

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN
AND FOR THE COUNTY OF SANTA CLARA**

HAILEY SCIMONE,)	No. _____
)	
Petitioner)	
-vs.-)	EMERGENCY RELIEF
)	SOUGHT
)	
SUPERIOR COURT OF SANTA CLARA)	
COUNTY,)	
Respondent)	
)	
PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Real Party in Interest)	
_____)	

**EMERGENCY WRIT OF MANDATE, HABEAS CORPUS OR
ALTERNATIVE RELIEF**

MOLLY O'NEAL (# 150944)
PUBLIC DEFENDER
CARLIE WARE (#229667)
DEPUTY PUBLIC DEFENDER
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Attorneys for Petitioner

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE
COUNTY OF SANTA CLARA**

HAILEY SCIMONE,)	No. _____
)	
Petitioner)	
-vs.-)	
)	
SUPERIOR COURT OF SANTA CLARA COUNTY,)	EMERGENCY RELIEF SOUGHT
)	
Respondent)	
)	
SANTA CLARA COUNTY OFFICE OF THE DISTRICT ATTORNEY)	
)	
Real Party in Interest)	
_____)	

EMERGENCY WRIT OF MANDATE, HABEAS CORPUS OR ALTERNATIVE RELIEF

TO THE HONORABLE ERIC GEFFON, PRESIDING JUDGE, CRIMINAL
DIVISION, AND TO THE HONORABLE ASSOCIATE JUDGES OF THE SANTA
CLARA COUNTY SUPERIOR COURT:

Petitioner, Hailey Scimone is incarcerated at the Santa Clara County Elmwood Correctional Facility. Without intervention from this Court, they will likely be held with 96 hours with no opportunity to present the ability-to-pay information to this Court that is required by the Constitution. (*In re Humphrey* (2018) 19 Cal.App.5th 1006, 1041 holding that “Bail Determinations Must Be Based Upon Consideration of Individualized Criteria.”)

If Hailey had been detained for a warrantless arrest on these same charges, their bail would be set at \$0. If their release took more than a few hours, a magistrate would promptly conduct a probable cause review and consider releasing them on OR or SORP. If Hailey

had been incarcerated on a post-filing arrest warrant, they would be brought promptly to court, where the arraignment judge would consider whether to set scheduled bail of \$0, or order release on OR or SORP. Instead, Hailey is jailed on an arrest-only warrant, sometimes called a *Ramey* warrant, pursuant to Penal Code § 817. (*People v Ramey* (1976) 16 Cal 3d 263). Even though they were booked into jail on a non-violent single count of vandalism in violation of Penal Code § 594(b)(1)—for which schedule bail is \$0—their bail is set at a half-million dollars. Hailey cannot afford that amount. Defense counsel anticipates that they will be held 96 hours until at approximately 9:00 .p.m. on Wednesday October 7, 2020 on this unaffordable bail. Other than this Petition, Hailey has no method to challenge the \$500,000 bail setting, present information about their ability to pay or community ties, or ask for a re-setting of bail to \$0 in light of the fact that Hailey has no criminal history and is a lifelong Santa Clara County resident.

Therefore, Petitioner, Hailey Scimone, by and through their attorneys, Carlie Ware and Carson White, hereby petitions this Court for a Writ of Mandate, Habeas Corpus, or Alternative Relief directed to the Respondent Superior Court of the State of California, County of Santa Clara, to set aside its previous order setting Hailey’s bail at \$500,000 and to enter a new order releasing them on their own recognizance or setting their bail at \$0, in accordance with the Santa Clara County Bail Schedule.

In support of the requested Writ of Mandate, Habeas Corpus or Alternative Relief, by this verified Petition, Petitioner alleges:

I

Petitioner, Hailey Scimone, a 23-year-old local anti-racist activist and protester, is the party beneficially interested in these proceedings, and an aggrieved party in the proceedings in Respondent Court. Currently housed in the women's jail, Hailey's pronouns are they/them. The other interested parties are: the Respondent, Santa Clara County Superior Court; and the Real Party in Interest, the Santa Clara County District Attorney's Office. All actions complained of in this Petition have occurred within the territorial jurisdiction of the Respondent Court and the Santa Clara County Superior Court.

II

On October 3, 2020, Petitioner was taken into custody on a *Ramey* warrant alleging one felony violation of Penal Code section 594(b)(1), vandalism (CEN: 20024510). Under Presiding Judge Ryan's August 26, 2020 "Order Extending Bail Schedule," schedule bail for felony vandalism is \$0. Bail was set on the warrant at \$500,000. A presumptive placeholder court date was set for Wednesday October 7, 2020 for a potential arraignment if charges are filed arising from this arrest, but it is unclear whether the law enforcement agency that arrested Hailey even notified the Santa Clara County District Attorney's Office of the arrest or requested that criminal charges be filed. Hailey remains in pre-arraignment custody because Hailey is unable to afford \$500,000 bail. There is no mechanism—other than this Petition—for Hailey to ask that bail be reduced to schedule. Without this Petition, Hailey will sit in jail for three additional days with no legal recourse. Petitioner also suffers

from asthma, making their continued incarceration during the COVID-19 pandemic potentially life-threatening.

III

Hailey remains in custody because they are unable to afford their release, in violation of their rights to due process and equal protection of the law under the Fourteenth Amendment of the United States Constitution. Their bail is set excessively under the California Constitutional prohibition against excessive bail and the Eighth Amendment of the United States Constitution.

IV

Petitioner has no plain, speedy, or adequate remedy at law.

V

No other petitions seeking the relief sought herein have been filed by or on behalf of Petitioner.

VI

Petitioner is incarcerated in Santa Clara County's Elmwood Correctional Facility in Milpitas California.

WHEREFORE, Petitioner prays this Court:

1. Issue a peremptory Writ of Mandate, Habeas Corpus, or Alternative Order directing Respondent to set aside its order setting Petitioner's bail at \$500,000 and to enter a new order releasing Hailey on their own recognizance or setting bail at \$0; or, in the alternative, show cause before this Court why it should not be so ordered; and

2. Grant such other and further relief as the Court deems appropriate and in the interests of justice.

Dated: October 5, 2020

Respectfully submitted,

MOLLY O'NEAL
PUBLIC DEFENDER

A handwritten signature in black ink, appearing to read 'CW', is written over a solid horizontal line.

CARSON WHITE
Fellowship Attorney
CARLIE WARE
Deputy Public Defender
Attorneys for Petitioner

VERIFICATION

I am employed by the Santa Clara County Public Defender and have been assigned to prepare and file this Writ of Mandate, Habeas Corpus or Alternative Relief. All facts alleged in the above document, not otherwise supported by citation to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was signed on October 5, 2020.

A handwritten signature in black ink, appearing to read 'CW', is written above a horizontal line.

Carson White

Fellowship Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

Petitioner Hailey Scimone is a lifelong resident of Campbell and San Jose. (Ex. A para. 5.) Hailey's only absence from the area was for the duration of their college education in Pennsylvania. (*Id.* para. 6.) Hailey's immediate family (mother, father and younger brother) still lives in Campbell. (*Id.* para. 9.) Hailey has worked for the last year at a local fitness and rock-climbing facility. (*Id.* para. 7.) In line with lifting COVID-19 restrictions, Hailey expects to return to work within the next few weeks. (*Ibid.*) Hailey, 23 years old, has never been arrested before. (*Id.* para. 11.) Hailey is a politically active college graduate who lives with roommates. (*Id.* para. 10.)

Hailey has spent their life serving their community. (Ex. A para. 13.) Hailey spent high school summers volunteering as a counselor with Via Services, a summer camp for children and adults with developmental disabilities. (*Ibid.*) Hailey volunteered with Martha's Soup Kitchen and other local nonprofits, serving meals to unhoused people living on the streets of San Jose. (*Ibid.*) As an undergraduate student at Villanova University, Hailey was president of VU Pride, an LGBTQ+ student union, and volunteered with Back On My Feet, an organization to empower houseless people through fitness.

In the aftermath of George Floyd's murder at the hands of the Minneapolis Police Department earlier this year, Hailey exercised their First Amendment rights and participated in the San Jose protests in support of the Black Lives Matter movement. Hailey volunteered with HERO Tent, a local nonprofit organization that provides snacks and water

to protestors at Bay Area demonstrations and holds a weekly soup kitchen serving unhoused people living in San Jose. (Ex. A at para. 13.) Hailey was also active in SURJ (Showing Up for Racial Justice), participating in multiple political protest events. (*Ibid.*)

On Saturday October 3, 2020, multiple police cars surrounded a residence to take Hailey into custody. A Santa Clara Superior Court judge had apparently signed a *Ramey* warrant for Hailey’s alleged violation of penal code section 594(b)(1), felony vandalism. The arresting law enforcement officers never presented the warrant to Hailey. Hailey has never seen the warrant, which set bail at \$500,000. Schedule bail for a felony violation of Penal Code section 594(b)(1) is \$0.

Hailey is unable to afford \$500,000 bail. (Ex. B.) Hailey remains incarcerated in Santa Clara County’s Elmwood Correctional Facility in Milpitas, California.

LAW AND ARGUMENT

I. Petitioner is Incarcerated on Unaffordable Bail Though They Present No Threat to the Public Safety, in Violation of Their Rights to Due Process and Equal Protection of the Laws.

Where a defendant does not present an unmanageable threat to the public safety necessitating preventative detention, they may not, constitutionally, be detained under unaffordable bail. (*In re Humphrey*, (2018) 19 Cal.App.5th 1006, 1041.) Hailey, who has been arrested on suspicion of vandalism—a nonviolent crime—and has no criminal history, does not present any threat to public safety. Hailey has an absolute right to bail under Article I section 12 under the California Constitution. (Cal. Const. Art I sect. 12.) And where an arrestee has an absolute right to bail under the California Constitution, “the court may neither deny bail nor set it in a sum that is the functional equivalent of no bail.”

(*In re Christie* (2001) 92 Cal.App.4th 1105, 498.) Yet Hailey remains imprisoned because they are unable to pay \$500,000: the functional equivalent of “no bail allowed.”

As in this case, the due process and equal protection clauses of the Fourteenth Amendment of the United States constitution require that “[o]nce the trial court determines . . . a defendant should be admitted to bail, the important financial inquiry is . . . the amount necessary to secure the defendant's appearance at trial or a court-ordered hearing.” (*Humphrey*, supra at 1041.) There is no reason to believe, however, that money bail is necessary to secure Hailey’s appearance at a court ordered hearing at all. Hailey has never failed to appear for a court date. They have no criminal history. Hailey’s extensive support network demonstrates that Hailey is not a flight risk. This Court should set \$0 bail and order Hailey’s immediate release. Hailey’s continued incarceration because they are unable to afford their release, when they present no risk to public safety and no risk of flight, is a violation of their federal constitutional rights and must be immediately remedied by this court.

II. Petitioner’s Bail is Excessive Bail, in Violation of State and Federal Constitutions.

Article I section 12 of the California Constitution and the Eighth Amendment of the federal constitution prohibit courts from setting excessive bail. (Cal. Const. Art 1 sect. 12; U.S. Const. Amend. 8.) Bail is set excessively when it is set by the state “to achieve invalid interests, [or] in an amount that is excessive in relation to the valid interests it is set to achieve.” (*Galen v. County of Los Angeles* (2007) 477 F.3d 652.)

In general, the valid interests for which the state may set bail to incentivize an arrestee to return to court or to protect the public safety. Neither concerns of flight nor for public safety justify half a million dollars bail in this case. Hailey has no criminal history. They have never been convicted of a crime nor ever missed a court date. Hailey is a 23-year-old college graduate, accused of committing a nonviolent offense—vandalism—for which schedule bail is currently \$0. Half a million dollars bail is “*per se* unreasonably great and clearly disproportionate to the offense involved.” (*Ex Parte Duncan* (1879) 53 Cal. 410, 412.) This is that rare case “in which the amount of bail demanded would be so great as to shock the common sense, and be seen to be utterly disproportionate to the offense charged, and in such a case it [is the reviewing court’s] duty to interfere.” (*Ibid.*)

There is no legitimate government purpose that merits the setting of half a million dollars bail. There is, however, an obvious *illegitimate* purpose for which half a million dollars bail might be set in this case: retaliation for Hailey’s exercise of their First Amendment right to protest in support of local political action. The state has no valid interest, however, in setting bail at an amount designed to ensure Ms. Scimone remains in custody. (*Galen*, *supra* at 663 [Affirming a First Circuit case concerning excessive bail in which “the sole purpose in setting bail was to prevent [the defendant] from securing his release, not to assure his presence at future court proceedings or to protect the public safety. This was not a “compelling interest,” that the state could seek to achieve by imposing onerous bail conditions. “[internal citations omitted].) By issuing this warrant as a \$500,000 arrest warrant, the Court authorized a five-day detention (from Saturday

October 3 to Wednesday October 7), which Hailey has no method of challenging other than this Petition. This is *per se* excessive bail.

CONCLUSION

Petitioner is being detained on \$500,000 for a \$0 bail offense though they presents no threat to the public safety, in violation of their rights to due process and equal protection of the laws under the Fourteenth Amendment of the United States Constitution. their bail is set excessively, in violation of the prohibition against excessive bail under state and federal constitutions. This court should immediately order their released on \$0 bail or their own recognizance.

Dated: October 5, 2020

Respectfully submitted,

MOLLY O'NEAL

PUBLIC DEFENDER

A handwritten signature in black ink, appearing to read 'CARSON WHITE', written over a horizontal line.

CARSON WHITE

Fellowship Attorney

CARLIE WARE

Deputy Public Defender

Attorneys for Petitioner

CERTIFICATE OF WORD COUNT

I, Carson White, counsel for Petitioner Hailey Scimone, hereby certify that the word count of the attached Emergency Petition for Writ of Prohibition, Habeas Corpus or Alternative Relief, including the Verification and supporting Memorandum of Points and Authorities, is 2,181 words as computed by the word count function of Word, the word processing program used to prepare this brief.

Dated: October 5, 2020

A handwritten signature in black ink, appearing to read 'CW', with a stylized flourish extending to the right.

CARSON WHITE
Attorney for Petitioner

EXHIBIT A

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

HAILEY SCIMONE,

Defendant,

**DECLARATION BY COUNSEL IN
SUPPORT OF PETITION FOR WRIT
OF MANDATE, HABEAS CORPUS OR
ALTERNATIVE RELIEF**

I, Carlie Ware, am employed as a Deputy Public Defender with the Office of the Public Defender for Santa Clara County. The Office of the Public Defender represents Hailey Scimone in the above-entitled matter. On information and belief, I, the undersigned, declare under penalty of perjury:

Pre-Arraignment Operations

1. I am an attorney assigned to the Public Defender's Office Pre-Arraignment Representation and Review team. For the last year, I have specialized in Pre-Arraignment representation, primarily for in-custody arrestees in Santa Clara county.

2. When a person is booked into jail in Santa Clara County, the CJIC database automatically generates a presumptive date for arraignment. This arraignment date is based on the timeframes in Penal Code section 825.

3. Sometimes, when a law enforcement officer arrests someone, the law enforcement officer *does not* submit a packet to the District Attorney's Office requesting review for filing the case. When this happens, and the arrested person cannot afford bail, the arrestee is held in custody until approximately 9:00 p.m. on the date of the presumptive arraignment set by CJIC, even though no arraignment could have possibly taken place because the District Attorney's Office was never asked by law enforcement to consider filing a case.

4. A person arrested on a so called *Ramey* warrant who cannot afford bail will be held in custody on the warrant until approximately 9:00 p.m. on the date of the presumptive arraignment set by CJIC. Petitioner Hailey Scimone was arrested on a *Ramey* warrant. Hailey cannot afford \$500,000 bail. Based on my past experience and my knowledge of Pre-Arraignment operations, if law enforcement does not present Hailey's arrest for filing consideration to the District Attorney's Office, Hailey will be held until approximately 9:00 pm on Wednesday October 7. This will result in a 96 hour period of "pre-arraignment" incarceration even though no arraignment could have possibly taken place because the District Attorney's Office was never asked by law enforcement to consider filing a case.

Education and Employment

5. Hailey is 23 years old. Hailey is a lifelong resident of Santa Clara County. Hailey grew up in Campbell, and graduated from Notre Dame High School in San Jose. Hailey still lives in San Jose, with roommates.

6. After graduating High School, Hailey attended College at Villanova University in Pennsylvania. They were politically active in college, and engaged with activities to support the houseless community. Hailey's college years are the only period of non-Bay-Area residence in Hailey's life.

7. From October, 2019 until the COVID-19 shut down in March 2020, Hailey worked the front desk at Planet Granite rock climbing gym and fitness facility. After being laid off due to Shelter-In-Place, Hailey receives unemployment of approximately \$130 per week. Hailey's unemployment adds to \$6000 in savings in addition to \$600 in a debit account. Hailey also has \$1000 credit card debt and the daily expenses of rent, food and other bills.

8. Scheduled bail for these charges is \$0. Hailey is held on \$500,000—a half million dollars—bail. As demonstrated in the attached CR-115 financial declaration, Hailey cannot afford \$500,000 or the traditional 10% premium of \$50,000 to contract with a bail bond company to secure release.

Housing and Family Support

9. Hailey grew up in Santa Clara County. Hailey's parents and younger brother still live in Campbell. Hailey's parents provide a safety net.

10. Hailey's lives with roommates in San Jose. Hailey's roommates are also community activists, providing a network of local support.

Public Safety Considerations

11. Hailey is 23 years old with no criminal history whatsoever. The alleged charge of arrest is a vandalism, a non-violent offense.

Community Ties

12. Hailey has no history of failures to appear in court.

13. Hailey's political activism also provides community ties. Hailey volunteers with HERO Tent, a local nonprofit organization that provides snacks and water to protestors at Bay Area demonstrations and holds a weekly soup kitchen serving unhoused people living in San Jose. Hailey has also been also active in SURJ (Showing Up for Racial Justice), participating in multiple political protest events with a network of community activists that support Hailey and demonstrate ties to the community.

Other Considerations for Release

14. The Santa Clara County Office of Pretrial Services has not reviewed this case, because Hailey was arrested on a warrant. In my experience, this is the type of case that Pretrial Service would likely recommend OR release.

15. Hailey is suffering the inherent burdens of pretrial incarceration, including deprivation of liberty, curtailed ability to prepare a defense, prejudice engendered by appearing in court incarcerated, peril to employment or inability to seek employment, imposition on family, and attendant social burdens.

DATED: October 5, 2020

Respectfully Submitted,

Carlie Ware

CARLIE WARE

Deputy Public Defender

EXHIBIT B

12. List all real estate owned in your name or jointly:

Address of real estate

Fair market value

Amount owed

a. \emptyset

b.

OTHER PERSONAL PROPERTY (Do not list household furniture and furnishings, appliances, or clothing.)
13. List anything of value not listed above owned in your name or jointly (continue on attached sheet if necessary)

Description

Value

Address where property is located

a. MAC DESKTOP COMPUTER

\$ GIFT FROM PARENTS
\$ VALUE NOT KNOWN
\$

b.

c.

ASSETS

14. List all other assets, including stocks, bonds, mutual funds, and other securities (specify):

15. Is anyone holding assets for you? ☐ Yes ☒ No If yes, describe the assets and give the name and address of the person or entity holding each asset (specify):
NOT TO MY KNOWLEDGE

16. Except for attorney fees in this matter and ordinary and routine household expenses, have you disposed of or transferred any assets since your arrest on this matter? ☐ Yes ☒ No

If yes, give the name and address of each person or entity who received any asset and describe each asset (specify):

DEBTS

17. Loans (give details): \emptyset

18. Taxes (give details): \emptyset

19. Support arrearages (attach copies of orders and statements): \emptyset

20. Credit cards (give creditor's name and address and the account number):

APPROX \$1000 OWED ON CREDIT CARD - CITIBANK

21. Other debts (specify):

\emptyset

Date: OCT 4, 2020

Harvey Scimone

(TYPE OR PRINT NAME)

Harvey Scimone

(SIGNATURE)

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other (specify):

(INTERPRETER'S SIGNATURE)

DATE

(TYPE OR PRINT INTERPRETER'S NAME)

(CERTIFICATION NUMBER)

NAME OF VICTIM ON WHOSE BEHALF RESTITUTION IS ORDERED:	FOR COURT USE ONLY
NAME OF COURT: Superior Court, Santa Clara County STREET ADDRESS: 200 W Hedding MAILING ADDRESS: CITY AND ZIP CODE: San Jose 95110 BRANCH NAME: HALL OF JUSTICE	
PEOPLE OF THE STATE OF CALIFORNIA VS. DEFENDANT: HAILEY SCIMONE	
DEFENDANT'S STATEMENT OF ASSETS	
CASE NUMBER:	

It is a misdemeanor to make any willful misstatement of material fact in completing this form. (Pen. Code, § 1202.4(f)(4).)

(Attach additional sheets if the space provided below for any item is not sufficient.)

PERSONAL INFORMATION

1. a. Name: HAILEY SCIMONE
- b. AKA:
- c. Date of birth: 07/22/1997
- d. Social security number:
- e. Marital status: SINGLE
- f. Driver license number:
- State of issuance:
- g. Home address (incl. city/zip): Via HAILEY SCIMONE @ GMAIL.COM
- h. Home telephone no.:
- i. Employer's telephone no.:

EMPLOYMENT

2. What are your sources of income and occupation? (Provide job title and name of division or office in which you work.)
UNEMPLOYED SINCE MARCH 2020 DUE TO COVID-19
PREVIOUSLY EMPLOYED AT FRONT DESK OF PLANET GRANITE, FITNESS FACILITY OCT 2019 -
3. a. Name and address of your business or employer (include address of your payroll or human resources department, if different): MAR 2020
- b. If not employed, names and addresses of all sources of income (specify):
UNEMPLOYMENT FROM CALIFORNIA EDD.
4. How often are you paid (for example, daily, weekly, biweekly, monthly)? (specify): WEEKLY
5. What is your gross pay each pay period? \$
6. What is your take-home pay each pay period? \$ APPROX \$130/WEEK
7. If your spouse earns any income, give the name of your spouse, the name and address of the business or employer, job title, and division or office (specify): NO SPOUSE
8. Other sources of income (specify): NONE

CASH, BANK DEPOSITS

9. How much money do you have in cash? \$ 0
10. How much other money do you have in banks, savings and loans, credit unions, and other financial institutions either in your own name or jointly (list):

Name and address of financial institution	Account number	Individual or joint?	Balance
a. FIRST REPUBLIC	DEBIT	INDIVIDUAL	\$ APPROX 600
b. EDD UNEMPLOYMENT ACCOUNT	UNEMPLOYMENT	INDIVIDUAL	\$ APPROX 6,000
c.			\$

PROPERTY

11. List all automobiles, other vehicles, and boats owned in your name or jointly.

	Make and year	Value	Legal owner if different from registered owner	Amount owed
a.	Ø	\$		\$
b.		\$		\$
c.		\$		\$

(Continued on reverse)

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

Case No.

I am a citizen of the United States and am employed in the County aforesaid; I am over the age of eighteen years and not a party to this action; my business address is 120 West Mission Street San Jose, CA 95110. On October 5 ,2020 I served the within EMERGENCY WRIT OF MANDATE, HABEAS CORPUS OR ALTERNATIVE RELIEF and exhibits in support on Respondent in this action, by sending a courtesy copy to the electronic service address

The Honorable Eric Geffon egeffon@scscourt.org

And the real-party-in-interest n this action, by sending a courtesy copy to the electronic service address

DAngel@dao.sccgov.org, addressed to:

David Angel
Office of the District Attorney
70 West Hedding Street
San Jose, CA 95110

I declare under the penalty of perjury that the foregoing I declare under the penalty of perjury that the foregoing is true and correct. Executed on the 5th of October, 2020 at Mountain View, California.

Carlie Ware