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4 *Attorney for Defendant*

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6  
7 **IN THE SUPERIOR COURT OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF YAVAPAI**

9  
10 STATE OF ARIZONA,

11 Plaintiff,

12 vs.

13 HOWARD KEITH HENSON,

14 Defendant.

Case No. PJC 2006 04957J

**PETITION FOR A  
WRIT OF HABEAS CORPUS**

**(A.R.S. § 13-3850)**

**(Oral Argument Requested)**

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16  
17 Defendant, HOWARD KEITH HENSON, by and through undersigned counsel, hereby  
18 asks that a writ of Habeas Corpus issue and he be discharged, as the warrant on extradition  
19 and accompanying documents establish that he cannot be the fugitive sought.

20 **ON HABEAS AND EXTRADITIONS**

21 A governor's warrant of extradition is not final and conclusive, and the accused is  
22 entitled to question the sufficiency of the requisition in a habeas corpus proceeding. *Ex*  
23 *parte Rubens (Rubens v. Boies)*, 73 Ariz. 101, 238 P.2d 402 (1951), *certiorari denied* 344  
24 U.S. 840, 73 S.Ct. 50, 97 L.Ed. 653. The reviewing court is duty-bound to review the  
25 extradition request for want of jurisdiction. *Id.*, see also *Applications of Oppenheimer*, 95  
26 Ariz. 292, 389 P.2d 696 (1964), *certiorari denied* 84 S.Ct. 1359, 377 U.S. 948, 12 L.Ed.2d  
311.

1 In a habeas corpus proceeding challenging extradition, the warrant on extradition and  
2 accompanying documents filed in the office of the Secretary of State are the proper subject  
3 of judicial notice. *State v. Flowers*, 9 Ariz.App. 440, 453 P.2d 536 (1969); *Oppenheimer*,  
4 *supra*.

5 Defendant Howard Keith Henson asks that this Court take judicial notice of the  
6 warrant on extradition and accompanying documents, filed in this matter in the office of the  
7 Secretary of State on or about April 10, 2007, and that a review of said documents will  
8 establish that he is not the individual sought as a fugitive. For the purpose of this petition  
9 and the convenience of the Court, Defendant is attaching copies of the relevant pages from  
10 the warrant on extradition and accompanying documents, as provided to him by the Yavapai  
11 County Attorney.

#### 12 **IDENTIFICATION OF FUGITIVE**

13 With few exceptions (as detailed further), the fugitive sought in the Riverside County,  
14 California matter, Case No. HEM014371, is consistently identified as “Keith Henson”,  
15 including in the “Factual Summary” of March 23, 2007 prepared by the Riverside District  
16 Attorney’s Office (Exhibit 1), in the “Application for Requisition” of March 23, 2007 prepared  
17 and sworn to by a Riverside District Attorney (Exhibit 2), in the Riverside District Attorney’s  
18 Office affidavit of March 8, 2007 (Exhibit 3), on each of the 31 pages of the sealed and  
19 certified records from the Superior Court of California, County of Riverside (Exhibit 4), and in  
20 the February 22, 2007 letter from the Riverside County Sheriff (Exhibit 5). Importantly, in  
21 Exhibit 2, a Riverside District Attorney states under oath that the fugitive’s true name is  
22 “Keith Henson”.

23 Most critical, the sealed and certified records from the Superior Court of California,  
24 County of Riverside, document that the fugitive “Keith Henson”, was arrested on felony  
25 charges of “Criminal Threats”, a violation of California Penal Code § 422, on July 19, 2000,  
26 by the Riverside County Sheriff’s Office. (Exhibit 4). The fact of the arrest is found on the

1 first page of the sealed and certified docket report, and repeated at the top of each of 26  
2 pages thereof. (*Id.*)

3 In a motion to the Prescott Justice Court filed February 27, 2007, Defendant brought  
4 some of these discrepancies to light. Only thereafter do the acts of the Governor's of  
5 Arizona and California list the name of the fugitive as "Keith Henson aka Howard Keith  
6 Henson", while the remaining supporting documents and the records of the Riverside District  
7 Attorney continue to list the fugitive as "Keith Henson".

### 8 **IDENTIFICATION OF DEFENDANT**

9 Defendant acknowledges and agrees that his true and full name, "Howard Keith  
10 Henson", is reflected in the caption of the instant matter, and that he is so listed and depicted  
11 in the 1997 California driving license extract attached to the February 22, 2007 letter from  
12 the Riverside County Sheriff in Exhibit 5.

13 In that letter to the Yavapai County Attorney, the Riverside Sheriff admits that the  
14 Defendant identified in that attachment, "has never been arrested by our agency".

### 15 **ARGUMENT**

16 The warrant on extradition and accompanying documents filed in the office of the  
17 Secretary of State, specifically the sealed and certified records of the Superior Court of  
18 California, County of Riverside, document that the fugitive "Keith Henson" was arrested on  
19 felony charges of "Criminal Threats" on July 19, 2000, by the Riverside County Sheriff's  
20 Office. Additionally, a Riverside District Attorney states under oath that "the full name of the  
21 person for whom requisition is asked is Keith Henson."

22 The Riverside County Sheriff acknowledges that the Defendant in the instant matter  
23 has never been arrested by them, and his true and full name is "Howard Keith Henson".

24 A.R.S. § 13-3845 (B) requires that the executive authority making the demand include  
25 a photograph or fingerprint to identify the accused as the fugitive sought. The California  
26 Department of Motor Vehicles extract from Defendant's 1997 driving license record fails to  
suffice as there is no nexus between that extract from 1997 and the California criminal

1 matter from 2001, and since it also fails a best evidence test. As the booking record  
2 (photograph and fingerprints) from the July 19, 2000 arrest would satisfy both the nexus and  
3 the best evidence shortcomings, the omission of that record would appear to be meaningful  
4 and significant.

5 Since Defendant Howard Keith Henson has never been arrested by the Riverside  
6 County Sheriff's Office, as acknowledged by that agency, and the sealed and certified  
7 records of the Riverside County Superior Court document that the fugitive was arrested by  
8 the Riverside County Sheriff's Office on July 19, 2000 on felony charges, the inescapable  
9 conclusion is that Howard Keith Henson cannot be the same individual sought by Riverside  
10 County authorities.

### 11 **RELIEF REQUESTED**

12 In light of the documentary evidence, which upon review, must lead to the conclusion  
13 that this Defendant cannot be the same individual sought in the Riverside County, California  
14 matter, Defendant asks that he be granted a writ of habeas corpus, and be discharged from  
15 this matter, and that this case be dismissed with prejudice.

16 Defendant further requests a finding that he is not a fugitive, as there remains  
17 significant risk that he may again be confused with the fugitive in the California matter.

18 Defendant further requests this court fashion a protective order directing the Yavapai  
19 County Sheriff's Office to correct or annotate the NCIC record in this matter, in conformance  
20 with these findings. The NCIC record contains serious errors, including the confusion over  
21 the identities of Defendant and fugitive, and listing the outstanding charges as felonies and  
22 terrorist threats, while the certified court record indicates that no felony charges were ever  
23 filed (Exhibit 2 at pp. 9-13), and conviction was upon a sole misdemeanor count (*Id.* at pp.  
24 19-20). Should another law enforcement agency confuse the Defendant with the fugitive, the  
25 matter should be resolved under misdemeanor circumstances, not felony fugitive status.

26 RESPECTFULLY SUBMITTED this 14th day of May, 2007.

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BY: \_\_\_\_\_  
Michael Kielsky  
Attorney for Defendant

1 **CERTIFICATE OF SERVICE**

2 On May 14, 2007:

3 I served the foregoing document on the below listed parties to this action, by  
4 depositing a true and correct copy thereof, enclosed in a sealed envelope with postage  
5 thereon fully prepaid, with the United States Post Office, addressed as set forth below:

6  
7 Cynthia Spitler or Jennifer Campbell  
8 Yavapai County Attorney's Office  
9 255 East Gurley Street  
10 Prescott, AZ 86301  
11 Attorneys for Plaintiff

12  
13 BY: \_\_\_\_\_  
14 Michael Kielsky

15  
16 On May 14, 2007:

17 I served the foregoing document on the Court, by personally delivering a true and  
18 correct copy thereof, addressed as set forth below:

19  
20 Superior Court of Arizona  
21 County of Yavapai  
22 Division 6  
23 120 South Cortez Street  
24 Prescott, AZ 86303

25 BY: \_\_\_\_\_  
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**Exhibit 1**

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**Exhibit 2**



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**Exhibit 3**

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**Exhibit 4**

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**Exhibit 5**