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No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

RALPH RUAL CONTRERAS, PETITIONER

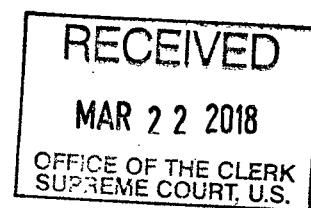
VS.

F. CHAVEZ, Warden, RESPONDENT

ON PETITION FOR A WRIT OF CERTIOARI TO  
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

RALPH RAUL CONTRERAS  
SIERRA CONSERVATIN CENTER  
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5150 O'BRYNES FERRY ROAD  
JAMESTOWN, CALIFORNIA  
95327



QUESTION PRESENTED

1 Petitioner contends that a criminal defendant is entitled to  
2 counsel at all crucial stages of the proceeding. United states  
3 Constitution, Sixth Amendment; California Constitution Article  
4 1, §15. Once counsel has become attorney of record all legal  
5 steps must be taken by the attorney. Petitioner contends that  
6 the word "must" when used in this text is not permissive.  
7 Generally the attorney controls all decisions affecting trial  
8 tactics and court proceeding. (People v. Masterson (1994) 34  
9 CR2d 679.

10 Petitioner asserts that a criminal defendant is guaranteed  
11 the right to the assistance of counsel by the Sixth Amendment  
12 to the United States Constitution, and Article 1, section 15  
13 of the California Constitution. Petitioner assert's that these  
14 constitutional right includes the correlative to representation  
15 free from any conflict of interest that under mines counsel's  
16 loyalty to his or her client.

17 Petitioner contends that when attorney fees are paid by other  
18 than the client lawyer's must ensure that their loyalties are  
19 reserved solely for the client. California Rules of Professional  
20 Conduct mandate that the attorney must obtain the client's  
21 informed written consent before representation begins, (See  
22 Cal Rules of Prof Cond 3-310(F)(3). Again the word "must" is  
23 not permissive when used in this text.

24 The question before this court is, Does a state created right  
25 such as an attorney must obtain a written consent from a client  
when other's pay the attorney's fees, constitute a denial

1 of conflict free counsel, thus denying the petitioner his  
2 Sixth Amendment right to counsel. The state created right  
3 specifically states that the written consent must be obtained  
4 "before" representation begins. California Rules of Professional  
5 Conduct. In this text the State of California indicates that  
6 representation does not begin until the written consent is  
7 obtained, if a written consent is not obtained, petitioner  
8 was never provided with conflict free counsel, therefore  
9 leading to denial of counsel within the good faith meaning of  
10 the Sixth amendment and the California Constitutuion.  
11

12 LIST OF PARTIES

13 ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE

14 INDEX TO APPENDICES

15 APPENDIX A NINTH CIRCUIT OF APPEALS DENIAL FOR A CERTIFICATE  
16 OF APPEALABILITY.

17 APPENDIX B ORDER ADOPTING FINDINGS AND RECOMMENDATIONS,  
18 RECOMMENDING DENIAL OF THE PETITION BY THE UNITED  
19 STATES DISTRICT COURT FOR THE EASTERN DISTRICT  
20 OF CALIFORNIA.

21 APPENDIX C MAGISTRATE JUDGES FINDING AND RECOMMENDATION,  
22 RECOMMENDING DENIAL OF THE PETITION, UNITED STATES  
23 DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA.

24 APPENDIX D PETITIONER OBJECTIONS TO THE MAGISTRATE JUDGES  
25 RECOMMENDATIONS.

26 APPENDIX E NINTH CIRCUIT COURT OF APPEALS DENIAL OF MOTION  
27 FOR RECONSIDERATION.

28 APPENDIX F KERN COUNTY, STATE OF CALIFORNIA'S DENIAL OF THE  
29 PETITION FOR A WRIT OF HABEAS CORPUS.

APPENDIX G CALIFORNIA COURT OF APPEALS FIFTH APPELLATE DISTRICT'S  
DENIAL OF THE PETITION FOR WRIT OF HABEAS CORPUS.

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## TABLE OF AUTHORITIES CITED

1 Sixth amendment to the United States Constitution.  
2 California Constitution, Article 1, §15.  
3 California Rules Of Professional Conduct 3-310(F)(3).  
4 California State Bar Formal Opinion No. 1975-35.  
5 Business and Professional Conduct Code §6068(e).  
6 California Case  
7 People v. Masterson, (1994) 34 Cal.3d 460, 468-69.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

**OPINIONS BELOW**

The denial for a Certificate of Appealability appears at Appendix "A" to the petition. The denial was issued by the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals denial of petitioners motion for reconsideration appears at Appendix "E" of the petition.

The United States District Court for the Eastern District of California's denial of the petition for a writ of habeas corpus appears at Appendix "B"

The Magistrate Judges Recommendations, recommending denial of the petition appears at Appendix "C".

Petitioners Objections to the Magistrate Judge's recommendations appears at Appendix "D"

## JURISDICTION

The date on which the United States Court of Appeals for the Ninth Circuit denied petitioner request for a Certificate of Appealability was October 19, 2017. (Appendix "A")

The date on which the United States Court of Appeals for the Ninth Circuit denied petitioners motion for a Reconsideration was December 18, 2017. (Appendix "E").

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution.

California Constitution Article 1, §15.

California Rules Of Professional Conduct 3-310(F)(3).

STATEMENT OF THE CASE

1 For the factual background of this case petitioner adopts  
2 the Magistrate Judge's "BACKGROUND" found in the Findings and  
3 Recommendations Recommending Denial of the Petition. (Appendix  
4 "C").

5 Petitioner will now provide a more concise statement of the  
6 case containing facts material to the question presented to  
7 this court. 1. Was the petitioner provided conflict representa-  
8 tion? 2. Does California's state created right that attorney's  
9 hired by a third party must first obtain a written consent be-  
10 fore representation begins deny petitioner his Sixth Amendment  
11 right to an attorney if the attorney's fail's to get the written  
12 consent? 3. Does the failure to get a written consent rescind 1./  
13 any representation that follow's?

14  
15 1. The hiring of attorney Mr. Seki, by the Union entitled  
16 C.O.P.S.

17 Trial counsel Mr. Seki, was retained for the petitioner by  
18 his Union entitled C.O.P.S. the Union paid Mr. Seki's fees  
19 and also paid the fee's of the other defendant's who were all  
20 law enforcement officer's. It should be noted that only low level  
21 detention officer's were charged with the death of Mr. Moore,  
22 even though testimony at trial developed that supervisory  
23 staff did in fact give petitioner order's. Testimony was also  
24 given that supervisory staff had actually participated in the  
25 beating of Mr. Moore by deleivering "baseball swings" with  
26 a baton, and placing "carotid holds".

27  
28 1./ Blacks Law Dictionary defines "recind" as follows; 1.  
To abrogate or cancel (a contract). 2. To make void; to repeal  
or annul.

1 The jury found petitioner guilty as charged of second degree  
2 murder and assault under color of authority. The court imposed  
3 a sentence of fifteen years to life for second degree murder,  
4 and stayed a two year sentence of assault under the color of  
5 authority. Co-Defendant Lindini, who was at the head of the  
6 gurney with petitioner, was tried together with petitioner and  
7 found guilty of involuntary manslaughter and assault under  
8 color of authority. On direct appeal the California court of  
9 Appeal affirmed the conviction. Following a denial for a pet-  
10 ition for review from the California supreme court petitioner  
11 the filed his habeas corpus petitions. 2./ In his petition for  
12 a writ of habeas corpus petitioner asserted that he was denied  
13 his constitutional Sixth Amendment right to the effective ass-  
14 istance of counsel. Petitioner contended that trial counsel  
15 failed to obtain a written consent from him in compliance with  
16 California Rules of Professional Conduct section 3-310(F)(3),  
17 which specificall reads as follows, "The attorney must obtain  
18 the client's informed written consent before representation  
19 begins". The troubling aspect to this trial counsel's represent-  
20 ation was that C.O.P.S. the Union that was paying trial counsel's  
21 Mr. Seki, fee's had over seventeen member's either participate  
22 in the beating of Mr. Moore or supervised the beating of Mr.  
23 Moore, during the trial testimony was given that supervisory  
24 staff specifically but not limited to Sergeant Holz, had beaten  
25  
26 2./Even though petitioner specifically asserted that his Sixth  
27 Amendment right to the appointment of counsel had been denied  
28 the Kern County Superior Court, The Court of appeals, the Calif-  
ornia Supreme Court, and The United States District Court, never  
addressed the issue of failure to obtain the written consent,  
see Appendix "A" thru "G".

5.

him. Testimony was developed during trial that Sergeant Holtz  
1 hit the victim Mr. Moore with a baton two to five times in the  
2 legs, a second officer tripped Moore and he landed on his back  
3 on the concrete, a third officer kicked him twice in the center  
4 of his face and once in his upper chest, a fourth officer got  
5 on top of Moore and punched him about three time's in the kid-  
6 ney's. Testimony was also given that Sergeant Holtz applied a  
7 carotid hold around Moore's neck from behind causing Moore to  
8 lose consciousness for five to ten seconds. Following the car-  
9 otidid choke hold bening applied by Sergeant Holtz, blood  
10 was coming from Moore's eye's, ears, and mouth, and he was  
11 missing a tooth. It should be noted that Sergeant Holtz was  
12 petitioner's direct supervisor during this time and ordered  
13 the petitioner and another officer to take Moore by car to a  
14 hospital according to departmental policy following the app-  
15 lication of a carotid hold.  
16

17 Sergeant Holtz is also the Union Rep for the union C.O.P.S  
18 the same union that paid Mr. Seki's fees. One of the responsib-  
19 ilites of a Union rep is to insure that Mr. Seki's fee's are  
20 paid, it would also be safe to assume that Sergeant Holtz was  
21 involved in retaining the attorney's for his constitutes  
22 and fellow Union member's.  
23

24 As previously stated the troubling factor is that even though  
25 Mr. Seki, had this information available to him he never con-  
26 tacted or sent an investigator to speak to these material wit-  
27 nesses, who were all member's of the Union C.O.P.S. surely  
28 any competent attorney would have made some attempt to obtain

1 their incriminating statement's, which implicated each other  
2 in the beating of Mr.. Moore. Surely, if the jury had heard  
3 the testimony of fourteen other officers:participating in the  
4 beatings with supervisory staff such as Sergeant Holtz giving  
5 order's it would have minimized petitioner's culpabilty.

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#### REASON FOR GRANTING THE PETITION

2 Petitioner contends that lawyer's must insure that their  
3 loyalties are reserved solely for the client when someone other  
4 than the client is paying for the client's representation. This  
5 means that a lawyer may not do anything, or promise anything,  
6 that may impair the attorney's ability to zealously represent  
7 the client with individual loyalty. California State Bar Formal  
8 Opinion No. 1975-35; Cal Rules of Prof Cond 3-310(F). The  
9 lawyer is forbidden from disclosing the client's confidences  
10 and secrets to anyone, including the person paying for his or  
11 her representation. See Bus & P C §6068(e). Finally, the state  
12 of California in all it's wisdom has added an aditional safe-  
13 guard in order to preserve the integrity of the represent-  
14 ation of a third party paid attorney, "the attorney 'must'  
15 obtain the client's informed 'written' consent before represent-  
16 ation begins. Cal Rules of Prof cond 3-310(F)(3). 3..

Petitioner assert's that the purpose of these additional safeguards when it comes to third party paid attorney's is to prevent a "chilling effect" from any third party meddling.

In this matter the Union C.O.P.S hired Mr seki, to represent the petitioner. Mr. Seki never obtained the written consent nor did he inform the petitioner that he was required to obtain a consent. Mr. Seki never called any supervisory staff, such as Sergeant Holz, who had actually beaton the victim with "bat like swings" of a baton.

8.

3./ Petitioner never signed an informed consent, nor was one ever filed with the court. The word 'must' is not permissive when used in this text.

1 Petitioner assert's that the State of California in all  
2 it's wisdom had enough foresight to impliment and additional  
3 safeguard to the Sixth Amendment of the United States Con-  
4 stitution, this safe guard being California Rules of Professional  
5 Conduct 3-310(F)(3) which specifically read, "the attorney  
6 'must' obtain the client's informed written consent 'before'  
7 representation 'begins'". As previously emphasized by the  
8 petitioner the word "must" is not permissive and there is no-  
9 thing ambiguous about this additional safe guard to the Sixth  
10 Amendment.  
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1 CONCLUSION

2 THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

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4 RESPECTFULLY SUBMITTED,

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6  
7 RALPH RAUL CONTRERAS

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10 DATED: MARCH 16, 2018

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