No. S179175 S179176

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ALFREDO GOMEZ, Petitioner, v. THE SUPERIOR COURT OF LASSEN COUNTY, Respondent, TOM FELKER, as Warden, etc. et. al., Real Parties in Interest.	Court of Appeal Case No. C060710 (Lassen County Superior Court Case No. 47543)
	consolidated with
MANUEL JUAREZ, Petitioner, v. THE SUPERIOR COURT OF LASSEN COUNTY, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	Court of Appeal Case No. C060773 (Lassen County Superior Court Case No. CHW2530)

PETITIONERS' OPENING BRIEF ON THE MERITS

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By Appointment of the Court of Appeal under the Central California Appellate Program's Independent Case System

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PETITIONERS' OPENING BRIEF ON THE MERITS

ISSUE FOR REVIEW

Is a commissioner's summary denial of a petition for a writ of habeas corpus or mandate a "subordinate judicial duty" within the meaning of article VI, section 22 of the California Constitution, or can only a judge or justice exercise the judicial power of final adjudication of a habeas or mandate petition?

STATEMENT OF THE FACTS AND CASE

Alfredo Gomez and Manuel Juarez, inmates at High Desert State Prison, filed petitions for extraordinary relief from conditions of their confinement in Lassen County Superior Court. (Maj. opn., p. 4.) Treating Gomez's petition as one for writ of mandate and Juarez's petition as one for a writ of habeas corpus, a superior court commissioner summarily denied both petitions. (Maj. opn., p. 4.) Gomez objected that the commissioner lacked authority to dispose of his petition because he "did not consent to the commissioner's jurisdiction." (Maj. opn., p. 4.) Relying on Code of Civil Procedure section 259, subdivision (a)[1], the commissioner overruled the objection. (Maj. opn., p. 5.)

Each prisoner then sought extraordinary relief in the Third District Court of Appeal, challenging the power and authority of the commissioner to deny their petitions. (Maj.

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[1] All references to code sections are to the Code of Civil Procedure unless otherwise indicated.

opn., p. 5.) Gomez filed a petition for writ of mandate naming the warden and other prison officials as the real parties in interest (RPI), and Juarez filed a petition for writ of habeas corpus that the Court of Appeal treated as a petition for writ of mandate and deemed the People the RPI. (Maj. opn., p. 5, fn. 1; see also handwritten note on Juarez's petition filed in the Court of Appeal.) The Court of Appeal consolidated the two matters and issued alternative writs of mandate to the superior court, as respondent, and to the People, as the RPI, in order to decide "the constitutional challenge" to the commissioner's authority to summarily deny the inmates' petitions for extraordinary relief in the Lassen County Superior Court. (Maj. opn., pp. 3 & 5.)

The Attorney General, on behalf of the RPI, filed a return to the alternative writs that cited California Constitution, article VI, sections 21 & 22. The Attorney General agreed with petitioners that a commissioner is not empowered to rule on a petition for writ of habeas corpus absent consent of the parties, and that there had been no consent in this case.[2] (Maj. opn., p. 5.) The Attorney General also agreed with petitioners that the denial of a petition for writ of habeas corpus is not a

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[2] California Constitution, article VI, section 21 permits a temporary judge to try a cause to final determination upon "stipulation of the parties." All parties in the Court of Appeal agreed this provision did not empower the commissioner to deny the petitions, since there was no stipulation to exercise of that power. (See, e.g., Maj. opn., pp. 5-7.)

subordinate judicial duty because of the important liberty interests protected by the "Great Writ" and the fundamental rights of an individual at stake in determination of such petitions. (*Ibid.*) Petitioners and the Attorney General further agreed that the summary denial of a petition for writ of habeas corpus is the equivalent of a final judgment, so that entry of such judgments cannot be deemed a "subordinate judicial duty." (Maj. opn., pp. 5-6.) Respondent superior court, however, filed its own return in which it argued that "together, article VI, section 22, of California's Constitution and section 259 of the Code of Civil Procedure authorize a court commissioner to rule on ex parte applications for writs" of habeas corpus and alternative writs of mandate. (Maj. opn., p. 6.)

In a divided decision, the Court of Appeal ruled that summary denial of a petition for writ of habeas corpus or alternative writ of mandate constitutes a subordinate judicial duty within the meaning of California Constitution, article VI, section 21, that commissioners may perform pursuant to section 259, subdivision (a). (Maj. opn., p. 3; Min. opn., pp 4-5.) The majority found this was so because such a denial does not constitute "the 'trial' of a 'cause.'" (Maj. opn., p. 3.) The majority opined that once a court commissioner determines that the inmate's petition has stated a prima facie case for writ relief, and thereupon issues the writ of habeas corpus (or order

to show cause why the habeas relief should not be granted)[3] or alternative writ of mandate, then a cause is created and the commissioner may not try that cause without a stipulation from the parties. (Maj. opn., pp. 3-4 & 7-9.)

In the minority opinion concurring in the judgment, Justice Hull was dubious about the purported distinction the majority drew between a summary denial of a petition for a writ of habeas corpus and one following "a 'trial' of a 'cause,'" since they are both "determinations[s] of [a] dispute between the prisoner and the confining authority ...." (Min. opn., p. 1.) As to its holding that permits summary denials by a commissioner, Justice Hull stated:

> [I]t is a result that gives one pause as it holds that a nonjudicial officer is captain of the gate when a person being held in confinement seeks the protections of the "Great Writ." [Citation.] ... [A]bsent appellate court intervention, there will never be a cause to be tried without the Commissioner's permission to pass.

(Min. opn., p. 1).) Justice Hull concluded, however, that "[g]iven the holding in *Rooney*[4], there is nothing more to be said." (*Id.* at p. 5)

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[3] Issuance of the writ of habeas corpus is equivalent to issuance of an order to show cause (OSC) why the relief requested in the habeas petition should not be granted. (See, e.g., *People v. Romero* (1994) 8 Cal.4th 728, 738.)

[4] *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351.

In sum, the Court of Appeal denied the petitions for writ of mandate after holding that the commissioner of the Lassen County Superior Court had authority, pursuant to article VI, section 22 of the California Constitution, to summarily deny their petitions for a writ of habeas corpus or alternative writ of mandate upon finding they failed to state a prima facie case for relief. (Maj. opn., pp. 4, 21; Min. opn., pp. 4-5.)

SUMMARY OF ARGUMENT

The California Constitution's limitation of a commissioner's powers to performance of "subordinate judicial duties" does not permit a commissioner to deny petitions for writs of habeas corpus or mandate. This conclusion is reinforced by the regard California has for a court's power to issue a writ of habeas corpus. Indeed, from its inception as a state, California has guaranteed that the writ may not be suspended except under the most compelling of circumstances — "unless required by public safety in cases of rebellion or invasion." The grave importance of the interest of the petitioner at stake in a habeas action, including the taking of his life or liberty without due process of law, the imposition of cruel and unusual punishment upon him, and all manner of other unconstitutional restraints on his freedom, further reinforces the fact that a commissioner has no power to bar a petitioner from the courthouse door by denial of his petition. Rather, only a duly appointed or elected judge or justice may exercise so

consequential a power as to deny issuance of a writ on a petition.

The statutory authorization for a commissioner to hear and determine petitions for writs of habeas corpus or alternative writs of mandate should not be interpreted in a way that deems denials of such petitions within the restricted power of a commissioner to perform subordinate judicial duties. There is no precedent or authority for such an interpretation of that critical statutory language, and that interpretation creates unnecessary tension with the constitutional right to seek and obtain habeas corpus relief from unlawful restraint. Rather, that statutory authorization should be interpreted in accordance with the Legislature's traditional limitation of a commissioner to performance of minor duties that permit determination of only routine or preliminary matters that are relatively inconsequential. That interpretation also best accords with the plain language of the constitutional provision relegating a commissioner to the performance of only subordinate judicial duties. Issuance of a final ruling in an important or contested type of case, such as habeas corpus, has always been deemed outside the scope of such duties. The Constitution's complementary provision that allows a commissioner to perform regular judicial duties only with the consent of the parties reflects that fact.

A contextual reading of section 259 that harmonizes all its parts confirms that the Legislature did not intend to permit

commissioners to enter final orders in habeas or mandate matters, for that statute does not permit commissioners in any other context to enter a final order disposing of a matter without a stipulation. Moreover, other statutes specifying the duties of commissioners demonstrate that they have been authorized to enter final orders of adjudication without the consent of the parties only in rare circumstances of relatively inconsequential matters — i.e., traffic infractions and small claims matters.

All of these considerations support a finding that a commissioner is not authorized to deny a habeas or mandate petition, for such denials constitute final adjudications that dispose of the petitioner's claims before they have even been considered by a judge.

* * * * * *

ARGUMENT

A COURT COMMISSIONER DOES NOT HAVE THE POWER TO DENY A PETITION FOR WRIT OF HABEAS CORPUS OR MANDATE; RATHER, EXERCISE OF SUCH A POWER IS INCOMPATIBLE WITH THE CONSTITUTION'S RESTRICTION OF A COMMISSIONER TO THE PERFORMANCE OF SUBORDINATE JUDICIAL DUTIES.

A. The Constitutional Standing of a Commissioner.

In *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351 (*Rooney*), this Court traced the history of the power of a commissioner. In 1862, article VI of the California Constitution read: "The Legislature may ... provide for the appointment ... [of] commissioners ... with authority to perform chamber business of the judges of the superior courts, to take depositions, and to perform such other business connected with the administration of justice as may be provided by law." (*Id.* at p. 361 (citing Cal. Const. of 1849, art. VI, § 11, as amended Sept. 3, 1862; Cal. Const., former art. VI, § 14).) "Under authority of former article VI, section 14, the Legislature conferred certain powers on all court commissioners throughout the state (§ 259) and, in enacting section 259a in 1929, conferred these and additional powers on commissioners in [certain populous] counties ...." (*Id.* at p. 362.) "The powers given court commissioners in certain counties by section 259a are an

enlargement on those given to court commissioners of all counties by section 259." (*Id.* at p. 362, fn. 7.)

As this Court has recounted, "a general revision of article VI of the California Constitution was ratified" in 1966. (*Rooney, supra,* 10 Cal.3d at p. 361.) Pertinent here is the enactment in that article of section 22 as follows: "The Legislature may provide for the appointment by trial courts of ... commissioners to perform subordinate judicial duties." (*Rooney, supra,* 10 Cal.3d at p. 361 (quoting provision); see also Maj. opn., p. 12.) At the time of this general revision of article VI, Code of Civil Procedure section 259a granted commissioners in populous counties powers that included the power "[t]o hear and determine ex parte motions, for orders and alternative writs and writs of habeas corpus in the superior court ...." (*Rooney, supra,* 10 Cal.3d at p. 362, fn. 7 (quoting former § 259a).)

Rooney held that the change in the duties of a court commissioner from performing "chamber business" to "subordinate judicial duties" was not intended to diminish the constitutional powers of a commissioner, nor "should [it] be interpreted as foreclosing or limiting court commissioners from exercising the powers which the Legislature had conferred upon them prior to 1966." (*Rooney, supra,* 10 Cal.3d at p. 364; see also Maj. opn., p. 13.) Rather, the change was simply "intended to eliminate any possibility that assigning subordinate judicial duties to commissioners would violate the constitutional

doctrine of separation of powers" (*id.* at p. 362), and in fact effectively incorporated the powers of a commissioner then set forth in sections 259 and 259a (*id.* at p. 364). (See also Maj. opn. at pp. 13-14.) In 1980, section 259a was repealed and its provisions, including the critical one related to petitions for writs of habeas corpus and mandate, were consolidated in section 259. (Min. opn., p. 4) (citing Stats. 1980, ch. 229, § 1, p. 472).) Nevertheless, what must be kept in the forefront of consideration of section 22 of article VI is that its enactment was "recommended in recognition of the necessity for assistance in the performance of some *minor* but nonetheless 'Judicial' duties." (Cal. Const. Revision Com., art. VI committee, second working draft (Apr. 26, 1965) of the 1966 revision to article VI, p. 48 (quoted in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 733) (emphasis added).)

In sum, article VI, section 22 of the California Constitution empowers the Legislature to "provide for the appointment by the trial courts of ... commissioners to perform subordinate judicial duties." The Legislature has done so mainly in section 259. As most pertinent here, that section provides, "Subject to the supervision of the court, every court commissioner shall have power to ... [h]ear and determine ex parte motions for orders and alternative writs and writs of habeas corpus ...." (§ 259, subd. (a).)

In contrast, in authorizing only judges to perform regular judicial duties, the Constitution has placed judges on a status

higher than commissioners and different in kind. It has done so not only by granting judges plenary judicial authority, but in a number of other ways to assure both quality and judicial independence. As explained by Justice Mosk:

> There are, of course, significant differences between commissioners and judges. Without denigrating the administrative and subordinate judicial services often rendered by commissioners, they do not have the qualifications, responsibilities, independence and protections of judges. This principle is recognized in article VI of the California Constitution creating a judicial appointment and retention procedure designed to foster an independent judiciary. For example, section 18 of article VI provides that judges may be removed from office prior to the completion of their term only for willful misconduct, persistent failure to perform judicial duties, or other seriously detrimental conduct. Court commissioners, in contrast, are not institutionally protected by the Constitution and serve solely at "the pleasure of the court appointing [them]." (Gov. Code, § 70142.)

(*In re Horton* (1991) 54 Cal.3d 82, 103-104 (dis. opn. of Mosk, J.); see also majority opinion in *Horton* at p. 97 [noting that the lifetime tenure of a judge under Article III of the federal Constitution secures an independent judiciary, and likewise "[t]he California Constitution, too, is based on the doctrine of the separation of powers, and ... [o]ur judicial system is grounded on the existence of a nonpartisan, independent judiciary"].)

B. The Constitutional Standing of the Writ of Habeas Corpus.

This Court not long ago described "the elevated position of the writ of habeas corpus" in our law as follows:

> The writ of habeas corpus enjoys an extremely important place in the history of this state and this nation. Often termed the "Great Writ," it "has been justifiably lauded as '"the safe-guard and the palladium of our liberties"' [citation] and was considered by the founders of this country as the "highest safeguard of liberty" [citation]. As befits its elevated position in the universe of American law, the availability of the writ of habeas corpus to inquire into an allegedly improper detention is granted express protection in both the United States and California Constitutions. (U.S. Const., art. I, § 9, cl. 2; Cal. Const., art. I, § 11.)

(*People v. Villa* (2009) 45 Cal.4th 1063, 1068.) The writ is "a critical check on the Executive, ensuring that it does not detain individuals except in accordance with law." (*Hamdi v. Rumsfeld* (2004) 542 U.S. 507, 525.)

The elevated status of the writ of habeas corpus in California dates back to the very inception of our state, for guarantee of the judicial power to issue the writ was enshrined in our first constitution in language unchanged to this day. (See Cal. Const. of 1849, art. I, § 5.) This Court has acknowledged the storied pedigree of the writ of habeas corpus in our State as follows:

> The rules governing postconviction habeas corpus relief recognize the importance of the

> "Great Writ," an importance reflected in its constitutional status, and in our past decisions. Indeed, the writ has been aptly termed "the safe-guard and the palladium of our liberties" [citation] and is "regarded as the greatest remedy known to the law whereby one unlawfully restrained of his liberty can secure his release ...." [citation] The writ has been available to secure release from unlawful restraint since the founding of the state. [citations].

(*In re Clark* (1993) 5 Cal.4th 750, 763-764.)

Petitions for writs of habeas corpus typically implicate weighty federal and state constitutional rights, including the guarantee that the state will not take life or liberty without due process of law (Cal. Const., art. I, § 7; U.S. Const. Amend XIV) or impose cruel and/or unusual punishment (Cal. Const., art. I, § 17; U.S. Const. Amends. VIII & XIV). This Court long has emphasized that habeas corpus concerns matters that are of the greatest importance and go to the roots of our constitutional democracy:

> It is well to remember that this case involves fundamental rights, and is of universal interest. Around those rights the English have waged their great battle for liberty. Without the narration of the conflicts to which they have given rise, the history of the English people would be a dull affair. The right of the government with reference to persons accused of crime has been, and is yet, a matter of great consideration. It led to the agitation which wrung from power the Great Charter, the Petition of Right, and the Habeas Corpus Act. All the great achievements in favor of

> individual liberty, of which the English people are so justly proud, may be said to have come through contests over the rights of persons imprisoned for supposed crime.
>
> And justly it is deemed a matter of the utmost importance.

(*In re Begerow* (1901) 133 Cal. 349, 352.) Moreover, even for constitutional entitlements "which relate 'solely to a matter of prison incarceration'" (Maj. opn., p. 19 (quoting *In re Ferguson* (1961) 55 Cal.2d 663, 669)), "[t]he writ of habeas corpus is an indispensable adjunct to that entitlement." (*Frias v. Superior Court* (1975) 51 Cal.App.3d 919, 923.)

C. Striking the Balance Between the Constitutional Provisions.

The majority's holding was colored by its finding that the concern expressed by both the Attorney General and petitioners over disposition by a commissioner of matters as grave as a habeas petition "is overstated given that not all petitions for writs of habeas corpus concern illegal imprisonment of an inmate or serious violations of a prisoner's civil rights." (Maj. opn., p. 19.) The majority's holding, however, did not limit the jurisdiction of a commissioner to those asserted minor restraints upon the prisoner. As the concurring justice observed: "[It] should not matter whether the restraint challenged by a particular writ is considered 'significant,' but only whether it violates the law. According to my reading, the majority opinion does not suggest otherwise." (Min. opn., p. 2).)

Vesting power in a commissioner to deny any and all habeas petitions is at odds with the power and majesty of the Great Writ, which one justice has described as follows:

> The writ of habeas corpus, the right to which is made inviolate by ... the Constitution of this State and which the Supreme Court, District Courts of Appeal and superior courts are ... given power to issue, is the ancient prerogative writ through which one illegally imprisoned and charged with a criminal offense might seek his liberty. Under the Constitution of this state the courts have inherent power to issue the writ and this power may not be taken away by the Legislature nor may the exercise of the power to grant it be restricted by the Legislature ....
>
> That the writ of habeas corpus, the right to which is protected by ... the Constitution of this state is the ancient prerogative writ granted to the people of England under the Bill of Rights and as set forth in the Habeas Corpus Act passed by the Parliament of 1679 [citation] is apparent if we trace the history of our constitutional provisions.

(*In re Newman* (1960) 187 Cal.App.2d 377, 381 (dis. opn. of Nourse, J.).)

Respondent court asserted it was "a misnomer" that "[c]ommissioners [are] issuing final judgments on writs," since petitioners "are able to file a new [petition for] writ in the Appellate Court ...." (Respondent's Return, p. 8.) The majority also found this ability significant to its decision, stating: "In cases where the petition is denied and the prisoner believes the

decision is unwarranted, the prisoner is not without recourse; he or she can file a petition for writ of habeas corpus in the appellate court." (Maj. opn., p. 20.) But the availability of recourse to an appellate court is not the dividing line between subordinate and regular judicial duties, nor does it lessen the finality of trial court judgments. To the contrary, the Constitution prohibits a commissioner from undertaking any regular judicial duty regardless of the availability of an appeal or other recourse to a higher court. The lack of an appeal from a denial of a habeas petition, however, highlights the inappropriateness of vesting a commissioner with power to render final judgment on a habeas petition. Such permission not only would deprive the petitioner of the attention of a superior court judge, but it also would burden the petitioner with the need to file a new petition for extraordinary relief that catches the attention of justices in busy appellate courts.

The Attorney General, on behalf of the People, agreed with petitioners that denial by a commissioner of a petition runs contrary to our state constitution and jurisprudence. He argued, "[G]iven the importance of habeas petitions and the range and complexity of constitutional and statutory questions that may be presented in habeas proceedings, entering a final order on a habeas petition does not fall within the scope of a subordinate judicial duty." (RPI Return, p. 5.) The Attorney General has further pointed out that precedent establishes that adjudication of a matter where liberty is at stake — as it always

is in habeas proceedings, whether the unlawful restraint complained of in these petitions or imprisonment itself — may "never be classified as a subordinate judicial duty." (RPI Return, p. 4 (quoting *People v. Lucas* (1978) 82 Cal.App.3d 47, 56), and authorities cited therein.)

Indeed, under the Court of Appeal holding, a commissioner could deny a petition for writ of habeas corpus where life was at stake. This Court well knows that habeas petitions attacking a capital judgment are among the most complex pleadings known to the law, and that their disposition may make the difference between life and death for the petitioners. Given that life itself may be at stake in a habeas petition, the grave duty of rendering final judgment on a habeas petition is incompatible with the subordinate judicial duties of a commissioner. (See, e.g., RPI Return, p. 4, citing *People v. Lucas, supra*, 82 Cal.App.3d at pp. 50-56 ["In determining whether a matter is a subordinate judicial duty, courts consider the seriousness, complexity and diversity of the factual and legal issues presented in a case type [and] the potential consequences of the matter"].)

The Court of Appeal's holding, which allowed commissioners appointed by the trial court to deny petitions in habeas or mandate proceedings, was misguided in two respects. First, it needlessly created tension between the constitutional guarantee to prosecute a petition for writ of habeas corpus and the constitutional limit on a commissioner's powers to the

performance of "subordinate judicial duties." Second, it wrongly resolved that tension against the restrained individual.

D. The Traditional Role of Court Commissioners.

"Court commissioners should be permitted to perform only *subordinate* judicial duties. I would place repeated emphasis upon the adjective." (*Rooney v. Vermont Investment Corp., supra,* 10 Cal.3d at p. 373 (conc. opn. of Mosk, J.).) (Italics in original.) So should this Court when the duty concerns a denial of a petition for writ of habeas corpus, for permitting commissioners to close the courthouse door on a claim of unlawful restraint before that claim has even come to the attention of a judge is inconsistent with not only the preeminent position enjoyed by the writ of habeas corpus in our constitution, but also the traditional role of court commissioners.

While "[t]he tasks of a commissioner are demanding and varied" (*Settlemire v. Superior Court* (2003) 105 Cal.App.4th 666, 670), the only spheres in which a commissioner may operate to render final judgments as a "subordinate judicial duty" have been modern innovations confined to the most mundane and inconsequential matters that concern the law, such as small claims (Gov't. Code, § 72190) and infractions (Gov. Code, §§ 72190, 72401, subd. (c)). Even given the relatively minor nature of such cases, judicial opinion has been divided on whether rendering judgments in them may indeed be deemed a subordinate duty. (See, e.g., *People v. Lucas,*

supra, 82 Cal.App.3d at pp. 56-64 (dis. opn. of Jefferson, J.) ["the majority's holding [that adjudication of a traffic infraction is a subordinate judicial duty] constitutes a prostitution of the judicial process"]; *In re Kathy P.* (1979) 25 Cal.3d 91, 105 (dis. opn. of Bird, C. J.) [adjudication of whether juvenile committed a "routine traffic infraction" is not a subordinate judicial duty].)

The majority introduced its opinion with the observation that "[s]tate prison inmates are a litigious bunch when it comes to filing writ petitions challenging conditions of confinement or raising a multitude of other grievances." (Maj. opn., p. 2.) That observation, however, is irrelevant to the constitutional question. To be sure, reviewing courts have been cognizant of the need to avoid the kind of "'second-tier' justice" (*Settlemire v. Superior Court, supra*, 105 Cal.App.4th at pp. 669-670) that may result when courts relegate to commissioners undesirable cases that they "do not consider ... important enough to merit the attention of judges." (*Id.* at p. 674 (quoting Jud. Council of Cal., Admin. Off. of Cts., Rep. on Role of Subordinate Judicial Officers (adopt Cal. Rules of Court, rule 6.609) (2002), com., p. 4).)

Because of the critical differences between a judge and a commissioner, the courts have been vigilant in ensuring that commissioners confine their actions to performance of the relatively minor ones to which the California Constitution restricts them. (See, e.g., *Rooney, supra,* 10 Cal.3d 351 [commissioner's action entering judgment unauthorized

because the parties had not stipulated to the judgment]; *Foosadas v. Superior Court* (2005) 130 Cal.App.4th 649, 655 [decision to bind defendant over for trial not a subordinate judicial duty].)

Judicial independence is especially important when the rights of prisoners are being adjudicated. Habeas corpus, which acts as a tool of freedom for the powerless against the oppression of an almighty government, necessarily implicates "the role of the rule of law in a society that justly prides itself on being 'a government of laws, and not of men' (or women)." (See, e.g., *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1068, where the Court in those words heralded the rule of law against executive fiat.) Habeas corpus at its core concerns prisoners of the state, a group that is literally disenfranchised and enjoys little public sympathy or support. (See *id.* at p. 1119 ["[H]istory demonstrates that ... individuals who are unpopular or powerless [] have the most to lose when the rule of law is abandoned — even for what appears, to the person departing from the law, to be a just end."]; see also *Landgraff v. USI Film Products* (1994) 511 U.S. 244, 253 [An elected body's "responsivity to political pressures poses a risk that it may be tempted to use [its power] as a means of retribution against unpopular groups or individuals."].)

When such retribution is in the form of wrongful imprisonment or other restraint, the need for habeas corpus relief is pressing. (See, e.g., *Kansas v. Hendricks* (1997) 521

U.S. 346, 356 ["freedom from physical restraint 'has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action ....'"]; see also *In re Loresch* (2010) 183 Cal.App.4th 150, 164-165 [noting, in the course of granting habeas relief entitling the petitioner to "release[ ] from custody on parole," that the Governor's practice of reversal of parole grants "denigrates the rule of law," and that "conscientious trial courts and panels of the Court of Appeal ... do not, and will not, shrink from their duty" to administer the writ of habeas corpus in this respect].) Indeed, there may be no higher judicial office than determination of the need for habeas relief, and every judge and justice of California up to the Chief Justice of this Court has authority to issue the writ in the first instance. Accordingly, that determination is not a subordinate judicial duty within the meaning of the California Constitution.

E. The Pertinence of Section 259 to Resolution of the Constitutional Question.

The Court of Appeal relied on section 259 to support its holding, in that subdivision (a) presently provides — in language substantially the same as when the California Constitution was revised in 1966 — that a commissioner is empowered to"[h]ear and determine ex parte motions for orders and alternative writs and writs of habeas corpus in the superior court ...." (See Maj. opn., pp. 14-18; see also Min. opn., p. 5 ["[P]rior to 1966, commissioners were authorized to hear

and determine writs of habeas corpus. Given the holding in *Rooney*, there is nothing more to be said."]).)

The language in section 259 critical to this case, however, had not been interpreted prior to *Rooney*; indeed, until the instant case, it had never been construed by any court. *Rooney* thus does not control the determination of the case at bar. *Rooney* simply did not concern the meaning of subdivision (a). (See, e.g., RPI Return, p. 6 ["In *Rooney*, the supreme court ... focused on a separate subdivision [of the statute] and did not address or resolve whether the subdivision relating to habeas matters permits commissioners to enter final orders in habeas proceedings."].) *Rooney* concerned a provision in existence at the time of the 1966 constitutional revision that is now substantially equivalent to subdivision (g) of section 259: The power of a commissioner to "[h]ear, report on, and determine ... uncontested matters." "In *Rooney*, the court considered whether ... 'rendition of a judgment in the terms stated and agreed upon in a written stipulation executed by the parties and filed in a pending civil action is among the "subordinate judicial duties" that court commissioners may constitutionally be empowered to perform.'" (Min. opn., p. 2 (quoting *Rooney*, *supra*, 10 Cal.3d at p. 357).)

Key to the *Rooney* determination that rendition of such a judgment is a subordinate judicial duty is the fact that rendition of such judgments is uncontested, routine, minor, and does not affect the substantial rights of the parties because they have

stipulated to such action.[5] Such actions consist of no more than formal rendition of a judgment in accordance with the agreement of the parties. In contrast, what disturbed Justice Hull about the finding that a commissioner was empowered to deny the petitions here at issue was that "[t]he summary denial of a petition for a writ of habeas corpus is a determination of the *dispute* between the prisoner and the confining authority ...." (Min. opn., p. 1 (italics added).)

The Attorney General rightly has argued that section 259, subdivision (a) cannot reasonably be read as permitting a commissioner to finally resolve such a dispute because that interpretation is not in harmony with the rest of the statute, which does not permit a commissioner to render final judgments except where the matter is not contested, nor with the rest of the legislative scheme for the employment of commissioners. Rather, throughout section 259 and other statutes concerning contested actions, commissioners may preside over only preliminary proceedings that do not involve termination of the action, and often even then must report their findings to a judge for that court's final action. As the Attorney General set forth in this regard:

> [I]nterpreting subdivision (a) as enabling commissioners to adjudicate habeas matters

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[5] The commissioner's action in *Rooney* entering the judgment there at issue was reversed precisely because the stipulation there at issue did not encompass all of the terms of the judgment that the commissioner rendered.

would be at odds with the remaining provisions in section 259. The other subdivisions in section 259 do not allow commissioners to enter a final order disposing of a matter without consent from the parties. Section 259, subdivisions (e) and (f) allow commissioners to conduct preliminary matters in family law cases; commissioners, however, must report their findings to the court for final approval. Similarly, section 259, subdivision (c) authorizes commissioners to take bonds and undertakings, but does [not] permit commissioners to enter final orders adjudicating the matter in which the bond was posted. Further, subdivision (b) enables commissioners to report findings on any disputed matter at the superior court's request, but the final order is a duty reserved for the court. Finally, subdivisions (d) and (g) allow commissioners to act as temporary judges in all matters, including uncontested proceedings, subject to the parties' stipulation. Thus, reading section 259 as a whole indicates that the Legislature did not intend to permit commissioners to enter final orders disposing of a matter without a stipulation. (See *Foothill Properties v. Lyon/Copley Corona Associates* (1996) 46 Cal.App.4th 1542, 1554 [statute must be construed in context in which it is written and internally harmonized].)

Similarly, other statutes specifying the duties of commissioners indicate that commissioners are rarely authorized to enter final orders of adjudication without party consent. Commissioners are authorized to conduct preliminary matters for vehicle code misdemeanor cases and recommend dispositions for motions, but not enter a final order or preside over the trial. (Govt. Code,

> §§ 72401, 72304.) Similarly, in felony cases, commissioners can conduct arraignments and issue bench warrants, but cannot preside over trials or enter final orders without a stipulation. (Govt. Code, §§ 72190.1, 72190.2; *Horton, supra*, 54 Cal.3d at p. 86.) Rather, the only statute CDCR is aware of allowing commissioners to enter final orders without a stipulation is for traffic infractions and small claims matters. (Govt. Code, §§ 72190, 72401, subd. (c); *Lucas, supra*, 82 Cal.App.3d at pp. 49-56.)
>
> As such, the Legislature has generally not authorized commissioners to enter final orders disposing of matters without consent, and adjudicating habeas petitions is not a subordinate judicial duty. Thus, any ambiguity in section 259, subdivision (a) should not be resolved to authorize commissioners to enter final rulings in habeas proceedings. Such an interpretation would be inconsistent with the constitutional mandate as well as other statutory provisions delineating the duties of commissioners.

(RPI Return, pp. 7-8.)

The Attorney General also correctly invoked the canon of statutory construction that favors avoidance of an interpretation that puts the statute in tension with the Constitution: "When possible, courts 'will interpret a statute as consistent with applicable constitutional provisions, seeking to harmonize Constitution and statutes.' (*Cal. Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 594; see also *Case v. Lazben Financial Co.* (2002) 99 Cal.App.4th 172, 188-189.)" (RPI Return, p. 6; see also *In re Klor* (1966) 64 Cal.2d 816, 821

["A fundamental canon of statutory interpretation requires that a statute be construed to avoid unconstitutionality if it can reasonably be so interpreted."].) Thus, to harmonize section 259, subdivision (a) with both article VI, section 22 and article I, section 11 of the California Constitution, and to avoid the tension with those constitutional provisions posed by the Court of Appeal's interpretation of the statute, this Court should hold that the statute precludes a commissioner from entering a final judgment denying a petition for writ of habeas corpus or mandate. It may find that the statutory provision authorizes a commissioner to either issue an order to show cause or recommend to a judge that the petition be dismissed. Interpretation of section 259 to permit issuance of the writ or order to show cause, while not permitting final disposition of the matter by *either* denial of the petition or grant of the relief it requests, best achieves the constitutional objectives of empowering a judge to dispose of habeas matters and empowering a commissioner to perform subordinate judicial duties in aid of the administration of justice.

Notably, such an interpretation of section 259 places commissioners in the exact role of their federal counterpart, magistrate judges, in administration of the writ of habeas corpus. That role is mindful of the constitutional provisions ensuring an independent judiciary. As our Constitution helps alleviate the demands on the judiciary with the provision of commissioners to perform subordinate judicial duties, so too

did Congress provide in the Federal Magistrates Act for the use of magistrate judges in district courts for a similar purpose. Both the federal and state courts faced a parallel concern: how best to balance the "dictates of expediency" (*Rooney, supra*, 10 Cal.3d at p. 373 (conc. opn. of Mosk, J.) with the "constitutional responsibility" that final decisions on dispositive matters "be decided only by judges." (*Ibid.*)

Justice Hull aptly observed in this regard:

> I am sympathetic to the workload imposed on small counties that have large prison populations and few superior court judges. Even so, as Justice Mosk wrote in his concurring opinion in *Rooney* ... "one need not be unsympathetic to the administrative complexities of the court to insist, despite the dictates of expediency, that substantive controversies between litigants be decided only by judges to whom the constitutional responsibility has been assigned. (Cal. Const., art. VI, §§ 1, 4, 10.) As Justice Cardozo wrote, 'codes and statutes do not render the judge superfluous.' [Citation.]" [Citation.]

(Min. opn., p. 1) (brackets and ellipses in quote deleted).)

State commissioners can perform a screening function, while protecting the judicial independence of judges, by considering habeas petitions in the same way that federal magistrates do under the Federal Magistrates Act, to which section 259, subdivision (a) may be likened. The Federal Magistrates Act authorizes the district judge in habeas corpus (and other) actions to designate a United States magistrate

judge to rule on any nondispositive pretrial matter. (28 U.S.C. § 636 (b)(1)(A) (2000); *Gomez v. United States* (1989) 490 U.S. 858, 867-868 [listing relatively routine types of "pretrial matter[s]" that judge may assign to magistrate judge to resolve]; *Thomas v. Arn* (1985) 474 U.S. 140, 151 [characterizing matters magistrate judges may hear and determine as "nondispositive"].)

Under the act, the district court, in habeas matters, has the discretion to designate magistrate judges to hear, but *not* to make final decisions that dispose of, a petition. Thus, for example, a magistrate judge may require a respondent to answer a petition, but cannot deny a petition; rather, the magistrate may only make a recommendation as to the final disposition of a petition, which is subject to meaningful de novo review by the district judge. (See *Gomez v. United States, supra,* 490 U.S. at pp. 864-865 [Court reiterates middle position that "limited, advisory review, subject to the district judge's ongoing supervision and final decision, [is] among the 'range of duties' that Congress intended magistrates perform" and emphasized that final decision rests with district judge]; see also 28 U.S.C. § 636 (b)(1)(B) (2000) [in decision that finally disposes of a petition, the magistrate is limited "to submit[ting] to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court"; *United States v. Raddatz* (1980) 447 U.S. 667, 673 ["as to

'dispositive' [matters], ... magistrate has no authority to make a final and binding disposition"].)

Similar to the federal court's use of magistrates as subordinate judicial officers, the Court of Appeal correctly construed the pertinent constitutional and statutory provisions as permitting a commissioner to issue the writ or an order to show cause on a petition for writ of habeas corpus, but precluding that commissioner from thereafter rendering final judgment on the petition. The Court of Appeal wrongly construed that language, however, as permitting a commissioner to deny a petition, for such a denial acts as a final judgment on the petition without any consideration by a judge. As Justice Hull put it in expressing his reservations about that court's decision, "[I]t holds that a nonjudicial officer is captain of the gate when a person being held in confinement seeks the protections of the 'Great Writ.' [Citation.]" ... (Min. opn., at 1.)

Preclusion of entry of a final judgment on a petition for extraordinary relief by a commissioner also is consistent with the historical use of commissioners, which has been limited to preliminary or uncontested matters. Traditionally, a commissioner has not been permitted to enter a final judgment that affects the substantial interests of a party. Even within that tradition, a commissioner may not adjudicate preliminary matters that "so involve the exercise of due process rights that it would be required to be made by a judge rather than an officer such as a commissioner." (*Loeb & Loeb v. Beverly Glen Music,*

Inc. (1985) 166 Cal.App.3d 1110, 1121 (quoting Cal. Law. Rev. Comm., in turn quoting the Legislative Counsel).) Given the potential gravity of the rights at stake in petitions for writs of habeas corpus and petitions for writs of mandate, neither our Constitution nor section 259, subdivision (a) permits commissioners to deny such petitions.

F. Policy Considerations Also Favor a Finding That a Commissioner May Not Enter Final Judgment Denying a Petition.

The Court of Appeal resolved the matter by using a technical definition of the term "cause" to mean a habeas corpus proceeding in which an OSC has issued. Before an OSC is issued, the matter is deemed to be a subordinate judicial duty under section 259, subdivision (a) that can be handled by a commissioner. Once an OSC has issued, however, the matter has become a "cause" that must be handled by a judge. The Court of Appeal treats the petition as an "uncontested" matter until the OSC has issued and filing a return is ordered. This is an overbroad interpretation of "uncontested." In the overwhelming majority of cases, the custodian as the responding party will contest the petitioner's claims, once called upon to do so. These petitions are not truly "uncontested matters"; in reality they are "not yet contested matters." For example, in this Court, the practice has developed of requesting an Informal Response to a petition, and a Reply to the Informal Response. (See also Cal. Rules of Court, rule 4.551, subd. (b) [providing for such informal procedures in the trial courts].)

The Informal Response typically asserts the petition is without merit and should be denied. Certainly by this juncture, one cannot fairly characterize the petition as "uncontested," even though an OSC has not yet issued. These ad hoc procedural developments do not negate the importance of habeas corpus petitions, or the importance of having them reviewed by a judge. Thus the purported congruence between "uncontested" — as defined by the Court of Appeal — and "subordinate" under article VI, section 22, is in fact illusory.

Moreover, the problem with the Court of Appeal's resolution of the matter is much larger. The construction it places on section 259, subdivision (a) applies to all petitions for writ of habeas corpus. As already noted, the majority begins its opinion by characterizing state prison inmates as "a litigious bunch when it comes to filing writ petitions challenging conditions of confinement or raising a multitude of other grievance." (Maj. opn., p. 2.) In doing so, it minimizes the significance of their petitions. Habeas corpus petitions, however, encompass an extraordinarily wide range of matters for which judicial review is sought. Although some petitions undoubtedly raise minor and even frivolous matters, petitions generally present claims ranging from challenges to allegedly unconstitutional conditions of probation, to complaints about the deliberate denial of urgently needed medical attention, to denials of due process in cases in which a defendant has been sentenced to life in prison (with or without the possibility of

parole), and to cases in which the defendant is under a judgment of death and his appointed counsel has filed a habeas corpus petition of 700 pages, with 3,000 pages of exhibits, alleging 75 claims of the denial of state statutory and constitutional rights and federal constitutional rights, and also raising complex questions of the interface between state and federal procedural law. Under the Court of Appeal's rationale, all of these petitions, including a voluminous petition in a complex capital case, can be summarily denied by a commissioner. Moreover, the commissioner is thereby invested with the enormous power to vet the petitions and decide which ones require a response from the People and which do not, i.e., which petitions potentially may have merit and require further explication before a judicial officer can decide how to proceed. This is somewhat analogous to the sophisticated process this Court undertakes in vetting petitions for review to determine which are worthy of the Court's further consideration — which is hardly a subordinate judicial duty.

The Court of Appeal dismisses such concerns as overstated because "not all petitions for writs of habeas corpus concern illegal imprisonment of an inmate or serious violations of a prisoner's civil rights." (Maj. opn., p. 19.) This is undoubtedly true, but that observation simply avoids the reality that many if not most <u>do</u> concern illegal imprisonment or serious constitutional violations. As to those petitions, the Court of Appeal simply assumes that the initial review of the

petition is "carefully constrained" and will be correctly performed, as properly by a court commissioner as by a judge, and with equal legitimacy. That begs the question, however, for it assumes that the commissioner is entitled to perform this review function, and is as well qualified as a judge to do so, even when the petition involves a complex capital case — an assumption that does not comport with the well established distinction between the respective roles and duties of commissioners and judges.

The consequence of the Court of Appeal decision is that a commissioner can summarily deny a habeas corpus petition in a capital case, no matter how voluminous or complex it may be, while that same commissioner cannot grant relief in a habeas corpus petition no matter how minor the claim or how small the relief sought, such as an additional day of credit for time served. Construction of the statute in a manner that produces such anomalies should be avoided.

The question is how best to harmonize section 259, subdivision (a)'s authorization to hear and determine writs of habeas corpus with the critical role that habeas corpus plays in the judicial system in protecting the rights of criminal defendants and the integrity of the legal system and the constitutional limitations on a commissioner to performance of subordinate duties absent agreement of the parties. The core concept that emerges from these constitutional and statutory provisions is that commissioners are authorized to handle

subordinate matters, that is, only preliminary or uncontested matters (matters in which there is and will be no actual dispute), unless the parties otherwise stipulate to the commissioner acting as a temporary judge. In this regard, it is significant that both the restrained individuals in this case and their custodians, who are the parties in the underlying actions, agree that the disposition of habeas corpus petitions is of too much consequence to be decided by commissioners rather than judges. Petitioners submit that whatever role is allocated to commissioners, they are not authorized to deny habeas corpus petitions absent the stipulation of the parties. Because the Court of Appeal found otherwise, its decision must be reversed.

* * * * * *

CONCLUSION

For these reasons, the Court should reverse the judgment of the Court of Appeal and hold that the commissioner in these cases had no jurisdiction to deny the petitions for extraordinary relief that the petitioners sought from a judge when they invoked the jurisdiction of the superior court.

Dated: May 3, 2010

Respectfully submitted,

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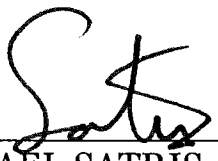
California Supreme Court Case No. S179175
Court of Appeal, Third Appellate District
Gomez v. The Superior Court of Lassen County (Case No. C060710)
Juarez v. The Superior Court of Lassen County (Case No. C060773)

CERTIFICATE OF APPELLATE COUNSEL

I, Michael Satris, appointed counsel for Petitioners Gomez and Juarez, hereby certify, pursuant to rule 8.504 (d)(1) of the California Rules of Court, that I prepared the foregoing opening brief on the merits on behalf of my clients, and that the word count for this brief, including footnotes, is 8181 words. This opening brief on the merits therefore complies with the rule, which limits an opening or reply brief on the merits to 14000 words. I certify that I prepared this document in Microsoft Word 2002, and that this is the word count Microsoft Word generated for this document.

Dated: May 3, 2010



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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Marin County. I am over the age of eighteen years and not a party to the within above entitled action. My business address is P.O. Box 337, Bolinas CA.

On May 4, 2010, I served the within **PETITIONERS' OPENING BRIEF ON THE MERITS** on the interested parties in said action causing to be placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in a United States Post Office box addressed to the parties as follows:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Bolinas, California, on May 4, 2010.

Sabine Jordan