

No.

IN THE

SUPREME COURT OF THE UNITED STATES

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Pierre GENEVIER (Pro se) — PETITIONER

vs.

The Superior Court of Los Angeles County,

Respondent

Los Angeles County,

Real party of interest.

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**Supreme Court of California**

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**PETITION FOR WRIT OF CERTIORARI**

Pierre GENEVIER

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Email: pierre.genevier@laposte.net  
Petitioner (pro per) and plaintiff

## **QUESTION (S) PRESENTED**

**Did** the Appeal Court (for the Second District of California) **violate** petitioner's **constitutional rights** [Cal Cont. art. VI & 14, and the right to a due process, 14<sup>th</sup> Amendment] and **abuse its discretion** when it dismissed **summarily** the petition for writ of mandate to compel the Superior Court to enter default against the Los Angeles County?

## **LIST OF PARTIES**

☒ **All parties appear in the caption** of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

[All the documents of the underlying negligence case against the LA County (BC 364 736) were scanned and can be found on Superior Court's website, if necessary. A Request for Judicial Notice containing several pleadings of the related cases (DC no 08-5681, AC no 08-55236, 08-55492, 07-56730, and judicial misconduct complaints) was also filed with the Excerpts of record at the Appeals Court - the US Supreme Court can access most of these documents (if not all) through the Internet links in Appendix D.1 and E, if necessary. Appendix D.1 and E gives necessary additional information to understand the overall case, certain aspects of the petition, and they also refer to and link to several important documents if needed. Both app. D.1 and E are printed with 2 pages on a A4 format to lower the number of pages sent with the petition, but the Court can also access them on the Internet at <http://pgenevier.110mb.com/npdf/jmcappeal7-10-09.pdf> for app. D.1 <http://pgenevier.110mb.com/npdf/jco08-90147-8-24-09.pdf> for app. D. 2 and at <http://pgenevier.110mb.com/npdf/letalladmin-uni2-5-09.pdf> for app. E to use the links and print normal size version, if necessary. This petition is also on the Internet at <http://pgenevier.110mb.com/npdf/petsupcovslac-ed2-8-31-09.pdf>, as well as the documents in the appendix: app. A <http://pgenevier.110mb.com/npdf/dec215584-5-8-09.pdf>; app. B <http://pgenevier.110mb.com/npdf/dec215584-5-8-09.pdf>; app. C <http://pgenevier.110mb.com/npdf/decs173079-7-8-09.pdf>; app. F: Removal order (F.1: <http://pgenevier.110mb.com/htm/deportorder1-11-08.pdf>); Acknowledgment of receipt of asylum application (F.2: <http://pgenevier.110mb.com/htm/asylumappliackreci5-14-2.pdf>); Refugee Verification of Status (F.3: <http://pgenevier.110mb.com/npdf/verifstat9-5-02s.pdf>); ALJ Tolenino's decision (F.4: <http://pgenevier.110mb.com/htm/aljtoleninoddec2-5-03-2.pdf>); A03 refugee EA card 12-10-04 (F.5 p1: <http://pgenevier.110mb.com/pdf/eacard12-10-04+explanation.pdf>) and A3 EA card 12-04-08 with explanation (F.5 p. 2-4: <http://pgenevier.110mb.com/htm/refeacard12-3-08-2.pdf>); petition for writ of habeas corpus (1 p., F.6: <http://pgenevier.110mb.com/npdf/habeascorpus2-7-08.pdf>); Order dismissing the habeas petition (F.7: <http://pgenevier.110mb.com/npdf/dechabeas08-881-2-15-08.pdf>); Ca9 order staying the deportation (F.8: <http://pgenevier.110mb.com/pdf/order4-17-08in08-55492.pdf>); Ca9 order affirming the DC order (F.9: <http://pgenevier.110mb.com/npdf/dec08-55492-7-22-09.pdf>); Petition for rehearing (F.10: <http://pgenevier.110mb.com/npdf/petreh08-55492-8-25-09.pdf>).]

# **TABLE OF CONTENTS**

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS  
INVOLVED.

## **STATEMENT OF THE CASE**

A The facts	7
B Procedural history	8

## **REASONS FOR GRANTING THE WRIT**

A Introduction	11
B The violation of petitioner's constitutional rights and the abuse of discretion.	16
C The summary dismissal is not in the parties' interest.	19
D The wrongdoings, the repeated judicial misconducts and the management and other implications.	20
E The jurisdiction of this court and conclusion.	23

## **CONCLUSION**

## **INDEX TO APPENDICES**

APPENDIX A: Order of the 2<sup>nd</sup> district Appeal Court dated May 8 2009 summarily dismissing plaintiff's petition for writ of mandate to enter default against the LA County.

APPENDIX B: Order of the LA Superior Court dated March 6 2009 denying the entry of default against the Los Angeles County.

APPENDIX C: Order of the California Supreme Court dated July 8 2009 summarily dismissing plaintiff's petition for review of the 2<sup>nd</sup> district Appeal Court order dated May 8 2009.

APPENDIX D: Petition for review the Ca9 Chief Judge's order dismissing 2 complaints of judicial misconduct against 4 Circuit Judges (10 p., D. 1); judicial council order (1 p, D.2).

APPENDIX E: Letter dated 2-5-09 addressed to 3 Administrations officials and 8 University Presidents (10 p.).

APPENDIX F: Removal order issued on 1-11-08 (2 p., F.1); Acknowledgment of receipt of asylum application (1 p., F.2); Verification of status listing appellant as a refugee (2 p. F.3); ALJ Tolenino's decision dated 2-5-03 (6 p., F.4); A03 refugee Employment authorization card dated 12-10-04 and A3 card dated 12-04-08 with explanation letter (4 p. F.5); first pages of the petition for writ of habeas corpus (1 p., F.6); Judge Guilford's order dated 2-15-08 dismissing the habeas corpus petition (4 p. F.7); Ca9 order dated 4-17-08 staying deportation order (3 p. F.8); Ca9 order dated -7-22-09 affirming the DC order ( 2 p. F.9); Petition for rehearing (8 pages, F. 10).

## **TABLE OF AUTHORITIES CITED**

<b>Federal and State Cases</b>	<b>PAGE NUMBER</b>
--------------------------------	--------------------

Burn v. Ohio 360 US 252 (1959)	24
Bradford v. State of California (1975) 36 CA 3d 16, 19, 111 Cr 852.	21
Michael J. By and Through Trout V. Los Angeles County, Dept. of Adoption (app. 2 Dist 1988) 247 Cal. Rptr.	21
Kingston v. Dept. of Motor vehicles (1969) 271 Cal . 3d 484, 490-492	12,17
Saunders v. Shaw 244 US 317, 320 (1917)	24

### **United States Constitution / Federal Statutes**

14 <sup>th</sup> Amendment	12, 17, 24
----------------------------	------------

### **California constitution / State Statutes**

Cal. Constitution art VI & 14	12, 16
GC 815.6	15
GC 818.8	15
CCP 586	12, 13
CCP 471.5	12, 13

### **Treatise, law review, and other references**

The California Form of Pleading and Practice (CFPP)	12
Supreme Court Practice, 9 <sup>th</sup> Edition	24, 25

# IN THE

## SUPREME COURT OF THE UNITED STATES

### PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

### OPINIONS BELOW

☐ For cases from federal courts:

☐ reported at ; or, ☐ has been designated for publication but is not yet reported; or, ☐ is unpublished. ☐ reported at ; or, ☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

☒ **For cases from state courts:**

The opinion of the highest state court to review the merits appears at **Appendix C** to the petition and is **the California Supreme Court's order** dismissing summarily plaintiff's petition for review.

☐ reported at ; or, ☐ has been designated for publication but is not yet reported; or,

☒ **is unpublished.**

The opinion of the Appeals' Court appears at **Appendix A** to the petition and is **the petition for writ of mandate dismissal order** of the Appeals Court for the Second Appellate district, Division One, Case No. B215184

☐ reported at ; or, ☐ has been designated for publication but is not yet reported; or,

☒ **is unpublished.**

### JURISDICTION

☐ For cases from federal courts:

☐ No petition for rehearing was timely filed in my case. ☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A . The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

☒ **For cases from state courts:**

The date on which the highest state court decided my case was **7-8-09**. A copy

of that decision appears at **Appendix C**.

[ ] A timely petition for rehearing was thereafter denied on the following date: (there is no rehearing on petition for review denial), and a copy of the order denying rehearing appears at Appendix . [ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date)in Application No. A .

**The jurisdiction of this Court is invoked under 28 U.S.C.§1257(a).**

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**14<sup>th</sup> Amendment, Right to a due process.**

**California Constitution Article VI and 14.**

**California Civil Code 471.5.** (a) If the complaint is amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments or amended complaint must be served upon the defendants affected thereby. **The defendant shall answer the amendments**, or the complaint as amended, within 30 days after service thereof, or such other time as the court may direct, and **judgment by default may be entered upon failure to answer**, as in other cases. For the purposes of this subdivision, "complaint" includes a cross-complaint, and "defendant" includes a person against whom a cross-complaint is filed.

(b) If the answer is amended, the adverse party has 10 days after service thereof, or such other time as the court may direct, in which to demur to the amended answer.

**California Civil Code 586.** (a) In the following cases the same proceedings shall be had, and **judgment shall be rendered in the same manner, as if the defendant had failed to answer:**

(1) **If the complaint has been amended**, and the defendant fails to answer it, as amended, **or demur thereto**, or file a notice of motion to strike, **of the character specified in Section 585**, within 30 days after service thereof or within the time allowed by the court.

(b) For the purposes of this section, "respond" means to answer, to demur, or to move to strike.

## **STATEMENT OF THE CASE**

### **A The Facts**

After the filing of the first amended complaint on 6-26-07 (in case BC 364 736), the defendant, Los Angeles County, filed a (new) demurer that did not even address the appropriateness of the amendment requested by the Superior Court since it mainly repeated the arguments presented in the first demurrer –arguments that had already been (indirectly) addressed by the judge when it sustained the 1<sup>st</sup> demurrer **with leave to amend**. The hearing on this new (2<sup>nd</sup>) demurrer was stayed on 9-18-07 until the US Supreme Court rules on the first entry of default issue, but after the US Supreme Court denied the petition for writ of certiorari **on 10-29-07** (case 07-6445), the LA County failed to re-notice its demurer on the first available court date as required by the California Rule of Court Rule 3.1320 d, and this **during 7 months** (at least until 5-30-08), while at the same time it used the pending demurrer as an argument to refuse to respond to the discovery questions. By doing so it technically and practically failed to ‘*respond*’ to the amended complaint with an answer, a valid demurer, or a motion to strike... **during a more than 7 months period of time**, although there were several available dates to hear the demurrer before that, and is therefore now subject to entry of default according to CCP 471.5 and 586. **On 5-30-08** petitioner requested a 2<sup>nd</sup> stay of the case to give some time to the newly appointed pro bono lawyer in a related case 08-55492 at the Ca9 Appeals Court to review the Superior’s Court case also, but new treacheries led to the withdrawal of the pro bono lawyer (see Appendix D), and on 2-25-09 petitioner requested the 2<sup>nd</sup> entry of default after the Superior Court ended the 2<sup>nd</sup> stay.

## **B Procedural History.**

The petition for writ of mandate to compel the Superior Court to enter default against the LA County for failure to '*respond*' to the first amended complaint (on time) follows a similar writ for failure to '*respond*' on time to the initial complaint (case no B197 948, S 152 131, US SC no 07-6445), and refers to a complaint for money damages (\$2 840 000 + \$20 000/month) for negligence against the Los Angeles County (**BC 364 736**) filed on 1-12-07 that followed two earlier complaints:

(a) **One initial complaint for misrepresentation** (BC 310 113) filed on February 4 2004 at the Superior Court against the **US Citizenship and Immigration Services** (formerly INS), **the Los Angeles County, DPSS**, and the **California Department of Social Services** that was removed to the Federal Court and dismissed with prejudice for the claim against the LA County DPSS because of the immunity for misrepresentation **under GC 818.8 mainly** [The US Supreme Court denied the petition for writ of certiorari on 1-9-06 case no **05-7408** on this immunity for misrepresentation in the social service area issue; and later it also denied another petition (on 1-7-08, case no 07-7122) in the second complaint re-filed at the State Court against the State of California that addressed the issue of '**direct**' liability of state agencies under G815.6].

(b) **And a second complaint** (05-7517) filed at the Federal Court on **10-19-05** for **(1)** deprivation of civil rights, **(2)** conspiracy to interfere with civil rights, **(3)** common law conspiracy against several civil servants in their individual capacities [and the **LA County for (1) only**], and for **(4)** **negligence** against defendants United States of America and **Los Angeles County**. On December 28 2006, after more than a year of analysis of the complaint and of defendant's demurrer arguments, the District Judge **denied the supplemental jurisdiction** for the negligence cause of action against the LA County and asked plaintiff to re-file this cause of action at the



State Court.

Petitioner did re-file his complaint on 1-12-07, it was formally served by the sheriff on January 30 2007, and plaintiff requested the default on 3-15-07 before the LA County filed its demurer on 3-20-07. The Superior Court refused to enter default and the Appeal Court (and CA Supreme Court) denied the writ of mandate to compel entry of default. Petitioner opposed the demurer and also filed **a motion to strike the demurer** based on its tardiness, but the Superior Court refused to strike the demurer (although it agreed the strike was justified) to address the issues of the demurer and the validity of the complaint. It ruled that petitioner should make a small amendment to the complaint and **dismissed it with leave to amend.** Petitioner did amend his complaint, but the LA County did **not** file an answer or appealed the Court's decision to dismiss with leave to amend, it simply re-filed a demurer to the first amended complaint **presenting the same arguments basically** (res juridicata,) which is not honest and not allowed according to CCP 471.5 a).

While petitioner pursued his request to enter **default in front of the US Supreme Court (07-6445)**, he requested a stay of this 2<sup>nd</sup> demurer on 9-18-07 until the US Supreme Court rules on the entry of default, and the stay was granted. On 10-29-07, the US Supreme Court denied the petition for writ of certiorari (case no 07-6445), but the LA County did **not** re-noticed its demurer at the earliest possible date as required by California Rule of Court Rule 3.1320 d [specifically stating that the demurer must be heard within 35 days of its filing **or on the first available Court date**] from 10-29-07 to 5-30-08 (7 months about). Petitioner filed some discovery papers and even a motion to compel discovery, but the LA County used the supposedly 'pending' demurer as ground to refuse to respond to the discovery questions although again it did not re-notice its demurer for a hearing and this during more than 7 months.

**On 5-30-08** after the Ca9 Appeals Court stayed the full of lies

deportation order issued on 1-11-08 (app. F.1) and ordered the appointment of a pro bono lawyer in the related deportation case 08-55492 (app. F.8), petitioner requested a stay of proceeding at the Superior Court until the Ca9 Court appoints the pro bono lawyer to give him/her a chance to review the Superior Court case at the same time and the 2<sup>nd</sup> stay was granted.

Unfortunately, the pro bono lawyer, a former AUSA, 'overlooked' a conflict of interest, had an unethical behavior to help his former colleague AUSA party in the related case 05-7517, and later withdrew. Petitioner requested the appointment of a new pro bono lawyer based on the unethical behavior of the first one, but the Ca9 Appeals Court refused to consider petitioner's request supposedly because the pleading was filed by fax **without permission** (although petitioner had asked for permissions), so petitioner filed a judicial misconduct complaint in which he asked the Ca9 Appeals Court, among other, to appoint another pro bono lawyer, but the Chief judge dismissed it (as well as petitioner 2 other misconduct complaints), and petitioner recently unsuccessfully petitioned the judicial council as seen in appendix D.1, D.2.

**On 2-5-09** the Superior Court issued a notice of status conference and order to see what delayed the proceeding, and appellant requested the Court to enter default based on the LA County's failure to re-notice its demurer and to answer on time, but the Superior Court denied it (app. B), and so did the Appeals Court summarily (B 215 584, app. A), and the Supreme Court (S173 079, app. C). **3 Appeals** - no 08-55492 for the deportation's case (DC no 08-881), no 08-55236 appeal in the negligence case against the SSA (DC no 07-5548), and no 07-56730 appeal in the deprivation of civil rights and conspiracy case including the LA County as defendant (DC no 05-7517) - **are still pending at the Ca9 Appeals Court, and a complaint** to obtain the SSI benefits **is also pending at the District Court**, no 08-5681.

# **REASONS FOR GRANTING THE PETITION**

## **A Introduction.**

This petition for writ of certiorari should be granted **for 3 reasons**: **first**, because it will give the US Supreme Court a chance to address **3 important questions of law** (in particular the unconstitutionality of summary decision in the context of petition for writ of mandate); **second**, because the grave wrongdoings and judicial misconducts at the USDOJ and Ninth Circuit Appeals Court (and other courts) on the case over the years led to **a gross miscarriage of justice** and had/have a negative impact on the efficiency of administrations that the US Supreme Court must point out in the nation's interest, and **third** because it is extremely rare to see a French refugee and not in the Nation's interest to let the administrations (including or in particular the Courts and DOJ) persecute him during 7 years. [This is the 4<sup>th</sup> petition for writ of certiorari that this Court will review in relation to the same 'growing case' that has been going on for more than 7 years now].

## **The 3 questions of law.**

The **first issue** is the '*unconstitutionality of **summary dismissals of petitions for writ of mandate***'; the process of justice takes place when the Court renders a **motivated** decision [**as Cal Cont. art. VI & 14 reminds us**], not when the Court renders a summary decision. If it appears at the face of the petition for writ of mandate that the writ should be denied (requirement for a summary decision), **writing a motivated decision** (with a short summary of facts and the ground for denial appearing at the face of the petition) **takes only 15 to 20 minutes**, so there is no need - **in a modern justice system** - to allow appeals' courts to render summary ('out of hand') decisions that violate the California and US Constitution (including the violation of 14<sup>th</sup> amendment that results from this practice), and

necessarily lead to further costly appeals to higher courts. The cases that establish the possibility to write summary decisions on this type of petition are old [for example *Kingston v. Dept. of Motor vehicles* (1969) 271 Cal . 3d 484, 490-492, refers to even older cases in the 1940s], so the US Supreme Court can review this issue at the light of the increased use of word processors, electronic filing, and in an effort to encourage Appeals Courts to be more precise and accountable.

**Second**, California Rules of Court, Rule 3.1320 d requires a demurring party to notice its demurrer within 35 days of the filing or at the earliest date available, but obviously some including the Appeals Court in LA have a loose interpretation of the meaning of ‘at the *earliest available date*’, so the US Supreme Court should clarify the law and rule that a demurrer not noticed during more than 7 months is not a valid demurer according to the CRC and does not replace the filing of an answer for default purpose.

**Third**, there is a contradiction between CCP 471.5 and CCP 586 since CCP 471.5 does not allow the filing of demurer on an amended complaint (following a sustained first demurer with leave to amend, it seems) although CCP 586 does allow the use of a demurrer on an amended complaint to prevent entry of default [see CFPP no 21.19 (2): ‘*Answer to Amended Complaint. The defendant or cross defendant is required to answer the amendments, or the complaint or cross complaint as amended, within 30 days after service, or by such other time as the court may direct, and judgments by default may be entered on failure to answer as (CCP 471.5 (a)).* **CCP 471.5 refers only to the filing of an answer to the amended complaint and does not authorize the filing of a demurrer.** *This is also true of its predecessor statute, former code 432. Nevertheless, a demurrer with or without answer may be filed [see *Johnsons v. Morgan* (1961) 190 Cal. App. 2d 94-97, 11 Cal Rptr 673]. Since the filing of a demurrer as well as an answer prevents entry of default (see CCP 586 (a) (1))’].*

This contradiction may be the result of an imprecision of the law and of the fact that an amended complaint can have ‘several origins’. For example, it makes sense **not** to allow the filing of a demurer on an amended complaint **after the Court sustained with leave to amend the first demurrer** (as in this case) because if the defendant disagrees with the Court’s evaluation of the demurer and indirectly of the technical appropriateness of the complaint, it can file an appeal or a motion to reconsider, and if the defendant disagrees with the validity of the amendment, it can point it out in the answer. On the other hand, if the plaintiff files an amended complaint before the judge rules on the demurrer, then the defendant can file a new demurrer since the judge has not yet ruled on the validity of the complaint. CCP 586 states that the filing of a demurer prevents the entry of default (even on an amended complaint), so the contradiction is due, it seems, to the fact that the law does not make a difference between the amended complaints filed after a judge’s order and the ones filed before, and can lead to the type of problems we have here. The grant of certiorari would give the **Court a chance to address these 3 issues and to improve the law.**

***The gross miscarriage of justice and the persecution of a French Refugee during 7 years.***

This very long lasting and painful (for petitioner) legal dispute started with the lies of 4 INS employees during petitioner’s asylum proceeding at the immigration court **in 2002 [they pretended that the status verifier had made an error in issuing the ‘refugee’ verification of status (app. F. 3) to petitioner on 9-5-02, which several status verifiers denied on 11-13-02]**, and was followed by a **deluge** of grave (even criminal for some) wrongdoings from several other administrations and their civil servants (including from 2 Assistant US Attorneys) that caused a very grave prejudice to petitioner (since he was sent more than 16 times in the street in 2002-03, he could not resettle and later even became very sick over a 7 years period).

This succession of wrongdoings had several grounds including **(1)** covering up the early and initial lies of the 4 INS employees **that amounted to felonies** [no matter how trivial they may have appeared or simply may appear for some], and **(2)** hurting petitioner for his political proposals and remarks submitted to the UN, and also for hate purpose.

As the Honorable Justices of the US Supreme Court knows, to lie in certain justice contexts **is criminal** - 18 USC 1512 (b) (3) states: *'whoever engage in a 'misleading conduct (lie...) ...to (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to **the commission** or possible commission of a Federal offense ...shall be fined under this title or imprisoned **not more than 20 years, or both.**'* And to hide/alter records/documents (*with the intent to impair the object's integrity or availability for use in an official proceeding*) and/or to corruptly influence and obstruct a proceeding is also criminal - 18 USC 1512 (c) (1) states: *'(c) **Whoever corruptly— (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding**'* (the proceeding at the immigration court and against the LA County); *'or (2) **otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.**'*

To corruptly conceal a record, and later to corruptly alter documents and records *'with the intent to impair the object's integrity or availability for use in an official proceeding'* and to corruptly influence, obstruct, or impede an official proceeding are exactly what the (4) INS employees (and other) have done during petitioner's immigration proceeding (when they lied about the situation of the INS record listing appellant as a refugee, and later issued an altered verification of status ...) and during his administrative proceeding against the LA County [not to mention what some employees of the District Court have done also during the proceeding 05-7517, etc.], and **were**

**felonies.** So later when the AUSAs (and the ICE Director in his deportation order app. F.1) (lied) engaged '*in a misleading conduct to (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to **the commission or possible commission of these Federal offenses***' [the 4 INS (and DPSS, and DSS) employees felonies (or possible felonies at least, if not obvious for the US Supreme Court)], **they also committed felonies**, and they continue do so.

This explains mostly **(1)** why the FBI and LA USA office criminal section refuse to investigate/prosecute the wrongdoings and never honestly responded to petitioner's criminal complaints (app. E), **(2)** why several judges (Circuit, District,, judges) also did everything they could to prevent a discovery that would have established the felonies (crimes) or simply to avoid reviewing honestly petitioner's refugee documents and admitting their validity to cover up the civil servants and hurt petitioner (app. D, E, see explanation below in part D ), **(3)** why the case was not resolved earlier and kept growing, with new treacheries at the SSA, and from the Courts and LA AUSA office employees, all this during the past 7 years (app. E), and **(4)** why the LA ICE office finally issued a full of lies deportation order **on 1-11-08** (app. F. 1) to harass petitioner and prevent him from obtaining justice [this LA County negligence case was in '*the request for admission phase*' (and there is no honest reasons to demur it) at the end of 2007 while the new SSA negligence complaint just established the obvious negligence of the SSA AL judge and liability and had a rapidly increasing damage (several millions), and petitioner filed a new criminal complaints on 12-14-07 in Washington to denounce the obvious conspiracy to hurt him]. As see below in part D, the District Court (app. F. 8) and recently the Appeals Court (F. 9) (incorrectly) refused to review the removal order and the validity of petitioner's refugee documents and a petition for rehearing is now pending (app. F. 10).

**The gross miscarriage of justice is obvious (1)** because petitioner had shown his good faith immediately after the problems took place when he

explained the contradiction problems on his status to an administrative law judge and to the INS Audit office, and **(2)** because the AL judge confirmed the refugee status (App. F. 4) [and so did the rehearing unit petitioner had contacted to obtain a confirmation of the ALJ decision], and the INS audit office and INS management did not question this confirmation of refugee status (although they could have easily done it); on the contrary the USCIS National Refugee Center Director also confirmed the refugee status with a A3 refugee EA card on 12-10-04 (App. F. 5 p.1), and finally **(3)** because the refugee status was justified on the merit [petitioner was victim of very advertized corruption scandal in France that led to the Senator President of the administration who fired him being sent to jail, which is very rare. Petitioner testified against him and was victim of all sorts of persecutions and economics deprivation ..., so it was a very unusual case]. Harassing, hurting and persecuting petitioner during 7 years is/was therefore inadmissible, and the grant of certiorari and entry of default that are justified would give the Court a chance to point out the miscarriage of justice and harsh treatment of petitioner in the US interest.

### **B The violation of petitioner's constitutional rights, and the abuse of discretion.**

California Form of Pleading and Practice (CFPP) states **in section 51.17 [b]**: *'All Decisions of the Supreme Court and Court of Appeals are required to be in writing, stating the reasons for the decision [Cal Cont. art. VI & 14]',* and later *'when a decision treats an issue in a summary and conclusory manner, and is virtually devoid of reasoning, its authoritative status is undetermined [City of Berkeley v. Superior Court (1980) 26 Cal. 3. d 515...]. When an opinion addresses an issues of first impression without discussing precedent form other jurisdiction or the policy implications of its rule, the decision is not entitled to deference [McHugh v. Santa Monica...],*



and in this case, the Appeals Court's decision (app. A) does not state the reason of the denial, so it violates appellant's constitutional rights. [As the a parenthesis, in section 51.17 [c], CFPP states also: '*A Court of Appeal opinion is required to identify the justices participating in the decision, including the author of the majority opinion and any concurring or dissenting opinion. If the opinion is by the Court, it must identify the **three** participating justices (Cal Rules of courts Rules 8.256 (a) (2))*'; and in this case the decision identifies only one participating justice].

Even if it is true that Cal Rules of Courts Rules 8.486 allows the Court to **summarily** deny a petition for which the required record or explanation (...) was not presented, this rule does not apply here because appellant did present the record [excerpts of records and a sufficient amount of related documents (RFJN) which gave the court an understanding of the case (and related cases) and of the issues of the petition], and he gave sufficient explanations to justify the entry of default, so the summary denial is not supported by the CA Rules of Court and not conformed to the CA Constitution, and it also violates the 14<sup>th</sup> Amendment, right to a due process.

The Court in *Kingston v. Dept. of Motor vehicles (1969) 271 Cal . 3d 484, 490-492*, states: '*It is settled that a court may deny an exp arte petition for an alternate writ of mandate 'out of hand' when it appears **at the face of the petition** that the writ will not be issued...However, the power of the Court to deny 'out of hand' is not without a discretion wisely exercised' and for an abuse of discretion on the part of the lower court appropriate remedies are available in a higher court'. Here, **like in the previous petition B 197 948 also dismissed summarily**, it did **not** appear at the face of the petition that the entry of default was not justified, there is obviously an issue when the defendant does not notice a demurer for more than 7 months while at the same time it does **not** answer the complaint within the required 30 days, especially when the filing of a 2<sup>nd</sup> demurer on an amended complaint after the first one was sustained with leave to amend **is dishonest and not***

allowed in CCP 471.5, as seen above and when the County used the pending demurrer to refuse to respond to discovery questions, so the Appeals Court **abused its discretion** when it avoided addressing these issues, and violated petitioner's constitutional rights.

Moreover, the LA County's inappropriate delay according to the CRC **was obviously wrongly motivated** [to harass petitioner, to take advantage of his pro se status, to unfairly prevent any discovery (again the LA County used the pending demurrer to refuse to respond to the request for admissions), to unfairly delay the case in the hope that petitioner would be deported with the 1-11-08 full of lies deportation order and/or that the Ca9 Appeals Courts would dismiss (with an unmotivated order again) the deprivation of civil right appeal because of the res judicata or un-timeliness of the complaint. Again the district court reviewed the county's demurrer for the negligence cause of action during one year and did not dismiss it, so a dismissal because of the un-timeliness and res judicata would be very dishonest now.]. And, according to CRC R 1.1320 b, the noticing of the demurer **is the responsibility of the moving party**, the County here, not petitioner's responsibility as the County's lawyer and the Superior Court argued to justify the refusal to enter default; and according to GC 68607, it is the responsibility of the Judge to ensure compliance with the fast track rules (and to order the County to re-notice its demurer or to answer the complaints, not petitioner's), **so petitioner cannot be given any responsibility for the delay** [petitioner thought that the defendant had given up on its demurer since it was obviously very dishonest after the judge had addressed the issue of the validity of the complaint, and he was forced to file several urgent pleadings because of the dishonest deportation order, so he could not do any research and file the necessary pleadings to prevent this treachery], and his request to enter default was/is therefore also legitimate also for sanction purpose.

The US Supreme Court should therefore point out **(1)** the

unconstitutionality of the summary decision in the context of petitions for writ of mandate, **(2)** the right to an entry of default after a 7 months delay for re-noticing a demurrer and given that CCP 471.5 does not allow the filing of a demurrer , **(3)** the unfairness of filing of a 2<sup>nd</sup> demurrer after a first one was sustained with leave to amend, and **(4)** the resulting due process violation while resolving a long lasting dispute in the public interest.

### **C The summary dismissal is not in the parties' interest.**

As the result of the Appeals Court dismissing summarily the first petition to compel entry of default **although** petitioner had presented the proper record and explanation justifying the entry of default [the County's demurer was filed about 20 days after the required date, the proof of services appeared in the SC record, and the default forms also appeared in the record], the damage against the LA County **has increased by more than \$500 000 in two years** [the complaint asks for a damage that increases by \$20 000 every month until the dispute against the county is resolved], and since June 2007 there is a new lawsuit (DC no 07-5548, AC no 08-55236) against the SSA and California for the unfair delay in paying the SSI benefits whose damage has increased by **more** than \$17 millions [a \$500 000 monthly penalty is requested until the SSA pays the SSI benefits], so it is absurd and not in the community's interest to dismiss the petition and entry of default **without a strongly motivated decision.**

Moreover, as explained above and below, there is an obvious and dishonest effort from several administrations and civil servants to cover up criminal wrongdoings of civil servants which results in new treacheries, prevents the resolution of the case and makes the damages grow bigger as well as petitioner's suffering, so the summary dismissal in this context without letting the LA County responds to the petition and explain the unfair and unjustified delay is even more dishonest. Petitioner has offered **to**

**waive the increasing penalty** if the Court entered default **now**, but if the Court denies again the petition summarily without a meaningful reason the damages may end up much higher for no valid reason **while hurting the petitioner even more** which is not in the community's interest.

**D The wrongdoings, the repeated judicial misconducts, and the management and other implications.**

Independently from the lies of (4) INS employees mentioned above, the various lawsuits describe all sorts of other grave and obvious wrongdoings [like the issuance and use of an **altered** verification of status to corruptly influence legal proceedings, negligence (violations of regulations articles imposing a mandatory duty like Manual and Policy and Procedure of the CA DSS, 20 CFR, 28 CFR, CCP,), misrepresentation in the social service area, deprivation of civil right and even a conspiracy to defraud and hurt petitioner,] that resulted in a lot of suffering and an important prejudice (or damage) for petitioner. Unfortunately and as explained above, several Courts employees including judges also used their positions to delay the honest review of petitioner's refugee documents, to prevent a discovery that would have established the crimes (felonies,) and to prevent petitioner from obtaining justice or simply from resolving the problems.

For example, and as seen in appendix D.1 and E, some documents were stolen at the District Court with the judges' support in case 07-7517 to prevent the review of petitioner's refugee documents (app. F.3-5). The District Court unfairly delayed the case 05-7517 during 2 years to harass petitioner and hurt him, and issued orders that ignored every arguments and legal authorities presented by petitioner (they even dismissed causes of action that petitioner did not make!). And now the same judges (Abrams and Guilford) are delaying the SSI case 08-5681 again to refuse to evaluate petitioner refugee documents and hurt him even more [the SSA AL judge lied about the

refugee documents she was presented with in her decision and refused to admit that the A3 refugee EA card dated 12-10-04 (App. F.5 p. 1) – that is an evidence of refugee status (App. F.5 p. 3) and was confirmed to be valid by the INS in 10-2005 with a G845 form– **made petitioner eligible for SSI according to 20 CFR 416.1618**, and now Judge Abrams who has the entire SSA record (with obvious proofs of her lies) and the case fully briefed since May 2009 (and who perfectly knows the issues of course since he has ruled on the previous related cases) delays his decision to avoid admitting that petitioner had valid refugee documents making him eligible for SSI in 2005 (!), and to try to have petitioner deported before his refugee documents be honestly evaluated.].

In the previous cases, the judges also ignored obvious legal authorities justifying the liability in the particular context of the case (in every lawsuits filed by petitioner). For example, the LA County was granted the immunity for misrepresentation (GC 818.8) although this immunity does **not** apply in the social services area according to the existing legal authorities [*Michael J. By and Through Trout V. Los Angeles County, Dept. of Adoption (app. 2 Dist 1988) 247 Cal. Rptr.*], and now the LA County uses this unfair dismissal of the first case and the res judicata's doctrine and timeliness of the 2<sup>nd</sup> complaint to try to obtain a new dismissal in this Superior Court negligence case and in the District Court's deprivation of civil right case (!). The Ca9 order on the first case did not list any facts and did not address any arguments and legal authorities presented by petitioner (!) [see SC case no 05-7408]. The State of California also obtained the '*judicial immunity*' for negligence although again there exists a legal authority [*Bradford v. State of California (1975) 36 CA 3d 16, 19, 111 Cr 852*] stating that G815.6 imposes a **direct** liability on public agencies independent from any individual immunity the employees may have [see SC case no 07-7122]. The Ca9 Appeals Court also twice argued that petitioner in forma pauperis status **had been revoked** to dismiss his appeal for lack of prosecution (05-55231 and 06-

55963) although petitioner had not been informed and was **not** given the possibility to file a motion to proceed in forma pauperis due to treacheries of the Appeals Court, and it seems that no order revoking the (pauper) status had even been filed at the District Court in the second appeal no 06-55963 (!).

More recently, Ca9 judges also wrote summary or unmotivated opinions to **(1)** refuse to disqualify the 2 AUSAs **who repeatedly lied in their pleadings** on critical issues of facts and law (by doing so committed felonies), to **(2)** refuse to acknowledge that the USA office did not present the permission to defend Robinson in her individual capacity pursuant to 28 CFR 50.15, to **(3)** refuse to appoint another pro bono counsel although the withdrawal of the first one – a former AUSA who was in contact first with his former colleague party against petitioner before even talking to him - was obviously a new treachery of the LA AUSA office; and to **(4)** refuse to grant petitioner some emergency aid (temporary SSI benefits) and take him out of home detention to keep him under very difficult living conditions although the deportation order **that is full of lies and obviously illegal was stayed** by the Ca9 (app. F.8). Petitioner filed 3 judicial misconduct complaints to denounce the unfair delay and other misconducts of the judges in case 05-7517, and the unmotivated denial of the 2 motions (including the refusal to appoint another pro bono lawyer) by the 4 Circuit judges in appeal 08-55236, 07-56730, but the Chief denied again with inappropriately motivated decisions the 3 complaints supposedly **because they address the merit of the judges decisions** [to render decisions is what judges do, so a complaint is necessarily related in some way to his/her decisions' merit ]. Petitioner appealed his order (App. D.1), but the judicial council also denied the appeal with a 'generic' ('summary') decision without addressing the arguments and problems (D.2). We understand that the judges defend their judicial immunity prerogative, but they also have a responsibility to render honest and motivated decisions that address the facts and laws involved [again as the constitution wanted it, see above p. 16], in this case they obviously have

not done so over a long period, and it caused a great injustice to petitioner even if the judicial council refuses to point it out.

**Finally, on 7-22-09**, the Ca9 issued an order (app. F. 9) in the deportation case arguing that the District Court properly dismissed the Habeas Corpus petition because it did not have jurisdiction and could not transfer the case to the Appeals Court **although** it is obvious **(1)** that under 8 USC 1252 e, the District Court had at least jurisdiction (and was even required) to allow petitioner a hearing pursuant to 8 USC 1229 a, and **(2)** that even if the Court still found that it lack jurisdiction, it still had to transfer the case pursuant to 28 USC 1631 (see petition for rehearing) [again the decision is not properly motivated, it does not list any facts, does not rule on the nature of deportation order and the jurisdiction of DC courts under 8 USC 1252 e, and does not rule on the 2 questions the Ca9 had ordered the parties to brief on 4-17-08 (app. F. 7)]. A petition for rehearing was filed (App. 10), but the USDOJ and ICE office that can also understand that petitioner should have at least been granted a hearing under 8 USC 1229 a continue to ask the Court to decline jurisdiction to have petitioner deported on full of lies removal order without having his refugee documents' validity reviewed, this is extremely dishonest and proves that the objective of the removal order was only to prevent petitioner from obtaining justice and to cover up the civil servants wrongdoings.

The various violations of regulations, and the repeated lies of the USAs on critical facts in their pleadings **like the lies in the deportation order are obvious**, and the cover up of these wrongdoings has a negative effect on the efficiency of administrations since they encourage the administrations to cheat, lie and hurt their clients although the press and media have recently pointed out serious negligence and integrity problems at the LA County and US DOJ [for example the woman dying in the emergency room of King Drew hospital that led to the hospital subsequent closing, the firing of 8 US Attorneys, etc.]. So the US Supreme Court can point out the **gross**

**miscarriage of justice** that resulted from the series of improperly motivated decisions and other ‘judicial’ treacheries, and end the persecution of a French refugee who has done a difficult work for the International Community and has shown his good faith several times by granting certiorari and entry of default in the US interest.

## **E The jurisdiction of this Court and conclusion.**

Even though petitioner did not specifically raise the violation of due process right in his California Supreme Court’s petition, **it was implicitly raised** when he addressed the issue of the California Constitution Article VI & 14 violation that deprived him from right to a due process as well as in *Burn v. Ohio 360 US 252 (1959)*. So the US Supreme Court can accept jurisdiction as in *Burn v. Ohio 360 US 252 (1959)* see SCP p. 180. Moreover, in exceptional cases where the California Supreme Court renders a surprise decision that raises the Federal Constitutional issue (violation of due process in this case), the US Supreme Court can accept jurisdiction as in *Saunders v. Shaw 244 US 317, 320 (1917)* see SCP p. 196.

To conclude, even if it is not the role of the US Supreme Court to correct ‘the errors’ of lower Courts [the 3 previous (erroneous) decisions brought to this Court’s attention were not properly motivated and unpublished (this Court rarely review unpublished decisions, it seems), and the issues may not have appeared important enough in comparison to other cases, so the 3 previous petitions for certiorari were denied summarily], **the Court sometimes grants certiorari to denounce a gross miscarriage of justice** as seen in SCP p. 277 [ ‘*Despite the Court’s general reluctance to grant certiorari solely to correct an erroneous decision below, the Court does sometimes grant review simply to correct an error committed by a lower court. And it does so even though there seems to be no conflicting decision, no novel or important principle of law, and no elements of great public interest at stake.... The Justices may also be motivated by a feeling that **the decision***



*represents a gross miscarriage of justice, or a subtle erosion of statutory of legal principle, or that the result reached below is unduly harsh in its impact.'* ]. In this case it is not just the refusal to enter default twice that led to the gross miscarriage and/or had a harsh impact on petitioner who has suffer a grave prejudice over 7 years, but the series of summary or inappropriately motivated decisions that did not address the facts and the applicable legal authorities, and the dishonest effort to avoid the honest review of petitioner's refugee documents that maintained the case during many years while gravely hurting petitioner. The 1<sup>st</sup> request to enter default was perfectly justified, and now the 2<sup>nd</sup> request to enter default is also justified, so the grant of certiorari and entry of default would render justice to a victim who has demonstrated his good faith and who suffered a grave prejudice over along period of time.

### **Conclusion**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: August , 2009

Pierre Geneviev

No.

IN THE  
SUPREME COURT OF THE UNITED STATES

Pierre GENEVIER (Pro se) — PETITIONER

vs.

The Superior Court of Los Angeles County --- Respondent  
Los Angeles County, ---Real party of interest.

**PROOF OF SERVICE**

I, Pierre Geneviev, do swear or declare that on this date, August , 2009, as required by Supreme Court Rule 29, I have served the enclosed **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** and **PETITION FOR A WRIT OF CERTIORARI** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by hand delivering or faxing or emailing or mailing the above documents.

**The names and addresses of those served are as follows:**

**Mr. Frederick Bennett**, Attorney for Los Angeles Superior Court (respondent), and **Judge Red Recana**, Superior Court, 111 North Hill street, RM 546, Los Angeles CA 90012 (By hand delivery).

**Mr. Maranga and Mrs. Ellyatt**, Attorney for the Los Angeles County (real party of interest), at 5850 Canoga Avenue, suite 600, Woodland Hills, CA 91367, Fax : (818) 380 0028.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August , 2009

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“As required by Supreme Court Rule 33.1(h), I certify that the document contains \_\_\_\_ words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).  
“I declare under penalty of perjury that the foregoing is true and correct.

“Executed on \_August \_\_\_\_\_, 2009.

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Pierre Genevieve