3d 976  
4 994 (9th Cir 2017), quoting, Melendres v Arpaio, 695 F 3d 995, 1002 (9th Cir 2012), and Petitioner  
5 denies any verified evidence exists to the contrary.
6. Petitioner asserts there is no verified evidence in the record that Petitioner has not been false  
7 ly imprisoned by an unconstitutional conviction by the prosecution's own admission, by " Default  
8 Judgment " without an constitutionally adequate prosecution, by the use of deceptive methods i.e.  
9 invalid and defective " Felony Complaint " and lack of Judge signed judgment of conviction on the  
10 record, authorizing incarceration, " Deprivation of Physical liberty " by UNLAWFUL DETENTION constitut-  
11 es irreparable harm and injury, and Petitioner denies any verified evidence exists to the contrary.
12. Petitioner asserts there is no verified evidence in the record that based on the foregoing facts  
13 presented there is not several triggering events / conditions that have been satisfied by stipulated  
14 agreement between the parties, as expressed by " Default Judgments " lodged in the official court  
15 record, that warrant this court's sua sponte action to correct a miscarriage of justice by vacature  
16 of the void judgment entered and discharge the Defendant from unlawful custody forwith: for want of  
17 of personal or subject matter jurisdiction: for lack of a sufficient accusatory pleading "Felony  
18 Complaint": For lack of a judge signed judgment of conviction in the record: for lack of a signed  
19 judgment of conviction furnished to the officer executing the judgment at time of delivery of Defendant  
20 to state prison: " But the writ does not contain a certified copy of a judge signed judgment, nor  
21 does it appear such a copy was furnished to the officer whose duty it was to execute the judgment.  
22 The Prisoner is therefore entitled to his discharge, and it is so ORDERED." (Ex Parte Gibson (1867) 31  
23 Cal 619 at 623, citing, Ex Parte Dobson 31 Cal 497) and Petitioner denies any verified evidence exists  
24 to the contrary.
25. In sum, the court is aware that the court retains jurisdiction to vacate a void judgment sua  
26 sponte, when the court never obtained jurisdiction in the first instance, and to issue orders as  
27 follows;

## DEFENDANTS CONFESSION BY DEFAULT JUDGMENT

IT HAS BEEN ORDERED AND ADJUDGED THAT:

1. This Notice/Motion along with the record of the Claim, shall comprise a record of the Respondent's acceptance of the terms and conditions of the claim, and as such shall constitute the final expression in the record of the private settlement agreement between the parties (The Final Agreement)
2. The Respondent's shall forthwith rescind and/or revoke any/all liens, levies, deficiencies, garnishments and distract warrants, (Collectively The Encumbrances) on all property registered and unregistered held in the same of the Petitioner and/or the Debtor, (The Collateral);
3. The Respondent's shall forthwith vacate and discharge any/all judgments, orders and decrees issued against the Petitioner or the Collateral for the settlement of the account, (Collectively The Orders);
4. The Respondent's shall forthwith dismiss and/or discharge any/all actions initiated by or for the Respondent's against the Petitioner and/or the Collateral for the settlement of the account, (Collectively The Action);
5. The Respondent's shall forthwith discharge any/all debts, obligations and liabilities of the Petitioner and/or the Collateral (The Liabilities) by executing or causing to be executed all notices of rescission, discharge, satisfaction and orders for dismissal, vacation , release of lien, levy, garnishments, obligations, liabilities and any/all instruments necessary for the discharging of the encumbrances, orders actions and liabilities for the settlement and closure of the account, (Collectively the Account);
6. The final Agreement shall charge the respondent's with giving notice of the discharge of the encumbrances, orders, actions and liabilities to the Petitioner by providing certified copies of the discharge by mailing said certified copies to the Petitioner through this court;
7. The Petitioner's paramount security interest in the Collateral;
8. The Petitioner's exclusive right to possess the Collateral;
9. The Petitioner's lien on the Debtor and the Accounts;
10. The Respondent's obligation to return and/or duly compensate the Petitioner for any/all property of the Petitioner/Debtor/Collateral seized, arrested, disposed or attached by lien, levy, garnishment or sale for the settlement of the account;
11. The value of the Petitioner's Claim in the collateral and lien on the account is equal to Ten Million U.S. Dollars and 00/100 (10,000,000.00);

12. The administrative determination, certification, judgment, decree, order and verdicts issued by this court shall be binding upon the parties in accordance to this agreement, and shall supersede any/all previous contract/agreements between the parties;
13. The Respondent's inability and failure to state a claim upon relief could be granted;
14. Any/all attempts by the Respondent to prejudice, hinder, obstruct or impede the Petitioner's Claim is in violation of Due Process and Equal Protection under the law;
15. Respondent shall cease and desist from generating and/or transmitting Petitioner's name/information associated with this action to any/all law enforcement agencies or otherwise;
16. Respondent shall expunge/remove Petitioner's name from any/all records associated, generated or established by this action, and seal all private/public records;
17. The Respondent's conveyance and granting of a specific power of attorney to the Petitioner or any agent thereof for the execution of any instruments, communications, or correspondences deemed necessary by the Petitioner, for the Petitioner's paramount security interest in the collateral, exclusive right to possession and disposition of the collateral;
18. The Respondent's admission and confession to committing torturous acts and crimes of theft of funds, slander and libel, dishonor in commerce, fraud, collusion, racketeering and conspiracy;
19. The Respondent's admission and confession of a liability to the Petitioner with a value equivalent to ten Million U.S. Dollars 00/100 (10,000,000.00) plus 10% Int. per annual, (the Respondents Liability);
20. The Respondent's acceptance of having any/all real/personal property registered and Unregistered secured as collateral for the Respondent's liability;
21. The Respondent's are liable for any/all damages incurred by the Petitioner pursuant to any actions in breach of the terms of this Final Agreement;
22. The Respondent's granting of in personam, in rem, venue, and subject matter jurisdiction to this court;
23. The Respondent's waive all limited liability protections and immunities afforded to the Respondent's by all franchises, including, but not limited to, the state of California, the District of Columbia, and the United states Inc.;

**DEFAULT JUDGMENT**

1. Petitioner asserts that there is no verified evidence in the record that the Default Judgment entered into the official record is not Final and precisely and clearly expressed the terms, conditions, stipulations and sum certain amount of the monetary award granted, see, *Hamilton v. Superior Court*, (1974) 37 Cal App 3d 418 423 112 Cal Rptr 450: Non Reviewability of Judgments entered by Default. *Rivas v. Napolitano*, 714 F 3d 1108 1111 (9th Cir 2013).

2. Petitioner asserts that there is no verified evidence in the record that the Foreign judgment is not enforceable in the same manner as the judgment of a sister state which is entitled to the full faith and credit, (CCP § 1710-1724); *164 East 72nd Street Corp. v. Ismay*, 65 Cal App 2d 574 151 P 2d 29, (1944); *United States v. Park Place Ass. LTD*, 563 F 3d 907 923-924, (9th Cir 2009).

3. Petitioner asserts that there is no verified evidence in the record that Justice Thomas did not explain that, "State and Federal Governments unquestionably have a legitimate interest in ensuring that reliable evidence is presented to the trier of fact in all civil and criminal proceeding in regards to certified evidentiary record, *U.S. v. Scheffer*, (1998) 523 U.S. 303 Parts I, II(A), & II(C).

4. Petitioner asserts that there is no verified evidence in the record that the judgment of Certified Abstract of Judgment and Administrative record, does not substantiate a prima facie case for registration and enforcement of a foreign judgment as stated above.

5. Petitioner asserts that there is no verified evidence in the record that the Default Judgment entered did not incorporate the settlement agreement by consent of the Respondent which meets the requirement of res judicata that there was a final decision on the merits, as "[A] stipulated judgment may properly be given collateral estoppel effect," "A judgment entered ... by consent or stipulation, is conclusive a...bar as a judgment after trial." (4 Witkins, Cal Proc. (2d Ed 1971) Judgments § 170, P3312; *De Weese v. Unick*, (1980) 102 Cal App 3d 100 105 [162 Cal Rptr 259]; *Johnson v. American Airlines, Inc.*, (1984) 157 Cal App 3d 427 431 [203 Cal Rptr 638].

AFFIRMATIVE DEFENSE

1. Petitioner has demonstrated by Default Judgment(s) in Petitioner's favor and against the State  
2 DBA THE PEOPLE OF THE STATE OF CALIFORNIA'S CONCESSION to acts in excess of authority both personal and  
3 and subject matter jurisdiction, making all orders rendered therefrom moot as a matter of law. Which  
4 is a substantial *prima facie* case for relief, under the standard in *re People v duvall* (1995) 9 Cal  
5 4th 464 474-475.

6. Petitioner asserts an individual who is unlawfully imprisoned is entitled to relief if he can  
7 prove that false evidence was introduced against him/her on the issue of guilt and that the false  
8 evidence was substantially material or probative. (Penal Code § 1437: *In Re Parks* (2021) 67 Cal App  
9 5th 418 444.) Individuals are entitled to relief if they are able to demonstrate "[N]ew Evidence  
10 exists that is credible, material, presented without substantial delay, and of such decisive force  
11 and value that it would have more likely than not changed the out come at trial."

12 For the purpose of this section 'New Evidence' means evidence that has been discovered after  
13 trial, that could not have been discovered to trial by the exercise of due diligence and in admissible  
14 such as the attached Certified Abstracts of Judgments lodged in the official court record.

15. Petitioner asserts the "Pre-Judicial *Per Se* Test." A Federal Constitutional error that amounts  
16 to a Structural Defect affecting the framework within which the trial court proceeds, is considered  
17 prejudicial *per se*, and thus Always Requires Reversal. (*Arizona v Fulminante* (1991) 499 U.S. 279 309  
18 113 L Ed 2d 302 331 111 S Ct 1246). Similarly, State Constitutional error amounting to a denial of a  
19 Defendant's right to have his/her guilt or innocence determined by an orderly legal procedure  
20 requires Reversal regardless of the strength of the evidence received at trial. (*People v Cahill*,  
21 (1993) 5 Cal App 4th 478 501 20 CR 2d 582).

22 In the case at bar, Petitioner made a special appearance to initiate a Cross-Claim by Civil  
23 Action to invoke a challenge to the States Respondents authority to bring him/her into court in the  
24 first place to answer any alleged charges, both personal and subject matter jurisdiction, that has  
25 resulted in Judgment(s) in Petitioner's favor and against the State, DBA THE PEOPLE OF THE STATE OF  
26 CALIFORNIA, ET AL, (*In Re Harris* (1993) 5 Cal. 3d 750: *Auto Equity Sales Inc, v Superior Court*, (1962)  
27 5 Cal App 2d 450: *Haring v Prosise*, 462 U.S. 306 320 (1983)).

1 4. Petitioner asserts by his presentment of Certified Abstracts of Judgment in the record, which  
2 is considered newly discovered *prima facie* material exculpatory evidence sufficient on it's face as  
3 a charge in facts and law, to establish a given fact that the trial court has entered orders in plain  
4 excess of authority and jurisdiction of constitutional dimention and structure, mandating per se  
5 reversal. (White v AbramsC.A. Cal 495 F 2d 724 729.) Courts use the concept of '*prima facie*' in two  
6 senses: (1) In the sense of Petitioner producing evidence sufficient to render a reasonable  
7 conclusion in favor of allegations he asserts, this means Petitioners evidence is  
8 sufficient to allow his case to go to jury, and  
9 (2) Courts use '*prima facie*' to mean not only that Petitioner's evidence would reasonably  
10 allow conclusion Petitioner seeks, but also that Petitioner's evidence compels such a  
11 conclusion if the Respondent produces no evidence to rebut it. (Husband v Com of Pa,  
12 D.C. Pa, 395 F Supp 1107 1139: State v. Harenza, 213 Kan. 201 515 P 2d 1217 1222.)

13 Petitioner asserts once a trier of facts is presented *prima facie* evidence of this calerber,  
14 standing alone and uncontradicted, would maintain the proposition and warrant the conclusion to  
15 support the purpose for which it is ~~introduced~~, Final Judgment of the merits, which has a binding  
16 legal effect and force. (United States Fidelity and Guaranty Co. v. Guenther, 218 U.S. 34 50 S Ct  
17 165 75 L Ed 683.)

18 5. Petitioner asserts the Respondent's failure to properly obtain jurisdiction, implicates the Due  
19 Process Clause and requires per se reversal. (People v. Albarran, 149 Cal App 4th P 232; In Re Lewis  
20 (2001) 25 Cal App 4th 610.) As such error compels reversal.

21 6. Petitioner asserts the Respondents use of deceptive methods to persuade the trial court of  
22 authority and jurisdiction that simply did not exists, was so prejudicial that it practices offends  
23 Societies concept of fair play, decency and concepts of fundamental fairness, in complete deprivation  
of Petitioner's Constitutional Guarantees and Protections to due process and equal protection under  
the law, 14th Amendment California and United States Constitutions.

24 Moreover, The Respondent's breach of Contractual Obligation as expressed in the Abstract of  
25 Judgment has caused the Petitioner addition injury, damage, and prejudice, by the Respondents failure  
26 to sua sponte move the court to dismiss the case with prejudice and discharge the Petitioner. (U.S.  
27 v. Johnson, 241 F 3d 1049 1055.) in bad faith and complete dishonor.

## REASONS FOR GRANTING THE PETITION

1. Petitioner asserts there is no verified evidence in the record that Judge Kimberl J. Mueller, did not knowingly, intelligently, and wilfully commit malfeasance and abuse her authority in complete contravention of FRC 28 USC § 455(a)(4), "she knew that she individually or as a fiduciary...has a financial interest in the subject matter in controversy... or any other interest that could be substantially affected by the outcome of the proceeding: (IV)(C): Ackerman v United States, 340 U.S. 193 95 L Ed 207 71 [\*2205] St Ct 209: Rule 60 (B), grants federal courts broad authority to relieve a party from a final judgment to accomplish justice, in accord with contractual obligation by judgment, as evidenced by the record, Justice must satisfy the appearance of justice. (Klapprott v United States, 335 U.S. 601)(In Re Marchison, 349 U.S. 133: Tuney v. Ohio, 273 U.S. 510 532: Offutt V United States, 248 11 14,) and Petitioner denies any verified evidence to the contrary.
2. Petitioner asserts there is no verified evidence in the record that Petitioner does not herein make a special appearance to invoke exclusive Equity Jurisdiction, to enforce Contractual Obligations" by Judgments in rem, under United States Constitution Art III. § 2, as Admiralty jurisdiction is exclusive as to causes of action begun and carried on as proceedings in rem, that is, where a vessel or thing itself is treated as the Offender and made the Defendant by name or description in order to enforce a lien. (Madruga, 346 U.S. 556: Lewis, 531 U.S. 438: 28 USC § 1333(1): Simmons v Ware, 213 Cal App 4th 1035), and Petitioner denies any verified evidence exists to the contrary. (Saving To The Suitors Clause) Common Law Remedy.
3. Petitioner asserts there is no verified evidence in the record that Petitioner has not proved his claim by a 'Proponderance of undisputed Substantial Evidence by JUDGMENTS and the principles of Res Judicata and Stare Desist apply to the case at bar, as Superiority in weight, Force and Importance, etc, In legal terms a proponderance of evidence means that Petitioner has shown that his version of Undisputed Facts, Causes, Damages or / and Fault is more likely than not the correct version of events, and Petitioner denies any verified evidence exists to the contrary.

Conclusion

1 Wherefroe, in sum for all of the foregoing reasons, Certified Abstratct of  
2 Judgment(s) lodged in the record, Statute Staple Security Instrument, Unrebutted Verified documentary  
3 evidence in Petitioner's favor in support of issuance of an order granting this petition in its  
4 entirety as follows;

5 A. The orders entered on 01/17/2024. ECF #'s 16, 19, 20, 21, & 15, are all reversed, with  
6 directions for each to be granted, specifically the Motion for Disqualification of Chief Judge  
7 Kimberly J. Mueller, based on the undisputed record; Writ of Mandate/PROHIBITION is Granted in its entirety;

8 B. The Orders entered on 9/16/2024, & June 25, 2024, are all reversed ECF #'s 30, 34, & 35,  
9 the Magistrate judge's denial of the Motion to Disqualify Chief Judge Kimberly J. Mueller, is  
10 Reversed, with direction to be granted: ECF 16: Motion For an Extention of Time ECF 19, is reversed  
11 with instruction to be denied: Motion to Dismiss ECF 20, is Reversed with instruction to be Denied:  
12 Motion to Strike Respondents motion for an extention of time ECF 21, is Reversed and Granted:  
13 ECF 22, Order signed by magistrate judge Dennis M Cota, 1/17/2024, Denying ECF 16, Petitioner's  
14 Motion to Disqualify, is Reversed and Granted: ECF # 27, Emergency Motion for Preliminary Injunction  
15 by Petitioner is reversed and granted: ECF 34 & 35, Orders adopting the magistrates finding and  
16 recommendations in full and issuance of a judgment in favor of the Defendants on 9/16/2024, are  
reversed in full, with directions to issue a writ of Habeas Corpus in favor of Petitioner/Plaintiff  
as expressed by Judgment provisions 1-23, in its entirety, anf for the immediate discharge of the  
Petitioner from invalid custody of the Warden at Corcoran State Prison and removal from the premises  
forthwith by the Marshall Office in compliance with this courts order;

17 C. The Unites States Court of Appeals For The Ninth Circuit order of Denial was entered in  
18 error and is herein reversed, with direction to be Granted for the Disqualification of Cheif Judge  
19 Kimberly J. Mueller:

20 D. Any and all further relief known to this court in the interest of due process, Equal  
Protection and Justice under the law.

21 Verification

22 I the undersigned Petitioner/Plaintiff/Affiant/Accomodation Party/ Beneficiary does herein  
23 solemnly affirm, state and verfiy that the foregoing is true, correct and complete on my own first-  
hand knowledge and Commercial liability, under penalty of perjury of the laws of the Republic State  
24 of California, without THE UNITED STATES OF AMERICA. INC.

25 Date 8 • 15 • 2025

26 

27 Witness

28 By Paul Jolivette Beneficiary

Paul Patrick Jolivette, Beneficiary

S/AS WJC HAWKER

Witness