IN THE SUPREME COURT OF CALIFORNIA

JAMES SLATIC, ANNETTE SLATIC, LILY COHEN, and PENNY COHEN, Petitioners, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO, Respondent. PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	)	CASE NO. _____

PETITION FOR WRIT OF MANDATE

Court of Appeal, Fourth Appellate District, Division One, Case No. D071464
San Diego County Superior Court Case No. MCR 16-061 (Hon. Jay M. Bloom)

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CERTIFICATE OF INTERESTED PARTIES

This certificate is being presented on behalf of petitioners, James Slatic, Annette Slatic, Lily Cohen, and Penny Cohen by their counsel pursuant to Rule 8.208 and 8.488 of the California Rules of Court.

☒ There is no interested entities or persons that must be listed in this certificate under Rule 8.208.

☐ Interested entities of persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of Interest
1.	
2.	
3.	

The undersigned certifies that the above-listed persons or entities have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Dated: January 9, 2017

Victor Manuel Torres
Attorney for Petitioners

TABLE OF CONTENTS

J. Hearing Exhibit 3: Affidavit for Seizure Order No. 52005

K. Hearing Exhibit 4: Affidavit for Seizure Order No. 52007

L. Hearing Exhibit 5: Med-West Standard Operating Procedures

M. Hearing Exhibit 6: High Quality Organics Website

N. Hearing Exhibit 7: Letter from Laura E. Duffy to Detective Mark Carlson

O. Hearing Exhibit 8: Photograph of Blue Barrels

P. Hearing Exhibit 9: Photograph of Laboratory Equipment

Q. Hearing Exhibit 10: High Quality Organics Check Payable to James Slatic

R. Hearing Exhibit 11: Schools First Credit Union Statement

S. Hearing Exhibit 13: Wells Fargo Account Statement

T. Hearing Exhibit 14: Wells Fargo Deposit/Withdrawal Slip

U. Reporter's Transcript of Proceedings Vol. I (Nov. 14, 2016)

V. Reporter's Transcript of Proceedings Vol. II (Nov. 15, 2016)

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

INTRODUCTION

This petition seeks the return of $100,693 belonging to the four members of the Slatic family—James, his wife Annette, and her two daughters, Lily and Penny. None of the family members has been charged with any crime. Yet, the Slatics' money was seized for civil forfeiture

following a raid on James's *legal* medical marijuana business. More than 11 months later, neither James nor anyone else from his business has been charged with any crime and no civil forfeiture case has been filed against the Slatic family's money.

The Court should grant the petition. Although Health and Safety Code § 11470(f) permits seizure of money only when the money has been traced to a drug crime, this Court has never addressed what it means to "trace" property to a crime. In the absence of guidance from this Court, lower courts have come to rely on federal law, while reaching inconsistent rulings about the requirements of Section 11470(f). This case provides an opportunity to clarify what proof is needed before the People may seize money from Californians—like the Petitioners—who face losing their property without being charged with a crime.

This case illustrates the problems caused by an uncertain traceability standard. After the Slatics moved for the return of their property in this case, an evidentiary hearing demonstrated there is no link between their money and the one crime allegedly committed by James's business—the extraction of cannabis oil. However, the court below declined to return the family's money based on two errors of law.

First, the court failed to apply recent amendments to the state's medical marijuana laws that *allow* the extraction of cannabis oil. These amendments went into effect a month *before* the raid on James's business,

and they allow precisely the conduct that the court in this case deemed illegal.

Second, the court improperly allocated the burden of proof. The People—not the Slatics—bore the burden of tracing the family's money to an actual crime. Yet, the police made no effort to trace the family's money to extraction. For their part, the Slatics offered unrebutted testimony and documentary evidence showing non-medical-marijuana sources for their money. The court discounted all of this evidence because it erroneously believed that the Slatics were required to offer third-party testimony negating traceability. But under Section 11470(f), proving traceability is the People's obligation.

Under these circumstances, the Slatics cannot wait for the People to decide whether to file a civil forfeiture case against their money. If that case ever comes, it could be years before it runs its course. Already, the decision below has allowed the seizure of the family's money for nearly a year without probable cause to believe the money is linked to an actual crime. Every day the money remains in custody compounds the family's constitutional injury. Therefore, the Slatics need a decision immediately.

For these reasons, discussed more fully below, the Court should grant the petition and issue a writ of mandate requiring the Respondent Court to return the Slatic family's money or, in the alternative, remanding for reconsideration under the correct traceability standard.

PETITION FOR WRIT OF MANDATE

Petitioners James Slatic, Annette Slatic, Lily Cohen, and Penny Cohen, by their attorneys Victor Manuel Torres and Wesley Hottot hereby petition this Court for a writ of mandate directed to the Superior Court of the State of California for the County of San Diego. By this verified petition, Petitioners declare that:

I.

Petitioners are the owners of $100,693 seized from their respective bank accounts based on seizure orders issued by the Respondent Court.

II.

Respondent is the Superior Court of the State of California for the County of San Diego.

III.

Real Party in Interest is the People of the State of California.

IV.

The Respondent Court issued two sets of orders pertaining to Petitioners' money. In February 2016, the Honorable Frederick Maguire issued Search Warrants 51082 and 51083, which ordered Petitioners' banks to freeze their accounts and turn over bank records. In June 2016, the Honorable Jay M. Bloom issued Seizure Orders 52005 and 52007, which ordered the banks to transfer all of Petitioners' money to the San Diego District Attorney.

V.

The San Diego District Attorney obtained both sets of orders using the testimony of Detective Mark Carlson. Carlson is assigned to the Asset Removal Group of a regional drug task force composed of San Diego police and agents of the U.S. Drug Enforcement Agency. In a series of affidavits, he alleged probable cause to believe *all* money in the Slatics' bank accounts represents the "proceeds from drug transactions per Health and Safety Code 11470." Carlson alleged that James Slatic committed one crime: manufacturing a controlled substance using a prohibited chemical extraction process, in violation of Health and Safety Code § 11379.6. No other crime has been alleged against James or his business. The People have never alleged that Annette, Lily, or Penny committed a crime.

VI.

In the 11 months since Petitioners' money was seized, neither James nor anyone associated with his business has been charged with any crime.

VII.

Shortly after Petitioners' first motion for return of property was denied,[1] the People requested formal seizure of Petitioners' money. Again based on Detective Carlson's testimony, Judge Bloom granted Seizure

[1] In May 2016, Petitioners filed a motion for return of property in which they challenged the Respondent Court's freezing orders on the ground that they needed their money in order to fund a potential criminal defense. Judge Maguire denied this motion without prejudice.

Orders 52005 and 52007, which authorized the district attorney to take possession of all remaining money in the family's bank accounts. *See* Ex. C, Motion for Return of Property, Exs. 1–2.

VIII.

The seizure orders resulted in the transfer from Petitioners' bank accounts to the district attorney of $55,258.60 belonging to James, $34,175.14 belonging to Annette, $5,616.38 belonging to 20 year-old Lily Cohen, and $5,643.73 belonging to 17 year-old Penny Cohen. No civil forfeiture action has been filed against this money.

IX.

In October 2016, Petitioners filed a second motion for return of property. *See* Ex. C. This motion challenged the finding of probable cause in Seizure Orders 52005 and 52007, based on Health and Safety Code § 11488.4 (g)–(h) and Penal Code §§ 1538.5(a)(1)(B)(iii), 1539(a)(iii), 1540. The Penal Code requires such a motion to go before the same judicial officer who signed the seizure orders—in this case Judge Bloom. *See* Pen. Code § 1538.5(b). Judge Bloom heard live testimony on the motion on November 14–15, 2016 and, the next day, denied the motion in a written opinion. *See* Ex. B. This petition seeks to overturn Judge Bloom's decision upholding the finding of probable cause in Seizure Orders 52005 and 52007.

X.

Petitioners filed a petition for writ of mandate with the Court of Appeal, Fourth Appellate District, Division One, on December 16, 2016. The Court of Appeal summarily denied the petition 12 days later without requesting a response from the People. *See* Ex. A.

XI.

Petitioners pray this Court will order a peremptory writ of mandate directed to the Respondent Court, requiring it to grant Petitioners' motion for return of property as to all $100,693.

XII.

Alternatively, this Court should remand to the Respondent Court for application of the correct legal standard.

XIII.

Petitioners have no other plain, speedy and adequate remedy in the ordinary course of law and will suffer irreparable injury if the requested relief is not granted.

XIV.

The attached Memorandum of Points and Authorities and its exhibits are incorporated into this petition by this reference.

Dated: January 9, 2017

Respectfully submitted,

Victor Manuel Torres
Attorney for Petitioners

VERIFICATION

I, VICTOR MANUEL TORRES, declare:

I have been retained as local counsel for Petitioners James Slatic, Annette Slatic, Lily Cohen, and Penny Cohen in this case. I am an attorney licensed to practice in the courts of the State of California. I have read and know the contents of the foregoing petition for writ of mandate and declare that its contents are true based on my personal knowledge, except matters alleged on the basis of information and belief, and as to those matters, I believe them to be true.

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

Executed this 9th day of January, 2017, in San Diego, California.

Victor Manuel Torres
Attorney for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

This memorandum demonstrates why this Court should decide what proof is necessary to "trace" a person's money to an alleged crime under Health and Safety Code § 11470(f) and demonstrates how the Respondent Court committed two legal errors that caused it to deny the Slatic family's motion for return of property in this case.

After hearing testimony, the Honorable Jay M. Bloom of the San Diego County Superior Court held that there is probable cause to believe that James Slatic's medical marijuana business was using an illegal process of extraction. Ex. B at 2:14–26. Based on this conclusion, the court held that there is probable cause to believe that every penny in the Slatic family's bank accounts is connected to that crime—including money belonging to James's wife and her two daughters. *See id.* at 3:3–7. As shown below, those rulings were incorrect as a matter of law because, on the day of the raid, medical marijuana businesses were *legally allowed* to extract in precisely the manner alleged and because the People—not the Slatics—bore the burden of tracing the family's money to an actual crime, and yet, the People made no effort to do so in this case.

This Court has never addressed the correct legal standard for tracing a person's property to an alleged crime. Thus, the Respondent Court did not have the benefit of this Court's guidance about when the People may (and may not) seize a person's property without charging the person with a

crime. This question has confused the lower courts in recent years, leading to inconsistent rulings and facilitating the People's abuse of civil forfeiture.

Accordingly, this Court should take this case and issue a writ of mandate overturning the decision below.

STATEMENT OF FACTS

I. The four members of the Slatic family—James, his wife Annette, and her daughters Lily and Penny—had $100,693 seized from their personal bank accounts the day after police raided James Slatic's *legal* medical marijuana business in January 2016.

For two years, James Slatic operated a legal medical marijuana business from a 14,000-square-foot commercial building on San Diego's Engineer Road, located next to a Korean church and across from a Mercedes-Benz dealership. *See* Ex. U, Reporter's Transcript, Vol. I, Nov. 14, 2016 at 154:12–18; 156:2–4; 190:10–14. His business consisted of two limited liability companies—Med-West Distribution and Highland Medical Packaging—which belonged to a non-profit medical marijuana collective, Pacific Heights Partners. *See id.* at 152:19–24; 153:12–154:18; 171:18–20.

Med-West purchased extracted cannabis oil from other members of the collective and refined the oil for use in vaporizer pens and topical oils. *Id.* at 153:12–16.[2] Highland Medical provided packaging and

[2] The Slatics presented evidence at the hearing that Med-West engaged in refining, not extraction. That remains true, as the Slatics will prove if there

[*cont. next page*]

administrative support for this operation. *Id.* at 153:17–23; 171:22–172:12. Med-West never sold directly to the public; its products were sold to Pacific Heights Partners and other collectives, which made them available to medical marijuana patients through licensed dispensaries. *Id.* at 161:11–162:24.

Med-West was able to operate openly in this way because it complied with California's medical marijuana laws and paid hundreds of thousands of dollars in taxes. *See id.* at 156:5–157:14; 182:1–19. The business had 35 employees, medical benefits, and a 401(k) plan. *Id.* at 154:27–155:5. It had a website publicly describing its manufacturing methods and products. *Id.* at 24:9–15; 160:22–161:1. San Diego officials knew the business was operating—they had conducted a walkthrough of its facility. *Id.* at 182:16–19. At the time, San Diego had no local regulations for marijuana manufacturing, and James repeatedly sought the city's guidance about how to remain compliant. *Id.* at 182:6–19.

The first indication of trouble came on January 28, 2016, when a local drug task force raided Med-West while carrying out a search warrant. *Id.* at 145:25–26; *see also* Ex. J at 3:24–26. Officers seized computers, records, equipment, and $324,979 in business proceeds. Ex. U at 22:16–19; 146:25–147:3. Two employees who were at work at the time of the raid

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are further proceedings in the trial court. In this petition, however, the Slatics raise purely legal arguments, none of which turn on the differences between refining and extraction.

were briefly arrested and released. *See id.* at 146:4–7. With all of its assets in custody, Med-West stopped operating. *See id.* at 145:19–26.

For James and his family, however, the real nightmare began the next day, when police used civil forfeiture to freeze every penny in their personal bank accounts. *See id.* at 148:9–23. Without warning, James lost access to $55,258 in his personal checking account; his wife, Annette, lost $34,175; and her daughters, 17 year-old Penny and 20 year-old Lily, lost a combined $11,260, which Annette had set aside for their college expenses. *See* Verified Petition for Writ of Mandate at VIII, p. 13 *above*; Ex. U at 199:23–27, 205:21–23, 213:6–22. The family was left with virtually nothing on which to live.

II. The police made no effort to connect the family's money to the only crime alleged—the extraction of cannabis oil.

The Slatics' money was seized based on one detective's suspicion that James, by operating Med-West, committed one crime—the illegal extraction of cannabis oil. No other allegations have been made against James or his business. No allegations of any kind have been made against Annette, Lily, or Penny. And, critically, the detective made no effort to trace the family's money to Med-West's alleged crime of extraction.

The seizure orders relied exclusively on the testimony of Mark Carlson—a San Diego Police detective assigned to the "Asset Removal Group" of the drug task force that raided Med-West. *See* Exs. J & K; Ex. U

at 13:3–14:5; *see also* Ex. C, Mot. for Return of Property at Exs. 1 & 2. Carlson's affidavits specifically allege that the Slatics' money is subject to civil forfeiture because it is connected to a crime. *See* Ex. J at 12:22–23 & 13:8–10 (relying on Health & Safety Code § 11470 to request forfeiture of all funds in bank accounts belonging to Annette, Penny, and Lily); Ex. K at 12:19–20 & 13:5–7 (same with respect to James). He alleges one crime, representing that "[c]harges of Manufacturing of a Controlled Substance (Concentrated Cannabis Extraction) per 11379.6 [Health and Safety Code] are pending filing by the San Diego District Attorney against James SLATIC." Ex. K at 12:19–20. But Carlson never addressed how he traced the family's money to the alleged crime of extraction. *See* Exs. J & K.

Instead, Carlson's affidavits rely on just three concrete allegations about James's account. First, he details five instances in which James transferred money to his wife beginning in May 2014. Ex. K at 10:12–15. Second, he points to five checks that James received from Highland Medical Packaging. *Id.* at 10:17–25. Finally, he assumes that 21 cash deposits, which James made over the course of two and a half years, must have come from Med-West because police found a large amount of cash at Med-West. *Id.* at 11:1–17. Based on these allegations, Carlson concluded that every dollar in James's account is "tied to his concentrated cannabis extraction business." *Id.* at 12:3–4. But he made no effort to show how the

specific money was "proceeds traceable to" illegal extraction, as required by Health and Safety Code § 11470(f). *See* pp. 34–38 *below*.

Carlson did even less investigation for Annette's account. He merely noted that Annette sometimes received money from her husband, *see* Ex. J at 10:3–7, and concluded on that basis that James had "transferred significant funds from his concentrated cannabis extraction business . . . to his wife," *id.* at 12:14–16. Similarly, for Lily and Penny's accounts, Carlson noted that Annette sometimes transferred money to her daughters. *Id.* at 12:19–21. He made no effort to show that the money in Lily and Penny's accounts was "proceeds traceable to" illegal extraction.

III. Unrebutted evidence showed that the family's money came from non-marijuana-related sources.

At the hearing on their motion, the Slatics rebutted Carlson's allegations and affirmatively demonstrated that they had legitimate sources for all $100,693 seized from their bank accounts.[3] The sources of those funds were shown to be wholly unconnected to Med-West and its alleged crime of extraction.

As Detective Carlson acknowledged, James deposited a $149,375 check shortly before the seizure "from his ownership in High Quality

[3] Petitioners did not seek the return of the $324,979 seized from Med-West. Unlike the family's money, civil forfeiture proceedings have actually been initiated against the business's money. *See People v. $324,979.00 in U.S. Currency*, Civil No. 37-2016-00006961-CU-AF-CTL in the San Diego County Superior Court. Only the family's money is at issue in this appeal.

Organics." Ex. K at 12:4–6; Ex. Q. At the time of the seizure orders, Carlson testified:

> I do not know the true nature of the business, High Quality Organics, or where SLATIC obtained his finances for his investment into High Quality Organics. Even if the returns of $149,375.00 were generated by legitimate non-drug investments, these returns have been comingled into account 169426, which contains proceeds from SLATIC's HIGHLAND MEDICAL PACKAGING LLC.

Ex. K at 12:13–17.

Unrebutted evidence at the hearing cleared up any confusion about the "true nature of the business." A representative of High Quality Organics testified that it is a culinary spice business with no connection to marijuana. Ex. U at 125:19–126:6. The company's website makes clear that it sells only culinary spices, *see* Ex. M, and its legitimate nature could have easily been confirmed by Detective Carlson at the time of the seizure orders. In any case, testimony and documentary evidence at the hearing showed that High Quality Organics has no connection to drugs. The People made no effort to rebut this testimony.

Unrebutted testimony also showed that James had a legitimate reason for receiving money from High Quality Organics: He once owned a stake in the company. James and the company's chairman both testified that James was being paid, in annual installments, as part of a buy-out agreement. Ex. U at 129:27–130:17; 150:27–151:2. The company's December 2015 check of $149,375 was admitted into evidence, showing

that James had deposited the check on January 5, 2016—just 23 days before the raid. *See* Ex. Q at 2; *see also* Ex. U at 149:21–150:7. James testified that some of this money was still in his account when it was seized. Ex. U at 151:3–6. And documentary evidence confirmed this. *See* Ex. R (January 2016 statement for James's account).

Annette Slatic also had legitimate sources for her money. She makes more than $45,000 a year as a part-time x-ray technician at the Veterans Affairs (VA) hospital in La Jolla, and her government paychecks are direct deposited into her account. Ex. U at 194:18–195:15. She also receives between $1,400 and $2,000 per month in child support payments from her ex-husband, Mark Cohen, the biological father of Lily and Penny. *Id.* at 195:16–28.

Annette's testimony was even corroborated by Detective Carlson. At the time of the seizure, Carlson knew about these obviously legitimate sources for the money in Annette's accounts. He knew that Annette was a VA employee, *id.* at 70:24–71:15, and he knew that her ex-husband was making deposits into her account, *id.* at 73:18–75:2. However, Carlson excluded this information from his affidavits in support of the seizure orders. He excluded information about Annette's VA job because he did not believe it was pertinent to include sources of income from legitimate employment. *Id.* at 73:9–16. He excluded information about child support because he did not think it was his job to show "all the deposits that came

from everyone." *Id* at 74:19–75:20. Instead, he "went to the specifics that [he] needed to include" while "[c]learly, there are other factors involved with [the] accounts as far as other deposits." *Id.* at 75:16–23. In other words, Carlson omitted information showing legitimate sources for the funds in Annette's accounts from his seizure affidavits, while later admitting that there *were* legitimate sources.

Additionally, both James and Annette testified that a substantial amount of money—approximately $200,000—was transferred from James's account to Annette's account to cover the cost of renovations that began after the purchase of their home in May 2014. *Id.* at 168:7–24, 196:16–197:18. This testimony was also corroborated by Detective Carlson's seizure affidavits, which note that James transferred $210,200 into Annette's accounts. Ex. J at 12:14–21. It was further corroborated by Carlson's testimony that James began making transfers to Annette in May 2014. Ex. K at 10:12–15 (noting $176,000 in checks written to Annette from James's account). This testimony explained why James "transferred significant funds" to Annette as alleged in Carlson's affidavits.

The testimony at the hearing also showed that Lily and Penny had legitimate sources for the money in their savings accounts. Annette had set up these accounts on her daughters' behalf when she started work at the VA. Ex. U at 199:12–27. She would occasionally deposit money from her paycheck in the hope of helping the girls with college expenses. *Id* at

199:24–200:4. None of this money came from James or his business, as Annette, Lily, and Penny all testified. *Id.* at 200:5–9, 206:8–18, 208:4–6, 213:27–214:21. There has never been any allegation (let alone any evidence) that Annette, Lily, or Penny had any involvement in James's business. All three testified at the hearing that they had zero involvement. *Id.* at 198:17–28; 208:7–8, 214:20–21; *see also id.* at 154:19–26 (James confirming they had no role, whether formal or informal, with the business). This testimony went unchallenged by the People.

In summary, there is nothing connecting the legitimate sources of the Slatics' funds to James's alleged crime of extraction. The police ignored legitimate sources that were known to them at the time of the seizure and, at the hearing, the Slatics dispelled any remaining doubts using their own testimony, Detective Carlson's testimony, the testimony of a third party, and documentary evidence.

ARGUMENT

I. This Court has not addressed the legal standard for seizing a person's property based on an alleged connection to a drug crime and lower courts need this Court's guidance.

This Court has never addressed the traceability requirements of Health and Safety Code § 11470(f) and, as a result, lower courts have been left to wonder what proof is necessary before the People can seize property based on its alleged connection to a crime. Without this Court's guidance, California courts have come to rely on federal traceability case law to

interpret Section 11470(f). But courts have interpreted federal law differently, leaving judges, prosecutors, and property owners to guess at what proof is necessary to support the seizure of money from someone who has not been charged with a crime.

This case presents a good opportunity for this Court to provide guidance because, as shown below, the Respondent Court erroneously placed the burden to *negate* traceability on Petitioners and concluded that their money was connected to illegal activity *generally* when, in actuality, Section 11470(f) requires the People to demonstrate a direct connection between the *specific* money seized and a *specific* crime.

The lower courts are sorely in need of this guidance. On several occasions, courts have applied Section 11470(f) while also highlighting the lack of California cases addressing that statute. *People v. $9,632.50 U.S. Currency* (1998) 64 Cal.App.4th 163, 168–74; *People v. $48,715 U.S. Currency* (1997) 58 Cal.App.4th 1507, 1517; *People v. $497,590 U.S. Currency* (1997) 58 Cal.App.4th 145, 151–57; *People v. $47,050* (1993) 17 Cal.App.4th 1319, 1322–26. These cases reach inconsistent results.

In *$9,632.50*, the Fifth Appellate District rejected the People's argument that money derived from legitimate sources—such as a tax refund—could be seized simply because the money was comingled in a bank account with other money the owner acknowledged was connected to methamphetamine production. 64 Cal.App.4th at 168–73. In doing so, the

court pointed out that "neither California case law nor any pertinent legislative history definitively resolv[es] the question whether commingling in a bank account the cash proceeds of drug transactions with funds derived from legitimate sources renders the entire account subject to forfeiture." *Id.* at 168–69. In the absence of California authority, the court relied on federal cases, *id.* at 168–73,[4] and concluded that adopting the People's comingling theory "would eliminate the need for tracing, despite [Section 11470(f)'s] clear language requiring it." *Id.* at 173.

In *$47,050*, the First Appellate District relied on federal traceability cases and reversed the seizure of a large amount of cash found alongside a small amount of cocaine and marijuana. 17 Cal.App.4th at 1322–26. But, in *$48,715*, the Fifth Appellate District reached a very different conclusion, upholding the seizure of cash from a car in which no drugs were found. 58 Cal.App.4th at 1518–19. The court in *$48,715* (like the courts in *$9,632.50* and *$47,050*) relied on federal case law, *see id.* at 1517–18, but it

[4] In addition to the cases discussed in *$9,632.50*, many federal cases require the government to prove a real-world connection between seized property and a crime. *See, e.g., United States v. $405,089.23 U.S. Currency* (9th Cir. 1997) 122 F.3d 1285, 1290 (holding that a police affidavit failed to show probable cause to support the seizure of money deposited in a bank account by convicted drug traffickers using cashier's checks purchased with cash); *United States v. Real Property Located 20832 Big Rock Dr.* (9th Cir. 1995) 51 F.3d 1402, 1411 (stating that "[a]ny interest in property purchased with illegitimate assets is forfeitable, but any interest purchased with legitimate assets, even the legitimate assets of a drug dealer or someone who knows they are doing business with a drug dealer, is not forfeitable because it is not 'proceeds traceable to' a drug transaction"); *United States v. U.S. Currency, $30,060.00* (9th Cir. 1994) 39 F.3d 1039, 1044 (stating that "a mere suspicion of illegal activity is not enough to establish probable cause that the money was connected to drugs").

determined that the lack of drugs was not dispositive because the surrounding circumstances suggested *some* connection to drug sales (including the fact that the cash was bound with duct tape and transported by someone on probation for selling heroin). *Id.* at 1519; *accord $497,590*, 58 Cal.App.4th at 156–58 (upholding forfeiture of almost half a million dollars in cash hidden in an attic based on a dog alert to cocaine residue on the cash and the presence of sophisticated money laundering tools).

All of these cases applied a California statute—Section 11470(f)—and were decided using federal traceability case law. But two of the cases—*$9,632.50* and *$47,050*—required a direct link between an actual crime and every dollar and cent seized, while the other cases—*$48,715* and *$497,590*—allow for seizure where surrounding circumstances suggest the *possibility* of some connection to some crime. The results in *$48,715* and *$497,590* would have been impossible if the court had applied the direct traceability required in *$9,632.50* and *$47,050*. This is true even though *$48,715* and *$9,632.50* were both decided by the Fifth Appellate District.

This inconsistency about the meaning of Section 11470(f) calls out for this Court's intervention and this case offers a good opportunity to resolve the confusion. Unlike in *$9,632.50* and *$47,050*, the Respondent Court in this case placed the burden to *negate* traceability on Petitioners and concluded that their money was connected to illegal activity *generally* when the statute places the burden on the People to demonstrate a direct

connection between the *specific* money seized and a *specific* crime. Like in *$48,715*, the Respondent Court allowed the People to seize money based on general allegations that the money was in *some way* connected to a crime.

This Court's intervention is made all the more necessary because forfeiture is big business in California. Between 2002 and 2013, county district attorneys and the Attorney General forfeited almost $280 million, an average of $23 million per year. *See* Carpenter et al., *Policing for Profit*, (2d ed. 2015) at 54, *available at* ij.org/report/policing-for-profit. If the relatively relaxed traceability standard applied in *$48,715* controls, perhaps all of those forfeitures were justified. If, however, the strict traceability standard of *$9,632.50* and *$47,050* controls, perhaps many of those forfeitures should never have happened. The result in this case illustrates just how confused courts have become and how that confusion can lead to erroneous outcomes, with disastrous results for the affected property owners.

II. The Respondent Court twice erred as a matter of law when it denied the Slatic family's motion for return of property.

When, as here, property is seized for civil forfeiture under Health and Safety Code § 11470, there must be probable cause to believe that a drug crime occurred and probable cause to believe that the specific property is connected to that drug crime. *People v. $47,050* (1993) 17 Cal.App.4th 1319, 1322–23 (noting "the People must make a minimum prima facie

showing of probable cause to believe the property is subject to forfeiture"). Both rulings were incorrect in this case—there is neither probable cause to believe that James Slatic illegally "extracted" marijuana in violation of Health and Safety Code § 11379.6 nor probable cause to believe that the money in the Slatic family's accounts is connected to that crime, even assuming a crime occurred.

A. The court failed to apply a medical marijuana law that made extraction *legal* in January 2016.

In holding there is probable cause to believe James committed the crime of "extraction," the Respondent Court erred as a matter of law by ignoring the controlling statute, the Medical Cannabis Regulation and Safety Act (MCRSA), Bus. & Prof. Code §§ 19300 *et seq*. Instead, the court evaluated probable cause under a now-superseded statutory framework, which was designed to combat clandestine methamphetamine labs but which no longer applies to marijuana manufacturers. *See* Ex. B at 2:14–26.

The law that Med-West allegedly violated forbids manufacturing a controlled substance through chemical extraction "*[e]xcept as otherwise provided by law*." Health & Safety Code § 11379.6(a) (emphasis added). The MCRSA is just such a law. It authorizes manufacturers such as Med-West to produce concentrated cannabis using extraction. The MCRSA defines a "manufacturer" as:

> [A] person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or *by extraction methods*, or independently by means of chemical synthesis *or by a combination of extraction and chemical synthesis* at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container.

Bus. & Prof. Code § 19300.5(ad) [former § 19300.5(y)] (emphasis added).

The MCRSA became effective on January 1, 2016—27 days before the raid on Med-West. 2015 Cal. Stats. ch. 689 (A.B. 266), § 12.[5] The law applies retroactively to Med-West's conduct *before* 2016. *See People v. Wright* (2006) 40 Cal.4th 81, 94–95 (holding that the Medical Marijuana Program applies retroactively to cases pending at the time of its enactment).

The MCRSA also authorizes medical marijuana manufacturers to operate without licenses until at least January 1, 2018:

> [A] facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter.

Bus. & Prof. Code § 19321(c), 2015 Cal. Stats. ch. 689 (A.B. 266).

[5] Section 12 of the MCRSA provides: "This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015-16 Regular Session are also enacted and become operative." Senate Bill 643 and Assembly Bill 243 were enacted and became effective January 1, 2016. *See* 2015 Cal. Stats. ch. 719 (S.B. 643) & 2015 Cal. Stats. ch. 688 (A.B. 243); *see also* Cal. Const. art. IV, § 8(c)(1) (providing bills generally become effective on January 1, unless they specify otherwise).

As the statute suggests, state licenses will not be issued until 2018. *See* California Bureau of Medical Cannabis Regulation, Frequently Asked Questions, bmcr.ca.gov/about_us/faq.shtml (last visited Jan. 5, 2017) ("Q. If I want to apply for a medical cannabis license issued by the Bureau, what should I do now? A. Be patient. The Bureau is still in the early stages of development and won't be accepting applications for licenses until 2018."). Thus, under the MCRSA, existing medical marijuana businesses may continue operating consistent with local laws. Bus. & Prof. Code § 19321.[6]

The People have never alleged that Med-West was operating in violation of any local laws. On the contrary, James testified that Med-West worked with the San Diego City Council and local agencies to address the fact that no local laws currently exist. Ex. U at 181:22–182:19. Med-West applied for "every permit, every license" available under local law and cooperated with the City Attorney, Business Licensing, Building and Planning, and Development Services. *Id.* at 182:15–19. Prior to the raid, no one from these agencies indicated that anything was wrong with Med-West's operation. *See id.* At the same time, Med-West was supplying city-licensed medical marijuana collectives and using city-licensed testing

[6] Senate Bill 837, which went into effect June 27, 2016, amended § 19321 to require "a completed application and all required documentation and approvals for licensure" before a medical marijuana business can continue operating. This requirement was added six months *after* Med-West was raided in January 2016. At the time it was shut down, therefore, Med-West was legally allowed to operate without a license or pending application.

facilities for its products because local licenses *did* exist for these types of businesses. *Id.* at 180:8–24.

Because "extraction" was not a crime at the time of the raid, as a matter of law there can be no probable cause to believe that Med-West violated the prohibition on "extraction" in § 11379.6.

However, because it applied a now-superseded statute—§ 11379.6—the Respondent Court erroneously found probable cause to believe that Med-West violated § 11379.6 because it used ethanol in its refinement process. *See* Ex. B at 2:15–20. But in the MCRSA, the Legislature specifically foresaw the apparent conflict between the two statutes and authorized the use of "volatile solvents," such as ethanol, for the extraction of concentrated cannabis oil. *See* Bus. & Prof. Code § 19341 (authorizing manufacturers to use both volatile and non-volatile solvents to extract cannabis oil).

Med-West maintains that it never engaged in extraction of any kind, but it could legally have done so, and it could have done so using ethanol or another solvent. Accordingly, the Respondent Court applied the wrong law, analyzed irrelevant facts, and reached a legally untenable conclusion.

B. The People bear the burden of tracing seized money to a drug crime, but the court required third-party testimony *negating* traceability.

Probable cause does not exist to believe that all of the money in the Slatic family's accounts is directly traceable to a crime, even if this Court

assumes there is probable cause to believe that James's business was operating illegally (which, as shown above, is impossible because a new statute made extraction *legal*). The contrary decision below relied on a fundamental misunderstanding about the power to seize property under Health and Safety Code § 11470. First, the court ignored the fact that Detective Carlson's affidavits made no particularized allegations tracing the seized money to the alleged crime, although particularized allegations are essential to establishing probable cause. Second, the court rejected all evidence from the Slatics tracing their money to *other* legitimate sources based on the mistaken idea that third-party testimony is required to negate any connection between money and drugs, when in actuality, the People—not the Petitioners—bore the burden of tracing the money to a crime.

i. The People made no effort to trace the Slatic family's money to the alleged crime of extraction and the court ignored a law that makes such tracing mandatory.

In alleging probable cause, the People made no effort to trace the dollars and cents seized from the Slatics to James's alleged crime of extraction. *See* pp. 19–21 *above*. Nevertheless, the Respondent Court held that all of the Slatics' money can be seized because the court believed there is probable cause connecting the money to "illegal activities" generally, such as "the laundering of funds to avoid detection by those participating in clandestine drug activities." *See* Ex. B at 3:5–6. By so holding, the

Respondent Court ignored a statute that requires the People to trace *specific* money to a *specific* crime.

The money in this case was seized on the theory that it represents forfeitable proceeds under Health and Safety Code § 11470. Ex. J at 13:8–10 & Ex. K at 13:5–7. There are two elements for forfeiture of money under § 11470(f): (1) a crime for which forfeiture is permitted (here, the superseded § 11379.6); and (2) the money is "traceable" to the crime.

The few appellate cases that have addressed this issue require the People to make a prima facie showing for both elements—a violation of law and traceability of the money to that violation. *See People v. $9,632.50 U.S. Currency* (1998) 64 Cal.App.4th 163, 172–74; *$47,050*, 17 Cal.App.4th at 1322–23. These cases make clear that when the government seeks to seize cash, or cash deposits in a bank account, it "must establish some nexus between the seized funds and a narcotics transaction." *$47,050*, 17 Cal.App.4th at 1323 (reversing finding of probable cause to seize cash found alongside cocaine and marijuana). General allegations that property is connected in *some* way to *some* illegal activity never suffice: "Evidence sufficient to support an inference that seized funds are related to *some* illegal activity does not establish even a prima facie case of probable cause absent the demonstration of some link between the cash and a narcotics transaction." *Id.* (emphasis in original).

For example, in *People v. $48,715 U.S. Currency*, the Court of Appeal affirmed a denial of a motion for return of property after reviewing the evidence of the crime and the evidence linking the cash to the crime. 58 Cal.App.4th 1507, 1517–19. Together, the evidence was "sufficient to establish probable cause to believe the currency was subject to forfeiture under section 11470." *Id.* at 1519.

Thus, Section 11470 does not authorize the seizure of all assets belonging to a family based on a drug crime allegedly committed by one family member. Nor does it authorize the seizure of substitute assets up to the value a person may have earned from drug crimes. Instead, the law authorizes the forfeiture of "proceeds traceable to . . . an exchange" involving an illegal controlled substance. Health & Safety Code § 11470(f); *$9,632.50*, 64 Cal.App.4th at 172–74.

The facts of *$9,632.50* illustrate these principles. In that case, the People seized and attempted to forfeit all of the money in a man's bank account after he rented his barn out for use as a methamphetamine laboratory for $8,000. 64 Cal.App.4th at 167. All but $700 in the account at the time of the seizure came from the man's legitimate paychecks and tax refund. *Id.* at 167, 174. The Court of Appeal therefore rejected the forfeiture of $8,932.50 on the grounds that it "would effectively repeal the statutory requirement of tracing" and is "tantamount to saying that persons

accused of dealing drugs should be deprived of the right to own *any* property." *Id.* at 173–74 (emphasis in original).

Because tracing money to a crime is essential, probable cause to seize money has been rejected even when the money is found in close physical proximity to drugs. For example, in *$47,050*, police executed a warrant to search a home for cocaine. 17 Cal.App.4th at 1321. They found cocaine and marijuana, an electronic scale, two guns, and $47,050 in cash. *Id.* The court acknowledged that the security measures on the property (a fence, guard dogs, and guns) and the large amount of cash could reasonably be connected to illegal drug dealing, but still held that probable cause was lacking to believe that the $47,050 could be directly traced to a crime. *Id.* at 1324. The court reasoned that the owner had "offered a well-corroborated explanation as to the *source* of the cash." *Id.* (emphasis in original). And the mere inference that *some* illegal activity was afoot is always insufficient to create probable cause to believe that seized money can ultimately be forfeited. *Id.* at 1323–24.

Indeed, the Court of Appeal in *$9,632.50* rejected the "comingling" theory on which Detective Carlson's allegations rely. *Compare $9,632.50*, 64 Cal.App.4th at 168–74 (holding that probable cause was lacking to seize more than $8,000 comingled in a bank account alleged to contain just $700 in drug proceeds) *with* Ex. K at 12:15–18 (alleging that $149,375

"generated by legitimate non-drug investments" can be seized because it was "comingled" with money allegedly tied to Med-West).

Despite these standards, the Respondent Court held that the transfer of funds between family members is, by itself, "indicative of illegal activities." Ex. B at 3:5. But, of course, innocent people routinely transfer money into the accounts of family members for innocent reasons. *See* Ex. U at 76:18–26 (Detective Carlson admits this).

The court's obligation in this case was to analyze probable cause as to particular deposits and their purported connection to particular crimes. Instead, the court simply rubber-stamped Detective Carlson's allegations that *all* money belonging to the Slatics can be seized because James operated a medical marijuana business and transferred personal money to his family. This Court should reverse because, as shown above, Section 11470 and on-point case law holds that a family does not forfeit its right to own property the moment one family member is suspected of a crime.

ii. The court ignored unrebutted evidence that the Slatic family had non-medical-marijuana sources for their money and faulted them for not presenting third-party testimony.

The Respondent Court not only relieved the People of their burden to trace every dollar to the alleged crime of extraction, it also declined to credit evidence showing that the Slatics' money came from *legitimate* sources. The court rejected this evidence and faulted the Slatics for failing

to call "neutral witnesses" who could affirmatively negate the People's theory of seizure. This requirement of "neutral witnesses" is contrary to precedent.

In its opinion, the court acknowledged that the Slatics had "put on evidence of innocent explanations" for the source of their money, Ex. B at 3:8–9, but rejected those explanations because they were provided by the family and a former business associate of James, which the court deemed "self-serving testimony," *id.* at 3:18–19. The court suggested that only testimony from "neutral witnesses" could *rebut* allegations of probable cause. *See* Ex. B at 3:15–19. In doing so, the court disregarded unrebutted evidence, including documentary evidence, which demonstrated that the $100,693 seized from the Slatics had come from legitimate sources other than James's medical marijuana business.

This unrebutted evidence showed:

- Shortly before the seizure, James deposited a $149,375 check from his ownership in High Quality Organics—a culinary spice company with no connection to marijuana. *See* pp. 21–23 *above*.

- Annette deposited more than $45,000 a year from her job with the U.S. Department of Veterans Affairs. *See* p. 23 *above*.

- Annette received between $1,400 and $2,000 a month in child support payments from her ex-husband. *See* p. 23 *above*.

- During the period covered by Detective Carlson's investigation, James had transferred around $200,000 to Annette for home renovations. *See* p. 24 *above*.

- Annette regularly deposited money from her VA paycheck into Lily and Penny's accounts for college expenses. *See* pp. 24–25 *above*.

In addition to being unrebutted, much of this evidence was corroborated by Detective Carlson's testimony. *See* pp. 21–25 *above*.

No matter what this evidence showed, however, the court's analysis erroneously placed the burden on the Slatics to *negate* any connection between their money and the alleged crime of extraction when, as shown above, that burden was squarely on the People. *See, e.g.*, *$47,050*, 17 Cal.App.4th at 1322 (noting "the People must make a minimum prima facie showing of probable cause to believe the property is subject to forfeiture").

For example, in *$9,632.50*, the property owner admitted to police that he rented his barn for use as a methamphetamine laboratory in exchange for $8,000 in cash. 64 Cal.App.4th at 166. Later, the property owner and his family testified that he never received the $8,000. *Id.* at 167. In these circumstances, the Court of Appeal held that the trial court could reject the family's testimony as incredible. *Id.* at 175. The Court of Appeal nevertheless reversed the forfeiture of the money and ordered return of all but $700. *Id.* In doing so, the court specifically rejected the People's theory that "proceeds traceable to an exchange for a controlled substance include any assets the claimant would not possess had he not been able to

use drug money for routine financial needs." *Id.* at 172–73. Instead, the court engaged in an exhaustive tracing of the owner's legitimate sources of money, and held as a matter of law that the People had failed to establish traceability as to all but $700. *Id.* at 174. The burden in *$9,632.50* was placed where it belongs—on the People—despite the absence of neutral witnesses. *See id.* at 172. But in this case, an invented burden of calling neutral witnesses was erroneously placed on the Slatics.

Indeed, if the ruling in this case represents the law, the People could take everything a family owns based on a showing that *any* property owned by *any* family member is connected to *any* crime. The family would then be required to call "neutral witnesses" to prove the *absence* of a connection between their property and a crime. As shown above, this is not the standard under Section 11470. *See $9,632.50*, 64 Cal.App.4th at 172 (holding that "nothing in the California forfeiture scheme or the cases interpreting it suggests the Legislature intended *untainted* assets (whether belonging to a third person or person involved in drug activity) to be subject to forfeiture simply because they were in proximity with forfeitable assets") (emphasis in original). This is particularly true where, as here, none of the family members have been charged with (let alone convicted of) a crime and where, as here, none of the family members could possibly be convicted because the alleged criminal activity is not actually criminal.

* * *

This Court should take this case and decide what proof is needed before the People can seize property based on an alleged connection to a crime. This case starkly illustrates why this Court's intervention is needed. Here, no crime has been charged (let alone proven) and yet, the Respondent Court has allowed the seizure of virtually every penny belonging to James, his wife, and her two daughters for more than 11 months based on the notion that *some* criminal activity may be afoot whenever family members transfer money to one another. This ruling cannot be squared with the traceability requirements of Section 11470(f). And, if it is allowed to become the law, no family's property will be entirely safe from seizure.

CONCLUSION

For these reasons, this Court should grant the petition and issue a writ of mandate directing the Respondent Court to grant Petitioners' motion for return of property. Alternatively, this Court should remand for reconsideration under the correct legal standard.

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.485(a) and 8.204(b)–(c) of the California Rules of Court, undersigned counsel hereby certifies that the above Petition for Writ of Mandate and Memorandum of Points and Authorities were created using 13-point Times New Roman type, including footnotes, and they contain 8,159 words total. Counsel has relied on the computer program used to prepare this brief for the word count.

Dated: January 9, 2017

Victor Manuel Torres
Attorney for Petitioners

PROOF OF SERVICE BY HAND DELIVERY

I, Roxane Pada, am over the age of 18 years and am not a party in this case. I am employed in Santa Clara County, California, by Steptoe & Johnson LLP and my business address is 1891 Page Mill Road, Suite 200, Palo Alto, CA 94304. My email address is rpada@steptoe.com.

On January 9, 2017, I delivered the above document, ***Petition for Writ of Mandate*** for service on this date on the below via registered process servers as required by Rule 8.486(e) and 8.25(a) of the California Rules of Court. I instructed the process server to serve a true and correct copy of the above document and all exhibits by hand-delivering a copy thereof to the following:

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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed this 09 day of January, 2017, at Palo Alto, California.

Roxane Pada

Roxane Pada, Paralegal