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App. R. 49(c)(3)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JAMES REEM,

Petitioner,

vs.

VICKI HENNESSY, Sheriff of San
Francisco,

Respondent.

Case No.

**EMERGENCY PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1
2 1. Petitioner James Reem has been imprisoned by the San Francisco Sheriff for
3 nearly four months in violation of the United States Constitution.

4 2. In the Answer to his Petition for Review in the Supreme Court of California,
5 Respondent State of California agreed that petitioner had not received a bail hearing consistent
6 with the requirements of State and Federal law and therefore did not oppose his petition.
7

8 3. Despite the parties' agreement that Reem's current detention is unlawful, both the
9 First District Court of Appeal and the Supreme Court of California denied his petitions for writ
10 of habeas corpus.

11 4. Petitioner therefore requests that this Court issue a writ of habeas corpus and order
12 his immediate release from confinement unless the state conducts a pretrial release and detention
13 hearing consistent with the requirements of Federal law.
14

JURISDICTION AND VENUE

15 5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
16 § 2241. Because he has not been convicted of a crime and is not in custody pursuant to the
17 judgment of a state court, Petitioner brings this action under § 2241 and need not bring this action
18 under § 2254, which governs habeas petitions challenging state criminal convictions.
19

20 6. Petitioner has pursued and exhausted all available state law remedies. Following
21 his bail hearing in the Superior Court, he filed a petition for writ of habeas corpus in the First
22 District Court of Appeal on September 11, 2017. That petition was summarily denied without
23 explanation on September 14, 2017. Petitioner filed a petition for review with the Supreme Court
24 of California on September 20, 2017. That petition was summarily denied on November 15,
25 2017, again without explanation.
26

27 7. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
28

§ 1391(b) because the events giving rise to these claims occurred in this District.

INTRADISTRICT ASSIGNMENT

8. Petitioner is in the custody of the San Francisco Sheriff. Assignment to the San Francisco/Oakland Division of this Court is proper under Local Rule 3-2(d) because the events giving rise to this claim occurred in San Francisco County.

PARTIES

9. Petitioner James Reem is a 53-year-old San Francisco resident who was arrested on July 28, 2017, and charged with several felony and misdemeanor offenses. He is currently confined in pretrial detention at a jail in San Francisco. He has been detained for over six months without ever having been provided detention hearing that comports with minimal constitutional standards to determine whether his detention is lawful.

10. Respondent Vicki Hennessy is the Sheriff of San Francisco. Sheriff Hennessy is responsible for the jails of San Francisco and is the legal custodian of Petitioner.

FACTUAL ALLEGATIONS

11. Petitioner James Reem is a 53-year-old longtime San Francisco resident who has recently struggled with homelessness and unemployment. He was arrested in San Francisco on July 28, 2017 and charged with first degree burglary–residential (Cal. Pen. Code § 459), unlawful driving or taking of a vehicle (Cal. Veh. Code § 10851(a)), receiving or buying stolen property (Cal. Pen. Code § 486(a)), possession of firearm by a felon (Cal. Pen. Code § 29800(a)(1)), using personal ID of another with intent to defraud (Cal. Pen. Code § 530.5(c)(1)), identity theft (Cal. Pen. Code § 530.5(a)), theft of access card (Cal. Pen. Code § 484e(c)), and resisting, obstructing, delaying of a peace officer (Cal. Pen. Code § 148(a)(1)).

12. At arraignment, the court determined that Reem was unable to afford his own counsel and appointed the public defender. Defense counsel requested release without financial

1 conditions, raising the fact that the court's Public Safety Assessment had recommended that
2 Reem be released and that his prior convictions were from years ago.

3 13. The prosecutor requested that Petitioner be released from custody prior to trial;
4 however, the prosecutor requested a \$350,000 secured financial condition of release pursuant to
5 the bail schedule. The judge denied the request for release on own recognizance, setting bail in
6 the amount of \$330,000. The court emphasized Reem's prior offenses and prior strike in setting
7 a financial condition of release. The court's imposition of \$330,000 had the intent and effect of
8 detaining Reem pretrial solely because he did not have enough money to pay the amount of
9 money required for his release.
10

11 14. Although California and federal law permit an order of pretrial detention in
12 serious felony cases such as petitioner's, both state and federal law require specific substantive
13 findings to be made after rigorous procedural safeguards. At no time did the prosecutor or the
14 court convene a hearing on Reem's preventive pretrial detention or apply the legal standards,
15 evidentiary showing, or legal and factual findings required for a valid and transparent order of
16 pretrial detention.
17

18 15. Reem renewed his motion for release on his own recognizance or reduction in
19 bail. Reem argued that the secured financial condition of release was set beyond his means and
20 violated the Fourteenth Amendment's guarantees of Equal Protection and Due Process. The
21 motion explained that Reem's behavior during the alleged crime was the result of substance
22 abuse issues and argued that the court should address any public safety concerns by imposing
23 conditions such as completion of a substance abuse treatment program, a stay-away order, or
24 case management.
25

26 16. The magistrate denied Reem's request, stating that he was not willing to adjust
27 the circumstances of bail at the time. The court made no inquiry of Reem's financial
28

1 circumstances, made no findings by clear and convincing evidence, and did not address the
2 possibility of release with safety conditions.

3 17. On September 11, 2017, Petitioner filed a petition for writ of habeas corpus in the
4 First District Court of Appeal. Petitioner argued that the trial court violated state law and the
5 United States Constitution in denying his pretrial release and by failing to consider his ability to
6 pay or alternatives to pretrial incarceration. The petition was summarily denied on September
7 14, 2017.

8 18. On September 20, 2017, Petitioner filed a petition for review with the Supreme
9 Court of California. On September 27, the Supreme Court requested and Answer to the petition.
10 On October 12, 2017, Respondent State of California filed an Answer to the Petition for Review
11 stating “A bail reduction hearing requires the court carefully consider, among other factors, the
12 risk of flight and danger to public safety posed by the defendant, as well as his or her ability to
13 pay monetary bail in conjunction with alternative methods for ensuring appearance at trial. The
14 record does not reflect that the magistrate in this case carefully and meaningfully considered
15 petitioner’s ability to pay or alternative methods of ensuring appearance at trial. Accordingly,
16 respondent does not defend the magistrate’s decision in this case.”

17 19. The Supreme Court summarily denied the Petition for Review on November 15,
18 2017.

21 **LEGAL BACKGROUND**

22 20. As explained in the attached memorandum of points and authorities, a secured
23 financial condition of release that an arrestee cannot afford is equivalent to a de facto order of
24 detention. When a financial condition of release results in the de facto pretrial detention of a
25 presumptively innocent person because of his inability to pay, the court must make the
26 substantive findings and provide the rigorous procedures required for a valid order of pretrial
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1 detention. Because those procedures were not followed and the findings have not been made,
2 Petitioner's ongoing detention is unconstitutional.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner respectfully requests that the Court grant the following relief
5 in an emergency and expedited manner:

- 6 a. Assume jurisdiction of this matter;
7
8 b. Grant the Order to Show Cause and set an expedited briefing schedule;
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10 c. Grant the Writ of Habeas Corpus and order Petitioner's immediate release from custody
11 under reasonable conditions; or in the alternative, order that petitioner must be released
12 within three days of this Court's order unless the state provides a pretrial release and
13 detention hearing that complies with the requirements of federal law;
14 d. Grant such other relief as the Court deems just and proper.

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16 Dated: November 16, 2017

17 Respectfully submitted,

18 Katherine Hubbard
19 Alec Karakatsanis
20 CIVIL RIGHTS CORPS

21 By: _____/s/_____
Katherine Hubbard

22 Chesa Boudin
23 DEPUTY PUBLIC DEFENDER
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