

CASE NO: _____

IN THE SUPREME COURT OF THE
UNITED STATES

ILICH VARGAS
PETITIONER

v.

SUPERIOR COURT OF CALIFORNIA
RESPONDENT

ON PETITION FOR CERTIORARI TO THE STATE OF
CALIFORNIA SUPREME COURT FOR THE SUMMARY DENIAL
OF CASE S246153 PETITION FOR REVIEW OF SEPTEMBER
22, 2017 DENIAL OF DISCOVERY REQUEST AND MOTION TO
DISQUALIFY PROSECUTING ATTORNEY ENTERED BY HONORABLE
JUDGE COREY LEE, SUPERIOR COURT OF CALIFORNIA
SAN BERNARDINO COUNTY CASE FVI 1203 282.

PETITION FOR WRIT OF CERTIORARI

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IN PRO-PER / PRO-SE

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I. PETITION FOR WRIT OF CERTIORARI

PETITIONER Ilich Vargas respectfully petitions to the court to issue a writ of certiorari in order to review the California Supreme Court, January 31, 2018 summary denial case No. S246153 of petition for review of the September 22, 2017 decision to deny motion for pre-trial discoveries and motion to disqualify the district attorney in case FVI 1203282 Superior Court of California County of San Bernardino (and on behalf of Honorable Judge Corey Lee Department 8 of Victorville Division.

II. QUESTIONS PRESENTED

1. WHETHER A STATE'S DISTRICT ATTORNEY / PROSECUTOR IN A CRIMINAL PROSECUTION HAS A FREESTANDING DUTY AND OBLIGATION TO INVESTIGATE, DILIGENTLY INQUIRE, AND TO BECOME INFORMED OF ANY EVIDENCE AND INFORMATION CONTAINED WITHIN DISTRICT ATTORNEY'S OFFICE CASE FILES AND OTHER LAW ENFORCEMENT RECORDS OF CRIMINAL JAILHOUSE INFORMANTS THAT THE PROSECUTOR INTENDS TO USE AS STATE WITNESSES IN A PENDING CRIMINAL PROSECUTION AGAINST THE DEFENDANT, AND IN ORDER TO ASCERTAIN WHETHER THE CRIMINAL JAILHOUSE INFORMANTS HAVE EVER ASSISTED LAW ENFORCEMENT AGENTS FOR THE PROSECUTION IN ANY PRIOR CASES AS INFORMANTS OR WITNESSES FOR THE STATE IN EXCHANGE FOR ANY SPECIAL CONSIDERATIONS, BENEFITS, DEALS, LENIENCY, PROMISES AND/OR ANY ASSISTANCE FROM LAW ENFORCEMENT OFFICIALS.?

IF THE ANSWER TO THE ABOVE QUESTION IS YES THEN,

2. WHETHER THE TRIAL COURT JUDGE HAS THE AUTHORITY AND A DUTY TO ISSUE A COURT ORDER TO COMPEL THE DISTRICT ATTORNEY'S OFFICE AND/OR THE PROSECUTOR TO PERFORM THE INVESTIGATIVE DUTIES AND OBLIGATIONS INTO CRIMINAL JAIL HOUSE INFORMANTS' RECORDS AS SET FORTH ABOVE IN (QUESTION 1), WHEN IT APPEARS THAT THE PROSECUTOR HAS NOT MADE ANY EFFORT TO CONDUCT SUCH INVESTIGATIONS AND/OR APPEARS TO ACT WILLFULLY IGNORANT OF HER DUTY AND OBLIGATION TO CONDUCT THOSE INVESTIGATIONS, SPECIALLY, WHEN DEALING WITH CRIMINAL JAILHOUSE INFORMANTS AS STATE WITNESSES; AND IN ORDER TO ASURE THAT THE PROSECUTOR'S RESPONSE AND/OR COMPLIANCE TO A PRETRIAL MOTION FOR DISCOVERY, OF THAT INFORMATION, IS MADE COMPETENTLY, ACCURATELY AND WELL INFORMED?

3. WHETHER A CRIMINAL DEFENDANT IN CUSTODY AND ACTING AS PRO-PER/SELF-REPRESENTED HAS A PROTECTED CONSTITUTIONAL RIGHT TO RECEIVE A FAIR AND MEANINGFUL OPPORTUNITY TO CONDUCT AN EVIDENTIARY HEARING IN FRONT OF A FAIR AND IMPARTIAL JUDGE; TO PRESENT EVIDENCE, AND TO COMPEL ATTENDANCE OF WITNESSES ON HIS BEHALF DURING A HEARING TO A MOTION TO DISQUALIFY THE DISTRICT ATTORNEY (PC § 1424) AND IN ORDER TO SUPPORT THE FACTUAL BASIS AND TO MEET THE BURDEN OF PROOF IN ACCORDANCE TO THE RULES OF EVIDENCE AND DUE PROCESS OF LAW IN ORDER TO CREATE AND ESTABLISH AN ACCURATE AND COMPLETE RECORD SO THAT MEANINGFUL AND EFFECTIVE APPEAL AND/OR REVIEW OVER THE TRIAL COURTS DETERMINATIONS CAN BE SUFFICIENTLY TAKEN OVER SUCH CLAIMS THAT AFFECTS FEDERAL AND STATE CONSTITUTIONAL CIVIL RIGHTS?

4. WHETHER, DIFFERENT FORMS OF BAD FAITH METHODS, TACTICS OR ACTIONS ON BEHALF OF THE PROSECUTING ATTORNEY THAT OFFEND AND SUBVERT INTO A CRIMINAL DEFENDANT'S CIVIL RIGHTS TO PREPARE AN EFFECTIVE DEFENSE CONSTITUTE EVIDENCE OF A CONFLICT OF INTEREST, ANIMUS, BIAS AND/OR PREJUDICE AGAINST THE DEFENDANT THAT HAS BECOME EXTRANEOUS TO A FAIR AND EVENHANDED EXERCISE OF DISCRETIONARY FUNCTIONS TO MERIT RECUSAL ORDERS?

5. WHETHER PROSECUTING AGENTS, POLICE AND PROSECUTORS HAVE A CONSTITUTIONAL OBLIGATION TO COLLECT AND PRESERVE CRITICAL EXONERATORY AND/OR POTENTIALLY EXONERATORY EVIDENCE THAT IS INFORMED TO THEM, IDENTIFIED BY THEM AND IT IS CLEAR THAT SUCH EVIDENCE WOULD PLAY AN IMPORTANT PART AT TRIAL AND COULD FORM THE BASIS FOR EXONERATING OR EXONERATING A CRIMINAL DEFENDANT?

III. PARTIES

1. ILICH VARGAS, PETITIONER, IS A PRO-BER CRIMINAL DEFENDANT IN CUSTODY OF THE SAN BERNARDINO COUNTY SHERIFF AND WAITING FOR TRIAL IN CASE FVI 1203282 IN THE RESPONDENT COURT

2. SUPERIOR COURT RESPONDENT IS THE SUPERIOR COURT OF CALIFORNIA SAN BERNARDINO COUNTY VICTORVILLE DISTRICT WHERE CASE FVI 1203282 IS PENDING IN DEPT. VB HONORABLE JUDGE LEE'S COURTROOM.

3. THE PEOPLE, IS THE REAL PARTY IN INTEREST AND THESE

PROCEEDINGS DIRECTLY AFFECT "THE PEOPLE" BECAUSE THEY ARE THE PLAINTIFF IN CASE# FVI 1203282 PEOPLE V. VARGAS SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO.

IV. OPINION BELOW.

ON JANUARY 31 2018 THE SUPREME COURT OF CALIFORNIA IN CASE S24G153 SUMMARILY DENIED PETITION FOR REVIEW WITHOUT AN OPINION NOR HEARING, SEE (APPENDIX -A-), OVER THE CALIFORNIA COURT OF APPEAL FOR THE FOURTH DISTRICT DIVISION TWO SUMMARY DENIAL OF PETITION FOR WRIT OF MANDATE CASE NO. E069306 THAT WAS DENIED ON NOVEMBER 28, 2017 SEE (APPENDIX -B-). THE UNDERLYING DECISION PETITIONER SEEKS REVIEW OF IS THE SEPTEMBER 22, 2017 SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO DISTRICT OF VICTORVILLE DENIAL OF MOTION FOR PRE-TRIAL DISCOVERIES AND MOTION TO DISQUALIFY THE DISTRICT ATTORNEY ENTERED BY HONORABLE COREY LEE IN CASE FVI 1203282. THE UNITED STATES SUPREME COURT HAS JURISDICTION TO REVIEW THIS CASE UNDER 28 U.S.C.A. § 1257

PETITIONER IS UNABLE TO PROVIDE A COPY OF THE SEPTEMBER 22, 2017 PROCEEDING IN THE STATE SUPERIOR COURT BUT HE IS IN THE PROCESS OF REQUESTING THE TRIAL COURT FOR A COPY. THE PETITIONER IS PRO-PER AND INDIGENT CRIMINAL DEFENDANT IN CUSTODY AND IS SUBJECT TO EXTREMELY RESTRICTIVE CONDITIONS OF CONFINEMENT AND THAT DIRECTLY CHILL AND PREVENT HIM FROM MAKING COPIES OF THE DOCUMENTS FROM THE ORIGINAL PETITION FOR WRIT OF MANDAMUS AND

THAT WERE FILED IN THE FOURTH DISTRICT DIVISION TWO OF THE CALIFORNIA COURT OF APPEALS IN CASE NO: E06306. HE HAS APPLIED TO THE SUPERIOR COURT OF CALIFORNIA FOR TRANSCRIPTS OF THE SEPTEMBER 22, 2017 HEARING IN QUESTION AND AT THE PRESENT MOMENT HE AWAITS FOR PRODUCTION OF SAID TRANSCRIPTS AND CANNOT INCLUDE THEM WITH THIS PETITION DUE TO THE EXIGENT CONDITIONS OF CONFINEMENT. THEREFORE PETITIONER RELIEF FROM RULE 14.1 AND FOR THIS COURT TO PLEASE ISSUE AN ORDER TO THE COURTS BELOW TO CERTIFY AND TRANSMIT THE RECORD OR AS THE COURT MAY DEEM NECESSARY TO CONDUCT AN APPROPRIATE REVIEW.

V JURISDICTION

THE JANUARY 31 2018 JUDGMENT ENTERED BY THE CALIFORNIA SUPREME COURT SOUGHT TO BE REVIEWED IS HEREBY INCORPORATED INTO THIS PETITION AS (APPENDIX-A-) THE CALIFORNIA COURT OF APPEALS DECISION ENTERED ON NOVEMBER 28, 2017 IS INCORPORATED INTO THIS PETITION AS (APPENDIX-B-)

ON JUNE 5, 2018 THE UNITED STATES SUPREME COURT RETURNED PETITIONER'S PETITION WITH AN INTENTION TO CORRECT THE PLEADING DUE TO EXCESS OF PAGINATION. THE CLERK'S LETTER IS INCORPORATED IN THIS PETITION AS (APPENDIX-C-) THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 1257

VI CONSTITUTIONAL PROVISIONS, RULES AND REGULATIONS

THIS CASE IS PREMISED ON THE FIFTH SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION

VII STATEMENT OF CASE

THIS CASE DEALS WITH PRE-SENTENCED / PRETRIAL CRIMINAL DEFENDANT (PETITIONER) ELICH VARGAS, ATTEMPTS TO FURTHER DISCOVERY EFFORTS AND TO OBTAIN EVIDENCE AND INFORMATION IN CONNECTION TO TWO CRIMINAL JAILHOUSE INFORMANTS THAT THE PROSECUTOR HAS INJECTED INTO THE PENDING PROSECUTION WITH INTENTIONS TO USE THEM AS STATE EVIDENCE AGAINST MR. VARGAS AT TRIAL. BUT, WHOM IT HAS BEEN ALLEGED AND SHOWN TO HAVE PROVIDED CLEARLY FABRICATED MISINFORMATION WHICH HAS BEEN MANIFESTED IN THE CASE, HOWEVER THAT THE DISTRICT ATTORNEY PROSECUTOR APPEARS TO REMAIN AND OR ACT WITH BLATANT DISREGARD TOWARDS THE TREACHERY ON BEHALF OF THESE TWO INDIVIDUALS, JOHN HANSON AND RANDY TURPIN, AND WHO'S STATEMENTS TO LAW ENFORCEMENT ARE COMPLETELY CONTRADICTORY TO EACH OTHER. THE PROSECUTE, REMAINS RELUCTANT TO CORRECT THE ERRORS NOR TO EVEN INVESTIGATE INTO THE MANIFESTED LIES AND FABRICATIONS, AND IS RELUCTANT TO INQUIRE AND INVESTIGATE WITHIN THE DISTRICT ATTORNEY'S OFFICE FILES INTO THE JAILHOUSE INFORMANTS PRIOR CRIMINAL CASES, AND IN ORDER TO DETERMINE WHETHER THE INFORMANTS HAVE PREVIOUSLY ASSISTED LAW ENFORCEMENT AGENTS, EITHER AS INFORMANTS OR WITNESSES FOR THE STATE, AND WHETHER THEY HAVE EVER RECEIVED ANY TYPE OF BENEFIT, CONSIDERATION OR REWARD IN EXCHANGE FOR THEIR ASSISTANCE; OR FOR ANY OTHER INFORMATION AND EVIDENCE THAT WOULD CAST A SHADOW OVER THEIR CREDIBILITY AS WITNESSES. AND IN THIS SERIOUS CASE WHERE THE PETITIONER HAS BEEN ACCUSED OF GROSS VEHICULAR MANSLAUGHTER DUE,

AND MURDER.

ON SEPTEMBER 22, 2017 THE TRIAL COURT HONORABLE JUDGE LEE DENIED PETITIONER'S MOTION FOR PRE-TRIAL DISCOVERY PERTAINING TO THE TWO JAILHOUSE INFORMANTS, HOWEVER THE PROBLEM PRESENTED DURING ARGUMENT OF THE MOTION IS THAT THE PROSECUTOR CANDIDLY DENIED KNOWING OF ANY PRIOR CASES IN WHICH THE TWO INFORMANTS SERVED AS INFORMANTS OR WITNESSES FOR THE STATE, NOR WHETHER THEY HAD EVER RECEIVED ANY DEALS, OR LENIENCY, OR CONSIDERATIONS IN EXCHANGE FOR THEIR ASSISTANCE WITH LAW ENFORCEMENT OFFICIALS. NOTWITHSTANDING, THE DISTRICT ATTORNEY DID ALSO REPRESENTED BY WORDS AND SUBSTANCE THAT SHE HAD NOT CONDUCTED ANY TYPE OF INVESTIGATION NOR INQUIRY INTO THE JAILHOUSE INFORMANTS' PRIOR HISTORY AND INVOLVEMENTS AS INFORMANTS OR WITNESSES FOR THE STATE, AND THE PROSECUTOR HAD FAILED TO, AT THE VERY LEAST, TO ASK THE TWO INFORMANTS THEMSELVES, WHETHER OR NOT THEY HAD ASSISTED THE STATE IN ANY PRIOR CRIMINAL CASES IN EXCHANGE FOR SPECIAL TREATMENTS. SEE ("PETITION FOR WRIT OF MANDATE"; CAL. 4TH. DIST. CT. OF APPEAL NO. E069306 AND HEREAFTER "MANDATE"; AT P. 3-9) THE PROSECUTOR FIRST REPRESENTED THAT SAN BERNARDINO COUNTY DISTRICT ATTORNEYS' OFFICE AND/OR THE LOCAL LAW ENFORCEMENT AGENCIES DO NOT HAVE ANY TYPE OF "DATA BASE", NOR A PRACTICAL SYSTEM TO MONITOR, KEEP RECORDS OF, AND TO ASSESS THESE TYPES OF JAILHOUSE INFORMANTS, THAT CAN BE SERIOUS POTENTIAL HARM TO THE PUBLIC AND OUR JUSTICE

SYSTEM, AND THAT RAISES REASONABLE PUBLIC CONCERN. HOWEVER, LATER IN THE DISCUSSION THE PROSECUTOR STATES DURING THE HEARING THAT, THE ACTUAL DISTRICT ATTORNEYS OFFICE DID KEEP SOME TYPE OF RECORD "NOTES IN THE FILES" THAT WOULD STATE IF THE TWO JAIL HOUSE INFORMANTS WERE EVER CALLED AS "WITNESSES" FOR THE STATE. BUT, THE DISTRICT ATTORNEY GIVES THE CLEAR IMPRESSION THAT SHE MADE NO EFFORT TO INQUIRE INTO THE DISTRICT ATTORNEYS FILES FOR ANY OF THESE "NOTES," THAT SHE ADMITTED WOULD STATE IN WHAT CASES THESE TWO JAILHOUSE INFORMANTS COULD HAVE, VERY WELL, BEEN INVOLVED BY ASSISTING THE STATE TO OBTAIN A CONVICTION, AND WHETHER ANY TYPE OF CONSIDERATION OR SPECIAL TREATMENT WAS GIVEN TO THEM IN EXCHANGE FOR ASSISTING THE GOVERNMENT IN ANY PRIOR CRIMINAL CASES. (ED)

THIS SITUATION CREATES A SERIOUS PROBLEM, BECAUSE FOR ONE, THE PETITIONER, AS A PRO-PER DEFENDANT AND /OR HIS INVESTIGATOR, DO NOT HAVE ACCESS TO THE DISTRICT ATTORNEY'S OFFICE FILES, SPECIALLY IN LIGHT OF CONFIDENTIALITY RULES AND POLICIES. AND SECOND, BY THE PROSECUTING ATTORNEY'S METHODS OF DELIBERATELY CHOOSING TO REMAIN IGNORANT OF ANY POTENTIAL DISCOVERABLE AND FAVORABLE BRADY MATERIALS, THE PROSECUTOR IS PROVIDING A POTENTIALLY FALSE IMPRESSION WHEN ASSERTING THAT NO FAVORABLE DISCOVERIES EXIST, BUT WITHOUT FIRST PERFORMING HER OBLIGATIONS TO INQUIRE AND INVESTIGATE IN ORDER TO PROVIDE A VALID AND WELL-INFORMED ANSWER TO THE TYPE OF DISCOVERY REQUESTS AS DISCUSSED ABOVE, PERTAINING TO CRIMINAL

JAILHOUSE INFORMANTS; AND OF WHOM THE HIGH COURTS HAVE REASONABLY CAUTIONED MUST BE CLOSELY MONITORED AND ASSESSED IN ORDER TO PREVENT AND CORRECT THE GRAVE POTENTIAL FOR SELF-SEEKING AND TREACHEROUS ACTIONS BY SUCH INDIVIDUALS OF FABRICATING LIES AND ACCUSATIONS AGAINST THE INNOCENT, AS IS THE CASE IN THIS MATTER. (COMPARE EXHIBIT 4 TO MANDATE AT ? 294-333) □

ON SEPTEMBER 22, 2017 THE PETITIONER ATTEMPTED TO ADDRESS THE ABOVE-STATED AND MANY OTHER BAD-FAITH TACTICS AND METHODS ON BEHALF OF THE PROSECUTOR AND THE DISTRICT ATTORNEY'S OFFICE AND THAT SERVE AS EVIDENCE OF AN EXISTING CONFLICT OF INTEREST, OFFICIAL ANIMUS, BEAS DISCRIMINATION AND/OR PREJUDICE AGAINST THE DEFENDANT/ PETITIONER AND THAT IS EXTRANEOUS TO THE DISTRICT ATTORNEY AND DISTRICT ATTORNEY'S OFFICE ABILITY TO PERFORM THE DISCRETIONARY FUNCTIONS OF A PROSECUTOR IN A FAIR AND EVENHANDED MANNER.

PETITIONER PRESENTED MANY CLAIMS / ALLEGATIONS SUPPORTED BY A SUBSTANTIAL RECORDS... SEE (EXHIBIT 1 TO MANDATE, "MOTION TO DISQUALIFY THE PROSECUTING ATTORNEY" (PEN. CODE, § 1421), THAT WAS FILED WITH THE MOVING PAPERS IN THE RESPONDENT COURT). THE CLAIMS AND ALLEGATIONS RANGE FROM, BUT ARE NOT LIMITED TO; BAD-FAITH, PARTIAL AND RECKLESS INVESTIGATION TACTICS THAT RESULTED IN CRITICAL KNOWN AND APPARENT EXONERATORY AND POTENTIALLY EXONERATORY EVIDENCE TO BE LOST AND DESTROYED; DELIBERATE BAD-FAITH SUPPRESS-

ION OF MATERIAL EXONERATORY EVIDENCE DURING THE CRITICAL STAGE OF PRELIMINARY EXAMINATION AND THAT RESULTED IN IRREPARABLE PREJUDICE TO THE PREPARATION OF THE CRIMINAL DEFENSE; BAD-FAITH TACTICS OF MISINFORMING AND MISREPRESENTATIONS TO THE COURTS OF LAW IN ORDER TO SUBVERT AND INTERFERE WITH EXERCISE OF CIVIL RIGHTS TO SELF-REPRESENTATION; BAD-FAITH RECKLESS USE OF KNOWN AND CLEARLY APPARENT LYING CRIMINAL JAILHOUSE INFORMANTS TO ORCHESTRATE METHODS OF SUBVERSION AND INTERFERENCES WITH THE PREPARATION OF A CRIMINAL DEFENSE AND THE ATTORNEY CLIENT RELATIONSHIP; PETITIONER ALSO FILED A CIVIL RIGHTS LAW SUIT AGAINST THE DISTRICT ATTORNEYS OFFICE IN CONNECTION TO THE DISTRICT ATTORNEYS DELIBERATE SUBVERSION INTO MATTERS OF THE DEFENSE; THE PROSECUTOR WILL BE A WITNESS AT TRIAL. SEE (EXHIBIT 1 AND 4 OF PETITION FOR WRIT OF MANDATE).

AT THE HEARING THE COURT DEPRIVED AND DENIED THE PETITIONER/DEFENDANT OF AN EVIDENTIARY HEARING AND OF AN ADEQUATE AND MEANINGFUL OPPORTUNITY TO PRESENT EVIDENCE IN ACCORDANCE TO DUE PROCESS DEMANDS, . THUS THE TRIAL COURT JUDGE'S FACTUAL DETERMINATIONS, WHEN DENYING THE MOTION TO DISQUALIFY THE PROSECUTING ATTORNEY IS PRESUMED LEGALLY UNREASONABLE. SPECIALLY IN LIGHT OF THE FACT THAT, THE JUDGE'S FACTUAL FINDINGS, BASED ON THE FACE OF THE RECORD, WERE UNSUPPORTED BY THE SUBSTANTIAL PROFFERED EVIDENCE IN SUPPORT OF THE ORIGINAL MOTION.

NOT ONLY WAS PETITIONER DEPRIVED OF FUNDAMENTAL PROCEDURAL SAFEGUARDS TO AN EVIDENTIARY HEARING, BUT HE IS ALSO BEING

SIMULTANEOUSLY AND STRUCTUALLY DEPRIVED OF AN OPPORTUNITY TO CREATE AN ADEQUATE AND ACCURATE RECORD IN THE TRIAL COURT, IN ACCORDANCE TO EXHAUSTION OF ADMINISTRATIVE REMEDIES AND COMITY DOCTRINES AS REQUIRED BY LAW, BUT THAT WILL ULTIMATELY SUBVERT AND INTERFERE IN THE PETITIONER'S ABILITY TO MEANINGFULLY ACCESS THE REMEDY PROCEDURES, SHOULD HE BE WRONGLY CONVICTED, AND HE WILL BE PREVENTED FROM RECEIVING A MEANINGFUL APPEAL AND/OR COLLATERAL REVIEW DUE TO THE INHERENT PERVERSION AND DEFICIENCY CREATED IN THE COURT RECORDS WHEN BEING DEPRIVED OF A MEANINGFUL EVIDENTIARY HEARING AND OF OPPORTUNITY TO RAISE AND PRESENT HIS CLAIMS OF STATE AND FEDERAL CONSTITUTION DIMENSION. SEE (EXHIBIT 4 AT P.267-275 TO MANDATE)

FURTHERMORE, DUE TO THE TYPES OF ERRORS CREATED BY THESE PRESENT CIRCUMSTANCES AND THE INFECTION CREATED IN THE CRIMINAL PROCESS FROM BEGINNING TO, AND EVEN AFTER ANY POTENTIAL CONVICTION, AS EXPLAINED ABOVE, THERE EXISTS A REAL AND OBJECTIVELY MANIFESTED POTENTIAL FOR GREAT IMMEDIATE AND IRREPARABLE PREJUDICE AND DAMAGES TO THE PETITIONER. WITHOUT A TIMELY AND REASONABLE REVIEW AND THE CORRECTION OF THE ERRORS AT THIS STAGE AND BEFORE TRIAL. IT WOULD DEFY THE PRINCIPLES OF ORDERLY ADMINISTRATION OF JUSTICE TO PROLONG THE REVIEW, ANSWERS AND CORRECTION TO THE ISSUES, PRESENTED HERE UNTIL AFTER ANY POTENTIAL CONVICTION, AND SUBJECTING THE PETITIONER

TO UNNECESSARY AND UNDUE HARSHIPS AND DELAYS
TO REMEDY CONSTITUTIONAL CIVIL RIGHTS VIOLATIONS.

PETITIONER SOUGHT FOR WRIT OF MANDATE RELIEF IN
GOOD FAITH TO THE 4TH DISTRICT COURT OF APPEALS AND
IN A PRAYER FOR BASIC REMEDIES (MANDATE AT P. 20-22):

1. AN ORDER TO THE SUPERIOR COURT TO VACATE ITS
PRIOR DECISION OVER THE "MOTION FOR PRETRIAL
DISCOVERY" ENTERED SEPTEMBER 22, 2017, AND FOR
THE SUPERIOR COURT TO ISSUE A MANDATE DIRECTED
TO THE DISTRICT ATTORNEY AND THE DISTRICT ATTOR-
NEYS OFFICE TO CONDUCT AN ADEQUATE INVESTIGATION
INTO THE "OFFICE FILES" AND "NOTES" INCLUDING IN
THE PRIOR CRIMINAL CASES OF THE TWO CRIMINAL
JAILHOUSE INFORMANTS, AND TO VERIFY WHETHER
ANY OF THE INFORMANTS (RANDY TURPIN OR JOHN
HANSON) SERVED AS STATE "WITNESSES" IN ANY PRIOR
CRIMINAL CASES IN EXCHANGE TO ANY SPECIAL TREAT-
MENTS, CONSIDERATIONS, DEALS, LENIENCY, REWARDS,
AND/OR INCENTIVES AND INFORMATION THAT MAY CAST
A SHADOW OVER THE INFORMANTS VERASITY AND THEIR
CREDIBILITY, AND FOR AN ORDER DIRECTING THE PROSECUTOR
TO TURN OVER IN DISCOVERY ANY SUCH EVIDENCE THAT
MAY BE DISCOVERED, AFTER, A PROPER AND GOOD-FAITH
INVESTIGATION.
2. AN ORDER TO THE SUPERIOR COURT TO VACATE ITS PRIOR
DECISION OVER THE "MOTION TO DISQUALIFY THE DISTRICT
ATTORNEY" AND TO PROVIDE THE PARTIES AN OPPORTUNITY

TO CONDUCT AN ACTUAL EVIDENTIARY HEARING; TO CALL UPON WITNESSES AND PRESENT EVIDENCE IN ACCORDANCE WITH THE RULES OF EVIDENCE AND DUE PROCESS DEMANDS, THEN AFTER HAVING CONDUCTED AN EVIDENTIARY HEARING, AND THE COURT BEING WELL-INFORMED OF THE FACTS AND EVIDENCE, TO ENTER A NEW DECISION AND JUDGMENT IN ACCORDANCE TO THE PREVAILING LAWS AND AUTHORITIES.

THE COURT OF APPEALS DENIED RELIEF ON NOVEMBER 28, 2017. THUS THE PETITIONER HEREBY PETITIONS TO THIS COURT FOR WRIT OF CERTIORARI IN A PRAYER FOR A FAIR AND APPROPRIATE REVIEW. BECAUSE THE SUPREME COURT OF CALIFORNIA ALSO DENIED RELIEF ON JANUARY 31, 2018. THUS THE PETITIONER IS WITHOUT ANY OTHER PLAIN, ADEQUATE AND SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW EXCEPT BY THIS PRESENT PETITION TO THE U.S. SUPREME COURT. AND DUE TO THE NATURE OF THE ERRORS IN THE RESPONDENT COURT OVER THESE ISSUES, THE PETITIONER IS SUBJECT TO GREAT IMMEDIATE AND IRREPARABLE DAMAGES AND INJURY WITHOUT A TIMELY REVIEW OF THE CASE AND GRANT OF AN APPROPRIATE REMEDY TO THE STRUCTURAL PREJUDICE OF THE PROCEEDINGS.

AN URGENT STAY IS REASONABLY REQUESTED, AND MERITED, UNTIL A RESOLUTION OF THIS MATTER IN THE SUPERIOR COURT IN LIGHT OF THE EXCEPTIONAL CIRCUMSTANCES PRESENTED HERE, AND IN THE BEST INTEREST OF JUSTICE.

1 **IX** REASONS FOR GRANTING THE WRIT
2 A.

3 THE DECISION BY THE STATE COURT OF LAST RESORT IS IN CONFLICT
4 WITH ITS OWN PRIOR DECISIONS AND WITH DECISIONS OF THE
5 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

6
7 1) DISTRICT ATTORNEYS / PROSECUTORS HAVE A FREESTANDING
8 OBLIGATION TO INVESTIGATE AND INQUIRE INTO THE BACKGROUNDS
9 OF CRIMINAL JAILHOUSE INFORMANTS INCLUDING PROSECUTION CASE
10 FILES AND FILES IN POSSESSION OF OTHER LAW ENFORCEMENT AGENCIES
11 (PROBATION OR PAROLE) AND TO ASCERTAIN WHETHER THE CRIMINAL
12 INFORMANTS HAVE SERVED AS INFORMANTS OR WITNESSES FOR
13 THE STATE IN ANY PRIOR CRIMINAL PROSECUTIONS AGAINST ANY
14 PERSON IN EXCHANGE FOR ANY BENEFITS, CONSIDERATIONS,
15 PROMISES OR ASSISTANCE AND TO DETERMINE WHETHER THERE IS
16 ANY EVIDENCE THAT SHEDS A SHADOW ON THEIR CREDIBILITY. AND
17 REGARDLESS WHETHER ANY CONSIDERATIONS OR BENEFITS WERE GIVEN.

18 ("IT IS A FUNDAMENTAL PRINCIPLE OF THE AMERICAN CRIMINAL
19 JUSTICE SYSTEM THAT DELIBERATE DECEPTION OF A COURT AND
20 JURORS BY PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE
21 WITH RUDIMENTARY DEMANDS OF JUSTICE") *PHILIPS V. ORNOSKI*
22 673 F.3d 1168, 1181 (9TH CIR 2012) QUOTING *GIGLIO V. UNITED*
23 *STATES* 405 U.S. 150, 153 (1972)

24
25 THE UNITED STATES SUPREME COURT AND THE NINTH
26 CIRCUIT COURT OF APPEALS HAVE MADE IT PERFECTLY CLEAR
27 THAT THE PROSECUTOR'S DUTY TO DISCLOSE EVIDENCE FAVORABLE

1 TO THE ACCUSED EXTENDS TO INFORMATION KNOWN ONLY TO
2 POLICE. KYLES V. WHITLEY 514 U.S. 419, 438 (1995). THE STATE
3 PROSECUTOR DOES NOT SATISFY ITS BRADY OBLIGATION TO DISCLOSE
4 EXONERATORY EVIDENCE BY MAKING SOME AVAILABLE AND ASSERT-
5 TING THE REST WOULD BE COMULATIVE. RATHER THE STATE IS
6 OBLIGATED TO TURN OVER ALL MATERIAL INFORMATION CASTING
7 A SHADOW ON A GOVERNMENT WITNESS'S CREDIBILITY. CARRIER
8 V. STEWART 132 F.3d 463, 460 (9TH CIR. 1997) AND ALSO
9 PEOPLE V. ROBINSON 32 CAL APP 4TH 494, 499 (2D DIST. 1995)
10 ⁶¹ EVIDENCE THAT A JAIL HOUSE SNITCH RECEIVED MATERIAL
11 BENEFITS FROM THE PROSECUTION IS SPECIALLY IMPORTANT
12 BECAUSE WITHOUT THAT EVIDENCE THE INFORMANT MASQUERADES
13 AS A DISINTERESTED OBSERVER.⁶² BELMONTE V. BROWN 414 F.3d
14 1094 (2005)

15
16 EVEN WHEN A PROSECUTION WITNESS WHOM IS CURRENTLY
17 FACING PROSECUTION HAS RECEIVED BENEFITS TO COOPERATE WITH
18 LAW ENFORCEMENT IN PRIOR CASES THE PROSECUTOR HAS A DUTY
19 TO DISCLOSE THIS FACT. PEOPLE V. KASIM 56 CAL APP 4TH
20 1360, 1382 (4TH DIST 1997). THE PROSECUTOR HAS THE DUTY
21 TO LEARN OF ANY EXONERATORY EVIDENCE KNOWN TO OTHERS
22 ACTING ON THE GOVERNMENT'S BEHALF. BECAUSE THE PROSECUTOR
23 IS IN A UNIQUE POSITION TO ACCESS AND OBTAIN INFORMATION
24 POSSESSED IN GOVERNMENT FILES OR THAT IS KNOWN BY OTHER
25 AGENTS, IT MAY NOT BE EXCUSED FROM DISCLOSING WHAT IT
26 DOES NOT KNOW, BUT COULD HAVE LEARNED. CARRIER V STEWART
132 F.3d 463, 479-480 (9TH CIR. 1997)

1 ⁶ THIS TRUTH-SEEKING FUNCTION CANNOT BE FULFILLED WHEN THE
2 STATE KNOWING THAT A WITNESS MAY HAVE PERJURED HERSELF,
3 PROCEEDS WITHOUT CONDUCTING AN INVESTIGATION TO ENSURE THAT
4 A NEW TRIAL IS NOT WARRANTED. THE DUTY TO INVESTIGATE
5 FLOWS FROM THE ⁶CONSTITUTIONAL OBLIGATION OF THE STATE AND
6 ITS REPRESENTATIVES TO COLLECT POTENTIALLY EXONERATORY
7 EVIDENCE, TO PREVENT FRAUD UPON THE COURT AND TO ELICIT
8 THE TRUTH. ^{7,8} [CITATION] MORRIS V. YIST 447 F.3d. 735, 744
9 (9TH CIR 2006)

10
11 THUS IN THIS INSTANT MATTER IT FOLLOWS THAT THE TRIAL COURT
12 HAD THE AUTHORITY, AND POWER, AND SHOULD HAVE ISSUED A
13 COURT ORDER TO COMPEL THE DISTRICT ATTORNEY'S OFFICE AND THE
14 PROSECUTOR TO CONDUCT A SUFFICIENT INVESTIGATION INTO THE
15 CRIMINAL JAILHOUSE INFORMANTS' PRIOR CRIMINAL CASE FILES
16 AND RECORDS POSSESSED BY THE DISTRICT ATTORNEY'S OFFICE AND
17 OTHER GOVERNMENT AGENTS, IN CONNECTION TO ANY EVIDENCE AND
18 INFORMATION THAT PERTAINS TO ANY PRIOR CORROBORATIONS WITH
19 LAW ENFORCEMENT OFFICIALS IN EXCHANGE FOR SPECIAL PROMISES
20 BENEFITS, DEALS, SPECIAL CONSIDERATIONS, ETC. FOR ACTING
21 EITHER AS WITNESSES OR INFORMANTS IN ANY PRIOR CRIMINAL
22 CASES. BUT MOST IMPORTANTLY IN ORDER FOR THE PROSECUTOR
23 TO BE SUFFICIENTLY INFORMED IN ORDER TO INTELLIGENTLY
24 AND COMPETENTLY ANSWER TO AND/OR COMPLY WITH DISCOVERY
25 REQUEST INTO SUCH EVIDENCE, AFTER FIRST CONDUCTING AN
26 HONEST INVESTIGATION TO ELICIT THE TRUTH. SUCH INVESTIGATION
27 IS REASONABLY EXPECTED FROM THE STATE PROSECUTING AGENTS

1 TO MAKE AN INTELLIGENT AND WELL-INFORMED DETERMINATION,
2 AND TO PROVIDE A VALID AND COMPETENT RESPONSE TO A
3 DISCOVERY REQUEST INTO THE JAILHOUSE INFORMANTS' PRIOR
4 COOPERATION WITH LAW ENFORCEMENT, BUT MOST IMPORTANT,
5 WHETHER THE INFORMANT HAS A PRIOR HISTORY OF PROVIDING
6 FALSE OR DISCRETEABLE INFORMATION AND REGARDLESS IF ANY ACTUAL
7 DEALS, PROMISES OR SPECIAL TREATMENT IN EXCHANGE FOR THEIR
8 CORROBORATION WAS MADE.

9
10 MOREOVER, WHERE AS HERE, IT IS REASONABLY QUESTIONABLE
11 WHETHER A PROSECUTOR HAS MADE ANY EFFORT TO CONDUCT SUCH
12 INVESTIGATIONS, THE COURT SHOULD, IN THE EXERCISE OF SOUND
13 AND REASONABLE DISCRETION, ISSUE AN ORDER TO THE PROSECUTOR
14 AND FOR DISTRICT ATTORNEY'S OFFICE TO REASONABLY AND IN
15 GOOD-FAITH CONDUCT SUCH AN INVESTIGATION, BEFORE EVEN
16 ATTEMPTING TO RESPOND TO A REQUEST FOR DISCOVERY OF THAT TYPE
17 OF EVIDENCE ABOUT JAILHOUSE INFORMANTS' PRIOR ASSISTANCE
18 WITH LAW ENFORCEMENT IN PREVIOUS CRIMINAL CASES

19
20 NEEDLESS-TO-MENTION, SUCH DUTIES ARE NOT JUST REQUIRED
21 AND EXPECTED UNDER THE CIVIL RIGHT CLAUSES OF A CRIMINAL
22 DEFENDANT'S RIGHT TO ACCESS INFORMATION AND EVIDENCE, THAT
23 IS MATERIAL TOWARDS THE CREDIBILITY OR INTERESTS OF A CRIMINAL
24 JAILHOUSE INFORMANT'S INVOLVEMENT IN A CRIMINAL CASE, BUT
25 MOST IMPORTANTLY, TO PROTECT OUR JUSTICE SYSTEM AND
26 THE PUBLIC'S CONFIDENCE IN OUR OFFICIALS, FROM THE TREACHERY,
27 MOCHERT, AND SERIOUS POTENTIAL DAMAGES THESE TYPE OF
28 CRIMINALS ARE VERY LIKELY TO CAUSE IF GONE UNCHECKED.

1 2) DISQUALIFICATION OF A PROSECUTOR MAY BE NECESSARY WHEN
2 A CONFLICT OF INTEREST EXISTS; OR, A PROSECUTOR SUFFERS
3 FROM PREJUDICE AGAINST THE DEFENDANT THAT AFFECTS HIS/HER
4 ABILITY TO PERFORM HIS DISCRETIONARY FUNCTIONS IMPARTIALLY
5

6 "A CONFLICT OF INTEREST DISQUALIFIES A DA FROM PROSECUTING A
7 CASE IF THE CONFLICT EITHER AFFECTS OR APPEARS TO AFFECT HIS
8 ABILITY FAITHFULLY TO PERFORM THE DISCRETIONARY FUNCTIONS OF
9 HIS OFFICE."²⁷ PEOPLE V. CONNER 34 CAL. 3d 141, 147
10 (1983)

11
12 THE PROSECUTOR IS A PUBLIC OFFICIAL VESTED WITH CONSIDERABLE
13 DISCRETIONARY POWER TO DECIDE WHAT CRIMES ARE TO BE CHARGED
14 AND HOW THEY ARE TO BE PROSECUTED. PROSECUTORIAL IMPARTIALITY
15 IS PERHAPS MOST IMPORTANT DURING THE CHARGING PROCESS.
16 NEVERTHELESS, PROSECUTORIAL DISCRETIONARY FUNCTIONS ARE NOT
17 CONFINED TO THE PERIOD BEFORE THE FILING OF CHARGES. WHILE
18 THE TRIAL JUDGE HAS THE POWER TO PREVENT ACTUAL PROSECUTORIAL
19 MISCONDUCT IN COURT, WITHIN THOSE BOUNDS, THE DISTRICT ATTORNEY
20 POSSESSES THE ADVOCATE'S TRADITIONAL ABILITY TO CONDUCT HIS
21 OR HER CASE IN THE MANNER HE OR SHE ELECTS. THESE TYPES
22 OF DISCRETIONARY JUDGMENTS INCLUDE THE MANNER THE PROSECUTOR
23 CONDUCTS VOIR DIRE EXAMINATIONS; THE GRANTING OF IMMUNITY
24 THE USE OF PARTICULAR WITNESSES OR TESTS; THE CHOICE OF
25 ARGUMENTS OR THE SHOWING OF DETAILS OF THE CRIME; THE
26 PARTICULAR PROSECUTORIAL INVESTIGATIONS INTO KNOWN AND
27 APPARENT EXONERATORY AND POTENTIALLY EXONERATORY EVIDENCE
28 OR EVIDENCE THAT WOULD HELP CLARIFY THE REALITY AND THE TRUTH

1 OR FACTUAL CIRCUMSTANCES OF AN INCIDENT LEADING TO CRIMINAL
2 ACCUSATIONS. PROSECUTORS ALSO RETAIN DISCRETION OVER PLEA BARGAINS.
3
4 THE THEME WHICH RUNS THROUGHOUT THE CRIMINAL PROCEDURE
5 IN THIS STATE IS THAT ALL PERSONS SHOULD BE PROTECTED FROM
6 HAVING TO DEFEND AGAINST FRIVOLOUS PROSECUTIONS AND THAT
7 ONE MAJOR SAFEGUARD AGAINST SUCH PROSECUTIONS IS THE
8 FUNCTION OF DISTRICT ATTORNEY IN SCREENING CRIMINAL CASES
9 PRIOR TO INSTITUTING A PROSECUTION. PEOPLE V. MUNICIPAL
10 COURT 27 CAL. APP. 3d 193, 205-206 — — — (2d Dist
11 1972)

12
13 THE SUPREME COURT CONSTRUES THE STATUTE AS TO PROHIBITING
14 RECUSAL SOLELY ON THE GROUND OF THE APPEARANCE OF IMPROPRIETY
15 "WHETHER THE PROSECUTOR'S CONFLICT IS CHARACTERIZED AS
16 ACTUAL OR ONLY APPARENT THE POTENTIAL FOR PREJUDICE TO THE
17 DEFENDANT - THE LIKELIHOOD THAT THE DEFENDANT WILL NOT
18 RECEIVE A FAIR TRIAL - MUST BE REAL NOT MERELY APPARENT
19 AND MUST RISE TO THE LIKELIHOOD OF UNFAIRNESS??" PEOPLE V.
20 EUBANKS 14 CAL 4TH 580, 592 — — — (1996)

21
22 HISTORICALLY RECUSAL OF AN ENTIRE DISTRICT ATTORNEYS' OFFICE
23 HAS BEEN RARE. PEOPLE V. ZAPIEN 4 C. 4TH 929 968 (1993)
24 PEOPLE V. CANNEDY 176 CA. 4TH 1474, 1482 — — (2009)
25 FOR THE MOST PART RECUSAL HAS BEEN ORDERED FOR AN INDIVIDUAL
26 PROSECUTOR. THE COURTS HAVE RECOGNIZED THE FOLLOWING
27 GROUNDS FOR RECUSAL: (1) PROSECUTOR HAS A PROVEN BIAS
28 AGAINST THE DEFENDANT. PEOPLE V. CONNER 34 CAL 3d 141,

1 198-149 — (1983); (2) PROSECUTOR IS EMBROILED
2 IN A CIVIL LITIGATION WITH THE DEFENDANT IN THE PROSECUTION
3 OF CRIMINAL CASE - PEOPLE V. SUPERIOR COURT (GREER) 19 C.3d
4 255, 261 — (1977) SEE ALSO PEOPLE V. BATTIN 77 CAL.
5 APP 3d 635 671 (4TH DIST. 1978); (3) THE PROSECUTOR WILL HAVE
6 TO TESTIFY AT TRIAL. COMDEN V. SUPERIOR COURT 20 CAL 3d 906,
7 912- 916 — (1978) SEE ALSO CAL. RULES OF PROF.
8 CONDUCT RULE 5-210 AND PEOPLE V. DONALDSON 93 CAL
9 APP. 4TH 916 (5TH CIR 2001)

10
11 IN THIS INSTANT MATTER SUBSTANTIAL SUPPORT AND EVIDENCE
12 EXISTS THAT CLEARLY AND REASONABLY MERIT DISQUALIFICATION
13 OF THE PROSECUTORIAL ATTORNEY IN THIS CASE IN ACCORDANCE WITH
14 THE AUTHORITATIVE LAW SET FORTH HEREIN. COMPARE TO (DECLARATION IN
15 SUPPORT OF MOTION TO DISQUALIFY THE PROSECUTING ATTORNEY)

16
17
18 3) IMPORTANCE OF PROSECUTORIAL IMPARTIALITY IS PARAMOUNT
19 AND INDISPENSABLE TO THE INTEGRITY OF JUSTICE

20
21 THE PROSECUTOR'S OFFICE IS OBLIGATED NOT ONLY TO PROSECUTE
22 WITH VIGOR BUT ALSO TO SEEK JUSTICE. THIS THEME WAS STRESSED
23 MORE THAN A HALF CENTURY AGO BY THE UNITED STATES COURT IN
24 BERGER V. U.S. 295 U.S. 78 88 — (1935) WHEN IT SAID:
25 "THE PROSECUTOR IS THE REPRESENTATIVE NOT OF AN ORDINARY
26 PARTY TO A CONTROVERSY BUT OF A SOVEREIGN WHOSE OBLIGATION
27 TO GOVERN IMPARTIALITY IS AS COMPELLING AS ITS OBLIGATION TO
28 TO GOVERN AT ALL AND WHOSE INTEREST, THEREFORE, IN A CRIMINAL

1 PROSECUTION IS NOT THAT IT SHALL WIN A CASE BUT THAT JUSTICE
2 SHALL BE DONE.²²

3
4 "WE MUST RELY ON OUR PROSECUTORS TO CARRY OUT THEIR FIDUCIARY
5 OBLIGATION TO EXERCISE THEIR DISCRETIONARY DUTIES FAIRLY AND
6 JUSTLY - TO AFFORD EVERY DEFENDANT WHETHER SUSPECTED OF
7 CRIMES HIGH OR PETTY: EQUAL TREATMENT UNDER THE LAW.²³
8 [CITATION] C OUR PUBLIC PROSECUTORS ARE CHARGED WITH AN
9 IMPORTANT AND SOLEMN DUTY TO ENSURE THAT JUSTICE AND FAIRNESS
10 REMAINS THE TOUCHSTONE OF OUR CRIMINAL JUSTICE SYSTEM. IN
11 THE VAST MAJORITY OF CASES, THESE MEN AND WOMEN PERFORM
12 THEIR DIFFICULT JOBS WITH PROFESSIONALISM ADHERING TO THE
13 HIGHEST OF THE HIGHEST ETHICAL STANDARDS OF THEIR CALLING.²⁴
14 HOLLYWOOD V. SUPERIOR COURT 43 CAL. 4TH 721, 735 (2008)

15
16

17 A) SHOWING OF PERSISTENT PROSECUTORIAL MISCONDUCT AND / OR
18 IMPROPER BAD FAITH TACTICS MAY BE MATERIAL EVIDENCE THAT
19 SUPPORTS THE EXISTENCE OF A CONFLICT MERITING RECUSAL.

20

21 GENERALLY A SHOWING OF "BAD FAITH" IS NOT REQUIRED TO SUPPORT
22 RECUSAL OF PROSECUTING ATTORNEY. RECUSAL DOES NOT EVEN
23 REQUIRE A SHOWING OF MISCONDUCT. BUT PROSECUTORIAL BAD FAITH
24 BECOMES A MATERIAL CONSIDERATION WHERE THE USE OF TACTICS IS AT
25 ISSUE. THE PERSISTENT, BAD FAITH USE OF LITIGATION TACTICS, SUCH AS
26 OBSTRUCTING DISCOVERY AND IMPARING DEFENSE PREPARATION MAY
27 BECOME CIRCUMSTANTIAL EVIDENCE OF EXISTING CONFLICT RENDERING
28 FAIR TRIAL UNLIKELY. PEOPLE V. SUPERIOR COURT 43 CAL. 4TH 737, 747 (2008)

1 a) REPEATED SUBVERSION INTO THE PREPARATION OF A DEFENSE IS
2 EVIDENCE OF A CONFLICT BECAUSE PROSECUTORS CANNOT TAKE
3 ANY ACTIONS THAT INTERFERES AND INFRINGES ON A DEFENDANT'S
4 SIXTH AMENDMENT CIVIL RIGHTS TO ASSISTANCE OF COUNSEL
5

6 "LAW ENFORCEMENT AGENTS ARE ENTRUSTED WITH AWESOME POWER.
7 BUT WITH THAT POWER ALSO COMES A RESPONSIBILITY... AMONG
8 THESE STANDARDS IS THE REQUIREMENT THAT THE PROSECUTOR NOT...
9 ACT IN A MATTER THAT CIRCUMVENTS AND THEREBY DILUTES THE
10 PROTECTION AFFORDED BY THE RIGHT TO COUNSEL.⁷ WHILE DISTRICT
11 ATTORNEYS ARE EXPECTED TO PROSECUTE THEIR CASES WITH CONSIDER-
12 ABLE VIGOR AND DISPATCH, THEY MAY STRIKE HARD BLOWS BUT
13 ARE NOT AT LIBERTY TO STRIKE FOUL ONES.⁸ BY CONSPIRING
14 TO VIOLATE [THE DEFENDANT'S] CONSTITUTIONAL RIGHTS THE
15 PROSECUTOR STRUCK A FOUL BLOW.⁹ MORROW V. SUPERIOR COURT
16 30 CAL APP 4TH 1252, 1262-1263 (1994) [EMPHASIS ADDED]

17 (EXHIBIT 4 TO MANDATE AT P. 294 - 305, 312 - 314, 318 - 319,
18 333 - 337)

19
20 b) EVIDENCE OF A CONFLICT MAY BE OBJECTIVELY SHOWN BY THE
21 WILLFUL AND RECKLESS SUPPRESSION OF EXONERATORY AND
22 POTENTIALLY EXONERATORY EVIDENCE ON BEHALF OF PROSECUTORS
23 BECAUSE IT VIOLATES SETTLED PRINCIPLES OF DUE PROCESS OF LAW.
24

25 "THE SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE
26 TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE THE
27 EVIDENCE IS MATERIAL TO GUILT OR TO PUNISHMENT, IRRESPECTIVE
28 OF GOOD FAITH OR BAD FAITH OF THE PROSECUTION.¹⁰ BRADY V. MARYLAND

1 373 U.S 83, 87 — — (1963) THE BRADY OBLIGATIONS OF
2 DISCOVERY EXPANDS TO THE CRITICAL STAGE OF THE PRELIMINARY
3 EXAMINATION. MAGALLAN V. SUPERIOR COURT 192 CAL 4TH 1444, 1459
4 (2011) AND SEE PEOPLE V. GOTTERRES 214 CAL APP 4TH 393, 398-399
5 (2013)

6

7 IN KYLES V. WHITLEY 514 U.S 419 (1995) THE UNITED STATES
8 SUPREME COURT HELD THAT THE PROSECUTOR HAS A DUTY TO SEARCH
9 AND INQUIRE WITHIN THE "PROSECUTORIAL TEAM" TO LOCATE
10 EXONERATORY EVIDENCE. THE COURT SAID: "THE INDIVIDUAL PROSECUTOR
11 HAS A DUTY TO LEARN ANY FAVORABLE EVIDENCE KNOWN TO THE
12 OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THE CASE. (ID AT
13 P. 437-438). HOWEVER COMPARE TO (EXHIBIT 1 AT P. 7-8, 13,
14 40-42, 45-55 AND EXHIBIT 4 AT P. 281-293 OF MANDATE.)

15

16 C) EVIDENCE OF A CONFLICT MAY BE OBJECTIVELY SHOWN BY THE
17 WILLFUL AND RECKLESS FAILURE TO COLLECT AND PRESERVE KNOWN
18 AND APPARENT EXONERATORY AND/OR POTENTIALLY EXONERATORY
19 EVIDENCE BY THE PROSECUTORIAL AGENTS. AND THAT RESULTS IN BAD
20 FAITH LOSS AND DESTRUCTION, BECAUSE IT CLEARLY VIOLATES FAIR
21 DUE PROCESS PRINCIPLES.

22

23 "A BAD FAITH FAILURE TO COLLECT POTENTIALLY EXONERATORY
24 EVIDENCE WOULD VIOLATE THE DUE PROCESS CLAUSE."⁵² MILLER V.
25 YASQUEZ 868 F.2D 1116 1120 (9TH CIR 1989).⁵³ WE MADE IT
26 ABUNDANTLY CLEAR THAT THE DUE PROCESS REQUIRES LAW ENFORCEMENT
27 NOT JUST TO PRESERVE EVIDENCE ALREADY IN HAND, BUT TO GATHER
28 AND TO COLLECT EVIDENCE IN THOSE CASES IN WHICH THE POLICE

1 THEMSELVES BY THEIR CONDUCT INDICATE THAT EVIDENCE COULD
2 FORM A BASIS FOR EXONERATING THE DEFENDANT.⁷⁷⁷ (ID AT P.
3 1121.) SEE ALSO COMMONWEALTH OF NORTHERN MARIANA ISLANDS
4 V. BOWIE 243 F.3d 1109, 1117 (2001) AND TENNISON V. CITY AND
5 COUNTY OF SAN FRANCISCO 570 F.3d 1078, 1088-1089 (9TH CIR 2008)
6 BUT COMPARE EXHIBIT 1 OF MANDATE AT P. 34-42)

7

8 d) EVIDENCE OF A CONFLICT MAY BE OBJECTIVELY SHOWN BY THE
9 WILLFUL AND RECKLESS FAILURE TO PREVENT AND OR CORRECT
10 MALEVOLENT DISINFORMATION AND TREACHERY CAUSED BY LYING
11 AND DISHONEST CRIMINAL INFORMANTS, ON BEHALF OF THE STATE
12 AND PROSECUTORIAL AGENTS BECAUSE IT VIOLATES WELL SETTLED
13 PRINCIPLES OF DUE PROCESS GUARANTEED PROTECTIONS.

14

15 "FEW THINGS ARE MORE REPUGNANT TO THE CONSTITUTIONAL
16 EXPECTATIONS OF OUR CRIMINAL JUSTICE SYSTEM THAN COVERT
17 PERJURY AND ESPECIALLY PERJURY THAT FLOWS FROM A CONCERTED
18 EFFORT BY REWARDED CRIMINALS TO FRAME A DEFENDANT. THE
19 ULTIMATE MISSION OF THE SYSTEM UPON WHICH WE RELY TO PROTECT
20 THE LIBERTY OF THE ACCUSED AS WELL AS THE WELFARE OF SOCIETY
21 IS TO ASCERTAIN THE FACTUAL TRUTH, AND TO DO SO IN A MANNER
22 THAT COMPORTS WITH DUE PROCESS OF LAW AS DEFINED BY OUR
23 CONSTITUTION. THIS MISSION IS UTTERLY DERAILED BY UNCHECKED
24 LYING LYING WITNESSES, AND BY ANY LAW ENFORCEMENT OFFICER OR
25 PROSECUTOR WHO FINDS IT TACTICALLY ADVANTAGEOUS TO TURN A BLIND
26 EYE TO THE MANIFEST POTENTIAL FOR MALEVOLENT DISINFORMATION."⁷⁷⁸
27 COMMONWEALTH OF NORTHERN MARIANA ISLANDS 243 F.3d AT P.
28 1115

1 "CRIMINAL INFORMANTS ARE CUT WITH FROM UNTRUSTWORTHY
2 CLOTH AND MUST BE MANAGED AND CAREFULLY WATCHED
3 BY GOVERNMENT AND THE COURTS TO PREVENT THEM FROM
4 FALSELY ACCUSING THE INNOCENT, FROM MANUFACTURING
5 EVIDENCE AGAINST THOSE UNDER SUSPICION OF A CRIME AND
6 FROM LYING UNDER OATH IN THE COURTROOM... A
7 PROSECUTOR WHO DOES NOT APPRECIATE THE PERILS OF USING
8 REWARDED CRIMINALS AS WITNESSES RISK COMPROMISING THE
9 TRUTH-SEEKING MISSION OF OUR CRIMINAL JUSTICE SYSTEM.
10 BECAUSE THE GOVERNMENT DECIDES WHETHER AND WHEN TO
11 USE SUCH WITNESSES AND WHAT IF ANYTHING TO GIVE
12 THEM FOR THEIR SERVICE THE GOVERNMENT CAN EITHER
13 CONTRIBUTE OR ELIMINATE THE PROBLEM. ACCORDINGLY WE
14 EXPECT PROSECUTORS AND INVESTIGATORS TO TAKE ALL REASONABLE
15 MEASURES TO SAFEGUARD THE SYSTEM AGAINST TREACHERY.
16 THIS RESPONSIBILITY INCLUDES THE DUTY TO TURN OVER TO THE
17 DEFENSE IN DISCOVERY ALL MATERIAL INFORMATION CASTING
18 A SHADOW ON A GOVERNMENT WITNESS CREDIBILITY."
19 UNITED STATES V. FILEMON BERNAL-OBESO 989 F.2d 331
20 F.2d 331 (9TH CIR 1993) But Compare (EXHIBIT 4 to MANDATE AT P.
21 294-333)
22
23 IN THE INSTANT MATTER PETITIONER HAS SUFFICIENTLY PLEAD
24 AND SUPPORTED HIS CLAIMS OF BAD-FAITH PROSECUTORIAL
25 MISCONDUCT THAT INTERFERED WITH THE PREPARATION OF THE
26 DEFENSE DURING NUMEROUS TIMES AND BY EMPLOYMENT OF
27 VARIOUS DIFFERENT METHODS OF TACTICAL SUBVERSION OF THE
28 CRIMINAL DEFENSE THAT MERIT DISQUALIFICATION FROM THE CASE.

- B. -

1
2 THIS CASE INVOLVES QUESTIONS OF EXCEPTIONAL IMPORTANCE
3 BECAUSE THE STATE COURTS OF LAST RESORT DECIDED AN
4 IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH
5 RELEVANT DECISIONS OF THE SUPREME COURT AND SUBSTANTIALLY
6 AFFECTS A RULE OF NATIONAL APPLICATION IN WHICH THERE IS AN
7 OVERRIDING NEED FOR NATIONAL UNIFORMITY.
8

9 1) THE STATES IS DEPRIVING PETITIONER PLAIN, ADEQUATE AND
10 SPEEDY REMEDIES IN THE ORDINARY COURSE OF LAW, SPECIALLY
11 DURING THE PENDENCY OF CRIMINAL PROSECUTION, WHERE VIOLATIONS
12 OF SUBSTANTIAL STATE AND FEDERAL CONSTITUTIONAL CIVIL RIGHTS
13 THREATEN TO UNDERMINE AND ERODE THE FUNCTION AND INTEGRITY
14 OF THE TRIAL PROCESS MECHANISM FROM BEGINNING TO END. 2: 15

16 "OUR FEDERAL SYSTEM ENTRUST THE STATE WITH PRIMARY RESPONS-
17 ABILITY FOR THE ADMINISTRATION OF THEIR LAWS. THE FOURTEENTH
18 AMENDMENT AND THE SUPREMACY CLAUSE MAKE REQUIREMENT OF FAIR
19 AND JUST PROCEDURES AN INTEGRAL PART OF THOSE LAWS . . . IF BY
20 EFFECTIVE PROCESS THE STATE ASSUMES THIS BURDEN THE EXHAUSTION
21 REQUIREMENTS . . . WOULD CLEARLY PROMOTE STATE PRIMACY IN THE
22 IMPLEMENTATION OF THESE GUARANTEES. OF GREATER IMPORTANCE
23 IT WOULD ASSURE NOT ONLY THAT MERITORIOUS CLAIMS WOULD
24 GENERALLY BE VINDICATED WITHOUT ANY NEED FOR FEDERAL COURTS'
25 INTERVENTION. BUT THAT MERITORIOUS CLAIMS WOULD BE FULLY
26 VENTILATED MAKING EASIER THE TASK OF THE FEDERAL JUDGE IF THE
27 STATE PRISONER PURSUES HIS ACTION FURTHER. CASE V. STATE
28 OF NEBRASKA 381 U.S 336, 845-347 (1965)

1 (1965)

2
3 " THE PROCEDURE SHOULD BE SWIFT AND COMPREHENSIVE TO
4 EMBRACE ALL FEDERAL CONSTITUTIONAL CLAIMS. IN LIGHT
5 OF FAY V. NOIA [CITATION] IT SHOULD ESHREW RIGID AND
6 TECHNICAL DOCTRINES OF FORFEITURE WAVER OR DEFAULT... IT
7 SHOULD PROVIDE FOR A FULL FACT HEARING TO RESOLVE DISPUTED
8 FACTUAL ISSUES AND FOR COMPILATION OF A RECORD TO ENABLE
9 FEDERAL COURTS TO DETERMINE THE SUFFICIENCY OF THOSE HEARINGS
10 (24) SEE ALSO HURLES V. RYAN 706 F3d 1021 (9TH CR 2013)

11
12 THE NINTH CIRCUIT COURT OF APPEALS SAID IN HURLES
13 V. RYAN SUPRA THAT: " WE HAVE HELD REPEATEDLY THAT
14 WERE A STATE COURT MAKES FACTUAL FINDINGS WITHOUT AN
15 EVIDENTIARY HEARING OR OTHER OPPORTUNITY FOR [DEFENDANT]
16 TO PRESENT EVIDENCE & THE FACT FINDING PROCESS ITSELF IS
17 DEFICIENT² AND NOT ENTITLED TO DEERENCE. [CITATION]. IF
18 FOR EXAMPLE A STATE COURT MAKES EVIDENTIARY FINDINGS
19 WITHOUT HOLDING A HEARING AND GIVING [DEFENDANT] AN
20 OPPORTUNITY TO PRESENT EVIDENCE SUCH FINDING CLEARLY
21 RESULT IN UNREASONABLE DETERMINATION OF FACT.³
22 [EMPHASIS ADDED] (ID AT P 1038- 1039)

23
24 CALIFORNIA COURTS ALSO STRICTLY ENFORCES ITS OWN JUDICIAL
25 RULE THAT ANY MATTERS OF FACT, EVIDENCE AND INFORMATION
26 IN SUPPORT OF ANY CLAIMS WILL NOT BE CONSIDERED
27 ON APPEAL IF ITS NOT INCLUDED AND APPARENT IN THE TRIAL
28 COURT RECORDS.

1 THE CALIFORNIA SUPREME COURT HAS EXPLICITLY HELD:
2 IF PETITIONER COULD NOT PRESENT [HIS] CONSTITUTIONAL
3 CONTENTIONS ON APPEAL BECAUSE ITS FACTUAL BASE WERE
4 NOT DISCLOSED ON THE RECORD ON APPEAL... IT IS
5 ELEMENTARY THAT THE FUNCTION OF AN APPELLATE COURT
6 IN REVIEWING A TRIAL COURT JUDGMENT ON DIRECT APPEAL
7 IS LIMITED TO CONSIDERATION OF MATTER'S CONTAINED IN THE
8 RECORDS OF TRIAL PROCEEDINGS¹ AND THAT MATTERS NOT
9 PRESENTED BY THE RECORD CANNOT BE CONSIDERED ON THE
10 SUGGESTION OF COUNSEL IN THE BRIEF.² IN RE HOCHBERG
11 2 CAL.3d 870, 875 (1970) SEE ALSO PEOPLE V. MERRIAM
12 66 2d 390 (1967) AND PEOPLE V. SZETO 29 C3d 20 (1981)

13
14 IN THE INSTANT MATTER THE TRIAL COURT NOT ONLY EFFECTIVELY
15 DEPRIVED THE PETITIONER OF STATE AND FEDERAL CIVIL RIGHTS
16 TO FAIR PROCEDURAL DUE PROCESS BY DEPRIVING HIM OF AN
17 ADEQUATE AND MEANINGFUL EVIDENTIARY HEARING FOR THE
18 SEPTEMBER 22, 2017 MOTION TO DISQUALIFY THE DISTRICT
19 ATTORNEY. BUT, THE COURT ALSO CREATED A SYSTEMIC AND
20 STRUCTURAL PERVERSION THAT WILL AXIOMATICALLY DEPRIVE
21 THE PETITIONER FROM HIS RIGHT TO MEANINGFULLY TAKE AN
22 APPEAL AND REVIEW, AS OF RIGHT, OVER SUCH CRITICAL ISSUES,
23 BECAUSE, THE COURT PREVENTED AND DEPRIVED THE PETITIONER FROM
24 A MEANINGFUL OPPORTUNITY TO PRESENT EVIDENCE AND TO CALL
25 ON WITNESSES AT AN EVIDENTIARY / ADVERSARIAL HEARING
26 AND THEREBY PREVENTING AN ADEQUATE AND SUFFICIENT
27 "COURT RECORD" TO BE DEVELOPED AND "COMPILED" IN
28 ORDER FOR ANY MEANINGFUL APPEAL OR REVIEW TO BE TAKEN.

1 2) THE STATE IS PREVENTING THE DEFENDANT FROM MEANINGFUL
2 OPPORTUNITY TO PRESENT A COMPLETE DEFENSE.

3
4 THE SUPREME COURT HAS SAID THAT "WHETHER ROOTED DIRECTLY
5 IN THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT
6 [CITATION] OR IN THE COMPULSORY PROCESS OR CONFRONTATION
7 CLAUSE OF THE SIXTH AMENDMENT [CITATION] THE
8 CONSTITUTION GUARANTEES A CRIMINAL DEFENDANT "A
9 MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE?"
10 [CITATION]¹⁰ CRANE V. KENTUCKY 476 U.S. 683, 690-691
11 (1986)

12
13 THE SUPREME COURT HAS FURTHER MADE IT CLEAR WHAT THE
14 SAFEGUARDS ARE FOR A COMPLETE DEFENSE: "IN ALL CRIMINAL
15 PROSECUTION THE ACCUSED SHALL ENJOY THE RIGHT... TO BE
16 INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO
17 BE CONFRONTED WITH WITNESSES AGAINST HIM; TO HAVE
18 COMPULSORY PROCESS FOR OBTAINING WITNESSES AND TO HAVE
19 ASSISTANCE OF COUNSEL FOR HIS DEFENSE." BECAUSE THESE RIGHTS
20 ARE BASIC TO OUR ADVERSARIAL SYSTEM OF CRIMINAL JUSTICE THEY
21 ARE PART OF THE "DUE PROCESS OF LAW" THAT IS GUARANTEED BY
22 THE FOURTEENTH AMENDMENT TO DEFENDANTS IN CRIMINAL
23 COURTS OF THE STATE. THE RIGHT TO NOTICE, CONFRONTATION
24 AND COMPULSORY PROCESS WHEN TAKEN TOGETHER GUARANTEE THAT
25 A CRIMINAL CHARGE MAY BE ANSWERED IN A MANNER NOW
26 CONSIDERED FUNDAMENTAL TO THE FAIR ADMINISTRATION OF
27 AMERICAN JUSTICE THROUGH THE CALLING AND INTERROGATION OF
28 FAVORABLE WITNESSES; THE CROSS EXAMINATION OF ADVERSE

1 WITNESSES; AND ORDERLY INTRODUCTION OF EVIDENCE.²²⁾ FARETTA V.
2 CALIFORNIA 422 U.S. 806, 818-820 (1975)

3
4 THESE GUARANTEES APPLY TO PRE-TRIAL PROCEEDINGS AS THE COURTS
5 RECOGNIZES. " ALSO CRITICAL FOR SIX AMENDMENT PURPOSES IS
6 THE PERIOD BETWEEN ARRAIGNMENT AND TRIAL WHEN A CASE
7 MUST BE FACTUALLY DEVELOPED AND RESEARCHED . . . AND
8 PRETRIAL MOTIONS FILED. IN DEED IT IS CLEAR THAT " TO
9 DEPRIVE A PERSON OF COUNSEL DURING THE PERIOD PRIOR TO
10 TRIAL MAY BE MORE DAMAGING THAN DENIAL OF COUNSEL DURING
11 TRIAL ITSELF.²²⁾ HURREL-HARRING V. STATE OF NEW YORK IS
12 N.Y. 3d 8, 21-22 (2001) RELYING ON MAINE V. MOULTON
13 474 U.S. 159 (1985) AND POWEL V. STATE OF ALABAMA 287
14 U.S. 45 (1932)

15
16 AND WHEN " A DEFENDANT WHO MUST FACE FELONY CHARGES IN
17 STATE COURTS WITHOUT ASSISTANCE OF COUNSEL GUARANTEED BY
18 THE SIXTH AMENDMENT HAS BEEN DENIED DUE PROCESS. UNLESS
19 DEFENDANT CHARGED WITH SERIOUS OFFENSE . . . [IS] ABLE TO
20 INVOKE THE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS THAT
21 DISTINGUISH OUR SYSTEM OF JUSTICE SERIOUS RISK OF
22 INJUSTICE INFECTS THE TRIAL. [CITATION] WHEN A STATE OBTAINS
23 A CRIMINAL CONVICTION THROUGH SUCH TRIAL IT IS THE STATE
24 THAT UNCONSTITUTIONALLY DEPRIVES THE DEFENDANT OF HIS
25 LIBERTY²²⁾ COYLER V. SULLIVAN 196 U.S. 335, 393 (1980).
26 [EMPHASIS ADDED]. THIS IS WHY IT WAS MADE VERY CLEAR BY
27 THE SUPREME COURT WHEN IT SAID " THE GOVERNMENT VIOLATES
28 THE RIGHT TO EFFECTIVE ASSISTANCE WHEN IT INTERFERES IN
29 CERTAIN WAYS WITH THE ABILITY [OF THE ACCUSED] TO CONDUCT

1 A DEFENSE.²³ STRICKLAND V. WASHINGTON 166 U.S. 688, 685-686
2 (1989) [EMPHASIS ADDED]

3
4 APPLYING THESE SETTLED PRINCIPLES OF LAW TO THIS CASE, IT IS
5 EVIDENT THAT THE TRIAL COURT HAS DEPARTED FROM THEM,
6 AND HAS DIRECTLY VIOLATED MR VARGAS' DUE PROCESS RIGHTS BY
7 DEPRIVING HIM OF THE PROCEDURAL SAFEGUARDS TO PRESENT HIS
8 PRE-TRIAL MOTIONS AND DEFENSE; DEPRIVED HIM FROM THE
9 ADEQUATE COMPULSORY PROCESS; FROM CALLING AND EXAMINING
10 THE ADVERSE WITNESSES TO THE STAND; FROM PRESENTING
11 EVIDENCE; AND FROM DEVELOPING AND ESTABLISHING AN
12 ADEQUATE AND SUFFICIENT RECORD FOR APPEAL DURING THE
13 SEPTEMBER 22, 2018 HEARING OVER CLAIMS OF OUTRAGEOUS
14 PROSECUTORIAL MISCONDUCT, BIAS AND PREJUDICE ON BEHALF OF
15 SAN BERNARDINO COUNTY DISTRICT ATTORNEY'S OFFICE AND
16 THE PROSECUTING ATTORNEY THAT WAS RAISED DURING THE
17 HEARING OF THE MOTION TO DISQUALIFY THE DISTRICT
18 ATTORNEY AND THAT IS ULTIMATELY CAUSING UNCONSTITUTIONAL
19 DEPRIVATION OF LIBERTY.

20
21 3) SUPREME COURT INTERVENTION IS NECESSARY AND
22 MERITED IN THIS CASE TO CORRECT THE CLEAR AND PLAIN
23 PREJUDICE CREATED BY DUE PROCESS VIOLATIONS TAKING
24 PLACE AND THAT SYSTEMATICALLY UNDERMINE THE ENTIRE
25 CRIMINAL PROCESS FROM BEGINNING TO END INCLUDING THE
26 APPELLATE PROCESS AND THAT IS RESULTING IN GREAT,
27 IMMEDIATE AND IRREPARABLE DAMAGES TO THE PETITIONER.

1 THE CALIFORNIA COURTS HAVE GENERALLY RECOGNIZED THAT
2 IN ORDERLY ADMINISTRATION OF JUSTICE WHENEVER NO OTHER
3 REMEDIES ARE AVAILABLE A PETITION FOR WRIT OF MANDATE
4 OR PROHIBITION IS SUPPOSED TO PROVIDE A PLAIN, ADEQUATE
5 AND SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW TO
6 REVIEW AND CORRECT ERRONEOUS AND INCORRECT TRIAL
7 COURT DECISIONS AND RULINGS THAT ARE MADE IN AN
8 ABUSE OF DISCRETION. SEE CALIFORNIA RULES OF COURT
9 RULES 8.485 TO 8.493 AND SMITH V. SUPERIOR COURT
10 68 CAL 2d 547 (1968) PATERSON V. MUNICIPAL COURT
11 232 CA 2d. 289 (1968); AND THAT INCLUDE REVIEW OF
12 TRIAL COURT ORDERS OVER DISCOVERY ISSUES AND TO
13 ESTABLISH GENERAL GUIDELINES FOR THE TRIAL COURT TO
14 FOLLOW. SEE CALIFORNIA HIGHWAY PATROL V. SUPERIOR COURT
15 85 CAL. APP 4TH 1010 (2000); PEOPLE V. MUNICIPAL COURT
16 12 CAL. 3d 658 (1974); CALSON V. SUPERIOR COURT 56 CAL.
17 2d 431 (1961); OR TO REVIEW PRETRIAL DECISIONS THAT
18 WOULD SUBSTANTIALLY AFFECT DUE PROCESS OR EFFECTIVE
19 ASSISTANCE OF COUNSEL CIVIL RIGHTS GUARANTEES. SEE.
20 DRUMGO V. SUPERIOR COURT 8 CAL. 3d 930 (1973); MAINE
21 V. SUPERIOR COURT 68 CAL 2d 375 (1968)

22
23 HERE HOWEVER, WE PRESENT A CASE WHERE IT CLEARLY
24 APPEARS THAT THE CALIFORNIA COURT OF APPEAL FOR THE
25 FOURTH DISTRICT, DIVISION TWO, AND THE SUPREME COURT
26 OF CALIFORNIA HAVE DEPARTED FROM, AND NO LONGER
27 ADHERE TO SUCH GUIDELINES AND PROCEDURE, HENCE, MAKING THE
28 STATE'S PRE-TRIAL WRIT OF MANDATE OBSOLETE AND USELESS

1 AS A PLAIN, ADEQUATE AND SPEEDY REMEDY TO REVIEW AND
2 CORRECT VIOLATIONS OF CONSTITUTIONAL CIVIL RIGHTS AND/OR
3 ABUSE OF DISCRETION ON BEHALF OF TRIAL JUDGES THAT IS
4 OCCURRING DURING PRE-TRIAL PROCEEDINGS IN THE PENDING
5 STATE CRIMINAL PROSECUTION.

6

7 ALTHOUGH THE CALIFORNIA "PETITION FOR WRIT OF MANDATE
8 AND/OR PROHIBITION REMAINS, IN THEORY, AND ON THE BOOKS,
9 AS THE PLAIN, ADEQUATE AND SPEEDY REMEDY AND PROCESS TO
10 CORRECT CONSTITUTIONAL VIOLATIONS DURING THE PENDENCY OF
11 THE CRIMINAL PROSECUTION, THE REALITY OF THE MATTER IS,
12 HOWEVER, THAT THE PROCESS IS INADEQUATE, INSUFFICIENT,
13 INEFFECTIVE AND FUTILE, IN SUBSTANCE, TO PROVIDE ANY
14 ACTUAL VINDICATION AND PROTECTION OF STATE AND FEDERAL
15 CONSTITUTIONAL CIVIL RIGHTS DURING THE PRE-TRIAL-
16 PRE-CONVICTION STAGES OF THE CRIMINAL PROSECUTION WHERE
17 THE GUARANTEED CONSTITUTIONAL PROTECTIONS FOR AN INNOCENT
18 PERSON "REASONABLY MEAN THE MOST," AS HAS BEEN THE CASE
19 IN THIS INSTANT MATTER, WHERE PETITIONER HAS SOUGHT A
20 NUMBER OF PETITIONS FOR WRIT OF MANDATES FOR REVIEW AND
21 CORRECTION OF WHAT HAVE BEEN CLEAR AND BLATANT ABUSES
22 OF DISCRETION AND OBJECTIVELY UNREASONABLE TRIAL COURT
23 DECISIONS THAT ARE CONTRARY TO CLEARLY ESTABLISHED LEGAL
24 PRINCIPLES AND STANDARDS. BUT, THAT ALL HAVE GONE WITHOUT
25 ANY ACTUAL REDRESS; NO OPINION; NO HEARING; AND NO REMEDY,
26 WHEN BEING SUMMARILY DENIED. SEE (CALIFORNIA COURT
27 OF APPEAL FOR THE FOURTH DISTRICT, DIVISION TWO, CASE NO:
28 E061909 (RAISING ISSUES OF FUNDAMENTAL RIGHTS OF PRO-PER

1 INMATES); E063723 (REVIEW OF MOTION TO DISQUALIFY
2 TRIAL COURT JUDGE FOR CAUSE); E065100 (REVIEW OF MOTION
3 TO DISQUALIFY JUDGE FOR CAUSE); E065103 (REVIEW OF ABUSE
4 OF DISCRETION OVER MOTION TO SET ASIDE THE INFORMATION AND
5 MOTION TO DISMISS); E069306 (REVIEW FOR ABUSE OF DISCRETION
6 OVER PRE-TRIAL DISCOVERY MOTION AND MOTION TO DISQUALIFY THE
7 DISTRICT ATTORNEY)

8

9 THUS, IN ESSENCE WHAT IS TAKING PLACE IS THAT THE CALIFORNIA
10 COURT OF APPEAL AND THE SUPREME COURT ARE PERMITTING,
11 PROVIDING FOR, AND LENDING A HAND TO SERIOUS AND FLAGRANT
12 VIOLATIONS OF STATE AND FEDERAL CONSTITUTIONAL CIVIL RIGHTS
13 AND HUMAN RIGHTS TO FREEDOM FROM OPPRESSION AT THE
14 HANDS OF ITS STATE OFFICIALS, WHILE AT THE SAME TIME
15 DEPRIVING THE PRESUMPTIVELY INNOCENT PETITIONER
16 FROM ANY PROCESS THAT WOULD PROVIDE ANY ACTUAL SUBSTANTIVE
17 AND MEANINGFUL VINDICATION AND PROTECTION WHILE HE IS BEING
18 SYSTEMATICALLY STRIPPED FROM ALL CONSTITUTIONAL CIVIL RIGHTS
19 PROTECTIONS AND THEREBY HAVING A CRIMINAL CONVICTION /
20 BEING UNCONSTITUTIONALLY FORCED UPON HIM BY CORRUPT METHODS.
21

22 THE UNITED STATES SUPREME COURT HAS RECOGNIZED THE GRAVE
23 DANGER OF THE PRESENT CONDITION WHEN IT SAID: "IN MANY
24 CASES THERE IS NO QUARREL WITH THE STATE LAWS ON THE
25 BOOKS [CITATION] INSTEAD THE PROBLEM IS THE WAY THOSE
26 LAWS ARE OR ARE NOT IMPLEMENTED BY STATE OFFICIALS"
27 ZINERMON V. BURCH 194 U.S. 113, 125 (1990), RELYING ON
28 MONROE V. PAPE 365 U.S. 167 (1961)

1 THE NINTH CIRCUIT COURT OF APPEALS HAS ALSO RECOGNIZED
2 THE LAWLESS CONDITIONS OF OPPRESSION THAT IT CREATES.⁶⁶
3 "THE AUTHENTIC MAGESTY IN OUR CONSTITUTION DERIVES
4 IN LARGE MEASURES FROM THE RULE OF LAW - PRINCIPLES AND
5 PROCESS INSTEAD OF PERSON. CONCEIVED IN THE SHADOW OF AN
6 ABUSIVE AND UNANSWERABLE TYRANT WHO REJECTS ALL AUTHORITY
7 TO SAVE HIS OWN OUR ANCESTORS WISELY BIRTHED A
8 GOVERNMENT, NOT OF LEADERS, BUT SERVANTS OF THE LAW.
9 NOWHERE IN THE CONSTITUTION, OR IN THE DECLARATION OF
10 INDEPENDENCE NOR, FOR THAT MATTER, IN THE FEDERALIST OR
11 IN ANY WRITING OF THE FOUNDING FATHERS CAN ONE FIND A
12 SINGLE UTTERANCE THAT COULD JUSTIFY A DECISION BY ANY
13 OATH-BEHOLDER, SERVANT OF THE LAW, TO LOOK THE OTHER
14 WAY WHEN CONFRONTED BY THE REAL POSSIBILITY OF BEING
15 COMPLICIT IN THE WRONGFUL USE OF FALSE EVIDENCE TO SECURE
16 A CONVICTION. WHEN THE PREAMBLE OF THE CONSTITUTION
17 CONSECRATES THE MISSION OF OUR REPUBLIC IN PART TO THE
18 PURSUIT OF JUSTICE IT DOES NOT CONTEMPLATE THAT THE POWER
19 OF THE STATE THEREBY CREATED COULD BE USED IMPROPERLY TO
20 ABUSE ITS CITIZENS, WHETHER OR NOT, THEY APPEAR FACTUALLY
21 GUILTY OF OFFENSES AGAINST THE PUBLIC WELFARE."⁶⁷ NORTHERN
22 MARIANA ISLANDS v. BOWIE 213 F.3d 1109 1124 - 1125 (9TH CIR
23 2001)

24
25 "THE ENDS IN OUR JUSTICE SYSTEM DOES NOT JUSTIFY THE
26 MEANS. OUR CONSTITUTION DOES NOT PROMISE EVERY CRIMINAL
27 WILL GO TO JAIL. IT PROMISES DUE PROCESS OF LAW. IT IS
28 LESS EVIL THAT SOME CRIMINAL SHOULD ESCAPE THAN THE

1 GOVERNMENT SHOULD PLAY AN IGNOBLE ROLE. [CITATION] IT
2 IS FOR THIS REASON THAT THE LAW PLACES THE DUTY TO
3 MANAGE THIS DIFFICULT BUSINESS WITH UTMOST CARE UPON
4 THOSE IN THE BEST POSITION AND WITH THE POWER TO ENSURE
5 THAT IT DOES NOT GO AWRY. ALTHOUGH WE EXPECT LAW
6 ENFORCEMENT OFFICERS AND PROSECUTORS TO BE TOUGH ON
7 CRIME AND CRIMINALS, WE DO NOT EXPECT THEM TO BE
8 TOUGH ON THE CONSTITUTION. [CITATION]. 'NOTHING CAN
9 DESTROY A GOVERNMENT MORE QUICKLY THAN ITS FAILURE
10 TO OBSERVE ITS OWN LAWS OR WORSE ITS DISREGARD OF
11 THE CHARTER OF ITS OWN EXISTANCE.'⁷⁷ (ID AT SAME)
12

13 IN THIS CASE WE ARE DEALING WITH A GRAVE AND SERIOUS
14 PREDICAMENT IN WHICH THE STATE LAW ENFORCEMENT; THE
15 PROSECUTORS; AND EVEN THE STATE COURTS ARE NOT MERELY
16 CUTTING CORNERS OR LOOKING THE OTHER WAY TO MANIFESTED
17 USE OF FALSE EVIDENCE AND INJUSTICE IN ORDER TO OBTAIN
18 A CONVICTION OF AN INNOCENT PERSON. BUT RATHER, WE PRESENT
19 A CASE WHERE WIDESPREAD; SYSTEMIC AND CONSTRUCTIVE
20 METHODOLOGY IS DOING AWAY WITH, AND ABROGATING THE LIFE,
21 THE SPIRIT; THE MEANING AND THE PURPOSE OF OUR SACRED
22 CHARTERS OF CIVIL RIGHTS PROTECTIONS. AND SPECIALLY
23 THOSE MEANT TO PROTECT AND PRESERVE LIBERTY, FREEDOM
24 AND JUSTICE FOR ALL, WHEN A PERSON IS BEING WRONGLY
25 ACCUSED OF COMMITTING A CRIME AND DEPRIVED OF LIBERTY.
26 AT THIS POINT PETITIONERS ONLY OPTION IS TO PETITION TO
THE SUPREME COURT OF THE UNITED STATES IN HOPES THAT

1 THE COURT OF LAST RESORT IN THIS GREAT NATION WHERE
2 THE IDEALS OF FREEDOM, JUSTICE AND RIGHTEOUSNESS
3 IS ITS CORNERSTONE, WILL CARRY OUT ITS DUTY TO JUSTICE AND
4 WILL GRANT REVIEW, CONSIDERATION OF, AND PROVIDE SOME
5 GUIDANCE AND ORDER TO THE ANOMALIES THAT ARE
6 PRESENTED IN THIS CASE, WHERE THE PETITIONER HAS SUFFERED
7 CLEAR VIOLATIONS OF SUBSTANTIAL CONSTITUTION CIVIL RIGHTS
8 DURING THE CRITICAL PRE-TRIAL STAGES, FROM THE ARREST
9 AND LEADING TO TRIAL, AND THAT HAVE CAUSED OBJECTIVELY
10 DEMONSTRATIVE GREAT IMMEDIATE IRREPARABLE DAMAGES
11 TO THE CONSTITUTIONAL VALIDITY AND INTEGRITY OF THE ENTIRE
12 CRIMINAL PROSECUTION PROCESS. YET, HE IS WITHOUT ANY
13 PLAIN, ADEQUATE AND SPEEDY REMEDY IN THE ORDINARY
14 COURSE OF LAW IN THE STATE, BECAUSE, THE PROCESS THAT IS
15 SUPPOSED TO PROVIDE SWIFT AND EFFICACIOUS VINDICATION AND
16 CORRECTION, ALTHOUGH AVAILABLE IN FORM, HAS NO ACTUAL
17 SUBSTANCE NOR EFFECT, THUS, RENDERED OBJECTIVELY INADEQUATE
18

19 FURTHERMORE, THIS IS A SITUATION WHERE THE STATE AND
20 THE ATTORNEY GENERAL MAY CLAIM THAT A DIRECT APPEAL
21 AFTER A CONVICTION IS STILL AVAILABLE, YET FAIL TO RECOGNIZE
22 AND REGISTER THE FACT THAT THE VERY VIOLATIONS OF CIVIL
23 RIGHTS DURING THE CRIMINAL PROCEEDING AXIOMATICALLY
24 RENDER A DIRECT APPEAL "AFTER" A CONVICTION STRUCTURALLY
25 INADEQUATE, INEFFECTIVE AND INSUFFICIENT TO PROVIDE ANY
26 SUBSTANTIAL REMEDY OR CORRECTION, THUS RENDERING SUCH
27 PROCESS ONLY ILLUSORY, BECAUSE OF THOSE REASONS SET

1 FORT AT (ANTE SECTION ~~IX~~(B) AT P 26-29.)

3. LIKEWISE THE STATE AND THE ATTORNEY GENERAL MAY ATTEMPT TO
1 ARGUE THAT POST-CONVICTION REMEDY OR WALT OF HABEAS CORPUS
5 MAY BE AVAILABLE. NEVERTHELESS, SUCH COURSE TENDS TO BE
6 JUST AS ILLUSORY AND INACCESSIBLE FOR VARIOUS REASONS AND
7 SUCH ARGUMENT WOULD BE DEFECTIVE AND FAULTY:

8 FIRST: DIRECT APPEAL UNLIKE POST-CONVICTION REMEDIES EXISTS AS
9 OF RIGHT AND PROVIDES FOR THE GUARANTEED PROTECTION OF EFFECTIVE
10 ASSISTANCE OF COUNSEL FOR THE INDIGENT APPELLANT. THERE EXISTS
11 NO RIGHT TO COUNSEL FOR POST-CONVICTION OR HABEAS CORPUS
12 PROCEDURES: MURRAY V. GIARRATANO 492 U.S. 1, 7 (1989);

13 SECOND: AN INDIGENT PERSON THAT CANNOT AFFORD "POST-CONVICTION"
14 LEGAL REPRESENTATION WILL ULTIMATELY BE LEFT ENTIRELY ON HIS
15 OR HER OWN TO DEVELOP EXTREMELY STRINGENT PLEADINGS AND
16 DOCUMENTS SIMPLY TO HAVE HIS OR HER CLAIM ENTERTAINED
17 PEOPLE V. DUVALL (1995) 9 C. 4TH 474;

18 THIRD: AND SPEAKING FROM EXPERIENCE, DUE TO THE HIGH
19 EXPECTATIONS AND STRINGENT (OR) UNFAIR SCREENING STANDARDS THAT
20 ARE IMPLEMENTED BY SOME COURTS TO DETERMINE WHETHER OR NOT
21 A PRO-SE / PRO-PER PETITIONER WILL BE PERMITTED ACCESS TO THE
22 COURTS OF LAW AND JUSTICE; IT IS EXTREMELY DIFFICULT, IF NOT
23 IMPOSSIBLE FOR THE COMMON LAY PERSON TO MEET AND SATISFY
24 THE HIGHTENED, STRINGENT AND UNFAIR PLEADING STANDARDS
25 IMPLEMENTED BY THE COURTS FOR PRO-PER / PRO-SE PLEADING AND FOR
26 PERSONS THAT DO NOT POSSESS LEGAL SKILLS AND CANNOT AFFORD
27 LEGAL REPRESENTATION. THEREBY, DEPRIVING FAIR AND MEANINGFUL
28 ACCESS TO JUSTICE TO THE AGRIEVED PERSON. COMPARE TO (UNITED

1 STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
2 EAST DIVISION CASES NO: CDCV-16-0231-R-KES AND
3 CDCV-16-01931 (FILED BY PETITIONER AND DISMISSED ON GROUNDS
1 THAT PETITIONER "FAILED TO STATE A CLAIM")
5

6⁶⁵ --- SURELY NO FAIR-MINDED PERSON WILL CONTEND THAT
7 THOSE WHO HAVE BEEN DEPRIVED THEIR LIBERTY WITHOUT DUE
8 PROCESS OF LAW OUGHT NEVERTHELESS TO LANGUISH IN PRISON...
9 SUCH ANOMALIES AFFRONT TO THE CONSCIENCE OF CIVILIZED
10 SOCIETY... IF THE STATES WITHOUT EFFECTIVE REMEDY THE
11 FEDERAL COURTS HAVE THE POWER AND THE DUTY TO PROVIDE IT.⁶⁶)
12 FAY V. NOIA 372 U.S. 391, 140 - 441 (1963)
13

14 ("DUE PROCESS DENIED IN PROCEEDINGS LEADING TO A CONVICTION IS
15 NOT RESTORED JUST BECAUSE THE STATE COURT DECLINED TO
16 ADJUDICATE THE CLAIMED DENIAL ON THE MERITS.") (ID)
17

18 X. CONCLUSION

19 WHEREFORE, THE FOREGOING REASONS PETITIONER HUMBLY PRAYS
20 THAT THE COURT WOULD GRANT THE WRIT AND REVIEW THE
21 ISSUES IN THIS CASE AND TO PLEASE SHED SOME LIGHT AND
22 GUIDANCE TO CORRECT THE ERRORS PRESENTED
23
24

25 RESPECTFULLY SUBMITTED

26 
27
28 ILICH VARGAS IN PRO-SE

4/10/2018