

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM NATHANIEL WASHINGTON

Petitioner,

v.

ERIC ARNOLD, WARDEN

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES DISTRICT COURT, FOR THE CENTRAL DISTRICT

William Nathaniel Washington

Prisoner Id. No. AT6324

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QUESTION(S) PRESENTED

Whether a substantial showing of the denial of a constitutional right has been made by the petitioner, in light of the recent factual finding, by the United States District Court, in which, it ruled that petitioner's civil case, **Washington v. Diamond**, No. 17-666, is not barred by **Heck v. Humphrey**, 512 U.S. 477, 486-87 (1994). App. E

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM NATHANIEL WASHINGTON, Petitioner

v.

ERIC ARNOLD, WARDEN, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
DISTRICT COURT, FOR THE CENTRAL DISTRICT

Petitioner, William Nathaniel Washington, respectfully asks that a Writ of Certiorari issue to review the judgment and opinion of the United States District Court, for the Central District, filed on February 16, 2018.

OPINION BELOW

The Report and Recommendation of the Magistrate Judge, was issued on February 16, 2018, and is attached as Appendix A. The Order accepting the report and adopting the findings, conclusions, and recommendations of the Magistrate Judge, was issued on March 23, 2018, and is attached as Appendix B. The order of the United States Court of Appeals, denying petitioner's request for a certificate of appealability, was issued on May 7, 2018, and is attached as Appendix C. The order denying the petition for rehearing en banc, in the United States Court of Appeals, was issued on June 1, 2018, and is attached as Appendix D.

The Final Report and Recommendation of the United States Magistrate Judge, was issued on May 3, 2018, and is attached as Appendix E. The order accepting the Final Report and Recommendation of the United States Magistrate Judge, was issued on June 6, 2018, and is attached as Appendix F.

JURISDICTION

The jurisdiction of this Court is invoked under Article III of Constitution of the United States and 28 U.S.C. § 1651(a). The decision of the United States District Court for which petitioner seeks review was issued on February 16, 2018. This petition is filed within 90 days of the United States Court of Appeals denial and dismissal, under Rules 13.1, 18, and 29.2 of this Court.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

United States Constitution, Amendment Fourteen provides, in relevant part: No state...shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 26, 2012, Petitioner, William Nathaniel Washington, was arrested as a suspect to crimes that had been committed in the San Fernando Valley area. Los Angeles Police Department(L.A.P.D.), Officers' Hookstra and Argota, attempted to persuade the petitioner to sign a Miranda waiver and Investigative Action Statement form, and interview petitioner. However, Petitioner refused to sign this form, and requested to speak with his Attorney.

During the booking process, L.A.P.D. Detective, Marc Diamond, took custody of the petitioner, and took petitioner into a room with no audio and video surveillance. Detective Diamond attempted to make the petitioner sign the Miranda waiver and Investigative Action Statement form, however, once again, petitioner refused to sign this form, and refused to be interviewed. Petitioner, then, pushed the form in front of him, back to Diamond, in which this form slid off of the table. Diamond took this action of petitioner as disrespect, and stated to petitioner: "you'll regret having did that".

Later on that same day, Detective Diamond forges petitioner's signature on the Miranda waiver and Investigative Action Statement form, and fabricates the police reports to state that petitioner confessed to being guilty of committing the crimes that he had been arrested for. However, instead of Diamond filing criminal charges against the petitioner, Diamond contacts petitioner's parole agent, Clyde Nobari, and falsely reports to him that petitioner had: (1) been arrested and already charged with crimes; and (2) confessed to committing the crimes. This false report compels petitioner's parole agent to place a "parole hold" on petitioner, keeping petitioner "in-custody", pending further invest-

igation, by the police, into these crimes.

Next, Detective Diamond deliberately fails to collect the video surveillance from the hotel cameras at the 777 Motor Inn. This is the hotel that petitioner had been staying at, and was also arrested at. The video surveillance of the hotel automatically erases after 30 days, so, Diamond waits an additional 10 days, before actually filing criminal charges against the petitioner, to ensure that no surveillance evidence exist that would show evidence being planted in petitioner's room.

On October 31, 2012, at the state preliminary hearing, Diamond testifies to the fact that petitioner signed the Miranda waiver and Investigative Action Statement form, and then confessed to him of being guilty of committing the crimes that petitioner was being held in-custody to answer for. Petitioner to rebut and impeach this testimony made by Diamond, calls Handwriting Expert, Laurie Hoeltzel, to testify for the defense. This expert testifies to the fact that: (1) the signature on the Miranda waiver and Investigative Action Statement form is a forgery; and (2) it was not written by the petitioner. See Final Report and Recommendation of the United States Magistrate Judge, [Appendix E.]

The state prosecution does not rebut and/or challenge the finding made by petitioner's expert, with other evidence. See Final Report and Recommendation of the United States Magistrate Judge, [Appendix E.]

On November 9, 2012, at the continued state preliminary hearing, state judge, Jessica Silvers, without requiring the state prosecution to rebut and/or challenge, with other evidence, the expert testimony, that had proven that the L.A.P.D. had committed a crime against the petitioner, with the specific intent of framing him, makes a finding that there was probable cause to hold petitioner in-custody to answer to these criminal charges, basing a part of her decision on the Miranda

waiver and Investigative Action Statement form, and the confession in the police reports. See Final Report and Recommendation of the United States Magistrate Judge, [Appendix E.]

On June 26, 2013, approximately one month before petitioner's state criminal trial proceedings commenced, the United States District Court, for the Central District of California, denies the motion for a stay of the state court criminal proceedings, and dismisses the emergency petition for writ of habeas corpus filed by petitioner on the ground that: "Petitioner has not demonstrated that he will be unable to present a defense based on his allegations of police misconduct in the state proceedings."

On August 20, 2013, the state criminal trial proceedings commence in petitioner's case. The state prosecution deliberately suppresses the Miranda waiver and Investigative action Statement form, and the confession purported to be made by the petitioner in the police reports. See Final Report and Recommendation of the United States Magistrate Judge, [Appendix E.]

On August 26, 2013, L.A.P.D. Detective Diamond testifies to the fact that petitioner signed the Miranda waiver and Investigative Action Statement form, and was interviewed by him.

As a direct result of the state prosecution's suppression of the Miranda waiver and Investigative Action Statement form, the state trial judge bars the petitioner from introducing the fact that the signature on the Miranda waiver was a forgery and that he had not confessed. See Final Report and Recommendation of the United States Magistrate Judge, [Appendix E.]

On August 30, 2013, the petitioner is convicted by a jury of the criminal charges, that Diamond stated in the police reports,

petitioner confessed to being guilty to.

Petitioner filed a petition for writ of habeas corpus in the United States District Court, while his state criminal appeal was still pending in the California Court of Appeals, however, the district court dismissed the petition, without prejudice, on the ground that: petitioner had not made a substantial showing of the denial of a constitutional right or that the district court erred in its procedural ruling.

Once his direct criminal appeal had concluded, petitioner resubmitted the habeas corpus petition, in the district court, arguing that: (1) the state trial court violated his Sixth Amendment right to present a defense by excluding evidence that would have proved that L.A.P.D. Detective Diamond had framed him; (2) his criminal case had satisfied the criteria for extraordinary circumstances that district court judge, Virginia A. Phillips, stated he must show in order for the district court to invoke its supervisory powers, and enjoin petitioner's state criminal proceedings; (3) the state prosecutor violated his Mooney rights guaranteed by the Fourteenth Amendment, by allowing false evidence to go "uncorrected", when it first appeared. Furthermore, that the state prosecutor deliberately suppressed the false evidence during the state trial proceedings, to alter the outcome of the state criminal proceedings; (4) the state court violated his Fourteenth Amendment Due Process rights, by subjecting him to answer to criminal charges on the basis of deliberately fabricated evidence; (5) the state trial counsel violated his Sixth Amendment right to effective assistance of counsel; (6) the police violated his Fourteenth Amendment rights by intentionally failing to collect ex-

culpatory evidence to conceal the fact that evidence was planted in bad faith; (7) the state court violated his Sixth Amendment right to a jury trial on his prior convictions, and imposed an illegal enhancement.

The United States District Court rejected petitioner's arguments on the merits, and denied to issue a certificate of appealability on the ground that: "petitioner had not made a substantial showing of the denial of a constitutional right." App. A and App. B

Approximately three months later, the United States District Court in petitioner's civil case, Washington v. Diamond, Case No. CV 17-666, makes the factual finding that "extraordinary circumstances" are present in petitioner's case, and rules that his civil case IS NOT BARRED by Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). App. E

Petitioner requested that a certificate of appealability be issued by the Ninth Circuit Court of Appeals, but this request is denied on the ground that: "appellant has not made a substantial showing of the denial of a constitutional right." App. C

Petitioner requested that the Ninth Circuit Court of Appeal rehear his request for a certificate of appealability en banc, arguing that its own ruling, in Devereaux v. Abbey, 263 F.3d 1070, 1076 (9th Cir. 2001)(en banc), mandated that the court grant a certificate of appealability, in light of the factual finding made by the district court. App. E

The Ninth Circuit Court of Appeal rejected this argument without opinion. App. D

REASONS FOR GRANTING THE PETITION

I.

This Case, In Which the United States District Court, In Washington v. Diamond, No. 17-666, Recently Made the Finding That the State Court Found That There Was Probable Cause, Based In Part On Deliberately Fabricated Evidence, And That the State Prosecution Did Not Challenge This Deliberately Fabricated Evidence, But Deliberately Suppressed This Evidence At Petitioner's State Trial Proceedings, And Lastly, That the State Trial Judge Barred Petitioner From Introducing the Fact That Evidence Had Been Deliberately Fabricated By the Police, With the Specific Intent Of Framing the Petitioner, Should Be Held For Disposition Pending This Court's Decision In Washington v. Diamond, No. 17-8218.

In Washington v. Diamond, this Court will be determining whether the Fourteenth Amendment Substantive Due Process Clause bars the California State Government from having been permitted to invoke judicial processes to obtain a conviction against the petitioner, in light of the fact that it has been already determined that: (1) the state preliminary hearing court found that there was probable cause to hold petitioner in-custody, to answer to these criminal charges, based in part on deliberately fabricated evidence; (2) the state prosecution did not rebut and/or challenge this deliberately fabricated evidence, after an expert witness opined that this evidence had been deliberately fabricated, but, instead, deliberately suppressed this evidence at petitioner's state trial proceedings; and (3) the state trial judge barred petitioner from introducing the fact that evidence had been deliberately fabricated by the police, with the intent of framing petitioner. App. E at pg. 4, lines 3-9, and pg. 6, lines 8-14.

In this case, a clear manifest injustice has occurred, due to the fact that the same district court that just made this above-mentioned finding in petitioner's civil case, has completely contradicted itself, in its ruling in petitioner's habeas corpus appeal. Because those factual findings in petitioner's civil case, clearly entitle

petitioner to an evidentiary hearing, due to the fact that he developed the factual basis of the claims in his habeas appeal.

It is well established that Due Process guarantees a criminal defendant a meaningful opportunity to present a complete defense. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). That right is violated when critical defense evidence is excluded from trial. *DePetrìs v. Kuykendall*, 239 F.3d 1057, 1062 (9th Cir. 2001).

This Court, in *Townsend v. Sain*, 372 U.S. 293, 313, 83 S.Ct. 745, 757, 9 L.Ed.2d 770, 786 (1963), listed six situations in which state errors require the federal court to hold an evidentiary hearing: (1) The merits of the factual dispute were not resolved in the state hearing; (2) The state's factual determination is not fairly supported by the record as a whole; (3) The state court's fact-finding procedure did not adequately provide a full and fair hearing; (4) There is a substantial allegation of newly discovered evidence; (5) The material facts were not adequately developed at the state court hearing; or (6) The state judge did not afford the applicant a full and fair hearing for any reason.

In this case, all six situations have occurred, in light of the recent finding made by the district court, in *Washington v. Diamond*, No. 17-666. App. E.

This case presents the same question of whether the Fourteenth Amendment Substantive Due Process Clause absolutely bars the California state government from having been able to invoke judicial processes to obtain petitioner's conviction, because the conduct of law enforcement agents was so outrageous. *United States v. Russell*, 411 U.S. 423, 431-32, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973).

The district court has made the factual finding and determination that petitioner's civil case, which stemmed from his criminal case, is not barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); but that, if a jury in the civil case to conclude that the Miranda waiver was forged by the police, and that petitioner had not confessed, it would not necessarily impugn the criminal jury's verdict. App. E at pg. 5, lines 4-10. These circumstances are clearly extraordinary, and warrant that this Court take exception and exercise its supervisory powers to: (1) implement a remedy for violation of recognized rights; (2) preserve judicial integrity by ensuring that [petitioner's] conviction rests on appropriate considerations validly before the jury; and (3) deter the illegal conduct of law enforcement agents. *United States v. Hastings*, 461 U.S. 499, 103 S.Ct. 1974, 76 L.Ed.2d 96, 51 U.S.L.W. 4572 (1983).

Petitioner's application for habeas corpus clearly sets forth facts which render his imprisonment void because of constitutional defects, and given this fact, in light of the factual finding made by the district court, App. E, he should have been given an opportunity to prove the issues of fact controlling the constitutional validity of his detention. *Ex parte Rosier*, App. Dc., 133 F(2d) 316; see also *Powell v. Alabama*, 287 U.S. 45, 77 L.Ed 158, 53 S.Ct. 55, 84 ALR 527; *Moore v. Dempsey*, 261 U.S. 86, 67 L.Ed. 543, 43 S.Ct 265.

This Court, in *United States v. Atkinson*, 297 U.S. 157, 160, 56 S.Ct. 391, 80 L.Ed. 555 (1936), stated:

"In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings."

Here, in this case, the district court, in petitioner's civil case,

Washington v. Diamond, No. 17-666, has taken exception, and held that petitioner's civil case is not barred by Heck, under the very facts in petitioner's civil case, there exists no justifiable reason that the same exception cannot be taken in petitioner's habeas corpus appeal.

The Ninth Circuit Court of Appeal, in Devereaux v. Abbey, 263 F.3d 1070, 1076 (9th Cir. 2001)(en banc), has held that:

"there is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government."

Since, the Ninth Circuit has held that this above-mentioned right is clearly established, the question posed by the petitioner is: "Should not his case have already been dismissed, due to a failure of the state prosecution to correct the showing of outrageous police misconduct being committed by law enforcement agents?" Napue v. Illinois, 360 U.S. 264, 267, 3 L.Ed.2d 1217, 79 S.Ct. 1173 (1959).

This Court's disposition of Washington v. Diamond will be determinative of the legality of petitioner's federal habeas appeal. Accordingly, this case should be held pending the decision in Washington.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari, vacating the judgment of the United States District Court, and either remanding the case for further proceedings in light of Washington, or simultaneously decide this case's merits—that is, without any merits briefing, without any "friend of the court" briefs or input from the solicitor general and without any oral argument, in light of the factual finding made by the district court.

App. E.

Dated: 6/26, 2018

Respectfully submitted,



William Nathaniel Washington
In Pro Se