

No. 25-7064

ORIGINAL

SUPREME COURT OF THE UNITED STATES

MICHAEL DEVIN FLOYD,

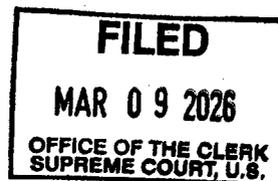
Plaintiff-Appellant,

v.

Defendant Santa Clara County officers Deputy Gino Cofferati
#10991, Deputy Daniel Dickson #11036, and Deputy Sheriff
Detective Matthew Newton #2212

Defendants-Appellees.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit



PETITION FOR A WRIT OF CERTIORARI

Michael Devin Floyd
Pro Se
2323 Broadway
Oakland, CA 94612
(713)562-7229
mdf3039@gmail.com

Friend of the Court

Question Presented

I was arrested around 9:30 PM on August 18, 2021. I informed Defendant officers Deputy Daniel Dickson #11036 and Deputy Sheriff Detective Matthew Newton #2212 that I had not yet received a phone call at 3:30 PM on August 19, 2021. I was finally allowed a phone call after 8:00 AM on August 20, 2021. Can the Defendant officers Dickson and Newton's 16-18 hour procrastination of allowing me a phone call be not regarded as violating constitutional due process and California Penal Code 851.5, especially when Officer Cofferrati issued previous threats of pretrial punishment?

Parties to the Proceeding

Plaintiff Michael Devin Floyd is the Plaintiff-Appellant.

Defendant officers Deputy Gino Cofferati #10991, Deputy Daniel Dickson #11036, and Deputy Sheriff Detective Matthew Newton #2212 are the only Defendant-Appellees for this Petition for a Writ of Certiorari.

But, there were other Defendant Officers. The defendants in the district court lawsuit are Santa Clara Department of Correction, County of Santa Clara, County of Santa Clara Office of the Sheriff, Elmwood Correctional Facility, Deputy Dung Tran #10679, Deputy Robert Silos #11291, Deputy Jeremy Hiles #11188, Deputy Saul Agustin #11131, Deputy Charles Stokes III #11240, Deputy Ryan Reyes #10612, Deputy Gino Cofferati #10991, Deputy Corey Evans #10838, Sgt. Yvette Dias #10305, Consuelo (Renee) Garcia LMFT, Sgt. Bradley Reagan #10572, Deputy Victor Cabrera #11081, Deputy Kyle Quadros #11216, Deputy Fabian Serrano-Alvarez #11284, Deputy George Barajas #11089,

Deputy Jesus Patino #11308, Deputy Joseph Cortez #11307, Deputy
Isaiah Campos #11214, Sgt. Ryan Hernandez #10604, Deputy Miguel
Sanchez-Perez #11050, Lt. Ruth Cote #10457, Deputy Sheriff Detective
Matthew Newton #2212, Sergeant Vorpahl #10888, Correctional Deputy
Daniel Dickson #11036

Related Proceedings

U.S. Court of Appeals for the Ninth Circuit:

Michael Devin Floyd v. Santa Clara Department of Correction, et al.,

No. 24-6866 (9th Cir. October 28, 2025) (unreported, available at 2025

WL 3012645)

U.S. District Court for the Northern District of California:

Michael Devin Floyd v. Santa Clara Department of Correction, et al.,

No. 22-CV-00750-CRB (N.D. Cal. Oct. 10, 2024) (unreported, available

at 2024 WL 4801852)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	2
PARTIES TO THE PROCEEDING	3
RELATED PROCEEDINGS	5
TABLE OF CONTENTS	6
TABLE OF AUTHORITIES	8
PETITION FOR A WRIT OF CERTIORARI	10
OPINIONS BELOW	11
JURISDICTION	12
STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED	13
INTRODUCTION	17
STATEMENT	19
Procedural Background	19
Relevant Factual Background	20
REASONS FOR GRANTING PETITION	22
Argument is Correct	22
Fair Appeal	23
CONCLUSION	25
APPENDIX	
A. Order from the Ninth Circuit Affirming District Court's Order	1A-7A

B. Order from California Northern District Court Granting Defendant's Summary Judgment Motion and Dismissing Claims	8B-19B
C. Order from the Ninth Circuit Denying Panel for Rehearing	20C
D. Appellant's Opening Brief to the Ninth Circuit	21D-48D
E. Defendants' Answer to the Operative Complaint	49E-57E

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Carlo v. City of Chino</i> , 105 F.3d 493, 497 (9th Cir. 1997)	22,23
<i>Halvorsen v. Baird</i> , 146 F.3d 680, 690 (9th Cir. 1998)	24
<i>Henry v. Cnty. of Shasta</i> , 132 F.3d 512, 519 (9th Cir. 1997), opinion amended on denial of reh'g, 137 F.3d 1372 (9th Cir. 1998)	23
<i>Lombardo v. City of St. Louis, Missouri</i> , 594 U.S. 464, 141 S. Ct. 2239, 210 L. Ed. 2d 609 (2021)	22
<i>Maley v. Cnty. of Orange</i> , 224 F. App'x 591, 593 (9th Cir. 2007)	23
<i>Michael Devin Floyd v. Santa Clara Department of Correction, et al.</i> , No. 22-CV-00750-CRB (N.D. Cal. Oct. 10, 2024) (unreported, available at 2024 WL 4801852)	5,11
<i>Michael Devin Floyd v. Santa Clara Department of Correction, et al.</i> , No. 24-6866 (9th Cir. October 28, 2025) (unreported, available at 2025 WL 3012645)	5,11
<i>Vitek v. Jones</i> , 445 U.S. 480, 488, 100 S.Ct. 1254, 1261, 63 L.Ed.2d 552 (1980)	22
 Statutes	
California Penal Code 851.5	2,14,19,22,23,25
United States Code	

28 U.S.C. § 1254	12
42 U.S.C. § 1983	13,19

Constitutional Provisions

United States Constitution	
1st Amendment	23
5th Amendment	23
14th Amendment	13,19,22

PETITION FOR A WRIT OF CERTIORARI

I, Plaintiff Michael Devin Floyd, respectfully petitions for a writ of certiorari to review the order from the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion is not reported but is available at 2025 WL 3012645.

The District Court's opinion is not reported but is available at 2024 WL 4801852.

JURISDICTION

The Ninth Circuit entered its order affirming the district court on October 28, 2025. (App 1a-7a). It denied panel rehearing on December 10, 2025. (App 20c).

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

INVOLVED

42 U.S.C. § 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

14th Amendment: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Penal Code § 851.5: (a) (1) Immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls, as described in subdivision (b).

(2) The arrested person shall be entitled to make at least three calls at no expense if the calls are completed to telephone numbers within the local calling area or at his or her own expense if outside the local calling area.

(b) At any police facility or place where an arrestee is detained, a sign containing the following information in bold block type shall be posted in a conspicuous place:

The arrestee has the right to free telephone calls within the local calling area, or at his or her own expense if outside the local calling area, to three of the following:

(1) An attorney of his or her choice or, if he or she has no funds, the public defender or other attorney assigned by the court to assist indigents, whose telephone number shall be posted. This telephone call shall not be monitored, eavesdropped upon, or recorded.

(2) A bail bondsman.

(3) A relative or other person.

(c) As soon as practicable upon being arrested but, except where physically impossible, no later than three hours after arrest, the arresting or booking officer shall inquire as to whether the arrested person is a custodial parent with responsibility for a minor child. The arresting or booking officer shall notify the arrested person who is a custodial parent with responsibility for a minor child that he or she is entitled to, and may request to, make two additional telephone calls at no expense if the telephone calls are completed to telephone numbers within the local calling area, or at his or her own expense if outside the local calling area, to a relative or other person for the purpose of arranging for the care of the minor child or children in the parent's absence.

(d) At any police facility or place where an arrestee is detained, a sign containing the following information in bold block type shall be posted in a conspicuous place:

The arrestee, if he or she is a custodial parent with responsibility for a minor child, has the right to two additional telephone calls within the local dialing area, or at his or her own expense if outside the local area, for the purpose of arranging for the care of the minor child or children in the parent's absence.

(e) These telephone calls shall be given immediately upon request, or as soon as practicable.

(f) The signs posted pursuant to subdivisions (b) and (d) shall make the specified notifications in English and any non-English language spoken by a substantial number of the public, as specified in Section 7296.2 of the Government Code, who are served by the police facility or place of detainment.

(g) The rights and duties set forth in this section shall be enforced regardless of the arrestee's immigration status.

(h) This provision shall not abrogate a law enforcement officer's duty to advise a suspect of his or her right to counsel or of any other right.

(i) Any public officer or employee who willfully deprives an arrested person of any right granted by this section is guilty of a misdemeanor.

INTRODUCTION

It's not what you know, it's what you can prove -- Detective Alonzo Harris,
played by Denzel Washington on *Training Day*

My district court complaint alleged several incidents that occurred within Santa Clara County correctional facilities. Unfortunately, obtaining evidence for those allegations rested on the very same entity I was suing. Summary judgment was granted to all Defendants mainly due to lack of evidence.

I focused my appeal to the Ninth Circuit on minor contradictions in the County's evidence and a singular, pinpointed issue which I did understand to have sufficient evidence. That singular issue is the focus of this petition: the claim for the lack of phone call has been tightened down to 3 Defendants and a smaller window of time.

The main reason why this Court should hear this petition is because I was not given a fair appeal. I was not provided a phone call within a practicable period of time after arrest, which is a clearly defined violation of California and constitutional law. I explained within my opening brief to the 9th Circuit that I was targeting the 16-18 hour window where a phone call was definitively practicable, yet was not provided to me. (App 28d). After my housing and conferring with the Defendants Newton and Dickson, I was not allowed access to a phone until more than 16 hours passed. (App 42d). The Ninth Circuit unfortunately overlooked my appeal's question and arguments, intentionally focusing on a different window of

time to uphold the district court's decision. (App 4a-5a). That court also refused a panel rehearing. (App 20c). I, Plaintiff Michael Devin Floyd, respectfully petitions for a writ of certiorari to review the judgment of the Ninth Circuit in this case and afford me a fair appeal.

STATEMENT

Procedural Background

Plaintiff Michael Devin Floyd commenced his civil right lawsuit in California Northern District court on February 4, 2022, with the filing of the original complaint. Floyd filed the operative Third Amended Complaint on March 19, 2023. Floyd alleges that Santa Clara County and its officers violated 42 U.S.C. § 1983 through excessive force and denial of constitutional due process, along with California Penal Code § 851.5. All Defendants were granted Summary Judgment after motioning and briefing; evidence produced by the County failed to incriminate the County. Floyd's claim for denial of due process under the 14th amendment and violation of California Penal Code § 851.5 rested on the alleged 35 hour window where Floyd did not receive a phone call. This 35 hour window spans from the arrest around 9:30 PM on August 18, 2021 to 8:08 AM on August 20.

Plaintiff-Appellant timely appealed to the 9th Circuit. His appeal of the excessive force claim focused on small contradictions in the Defendant's evidence. His appeal for the lack of phone call access focused on a particular 18 hour window of time where it was more than practicable to provide Floyd with a phone call, yet one was not provided. (App 28d). This window starts around 2:00 PM on Thursday August 19, 2021 and ends at 8:08 AM on August 20. The Plaintiff was housed at 2 PM. (App 11b). The Ninth Circuit did not address my question in its decision.

Relevant Factual Background

I, Plaintiff Michael Devin Floyd, was arrested by San Jose Police Department late night on August 18, 2021 in San Jose, California. San Jose resides in the County of Santa Clara. I was brought to the Santa Clara County Main Jail after the arrest. After hours within the Main Jail, I requested a phone call. This request was before my transport to a different facility: Elmwood Correctional Facility. I was told to wait for a phone call until I reached Elmwood. I agreed and complied.

I reached Elmwood Correctional Facility at approximately 4:00 AM on August 19, 2021. From there, facts about the encounters within the lobby are debatable. My allegations in the complaint do not match the evidence produced by the County of Santa Clara for my claims against the County of Santa Clara. But, what is undebatable is that I was housed at approximately 2PM on August 19, 2021. (App 11b). What is undebatable is that shortly after being housed, Deputy Daniel Dickson #11036 and Deputy Sheriff Detective Matthew Newton #2212 spoke to me near 3:30 PM, to obtain my testimony about the events. (App 11b, 42d). What is undebatable is that those two Defendants were aware I was arrested the prior night and I had not made a phone call. (App 42d). What is undebatable is that I requested a phone call to those two Defendants. (App 11b, 42d). What is also undebatable is that Santa Clara declared I made my first phone call at 8:08 AM on Friday, August 20, 2021. (App 50e). This 16 hour window of time, between the

practical phone call request and phone call allowance, is the challenge I seek review from this Court. The reason for this petition to be granted.

REASONS FOR GRANTING PETITION

Argument is Correct

The Supreme Court has “repeatedly held that state statutes may create liberty interests that are entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment.” *Vitek v. Jones*, 445 U.S. 480, 488, 100 S.Ct. 1254, 1261, 63 L.Ed.2d 552 (1980). We hold that the California statute [Cal Penal Code § 851.5] creates such a liberty interest.

Carlo v. City of Chino, 105 F.3d 493, 497 (9th Cir. 1997)

The argument I raised is a correct one. I had a constitutional and statutory right to a phone call in a practicable time. The 9th Circuit has already admitted a violation of Cal Penal Code § 851.5 is a violation of the 14th Amendment.

On certiorari review of a case decided by summary judgment, the Supreme Court views the evidence in the light most favorable to the nonmoving party.

Lombardo v. City of St. Louis, Missouri, 594 U.S. 464, 141 S. Ct. 2239, 210 L. Ed. 2d 609 (2021)

My argument to this court starts at 3:30 PM on August 19, 2021. Evidence from both parties shows that I requested the phone call to the two Defendant Officers at that time. (App 11b, 42d). Evidence also shows that I informed the officers I had not made a phone call since the arrest during the prior night. (App 42d). Evidence

also shows that I was not allowed a phone call until after 8:00 AM on August 20, 2021. (App 50e). That 16 hour wait was not practicable.

Fair Appeal

Despite raising the same argument in the opening brief of my appeal to the Ninth Circuit, that court decided not to answer that question presented. Interestingly enough, the Ninth Circuit has already ruled in my favor in other similar cases. See Maley v. Cnty. of Orange, 224 F. App'x 591, 593 (9th Cir. 2007) where

“The language of the statute [California Penal Code 851.5] nowhere suggests that it was meant to limit arrestee's rights in such a way. Rather, it places a burden on police officers to ensure access to the telephone.”

And also see Carlo v. City of Chino, 105 F.3d 493, 499 (9th Cir.1997) where

“[T]he statute substantively limits an officer's discretion [to deny a detainee access to a phone] because it makes a telephone call mandatory unless physically impossible.”

And also see Henry v. Cnty. of Shasta, 132 F.3d 512, 519 (9th Cir. 1997), opinion amended on denial of reh'g, 137 F.3d 1372 (9th Cir. 1998)

“Despite his repeated requests to make a phone call, he was held incommunicado in that condition until approximately noon the next day, in violation of both California law and his First and Fifth Amendment rights.

The Ninth Circuit has even ruled that even a six hour window must be judged on the reasons for practicality. “Halvorsen's six hour confinement cannot be held too short, as a matter of law, to entitle him to communicate. The duration of incommunicado confinement has to be considered against the reasons why communication might be necessary, and why it might be impractical. A six hour disappearance during the night is long enough to raise significant concerns in any spouse or parent about where the disappeared person is.” Halvorsen v. Baird, 146 F.3d 680, 690 (9th Cir. 1998).

CONCLUSION

As a pretrial detainee, I was not allowed a phone call for more than 32 hours after arrest. Approximately halfway through that window of time, I requested a phone call to Defendant officers Dickson and Newton. Those Defendant officers were aware at that time that I hadn't made a phone call since the previous night's arrest. That 16 hour wait is not a practicable period of time and is the challenge in this petition. I was not granted a fair appeal. A reasonable jury could find those officers violated California Penal Code 851.5. I pray for the Supreme Court to hear this petition and remand this back to the district court for trial.

Date: March 7, 2026

A handwritten signature in cursive script that reads "Michael Floyd". The signature is written in black ink and is positioned above a horizontal line.

Michael Devin Floyd
Pro Se for Appellant