No. _____

In the

Supreme Court of the United States

October Term: _____

CARLOS DAVID LOPEZ,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For a Writ of Certiorari
To The Court of Appeal Of The
State of California, Sixth Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. **Does a trial court's refusal to review privileged mental health records of the complaining witness during plea negotiations violate the Sixth Amendment right to the effective assistance of counsel, particularly where the defendant is potentially facing a life sentence if he does not enter a plea?**

2. **Does a trial court's refusal to review privileged mental health records of the complaining witness prior to trial violate the Sixth Amendment right to confront witnesses?**

3. **Does a trial court's refusal to review privileged mental health records of the complaining witness prior to trial violate the Sixth Amendment right to compulsory process?**

4. **Do criminal defendants have a due process right to have a court review privileged mental health records of the complaining witness prior to trial?**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Carlos Lopez respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Sixth Appellate District Court of Appeal for the State of California, entered and filed in the above proceedings on January 23, 2018.

OPINIONS BELOW

The opinion of the Sixth Appellate District Court of Appeal for the State of California appears at Appendix A to the petition and is unpublished. The opinions of the Santa Clara County Superior Court appear at Appendix B to the petition and are unpublished. The order of the California Supreme Court denying a petition for review appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the Sixth Appellate District Court of Appeal for the State of California decided this case was January 23, 2018. A copy of that decision appears at Appendix A. A timely petition for review to the California Supreme Court was thereafter denied on May 9, 2018, and a copy of the order denying that petition appears at Appendix C.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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

The Santa Clara County District charged Petitioner Carlos Lopez with two counts of committing a lewd act on a child under the age of 14 by force, in violation of California Penal Code section 288, subdivision (b)(1). Clerk's Transcript on Appeal ("CT") 2-4.

Prior to the preliminary hearing, Petitioner's counsel subpoenaed certain educational records from a school, and certain psychological/ medical records from a medical provider, to be produced in the trial court.

The trial court refused even to review the psychological records prior to trial based on a California Supreme Court decision, *People v. Hammon,* 15 Cal.4th 1117 (1997). Appendix B, December 23, 2014 Order Re: Materials Receive After Issuance of Subpoena Duces Tecum to EMQ Families First. Petitioner moved for reconsideration of the order as to *in camera* review of the psychological/medical records, which the court also denied. Appendix B, February 10, 2015 Minutes Denying Motion to Reconsider Order Denying *In Camera* Review; Reporter's Transcript on Appeal ("RT") 17-18.

Petitioner thereafter entered into a plea agreement, pursuant to which he agreed to plead no contest to both counts, with an indicated sentence of ten years in state prison. CT 49-56, 58; RT 20-25. The court subsequently sentenced Petitioner in accordance with the agreement. CT 47, 72; RT 31.

On appeal, the Sixth Appellate District affirmed, in part on the grounds that it was bound by *Hammon.* Appendix A, Opinion at 7, 10. Petitioner's timely Petition for Review to the California Supreme Court was denied without comment on May 9, 2018. Appendix C.

STATEMENT OF FACTS

A. Police Investigation

On November 8, 2013, the victim's mother told officers that her 9-year old daughter had reported that she had been molested the day before by the Petitioner. CT 24. During an interview that day, the victim told officers Petitioner had asked her to take off her shoes and pants, then pulled her pants and underwear off, began breathing heavily in her ear, and touched her chest over her shirt. On three or five occasions, he inserted his index finger in her vagina, and he performed oral sex twice. CT 25. The victim also told police about a prior incident, when she was eight, when Petitioner touched her leg while they were watching a movie. CT 25-27. When questioned, the Victim said she could not recall where Petitioner actually touched her, saying "[p]robably my leg something." CT 26-27.

During a Sexual Assault Response Team ("SART") examination that day, the victim did not refer either to digital penetration or oral copulation. The nurse noted a past history for Attention Deficit Hyperactivity Disorder ("ADHD"), and took swabs for DNA analysis. CT 28. Police conducted a follow-up interview with the victim on November 18, 2013, in which she again discussed the recent incident. CT 29-30. When asked about the prior incident, the victim was again very vague about what had occurred, saying she could not remember but mentioning touching. CT 30-32. The interview

ended with the following exchange:

> Detective: Mm-hmm. So you don't remember if – what he did at all?
> [Victim]: No.

CT 32.

At a follow-up SART investigation that day, the victim said she had lower abdominal pain during bowel movements, and her mother indicated that she had not taken medication prescribed for her ADHD for six months due to insurance issues. She was receiving counseling for her behavior at a healthcare provider, EMQ Families First ("EMQ"), and her mother intended to get additional treatment for her after a planned move. The examiner concluded there were "[n]o findings of penetrating anogenital trauma." CT 32.

Petitioner repeatedly denied the incident despite aggressive, misleading interrogations, during which detectives falsely told him that his saliva was on the victim's vagina. CT 33-34. No physical evidence ever corroborated the victim's account of either event. CT 27-34.

B. Trial Court's Refusal to Review Records as Requested by Petitioner's Counsel During Plea Negotiations

Prior to any preliminary hearing, Petitioner's counsel subpoenaed documents pertaining to the victim from EMQ and from a school. Exhibits A and B to Motion to Augment The Record on Appeal ... ("Augment

Motion"). From EMQ, counsel sought "[m]edical and psychological reports and reports for all treatment including case referral received by [victim],... information related to [victim's] behavioral issues, records of disclosure regarding the alleged molestation and any other allegations of prior molestation or abuse allegations, any information evidencing a lack of honesty or veracity including, but not limited to, false statements, and any other information regarding developmental delays or other factors that could impair [victim's] ability to perceive, understand, or communicate." Exhibit B-1 to Augment Motion.

The trial court received the sealed envelopes containing the subpoenaed documents, which were produced under seal to the Sixth Appellate District. CT 16; ART 3-4. The trial court opened the sealed envelopes, determined that the contents appeared generally to respond to the two subpoenas, and stated its intention to conduct an *in camera* review. CT 16; ART 3-4. After its review of the school records, the trial court found no good cause to believe the records were material or likely to lead to material information and ordered the records to "remain sealed within the court's file." CT 18. The court determined the EMQ records were governed by the procedures set forth in *Hammon, supra*, 15 Cal.4th 1117, and ordered those records to remain sealed in the court's file, apparently without reviewing them. CT 20.

Petitioner moved for reconsideration regarding the EMQ documents, CT 22-42, arguing that he was entitled to disclosure during the critical plea negotiations. CT 35-41; RT 5-18. As counsel explained, Petitioner had been offered a determinate sentence of 16 years, but subsequent proceedings could subject him to an indeterminate sentence of 25 years to life. CT 35; RT 10, 14-15. "It's pretty clear that the case – the charges will change after the preliminary hearing." RT 10. Counsel requested judicial review of the subpoenaed documents "in order to make an informed recommendation to my client regarding whether to accept an offer in the conflicts (*sic*) of plea negotiations or reject it and proceed to a trial department. I am asking to be able to complete a full informed and effective investigation type so I can participate meaningfully in plea negotiations, and advisement to my client." RT 7-8.

The court denied the motion. CT 43; RT 17-18.

REASONS FOR GRANTING THE WRIT

This case raises overlapping constitutional issues involving a criminal defendant's rights to effective counsel during plea bargaining, to effectively confront and cross-examine witnesses, to compulsory process, and to due process. By refusing to review mental health records pertaining to the complaining witness, the trial court made it impossible for defense counsel

to effectively advise his client on whether to engage in plea bargaining, even though the failure to take a plea would result in the filing of additional charges carrying a life sentence.

As this Court recognized in its dual cases on ineffective assistance of counsel during plea negotiations, *Lafler v. Cooper,* 566 U.S. 156, 169-170 (2012), and *Missouri v. Frye*, 566 U.S. 134, 143-144 (2012), plea bargaining now dominates the criminal justice system, with well over ninety percent of all cases resolved by plea rather than by trial. Although the negotiation of a plea is usually the most important proceeding a criminal defendant will face, there is a dearth of authority on critical issues regarding counsel's access during those negotiations to the information required to give competent advice to defendants facing lengthy sentences. The government's actions in this case prevented Petitioner's counsel from effectively assisting him during a critical stage of the proceedings, a form of ineffective assistance of counsel that constitutes a constitutional error without any showing of prejudice. *United States v. Cronic*, 466 U.S. 648, 659, fn. 25 (1984).

There does not appear to be any authority directly addressing the question of whether a defendant's Sixth Amendment right to counsel overcomes the psychotherapist-patient privilege afforded by statutes such as California Evidentiary Code section 1014. Appendix A, Opinion at 6. The trial court's refusal to review the records was based on California's ban

on allowing criminal defendants access to the mental health records of victims until trial, *Hammon*, 15 Cal.3d 1117, which in turn was based on this Court's splintered decisions in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). With two justices not participating, *Ritchie* limited the Confrontation Clause of the Sixth Amendment to a trial right that did not warrant any pretrial disclosure, though it found the right to due process required post-trial review. *Ritchie* has resulted in conflicting, confusing decisions among the state courts as to whether evidentiary privileges must yield to the constitutional rights of criminal defendants.

This Court should grant certiorari to consider whether the constitution requires pretrial review of a complaining witness's mental health records.

I. The Trial Court's Refusal to Review Potentially Critical Mental Health Records During Plea Negotiations Prevented Counsel from Providing Effective Assistance During a Critical Stage of Criminal Proceedings in Violation of Petitioner's Sixth Amendment Right to Counsel

The Sixth Amendment "guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009). This Court has "long recognized that the negotiation of a plea bargain is a critical phase of litigation for

purposes of the Sixth Amendment right to effective assistance of counsel." *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010). "[C]riminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Lafler v. Cooper*, 566 U.S. at 170. "In today's criminal justice system ... the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." (*Missouri v. Frye*, 566 U.S. 134, 144 (2012).

Timely, reasonable investigation is a critical aspect of the effective assistance of counsel, "and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland v. Washington*, 466 U.S. 668, 690-691 (1984). Even when an individual attorney is diligently attempting to mount a vigorous defense, the State's actions can violate a defendant's constitutional rights by "prevent[ing counsel] from assisting the accused during a critical stage of the proceedings." *Cronic*, 466 U.S. at 659, fn. 25. In such circumstances, this Court has "uniformly found constitutional error without any showing of prejudice." *Ibid.*

The Sixth Appellate District rejected Petitioner's claim because "the trial court's refusal to review and release the medical records did not

prevent defendant from communicating with his attorney for any extended period of time, as would be necessary to support a finding that his right to counsel had been denied." Appendix A, Opinion at 6, citing *Geders v. United States,* 425 U.S. 80, 91 (1976). But preventing communication between counsel and client is not the only method by which the State can deny a defendant's right to counsel. *Powell v. Alabama*, 287 U.S. 45, 53, 56-57 (1932), held that not appointing counsel until the day of trial in a capital case violated the Sixth Amendment right to counsel, while *Bell v. Cone,* 535 U.S. 685 (2002), listed a number of cases involving "criminal defendants who had actually or constructively been denied counsel by government action." *Id.* at 696, fn. 3. These included *Herring v. New York*, 422 U.S. 853, 865 (1975), where the court prevented counsel from making a summation at the close of a bench trial, and *Brooks v. Tennessee*, 406 U.S. 605, 612-613 (1972), where a law required defendants "to testify first at trial or not at all."

The trial court's refusal to review the EMQ records in this case prevented Petitioner's diligent attorney from conducting the investigation that, in counsel's reasonable professional judgment, was absolutely required to make informed decisions and ensure that his client was not laboring under any misconceptions about the potential consequences. Without the effective advice of counsel, Petitioner had to decide whether to negotiate for

a determinate sentence prior to any further proceedings, or face a possible 25 years to life sentence if he did not plead and proceeded to the preliminary examination. CT 35; RT 7-10, 14-15.

The Court should grant certiorari to determine whether the government prevented Petitioner from receiving the effective assistance of counsel required under the Sixth Amendment by making it impossible for his attorney to engage in informed, zealous plea negotiations with the prosecution, or to provide informed legal advice to his client. *Strickland v. Washington,* 466 U.S. at 690-691. In examining this issue, the Court should look to the state authorities that have been grappling with criminal defendants' right to review mental health records following *Ritchie*, as discussed in the next section.

II. This Court Should Extend State Court Caselaw Following *Ritchie* to Require Pretrial Review of Mental Health Records Under the Sixth Amendment's Confrontation Clause and Right to Counsel

Although there does not appear to be any authority directly addressing whether a refusal to review the victim's mental health records violated the Sixth Amendment right to counsel, Appendix A, Opinion at 6, a considerable body of caselaw regarding such records has developed in relation to due process and the Sixth Amendment's Confrontation Clause

since this Court's decision in *Pennsylvania v. Ritchie,* 480 U.S. 39, which overlaps the issues in this case.

In *Ritchie,* a criminal defendant subpoenaed records from the state's investigative child abuse files prior to trial to assist in cross-examining the minor who had accused him of having unlawful sexual intercourse. *Pennsylvania v. Ritchie,* 480 U.S. at 43-44. Although the material was subject to only a qualified privilege, the trial court denied access and the defendant was convicted. *Id.* at 44-45, 57-58. With two justices essentially abstaining due to jurisdictional concerns, *id.* at 72-78 (Stevens, J., dissenting), a four-justice plurality of this Court held that Ritchie had a due process right, under the Fourteenth Amendment and *Brady v. Maryland,* 373 U.S. 83 (1963), to have the trial court review those files *in camera,* and further held he had a right to a new trial if the files contained information that probably would have changed the outcome of his trial. *Id.* at 49-58.

Three justices believed the Sixth Amendment's Confrontation Clause required pretrial review of the records by either the trial court or defense counsel, because "there might well be a confrontation violation if, as here, a defendant is denied pretrial access to information that would make possible effective cross-examination of a crucial prosecution witness." *Pennsylvania v. Ritchie,* 480 U.S. at 61-62 (Blackmun, J., concurring in part and concurring in the judgment; see also *id.* at 66-72 (Brennan, J., dissenting).

Concerned that a broad interpretation of *Davis v. Alaska*, 415 U.S. 308, 316 (1974), would effectively "transform the Confrontation Clause into a constitutionally compelled rule of pretrial discovery," *id.* at 52, the plurality found the right to confrontation was only "a *trial* right designed to prevent improper restrictions on the type of questions that defense counsel may ask during cross-examination." *Ibid.* (emphasis in original). The Court declined to consider whether the compulsory process clause of the Sixth Amendment afforded such a right, preferring to analyze the issue under the due process framework. *Id.* at pp. 55-58.

The Court has since held that there is an absolute federal psychotherapist-patient that precluded any review, at least in civil litigation, while acknowledging that in certain circumstances even an absolute privilege "must give way." *Jaffee v. Redmond*, 588 U.S. 1, 18, fn. 19 (1996).[1]

As one commentator has noted, since *Ritchie* "the law on this subject has become an incredible hodgepodge of conflicting approaches and procedural conundrums,..." Clifford C. Fishman, *Defense Access to a*

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[1] Federal courts have extended the *Jaffee* ruling to criminal cases, holding that the federal psychotherapist privilege "is not rooted in any constitutional right of privacy but in a public good which overrides the quest for relevant evidence; the privilege is not subject to a balancing component." *United States v. Glass*, 133 F.3d 1356, 1358 (10th Cir. 1998); see also *Johnson v. Norris*, 537 F.3d 840 (8th Cir. 2008).

Prosecution Witness's Psychotherapy or Counseling Records, 86 Or. L. Rev. 1, 4 (2007). Professor Fishman explains that in Connecticut, Michigan, Nebraska, New Mexico, Wisconsin and South Dakota, if a criminal defendant establishes a right to disclosure of privileged mental health records, the witness is given a chance to waive the privilege and, if she declines, is precluded from testifying. *Id.* at 17-18.[2] On the other hand, a defendant has no right to any disclosure of privileged records in Colorado, Illinois and Pennsylvania. *Id.* at 19-20,[3] while in Massachusetts, defense counsel rather than courts are allowed to review the records upon a proper showing. *Id.* at 23, citing *Commonwealth v. Dwyer*, 859 N.E.2d 400 (Mass 2006).

More recently, the Connecticut Supreme Court cited *United States v. Nixon*, 418 U.S. 479, 485 (1974), in determining that "in certain exceptional circumstances, the interests of an accused must prevail over a homicide victim's psychiatrist-patient privilege." *State v. Fay*, 167 A.2d 897, 909 (Conn. 2017). South Carolina's Supreme Court found that "the majority of

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[2] Citing *State v. Peeler*, 857 A.2d 808, 841 (Conn. 2004); *People v. Stanaway*, 521 N.W. 2d 557 (Mich. 1994); *State v. Trannell*, 435 N.W. 2d 197 (Neb. 1989); *State v. Gonzalez*, 912 P.2d 297 (N.M. 1996); *State v. Shiffra*, 499 N.W.2d 719 (Wis. Ct. App. 1993); *State v. Karlen*, 589 N.W.2d 594 (S.D. 1999).

[3] Citing *People v. Turner*, 109 P.2d 639 (Colo. 2005); *People v. Harlacher*, 634 N.E.2d 366 (Ill. App.Ct. 1994); and *Commonwealth v. Wilson*, 602 A.2d 1290 (Pa. 1992).

jurisdictions in the United States have determined that a criminal defendant's right, provided certain requirements are met, may supersede a witness's rights or statutory privilege," and adopted the procedure enunciated by the Kentucky Supreme Court:

> If the psychotherapy records of a crucial prosecution witness contained evidence probative of the witness's ability to recall, comprehend, and accurately relate the subject matter of the testimony, the defendant's right to compulsory process must prevail over the witness's psychotherapist-patient privilege.

State v. Blackwell, 801 S.E.2d 713, 726 (S.C. 2017), quoting *Commonwealth v. Barroso*, 122 S.W.2d 554, 563 (Ky. 2003)

The Wisconsin Supreme Court splintered into five separate opinions in attempting to determine whether to change its procedure, with no opinion garnering enough votes to change an appellate decision upholding the existing procedure banning a witness who refuses to waive the privilege from testifying. *State v. Lynch*, 885 N.2d 89 (Wis. 2016). In *State v. Neiderbach*, 837 N.W.2d 180 (Iowa 2013), the Iowa Supreme Court determined that statutory provision for *in camera* review by a court was constitutional, *id.* at 229-237, but warned that "[t]o adequately protect a criminal defendant's rights to due process and confrontation, the [privilege] statute must be interpreted in a fashion that provides adequate opportunity for a party to uncover evidence relevant to actual guilt or innocence in a criminal proceeding." *Id.* at 226. Relying on *Ritchie* and *Hammon,* 15

Cal.4th 1117, the Indiana Supreme Court held that there was no right to any pretrial review of mental health records in *In re Crisis Connection*, 949 N.E.2d 789, 796-798 (Ind. 2011).

This Court should grant certiorari not only to provide guidance to the state courts in applying *Ritchie* and *Davis*, but also to determine whether the Sixth Amendment requires pretrial review of mental health records under the Confrontation Clause or the right to counsel. Regarding the timing of any review, this Court should adopt the reasoning of the concurring opinion in *Hammon*, 15 Cal.3d 1117.

Justice Mosk argued that "a Sixth Amendment right of confrontation entails a 'right' to conduct the 'effective cross-examination ... of... adverse witness[es]' and, at bottom, reflects a 'right ... to seek out the truth in the process of defending himself.'" *Id.* at 1130 (Mosk, J., concurring), quoting *Davis v. Alaska,* 415 U.S. at 320. Effective cross-examination may require lengthy preparation, and to properly defend a criminal case, a defendant "must usually seek out the truth immediately. He cannot wait until the cause is called to trial." *Id.* at 1129-1130 (Mosk, J., concurring).

After reviewing all of the relevant caselaw since *Ritchie*, Professor Fishman agreed with Justice Mosk's concurrence in *Hammon:*

> [W]here a defendant makes an adequate showing of necessity, certainly the trial judge should have the authority, if not the routine obligation, to conduct such an inspection prior to trial...

> Where in camera review reveals information that must be disclosed, as a rule such disclosure should be delayed until the witness has testified on direct.... But where the records reveal information that requires extensive follow-up by the defense, waiting until midtrial to disclose it may significantly disrupt the trial. Moreover, postponing disclosure until after the trial has begun may seriously undercut defense counsel's ability to use the information effectively.

Fishman, *supra*, at 60.

Even if the Court does not believe the Confrontation Clause requires pretrial disclosure of mental health records, it should determine that a defendant's Sixth Amendment right to the effective assistance of counsel requires disclosure during the course of plea negotiations where, as here, defense counsel cannot provide effective advice to the client without such disclosure. CT 35-41; RT 5-18.

III. The Trial Court's Refusal to Review Potentially Critical Mental Health Records During Plea Negotiations Violated the Compulsory Process Clause of the Sixth Amendment

While the Court in *Ritchie* noted that it had had "little occasion to discuss the contours of the Compulsory Process Clause" and chose instead to evaluate the defendant's contentions using due process analysis, *Pennsylvania v. Ritchie,* 480 U.S. at 55-57, it also noted it had recognized that right in *United States v. Burr*, 25 F.Cas. 30 (CC Va. 1807). Chief Justice Marshall ruled that it entitled Aaron Burr to serve a subpoena on President

Jefferson seeking production of evidence. *Pennsylvania v. Ritchie,* 480 U.S. at 55. *Burr* had actually stated that general principles and practices "are in favor of the right of every accused person, as soon as his case is in court, to prepare for his defense, and to receive aid of the process of the court to compel the attendance of his witnesses." *Burr,* 25 F.Cas. at 33.

Somewhat more recently, the Court denied President Nixon's motion to quash a federal subpoena duces tecum issued prior to criminal trials involving staff members and political supporters of the President, who was named as an unindicted co-conspirator. *United States v. Nixon,* 418 U.S. 683, 686-709. The Court discussed the Sixth Amendment rights of confrontation and compulsory process, and the Fifth Amendment right of due process, noting that "it is the manifest duty of the courts to vindicate those guarantees and to accomplish that it is essential that all relevant and admissible evidence be produced." *Id.* at 711. The Court did not specifically rely on the Sixth Amendment in refusing to quash the subpoena, but stated that "the constitutional need for production of relevant evidence in a criminal proceeding is specific and central to the fair adjudication of a particular criminal case in the administration of justice." *Id.* at p. 713.

Although it is true that the Supreme Court has never specifically held that the compulsory process clause requires the production of exculpatory evidence, *Pennsylvania v. Ritchie, supra,* 480 U.S. at 56, this Court should

grant certiorari to determine whether that clause, alone or in conjunction with Petitioner's other constitutional rights, compelled the court to conduct an *in camera* review of the EMQ documents.

IV. The Trial Court's Refusal to Review Potentially Critical Psychological Records During Plea Negotiations Violated Petitioner's Constitutional Right to Due Process

The right of due process provides a criminal defendant with "the right to a fair opportunity to defend against the State's accusations," *Chambers v. Mississippi,* 410 U.S. 284, 294 (1973), and entitles such defendants to "a meaningful opportunity to present a complete defense." *Holmes v. South Carolina,* 547 U.S. 319, 324 (2006). The due process right to present such a defense prevails over evidentiary privileges. *Chambers,* 410 U.S. at 298.

As discussed above, *Ritchie* held that a criminal defendant has a due process right under the Fourteenth Amendment to have the trial court conduct an *in camera* review of the state's investigative files to determine if they would have changed the outcome of their trial. *Pennsylvania v. Ritchie, supra,* 480 U.S. at 55-58. *Ritchie* did not address whether a criminal defendant was entitled to pretrial review of such confidential materials, or to records in the possession of a third party.

This Court should grant certiorari to determine whether "the broader

protections of the Due Process Clause of the Fourteenth Amendment," *Pennsylvania v. Ritchie, supra*, 480 U.S. at 56, require the limited discovery being sought in order to ensure that Petitioner has a "a fair opportunity to defend against the state's accusations." *Chambers v. Mississippi*, 410 U.S. at 294. Petitioner cannot properly defend himself against the State's charges without the discovery being sought, and his need for that discovery is not dependent on whether the documents are in the possession of the government, as in *Ritchie*. Appendix A, Opinion at 7.

CONCLUSION

For all the above reasons, this Court should grant certiorari.

Respectfully submitted,

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Filed 1/23/18

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS DAVID LOPEZ,

Defendant and Appellant.

H042282
(Santa Clara County
Super. Ct. No. C1476266)

Defendant Carlos David Lopez pleaded no contest to two counts of forcibly committing lewd or lascivious acts on his nine-year-old niece (Pen. Code, § 288, subd. (b)(1)), and was sentenced to state prison. Defendant contends the trial court erred by denying his pre-plea motion to access medical records that the victim's health care provider produced in response to defendant's subpoena duces tecum. Defendant argues the trial court's decision violated his federal constitutional rights to the effective assistance of counsel, due process, compulsory process, and confrontation. For the reasons stated here, we will affirm the judgment.

I. TRIAL COURT PROCEEDINGS

According to a probation report, police officers received a report that defendant had touched his young niece inappropriately. The girl reported that while at defendant's house a day earlier, defendant removed her pants and underwear and touched her chest over her shirt. Defendant penetrated her vagina with his finger three to five times, and then placed his mouth and tongue in her vagina approximately two times. Defendant was

Appendix A

charged with two counts of committing lewd or lascivious acts on a child under the age of 14 years by force, violence, duress, or fear. (Pen. Code, § 288, subd. (b)(1).)

Defendant subpoenaed the niece's school and medical records before any preliminary hearing occurred. The subpoena to the health care provider sought records about the niece's medical and psychological health, related both to the specific allegations against defendant and more generally.[1] The school and the health care provider each submitted records to the trial court under seal. The trial court reviewed the school records in camera and denied defendant's request to release those files, finding no good cause to believe the records contained material information. The trial court refused even to review in camera the medical records, finding defendant was not entitled to those records at that stage of the proceedings.

Defendant moved for reconsideration of the order denying access to the medical records, arguing that denying him access would prevent his counsel from providing effective assistance. The trial court denied the motion.

Defendant pleaded no contest to both counts and was sentenced to 10 years in state prison, consisting of two fully-consecutive five-year lower terms. The trial court granted defendant's request for a certificate of probable cause to challenge the denial of the request to release the medical records.

II. DISCUSSION

Defendant's primary argument on appeal is that the trial court denied him the effective assistance of counsel by not reviewing the medical records in camera and granting defense counsel access to any files pertinent to defendant's case. Defendant also argues the trial court's decision violated his federal constitutional rights to due process, compulsory process, and confrontation. Defendant appears to acknowledge that either

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[1] The declaration attached to the subpoena describing the requested records was filed in this court under seal. We summarize its contents without quoting it to maintain confidentiality.

the physician-patient privilege or the psychotherapist-patient privilege applies to the records at issue. (Evid. Code, §§ 994, 1014.) But he argues that his federal constitutional rights outweigh any statutory privilege. Before addressing defendant's arguments, we summarize *People v. Hammon* (1997) 15 Cal.4th 1117 (*Hammon*), the authority on which the trial court based its decision.

A. *PEOPLE V. HAMMON*

Hammon was charged with several counts of committing lewd or lascivious acts on a foster child in his care. (*Hammon, supra*, 15 Cal.4th at p. 1120.) Before trial, Hammon served subpoenas on three psychologists who had treated the foster child. The prosecutor moved to quash the subpoenas, asserting that the information was subject to the psychotherapist-patient privilege. (*Ibid.*) The trial court quashed the subpoenas, determining that defendant had not demonstrated good cause for obtaining the psychological records. (*Id.* at p. 1121.) Hammon was convicted by jury of some of the lewd act counts, the Court of Appeal affirmed, and the Supreme Court granted review. (*Id.* at pp. 1121–1122.)

Hammon argued that the trial court's decision violated his Sixth Amendment right to confront and cross-examine witnesses. (*Hammon, supra*, 15 Cal.4th at p. 1127.) The *Hammon* court reviewed United States Supreme Court Sixth Amendment confrontation clause jurisprudence. The *Hammon* court noted that in *Davis v. Alaska* (1974) 415 U.S. 308 (*Davis*), the United States Supreme Court held that a criminal defendant's constitutional right to confront adverse witnesses at trial "sometimes requires the witness to answer questions that call for information protected by state-created evidentiary privileges." (*Hammon*, at pp. 1123–1124.) But the *Hammon* court distinguished *Davis* because it was silent regarding "the effect of the confrontation clause on *pretrial* discovery." (*Hammon*, at p. 1124.)

The *Hammon* court also discussed *Pennsylvania v. Ritchie* (1987) 480 U.S. 39 (*Ritchie*), where the United States Supreme Court decided that the Fourteenth

Amendment's due process clause required the trial court in a child molestation case to review the state youth services agency's file about the victim in camera to determine whether it contained material exculpatory evidence that would have to be disclosed under the rule of *Brady v. Maryland* (1963) 373 U.S. 83, 87 (*Brady*). (*Hammon, supra*, 15 Cal.4th at pp. 1125–1126.) The *Hammon* court noted that while there was no majority consensus in *Ritchie* regarding the effect of the confrontation clause on pretrial discovery, the lead plurality opinion signed by four justices "expressed the view that the 'right to confrontation [articulated in the Sixth Amendment] is a *trial right*' " that " 'does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony.' " (*Hammon*, at p. 1126, quoting *Ritchie*, 480 U.S. at pp. 52–53 (opn. of Powell, J., concurred in by Rehnquist, C.J., White and O'Connor, JJ.), italics added by *Hammon*.)

After discussing *Davis* and *Ritchie*, the *Hammon* court found no clear United States Supreme Court precedent supporting Hammon's argument that the Sixth Amendment should compel pretrial disclosure of privileged information. (*Hammon, supra*, 15 Cal.4th at p. 1127.) In addition to lack of precedent, the court identified a "persuasive reason" for finding that pretrial disclosure is not compelled by the confrontation clause: before trial, a trial court will typically have inadequate information to balance a defendant's need for evidence to assist in future cross-examination against the state policies the privilege is intended to serve. If pretrial disclosure were required, "a serious risk arises that privileged material will be disclosed unnecessarily." (*Ibid.*) The *Hammon* court concluded that the Sixth Amendment rights of confrontation and cross-examination do not compel pretrial disclosure of privileged information. (*Id.* at p. 1128.)

B. EFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that the trial court prevented counsel from providing constitutionally effective assistance by refusing to review the medical records in camera and disclose any records "pertinent to his defense." Respondent does not specifically

address that argument, asserting simply that the California Supreme Court's *Hammon* decision resolves all issues raised by defendant. We decline to treat respondent's argument as a concession and will consider the issue on its merits. (See *Griffin v. The Haunted Hotel, Inc.* (2015) 242 Cal.App.4th 490, 505 ["[E]ven a respondent's *complete failure* to address an appellant's argument does not require us to treat the failure to respond as a concession the argument has merit."].)

1. Legal Principles

The Sixth Amendment guarantees criminal defendants the right to counsel at all critical stages of criminal proceedings. (*Montejo v. Louisiana* (2009) 556 U.S. 778, 786.) Plea negotiations are a critical stage in the proceedings. (*Padilla v. Kentucky* (2010) 559 U.S. 356, 373.) The right to counsel means the right to the effective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 686 (*Strickland*).)

To prevail on a claim of ineffective assistance of counsel, a defendant must show not only that counsel's performance was defective, but also that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. (*Strickland, supra,* 466 U.S. at pp. 687, 694.) But the *Strickland* standard does not apply to claims that the government (through the actions of either the prosecution or the court) has denied altogether the right to counsel. When the assistance of counsel is actually or constructively denied, when counsel fails entirely to subject the prosecution's case to meaningful adversarial testing, or when a state interferes to a sufficiently severe degree with counsel's assistance (such as by not appointing counsel in a capital case until the day of trial (e.g., *Powell v. Alabama* (1932) 287 U.S. 45, 53, 56–57)), the Supreme Court has "uniformly found constitutional error without any showing of prejudice." (*United States v. Cronic* (1984) 466 U.S. 648, 659, fn. 25; *Strickland*, at p. 692.)

2. Defendant Was Not Denied the Effective Assistance of Counsel

Defendant's argument focuses on cases discussing whether the actions of attorneys in certain situations met the *Strickland* standard. (E.g., *Missouri v. Frye* (2012)

566 U.S. 134, 145, 149 [finding defective performance where counsel failed to communicate to the defendant a formal plea offer from the prosecution].) But defendant's argument here is not that his trial counsel's performance was deficient. (Indeed, we see no deficiency in defense counsel's performance on the record before us, which shows defense counsel worked proactively to investigate the case and even moved for reconsideration when the trial court denied his request to access the medical records.)

Defendant's argument is that the trial court's actions violated his right to the effective assistance of counsel. But the trial court's refusal to review and release the medical records did not prevent defendant from communicating with his attorney for any extended period of time, as would be necessary to support a finding that his right to counsel had been denied. (E.g., *Geders v. United States* (1976) 425 U.S. 80, 91 ["[A]n order preventing petitioner from consulting his counsel 'about anything' during a 17-hour overnight recess between his direct-and cross-examination impinged upon his right to the assistance of counsel guaranteed by the Sixth Amendment."].)

Defendant points to no case, and we have found none, where a court has found that a trial court's refusal to disclose certain privileged evidence before trial prevented defense counsel from investigating a case to such a degree as to deprive a defendant of the Sixth Amendment right to counsel. Defendant has not demonstrated that the trial court's decision denied him the effective assistance of counsel.

C. DUE PROCESS

Citing *Ritchie, supra*, 480 U.S. 39, defendant argues that the Fourteenth Amendment's due process clause required the trial court to review the medical records in camera "to determine whether they contained information relevant" to defendant's case. Though defendant did not object on this ground in the trial court, we will address the argument. (*People v. Hobbs* (1994) 7 Cal.4th 948, 955 (*Hobbs*) [" 'Issues cognizable on an appeal following a guilty [or no contest] plea are limited to issues based on "reasonable constitutional, jurisdictional, or other grounds going to the legality of the

proceedings" resulting in the plea.' "]; *In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7 [recognizing discretion of appellate courts to consider forfeited arguments raising "an important issue of constitutional law"].)

Ritchie involved an appeal from convictions obtained after a jury trial, where the defendant argued that the trial court had violated his constitutional rights by not reviewing and disclosing evidence submitted to the court in response to a subpoena the defendant had served on a state youth services agency. (*Ritchie*, *supra*, 480 U.S. at pp. 43, 45, 51.) The *Ritchie* court determined that due process and the *Brady* rule (*Brady*, *supra*, 373 U.S. 83) required the trial court to review in camera the records to determine whether they contained any material exculpatory evidence. (*Ritchie*, at pp. 57–58.) Because the United States Supreme Court decided the case after trial, it found that the defendant would be entitled to a new trial if the records contained material exculpatory evidence that "probably would have changed the outcome of his trial." (*Id.* at p. 58.)

Ritchie is distinguishable. As the California Supreme Court noted in *Hammon*, the disclosures required by *Brady*, *supra*, 373 U.S. 83, apply only to "material exculpatory information *in the government's possession*." (*Hammon*, *supra*, 15 Cal.4th at p. 1125.) The records at issue here were subpoenaed from the victim's health care provider rather than being "possessed" by the government. And, as defendant acknowledges, "*Ritchie* did not address whether a criminal defendant was entitled to pretrial review" of confidential files because the post-trial posture of the case did not present that issue.

Defendant contends that notwithstanding *Ritchie*, "California appellate courts have granted pretrial access to criminal defendants of confidential records pertinent to the charges against the defendant." (Citing *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 367–377 (*DMV*); *Rubio v. Superior Court* (1988) 202 Cal.App.3d 1343, 1346–1350 (*Rubio*).) In *DMV*, a man (Carmona) struck several cars while driving unsafely, leading to the death of another driver. Carmona was charged with vehicular manslaughter, and the prosecution served the Department of Motor

Vehicles with a business records subpoena duces tecum to produce all documents related to Carmona's driving record. Carmona also wanted the records. The Department moved to quash the subpoena, arguing that the records were privileged under Vehicle Code "section 1808.5 [DMV records of medical and physical condition confidential], and Evidence Code section 1040, subdivision (b) [official information privilege]." (*DMV*, at pp. 367–369.) The trial court denied the motion to quash. (*Id.* at p. 369.) The Department petitioned the Court of Appeal for a writ of mandate to prevent disclosure of the records, which the court denied. (*Id.* at p. 377.) The appellate opinion focused on the reasons the two asserted privileges did not apply. (*Id.* at pp. 373–376.) The opinion does not mention due process, and refers only generally to a criminal defendant's right to discovery based on the right to a fair trial. (*Id.* at p. 377.)

DMV is inapposite. The records pertained to Carmona (the defendant), rather than to a third party; both the prosecutor and Carmona sought access to the records; and the opinion did not conclude that the parties were entitled to the records because of Carmona's due process rights.

Rubio involved a subpoena duces tecum served after a preliminary hearing to obtain a videotape of a child molestation victim's parents engaging in consensual sex acts that were supposedly similar to those Rubio was charged with performing on the victim. (*Rubio, supra*, 202 Cal.App.3d at p. 1346.) Rubio suggested that the victim made up the allegations after watching part of the videotape. The trial court quashed the subpoena, and the Court of Appeal granted Rubio's petition for writ of mandate. The *Rubio* court noted that there were competing constitutional interests involved: Rubio's constitutional rights to confrontation and due process, and the parents' constitutional right to privacy. (*Id.* at p. 1349.) Based on *Ritchie, supra*, 480 U.S. 39, and an opinion of this court (*People v. Boyette* (1988) 201 Cal.App.3d 1527 (*Boyette*), disapproved by *Hammon, supra*, 15 Cal.4th at p. 1123), the *Rubio* court determined that the trial court should

review the videotape in camera to determine whether Rubio's right to due process outweighed the parents' right to privacy. (*Rubio*, at p. 1350.)

Rubio's continued viability is questionable in light of *Hammon*, which disapproved the *Boyette* opinion upon which *Rubio* was based. (See *Hammon*, *supra*, 15 Cal.4th at p. 1123 [noting that the line of authority that included *Boyette* was "not correct"].) Because *Ritchie* is distinguishable and we are not bound by *Rubio* (even assuming *Rubio* remains good law), defendant has not demonstrated a due process violation.

D. COMPULSORY PROCESS

Defendant argues that the Sixth Amendment's compulsory process clause required the trial court to review the records in camera and disclose any material evidence. The Sixth Amendment guarantees a defendant's right "to have compulsory process for obtaining witnesses in his favor." (U.S. Const., 6th Amend.) Though defendant did not object on this ground in the trial court, we will address the argument. (*Hobbs*, *supra*, 7 Cal.4th at p. 955.)

Defendant acknowledges that the United States Supreme Court "has never specifically held that the Compulsory Process Clause requires the production of exculpatory evidence." (Citing *Ritchie*, *supra*, 480 U.S. at p. 56 ["This Court has never squarely held that the Compulsory Process Clause guarantees the right to discover the *identity* of witnesses, or to require the government to produce exculpatory evidence."].)

Defendant cites *United States v. Nixon* (1974) 418 U.S. 683, which involved the President's attempt to quash a government subpoena duces tecum seeking documents and recordings related to conversations with aides and advisers for use in prosecuting individuals who had worked for the White House or for the President's reelection committee. (*Id.* at p. 686.) Defendant argues the *Nixon* court determined that "the Compulsory Process Clause overcame the President's assertion of a confidentiality privilege, and compelled production for in camera review." (Italics omitted.) But the

Nixon court found that disclosure was required based on due process principles, reasoning that the President's "generalized interest in confidentiality ... cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." (*Id.* at p. 713.) The compulsory process clause was mentioned in *Nixon* (*id.* at p. 711), but it was not the basis for the court's decision. Significantly, because the subpoena was served by the government rather than by a defendant, it is unclear how the compulsory process clause could have been implicated as that right is guaranteed by the Sixth Amendment to *defendants*.

E. CONFRONTATION CLAUSE

Defendant acknowledges that *Hammon*, *supra*, 15 Cal.4th at p. 1128, precludes a confrontation clause challenge to the trial court's decision, but notes that the Supreme Court granted review in *Facebook, Inc. v. Superior Court* (review granted Dec. 16, 2015, S230051) and asked the parties to brief whether the court should limit or overrule *Hammon*. As *Hammon* remains binding on this court (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455), defendant's confrontation clause argument must fail.

III. DISPOSITION

The judgment is affirmed.

Grover, J.

WE CONCUR:

Premo, Acting, P. J.

Bamattre-Manoukian, J.

FILED

DEC 23 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA/County of Santa Clara
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

CARLOS DAVID LOPEZ,
Defendant.

/

Case No.: C1476266

ORDER RE: MATERIAL RECEIVED AFTER ISSUANCE OF SUBPOENA DUCES TECUM TO EMQ FAMILIES FIRST

On November 19, 2014, the court received records from EMQ Families First delivered in response to a subpoena duces tecum issued by the defendant.

The court finds that the material delivered by EMQ Families First is governed by the procedures set forth in *People v. Hammon* (1997) 15 Cal.4th 1117. Therefore, the material shall remain sealed within the court's file pending further order of the court.

The defendant's motion for release is DENIED without prejudice .

DATED: December 23, 2014

Honorable Daniel T. Nishigaya
Judge of the Superior Court

Appendix B

125 HALL OF JUSTICE
190 W. HEDDING STR'
SAN JOSE, CA 95110

CASE NO. C1476266
TC:_ CEN 14504301
DATE 02/11/2015 9:00 AM DEPT. 38
11/04/1985 CAX5492711 CDY BK:N
ECS433 M

PEOPLE VS. CARLOS DAVID LOPEZ
L.K.A. 1618 BOWLING GREEN DRIVE
SAN JOSE, CA 95121

CLERK J. MOTA
HEARING PLEA
JUDGE HON. DANIEL NISHIGAYA DV:
REPORTER A. PLANCARTE CHILD:
AGENCY SJ-04313-4031 -JANTZ
STATUS I-SET -200000 TW Y
DEF. ATTY. SINGH, AVI (P) DA: ~~SE, WEST~~ Vega APO
CHARGES F(001)PC288(B)(1) F(002)PC288(B)(1) VIOLATION DATE 11/07/2013

2-26-15 09W D38 Judge discloses spouse is a Deputy District Attorney

NEXT APPEARANCE

☒ Defendant Present ☐ Not Present ☒ Atty Present Singh AD / PD / IDO / Special App
☐ Arr'd ☐ Adv ☐ Arr Wav ☐ Amend Comp/Info ☐ Arr ☒ Plea ☐ IDC ☐ PTC ☐ Prob / Sent ☒ Interpreter Spa ☐ Sworn
☐ PC977 ☐ Filed ☐ On File ☐ Reptr. Adv / Wav ☐ Bail/ OR/ SORP ☐ Rect Dr Rpt ☐ FAR/ ERC ☐ Bail Apply ☐ Balance Exonerated
☐ NG ☐ Entered by CRT ☐ NGBRI / Adv ☐ PSet ☐ Prelim ☐ Readiness ☐ S / B MTC ☐ Bail Exonerated ☐ Forfeited Bond #_____
☐ Denies Priors/ Allegations/ Enhancements/Refusal ☐ Further ☐ Jury ☐ CT ☐ Peo / Def Wav Jury ☐ Reassumption Filed ☐ Forfeiture Set Aside ☐ Bail Rein
☐ TW ☐ TNW ☐ TW / WD ☐ TW Sentence ☐ Ref'd_____ ☐ $_____ Costs Within 30 Days to Court
☐ Ref / Appt PD / ADO / IDO ☐ Con Decl ☐ Adm A / F ☐ APO / DADS/ Prop 36 ☐ P36 Re-Assm't SORP / OR ☐ Revoked ☐ Reinstated ☐ May Post & Forfeit
☐ _____ Relieved _____ Appt'd ☐ Crim Proc Susp ☐ Rein ☐ Status Hrg ☐ BW Ordered $_____ ☐ Stayed ☐ To Issue
☒ Hrg on Motion EP - Consec Rules ☐ Doubt Decl Pursuant PC 1368 ☐ No Cite Release/SCIT ☐ No Request ☐ Cash Only
☐ Granted ☒ Denied ☐ Submitted ☐ Off Cal ☐ Subm on Report ☐ Found _____ ☐ BW Set Aside ☐ Recalled ☐ Filed ☐ Remain Out ☐ NWF
☐ Stip to Comm ☐ Drs. Appointed _____ ☐ Max Term _____ ☐ Committed _____ ☐ Prcof of _____
☐ Prelim Wav ☐ Certified to General Jurisdiction ☐ MOA / COM Amended to _____
☐ Amended to ☐ (M) VC12500(a) / VC23103(a) ☐ Pur VC23103.5 ☐ DA Stmt Filed _____

PLEA Conditions: ☐ None ☐ No State Prison ☐ PC17 after 1/Yr Prob ☐ Includes VOP _____
☐ Jail / Prison Term of At materials prv to SDT. ☐ Add to Cal ☐ Vacate pending date
☐ Dismissal / Striking _____ ☐ Subm time of Sent ☐ Harvey Stip _____
☐ Adv Max Pen / Parole / Prob / Immig / Appeal ☐ Reg HS11590/PC290/PC457.1/PC186.30 ☐ FSF ☐ Fines/Fees ☐ PC29800/29805/30305/666/VC14607.8
☐ Wav Right to ☐ Counsel ☐ Court / Jury Trial ☐ Subpoena / Confront / Examine Witnesses ☐ Self-Incrimination ☐ Written Waiver filed ☐ Plea / Absentia filed
☐ COP ☐ GUILTY ☐ NOLO CONTENDERE to charges & admits enhancements / allegations / priors ☐ PC17 ☐ Arbuckle ☐ Factual Basis found ☐ Findings stated
☐ Prop 36 Granted / Unamenable / Refused / Term ☐ DEJ Eligibility Filed ☐ DEJ Granted / Rein / Term Fee $_____ ☐ Guilty Plea Rendered
☐ Waives Referral ☐ APO Full Rpt ☐ CR110 issued Fines/Fees Pay to: ☐ DOR ☐ Traffic ☐ Court ☐ Today ☐ Audit #_____
☐ Sent Suspended _____ ☐ PROBATION DENIED
PROBATION ☐ Execution ☐ Imposition of sentence suspended for probation period
☐ COURT ☐ FORMAL PROBATION GRANTED for _____ Days / Mos / Yrs
☐ Report to APO within _____ Days ☐ Terminated ☐ Upon Release
☐ Perform _____ Hrs Volunteer Work as directed PO / SAP ☐ in lieu of fine/Jail
☐ Not drive w/o valid DL & Ins ☐ Adv VC23600 ☐ HTO ☐ Re-refer
☐ MOP ☐ FOP ☐ 12 hrs ☐ 3 mos ☐ 9 mos Enroll within _____ days
☐ DL Susp/ Restr'd/ Rvk'd for _____ ☐ IID Not/Ordered/ Rmv'd Term _____ Yrs
☐ No contact with victim or family / co-defts unless appr by APO ☐ PC1202.05
☐ DVPO issued / mod /term'd Exp _____ ☐ Victim Present
☐ No Contact ☐ Peaceful Contact ☐ DSA thru APO / DOR / CRT ☐ Filed
☐ Not own/possess deadly weapons ☐ Destroy/return weapon _____
☐ Stay away from _____
☐ Submit Search/Testing ☐ Educ/Voc Tmg/Empl ☐ No alcohol / drugs or where sold
☐ Substance Abuse, Psych, Theft, Anger Mgmt, DV, Parenting cnsl / prgm
☐ PC296 (DNA) ☐ PC1202.1 HIV Test / Education
VOP: ☐ Wav ☐ Arr'd _____ ☐ Admits/Denies Viol ☐ Court Finds VOP / No VOP
Prob Rein / Mod / Term'd / Revoked / Remains Revoked / Ext to _____
☐ Original Terms & Conditions Except as Amended herein
☐ Co-terminous with _____ ☐ No Further Penalties / Reviews
Other: _____

COUNT ___ $_____ + PA $_____ ☐ Purs HS11350d
COUNT ___ $_____ + PA $_____ ☐ PC290.3
AIDS / CPP $_____ + PA $_____ SORP _____
DPF $_____ + PA $_____ EMAT $ _____
LAB $_____ + PA $_____
DRF /RF $_____ Add'l RF $_____ Susp'd PC1202.44/45
AEF $_____ Original Fine $ _____
SECA/COPA $_____ CTS PC2900.5 $ _____
ICMF $_____ TOTAL DUE $ _____
ICIN $_____ Payments Granted / Modified
AR $_____ $_____ / Mo beginning _____
SHELTER $_____ FINE STAYED _____
DV $_____ Committed @ $_____ /day ☐ May Pay Out
ATTY $_____ Consec/Conc to _____
ASF$25/CPF$10 $_____ Fine / Fees ☐ Deemed Satisfied ☐ Commuted
P/INVEST $_____ ☐ P/SUP $_____ /Mo ☐ Waived
CJAF $129.75/$259.50 $_____ ☐ Add'l Fees Waived
☐ SECA, ICMF, ICIN, CJAF, PINVEST, PSUP FEES NOT COND. OF PROB
☐ Restit ☐ Gen $_____ to _____
☐ As determined by APO/Court ☐ Referred to VWAC ☐ Collect Civilly

JAIL/PRISON ☐ See Attachm't Pg ☐ CDCR/Parole collect restit from Def's earnings ☐ Blended Sentence

Count	F/M	Violation	Prison Term / Yrs	Enhancement / Priors	Yrs / Styd / Strkn	County Jail HRS / DAYS / MOS
		Records Rec	Pur. to SDT to run		Stayed	until
		further order.				

Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Total

CTS = _____ ACT + _____ ☐ 4019 ☐ ½ ☐ ⅓ ☐ PC2933.1 _____ Total Total term _____ CDCR / PC 1170h
☐ Straight time ☐ In Camp ☐ WWP ☐ PC1209 Fees ☐ Waived ☐ Court Rec _____ All / Except ☐ EMP/PSP/ERP/DRP/Co Parole/NP _____
☐ Sent Deemed Srv'd ☐ Rpt to Parole/Prob w/in _____ ☐ Adv/ORD _____ Yrs/Mos Parole/MS/PRCS/Appeal ☐ Consec ☐ Conc to 43
☐ Bal CJ Susp ☐ All but _____ Hrs/Days/Mos ☐ On Cond Complete Residential Treatment Prgm ☐ Serve Consec MO/TU/WE/TH/FR/SA/SU _____
☐ Pre-process _____ AM/PM ☐ Stay / Surrender / Transport to _____ @ _____ AM/PM or Sooner

☒ REMANDED-BAIL $_____ ☒ REMAIN AS SET ☐ NO BAIL ☐ COMMITTED ☐ RELEASED ☐ OR ☐ SORP ☐ JAC PHONE ASSM'T ☐ P36
☐ AS COND OF SORP ☐ BAIL INCREASED / REDUCED ☐ TO PRGM AS REC BY JAC DOC TO ARRANGE TRANSPORT UPON AVAIL BED

DISTRIBUTION: ORIGINAL - FILE. GREEN - DOC BLUE - CUIC / DOR PURPLE - PROBATION BROWN - DEFENDANT

Court of Appeal, Sixth Appellate District - No. H042282

S247382

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

CARLOS DAVID LOPEZ, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix C