No. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

DR. DAVID ALAN DORTCH,

Petitioner,

vs.

RIVERSIDE COUNTY SUPERIOR COURT; STANLEY SNIFF, RIVERSIDE COUNTY SHERIFF; AND DOES 1-50,

Respondents.

Riverside County Superior Court, Southwest
Case Nos. SWF1400013 and SWF1501444

Presiding Judges
Judith C. Clark
Dennis A. McConaghy

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE

---IMMEDIATE RELIEF REQUESTED---

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INTRODUCTION

Two years ago, Petitioner Dr. David Dortch was blacklisted by Murrieta Police Department with a false allegation that he held "Sovereign Citizen ideology" and thus, they claimed, a safety concern for the community. Since then, law enforcement, in concert with the Riverside County District Attorney's Office and the Respondent Riverside County Superior Court, Dr. Dortch and his family have been methodically deprived of their most basic constitutional rights, including being punished for exercising their rights of freedom of speech to talk about how they have been treated by law enforcement, prosecutors, and the court, and the right of redress to the court for violation of their civil rights.

Five months after filing an *in pro per* civil rights lawsuit against officers of the Murrieta Police Department and others acting in concert with them, Petitioner Dr. Dortch was arrested, without a warrant, by one of the named police officers. That arrest was followed by criminal charges being filed against Petitioner Dr. Dortch, referred to as the 013 Case herein.

This has been followed by the prosecutor advising Petitioner to drop his civil rights case and "stop making trouble for himself," discovery of falsified police reports and destroyed evidence, the prosecutor willfully withholding *Brady* materials, extra criminal charges being added after the preliminary hearing was held, Petitioner's attorney being told by Respondent Court (by Judge Dennis A. McConaghy) that she put Petitioner's safety in jeopardy by not waiving reading of the information, refusal to read and hear discovery motions filed by Petitioner (Judge McConaghy and Judge Stephen Gallon), refusal to dismiss charges on a statute since held unconstitutional (failure to give a DNA sample), and

appointment of a public defender over Petitioner's objection (also Judge McConaghy).

After almost two years filled with continuances and nothing of substance being done, the Respondent Riverside County Superior Court has upped the ante, suspending the case, and ordering Petitioner jailed without bail for six weeks[1] pending a psychological/psychiatric evaluation on mental competence to stand trial. This set of orders has been made even though Petitioner had been out on bail for almost two years, never missing a single court hearing, even while he has challenged the jurisdiction of the court, and even though there is no evidence of mental incompetency, nor any allegation or finding that he is a flight risk, a danger to himself, others, or the community at large, and even though he has no history of violence.

Respondent Court suspended the criminal case against him under *Penal Code* § 1368 when a public defender, Richard Briones-Colman, appointed without request or consent of Petitioner, felt "boxed in a corner" and, to protect against the risk that any subsequent conviction might be overturned, argued that due to the nature of the (unproven) criminal charges, Petitioner's legal defense positions, and unwillingness to cooperate with the public defender, the Court needed to do psychological evaluations.

Even a person believed to be, as a result of a mental health disorder, a dangers to others, or himself or herself, or gravely disabled, is given more due process rights under *California Welfare & Institutions Code* § 5150 than has been accorded to Petitioner here.

Petitioner is, in fact, being held as a political prisoner, explicitly jailed due to statements made and positions taken as part of his legal defense against the jurisdiction of the Court.

The case against Petitioner is filled with Constitutional and statutory violations, but the most pressing right now, and the reason for this Petition

[1] Since reduced to four weeks

for Writ of Mandate, are as follows: (1) placing of Petitioner on a psychological/psychiatric hold for a month in violation of *California Welfare & Institutions Code* § 5150; (2) violation of Petitioner's Sixth Amendment right to a speedy and public trial, compounded by the improper hold and (3) the violation of his Eighth Amendment right against the requiring of excessive bail.

FACTUAL SUMMARY

The challenged actions of the Respondent occurred in two criminal prosecutions filed against Petitioner, People v. Dortch, Case No. SWF1400013, which was filed in January 2014 ("013 Case"), and a second case arising out of Petitioner's free speech and challenge to the jurisdiction of the court, People v. Dortch, Case No. SWF1501444, filed on September 3, 2015 ("444 Case"). *Petition*, ¶ 7; see Case Reports for these two cases at *Exhibits,* Exh. A and B[2].

The 013 Case was filed five months *after* (and facts indicate *because*) Petitioner and his family filed a pro per civil rights lawsuit against the Murrieta Police Department and other entities involved in a SWAT-style search of the Dortch home on April 20, 2013, and events surrounding that occurrence ("Pro Per Lawsuit"). EX Exh. C. More details regarding these circumstances is contained within the Contextual Facts section below.

The Pro Per Lawsuit was dismissed without prejudice in February 2014 (EX Exh. C), and was refiled in the United States District Court for the Central District of California with the assistance of counsel, a case which is currently stayed pending completion of the 013 Case ("Federal Civil Rights Lawsuit"). EX Exh D. The 444 Case was filed

[2] All references to Exhibits herein refer to the packet of Exhibits filed herewith, unless designated otherwise. For ease of reference, each page of the Exhibits is numbered in the following format: EXHIBIT A – [page number]. References within this Memorandum will use the short reference EX A-1, and so forth, or EX Exh A if the exhibit as a whole is being referenced.

contemporaneously with the issuance of the challenged order addressed in this Petition for Writ.

Procedural Facts of 013 Case Re Speedy Trial

The criminal complaint in the 013 Case was filed January 9, 2014, two months after Petitioner was arrested without a warrant. See EX A-23; EX 675.

On February 6, 2015, Defendant waived time for trial to April 10, 2015 plus 60 days." See Minute Order at EX A-443 and Request for Continuance signed by Petitioner and his counsel at EX A-444. This waiver thus extended only to June 9, 2015.

This is the last waiver of speedy trial made in the 013 Case by Petitioner. *Petition*, ¶ 10; EX A-1 thru 24.

On April 10, 2015, in open court, Dr. Dortch discharged Ms. Kramer as his attorney and indicated to the Court that he would take the case on from there. *Petition*, ¶ 11; EX A-619; and Hearing Transcript for April 10, 2015 proceedings before Judge Stephen Gallon (pending receipt)[3]. The next court date was set for May 8, 2015 with the Court noting that "dates set are within previous time waiver." *Id.* Also at the April 10th hearing, Petitioner brought to Judge Gallon's attention that the Court (specifically a clerk in Judge McConaghy's department, had lied about the previously filed *Pitchess*[4] & *Brady*[5] motions, a fact that Ms. Kramer concurred with on the record, and subsequently by declaration. EX A-625 thru A-629, and Hearing Transcript for April 10, 2015 proceedings before Judge Stephen Gallon (pending receipt).

[3] As outlined in the concurrently filed Declaration of Melody A. Kramer ("Kramer Decl."), ¶¶ 4, et seq,, a number of hearing transcripts have been requested, but not yet received, from court reporters for Respondent Court. All such transcripts will be referenced herein as "(pending receipt)" and will be submitted to this Court as soon as possible after receipt by counsel.
[4] *Pitchess v. Superior Court*, 11 Cal.3d 531 (1974)
[5] *Brady v. Maryland*, 373 U.S. 83 (1963)

Petitioner appeared again in Court on May 8th and June 8, 2015. On neither date did Petitioner further waive time for trial. In fact, even the 013 Minute Order reflects that Petitioner objected to a requested continuance. *Petition*, ¶ 12; see also EX A-711, A-712; Hearing Transcript for May 8, 2015 (pending receipt)[6] and EX E-156, lines 2-8..

On August 7, 2015, Dr. Dortch again explicitly rejected any further efforts to delay the case. The Respondent Court acknowledged that no further time waiver was taken, and that there were no grounds for further time waiver, but did not dismiss the case. *Petition*, ¶ 13; EX E 94, line 26 – EX 95-3, line 21; see also EX 96, lines 14-21. The Court set trial date of August 27, 2015 with last day for trial being September 8, 2015. No further time waiver was taken by the Court. EX A-722 thru 723.

On August 27, 2015, Dr. David Dortch appeared yet again in Court for yet another court hearing in the 013 Case and, at the conclusion of his comments, stated that he considered the case to be dismissed and left the courtroom. *Petition*, ¶ 14; EX E 122, line 18 thru E 126. As shown in the transcript, this followed the Respondent Court allowing Briones-Colman to speak on behalf of Petitioner, despite his continuing objection, and also followed the Respondent Court accepting into evidence an "Affidavit" not sworn to under penalty of perjury (see EX A 737-739) and allowing Briones-Colman to argue that the Court should avoid the risk of a later conviction reversal by questioning Petitioner's mental competency to stand trial now. See EX E 103, line 13 thru E 120.[7] Respondent Court issued an

[6] The Verified Petition for Writ filed herewith verifies, by Petitioner under oath, that he objected to a continuance on May 8, 2015, even though the Minute Order for that day does not so reflect. However, in view of the discovery of another falsified Minute Order (for November 14, 2014, as indicated in Kramer Decl. ¶ 16-23, it is more likely than not that Petitioner's version of events is accurate. A transcript of the hearing has been requested, but not yet received.

[7] The absurdity of Briones-Colman's arguments elicited an interruption by Petitioner in the middle of his comments. "Are you shooting for a conviction, Mr. Briones? Because it sounds like you are." EX E 107, lines 25-26.

electronic bench warrant for his arrest, purportedly for "failure to appear" (even though Petitioner had appeared, just left early). *Petition*, ¶ 15.

Several days later, Petitioner was ambushed outside of his office by a group of plain clothed officers of the Riverside County Sheriff's Office, forcibly tackled to the ground, and then accused of assaulting an officer and resisting arrest. *Petition*, ¶ 16. Petitioner did not resist arrest. A videotape capturing most of the arrest shows a calm Dr. Dortch complying with officers. In fact, the video shows officers jerking Dr. Dortch around or putting him into painful holds and then verbally claiming that he was resisting. *Petition*, ¶ 17; *Kramer Decl*. ¶ 24-25.

On September 3, 2015, the Respondent Court ordered that Petitioner be held without bail, and also suspended the case under *Penal Code* § 1368. *Petition*, ¶ 18; EX A-742, A-743.

The denial of bail was based upon a document filed in pro per on August 11, 2015, in which Petitioner contested the jurisdiction of the Court over him, and also contested the purported assignment of a public defender over his objection. The Respondent Court disregarded everything else in the August 11, 2015 filing other than a statement that Respondent treated as meaning that Petitioner was revoking his bail contract. The contents of this document -- political speech, rights to which are guaranteed under the First Amendment -- are described in further detail below. *Petition*, ¶ 19; see also EX E-128, line 13 thru E-130, line 27. The document referenced by the Court is at EX A-724 thru A-728.

Respondent Court did not make any findings (nor was there any evidence presented) that there was substantial evidence of mental incompetence, nor that Petitioner Dr. Dortch posed any danger to himself, or others, or the community, nor that he was a flight risk. The Court record itself showed that Dr. Dortch had appeared for every single court hearing since his arrest, even during the two months between his arrest and actual

charges being filed, and even after his August 11, 2015 filing. *Petition,* ¶ 20; see also EX E-103, et seq (generally); EX E-162, et seq.

During the entirety of the day that this occurred (September 3, 2015), and the day prior, attorney Melody A. Kramer, Dr. Dortch's counsel on a pending, related federal civil rights case, and previously counsel of record in the 013 Case, tried to speak with Dr. Dortch to see if he wanted her to resume representation. On at least six occasions, Riverside County Sheriff's Office deputies, several times through show of force, prohibited Ms. Kramer from communicating with Dr. Dortch and absolutely barred her from even observing a hearing involving Dr. Dortch's continuing contest against having a public defender forced upon him. *Petition,* ¶ 21; *Kramer Decl.* ¶ 26.

By the afternoon of September 3, 2015, Petitioner was sitting in Dept. S204 awaiting another hearing and, being able to make contact with Ms. Kramer visually across the courtroom, mouthed the words "I want you to represent me," and Riverside County Sheriff's Office deputies continued to deny Ms. Kramer access to speak with Petitioner Dr. Dortch, and instructed Ms. Kramer to not communicate with him in any manner. *Petition,* ¶ 22; *Kramer Decl.* ¶ 27. Finally by the end of the day on September 3, 2015, Ms. Kramer was allowed to speak with Dr. Dortch and then enter her appearance on his behalf. *Petition,* ¶ 23; *Kramer Decl.* ¶ 28.

Immediately upon entering her appearance, Ms. Kramer reviewed the Court record and determined that, in addition to many other improper actions in the case, Dr. Dortch's rights to speedy trial had been violated, by approximately three months. *Petition,* ¶ 24; *Kramer Decl.* ¶ 29.

On September 4, 2015, Ms. Kramer promptly filed a Motion to Dismiss for Violation of Speedy Trial rights in the 013 Case (along with a motion to reconsider the suspension of the case, discussed in more detail below). *Petition,* ¶ 15; EX A-749 thru A-764; *Kramer Decl.* ¶ 30.

On September 8, 2015, Respondent Court ruled that it had no jurisdiction to reconsider its own order suspending the case, and because the case was suspended, also refused to hear the speedy trial motion. *Petition*, ¶ 26; Hearing Transcript for September 8, 2015 before Judge Clark (pending receipt).

Therefore, Petitioner Dr. Dortch remains held in the Southwest Detention Center jail, under the control of Respondent Sheriff, without bail, in a suspended criminal case, when all of the orders placing him there were rendered by the Court *after* his right to speedy trial had been violated. *Petition*, ¶ 27.

Petitioner has no plain, speedy, or adequate remedy because the case suspension stops any final orders from being directly appealable. *Petition*, ¶ 28.

Procedural Facts of 444 Case

The criminal complaint in the 444 Case was filed September 3, 2015, and arises directly out of the actions of the Respondent Court taken *after* Petitioner's speedy trial rights had been long violated. *Petition*, ¶ 29. As noted above, when Petitioner walked out of court on August 27, 2015, the Respondent Court issued a bench warrant for his arrest. *Petition*, ¶ 30.

In a case of massive overkill against an unadjudicated defendant who had no history of any violence and had done no more than walk out of the courtroom early, Petitioner was forcibly attacked by plain clothes officers and arrested several days later, on September 1, 2015. *Petition*, ¶ 31.

Petitioner did not resist arrest, as can be verified by videotape of the arrest, however the officers claimed he resisted arrest and the prosecutor filed a new criminal complaint charging Petitioner with felony resisting arrest. This the prosecution then used to argue that Petitioner should be held without bail. *Petition*, ¶ 32; *Kramer Decl.* ¶ 24-25.

The 444 Case was transferred to the same judge as the 013 Case and, without any separate findings, Judge Clark denied bail on the 444 Case, and ordered a mental competence evaluation even though no § 1368 motion had been filed. *Petition*, ¶ 33; EX A-740.

Again, even though Petitioner had not requested, nor qualified for, a public defender, the previously appointed public defender Briones-Colman continued to be treated as though he was counsel for Petitioner. *Petition*, ¶ 34; EX Exh. B. On September 3, 2015, a closed hearing, purportedly a *Marsden* hearing, was conducted by Judge Elaine Keifer (formerly Judge Elaine Johnson), the judge who had signed the original search warrant for the SWAT-style search of Petitioner's home on April 20, 2013 (explained in more detail below). *Petition*, ¶ 35; EX Exh B.

This September 3, 2015 was a farce from beginning to end. Prior to this hearing, Petitioner had not even been arraigned in the 444 Case, had not requested appointment of a public defender, had not been appointed a public defender, had not consented to a public defender, and had been barred all day from talking with Ms. Kramer who was his attorney of record in the related civil rights case. And no Marsden motion could have, nor was, made in the 444 Case. Notwithstanding the lack of any factual or legal grounds for a *Marsden* motion, Judge Keifer denied the motion, thus implying that Briones-Colman was authorized to represent Petitioner in the 444 Case also. She also sealed the hearing transcript. *Petition*, ¶ 36; EX Exh B.

Therefore, Petitioner Dr. Dortch remains held in the Southwest Detention Center jail, without bail, in a new suspended criminal case, when all of the orders placing him there were rendered by the Court *after* his right to speedy trial had been violated in the 013 Case. *Petition*, ¶ 37. As in the 013 Case, Petitioner has no plain, speedy, or adequate remedy in the 444

Case because the case suspension stops any final orders from being directly appealable. *Petition*, ¶ 38.

Facts Relating to Improper Assignment of Counsel and Resulting *Penal Code* § 1368 Motion

At the beginning of the 444 Case, on January 15, 2014, Petitioner waived his right to counsel. However, as of April 30, 2014, he decided to retain counsel for the case, and several months later replaced that counsel with another. *Petition*, ¶¶ 39 and 40. As noted above, eight months later, on April 10, 2015, in open court, Dr. Dortch discharged Ms. Kramer as his attorney and indicated to the Court that he would take the case on from there. *Petition*, ¶ 41; Hearing Transcript for April 10, 2015 proceedings before Judge Stephen Gallon (pending receipt).

On May 1, 2015, et seq, Petitioner filed a series of documents with the Court reflecting an argument for contesting jurisdiction of the Court. It is believed that these documents, along with arguments related to them, were not looked upon favorably by the Court and lead to subsequent punitive action against Petitioner. *Petition*, ¶ 42; EX A-632, et seq. On May 8, 2015, Petitioner appeared again in Court at which time the Respondent Court, by Judge Dennis A. McConaghy, without any request or consent by Petitioner, appointed a public defender to represent him. During the course of this hearing, Judge McConaghy demanded that Petitioner sign certain documents agreeing to appointment of a public defender and threatened Petitioner that he would be arrested (presumably if he didn't sign). Judge McConaghy cleared the courtroom and, for a certain period of time, Riverside County Sheriff's courtroom deputies refused Petitioner the ability to even leave the room (even though he was not in custody and the court was on a break) to use the bathroom. *Petition*, ¶ 43; Hearing Transcript for May 8, 2015 proceedings before Judge McConaghy (pending

receipt). Note that although the Court file contains signed agreements to continuances on several occasions up until February 6, 2015, no such further documents were signed or appear in the file. See EX A-70, A-73, A-126, A-322, A-444.

On May 29, 2015, Petitioner filed another document with the Court consistent with his argument contesting jurisdiction of the Court. *Petition*, ¶ 44; EX A-715, et seq. On June 8, 2015, another hearing was held. Over Petitioner's objection, the Respondent Court allowed the public defender to speak on behalf of the Petitioner, including in an unreported conversation between counsel and the Court outside of the presence of Petitioner. On this date, the public defender purported to waive further time for trial over the objection of Petitioner. *Petition*, ¶ 45; EX A-712.

On June 9, 2015, the speedy trial deadline for prosecuting Petitioner Dr. Dortch in the 013 Case expired. *Petition*, ¶ 46.

On August 7, 2015, Dr. Dortch again explained to the Court that he had not hired the public defender (Briones-Colman) and that he was unlawfully appointed. He described the Briones-Colman as being a fiduciary only (tying into the arguments for lack of court jurisdiction that Petitioner had already raised with the Court) and expected the case to be resolved that day. *Petition*, ¶ 47; See EX E-83, lines 27-28. Briones-Colman seemed no more interested in continuing this representation than Petitioner, requesting a *Marsden*[8] hearing, citing a "fundamental breakdown in communication." The Respondent Court refused, stating that it knew of no statutory authority or case authority that would allow an appointed counsel to request a *Marsden* hearing. "If the defendant does not wish to cooperate with you in the preparation of a defense, you can make that record for purposes of appeal." EX E-83, line 5 thru E-84, line 24. The judge did note that if there was a conflict of interest with the public

[8] *People v. Marsden*, 2 Cal.3d 118, 465 P.2d 44 (1970)

defender's office, that could be a basis for withdrawal. *Petition*, ¶ 48; EX E-84, lines 16-21.

Also on August 7, 2015, Petitioner laid out his argument that there was a distinction between himself, as a living, breathing person, versus the corporate person that the Court could charge. He explained his position that the prosecution had an obligation to prove its jurisdiction over him, "a living breathing man, not a corporation." EX E-93, lines 3 thru 9. These arguments fall squarely within Petitioner's First Amendment rights, whether the Court agreed with them or not. *Petition*, ¶ 49. Petitioner went on to explain what had been going on for the past two years.

> [I]t's been two-plus years. And I'm exhausted. My family is beat, worn out. We've been drained financially, all because of fraudulent stuff that's persisted from Murrieta Police all the way through this department. And I expect somebody to look at it with a little bit more peculiarity and particularity, because nobody is. Everything that's been filed has been ignored, has been overlooked, has been – everyone's pretending that – there's no eyes and ears to see anything. It's a game. I'm seeing rehearsals. I'm seeing stage plays. I'm seeing acts. But I'm not seeing any real justice. I'm seeing coercion. I'm seeing threats of force, use of force, coercion. Nothing is voluntary or just.

EX E-93, lines 10-22. The Respondent Court responded with placating statements without any substance. EX E-93, line 3 thru E-94, line 8; *Petition*, ¶ 50. Petitioner responded by again objecting to the process and seeking resolution and dismissal that day.

> I object to the process and procedure. You can tell me what you want, but I know that this court has the capability of resolving this, dismissing this here and now, and resolving the financial hardships that my family has been under because of the duress and force of this court, the police department, the sheriff's department, everybody that's been involved. And there is no justice. Like I said, you know, we've been in this court for years now, and you tell me there's justice. I haven't

> seen a shred of it, and I don't know anybody that has. It's a farce; it's a façade; and its all a game. . . . I will object to anything that you try to do to waive time, to move the clock forward. This has to be done – dealt with today – today this must be dealt with. I'm not doing anything else by consent. You guys are going to have to take me as a political prisoner if that's what you're going to do.

EX E-94, lines 9 thru E-95, line 3; *Petition*, ¶ 51. The Respondent Court responded "I have no intention of doing that," but subsequent actions later in August demonstrated the contrary. *Petition*, ¶ 52.

At the end of the August 7th hearing, Mr. Briones-Colman specifically, on the record, requested a transcript of the hearing for his office and Petitioner, and for appellate purposes, and "also to have in terms of evaluating whether or not there's a conflict" (the other way the Court indicated he could be removed as counsel earlier in the hearing). *Petition*, ¶ 53; EX E-97, lines 4-12.

After the hearing on Friday, August 7, 2015, the public defender sent an email to Petitioner in which he stated –

> I thought you spoke eloquently at the hearing, and what you said made sense to me, but the bottom line is that the system itself will never recognize its own illegitimacy. I think you stated as much today.

(emphasis added). *Petition*, ¶ 54; *Kramer Decl*. ¶ 31, and Exh. 1 thereto.

The following Tuesday, August 11, 2015, Petitioner filed a "Judicial and Legal Notice to All Parties" again indicating that he was revoking any possible agreements or contracts with Riverside County, relating to bail, relating to representation by Briones-Colman, contesting the illegality of Judge McConaghy's authority to assign a public defender, and demanded dismissal of the case for lack of jurisdiction and return of the bail money. EX A-724, et seq. Almost immediately after this was filed, the public

defender (Briones-Colman) again emailed Petitioner, this, and for the first time, he threatened to challenge Petitioner's mental competence.

> I am considering making a motion under Penal Code Section 1368 in your case. . . . I would prefer not to raise this motion but may be boxed into a corner and have to do so, if you will not communicate, so I can evaluate what you're thinking and why you are doing what you're doing.

Petition, ¶ 55; Kramer Decl. ¶ 32, and Exh. 2 thereto.

Two days later, and without notifying Petitioner, the public defender did file a § 1368 motion claiming a doubt as to Petitioner's mental competence to stand trial. *Petition*, ¶ 56; EX A-729, et seq. The public defender's public accusation of mental incompetence was defamatory and likely to inflict serious harm to Petitioner's professional and personal reputation irrespective of how the matter played out in the court. *Petition*, ¶ 57.

On August 27, 2015, Petitioner appeared yet again in Court in the 013 Case and again objected to representation by the public defender. Notwithstanding this violation of Petitioner's right to counsel, not an obligation to be represented by counsel against his will, the Respondent Court again treated the public defender as being Petitioner's counsel of record. *Petition*, ¶ 58; EX E-103, et seq.

Respondent Court allowed the public defendant to submit a confidential affidavit into evidence before the Court, without Petitioner being able to see its contents and without it being entered into the accessible court file. This action violated Petitioner's right to a public trial on a substantial issue in the case. *Petition*, ¶ 59; EX E-120, lines 12-19. Note that this "Affidavit," later filed in the court file, is not sworn to under oath by Mr. Briones-Colman (EX A-737) and thus should never had been admitted into evidence in the first place.

Petitioner Dr. Dortch has not raised any mental issue as a potential defense in the case, Petitioner's defense counsel of choice has no doubts regarding mental competency, and the government also contends that Petitioner's mental competence is not in question. See EX Exh. A, generally; *Kramer Decl.* ¶ 33; Hearing Transcript for September 8, 2015 proceedings before Judge Clark (pending receipt); EX E-120, line 20 thru E-121, line 8. Note that although the Court file contains signed agreements by Petitioner Dr. Dortch for continuances up through February 6, 2015, there are none after that.

The public defender's arguments on the record began and ended with a focus on the risk of the possibility of a subsequent conviction being overturned (EX E-107, line 2 thru E-108, line 21; EX E-119, lines 12 thru 27). Briones-Colman then cited the allegations of use of DMT, discussed his layperson internet research regarding the substance, and then cited First Amendment protected speech statements made by Petitioner during the August 7th hearing and Petitioner's non-cooperation with him. See *Petition*, ¶ 60; see also EX E-109, line 12, et seq.

In short, Briones-Colman tried to spin Petitioner's free speech and political arguments against the Court's jurisdiction of this case as likely being the product of hallucinogenic use. This rambling, supported by an unsworn "affidavit" does not meet even the threshold of evidentiary standards in a court of law. <u>If the mere allegation of drug use were sufficient to characterize a defendant's free speech and legal defense arguments as indicia of possible mental incompetence to stand trial, every drug case would require such proceedings.</u>

The Court then allowed Dr. Dortch to speak and he again made a final final plea for the Court to dismiss the 013 Case for failure of the Court to show proof of jurisdiction over him, and proof that the public defender had been hired or authorized to speak for him. The Court ignored these

requests. Dr. Dortch then indicated that he considered the case dismissed and walked out of the courtroom. *Petition*, ¶ 61; EX E-126, lines 4-10.

After Petitioner left the courtroom, the Respondent Court, citing a document filed by Petitioner on August 11, 2015, which contained First Amendment protected statements relating to Petitioner's challenge of the court's jurisdiction, ordered that his bond be revoked and a bench warrant issue with a new bond amount of $60,000. *Petition*, ¶ 62; see EX E-127, line 23 thru E-129, line 19.

On September 3, 2015, Respondent Court Judge Clark concluded her 1368 hearing, ordered Petitioner held without bail, and appointed two medical examiners. See EX A-744 thru A-747. Although the form used for appointment of evaluations had boxes to check that would limit access to resulting reports, none of the boxes were checked and therefore Respondent Court placed no limitation on access or use. See *Id.* Also on September 3, 2015, in front of Judge Gallon, when Ms. Kramer was finally allowed to speak to Petitioner and entered her appearance in the case, Ms. Kramer made an oral motion to reconsider the 1368 ruling. In a complete about-face, prosecutor Richard Necochea objected to reconsideration of the very ruling he had objected to on August 27th. First he objected that Ms. Kramer had not yet entered her appearance in the 013 case, then suggested she couldn't enter her appearance because of the 1368 stay, then objected to reconsideration at all (see EX E-140, line 9 thru E-142, line 20; EX E-144, lines 12-28).

On September 8, 2015, Respondent Court Judge Clark addressed Petitioner's Motion for Reconsideration of the 1368 Order (EX A-749, et seq) and Petitioner's Motion for Dismissal (EX A-760, et seq). However, she decided she didn't have jurisdiction to reconsider her own order, and refused to hear the speedy trial motion. See EX A-765; and Hearing

Transcript for September 8, 2015 proceedings before Judge Clark (pending receipt).

Contextual Facts

The actions of the Petitioner, Respondent Court, public defender, and Riverside County Sheriff's deputies must be put in the context of the ongoing and unjustified targeting of the Petitioner's family for more than two years because of mistaken beliefs about Petitioner's political views. *Petition*, ¶ 63.

The 013 Case was filed in apparent retaliation against Petitioner (Dr. Dortch) having filed a civil rights lawsuit, in pro per, against law enforcement, challenging the legality of a search of their home by Murrieta Police Department and others, as further described below. *Petition*, ¶ 64.

On April 20, 2013, Petitioner's home was invaded, SWAT-style, by approximately a dozen officers lead by the Murrieta Police Department, on a pretextual search warrant. *Petition*, ¶ 65. The search of the Dortch home came after the detention and interrogation, without parents or attorneys, of the Dortch's 12-year-old son over a matter of some graffiti. *Petition*, ¶ 66.

More extensive details of the search and constitutionally-violative treatment of the Dortch family is set forth in the complaint in the pending federal civil rights lawsuit. *Petition*, ¶ 67; EX D-1, et seq.

In May 2013, Dr. Dortch and his family filed a civil rights lawsuit against the Murrieta Police Department and other agencies relating to the pretextual, all-day search of the Dortch home on April 20, 2013. They filed this civil rights lawsuit in pro per, and thus it did not read in a similar manner to pleadings that might have been drafted by an attorney. *Petition*, ¶ 68; EX Exh. C.

Furthermore, the Dortch family did not know about the requirement for the filing of a governmental tort claim within six months of the asserted injury, and thus none was filed. *Petition*, ¶ 69.

Upon information and belief, the Murrieta Police Department, and other defendants, took the wording and form of the pro se complaint as being grounds to label the Dortch family as being part of the "Sovereign Citizen" movement, although the Dortch family was not part of any such group nor had any understanding at the time what that label meant. *Petition*, ¶ 70. Two weeks later, on June 12, 2013, Sgt. Markellus Reid of the Murrieta Police Department, dispatched an email to all city employees blacklisting Dr. Dortch for his "ideology." The subject line read "Safety Concern for City Personnel" and the email stated that –

> Dr. David Dortch is an Optometrist . . . and he currently provides service to several city employees. A recent investigation involving his family has exposed several areas of concern, with the most severe being his Sovereign Citizen ideology. The Sovereign Citizen movement has increased nationally and their beliefs typically pose a safety concern for law enforcement and anyone representing government. This information is being disseminated for the safety of all city personnel who may be current or future clients, and to afford you the opportunity to make an informed decision when providing personal information, to include your place of employment.

Petition, ¶ 71; EX A-640.

Actions taken by law enforcement, prosecutors, and courts have followed a virtual playbook of suggestions of how to deal with "Sovereign Citizens," as widely disseminated to law enforcement officers since 2013 to the present, surmising that anyone who challenges the actions of law enforcement or government in an way, even through First Amendment protected free speech and writings, is possibly violent and a risk to the public. *Petition*, ¶ 72.

Petitioner Dr. Dortch has no history of violence, nor do any of his family members, nor any history of advocating violence. All challenges he has made against the authority of the court or law enforcement has been done through exercise of his First Amendment rights of free speech and government redress. *Petition*, ¶ 73; see also EX Exh A, Exh B, Exh C, and Exh D.

On August 13, 2013, the day after a hearing in the pro per civil rights action, Riverside County Sheriff's Office Investigator John Pulatie contacted the State Lab that held purported items of evidence seized from the Dortch home in April 2013 and asked for case analysis. "J. Pulatie informed me that the case analysis is still needed. Possible lawsuit pending from suspect." *Petition*, ¶ 74; EX A-398. On September 30, 2013, Pulatie again contacted the State Lab, requesting that lab reports come to him rather than the case agent previously identified, and against referenced the lawsuit. "J. Pulatie indicated he needs an analysis report by 10-11-13 the latest due to pending lawsuit." *Petition*, ¶ 75; EX A-398.

The prosecutors in the 013 Case have advised defense counsel that *Brady* exculpatory materials exist relating to Investigator Pulatie, but have refused to turn over such materials, stating that a *Pitchess* motion must be made. *Pitchess* motions have been repeatedly made, but never heard by Respondent Court. *Petition*, ¶ 76; EX A-400 thru A-405.

Less than two weeks later, and just three days past the six-month governmental tort claims filing deadline (that the Dortches did not know about), and while the civil rights lawsuit was still pending, on October 23, 2013, Murrieta Police Department Det. Brandon Carney, still a named defendant in the civil rights lawsuit, suddenly prepared an Incident Report regarding the search of the Dortch home on April 20, 2013. *Petition*, ¶ 77; EX A-353 thru A-362.

This new report by Carney contains indicia of falsification on its face, specifically, it changes identification of the participating law enforcement officers (from his original report six months earlier that only discussed the events of April 20, 2013 directly related to the Dortch 12-year-old son) and both his report, and a similar belated report from fellow Officer Byler, contained pre-dated supervisor approval dates. These actions constitute falsification of reports, a criminal act under *Penal Code* § 118.1. *Petition,* ¶ 78; EX A-353 thru A-362; EX A-486 thru A-498.

Although the Court and the prosecutor have been on notice of this criminal act by the primary investigating officer, there is no indicia of any criminal investigation or charges being made. *Petition*, ¶ 79; *Kramer Decl.* ¶ 36.

Also on October 23, 2013, Carney prepared a Declaration in Support of Arrest Warrant seeking an arrest warrant of Dr. Dortch. No judicial officer approved the request. *Petition*, ¶ 80. This Declaration was never filed with the Respondent Court and first appeared as an exhibit to the prosecutor's opposition to the motion to recuse their office from this case. See EX A-156.

Despite recognizing the need for an arrest warrant, but not receiving one, and despite the obvious conflict of interest of being sued by the Dortch family, Carney arrested Dr. Dortch on November 1, 2013 anyway, outside of the city limits of Murrieta. *Petition,* ¶ 81. Dr. Dortch was treated in a humiliating fashion upon his arrest, including being stripped searched in sight of many people. Furthermore, references to "Sovereign Citizen" were made during the booking process. *Petition*, ¶ 82.

Dr. Dortch was booked on a felony, thus triggering a request for a DNA sample pursuant to *Penal Code* § 298.1, which Dr. Dortch refused. (Despite the subsequent ruling in People v. Buza, Case No. A125542, California Court of Appeal, First Appellate District, finding *Penal Code* §

298.1 unconstitutional, the Riverside County District Attorney's Office continues to prosecute Dr. Dortch under this code section.) *Petition*, ¶ 83; *Kramer Decl.* ¶ 34.

On November 5, 2013, Dr. Dortch and his family exercised their First Amendment rights by discussing Dr. Dortch's arrest and treatment by law enforcement that lead up to it, on an online media interview. *Petition*, ¶ 84. Three days later, on November 8, 2013, the Murrieta Police Department issued a press release about the November 1, 2013 arrest of Dr. Dortch, claiming that the Murrieta Police Department had stumbled upon an "active, illicit clandestine 'DMT' (Dimethyltrypatamine) laboratory." *Petition*, ¶ 85; EX A-516.

Police reports regarding the Dortch house search indicate that most of the items purportedly constituting this "lab" were destroyed. Destruction of evidence is criminal, in violation of *Penal Code* § 135. *Petition*, ¶ 86; EX A-526.

Although the Court and the prosecutor have been on notice of this criminal act by investigators and destruction of material evidence in the case, there is no indicia of any criminal investigation or charges being made. *Petition*, ¶ 87; *Kramer Decl.* ¶ 35.

The November 8, 2013 press release was republished by the Murrieta Patch online newspaper almost verbatim, including with a photograph of Dr. Dortch provided by the Riverside County Sheriff's Office, after 10pm that very night. Comments derogatory of Dr. Dortch were posted from someone that obviously had access to law enforcement reports. *Petition*, ¶ 88; EX A-519. Four days later, the Murrieta Police Department republished the press release on its Facebook page of over 900 followers. *Petition*, ¶ 89; EX A-522.

Dr. Dortch had to post bail to get out of jail, but it took another two months for the Riverside District Attorney's Office to file charges. A

complaint was filed January 9, 2014, both based on Carney's falsified reports and retaliatory arrest, and in view of destruction of the purported clandestine lab, facts known by anyone reading the police reports. *Petition*, ¶ 90; EX A-23 thru 24.

On July 17, 2014, when the preliminary hearing was set to be heard, Riverside County Deputy District Attorney Paul Svitenko extended a plea offer to Dr. Dortch. In the process of clarifying what had actually been offered, Mr. Svitenko left a voicemail message for Dr. Dortch's counsel adding that Dr. Dortch dismiss the civil lawsuit –

> I think the civil suit with Murrieta and so forth I would say he should stop throwing good money after bad. Murrieta is a nice town . . . He seems like a guy who's kind of got his stuff together in a lot of ways and may not want to keep on making trouble for himself.

Petition, ¶ 91; *Kramer Decl*. ¶ 37.

This voicemail, especially in conjunction with discussions of resolution of the 013 criminal case, Dr. Dortch and his counsel these statements to be a veiled threat. *Petition*, ¶ 92; EX A-83, et seq.

Dr. Dortch, through his counsel, sought to remove the Riverside County District Attorney's Office from the case, but the request was denied. *Petition*, ¶ 93; see also EX A-74 thru 123 and EX A-320.

At each stage of the 013 Case, every time Dr. Dortch avails himself of his constitutional rights, the prosecution levels more criminal charges against him. The single arrest charge was listed as *Health & Safety Code* § 11379.6(A), manufacture of a controlled substance. Then when Dr. Dortch refused to give a DNA sample pursuant to an unconstitutional statute, he was charged with an additional count of *Penal Code* § 298.1(A), failure to provide a DNA sample. Nine months later when Dr. Dortch both challenged the impartiality of the District Attorney's Office with a motion to disqualify and did not waive a preliminary hearing, the prosecution tried

to have him held over on an added charge of *Penal Code* § 273a(b), child endangerment. A report of potential child endangerment had been made on April 20, 2013 and fully reviewed by CPS with a finding of no child abuse or endangerment. Then the prosecution added another two charges to the subsequent Information, adding *Health & Safety Code* § 11379(a), sale of a controlled substance, and *Health & Safety Code* § 11377(a), possession of a controlled substance (charged as a felony even though Proposition 47 changed this charge to a misdemeanor). *Petition*, ¶ 94; see also EX A-1 thru A-24.

This pattern of retaliation for exercise of basic constitutional rights continued on November 14, 2014 when Dr. Dortch did not waive his right to have the criminal charges read into the record at his arraignment, Judge Dennis McConaghy required his own counsel (Ms. Kramer) to read the charges in court, and then called Ms. Kramer and the prosecutor to a sidebar where he stated to Ms. Kramer that she had put her client (Petitioner Dr. Dortch) "in danger of getting his butt kicked when he is put in custody" because Ms. Kramer had read aloud the charge of child endangerment. When Ms. Kramer responded that the charges were bogus and without foundation and the prosecution knew it, Judge McConaghy motioned towards the in-custody defendants sitting the jury box and said "You think the guys in orange are going to care about that?" *Petition*, ¶ 95; *Kramer Decl.* ¶¶ 17-21.

Respondent Court has falsified the court minutes from the November 14, 2014 hearing by reading that defendant waived formal reading of the information, and claiming that defendant counsel waived formal reading also. *Petition*, ¶ 96; see EX A-325 versus *Kramer Decl.* ¶¶ 17-21.

In December 2014, Dr. Dortch, through his counsel, filed a discovery motion, requesting statutory discovery, *Brady* materials, and *Pitchess* materials. The motion was file-stamped and thrown in a clerk's

drawer, never being entered as part of the court record. On the day appointed for hearing, February 6, 2014, Judge McConaghy said it didn't matter that the discovery motion was thrown in a drawer, he said he never reads discovery motions anyway. He instructed counsel to talk with each other further, and required the discovery motions to be refiled as separate motions. *Petition*, ¶ 97; EX A 626-627.

On February 6, 2015, the Court set a new hearing date for the *Pitchess* motion, that being April 10, 2015. Dr. Dortch reluctantly agreed to one more time waiver to April 10, 2015 plus 60 days, which would be June 9, 2015. *Petition*, ¶ 98; EX A-443, A-444.

On April 10, 2015, Judge McConaghy sent the case out to Judge Gallon who, having just dealt with a high-profile felony sentencing, was unwilling to read the extensive motion pleadings on the spot, voiced frustration that Judge McConaghy had not read the materials in advance of the day of hearing, and Judge Gallon indicated an intent to postpone the matter again. *Petition*, ¶ 99; EX A-618; Hearing Transcript for April 10, 2015 proceedings before Judge Stephen Gallon (pending receipt).

At that point, Dr. Dortch relieved his defense counsel, on the record, a decision that was subsequently verified through a Withdrawal of Counsel document filed with the Court. *Petition*, ¶ 100; Hearing Transcript for April 10, 2015 proceedings before Judge Stephen Gallon (pending receipt); EX A-621.

The cases against Petitioner Dr. Dortch have been filed with improper actions, delay after delay, and violation of his constitutional rights of free speech, speedy and public trial, and various other rights. And all of this seems to be based on the labeling of him and his family as "Sovereign Citizens" which law enforcement and the courts treat as suspect, even though Petitioner has done nothing more than exercise his First Amendment rights in a peaceable and proper fashion. *Petition*, ¶ 101.

HOW RESPONDENTS ERRED

The Court erred in several, intertwined, respects, all resulting in the larger error of ordering that Petitioner Dr. David Dortch, though presumed innocent of all charges against him, and presumed mentally competent to stand trial, be –

- ✓ Forced to submit to continued criminal prosecution after Constitutional and speedy trial deadlines had passed;
- ✓ Forced to submit to a mental evaluation by state actors, despite their being no evidence whatsoever presented of possible mental incompetence;
- ✓ Held in jail without bail for at least six weeks pending a mental evaluation;
- ✓ Held in jail without bail indefinitely because the case against him was suspended;
- ✓ Held in jail without bail as a punishment for challenging the jurisdiction of the court in court pleadings.

The specific errors of Respondent Court are as follows:

1. The Respondent Court erred in continuing the 444 Case against Petitioner Dr. Dortch well after the last day for speedy trial had passed – June 9, 2015. This is a violation of Petitioner's right to a speedy trial, a Sixth Amendment violation.

2. The Respondent Court erred in appointing public defender Mr. Briones-Colman to speak on behalf of Petitioner Dr. Dortch, without Petitioner's request or consent and over his objection on May 8, 2015, and continuing to allow Briones-Colman to act as though he were counsel (and act to the detriment of Petitioner) on June 6, 2015, August 7, 2015, August 27, 2015, September 2, 2015, and September 3, 2015. This is a violation of

Petitioner's right to have counsel of his choice (or none at all), an Eighth Amendment violation.

3. The Respondent Court erred in conducting an evidentiary hearing on Petitioner's mental competency to stand trial on August 27, 2015 without allowing Petitioner to see the "evidence" submitted against him, namely, an unsworn affidavit of the improperly appointed public defender. This is a violation of Petitioner's right to a public trial, an Eighth Amendment violation.

4. The Respondent Court erred in granting a *Penal Code* § 1368 motion putting into question defendant (Petitioner Dr. Dortch)'s mental competence to stand trial and concurrently suspending the criminal case pending psychological evaluations without any substantial evidence of any question as to Dr. Dortch's mental competence. This is a violation of Petitioner's right to not be a witness against himself (a Fifth Amendment violation), as well as an unjustified violation of Petitioner's protected privacy interests; and a violation of involuntary mental health holds being limited to 72 hours, a violation of California *Welfare & Institutions Code* § 5150.

5. The Respondent Court erred in refusing to acknowledge its own jurisdiction to reconsider (and vacate) the *Penal Code* § 1368 order, and un-suspend the case to hear a motion to dismiss the 013 Case due to violation of Petitioner's right to a speedy trial. This resulted in further violation of Petitioner's right to a speedy trial, and the continued punitive effect of asserting the need for a mental competence evaluation. This is an abuse of discretion in that it furthered violation of Petitioner's constitutional rights.

6. The Respondent Court erred in ordering Petitioner held without bail as a penalty against Petitioner for exercising his rights of free speech, including arguing against the Court's jurisdiction and laying out the

detailed facts of abuses by law enforcement, prosecutors, and the court system against his family in court pleadings. There is no evidence that Petitioner is a flight risk, nor any danger to himself, others, or the community at large. This violates Petitioner's right to be free from excessive bail (an Eighth amendment violation), and violation of freedom of speech and to petition the government for a redress of grievances (a First Amendment violation).

7. Respondent Sheriff erred in acting in concert with the Respondent Court to improperly hold Petitioner in jail in violation of Petitioner's constitutional rights as outlined above.

NO OTHER PLAIN, SPEEDY, OR ADEQUATE REMEDY

Due to the unique positioning of the underlying 013 and 444 Cases, there is no other plain, speedy, or adequate remedy other than writ of mandate to provide Petitioner with relief.

The Respondent Court has "suspended" the proceedings in both the 444 Case and the 013 Case, refusing even to reconsider the 1368 Motion. Thus the case is not proceeding to a final, appealable judgment. Due to the suspension, the Respondent court has also refused to hear Petitioner's Motion to Dismiss on the Denial of Speedy Trial Rights, further violating his rights. Furthermore, the action of Respondent Court in ordering Petitioner held without bail as a result of Petitioner walking out of Court after he considered the case dismissed due to failure of the Court to demonstrate jurisdiction over him, is in form and content, a holding on contempt. A contempt ruling is immediately appealable, per *Code of Civil Procedure* 904.1, but because Respondent Court didn't call it "contempt," so it does not appear to be an immediately appealable order.

Furthermore, Respondent Court has materially jeopardized the ability of Petitioner to ever receive a fair trial, or a fair opportunity to have

all of the Respondent Court abuses raised on appeal. Petitioner's counsel has discovered numerous falsification in minute orders of the Respondent Court, as well as secreting or destroying of paper records relating to court proceedings.

IRREPARABLE HARM

Petitioner Dr. Dortch is being irreparably harmed by every day that he is being deprived of his liberty due to the series of unconstitutional actions by Respondents as set forth herein. He can never get back the life events and time with his family that he is being deprived of day by day. In fact, as this Court reads this document, Petitioner will be spending his 50th birthday in jail.

In addition to that incalculable harm, as a result of the above-described actions of the Respondents, Petitioner is also being irreparably harmed in the following additional ways –

a. While Petitioner is being jailed, his business (Dr. Dortch is a licensed optometrist with his own practice) is threatened with destruction. He cannot see patients, many of which have been scheduled long in advance, and cannot attend to any of the necessary functions of running a business.

b. Respondent's order that Petitioner submit to psychological evaluation, particularly when the purported need for the evaluation has to do with a speculation of guilt on the underlying charges, would violate Dr. Dortch's Fifth Amendment rights, require disclosure of attorney-client communications and attorney work product privileged matters, and invade his privacy interest in his medical condition.

c. Petitioner is furthermore suffering irreparable harm by continuing to be punished for asserting his constitutionally guaranteed rights of freedom of speech and redress of government relating to the civil

rights challenges raised and filed many months prior to commencement of these criminal proceedings.

d. Also, due to the stay of the Federal Civil Rights Lawsuit being stayed pending completion of the 013 Case, the suspension of the 013 Case further delays the Petitioner's right to seek and recovery redress for the civil rights violations against him, causing further deterioration in the ability of collect evidence. *Petition* ¶ 109; Kramer Decl. ¶ 38.

ARGUMENT

This Court is being asked for a Writ of Mandate instructing the Riverside County Superior Court to vacate the orders that have led to Petitioner's current incarceration, and order the underlying criminal case dismissed for violation of Petitioner's right to a speedy trial. For ease of discussion, the speedy trial issue is discussed first, because the court actions resulting in Petitioner's current incarceration occurred after passage of the speedy trial limits.

I. *CODE OF CIVIL PROCEDURE* § 1085 AUTHORIZES THIS COURT TO ISSUE A WRIT OF MANDATE TO A SUPERIOR COURT.

> (a) A writ of mandate may be issued by any court to any inferior tribunal . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal . . . Where the appellate division grants a writ of mandate directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Code of Civil Procedure § 1085.

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

Code of Civil Procedure § 1086.

II. PROCEEDING WITH CRIMINAL PROSECUTION MONTHS AFTER RIGHT TO SPEEDY TRIAL HAS EXPIRED IS ERROR IS A FUNDAMENTAL CONSTITUTIONAL VIOLATION.

All criminal defendants have a right to a speedy and public trial under the Sixth and Fourteenth Amendments of the U.S. Constitution and Article I, § 15, of the California Constitution. The right to a speedy trial is a fundamental right. *Smith v. Hooey*, 393 U.S. 374 (1969); *Dickey v. Florida*, 398 U.S. 30 (1970).

A defendant also has a California statutory right to have a case brought to trial within 60 days of the arraignment on the information. *Penal Code* § 1382.

To determine whether a speedy trial violation has occurred, there is a four-part balancing test:

1. Whether delay before trial was uncommonly long;
2. Whether the government or the criminal defendant is more to blame for that delay;
3. Whether, in due course, the defendant asserted his right to a speedy trial; and
4. Whether he suffered prejudice as the delay's result.

Doggett v. United States (1992) 505 U.S. 647, 651.

None of these four factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic

qualities; courts must still engage in a difficult and sensitive balancing process." *Barker v. Wingo,* 407 U.S. 514, 533 (1972).

The Sixth Amendment speedy trial right attaches when the defendant is "accused," which includes when he is arrested. see *United States v. Marion* (1971) 404 U.S. 307, 325. "[T]he lower courts have generally found post accusation delay `presumptively prejudicial' at least as it approaches one year". *Doggett*, supra, pg. 652, fn. 1.

Arrest and pretrial incarceration "seriously interfere with the defendant's liberty" and "may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends"]. See *Marion, supra,* 404 U.S. at 320.

The totality of the accused's responses to the delay is indicative of whether he or she actually wanted a speedy trial." (*State v. Couture* (Mont. 2010) 240 P.3d 987, 1003 (*Couture*), cited in *People v. Williams*, No. S118629, California Supreme Court (2013).

Petitioner Dr. Dortch was arrested on November 1, 2013 and it is now September 25, 2015. The passage of almost two years makes this presumptively a violation of Constitutional speedy trial rights. Furthermore, Petitioner was arraigned on the information in the 013 Case on November 14, 2014, thus entitling him to trial by January 13, 2015. Although a couple of time waivers were made, the last waiver of time made by Petitioner Dr. Dortch in Case 013 was made on February 6, 2015, waiving time for trial to April 10, 2015 plus 60 days (until June 9, 2015). Thus, this is also a presumptive violation of statutory speedy trial rights.

Petitioner has neither waived any additional time for trial, nor authorized anyone else to waive time on his behalf since February 6, 2015. In fact, the court transcripts show that he vigorously opposed further continuances of the matter. To the extent that a court-imposed attorney on

Petitioner purported to agree to continuances since then, those cannot be considered valid acts, as discussed on more detail below.

As to responsibility for the delay, the prosecution has again and again caused delay in this case. Petitioner was arrested on November 1, 2014 and it wasn't until over two months later that a criminal complaint was even filed. Then Deputy District Attorney Paul Svitenko made his veiled threat to Petitioner, suggesting in plea negotiations that Petitioner "stop making trouble for himself" and dismissing the civil rights case that Petitioner and his family had been pursuing since months before the November 2014 arrest. This prompted a necessary request for the disqualification of the prosecutor's office and delay of other aspects of the case.

Another significant factor of delay in this case has been the prosecutor's refusal to comply with its *Brady* obligations. This continuing failure is reversible error, in and of itself. The prosecution is obligated to disclose favorable and material evidence "whether the defendant makes a specific request [citation], a general request, or none at all [citation]." *In re Brown* (1998) 17 Cal.4th 873, 879. "The scope of [the prosecution's] disclosure obligation extends beyond the contents of the prosecutor's case file and encompasses the duty to ascertain as well as divulge `any favorable evidence known to the others acting on the government's behalf. . . .' [Citation.]" (*Ibid.*) A determination that the prosecution improperly withheld material information requires reversal without further harmless error analysis. *Kyles v. Whitley*, 514 U.S. 419, 435 (1995).

Just a day prior to the preliminary hearing in the 013 case, prosecutor Jade Holder advised that she had *Brady* materials, but would not turn them over without a *Pitchess* motion being filed. The *Pitchess* motion was received by the Respondent Court on December 23, 2014, but not even filed in the court record until two months later, at which time Respondent

Court Judge Dennis A. McConaghy told counsel he never reads discovery motions. Then two months later, the *Pitchess* motion was again called for hearing, and again, not heard. Still no *Brady* materials have been produced.

Since February 6, 2015, the first continuance of the *Pitchess* motion hearing, Petitioner has not ever waived his speedy trial rights.

Petitioner has been greatly prejudiced, and continues to be suffering prejudice. The civil rights lawsuit against the Murrieta Police Department has been stayed, pending completion of the 013 Case. Thus Petitioner and his family are being barred from conducting discovery and take other actions to protect their constitutional rights.

The delay has now become even more egregious in that the court-forced attorney for Petitioner has taken the extreme action of accusing Petitioner of mental incompetence, the final breaking straw for Dr. Dortch who had already been objecting to continued delays in the case and finally deemed it dismissed. Petitioner is now being held, pretrial, in a suspended criminal case, after speedy trial deadlines are well past.

Case 013 is now over three (3) months past the constitutional and statutory limitations on the right to a speedy trial and thus must be dismissed with prejudice.

Petitioner's right to have a ruling on the speedy trial issue supercedes the Court's *Penal Code* § 1368 order for evaluation of mental competence to stand trial because, if the case is dismissed, as it should be, it is irrelevant whether Petitioner is competent to stand trial or not.

Petitioner respectfully requests that this Court order Respondent Riverside County Superior Court to dismiss the 013 Case with prejudice, or, in the alternative, to order that the Respondent Court immediately un-suspend the 013 Case and proceed with an evidentiary hearing on Petitioner's Motion for Dismissal With Prejudice for Violation of Defendant's Right to Speedy Trial.

III. SUSPENDING CRIMINAL CASE PROCEEDINGS WITHOUT SUBSTANTIAL EVIDENCE OF MENTAL INCOMPETENCE IS ERROR.

By law, a defendant is presumed mentally competent to stand trial unless proved by a preponderance of the evidence that the defendant is mentally incompetent. *Penal Code* § 1369(f).

Penal Code § 1368 sets forth a procedure for evaluation of mental competency of a defendant if a doubt arises as to his or her mental competency to stand trial. However, a trial court is only required to conduct a competence hearing where there is substantial evidence of mental incompetence. *See People v. Howard*, 1 Cal.4th 1132, 1163 (1992) (emphasis added). Courts are not required to accept, without question, a lawyer's representations concerning the competence of his or her client, although it is "unquestionably a factor which should be considered." *Drope v. Missouri*, 420 U.S. 162 (1975), 420 U.S. 162, 178 n.13.

A. There has been no showing of substantial evidence of mental incompetence.

In *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam), the Supreme Court set forth a two-part standard for determining competency to stand trial: first, a person must have the sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding; and, second, he or she must have a rational as well as a factual understanding of the proceeding against him or her. *Id.*

According to The National Judicial College, it is a best practice for the court to consider the defendant's *capacity versus* the defendant's *willingness* to assist counsel, and whether the defendant's unwillingness is based on free choice or irrational factors. When making the initial decision

as to whether to order an evaluation, it is a best practice for the court to rule out issues such as:

- intoxication on alcohol or drugs (and acting out due to the effects of the substance);
- voluntary choice to act inappropriately in court;
- culture (government/system is bad);
- language barrier; and/or
- lack of education (illiterate, or does not otherwise understand the proceedings, and/or defense counsel has not discussed the proceedings with the defendant).

EX Exh. F.

In this case, the Respondent Court made no inquiry or record of any of these things. There was no evidence of intoxication on alcohol or drugs. The drug allegations against Petitioner are over two years old, and though Petitioner has appeared in court two dozen times, in front of seven judges, at least four prosecutors, an unknown number of court clerks and bailiffs, and with three different attorneys, there has never been any question about his sobriety or mental capabilities. Even the prosecutor argued that there was no evidence that Petitioner was mentally incompetent to stand trial.

Petitioner was not acting inappropriately in court; his interruptions a couple times during the August 27th hearing are natural for a defendant speaking on his own behalf.

Petitioner certainly has opinions about the court system being less than ideal, as passionately explained by Petitioner in numerous filings with the court and particularly during the August 7th and August 27th hearings. He provided specific complaints of constitutional violations and harassment by law enforcement that are documented elsewhere. He also has challenged the Court's jurisdiction over him. Whether the Respondent Court agrees with Petitioner's lack of jurisdiction arguments or not,

Petitioner has an absolute First Amendment right to make those arguments and not be accused of mental incompetence or jailed because of them.

As to being skeptical that proper records of the proceedings would be kept by the Respondent Court, that opinion is borne out by the facts. As reflected in the declaration of Melody A. Kramer, even one of the Minute Orders of the Respondent Court has been falsified in a material respect (indicating that Petitioner waived his right to reading of the information when that is not at all what happened), another is materially incomplete (failing to mention the refusal to hear Petitioner's Motion to Dismiss on speedy trial grounds), the Respondent Court has delayed filing of documents submitted for months at a time, and Respondent Court Judge McConaghy indicated in chambers that he never reads discovery motions. There is a factual basis for Petitioner's opinions about the court system. The falsified Minute Order, in and of itself, would be more than sufficient to prompt a request to allow video recording of a court hearing; this is not some sort of paranoia as Mr. Briones-Colman tried to spin it.

Why would Petitioner Dr. Dortch trust the operations of law enforcement and the court system when he was arrested by a police officer against whom he had filed a civil lawsuit? When official court records have been falsified and so much more? A reading of Mr. Briones-Colman's comments to the court on August 27, 2015 epitomizes what this case against Petitioner Dr. Dortch has been turned into – institutionalized gaslighting. "Gaslighting"—a phrase originating with the 1938 stage play "Gas Light"—refers to the process of systematic psychological manipulation to convince another person that they are insane, by manipulating small aspects of one's environment and then insisting the other person is mistaken when these changes are pointed out.

There is no language barrier, and no lack of education. Dr. Dortch is highly educated and a practicing optometrist and business owner. The

appointed public defender, Mr. Briones-Colman, was actually a patient of Dr. Dortch, a fact he admitted in the closed *Marsden* hearing. Hearing Transcript for September 3, 2015 proceedings before Judge Elaine Keifer (pending receipt; see *Kramer Decl.* ¶ 9). Yet, in true gaslighting fashion, Mr. Briones-Colman lied to the Respondent Court on this very point, saying he didn't know that Dr. Dortch was a doctor. EX E-21, line 17 thru EX E-22:1; see also EX Exh G showing Petitioner Dr. Dortch's current licensure status with the California Board of Optometry. This lie by Briones-Colman, coupled with his speculation of drug use, and gaslighting tactics, are all indicative of his motivations in impugning Petitioner's mental competence in the first place.

As to Petitioner's non-cooperation with Mr. Briones-Colman, the public defender appointed over his objection, the reasons are self-evident. Petitioner contends that the public defender was appointed without his request or authority and does not consider that public defender to be his lawyer. As even the prosecutor noted during the August 27, 2015 hearing, neither of the prior two attorneys for Dr. Dortch had ever raised any issues as to his mental competence.

In this case, the *Penal Code* § 1368 procedure has been misused to (1) penalize Petitioner for exercising his First Amendment rights and making non-traditional defense arguments in the case; (2) penalize Petitioner for questioning the court system; and (3) allow an end run around Petitioner's constitutional rights by ordering state actors to question Petitioner about material facts in the case.

No substantial <u>evidence</u> of mental incompetence has been shown, and, disturbingly, the single attorney claiming a doubt as to mental competency began and ended his remarks by referring to a slight risk of the future reversal of a conviction. This intent to protect the prosecution, not the defendant, was accompanying by the proffer of only a secret Affidavit

(neither shown to the Petitioner, nor made accessible in the court file at the time, and also not made under oath) by the public defender forced upon Petitioner. Even this unsworn document Affidavit (which has since become accessible) does not contain substantial evidence of mental incompetence, but rather speculation based upon the allegations against the Petitioner (allegations of use of an endogenous hallucinogenic), Petitioner's First Amendment protected arguments against the Court's jurisdiction, and Petitioner's lack of cooperation with the public defender. None of these things equate to evidence of mental incompetence at all, much less substantial evidence. If the mere accusation and charging of drug use were a basis for alleging a doubt as to mental competence, every single prosecution of a drug-related case would mandate invocation of *Penal Code* § 1368 mental competence examination!

It was the public defender who indicated an intent to raise a doubt as to mental incompetence via an email to Petitioner, threatening that if Petitioner would not contact him, that he (the public defender) would file a *Penal Code* § 1368 motion asserting lack of mental competency. This email was sent within an hour of Petitioner having filed and served the document entitled "Judicial and Legal Notice to All Parties" wherein Petitioner explicitly revoked any even assumed relationship between him and Briones-Colman and explained that Judge McConaghy had no lawful authority to assign a public defender. It also came just four days after the same attorney, Briones-Colman, had complimented Petitioner on his eloquence in court, but stated that "the court will not recognize its own illegitimacy." *Kramer Decl.*, Exh. 1 thereto.

B. <u>The Court's order that Petitioner be held, without bail, pending psychological/psychiatric evaluations, is in violation of *Welfare & Institutions Code* § 5150 provisions</u>.

The impropriety of the Respondent Court's actions against Petitioner are aptly shown by comparing it to the provisions of *California Welfare & Institutions Code* § 5150. Under that statute, persons may be involuntarily committed (held) only upon probable cause, and then be taken into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, upon a probable cause showing. These are persons who are believed to be a threat to themselves or others, a situation far more serious and likely of harmful consequences than mental incompetence to stand trial.

Here, Respondent Court Judge Clark allowed a person to speculate that based on the charges of possession of an hallucinogenic drug (and his internet research about the substance), First Amendment protected arguments made by Petitioner, and non-cooperation with a public defender appointed over his objection, somehow put Petitioner's mental health in question. This is nothing near the standard required under California law for involuntary detention for mental health reasons. But instead of the 72 hour involuntary hold of § 5150, Respondent Court ordered Petitioner held in jail, without bail, for another six weeks (later reduced to four weeks) pending a psych evaluation. Furthermore, there is no indication that Respondent has any intention of letting Petitioner out of custody on October 1, 2015, the next hearing date. On the last hearing, on September 18, 2015, Petitioner's counsel specifically asked what would happen on October 1st and Judge Clark responded "well, we'll see." Hearing Transcript for September 18, 2015 proceedings before Judge Clark (pending receipt).

IV. A CRIMINAL DEFENDANT CANNOT BE SUBJECTED TO JAIL WITHOUT BAIL ON THE GROUNDS OF EXERCISE OF

HIS FIRST AMENDMENT RIGHTS WITHIN COURT DOCUMENTS.

Petitioner has First Amendment rights of free speech and Eighth Amendment rights of not being subjected to excessive bail. See U.S. Constitution, First and Eighth Amendments.

Although Petitioner has contested the jurisdiction of the Respondent Court over his person since at least January 10, 2014 (EX A-29, et seq), four days after the original Felony Complaint was filed (see EX A-27), he has faithfully appeared in court for approximately two dozen court hearings since that time. It was only on August 27, 2015 that the Respondent Court decided to use one of Petitioner's statements, namely one paragraph within Petitioner's August 11, 2015 "Judicial and Legal Notice," as an excuse to deny him bail.

The importance of this violation of rights cannot be underestimated. Petitioner's Judicial and Legal Notice also explicitly deny any relationship between Petitioner and Mr. Briones-Colman, but Respondent Court refused to accept that statement. The Notice also explicitly denied any jurisdiction of the Respondent Court over the Petitioner, but Respondent Court ignored and refused to accept that statement also. Finally, the Notice also indicated that Petitioner was innocent of all the allegations against him, and again, Respondent Court ignored and failed to accept that statement.

It doesn't take a genius to see what happened here. Petitioner had begged the Court to actually address his lack of jurisdiction arguments, but had been ignored. Petitioner had objected to a public defender being appointed to speak for him, especially when that attorney was doing all sorts of things to impinge on his constitutional rights. Then the Respondent Court allowed a "kangaroo court" style hearing on unsworn speculation by a public defender against the interests of his own client and assuming his client's guilt, accusing the Petitioner of being delusional and lacking in

mental competence. At a certain point, any self-respecting human being has to walk out from that kind of absurdity and lack of due process. Never, in the United States, should a defendant be jailed because they walked out of such a farcical proceeding before asking permission of the court.

If Petitioner's challenge to the Court's jurisdiction meant that he was not agreeing to be bound by his agreement to return to court hearing after hearing, then he wouldn't have been at the two dozen hearings he attended, especially those that occurred after his speedy trial deadline had passed.

There is nothing in the Respondent Court record to indicate that Petitioner is a flight risk or is dangerous.

Petitioner is being held under the condition of excessive bail (no bail) based upon exercise of his First Amendment rights. Petitioner respectfully requests that this Court issue a writ of mandate ordering the Respondents to immediately release Petitioner from custody.

V. APPOINTMENT OF A PUBLIC DEFENDER WITHOUT REQUEST OR CONSENT OF A DEFENDANT, IS ERROR.

Much of the problems that have caused this case to be before this Court now is the error of an improper appointment of public defender for Petitioner.

The Sixth Amendment of the U.S. Constitution guarantees a criminal defendant the right "to have the assistance of counsel for his defense." "A trial court must grant a defendant's request for self-representation if the defendant knowingly and intelligently makes an unequivocal and timely request after having been apprised of its dangers." *People v. Valdez*, 32 Cal.4th 73, 97-98 (2004). Erroneous denial of a *Faretta* [*v. California*, 422 U.S. 806 (1975) motion is reversible per se. *People v. Dent* 30 Cal.4th 213, 218 (2003).

The right to have the assistance of counsel, at the option of a criminal defendant, does not authorize the state to force counsel on a defendant against his or her consent. That is what has happened to Petitioner.

In this case, the Case Report shows that Petitioner knowingly waived his right to be represented by counsel early on in the case, as reflected in the court record. On January 15, 2014, the minute order reads "Defendant specifically waives right to counsel. The Court finds Defendant has knowingly and intelligently waived his/her right to counsel."

Even though Petitioner Dr. Dortch later, filed a document revoking that waiver, and for awhile, had counsel represent him, the revocation of waiver was never acknowledged by the Respondent Court and, furthermore, was filed in an effort to preserve Petitioner's legal argument that the Respondent Court lacks jurisdiction over him. It is not necessary to fully elaborate on Petitioner's jurisdictional defense in this Writ proceeding, except to say that it relies on a legal theory that due to various actions of the Respondent Court, it is a corporation with whom Petitioner is not obligated to contract, or be bound by its authority.

On April 10, 2015, Petitioner opted again to resume his own representation. The Respondent Court case record states "Defendant indicates that he will no longer be represented by counsel and will proceed pro per" EX A-619. In actuality, Petitioner used different words than "in pro per," but he did unambiguously indicate his intent to discharge his counsel and proceed on his own. Hearing Transcript for April 10, 2015 proceedings before Judge Stephen Gallon (pending receipt).

At the following hearing on May 8, 2015, the records reflects "Public Defender Appointed," but makes no reference to any request being made, any qualifications for a public defender appointment being met, nor consent to this procedure by the Petitioner defendant. The transcript of the

May 8, 2015 hearing is not yet available, but in subsequent transcripts and documents, Petitioner again and again unambiguously tells the Respondent Court that he did not agree to this public defender speaking on his behalf.

Finally, on September 3, 2015, Petitioner rehired Ms. Kramer to represent him as the only way to get the Court to stop letting the public defender take actions purportedly on his behalf and against his consent, but the damage had already been done. The public defender had used his position to first purport to waive Petitioner's fundamental right to a speedy trial, and then defame Petitioner by raising a doubt as to mental competence under *Penal Code* § 1368, an action that he could not have taken had it not been for the improper appointment of him to the case. This then led to the Respondent Court suspending proceedings, further violating Petitioner's rights and compounded by the simultaneous order that Petitioner be held without bail.

Petitioner respectfully requests this Court to order the Respondent Court to, *nunc pro tunc*, vacate the appointment of the public defender and nullify all actions taken by this public defender purportedly on behalf of Petitioner, or in his capacity as defense counsel.

CONCLUSION

Petitioner Dr. David Dortch currently sits in jail at the Southwest Detention Center in Murrieta, California, based on a series of Constitutional and statutory violations perpetrated by Respondent Riverside County Superior Court, and held by Respondent Stanley Sniff, Riverside County Sheriff.

Petitioner has no other plain, speedy, or adequate remedy in the ordinary course of law other than this appeal to the Court of Appeal for a writ of mandate, and Petitioner is, and continues to, suffer irreparable harm as outlined herein.

THEREFORE Petitioner respectfully requests this Court to issue a writ of mandamus as follows:

1. Directing the Respondent Riverside County Superior Court to immediately stay the operation of all orders issued on September 3, 2015 and since that result in Petitioner being held in jail, without bail, and purport to require any involuntary mental competence examinations of Petitioner.

2. In accord therewith, also directing Respondent Stanley Sniff, Riverside County Sheriff, to immediately release Petitioner from custody at the Southwest Detention Center (or any other correctional facility at which Petitioner may be held)[9].

SUBSEQUENTLY, upon receipt of this Court of a complete record, including the missing hearing transcripts identified by Petitioner, Petitioner respectfully requests a further writ of mandate as follows:

3. Dismiss with prejudice the case against Petitioner – *People v. David Alan Dortch*, Case No. SWF1400013 – for failure to accord Petitioner, Dr. Dortch, a speedy trial, *nunc pro tunc*, effective as of June 9, 2015; and

4. Vacate, *nunc pro tunc*, all actions taken and orders issued since June 9, 2015 in said case, including any orders that Respondent be held without bail.

5. Dismiss with prejudice the second case against Petitioner -- *People v. David Alan Dortch*, Case No. SWF1501444 – because it was filed as a direct result of actions taken by Respondent Court in the improperly continuing 013 Case.

IN THE ALTERNATIVE, Petitioner respectfully requests this Court for a writ of mandate as follows –

[9] It should be noted in any Writ of Mandate that Petitioner's date of birth has been improperly documented in at least some records of Respondent Sheriff's Southwest Detention Center as March 1, 1982, even though his actual birth date is September 28, 2015.

1. Directing Respondent Riverside County Superior Court to –

a. Vacate, *nunc pro tunc*, its appointment of public defender Richard Briones-Colman for Petitioner without his request or consent, and over his objection;

b. Vacate, *nunc pro tunc*, all actions taken by Briones-Colman, or as a result of his involvement in the case with respect to Petitioner, including the following: any purported waivers of time for trial, the accusation of doubt as to mental competence of Dr. Dortch, and the suspension of the case pending psychological evaluations.

c. Vacate its order of suspension of the cases against Petitioner and immediately hold an evidentiary hearing on Petitioner's request for dismissal for violation of his rights to speedy trial.

d. Vacate the orders that Petitioner be held without bail immediately, pending completion of further actions in either case.

2. Directing Respondent Stanley Sniff, Riverside County Sheriff, to immediately release Petitioner from custody at the Southwest Detention Center (or any other correctional facility at which Petitioner may be held).

Petitioner also seeks any such other and further relief as this Court deems just.

DATED: Sunday, September 27, 2015

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