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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

PETITION FOR WRIT OF MANDATE

---IMMEDIATE RELIEF REQUESTED---

MELODY A. KRAMER, SBN 169984
KRAMER LAW OFFICE, INC.
4010 Sorrento Valley Blvd., Ste. 400
San Diego, CA 92121
Telephone (855) 835-5520
Attorney for Respondent David Alan Dortch

Petitioner respectfully petitions this Court for writ of mandate pursuant to *Code of Civil Procedure* § 1085 as follows –

1. To require Respondent Riverside County Superior Court to –
 - a. 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
 - b. 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.
2. To require Respondent Stanley Sniff, Riverside County Sheriff, to release Petitioner from custody at the Southwest Detention Center (or any other correctional facility at which Petitioner may be held) forthwith.

In the alternative, Petitioner respectfully requests this Court for a writ of mandate as follows –

1. To require Respondent Riverside County Superior Court to vacate, *nunc pro tunc*, its appointment of public defender Richard Briones-Colman for Petitioner without his request or consent, and over his objection;
2. To require Respondent Riverside County Superior Court to 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.
3. To require the Respondent Riverside County Superior Court to vacate its order of suspension of the case and immediately hold an evidentiary hearing on Petitioner’s request for dismissal for violation of his rights to speedy trial.

This request for writ of mandate is being made for the following reasons --

PETITIONER DR. DAVID ALAN DORTCH IS BEING ILLEGALLY HELD, WITHOUT BAIL, IN SUSPENDED CRIMINAL CASES, AND HAS BEEN ACCUSED OF MENTAL

**INCOMPETENCE, ALL IN VIOLATION OF HIS
CONSTITUTIONAL RIGHTS AND AS A DIRECT RESULT OF
HIS EXERCISE OF FREEDOM OF SPEECH REGARDING
HIS VIEWS ON THE JURISDICTION OF THE COURT.**

PARTIES

1. Petitioner Dr. David Alan Dortch is 49 years old and lives in Murrieta, California in the County of Riverside, where he also runs a successful business as an optometrist.

2. Petitioner is currently being held in jail at the Southwest Detention Center in Murrieta, California. Although Petitioner date of birth, as reflected in court files, is September 28, 1965, the ID tag given to him to wear on his wrist at the Southwest Detention Center improperly lists his date of birth as March 1, 1982.

3. Respondent Riverside Superior Court (“Respondent Court”) is the Court which has issued the Court orders resulting in Petitioner’s being jailed in violation of his constitutional rights.

4. Respondent Stanley Sniff is the Sheriff of Riverside County, California (“Respondent Sheriff”), responsible for management and operations of the Southwest Detention Center, and all other correctional facilities in Riverside County, and thus responsible for the current jailing of Petitioner.

5. Respondent Does 1-50, identifies currently unknown, are other persons or entities that may be working in concert with the named Respondents, as agents of each other.

CHALLENGED ACTIONS OF RESPONDENTS

6. Petitioner challenges the following actions of the Respondents which together have resulted in Petitioner being held in jail –

- a. Order by Respondent Court, via Judge McConaghy, appointing as Petitioner's attorney, a public defender that Petitioner neither requested, nor consented to a being his representative, and subsequent allowing of said public defender to take actions violative of Petitioner's rights;
- b. Orders by Respondent Court granting a *Penal Code* § 1368 motion, suspending criminal proceedings and ordering a mental competence examination of Petitioner, without there being any substantial evidence of mental incompetence;
- c. Order by Respondent Court refusing to consider a motion to dismiss criminal prosecution on the grounds of violation of Petitioner's right to a speedy trial;
- d. Orders for Petitioner be held without bail.

GROUND FOR THE PETITION

7. 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").

8. 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. More details regarding these circumstances is contained within the Contextual Facts section below. The in pro per case was dismissed without prejudice in February 2014, 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.

Procedural Facts of 013 Case Re Speedy Trial

9. The criminal complaint in the 013 Case was filed January 9, 2014, two months after Petitioner was arrested without a warrant. Additional facts relating to the context of this arrest and criminal charges follows in the Contextual Facts section below.

10. On February 6, 2015, as reflected in the Court's minute order, "Defendant waives time for trial to 04/10/2015 plus 60 days." (This waiver thus extended only to June 9, 2015.) This is the last waiver of speedy trial made in the 013 Case by Petitioner.

11. On April 10, 2015, in open court, Dr. Dortch indicated that he "will no longer be represented by counsel and will proceed pro per." The next court date was set for May 8, 2015 with the Court noting that "dates set are within previous time waiver."

12. Petitioner appeared again in Court on May 8th and June 8, 2015. On neither date did Petitioner further waive time for trial. In fact, the 013 Case Report reflects that Petitioner objected to a requested continuance.

13. On August 7, 2015, Dr. Dortch again explained to the Court that he objected to any further proceedings in the case, and objected to any efforts to further waive time. 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.

14. 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.

15. Respondent Court issued an electronic bench warrant for his arrest, purportedly for "failure to appear" (even though Petitioner had appeared, just left early).

16. 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.

17. 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.

18. On September 3, 2015, the Respondent Court ordered that Petitioner be held without bail, and also suspended the case under *Penal Code* § 1368.

19. 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.

20. 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.

21. 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 for 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.

22. 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.

23. 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.

24. 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.

25. 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).

26. 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.

27. 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.

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

Procedural Facts of 444 Case

29. 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.

30. As noted above, when Petitioner walked out of court on August 27, 2015, the Respondent Court issued a bench warrant for his arrest.

31. 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 plainclothes officers and arrested several days later, on September 1, 2015.

32. 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.

33. 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.

34. 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.

35. 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).

36. 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.

37. Therefore, Petitioner Dr. Dortch remains held in the Southwest Detention Center jail, 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 in the 013 Case.

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

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

39. At the beginning of the 444 Case, on January 15, 2014, Petitioner waived his right to counsel and proceeded in pro per. However, as of April 30, 2014, he had decided to retain counsel for the case, Mr. Levinsohn.

40. On August 14, 2014, Mr. Levinsohn was replaced with other counsel, Ms. Kramer.

41. 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.

42. 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.

43. 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.

44. On May 29, 2015, Petitioner filed another document with the Court consistent with his argument contesting jurisdiction of the Court.

45. 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.

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

47. On August 7, 2015, Dr. Dortch again explained to the Court that he had not hired the public defender and that he was unlawfully appointed. He described the public defender 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.

48. The public defender seemed no more interested in continuing this representation than Petitioner, requesting a *Marsden* 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.” The judge did note that if there was a conflict of interest with the public defender’s office, that could be a basis for withdrawal.

49. 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 that he was not “requesting to represent himself” in that he considered himself a separate entity from the corporate person. He also explained his position that the prosecution had an obligation to prove its jurisdiction over him, “a living breathing man, not a corporation.” These arguments fall squarely within Petitioner’s First Amendment rights, whether the Court agreed with them or not.

50. On August 7th, Petitioner also explained the context of 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.

The Respondent Court responded with placating statements without any substance.

I certainly recognize that the length a proceeding goes on is an exhausting situation for certainly anyone who's involved, and I am very sympathetic to that. This court takes very seriously its responsibilities with regards to jurisdiction and the handling of issues, but I also know that I only have the authority to handle the issues that are before me on a particular day.

51. 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 it's 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.

52. The Respondent Court responded “I have no intention of doing that,” but subsequent actions later in August demonstrated the contrary.

53. Then the Respondent Court proceeded to advise the public defender that it is within a represented party's control to determine the extent to which they wish to cooperate with their attorney, but it was not grounds for a request to be relieved. The public defender then specifically, on the record, requested the transcript of the August 7th 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).

54. 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).

55. The following Tuesday, August 11, 2015, the public defender 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. The public defender's arguments on the record focused on the risk of the possibility of a subsequent conviction being overturned, cited the allegations against Petitioner as though credible evidence of use of an hallucinogenic, and cited Petitioner's non-cooperation with him.

61. The Court then allowed Dr. Dortch to speak and he again made a 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.

62. 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.

Contextual Facts

63. 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.

64. 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.

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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 any way, even through First Amendment protected free speech and writings, is possibly violent and a risk to the public.

73. 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 have been done through exercise of his First Amendment rights of free speech and government redress.

74. 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.”

75. 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.”

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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.)

84. 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.

85. 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’ (Dimethyltryptamine) laboratory.”

86. 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.

87. 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.

88. 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.

89. Four days later, the Murrieta Police Department republished the press release on its Facebook page of over 900 followers.

90. 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.

91. 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.

92. 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.

93. Dr. Dortch, through his counsel, sought to remove the Riverside County District Attorney's Office from the case, but the request was denied.

94. 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).

95. 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?"

96. 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.

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

HOW RESPONDENT ERRED

102. The Court erred in at least the respects identified below, violating Dr. Dortch's constitutional rights.

a. 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.

b. The Respondent Court erred in appointing a public defender to speak on behalf of Petitioner Dr. Dortch. without his consent and over his objection.

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

d. 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. Petitioner (defendant) 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. This ruling thus operates to violate Petitioner's Fifth Amendment to the extent he is expected to be interviewed by government-appointed psychologist and psychiatrist, and is also an unnecessary violation of Petitioner's protected privacy interests.

e. The 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 results 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.

f. The Court erred in ordering Petitioner held without bail as an obvious 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. There is no evidence that Petitioner is a flight risk, nor any danger to himself, others, or the community at large.

103. Respondent Sheriff erred in acting in concert with the Respondent Court to improperly hold Petitioner in jail.

NO OTHER PLAIN, SPEEDY, OR ADEQUATE REMEDY

104. Due to the unique positioning of these cases, there is no other plain, speedy, or adequate remedy other than writ of mandate to provide Petitioner with relief.

105. 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.

106. 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.

107. 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 didn’t call it “contempt,” it does not appear to be an immediately appealable order.

108. 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

109. Petitioner is being irreparably harmed by the above-described actions of the Respondent in the following 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.

RELIEF REQUESTED

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)¹.

SUBSEQUENTLY, upon receipt of this Court of a complete record, including the missing hearing transcripts identified by Petitioner herewith, 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 –

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.

¹ 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.

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

KRAMER LAW OFFICE, INC.

/s/ Melody A. Kramer
Melody A. Kramer, Esq.
4010 Sorrento Valley Blvd. #400
San Diego, California 92121
Telephone: (855) 835-5520
Attorney for Petitioner
Dr. David Alan Dortch

VERIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this ___ day of September, 2015 in Murrieta, California.


Dr. David Alan Dortch