

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION _____**

**BRENDON D. WOODS,
ERIK J. CRUZ,**

No.

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA, COUNTY OF
ALAMEDA,

Respondent and Real Party in
Interest.

_____ /

**CERTIFICATION OF COMPLIANCE, WORD COUNT
AND APPLICATION TO FILE LONGER BRIEF**

TO: THE HONORABLE PRESIDING JUDGE, FIRST APPELLATE
DISTRICT:

This Petition is proportionately spaced in Times New Roman 13-point type; the lines of text are one-and-one-half spaced, except for headings and footnotes, which are single-spaced; the right and left margins are one-and-one-half inches and the top and bottom margins are one inch.

I hereby certify that the form of the Petition for Original Writ of Mandate is in compliance with the requirements of Rules 8.932(b)(6) of the California Rules of Court.

Pursuant to Rule 8.883, the undersigned counsel for Petitioner certifies that, according to the word processing system used to prepare the Petition for Writ of Mandate (Microsoft Word 2013), the total word count is words,

excluding the Cover Page, Subject Index, Table of Authorities, Verification, Certification of Compliance, and Proof of Service.

Because the word count exceeds 6800 words, petitioner respectfully requests leave to file a longer brief pursuant to Rule 8.883(b)(4) on the ground that the issues raised in this petition are complex and of far-reaching importance for the courts and criminal justice litigants in Alameda County.

DATED: April 10, 2017

Respectfully Submitted,

BRENDON D. WOODS
PUBLIC DEFENDER

Charles M. Denton
Assistant Public Defender
California State Bar No.107720

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**PETITION FOR ORIGINAL WRIT OF MANDATE AND
ACCOMPANYING MEMORANDUM OF POINTS AND AUTHORITIES**

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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION _____**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Appellate Division Case Number: _____

Case Name: **Brendon D. Woods, Public Defender of Alameda County and Eric J. Cruz v. Alameda County Superior Court; People of the State of California, Real Party in Interest.**

Please check the applicable box:

There are no interested entities or persons to list in this Certificate per Rule 8.208 of the California Rules of Court.

Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1. People of the State of California	Real Party in Interest in petitioner Cruz's underlying criminal case
2. Brendon D. Woods	Petitioner
3. Eric J. Cruz	Petitioner

Please attach additional sheets with Entity or Person information if necessary.

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**ORIGINAL PETITION
FOR WRIT OF MANDATE**

INTRODUCTION:

“The rollout of the Odyssey case management system has placed a tremendous strain upon the court’s staff. We have worked very hard to try to work around its systemic problems and make it work efficiently. But without a significant interface redesign to allow true real-time data entry, or without a significant influx in funding that would allow us to hire more staff, we will be unable to provide a complete and fully accurate record of proceedings.”

Declaration of Tracy R. Wellenkamp,
Division Director of Criminal Operations,
Alameda County Superior Court

A.

This is an original writ petition seeking to enforce the Alameda County Superior Court's constitutional and statutory duty to completely and accurately record its proceedings and preserve that record in the same reliable fashion that it did before the introduction of the *Odyssey* case management system [hereafter *Odyssey*] on August 1, 2016.

Last August, the Alameda County Superior Court rolled-out a new case-management system that has caused widespread delays in entering court orders, created thousands of incomplete and/or inaccurate "paperless" court files and caused scores of Public Defender clients to: □ suffer unlawful arrests on recalled bench warrants and stricken probation conditions; □ serve additional and unjustifiable time in custody as a result of calendaring errors; □ be designated as sex offenders because of a software error that automatically converted every drug registration [Health & Safety Code section 11590] into Penal Code section 290 sex registration requirement; or □ be designated a felons because their misdemeanor conviction was incorrectly "coded" as a felony.

These delays and errors violate Government Code § 69844's express requirement that superior court clerks enter judicial orders "forthwith," as well as the constitutional right to a complete and accurate record on appeal and the Fourth Amendment prohibition upon unlawful arrests and illegal searches.

The court's staff concedes that, without additional staffing or a major software overhaul, it will not be able to fix the system's problems. (See **Exhibit D**, pp. 4-5.) The factual record to which the parties have stipulated supports that

assessment. The Presiding Judge of the Court consolidated nearly 2200 cases raising this issue for hearing and then denied relief.

Petitioners therefore have filed original writ petition seeking to enforce the Superior Court’s constitutional and statutory duties to completely and accurately record its proceedings and preserve that record in the same reliable fashion that it did before the introduction of the Odyssey case management system [hereafter *Odyssey*] on August 1, 2016.

B.

The circumstances that gave rise to this petition began this past August with the rollout of *Odyssey*, the court’s appropriately titled case management system. Despite petitioner Brendon D. Woods’ warning that the system was not ready to go online, attorneys in the public defender office worked collaboratively with the court to implement the new case management system and to identify, correct and work around its many shortcomings.

However, after 90 days, it had become clear that the new system was a disaster. Every day, across the county, dozens of litigants were being denied their day in court because of *Odyssey*’s inability to properly interface with the county’s other case management systems. In custody clients were not brought to court, and out of custody defendants arrived only to find that their court date had never been inputted into the system. Even the district attorney acknowledged that *Odyssey* errors were causing defendants a variety of “injustices.” (See **Exhibit B**, pp. 18-19.)

Petitioner Eric Cruz’s case offers a snapshot of the problem. He made nine court appearances before October 20, 2016,[□] but, even today, not a single one has been uploaded into the **Consolidated Records Information Management System** [“CRIMS”] used by the public defender, district attorney and sheriff to determine which files and which criminal defendants to bring to court each day.

[□] The date his *Motion to Compel a Complete and Accurate record of Court Proceedings* [hereafter “motion to compel” was heard. (See **Exhibit E**.)

Those who were lucky enough to get their cases could expect to have the disposition of their matters delayed by a variety of systemic errors that ranged from the failure to refer the case to the probation department [or other criminal justice partners] to the court’s own inability to access progress reports, filings and even the judge’s notes from the last appearance. Even now, after more than seven months, calendar court sessions are still punctuated with missing files, missing defendants and a stream of apologies and complaints about *Odyssey’s* shortcomings. Many of the comments come from the bench – which contributes to an appearance of unease and disorganization and causes lawyers, litigants, witnesses and spectators to question the reliability of the court’s recordkeeping.

Unfortunately, this is not the worst of it. Nearly every week, petitioner Brendon D. Woods, the Alameda County Public Defender, and his staff discover another client who has been mistakenly arrested on a recalled bench warrant or whose probation condition – like a curfew – was erroneously added. For example, when petitioner Eric Cruz posted bail, the change in his custody status was not properly exported into the CRIMS system which still shows him as having “no bail in this case.” This means that if he is contacted by the police, he will likely be taken into custody on a case for which he has posted bail.

Equally disturbing is the fact that there are more than 100 sentenced state prisoners at the Santa Rita county jail who have not been transported to San Quentin because their commitment orders are backlogged and have not been processed. In addition to costing the county thousands of dollars, many of these inmates are losing the opportunity to accrue additional conduct credits in prison under the various “Milestone” programs.

Although one of *Odyssey’s* chief selling points was that entire files would be digitized and available online, the reality is that there is a backlog of more than 12,000 files not yet uploaded into the system. That number grows by 200–300 every day and with it the danger that filings and minute orders will be

lost or erroneously catalogued in the process. Because of this backlog, many still active files have not been updated for months. A judge or court clerk who wants to check on a future court date has only slightly better than a 50–50 chance of finding it in the system, and the lawyer who needs a minute order, a filing, or a charging document for a motion, writ or appeal is as likely as not to find it missing from the “paperless” file.[□]

When it became clear that *Odyssey’s* problems were systemic, and that the court lacked the staffing to chase them all down and correct them, petitioner Brendon D. Woods began filing motions to compel an accurate and contemporaneous record of court proceedings in every public defender case in every court across the county.[□] The gravamen of the motion was a request to record the court’s proceedings in a complete and accurate fashion and export that information within 24 hours to the CRIMS database so that it could be accessed by other criminal justice system partners and used to – among other things – prepare their daily calendars.

On January 31, 2017, approximately 2200 of these motions came on for hearing in Department 1 of the Alameda County Superior Court. The Public Defender filed declarations from petitioner Woods, Assistant Public Defenders Charles M. Denton, Yuseef Elias, and Kathleen Ryals and the court’s Division Director of Criminal Operations, Tracy R. Wellenkamp in support of the

[□] By way of example, in petitioner Eric Cruz’s “paperless” *Odyssey* file, [□] there is no minute order or other documentation from the arraignment date, [□] two pages are missing from the information, [□] there is no record of the surety bond that he posted, [□] there is a mysterious “fingerprint form” that cannot be downloaded, and [□] perhaps most ironically, there is no indication in the minutes that his *Motion to Compel an Accurate and Contemporaneous Record of Court Proceedings* was ever on calendar.

[□] A copy of the motion to compel filed in petitioner Cruz’s case is lodged as **Exhibit E**.

motions. The declarations from petitioner Woods and the other public defenders recounted 52 cases in which public defender clients suffered serious harm as a result of *Odyssey's* shortcomings. Twenty one [21] of those cases involved public defender clients who were unlawfully arrested on recalled bench warrants or stricken probation conditions -- an average of 3-4 each month. Woods' declarations explained that this was "only a snapshot of. . . the myriad problems that have been brought to our attention since the implementation of *Odyssey*." (**Exhibit E**, *Declaration of Brendon D. Woods*, p. 2; **Exhibit C**, p. 2.)

Ms. Wellenkamp, who supervises the clerks in the criminal division, acknowledged that, from the beginning, it was "clear that the *Odyssey* system was not an efficient case management tool for a court our size" and that without a software fix or additional staffing, the court "*will be unable to provide a complete contemporaneous and fully accurate record of [court] proceedings.*" (See **Exhibit D**, pp. 2, 4-5.)[□]

The parties stipulated that each of these declarations was true and accurate and could serve as the undisputed factual basis for the hearing and "*any subsequent writ petition.*" (See **Exhibit B**, p. 3; italics added.)

On March 3, 2017, respondent issued a written order denying the motions. (**Exhibit T**.) The court's order was a narrow one. It accepted the truth of the allegations contained in the declarations and acknowledged many of the problems caused by *Odyssey's* rollout. But it rejected the remedy sought by the public defender and ruled that court clerks were not legally bound to submit written minute orders [or export to other databases the information contained in those orders] within 24 hours.

This original writ petition followed.

PETITION:

[□] Court staffers that the public defenders spoke to echoed this sentiment. (See **Exhibits F** (p. 6), **G** (p. 7) and **H** (p. 5.)

Petitioners represent by this verified petition that:

I.

Petitioner Brendon D. Woods is the Public Defender of Alameda County. 11. The software and interface errors caused by the *Odyssey* case management system directly affect him and the 100 lawyers under his supervision. As a result of these errors, every day public defenders must communicate with court clerks, courtroom bailiffs, the Sheriff's Records Department and IT personnel in order to prepare their calendars and to identify and rectify the problems caused by *Odyssey* so that their clients are not harmed further. The inordinate amount of time and effort spent doing this takes these lawyers away from their primary tasks of investigation, communicating with their clients, and preparing their cases for litigation and/or disposition.

Petitioner Eric Cruz is a criminal defendant charged in Alameda County Superior Court with felony violations of Vehicle Code sections 23152(a) and 23152(b) and a misdemeanor violation of Vehicle Code section 14601.5. (A true and correct copy of the information is lodged with the clerk of this Court as **Exhibit A** and incorporated by reference herein.) He is also directly affected by *Odyssey's* inability to accurately document the court proceedings in his case. Although he made only five court appearances between July 1, 2016 and January 31, 2017, his file contains more than 10 *Odyssey* generated errors or omissions.

Both petitioners are "beneficially interested" in correcting *Odyssey's* systemic errors and are therefore entitled to seek mandamus relief. In addition, they have "public interest standing" to enforce the statutes requiring court clerks to completely and accurately chronicle court proceedings, the court's constitutional duty to prepare and deliver a complete and accurate appellate record, and its responsibility under the Fourth Amendment to keep its databases clear of invalid warrants and probation conditions. (See generally *Save the*

Plastic Bag Coal. v. City of Manhattan Beach (2011) 52 Cal.4th 155, 165–66; see also *Green v. Obledo* (1981) 29 Cal.3d 126, 144–45; *Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513; *Common Cause v. Bd. of Supervisors* (1992) 49 Cal.3d 432, 432–37.) And, of course, mandamus lies to require the superior court to obey the Government Code and the state and federal constitutions. (*In re Head* (1986) 42 Cal.3d 223, 231 fn.7 [“Because actions to enforce statutory and constitutional rights of prisoners are brought to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, there is no question but that mandamus lies”]; see also *Jenkins v. Knight* (1956) 46 Cal.2d 220 [mandamus proper to compel the governor to comply with the constitution].)

II.

Petitioners respectfully request that the court invoke its original jurisdiction pursuant to article VI, section 10 of the California Constitution and Rule 8.468 of the California Rules of Court. This court has done so in the past when the petition challenged – as this one does – judicial policies and practices in which the superior court has a pecuniary interest. (*Serv. Employees International Union v. Superior Court* (1982) 137 Cal.App.3d 320, 322; see also *Hogoboom v. Superior Court* (1957) 51 Cal.App.4th 653, 656, fn. 1; *American Federation of State etc. Employees v. County of San Diego* (1992) 11 Cal.App.4th 506, 513.) Petitioners believe that exercise of this discretionary power is appropriate in this case because:

1. The issue has far-reaching implications for litigants in Alameda County criminal courts;
2. Prompt resolution is necessary to insure that the proceedings in Alameda County criminal cases are recorded and preserved in a complete and accurate manner; and,

3. The issue is purely one of law, suitable for resolution by this court in the first instance. The parties have stipulated to the facts underlying the petition.

III.

The other parties directly affected by this petition are respondent, the Superior Court of the State of California for the County of Alameda, and the District Attorney of Alameda County, who has also been adversely affected by *Odyssey's* shortcomings and is the real party in interest in petitioner Cruz's underlying criminal case.

IV.

All the proceedings about which this petition is concerned have occurred within the territorial jurisdiction of respondent and of the Court of Appeal of the State of California for the First Appellate District.

V.

The averments in this petition are taken from the declarations filed in connection with Motions to "*Compel An Accurate And Contemporaneous Record Of Court Proceedings*" filed by petitioner Woods on behalf of petitioner Cruz and approximately 2200 other public defender clients. Those motions were heard by respondent superior court on January 31, 2017. At that hearing, the parties stipulated that the allegations contained in the declarations were true and accurate and could serve as the factual basis for "*any subsequent writ.*" (A true and correct copy of the reporter's transcript of the hearing on January 31, 2017 [hereafter R.T. I] is lodged with the clerk of this Court as **Exhibit B**, and incorporated by reference herein. See pp. 1-3.)

VI.

For decades, Alameda County court clerks recorded the court's proceedings on written minute orders. Those minutes, along with other court filings, orders, subpoenaed records, transcripts and other miscellaneous

information were kept in a physical file and stored in the clerk's office. Calendaring information and other pertinent data from the file was entered into CORPUS – and later the **C**onsolidated **R**ecords **I**nformation **M**anagement System [popularly known as “CRIMS”] – where it could be accessed by the district attorney, public defender, probation, sheriff and other law enforcement agencies. This not only kept police updated on the status of warrants and probation conditions, it also synchronized the court's calendars with those of the public defender, district attorney and sheriff. This ensured that the right files and the right in custody defendants were brought to court each day. Although the system was subject to human error, it did not suffer from systemic software or interface problems. (A true and correct copy of the declaration of *Youseef Elias* filed on January 13, 2017 is lodged with the clerk of this Court as **Exhibit C** and incorporated by reference herein. See pp. 1-2)

In 2016, the court purchased a “paperless” case management system called *Odyssey*. According to Tracy R. Wellenkamp, the Division Director of Criminal Operations for the court, initial testing of the new system suggested that it would be cumbersome and difficult to use. The generation of a simple minute order, for example, required the use of multiple tabs and a daunting number of keystrokes, a data entry process that was complicated, error-prone and time consuming. The system also contained a variety of coding and software problems that suggested – at least in calendar courts [*where the bulk of the court's criminal work is done*] – “that it was not an efficient case management tool. . . for [the court's] needs.” (A true and correct copy of the declaration of *Tracy R. Wellenkamp* filed on January 31, 2017 is lodged with the clerk of this Court as **Exhibit D** and incorporated by reference herein. See p. 2.)

VII.

One of *Odyssey's* chief selling points was the promise that entire files could be digitized and available online. But, according to Wellenkamp, the

digitization process “is extremely time consuming and involves nearly 50 separate steps.” (**Exhibit D**, p. 4.) As a result, thousands of files were shipped to Los Angeles for scanning. Despite the court staff’s best efforts, there is currently a backlog of more than 12,000 files that have not been uploaded into the system, and the number grows by 200-300 files every day. Among the files that have been digitized, an unacceptable number contain incomplete or incorrect information. (A true and correct copy of the declaration of *Brendon D. Woods*, attached to petitioner Eric Cruz’s *Motion to Compel An Accurate And Contemporaneous Record Of Court Proceedings* is lodged with the clerk of this Court as **Exhibit E** and incorporated by reference herein. See p. 10.)

VIII.

Although the system’s vendor assured respondent that *Odyssey* would interface smoothly with the CRIMS case management system, the interface has been anything but smooth and many of the court dates inputted into *Odyssey* have not been accurately or completely exported to CRIMS. As a result, in custody clients are often not brought to court and out of custody defendants arrive only to find that their cases did not make the calendar. (True and correct copies of the declarations of Charles M. Denton, Kathleen Ryals and a supplemental declaration from Brendon D. Woods are lodged with the clerk of this Court as **Exhibit F** [Denton], **G** [Ryals], and **H** [Woods], respectively and incorporated by reference herein.)

IX.

Shortly after *Odyssey*’s rollout on August 1, 2016, it became clear that the system did not work as advertised. As Wellenkamp’s declaration acknowledges, “Soon after the initial deployment, it became clear that the *Odyssey* system was not an efficient case management tool for a court our size, with the volume of criminal cases that we process on a daily basis.” (**Exhibit D**, p. 2.)

X.

Within the first month of the rollout, petitioner Woods began receiving complaints from his staff and from public defender clients. (**Exhibit E.**) They identified a number of systemic errors that began appearing in unacceptable numbers. They included the following:

1. *Failure to remove warrants from the system*: Court staff identified a “significant number of cases” in which a warrant the court recalled was not removed from the system. (**Exhibit D**, p. 3.) The declarations of petitioner Woods, Youseef Elias and Kathy Ryals catalogued 19 instances in which this occurred. (See **Exhibits C, E, G.**) In most of these cases, the defendant was arrested on the recalled warrant and forced to remain in custody while his lawyer added the case back on the calendar and corrected the error. In the public defender cases, for example, the clients served 54 additional in jail because of this coding error.

In one such case (Docket 16-CR-007979), the court recalled a bench warrant, released the defendant on his own recognizance and ordered him to get “booked.” Due to an Odyssey inputting error, none of these orders was uploaded into the system. As a result, when the defendant drove to the Berkeley Police Department to get booked, he was taken into custody on the recalled bench warrant. As a result of these errors, he spent two (2) days in custody and had his car towed.

According to Wellenkamp, the source of these errors is *Odyssey’s* unwieldy data entry system. “Under the previous criminal data management system,” she wrote, “the process for recalling a warrant was relatively straightforward. The Clerk would call up the appropriate screen, input the proper “event code,” strike out the warrant amount, and vacate the warrant control date. Under *Odyssey* the process is much

more cumbersome and time consuming. The clerk is required to navigate to at least two different screens. One event code has to be entered on a particular tab, while the recall date and warrant amount must be input on a different tab. Unlike the CORPUS system—in which just the act of entering in the event code would have the effect of recalling the warrant—in Odyssey the warrant will not be recalled unless the clerk moves between these tabs and completes all of the requisite tasks. Thus, if a clerk forgets or, relying on prior CORPUS training, only inputs the event code, the warrant will not be recalled. This has actually occurred in a significant number of cases.” (**Exhibit D**, pp. 2-3.)

2. *Failure to provide the parties and the public with accurate calendars:* As a result of the “lack of a calendar sort function” (**Exhibit D**, p. 4) and what is variously described as exporting or interface problems, the calendars generated by *Odyssey* are persistently incomplete, and, at least in the calendar courts, regularly conflict with the calendars generated by the district attorney, public defender and sheriff. This creates a variety of logistical problems including in custody defendants not being brought to court for their appearance and out of custody litigants who arrive only to find that their court date was not properly inputted into the system. As a result of these errors, cases often have to be continued and, in some cases, defendants have been forced to spend additional and unjustifiable time in custody. (See **Exhibits C, D, E &G.**)
3. *Failure to update probation status:* One result of *Odyssey*’s cumbersome and error-prone data entry system is that its “paperless” files often fail to show that a defendant’s probation has either expired or been terminated. (See **Exhibits C, E, G.**) To give but one example, on December 27, 2016, the court terminated the defendant’s probation in Wiley W. Manuel Docket 453376A. Unfortunately, due to an *Odyssey* interface error, the

termination order was never exported to the CRIMS system which continued to show him active to probation with a stay-away order from the “*Safeway [on] Redwood Road, Castro Valley.*” The defendant was arrested twice for violation of this terminated probation condition, once for using the store’s bathroom and another for standing under its awning to get out of the rain. Both times, he told the police that he had nowhere else to go. He served a total of 14 days in custody as a result of this inputting error, an error that was not corrected until sometime after February 24, 2017. (**Exhibit C**, pp. 2-3.)

4. *Failure to correctly input or update probation conditions*; As a result of the same data entry problems, the “paperless” file often shows the defendant with probation conditions that the court never ordered. Reliance by the police upon such erroneous information has led to unlawful arrests. (See **Exhibit E, C, G.**) For example, in Rene C. Davidson Docket 177789, the court explicitly deleted a curfew condition from defendant’s probationary terms. Unfortunately, that order was never exported to CRIMS, and, as a result, the defendant was detained multiple times for curfew violations. (**Exhibit E**, *Declaration of Brendon D. Woods*, p. 4.)
5. *Failure to properly code registration requirements*: As a result of a coding error, *Odyssey* automatically converted *all* drug registrations [Health & Safety Code section 11590] into Penal Code section 290 sex registration conditions. This software error was not fixed until the end of October. (See R.T. I, 5; See **Exhibits C, E, G.**)
6. *Failure to properly code convictions*: Due to what Division Director Tracy Wellenkamp calls “conversion errors,” *Odyssey* often lists a defendant’s misdemeanor conviction as a felony. (**Exhibit D**, p. 3. See also **Exhibits E, C, G.**) Hayward Hall of Justice Docket 453578 is

illustrative. In that case, the defendant plead no contest to misdemeanor violations of Vehicle Code sections 2800.2 and 23152(a) on December 18, 2013. Due to an apparent Odyssey inputting error, his “paperless” file still categorizes his case as a felony. The error is compounded by the absence of the minute order, transcript or plea form from the file.

(**Exhibit G**, p. 5.) Because felony probations are typically two years longer than misdemeanor probations, reliance by the police upon such erroneous information can lead to unlawful probation searches.

7. *Failure to completely and accurately record court proceedings*: In an unacceptable number of cases, the “paperless” *Odyssey* file fails to record critical court proceedings, including dismissals. The source of these errors is typically the time-consuming and error-prone data entry system. In some cases, notes in the “paperless” file are inaccurate, while in others, minute orders have not been uploaded and it is impossible to reconstruct what occurred in court because the transcript is also missing. (See **Exhibits F, C, E, G**.) The declaration of Kathleen Ryals catalogues two illustrative examples. In one, Hayward Hall of Justice Docket #467632, the defendant “made two dozen court appearances” between February and July 2016 for which “there is not a single minute order attached to his paperless file and no docket entries after May 10, 2016.” (**Exhibit G**, p. 5.) In docket #453578, there is likewise “not a single minute order or any other filing for the 17 court appearances that defendant made between December 12, 2013 and July 10, 2016.” (**Exhibit G**, p. 5.)
8. *Failure to properly record referrals*: *Odyssey*’s error-plagued data entry system often fails to record referrals to probation, treatment facilities or collaborative courts. As a result, clients regularly show up at outside agencies who have no idea why they are there, probation reports do not

get timely prepared and court files are not routed to the appropriate courtroom. (See **Exhibit E, C.**) In one such case [Wiley Manuel Docket 16-CR-011078], the defendant was released from custody on October 20, 2016 and ordered to appear in “drug court” on October 24th. Although the minute order from October 20th was uploaded to *Odyssey*, the October 24th court date was not. As a result, the defendant was not brought to court on the 24th and was forced to spend an additional two days in custody.

9. *Failure to properly catalog court filings:* Trying to maintain a “paperless” file system with a cumbersome error-plagued data entry process has strained the court’s resources (see **Exhibit D**, p. 4), and, as a result, motions, progress reports, letters, transcripts, subpoenaed records and other court filings are often lost or misplaced. Many files are missing critical documents and some even contain documents from entirely different cases. (See **Exhibit E, C, F, G.**)
10. *Failure to timely serve state prison commitment orders:* Because of staffing problems caused by *Odyssey*’s data entry system, court staff fell behind in the preparation of state prison commitment orders and abstracts of judgment. At the last count there were more than 100 sentenced state prisoners at Santa Rita county jail who had not been transported to San Quentin because of this backlog. (See **Exhibit E**. R.T. I, 18.) The defendant in Hayward Hall of Justice Docket 16-CR-002109 is representative of this problem. He was sentenced to state prison on July 6, 2016. As a result of delays caused by *Odyssey*’s cumbersome data entry process, his abstract of judgment was not filed until December 15, 2016. On December 22, 2016, he appeared in Department 513 and reported that he was still at Santa Rita jail awaiting transport to prison. As of January 10, 2017, he was still there.

11. Failure to properly designate judicial officers: As a result of a coding error, *Odyssey* “paperless” files frequently list the wrong judge. This typically occurs when bench officers switch departments. The system’s software automatically substitutes the new judge’s name into every docket entry in every case heard in that department, including those that occurred before the switch. (R.T. I, 13; See also **Exhibits D** and **E**.)

XI.

Petitioner Eric Cruz’s case offers a snapshot of the software problems that Wellenkamp and public defenders were seeing in courts across the county on an everyday basis.

1. On July 1, 2016, following a preliminary hearing, he was held to answer for felony violations of driving under the influence of alcohol (Vehicle Code sections 23152(a), and 23152(b)) and a misdemeanor violation of driving on a suspended license (Vehicle Code section 14601.5) alleged to have occurred on or about June 17, 2016. An enhancement for “excessive blood alcohol/refusal” was also found. The matter was continued for arraignment to July 15, 2016. (A true and correct copy of the holding order is lodged with the clerk of this Court as **Exhibit I** and incorporated by reference herein.)

Petitioner’s “paperless” *Odyssey* file erroneously cites the date of the holding order as July 14, 2016, and, as a result of an inputting or exporting error, CRIMS misstates the date as July 12, 2016. (A true and correct screen shot of petitioner’s “paperless” *Odyssey* file is lodged with the clerk of this Court as **Exhibit J** and is incorporated by reference herein. A true and correct copy of the CRIMS printout in petitioner Eric Cruz’s case is lodged with the clerk of this Court as **Exhibit K** and incorporated by reference herein.) More than eight months later, the

transcript of the preliminary hearing has still not been uploaded into the “paperless” file.

2. An information filed July 14, 2016 recited the same charges and alleged three prior misdemeanor convictions for violations of Vehicle Code sections 23152(b) [2015], 23152(a) [2011] and 23103.5 [2010]. (**Exhibit A.**) Petitioner’s “paperless” *Odyssey* file erroneously denominates the information as a “complaint.” (See **Exhibit J.**) Due to a recurring software error, the information cannot be downloaded, and the document that is displayed onscreen is missing two pages. (A true and correct copy of the “onscreen” version of the information is lodged with the clerk of this Court as **Exhibit L** and incorporated by reference herein.)
3. According to CRIMS, petitioner was arraigned on the information on July 15, 2016. (**Exhibit K.**) His public defender file reflects that he appeared out of custody in Department 11 with deputy public defender Brian Amaya, plead not guilty and waived time for trial. According to the file notes, the court continued his case to August 25, 2016 for “dispo and set.”

The *Odyssey* “paperless” file contains no indication that petitioner was ever arraigned. (See **Exhibit J.**) There is no minute order or transcript in the “paperless” file. The only entry for July 15, 2016 suggests that a “fingerprint form [was] filed.” Unfortunately, due to a recurring software error, that form cannot be downloaded.

4. Petitioner returned to Department 11 on August 25, 2016. His matter was set for a Penal Code section 995 motion on October 14th and a further “dispo and set” [pretrial] on October 20, 2016. (A true and correct copy of the minute order for August 25, 2016 is lodged with the clerk of this Court as **Exhibit M** and incorporated by reference herein.)

There are at least three *Odyssey* errors or omissions associated with this court date. The first is that this court date was never exported from *Odyssey* to the CRIMS system. (See **Exhibit K.**) The second is that, although petitioner Cruz posted bail and was out of custody, the surety bond filed by the bail bondsman is missing from his “paperless” file. (See **Exhibit J.** A true and correct copy of the bail bond and the sheriff’s Bail Information Sheet is lodged with the clerk of this Court as **Exhibit N** and incorporated by reference herein.) Moreover, petitioner’s CRIMS printout was not updated and still showed him as having “*no bail on this case.*” (**Exhibit K.**) In other words, despite the fact that he posted bail, he would likely be taken into custody if he came into contact with police.

5. On September 30, 2016, petitioner filed a “*Memorandum of Points And Authorities In Support of Motion Under Penal Code Section 995.*” (A true and correct copy of this memorandum is lodged with the clerk of this Court as **Exhibit O** and incorporated by reference herein.)

Although the file stamp on the motion confirms that the clerk received it on September 30th, the “paperless” file erroneously lists the filing date as October 3, 2016 [*three days after the filing deadline*]. (**Exhibit J.**)

6. On October 14, 2016, petitioner’s motion to dismiss pursuant to Penal Code section 995 was heard and denied by Judge Rolefson and Department 10. The case was then continued to October 20, 2016 in Department 11 for further “dispo and set.” (A true and correct copy of the minute order for October 14, 2016 is lodged with the clerk of this Court as **Exhibit P** and incorporated by reference herein.)

Odyssey’s “paperless” file states – among other things – that this hearing was cancelled due to “clerical error.” (See **Exhibit J.**) As a result

of an interface error, this court date was never exported to the CRIMS system. (**Exhibit K.**)

7. Petitioner returned to Department 11 on October 20, 2016. The matter was continued in Department 11 until November 17, 2016 for further “dispo and set.” (A true and correct copy of the minute order for October 20, 2016 is lodged with the clerk of this Court as **Exhibit Q** and incorporated by reference herein.) Unfortunately, due to yet another *Odyssey* interface error, this court date was also never exported to the CRIMS system, and, as a result, did not show up on either the public defender’s or district attorney’s calendars. (**Exhibit K.**)

XII.

Despite their growing concerns, petitioner Woods and his staff worked collaboratively with the court to identify, correct and work around *Odyssey*’s many shortcomings. Woods -- who objected to *Odyssey* August rollout -- sent three letters to respondent explaining how the new case management system’s shortcomings were impeding the Public Defender’s ability to effectively represent clients. (True and correct copies of these letters are lodged with the clerk of this Court collectively as **Exhibit R** and incorporated by reference herein.)

However, after 90 days, it was clear that the problems were systemic, and the court lacked the staffing to chase them all down and the software to correct them.

Beginning November 16, 2016, Woods began filing motions to “*Compel An Accurate And Contemporaneous Record Of Court Proceedings*” in every public defender case in every court across the county. The motion generally sought “*an order directing the Court to do what it is statutorily and constitutionally required to do, which is to record the [court’s] proceedings in a complete fashion and then prepare and maintain a permanent record of that.*”

(A true and correct copy of the reporter’s transcript of the November 17, 2016 hearing [hereafter R.T. II] is lodged with the clerk of this Court as **Exhibit S**, and is incorporated by this reference. See p. 1.) In particular, Woods asked the court to return to its pre-*Odyssey* timetable of uploading minute orders and exporting the information contained therein to CRIMS within 24 hours or by the end of the day if the order affected the “defendant’s custodial status.” (**Exhibit E**, pp. 1-2.)

Attached to the motion was a declaration from Woods documenting 25 incidents in which public defender clients were forced to serve additional time in custody as a result of *Odyssey* errors. Woods noted that these incidents provided “only a snapshot of. . . the myriad problems that have been brought to our attention since the implementation of *Odyssey*.” (**Exhibit E**, *Declaration of Brendon D. Woods*, p. 2. See also **Exhibit C**, p. 2. See also R.T. I, 4-5.)

XIII.

The motion in petitioner Eric Cruz’s case initially came on calendar on November 17, 2016. Respondent accepted Woods’ declaration as accurate, adding “*the Court does not need any supplemental information. I am willing to take the declaration at face value. I don’t know if there is necessarily a factual disagreement with what has been placed in there. . . . In the interest of full candor, there’s probably instances that the Court, having read, can take judicial notice of because I was sitting right here when it happened, so I don’t need any additional information on that.*” (R.T. II, 3.)

However, the court ultimately declined to rule on the merits of the motion, deferring the decision to the presiding judge and continuing the matter to January 17, 2017.

Perhaps not surprisingly, the minute order for this court appearance fails to note that the motion was filed or argued, and the “paperless” file erroneously

states that the case was on calendar for “*Set Hearing After Revocation of Probation*” and was cancelled due to “*clerical error.*” (A true and correct copy of the minute order for November 17, 2016 is lodged with the clerk of this Court as **Exhibit T** and incorporated by reference herein.) As a result of an *Odyssey* interface error, this court date was also never exported to the CRIMS system. (**Exhibit K.**)

XIV.

In advance of the January 17, 2017 hearing on petitioner Cruz’s motion to compel, the public defender submitted additional declarations authored by Youseef Elias (**Exhibit C**), Tracy R. Wellenkamp (**Exhibit D**), Charles M. Denton (**Exhibit F**), Kathleen Ryals (**Exhibit G**) and a supplemental declaration from petitioner Woods. (**Exhibit H.**)

The declarations filed by Woods, Elias, Denton and Ryals recounted a total of 52 cases in which public defender clients suffered [*or narrowly missed suffering*] serious harm as a result of *Odyssey* errors.

Each of the declarants also noted that they had seen “dozens” of litigants who were denied their day in court because of *Odyssey*’s inability to interface with the CRIMS system. Denton, Ryals and Woods recounted conversations in which court staffers expressed “*deep skepticism*” that *Odyssey* would ever work properly. (See **Exhibit E.**, *Declaration of Brendon D. Woods*, pp. 9-10; 2; **Exhibit C**, p. 9, **Exhibit F**, p. 5, 6; **Exhibit G**, p. 6, 7; **Exhibits H**, p. 5.)

XV.

Tracy Wellenkamp’s declaration acknowledged that *Odyssey*’s rollout has placed a tremendous strain upon the court’s staff. Its systemic errors have affected a “significant number of cases,” and its overall performance has been so dismal that, after just three months, the court decided not to introduce it in its family, probate and civil divisions. (**Exhibit D**, p. 3-4.) In a stunning confession, she concedes that “without a significant interface redesign to allow

true real-time data entry, or without a significant influx in funding that would allow us to hire more staff, *we will be unable to provide a complete contemporaneous and fully accurate record of proceedings.*” (**Exhibit D**, pp. 4-5.)

XVI.

The *Motions To Compel An Accurate And Contemporaneous Record Of Court Proceedings* filed by petitioner Woods came on for hearing in Department 1 of the Alameda County Superior Court on January 31, 2017. *People v. Kathryne Swire* (Docket No. 601753) was one the approximately 2200 cases on the calendar that day. (A true and correct copy of her “paperless” *Odyssey* file is lodged with the clerk of this Court as **Exhibit U** and incorporated by reference herein.) The court designated *People v. [petitioner] Eric Cruz* (Docket No. 178801) as one of the lead cases.

The parties stipulated that the declarations filed in support of the motion were true and accurate and, understanding “that the Public Defender is contemplating more litigation on this,” agreed that they could supply the factual basis for the motion and “*any subsequent writ petition.*” (R.T. I, 1-3 [**Exhibit B**].)

During argument on the motion, Woods pointed out some of the most serious and persistent problems with *Odyssey*. (R.T. I, 3-7, 12-14, 16-18.) He noted that in the 26 cases documented in his declaration, public defender clients were forced to serve a total of 130 days in custody as a result of *Odyssey*’s systemic errors. (R.T. I, 4.) He went on to explain that:

“I do want to make clear *that this is just a snapshot of the type of error and harm that has been occurring.* It’s really the tip of the iceberg. It doesn’t account for the cases we don’t see. We’ve had issues. . . that are not included in the declarations. It does not account for private counsel cases. . . [or] court appointed cases. And I also want to make clear that the problems with *Odyssey* just are not limited to clients serving

more time in custody, it goes to clients being arrested on unlawful warrants. . . clients remaining on probation past the termination date. . . [or] who had their probation terminated but [are] still in the system. We had clients, that the court is aware, who show up as 290 registrants, and they are not supposed to. We have had clients who have misdemeanor convictions showing up as felonies. *This harm is widespread and it touches numerous clients.*” (R.T. I, 4-5; see also R.T. II, 9; italics added.)

At the same time, he sympathized with the court’s predicament. “The court has purchased a system that is flawed and doesn’t work.” (R.T. I, 16.) There “shouldn’t be a client who is in the community getting arrested on a warrant that doesn’t exist; there should not be someone in the community who now has a record of a felony that should be a misdemeanor; there shouldn’t be someone in the community who is thinking now that they are a sex offenders registrant. . . This is a bad system, so going forward, how do we fix it, and the thing is, we’ve had five months now. . . and the same mistakes keep occurring, and we’ve got to fix it now.” (R.T. I, 16.)

In response to a question from the court, Woods explained that “the problem is that it is such a widespread problem. It’s almost impossible for us to capture all of the mistakes, and it comes down to. . . ultimately. . . that Odyssey is a system that does not work for our county, does not work for a calendar court where we have such a high volume of criminal cases. And the harm continues, and I think ultimately we’re requesting that there be a fix.” (R.T. II, 7.)

Woods ended his submission with a call to work collaboratively to “fix” the problems caused by *Odyssey*’s cumbersome and error-plagued software:

“I don't recall our office ever taking a stand or we filed a particular motion in every single new case that is coming to our office. We see this as a huge systemic problem where all of our clients are harmed, and it's not just the clients, but it's

also the court itself and the deputies and the DAs and our attorneys who are working extra time to try to avoid these mistakes that are occurring. And, I guess, it comes down to the court has purchased a system that simply does not work, and we're trying to fix that and prevent this harm from occurring to our clients. . . . I'm asking the court to grant a motion and help us fix this problem.” (R.T. I, 20-21. See also R.T. I, 7, 16-17)

Echoing these sentiments, the district attorney stated that he “shared the public defender’s concern” about the accuracy of the court records generated by *Odyssey*. (R.T. I, 18-20.) Acknowledging the consensus among criminal justice partners, he added: “We all know and all agree that despite all of our efforts there are still problems coming out of *Odyssey*” (R.T. 18) which have caused a variety of “injustices” including defendants who have been “wrongfully imprisoned.” (R.T. I, 18-20.) Among these injustices, he adverted to “problems with warrants not being recalled” as a “particular concern for the District Attorney.” (R.T. I, 19.)

The court took the motion under submission and invited the parties to submit a proposed order. (R.T. I, 22.) It then ended the hearing with this comment: “The sad thing is we purchased the *Odyssey* system with a view toward becoming more efficient and needing less staff, and it has had quite the opposite effect for us. *It’s been very, very difficult for us to deal with.*” (R.T. I, 23; italics added.)

XVII.

On February 7, 2017, petitioner Woods submitted a proposed order to the court. (A true and correct copy of that proposed order is lodged with the clerk of this Court as **Exhibit V** and incorporated by reference herein.)

XVIII.

On March 3, 2017, respondent issued a written order denying the motions. (A true and correct copy of that order [hereafter “*Order*”] is lodged

with the clerk of this Court as **Exhibit W** and incorporated by reference herein.) The court accepted the facts contained in the declarations as uncontroverted (*Order*, p. 3, fn. 3), and did not dispute petitioner Woods’ assertion that “the cases mentioned in the declarations are merely a ‘snapshot’ of the number of cases affected by Odyssey’s implementation.” (*Ibid.* See also **Exhibit C**, p. 2; R.T. I 4-5, 9.) It conceded that “Odyssey’s implementation ha[s] impacted multiple aspects of the criminal justice system in Alameda County” (*Order*, p. 3) and explicitly endorsed this laundry list of problems:

- Delays in the preparation of minute orders;
- Errors in the manner data is inputted into *Odyssey*;
- “Coding and interface problems between Odyssey and other case management systems. . . such as. . . CRIMS;”
- Unlawful arrests on recalled or other invalid warrants;
- Unlawful arrests on terminated probation conditions;
- Delays in defendants’ release dates;
- Failures to bring defendants to court “which often caused a delay in the disposition of [their] case[s];”
- Assignment of “erroneous. . . section 290 registration conditions;”
- “Misdemeanor cases being incorrectly designated as felon[ies];
- A backlog of “more than 100 sentenced state prisoners” who have been forced to remain in county jail “because their commitment orders and abstracts of judgment have not been processed into Odyssey;”
- Persistent conversion errors that prevent the clerks from inputting the name of the judge presiding over a particular case; and,

- Persistent errors in creating and exporting court calendars that “has resulted in unfortunate situations for numerous individuals.” (*Order*, pp. 3-5.)

Quoting Division Director Wellenkamp’s declaration, respondent noted that “there are many reasons why Odyssey is not an efficient tool for the criminal courts in Alameda County.” (*Order*, p. 4.) However, it failed to mention Wellenkamp’s prediction that “*without a significant interface redesign to allow true real-time data entry, or without a significant influx in funding that would allow us to hire more staff, we will be unable to provide a complete contemporaneous and fully accurate record of proceedings.*” (**Exhibit D**, pp. 4-5.)

Although respondent acknowledged the harm that *Odyssey* has caused, it rejected the remedy sought by the public defender. With respect to minute orders, it concluded that while Government Code section 69844 requires that such orders be submitted “forthwith,” that does not mean that court clerks must upload them into *Odyssey*’s “paperless” files within 24 hours.

As for exporting the information contained in those orders to CRIMS, the court “recognize[d] that clerks working in criminal departments have certain time-sensitive duties as it relates to the reporting and transmission of criminal case information to other criminal justice agencies.” (*Order*, p. 7.) But it ruled that “none of the[se] reporting requirements establish an end of business day or 24 hour deadline.” (*Ibid.*)

In response to the “unlawful arrests and searches” resulting from *Odyssey* interface and conversion errors, the court rather blithely concluded that “clerical errors that affect a defendant’s Fourth Amendment right to privacy will occur regardless of the case management system used by the court.” (*Order*, p. 11.)

XIX.

Petitioners have no plain, speedy or adequate remedy at law to

compel respondents to perform their statutory and constitutional duty. Damages cannot provide adequate relief for the denial of the public's [and criminal defendant's] right to a reliable record of the proceedings in criminal cases. Time is of the essence, because the record demonstrates that the *Odyssey* case management system continues to generate errors at an unacceptable rate.

XX.

No other *original* petition for writ of mandate has been made by or on behalf of petitioners in this matter. A previous writ of mandate and/or prohibition, filed on behalf of petitioner Eric Cruz (Docket No. A149986) challenging the decision to defer ruling on his *Motion To Compel An Accurate And Contemporaneous Record Of Court Proceedings*, was denied by this court on January 5, 2017. The court cited *Concerned Citizens Coalition of Stockton v. City of Stockton* (2005) 128 Cal.App.4th 70, 83, a case in which the court "refused to grant writ review to decide issue trial court had not yet addressed." (A true and correct copy of the court's order denying petitioner's writ is lodged with the clerk of this Court as **Exhibit X** and incorporated by reference herein.)

WHEREFORE, petitioner respectfully requests that this Court:

1. Issue a peremptory writ of mandate in the first instance, compelling respondent superior court to take the necessary steps to insure that its court clerks comply with their statutory and constitutional duty to completely and accurately record criminal court proceedings. (See Government Code §§ 69844, 69844.5, 69844.7, 69846.)
2. Issue an alternative writ of mandate directing and requiring respondent superior court to show cause before this Court at a specified time and place, why petitioner should not be granted the relief he seeks;
3. On the return of the alternative writ and after hearing argument, issue a peremptory writ of mandate commanding respondent take the necessary steps to

insure that its court clerks comply with their statutory and constitutional duties to completely and accurately record criminal court proceedings.

4. Grant such other and further relief as is equitable, just and proper.

DATED: April 10, 2017.

Respectfully Submitted,

BRENDON D. WOODS
PUBLIC DEFENDER

Charles M. Denton
Assistant Public Defender
California State Bar No.107720
Attorney For Petitioners

VERIFICATION

I, Charles M. Denton, do hereby declare under penalty of perjury as follows:

I am an attorney for petitioners in this action. I have read the petition filed with this declaration and know its contents. The facts alleged in the petition are matters of public record, are supported by documents lodged as exhibits in support of the petition, and therefore are true of my own knowledge.

Executed this 10th day of April, 2017, at Oakland, California.

Charles M. Denton
Attorney for Petitioners

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PETITION
FOR ORIGINAL WRIT OF MANDATE**

ARGUMENT:

I.

**THE COURT HAS A STATUTORY DUTY
TO CONTEMPORANEOUSLY RECORD ITS
PROCEEDINGS IN A COMPLETE AND ACCURATE MANNER**

A.

It is axiomatic that the court has a statutory duty to completely and accurately record its proceedings. (Government Code §§ 69844, 69844.5, 69844.7, 69846; see also Cal. Rules of Court, Rules 8.320, 8.336, 8.616(2) [record on appeal]; Penal Code § 13100 et. seq. [reporting requirements to Department of Justice].)

Section 69844 of the Government Code requires the court clerk to “keep the minutes and other records of the court” and to enter them into the record “within the time specified by law *or forthwith if no time is specified.*” (Government Code § 69844; see also § 69844.7.) Minute orders “reflecting any ‘order, judgment’ or ‘decree’” must be “prepared ‘forthwith.’” (*People v. Allegheny Cas. Co.* (2007) 41 Cal.4th 704, 708; citing 2 Witkin, *Cal. Procedure* (4th ed. 1996) Courts, § 373, at pp. 444–445.)[□] Among other things, this means that that an order made in open court

[□] As it turns out, there are not many court records which must be entered within a “time specified by law.” (See e.g., Code of Civil Procedure § 664 [A judgment after a jury trial must be entered within 24 hours of the verdict]; Civil Code § 269 [The clerk’s transcript on appeal in a felony case must be “prepared immediately”]; California Rules of Court, Rule 8.336(c) (2) [clerk’s transcript must be certified as complete and accurate within 20 days]; Penal Code § 13151 [“Criminal offender” information must be forwarded to the Department of Justice within 30 days of the disposition of

will “trigger a prompt minute order” that will “be available at the end of the day, or at least by the next, to so inform all interested parties.” (*People v. Allegheny Cas. Co.*, *supra*, 41 Cal.4th at p. 713.)

In the case of an appeal, the clerk must certify the accuracy and completeness of the “clerk’s transcript,” which includes – among other things – “*all court minutes.*” (California Rules of Court, Rule 8.320.) There is a similar obligation for appeals to the superior court (California Rules of Court, Rule, 8.861) and writ petitions must include true, complete and accurate copies of “all documents and exhibits submitted to the trial court supporting and opposing the petitioner's position” and “any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review.” (California Rules of Court, Rule 8.486.)[□]

Court clerks “must act in strict conformity with [these] statutes rules and orders.” (2 Witkin, *California Procedure* 5th, Courts §§ 361–362, 364.) They are “charged by law with recording the proceedings *accurately.*” (*United States v. Snellenberger* (9th Cir. 2008) 548 F.3d 699, 701–702.[□]) Their “principal duty is to make a *correct* memorial of the court's orders and directions.” (*People's Ditch Co. v. Foothill Irr. Dist.* (1932) 123 Cal.App. 257, 261; *Copley Press, Inc. v. Superior Court* (1992) 6

a case].) Most others must be prepared “forthwith.” (Government Code § 69844.)

□ All of these records must be “kept safely” (Government Code § 69846) and available to the parties and the public unless they are sealed or otherwise “made confidential by law.” (California Rules of Court, Rule 2.503(a).)

□ Disapproved on another point in *Young v. Holder* (9th Cir. 2012) 697 F.3d 976.

Cal.App.4th 106, 113; *People v. Dunlap* (1993) 18 Cal.App.4th 1468, 1479–1480 [court personnel are “public employees who have a duty to observe the facts and report and record them accurately.”]□

B.

It is clear that *Odyssey* has stymied the court’s ability to fulfill this mandate. Even respondent concedes that “*Odyssey*’s implementation” has resulted in “delays in the preparation of minute orders and errors in the manner that certain data is inputted into *Odyssey*.” (*Order*, p. 3.)

The court does not dispute that minute orders, filings and other documents are frequently missing from the “paperless” *Odyssey* files□ or that the examples set out in the declarations are just a “snapshot” of a wider problem. (See *Order*, p. 3, fn. 3; see also R.T. I, 4-5, 9.) It does not challenge the assertion that “there are more than 12,000 files that are incomplete in one way or another” (*Order*, p. 4, 12. See **Exhibit E**, *Declaration of Brendon D. Woods*, p. 10) and admits that there are “more than 100 sentenced state prisoners” sitting in county jail “because their commitment orders and abstracts of judgment have not been processed into

□ See also California Rules of Court, Rules 8.336(c)(2), 8.616(a)(3) [certification of clerk’s transcript as accurate]; Government Code § 69844.5 [court certification of the accuracy of records sent to Department of Justice]; Penal Code §§ 13100, 13125, 13151, 13155. Penal Code § 13100 which expresses the Legislative intent behind these statutes: “the criminal justice agencies in this state require, for the performance of their official duties, accurate and reasonably complete criminal offender record information. . . . [and] that, in order to achieve the above improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in this state must be made more uniform and efficient, and better controlled and coordinated.”

□ See **Exhibit C**, pp. 2, 4-5, 6-7, 8, 9; **Exhibit E**, pp. 2, 4, 5, 7-8; **Exhibit F**, pp. 2-5; **Exhibit G**, pp. 2-5.)

Odyssey due to a backlog.” (*Order*, p. 4.) As evidence of this backlog, it cites a case in which a defendant sentenced to state prison had to wait five months before his abstract of judgment was filed.[□]

According to Tracy Wellenkamp, the supervising clerk in the court’s criminal division, these delays are ongoing and defy a quick fix. She notes that *Odyssey’s* configuration makes data entry “cumbersome” and “extremely time consuming.” (**Exhibit D**, pp. 3-4.) This has “lead to [an] overall delay in getting the data in Odyssey completely up-to-date” and has produced a variety of “conversion errors.” (**Exhibit D**, pp. 3-4.) These occur when a physical file is “converted” into a “paperless” one. Because of the way that *Odyssey* is designed, the process of converting each file “involves nearly 50 separate steps” (**Exhibit D**, p. 4) which undoubtedly increases the risk of human error.

In addition to “conversion errors,” there are other software problems. According to Wellenkamp, the latest[□] involves the “relatively common situation” in which judges take over a case or are assigned to a new department. When a clerk “inputs the name of the new bench officer. . . the Odyssey system then changes all prior hearings to reflect the name of the new judge, in effect rewriting the history of the case.” (**Exhibit D**, p. 4. See also R.T. I, 13-14.)

[□] In that case, the defendant was sentenced to state prison on July 6, 2016. His abstract of judgment was not filed until December 15, 2016. (**Exhibit G**, pp. 3-4.)

[□] Before that, *Odyssey* automatically converted every drug registration requirement into a section 290 sex registration condition. It took almost three months before this software problem was finally corrected. (See **Exhibit E**, Declaration of Brendon D. Woods, pp. 5-6; R.T. I, 17.)

Having identified many of Odyssey’s systemic problems, Wellenkamp’s declaration ends with this stunning concession: “*without a significant interface redesign to allow true real-time data entry, or a significant influx in funding that would allow us to hire more staff, we will be unable to provide a complete and fully accurate record of proceedings.*” (Exhibit D, pp. 4-5.)

In denying the public defender’s motions to compel, respondent glossed over this concession and focused upon when [rather than whether] its staff was required to tender a complete and accurate record.

The discussion centered on the definition of the word “forthwith.” Defense counsel pointed out that the United States Supreme Court has said that the word typically means “*within 24 hours.*” (*Dickerman v. N. Trust Co.* (1900) 176 U.S. 181, 193.) California courts have similarly defined it as “*immediately; without delay; within a reasonable time; promptly and with reasonable dispatch.*” (*Ex parte Rose* (1949) 90 Cal.App.2d 299, 302. See R.T. I, 8.) More recently, our Supreme Court has indicated that an order that is covered by section 69844 of the Government Code “will be available by the end of the day, or at least by the next.” (*People v. Allegheny Cas. Co., supra*, 41 Cal.4th at p. 713.)

Respondent nonetheless took the position that “forthwith” means that the “clerk must construct the minutes *within a reasonable time.*” (*Order*, p. 6; italics in original.)[□]

□ The court cited four cases in support of this assertion. The first, *People v. Thomas* (1959) 52 Cal. 2d 521 does not mention Government Code section 69844 or the word “forthwith.” Nor did it “pass upon the question as to what is a reasonable time for the clerk” to process a minute order. (*Id.* at p. 530.) The court did say – albeit in dicta – that a clerk is not required to prepare the minutes before the “adjournment of the court for the day.” (*Ibid.*)

For the purposes of this writ petition, this dispute seems largely academic. For as we have noted, respondent’s staff concedes that, without a change in software or staffing it will *never* be able to “provide a complete and fully accurate record of court proceedings.” (**Exhibit D**, p. 5.)

The numbers bear this out. The bottleneck in processing commitment orders for the more than 100 state prisoners languishing in county jail is months long, and, seven months after *Odyssey’s* rollout, there is an ever-growing backlog of more than 12,000 “paperless” files that are missing minute orders, filings and transcripts. (See **Exhibit E**, *Declaration of Brendon D. Woods*, p. 10; *Order*, p. 12.)

These delays – which in both cases have dragged on for months rather than days – unquestionably exceed any reasonable definition of “forthwith.”

The second, *N.C. Roberts v. Topaz Transformers Products Inc.* (1966) 239 Cal.App.2d 801 has nothing to do with section 69844, courtroom clerks or even minute orders. It involved a “permit” related to the sale of stock. The court suggested that, generally speaking, the word “forthwith” is not “necessarily construed as a time immediately succeeding without an interval,” but offered no further guidance than that. (*Id.* at p. 817.)

People v. McAllister (1940) 15 Cal.2d 519 [disapproved in *People v. Thomas, supra*, 52 Cal. 2d 521] predates section 69844 and does not mention the word “forthwith.” In dicta, the court stated that the usual practice in California courts is “for the clerk to make up his minutes following the adjournment of the court for the day.” (*Id.* at p. 527.)

The fourth case, *People v. Karaman* (1992) 4 Cal.4th 335, postdates section 69844 but does not mention it or define “forthwith.” Respondent summarized its holding as follows: “when the clerk enters the judgment in the permanent minutes *by the end of the day*, he or she has satisfied his or her duty to complete such minutes within a reasonable time.” (*Order*, p. 7; italics added.)

Unfortunately, incomplete files are not the only problem. The files that have purportedly been “updated” are rife with inaccuracies and omissions. Petitioner Eric Cruz’s “paperless” file offers a snapshot of these errors. Seven months after *Odyssey*’s rollout, that file is still missing □ the minute order from his July 15, 2016 arraignment, □ two pages of the information filed July 14, 2016, □ the surety bond that he posted on July 1, 2016, □ a “fingerprint form” from July 15, 2016, □ the preliminary hearing transcript from July 1, 2016, and □ any documentation that his motion to compel an complete and accurate record was heard on November 17, 2016.

The information that has been uploaded into the “paperless” file does not inspire much confidence in *Odyssey*’s reliability. The dates listed for the holding order, and the filing of petitioner’s section 995 motion are incorrect. An entry for July 14, 2016 [*the date erroneously listed for the holding order*] mistakenly characterizes the information as a “complaint,” and both the hearing on the 995 motion and the motion to compel are incorrectly described as “cancelled” due to “clerical error.” (See **Exhibit B.**)

Ms. Wellenkamp’s concession and the wealth of uncontroverted evidence of files that are incomplete and inaccurate and backlogs that stretch for months leave little doubt that respondent is currently unable to satisfy the record-keeping duties imposed upon it by statute.

Fortunately, there is a silver lining. The problems with *Odyssey* could be solved if this court ordered respondent to do what it has been reluctant to do on its own: seek a software fix or funding for additional staff.

II.

CRIMINAL DEFENDANTS HAVE DUE PROCESS AND EQUAL PROTECTION RIGHTS TO THE COMPLETE AND ACCURATE

RECORD NECESSARY FOR AN EFFECTIVE DEFENSE OR APPEAL

A.

It is well-established that a defendant has a constitutional right to a complete and accurate record “of the prior proceedings. . . *necessary for an effective defense or appeal.*” (*Britt v. North Carolina* (1971) 404 U.S. 226, 227; *Kennedy v. Lockyer* (9th Cir. 2004) 379 F.3d 1041, 1046–1047; *People v. Howard* (1992) 1 Cal.4th 1132, 1164–1166 [*“Under the Fourteenth Amendment, the record of the proceedings must be sufficient to permit adequate and effective appellate review”*]; *People v. Serrato* (1965) 238 Cal.App.4th 112, 118 [*“The essential requisite supporting the right of appeal is that there must be a complete record”*]; italics added.)[□] This includes not only minute orders but all other “reports” of “proceedings in the case from the time of the convening of the court until the termination of the trial.” (*Griffin v. Illinois* (1956) 351 U.S. 12, 13, fn. 3.)[□]

Although the documents necessary to resolve a particular case depend upon the contentions on appeal (*In re Armstrong, supra*, 126 Cal.App.3d at p. 571), the need to prepare a complete and accurate record

[□] See also *Mayer v. City of Chicago* (1971) 404 U.S. 189, 193-194; *Draper v. Washington* (1963) 372 U.S. 487, 495; *In re Armstrong* (1981) 126 Cal.App.3d 565; *Young v. Gipson* (N.D. Cal.) 163 F.Supp.3d 647, 746–748; *March v. Municipal Court* (1972) 7 Cal.3d 422, 428 [*“the state “... must provide a full verbatim record where that is necessary to assure the indigent as effective an appeal as would be available to the defendant with resources to pay his own way.”*]

[□] See also *Long v. District of Iowa* (1966) 385 U.S. 192, 192–194 [extending this rule to state post-conviction proceedings]; *Gardner v. California* (1969) 393 U.S. 367, 370 [extending the rule to state habeas hearings]; *Williams v. Oklahoma City* (1969) 395 U.S. 458, 459 [extending the rule to “petty offenses”]. See generally *Kennedy v. Lockyer, supra*, 379 F.3d at pp. 1046–1047.

remains constant. As the court explained in *Andrus v. Municipal Court* (1983) 143 Cal.App.3d 1041, 1051:

“It must be remembered that we discuss the question of when the state must collect a verbatim record, not the issue of when it must provide a transcript of that record. There is a world of difference. *Before trial the imagination of defense counsel, the impossibility of predicting what might arise in even the simplest trial, and the court's inability to require disclosure of defense strategy almost always will combine to mandate the maintenance of a verbatim record at the request of an indigent defendant.* In considering the need to prepare a transcript post-trial, knowledge will replace speculation; and the defense strategy will be known.” (Italics added; see also *People v. Serrato, supra*, 238 Cal.App.4th at p. 118.)

Defense counsel has a correlative duty to insure that the record is complete and accurate. (*People v. Howard, supra*, 1 Cal.4th at pp. 1164–1166; *Young v. Gipson, supra*, 163 F.Supp.3d at pp. 746–748; quoting *People v. Young* (2005) 34 Cal.4th 1149, 1170; *People v. Chessman* (1950) 35 Cal.2d 455, 462.)[□] This is an application of the general rule that gaps or omissions in the record are resolved against the appealing party. (*People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75, 80; *People v. Hulderman* (1976) 64 Cal.App.3d 375, 382.)[□]

[□] See also *People v. Barton, supra*, 21 Cal.3d at pp. 517–522 [trial counsel incompetent for “*failing to obtain an appellate record adequate for consideration of appellant’s claims of error*”].

[□] The lone exception is when the failure to generate a complete record is “due entirely to a failure” of a court official to “prepare and file clerk’s and reporter’s transcripts within the time required by the rules of court.” (*People v. Serrato, supra*, 238 Cal.App.2d at pp. 115–119.) In this situation, the defendant is denied a “fundamental” due process right, and his conviction must be reversed. (*Ibid.*)

This responsibility has been described as “a procedural and substantive requirement on the part of any party prosecuting an appeal or asserting a position on appeal.” (*People v. Neilson* (2007) 154 Cal.App.4th 1529, 1534.) “Where the appropriate record is missing or incomplete, counsel must see that the defect is remedied, by requesting augmentation or correction of the appellate record.” (*People v. Barton* (1978) 21 Cal.3d 513, 520; see California Rules of Court, Rule 8.619.)[□]

B.

As we have noted, respondent’s supervising clerk concedes that, without software improvements or additional staffing, her staff cannot generate complete and accurate records of the court’s proceedings. It follows from that concession that it also cannot guarantee a complete and accurate record “of the prior proceedings. . . *necessary for an effective defense or appeal.*” (*Britt v. North Carolina, supra*, 404 U.S. 226, 227; *Kennedy v. Lockyer, supra*, 379 F.3d 1041, 1046–1047; *People v. Howard, supra*, 1 Cal.4th 1132, 1164–1166.)

The stipulated facts support this inference. One of the most striking features of the *Odyssey* rollout has been the court’s inability to update its “paperless” files. As we have noted, there is an ever-growing backlog of

[□] Thus, for example, in *United States v. Snellenberger, supra*, 548 F.3d at p. 702, the court commented that “It’s not clear from the record whether parties to a criminal case in California are given copies of the clerk’s minute order at the time it is placed in the case file, but there is certainly no suggestion that it’s a secret document. A defendant can always check the case file and ensure that any materials placed there accurately reflect the proceedings; *presumably, doing so is part of every criminal defense lawyer’s professional obligation.*” (Italics added.)

more than 12,000 physical files that have either not been entered into the “paperless” system or have not been fully updated. “Thousands” of these files have apparently been shipped to Los Angeles for scanning. (**Exhibit E**, *Declaration of Brendon D. Woods*, p. 10.)

As a practical matter, this means that there are a substantial number of active or recently closed court files[□] that are incomplete, and a lawyer who needs a minute order, a filing, a transcript or a charging document in order to prepare a motion, or writ or to augment the appellate record stands an excellent chance of finding it missing from the court’s “paperless” file.

According to Tracy Wellenkamp, the source of this backlog is *Odyssey’s* “cumbersome” and “extremely time consuming” data entry system which requires “nearly 50 separate steps” to convert a paper file into a “paperless” one. (**Exhibit D**, pp. 3-4.) The unwieldy nature of the process, combined with the lack of adequate staffing, significantly increases the risk of human error. When you add to this “conversion errors” and persistent software glitches, it is easy to understand why court staff can no longer “provide a complete and fully accurate record of [the court’s] proceedings.” (**Exhibit D**, p. 3, 4.)

In denying the public defender’s motion to compel, respondent did not dispute the number of incomplete files. (See *Order*, p. 12.)[□] Indeed, it cited “*Odyssey’s* complicated and non-user friendly interface” -- the problem that created the backlog -- as one of the chief reasons that “the

□ We don’t know how many of the 12,000 backlogged cases are active or recently closed. But we do know that the 200–300 new files coming in each day fall into that category. (**Exhibit E**, *Declaration of Brendon D. Woods*, p. 10.)

□ Presiding Judge Jacobsen [the author of the *Order*] has publicly stated that the number of un-scanned and otherwise incomplete files grows by 200-300 each day. (See **Exhibit E**, *Declaration of Brendon D. Woods*, p. 10.)

court terminated the second phase of its contract with the Odyssey vendor and cancelled the implementation of the system in the court’s family, probate and civil divisions.” (*Order*, p. 5.)

The court instead took the position that ☐ “there are procedures in place to ensure that the clerk timely and accurately prepares a defendant’s trial record for appellate review,”☐ and ☐ the public defender was unable to cite a case in which an incomplete and/or inaccurate “paperless” file had compromised an appeal.☐ (*Order*, p. 12.)

While this may have been determinative of the motion to compel, the considerations are somewhat different in this writ petition. The issue raised in this petition is not whether an incomplete appellate record has been filed in the past six months, but whether *Odyssey’s* case management software is capable of generating complete and accurate records for appeal over the long term. Although respondent glossed over it in its order, the unequivocal answer from its own staff is “no,” not “without a significant interface redesign to allow true real-time data entry, or. . . a significant influx in funding.” (**Exhibit D**, pp. 4-5.)

This is clearly not just hand-wringing. As we have pointed out, there are more than 12,000 files that are missing minute orders, filings, records, exhibits, instructions, or notes. As a practical matter, how does a clerk compile a complete record “within 20 days” (California Rules of Court, Rules 8336(c)(2) & (d)(3)) from such a file? So far as the record discloses,

☐ Citing California Rules of Court 8336(c)(2), (d)(3), 8.155(c)(2) and 8.340(c).

☐ Since the rollout of the *Odyssey* case management system, the public defender has not represented anyone in a post-conviction appeal.

there are no physical files from which to fill in the missing gaps in the “paperless” ones.

Petitioner Eric Cruz’s case is illustrative. The clerk’s transcript on appeal in his case will surely *not* include □ the minute order from his arraignment, □ two pages of the information, □ the preliminary hearing transcript, or □ any documentation that his motion to compel was heard on November 17, 2016. It will also inaccurately list □ the date of the holding order, □ the date petitioner filed his section 995 motion, and □ the results of the hearings on his section 995 motion and motion to compel, both of which are mislabeled as cancelled due to “clerical error.” (See **Exhibit B.**)

This file is not an outlier. The declaration of Kathleen Ryals contains two even more egregious examples. In docket #467632,[□] she notes that the defendant “made two dozen court appearances” between February and July 2016 for which “there is not a single minute order attached to his paperless file and no docket entries after May 10, 2016.” (**Exhibit G**, p. 5.) In docket #453578,[□] there is likewise “not a single minute order or any other filing for the 17 court appearances that defendant made between December 12, 2013 and July 10, 2016.” (*Ibid.*)

Kathryne Swire’s “paperless” file is nearly as incomplete. She is currently represented by petitioner Woods and -- like the two defendants described in Ms. Ryals’ declaration – was one of the more than 2000 public defender clients who challenged *Odyssey’s* rollout. She has been on probation since 2014 for driving under the influence. (Vehicle Code § 23152(b).) Although she made 15 court appearances on that case between

□ *People v. Christopher Ortega.*

□ *People v. George Yanez.*

December 17, 2014 and January 17, 2017, there is only one minute order in her paperless file. (See **Exhibit U**.)

These missing records appear to be lost for the ages. An attorney appearing at the clerk’s office asking to see the physical file in order to augment the appellate record will be told that they no longer exist.

Respondent correctly noted that the public defender’s motion to compel did not cite a case in which the switch to “paperless” files corrupted the appellate record. But given □ Wellenkamp’s admission that her staff cannot produce complete and accurate records, and □ the backlog of thousands of files that are missing minute orders, filings, or other critical documents, it appears certain that, without significant improvements in software or staffing, incomplete and inaccurate appellate records will inevitably become one of *Odyssey*’s legacies. (See **Exhibit D**, pp. 4-5.)

III.

THE FOURTH AMENDMENT GUARANTEES THE RIGHT TO BE FREE FROM ARRESTS ON RECALLED WARRANTS AND PROBATION CONDITIONS THAT HAVE BEEN STRICKEN

A.

It is axiomatic that an arrest based upon a recalled warrant or a probation condition that has been stricken is unconstitutional. (*Whiteley v. Warden* (1971) 401 U.S. 560, 568-569; *United States v. Hensley* (1985) 469 U.S. 221, 232; *People v. Ramirez* (1983) 34 Cal.3d 541, 552; *People v. Collins* (1997) 59 Cal.App.4th 988, 993; *Freytes v. Superior Court* (1976) 60 Cal.App.3d 958, 962-963.) Thus, for example, in *Ramirez*, the California Supreme Court explained that:

“an arrest based solely on a recalled warrant is made without probable cause. The fruits of a search incident to such an arrest

must, then, be suppressed. *Although in this case the arresting officer no doubt acted in good faith reliance on the information communicated to him through ‘official channels,’ law enforcement officials are collectively responsible for keeping those channels free of outdated, incomplete, and inaccurate warrant information. That the police now rely on elaborate computerized data processing systems to catalogue and dispatch incriminating information enhances rather than diminishes that responsibility.*” (*People v. Ramirez, supra*, 34 Cal. 3d at p. 552; italics added.)

Subsequent cases have found that when the failure to remove a recalled warrant from a judicial database is the result of a “non-recurring” or non-systemic error, the fruits of such an arrest may be admissible under the “good faith” exception.[□] (See *Herring v. United States* (2009) 555 U.S. 135, 144; *Arizona v. Evans* (1995) 514 U.S. 1; *Willis v. Superior Court* (2002) 28 Cal.4th 22; *People v. Ferguson* (2003) 109 Cal.App.4th 367.) These cases rest upon the assumption that the court’s databases are accurate and are maintained in a neutral and reliable fashion. (See e.g. *Herring v. United States, supra*, 555 U.S. at p. 147; citing *Arizona v. Evans, supra*, 514 U.S. at p. 17 (O’Connor, J., concurring) [“Surely it would not be reasonable for the police to rely ... on a recordkeeping system ... that has no mechanism to ensure its accuracy over time and that routinely leads to false arrests”] and *Hudson v. Michigan* (2006) 547 U.S. 586, 604 (Kennedy, J, concurring) [“If a widespread pattern of violations were shown ... there would be reason for grave concern”].)

□ Of course, that does not make the arrest itself excusable or any less invalid.

B.

The declarations filed in support of the motion to compel documented 21 cases – covering a six month span -- in which public defender clients were unlawfully arrested on recalled bench warrants or stricken probation conditions.[□] That’s an average of 3-4 each month.

Respondent recognizes this problem[□] and does not dispute that these 21 incidents are “merely a snapshot” of that problem.[□] (*Order*, p. 3, fn. 3.) Nonetheless, it has concluded that systemic changes are unnecessary because “clerical errors that affect a defendant’s Fourth Amendment right to privacy will occur regardless of the case management system used by the court. . . . Therefore, the Public Defender’s implicit suggestion that such errors will not occur if the court complies with its demands or eliminates Odyssey. . . lack merit.” (*Order*, pp. 11-12.)

It is, of course, true that human error infiltrates every system, including case management systems. But human error is not really the

□ There were also three instances where, at the public defender’s behest, the court was able to remove the recalled warrant from the system before the defendant was arrested. (See **Exhibit C**, pp. 3-4, 5-6.)

□ The court explained that “As a result of various problems associated with Odyssey’s implementation, several defendants have been subject to unlawful arrests.” (*Order*, p. 3.) It then cited 19 cases in which such arrests had occurred.

□ The number does not include arrestees who □ were not currently represented by the public defender clients, or □ for any number of reasons failed to register a complaint with the public defender after their unlawful arrest.

culprit here. According to Tracy Wellenkamp, the source of the problem is *Odyssey's* “cumbersome and time consuming” software:

“Under the previous criminal data management system, CORPUS, the process for recalling a warrant was relatively straightforward. The Clerk would call up the appropriate screen, input the proper “event code,” strike out the warrant amount, and vacate the warrant control date. Under *Odyssey* the process is much more cumbersome and time consuming. The clerk is required to navigate to at least two different screens. One event code has to be entered on a particular tab, while the recall date and warrant amount must be input on a different tab. Unlike in the CORPUS system—in which just the act of entering in the event code would have the effect of recalling the warrant—in *Odyssey* the warrant will not be recalled unless the clerk moves between these tabs and completes all of the requisite tasks. Thus, if a clerk forgets or, relying on prior CORPUS training, only inputs the event code, the warrant will not be recalled. This has actually occurred in a significant number of cases.” (Exhibit D, pp. 2-3.)[□]

Respondent’s rationale also fails to account for the fact that the rate of unlawful arrests has soared after *Odyssey's* rollout.[□] As petitioner Woods

□ The public defender also traced the proliferation of invalid warrants and probation conditions to systemic rather than human errors. (See R.T. I, 9-10.)

□ The number unlawful arrests far exceeds the “human error” rate in other jurisdictions. For example, in *Arizona v. Evans* (1995) 514 U.S. 1, a case respondent relies upon, the testimony was that clerical errors in recalling bench warrants occurred only “on[c]e every three or four years.” (*Id.* at pp. 15-16.) In *Herring v. United States, supra*, 555 U.S. 135, the error rate was even smaller. Two veteran court clerks testified that “they could remember no similar miscommunication [regarding recalled warrants] ever happening on their watch.” (*Id.* at pp. 146–147.)

pointed out at the hearing on the motion to compel, “I have been with [the public defender’s] office for 20 years. . . [and] I have not ever seen or encountered these types of mistakes related to what I would call a data system, ever, ever.” (R.T. I, 16.) The prosecutor echoed these sentiments, noting that the “problems with warrants not being recalled. . . is one that is of particular concern for the District Attorney.” (R.T. I, 19.) Even respondent acknowledged that one of *Odyssey’s* systemic problems is “people arrested on warrants either that are old [sic], and *under our Corpus system we would have understood that they were no longer active*, but Odyssey picked them up as active warrants that were recalled in the courtroom.” (R.T. I, 11; italics added.)

In our view, the alarming rise in unlawful arrests is unacceptable and unnecessary. The court has a duty to protect the residents of Alameda County from unreasonable seizures, and a responsibility to supply the police with reliable information. Because of *Odyssey’s* systemic problems, it is doing neither.

The good news is that the court’s staff knows how to clear the system of invalid warrants and probation conditions. They did so for decades before *Odyssey’s* rollout. According to Tracy Wellenkamp, the current problem can be fixed with either a software redesign or additional staffing. This petition is filed in the hope that this Court will give respondent the incentive it needs to make these changes.

CONCLUSION:

In a recent opinion, the Court of Appeals wryly noted that “*It is difficult enough to practice law without having the clerk as an adversary.*”

(*Voit v. Superior Court* (2011) 201 Cal.App.4th 1285, 1287; quoting *Rojas v. Cutsforth* (1998) 67 Cal.App.4th 774, 777.)

This comment, meant to be humorous, has unfortunately become a fitting epigram for the rollout of the *Odyssey* case management system. After seven months, the record is painfully clear that systemic flaws in the program prevent court personnel from accurately recording the court's proceedings or reliably preserving them in "paperless" files.

The system's alarming error rate has also resulted in numerous Fourth Amendment violations, and jeopardized the constitutional right of criminal defendants to an accurate record "of the prior proceedings. . . necessary for an effective defense or appeal." (*Britt v. North Carolina, supra*, 404 U.S. at p. 227.) Until a software fix or additional staffing can be found, it is undisputed that these vexing errors and constitutional deprivations will continue.

In our view, the widespread and pervasive nature of these problems demands immediate action. Accordingly, we ask this court to exercise its original jurisdiction and issue a writ of mandate directing respondent superior court to take the necessary steps to insure that its court clerks comply with their statutory and constitutional duty to completely and accurately record criminal court proceedings, or to show cause before this Court it should not be required to do so.

DATED: April 10, 2017

Respectfully Submitted

BRENDON D. WOODS
PUBLIC DEFENDER

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