NO._____

IN THE SUPREME COURT

OF THE UNITED STATES

JARED MORRISON (PETITIONER)

V.

LORIE DAVIS (RESPONDENT)

ON PETITION FOR WRIT OF CERTIORARI TO:

THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NEW ORLEANS, LOUSIANA

PETITION FOR WRIT OF CERTIORARI

JARED MORRISON #1747148
HIGHTOWER UNIT
902 FM 686
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QUESTIONS PRESENTED
(Rule 14(a))

Question #1: Whether a **Mcquiggin v. Perkins 133 S.Ct 1924 (2013)** actual innocence gateway past the AEDPA 1-year limitation period default can be denied by a United States District Court, and affirmed by the United States Court of Appeals by saying that because the petitioner failed to present one of the three types of reliable new evidence listed in **Schlup v. Delo 513 U.S. 298, 324 (1995)** (i.e. exculpatory scientific evidence, trustworthy eye witness accounts, or critical physical evidence), then the petitioner failed to present a **Mcquiggin v. Perkins** actual innocence claim, despite the fact the petitioner did present reliable new evidence that was not one of the three examples listed in **Schlup**, but nonetheless, proved with Supreme Court case law that the petitioner suffered a miscarriage of justice through several constitutional violations, and is actually innocent of the crime, because had the constitutional violations not occurred, no reasonable juror would have voted to find him guilty, beyond a reasonable doubt, of all the elements of the charged statute as the plain language and legislative intent demand.

Question #2: Whether a person who has been "placed on" (not sentenced to) deferred adjudication probation can be "in custody" for the purposes of 28 U.S.C. § 2244(d)(1), and § 2254 in order to invoke jurisdiction in the federal courts to file for writ of habeas corpus § 2254, when the person has not been convicted, sentenced, or held in a jail or prison, and has not been able to seek direct review or postconviction relief to meet the requirements of 2254(b)(1)(A).

If the federal courts do lack jurisdiction to hear a § 2254 Petition by such a person, is it constitutionally permissible to prevent the person from raising credible constitutional claims through a 2254 Petition by asserting a § 2244(d)(1) time bar (by setting the 1-year limitation period trigger date to 30 days after the deferred adjudication probation order, when the federal courts lacked jurisdiction to hear the claims in the first place) to the petitioner's first

opportunity to file a § 2254 Petition after the petitioner is finally convicted, sentenced, sent to prison, and completed direct review, and state postconviction remedies.

Question #3: Whether the phrase "**judgment** of a state court" or "final **judgment**" in 28 U.S.C. § 2244(d)(1) and § 2254 can refer to an "**order**" that places a person on (not sentences them to) deferred adjudication probation, without the person having been convicted, sentenced, or held in a jail or prison, and having no legal means to seek direct review pursuant to Tex. Rules of App. P. 25.2, and Tex. Code of Criminal P. Article 44.02, nor postconviction relief without having a conviction pursuant to state law to meet the requirements of § 2244(d)(1)(A) and (d)(2).

Question #4: Whether a defendant facing a revocation of deferred adjudication probation (before being convicted and sentenced to prison), has the Sixth Amendment right to the effective assistance of counsel to properly file a **preconviction** writ of habeas corpus that contains credible constitutional issues that calls into question his unlawful imprisonment.

If so, was Morrison denied the actual effective assistance of counsel when the trial court would not appoint counsel to help Morrison (an indigent defendant who was being deprived of his liberty, and facing 20 years imprisonment) to help file his credible preconviction writ of habeas corpus claims that called into question his unlawful imprisonment.

Qustion #5: Whether a trial court can suspend a defendant's right to file a preconviction writ of habeas corpus (Article 1 § 9 Clause 2 U.S. Constitution) by saying the defendant cannot file pro se motions while having court appointed counsel, despite the fact, the court appointed counsel admitted to the court that he would not help the defendant properly file it, nor file it for him since any writs of habeas corpus were out of his scope of appointment, essentially leaving

the defendant, an indigent prisoner restrained of his liberty, with absolutely no way to inquire, through writ of habeas corpus, into the lawfulness of such restraint, and the removal thereof if unlawful.

Question #6: Whether § 2254(d)(1)'s "contrary to" prong and § 2254(d)(2)'s "unreasonable determination of the facts" prong is satisfied when the State habeas court denies habeas relief of ineffective assistance of counsel claims by basing its decision to deny relief soley from counsel's post hoc rationalizations that were in his unsupported by the record affidavit, without ever relying on or even mentioning the **Strickland v. Washington 104 S.Ct 2052 (1984)** or **Lafler v. Cooper 132 S.Ct 2072 (2012)** Supreme Court cases or any of their prongs as mandated by this Court, along with ignoring all of the evidence the petitioner presented which rebuts counsel's affidavit, and proves counsel was deficient and the petitioner sufferred prejudice.

Question #7: Whether perpetual constitutional violations that violate many people's First Amendment rights, as raised in a § 2254 Petition, can be time barred by claiming the issue is a substantive issue that undermined or challenged a deferred adjudication order, therefore should have been raised within a year after the expiration of time for seeking direct review of that order.

LIST OF PARTIES
(Rule 14(b))

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(RULE 14(C))

NOTE: Morrison's typewritter went out, and stopped working on Page 34 of The Argument. Morrison apologizes for his handwritting and hopes it does not cause any problems.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jared Morrison (**"Morrison"**), respectfully prays that a writ of certiorari issues to review the judgment below.

OPINIONS BELOW

The Judgment of the United States Court of Appeals for the Fifth Circuit, denying Morrison's Certificate of Appealability appears at Appendix 1 to this Petition and is unpublished.

The opinion of the United States District Court Denying Morrison's § 2254 Petition appears at Appendix 2 to this Petition and is unpublished.

The Report and Recommendations by the U.S. Magistrate Judge recommending the denial of Morrison's § 2254 Petition appears at Appendix 3 and is unpublished

The State trial court's recommendation to deny Morrison's state writ of habeas corpus (11.07) appears at Appendix 4 and is unpublished.

The order of the Texas Court of Criminal Appeals to deny Morrison's State writ of habeas corpus (11.07) appears at Appendix 5 and is unpublished.

NOTE: All of Morrison's pleadings and the State and Courts' responses can be viewed at **motionfortruejustice.com**.

JURISDICTION
(Rule 14(e))

On May 8, 2015 Morrison filed a 28 U.S.C. § 2254 Writ of Habeas Corpus in the United States District Court for the Western District of Texas Midland/Odessa Division.

On June 14, 2017, the district judge adopted the Report and Recommendation by the U.S. Magistrate Judge, denying the § 2254 Petition.

On October 17, 2017 Morrison filed in the Fifth Circuit a Certificate of Appealability and its Brief in Support.

On May 29, 2018 Fifth Circuit Judge, W. Eugene Davis denied the COA. (See Appendix 1).

On June 10, 2018 Morrison found out, when he called his brother, that his COA was denied 12 days earlier. Morrison never received notice from the court of appeals that his COA was denied. (See Exhibit "A" Morrison's request to mailroom about dates of legal correspondance recieved from the Fifth Circuit during that time).

On June 11, 2018 Morrison mail filed a Motion for Extension of Time to Petiton for Panel Rehearing, asking the court for an additional 14 days from June 11 to June 25 to Mail file the Petition for Panel Rehearing/Reconsideration, since he could not possibly do a Petition for Reconsideration in the two days left pursuant to Fed. Rules of App. P. 40(1).

On June 25 Morrison mail filed the Petiton for Panel rehearing/Reconsideration, along with a Petition for Leave to File for out of Time Petiton for Panel Rehearing/ Reconsideration.

On July 20 Judge W. Eugene Davis also denied the Petition for Leave to File for Out of Time Petiton for Panel Rehearing/Reconsideration, essentially reverting the 90 days of time to file for writ of certiorari back to the May 29 denial of Morrison's COA since the Motion for Rehearing/Reconsideration was denied as untimely.

On August 11, because Morrison had lost approximately 58 days of the 90 days to file the writ of certiorari, by attempting to exhaust all the remedies in the Fifth Circuit to getthem to accept the Petition for Panel Rehearing/Reconsideration as timely, he mailed filed to Justice Gorsuch an Application for Extension of Time to File for Writ of Certiorari to recoup 50 of those days up until October 16, 2018.

As of today, August 22, the Extension of Time has not yet been granted or denied, therefore according to Supreme Court Rule 13, Morrison has until August 27, 2018 to file for Writ of Certiorari from the May 29 denial of his COA.

The Application for Extension of Time to File for Writ of Certiorari was ~~granted~~ Sent Back For NOT SENDING LOWER COURT OPINION. THE APPLICATION FOR EXTENSION OF TIME IS NOW MOOT SINCE MORRISON IS TIMELY FILING THIS TODAY. on _____, givning Morrison up until _____ to file for Writ of Certiorari, therefore the jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) and Morrison timely files this Writ of Certiorari by placing it in the mail on August 27, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
(Rule 14(f))

SEE APPENDIX 7 FOR TEXT AND LANGUAGE OF STATUTES

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2.01 (Requirement THAT ALL ELEMENTS OF AN offense MUST Be proved Beyond A Reasonable Doubt) P. 7, 9, 12, 14, 15, 17, 24

6.02 (proper Application OF culpable MENTAL STATE) P. 7, 9, 12, 14, 15, 17, 24

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TEXAS CODE OF CRIMINAL PROCEDURE:

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26.2 (GIVES People who CAN Appeal 30 DAYS TO Appeal AFTER Judgment) P. 18, 32, 34, 35

STATEMENTS OF THE CASE
(Rule 14(g))

Morrison would like to apologize for the length of these Statements of the Case, he will attempt to make them as concise as possible but to make sure this Court is aware of all of the injustices and the facts that are material to the Questions Presented that have been going on since 2004, it will be hard to make them concise. Please remember Morrison is pro se and is not as good as concise writing as an attorney would be. However, these issues are important federal questions of law that affect the entire nation, therefore, it is important to give this Court an account of all the events that led up to him being time barred from raising his constitutional questions in a Federal writ of habeas corpus, and other errs from the lower courts.

On October 16, 2017 Morrison filed for a Certificate of Appealability (**"COA"**) in the Fifth Circuit to get that court of appeals to objectively and impartially look into the United States District Court for the Western District of Texas' (Midland/Odessa Division) unreasonable determination and errs that they made in denying his 28 U.S.C. § 2254 Petition. Morrison filed it on May 8, 2015, proving he is unconstitutionally convicted and sentenced to 16 years prison for a Texas Penal Code 22.011(a)(2) (**"22.011"**) statutory rape charge from 2003, where Morrison had consentual-in-fact sex with a 15 year old female who he reasonably believed was an adult since he was told by her, and his 18 year old cousin who brought her to his house to party, that she was 21 years old. She was driving, smoking, brought alcohol, acted 21, and looked 21, therefore, Morrison had no reason to disbelieve the girl or his cousin. During the night of partying, Morrison had sexual intercourse with the female, Morrison's brother, Jason, performed oral sex on her, and their cousin received oral sex from her and had intercourse with her as well. Later that night, she went home and wrote about the events in her diary. Her mother found the diary four months later and took it to the police department.

The Morrison's were subsequently arrested for a 22.011 sexual assault of a 14 to 16 year old child offense. While being interviewed by the detective, they were told they were being investigated for a sexual assault. Morrison construed that to mean someone was claiming that he raped them, therefore when he was told who reported the incident, he told the detective what happened thinking he was clearing his name, since the acts were consensual. However after he confessed to the offence he was made aware that the girl was a minor. Since Morrison's cousin was within three years of the girl's age, he was not charged, arrested, or put in prison. (See 22.011(e)(2)).

Because the Morrison's did not feel that it was right that they could be imprisoned and have to register as a sex offender for life for having consensual-in-fact sex with a minor who told them she was 21, acted 21, and looked 21, they decided to go to a jury trial with the hopes they would be acquitted since there was no coersion, violence, and they reasonably believed she was an adult.

Morrison hired attorney Ian Cantacuzene. His brother, Jason, hired Tom Morgan. The initial plan was to go to jury trial and allow the jury to decide whether they believed that the Morrisons reasonably believed the girl was an adult. The Morrisons had proof of that, so they planned to go to jury trial. However, on May 6, 2004, during pretrial, the State offered Morrison's attorney a plea offer of 10 years deferred adjudication probation (**"deferred probation"** or **"probation"**), where the Morrisons would not be convicted or sentenced, but placed on probation for 10 years. The Morrisons both initially rejected the plea offer since they did not believe they could be found guilty for doing a crime that they thought was a legal, constitutionally protected act. However, Cantacuzene and Morgan told the Morrisons they would be found guilty if they went to a jury trial because ignorance of the law is no defense. Despite that advice, they both continued to reject the offer and go to trial. After much resistance from different forceful demands by Morgan and Cantacuzene to accept the probation, and the Morrisons continuing to reject the offer, the two attorneys told the Morrisons and their mother that if they went to jury trial, the jury would

have to find them guilty because of their confession to the detective, and since ignorance of the law is no defense then it did not matter they thought she was an adult, the jury would have to go by the law and they would go to prison for 15 to 20 years. And because the offense involved a child sex offense they would get beat up and raped every day in prison. After hearing that their mom got very emotional and begged them to take the offer. That caused them to relent and plead guilty. also during the back and forth Morgan got the State to drop the probation to 9 years, therefore, they were placed on deferred probation for 9 years.

Six years later, in April 2010, the State filed a motion to revoke Morrison's deferred probation for several probation violations, including a federal S.O.R.N.A. violation, which Morrison pled guilty to and was sentenced to 18 months federal prison.

Morrison was then extradited to Midland County Jail to face his probation violations. Morrison was appointed Tom Morgan to represent him for the Motion to Revoke. Morrison was offered a seven year prison term for a plea of true to the probation violations. He asked Morgan to get it dropped to four years. While waiting on Morgan to get back to him, MOrrison went to the law library and discovered the factual predicate of the constitutional grounds for his § 2254 Petition, and his State writ of habeas corpus, which in its infancy was simply that he could not be guilty of the 22.011 violation since the plain language of 22.011 in conjunction with Texas Penal Code 6.02, 2.01, and 8.02 said that in order for a person to commit the 22.011 crime, a person must **intentionally** or **knowingly** cause the penetration of the sexual organ **of a child** by any means. Morrison interpreted that statute with 6.02(b) and 2.01 as saying; since the legislature did not dispense with the mental element of "of a child", then the intentionally or knowingly culpable mental state prescribed in the heading of the statute, must then modify "of a child", making it an element of the offense through 2.01 to be proved beyond a reasonable doubt that Morrison knew or had the intentions to have sex with a child to commit the offense, and since he did not

intend to, or know he was having sex with a child because he believed she was 21, then he did not fulfill all the elements of the crime as required by the legislature in those statutes, and he was now wrongfully in jail because of the ineffective assistance of trial counsel in 2004, who misinformed him about the correct understanding of the law as the literal plain language and legislative intent demand. Morrison also read a Tex. Court of Criminal appeals (**"TCCA"**) case that supported his logic called **Johnson v. State 967 S.W.2d 848 (1998).** This case was an indecency with a child, Penal Code 21.11 mistake of age petition for discretionary review, where Judge Baird in his dissent on page 858 discussed the fact that Johnson was acquitted from his 22.021 (Aggrivated Sexual assault of a child under 14) charge based on the same logic that Morrison had regarding the plain language of 22.011, which both statutes have the exact same mens rea elements. However, Johnson's 21.11 charge was affirmed since it does not contain a mens rea requirement in the statute as does 22.011 and 22.021. Despite Johnson being a Penal Code 21.11 case, which is distinguishable from 22.011, the district court used **Johnson** and 21.11 to deem 22.011 strict liability. (See Appendix 3 Report and Recommendation by the U.S. Magistrate Judge (**"Report"**) at pp.14, 17-18, 28).

On March 5, 2011, after discovering that he was actually innocent of 22.011 based on the literal plain language and legislative intent of 22.011, 6.02, and 2.01, and what he read in **Johnson at 858**, Morrison sent the trial judge a letter explaining what he had found out. He requested a new jury trial, new counsel to replace Morgan who was a conflict of interest, and to withdraw his 2004 guilty plea based on ineffective assistance of counsel (**"IAC"**) by 2004 counsel Cantacuzene and Morgan. (See APPENDIX 10, Exhibit "D" in § 2254 Petition). Because Tom Morgan was Morrison's court appointed counsel at that time in 2011, he was a conflict of interest in regards to the letter Morrisn wrote. Therefore, Morrison could not logically have Morgan file it for him, and because he was ignorant about the correct filing procedures, he sent the letter requesting relief to the only person he knew to send it to, the judge over

his case, Judge Robin Darr. Morrison at that time thought judges were in their posititions to help people who were unconstitutionally imprisoned, and he thought Judge Darr would go by the literal plain language of 22.011, 6.02, and 2.01 and give him a new trial or evidentiary hearing, so he not knowing any better, sent the request for relief to her, expecting her to help. That however did not happen, the letter ultimately got Morrison sentenced to 16 years prison, as discussed below.

On March 18, 2011 because of the letter he sent to Judge Darr, Tom Morgan withdrew from representing Morrison since the letter made him a conflict of interest. Judge Darr then appointed David Rogers to represent Morrison. (See Reporter's Record Vol.2). APPENDIX 8

On March 23, Rogers came to see Morrison to discuss the case. Morrison informed him of his plans to get a new jury trial or evidentiary hearing based on the new evidence he found that could prove his innocence and was in conflict with what he was told in 2004 which caused his involuntary plea of guilty. Rogers told Morrison he should have filed the letter as a writ of habeas corpus. Since Morrison at that time knew nothing about the law in regards to filing writs of habeas corpus or anything else, he asked Rogers if Rogers could file it for him. Rogers told him that he was not appointed to do that and was only appointed to represent him on the motion to revoke, but he had to go to hte courthouse anyway so he would check on somethings. Rogers also told Morrison that his 6.02/mens rea issue had merit and he would send some case law but he did not think that 8.02 could apply to children. After Rogers left Morrison was under the impression that Rogers was going to help him and that his 6.02 and 2.01 arguments had merit. Morrison never received the case law.

During this time Morrison and Jason continued to write each other discussing what they researched, their plans, and their mindset in regards to them receiving a new trial and an acquittal. Morrison used several of these letters in his state and federal writs as exhibits to prove David Rogers' affidavit as untrue and he was ineffective in 2011. Those letters are found in Exhibits "N"-"S" and tell the story of what happened in 2011 in regards to Rogers' affidavit as being untrue.

Morrison also during this time researched what a writ of habeas corpus was, and found out under Tex. Code of Crim. P. Art. 11.07 § 2 that he filed a preconviction writ since he was not yet convicted and the writ would be handed down in the trial court. Morrison did not see Rogers again until April 26, 2011, when Rogers came to inform him that the motion to revoke hearing was in two days. Morrison told Rogers he needed to file a Motion for Continuance so he could get his preconviction writ issues ruled on before he was convicted and sentenced to prison so it would be answered in the trial court and not the TCCA. Morrison asked Rogers if he properly filed the writ since he was under the impression he was going to. Rogers told him no that that was out of his scope of appointment, but he would draft a motion for continuance in hopes the judge would grant it to allow Morrison time to hire an attorney to file it for him, or to file it properly himself.

On April 28, 2011 David Rogers, at the revocation of probation hearing, immediately presented the Motion for Continuance asserting that if the Motion for Continuance was denied, then Morrison's right to writ of habeas corpus in the trial court would be violated and he would be prejudiced by receiving any prison time from the revocation of probation. The judge looked at the letter and denied the motion for continuance because she did not construe the letter as a writ of habeas corpus since Morrison filed it pro se while having court appointed counsel. Judge Darr then asked Rogers if he had read the letter. He said yes, but was not appointed to do any 11.07 writs, therefore he did not file it. Judge Darr denied the Motion for Continuance because the pro se preconviction writ was filed while Morrison had counsel, even though, at the time he filed it on March 5, 2011 his attorney, Tom Morgan was a conflict of interest and surely would not have filed it since it was an IAC claim on him. Judge Darr continued with the Motion to revoke hearing and found the probation violations to be true. She then convicted Morrison of the 22.011 violation, then sentenced him to 16 years prison. (See Appendix 9, Reporter's Record vol.3 pp.5-9, 63-66). Since Morrison was not allowed to file a preconviction writ pro se, his court appointed counsel,Rogers,

would not file one for him because he was not appointed to file any 11.07 writs, at the time of the filing his attorney was a conflict of interest, and him being indigent and unable to hire an attorney to file one either, Morrison was left with no possible way to file a preconviction writ of habeas corpus in the trial court to call into question his unlawful imprisonment. Therefore, his right to writ of habeas corpus was suspended, resulting in him being sentenced to 16 years prison. This event is what spurred Questions #4, and 5 of this Writ of Certiorari.

On July 20, 2011 David Rogers appealed the conviction and sentence on direct appeal. It was affirmed on May 30, 2013. On August 28, 2013 Morrison filed for Petition for Discretionary Review with the TCCA. It was refused on October 23, 2013. Morrison had until January 20, 2014 to file for Writ of Certiorari to seek conclusion of direct review. He did not file it. While the direct appeal was pending from 2011 to 2013, Morrison researched his grounds for his 11.07 state writ of habeas corpus which was filed on December 30, 2014 in the trial court, raising 14 grounds for relief. On April 29, 2015 the TCCA denied the writ without a hearing based on the trial court's findings which were conclusory in regards to grounds 2-7 and 14, and were contrary to Supreme Court precident, and an unreasonable determination of the facts in light of the evidence Morrison presented in his exhibits "A"-"S" and Motion to Disqualify the Affidavit of David Rogers, which proved Rogers' unsupported by the record affidavit that the trial court relied on to deny relief as untrue. See Appendix 4 for trial court's findings that prove that the state court resolved Morrison's IAC claims unreasonably because the decision to deny was contrary to federal law as determined by the Supreme Court in **Strickland v. Washington 104 S.Ct 2052 (1984),** and **Lafler v. Cooper 132 S.Ct 2072 (2012)** by the court relying soley on counsel's unsupported by the record affidavit and never relying on much less even mentioning **Strickland** or **Cooper** or any of their prongs. Morrison raises this in Question #6 of the Writ of Certiorari.

On May 8, 2015, because of the State court's unreasonable determination of his Art. 11.07 writ of habeas corpus, Morrison filed his § 2254 Petition and Brief in Support ("**Brief/2254**") with the district court claiming the same 14 grounds for relief as stated in his state writ. A summary of those grounds are:

Ground 1: As discussed above, the plain language of 22.011, 6.02, 2.01, and 8.02 caused Morrison to reject a 7 year plea bargain, resulting in him being sentenced to 16 years prison instead of 7. Morrison's 2011 revocation of probation counsel, David Rogers failed to properly counsel Morrison about the relevant laws that affected his decision to reject the offer. Rogers also failed to alert him that his attempt to seek relief the way he was trying it would be futile. Morrison was left in the dark, without the guiding hand of counsel, hoping he would get an evidentiary hearing or new trial then acquitted based from the rationale he developed from the plain language of the aforementioned statutes. However because the trial judge denied his preconviction writ as being a writ of habeas corpus, after Morrison went into the revocation hearing expecting a continuance, and knowing he was guilty of the probation violations, he was sentenced to 16 years prison. Had Rogers properly counseled Morrison, Morrison would have accepted the 7 year plea, or would have properly filed the preconviction writ of habeas corpus, where there is a reasonable probability he would have received a less harsh sentence than 16 years. Morrison used **Lafler v. Cooper** and **Strickland v. Washington supra** to prove this IAC claim.

Ground 2: Morrison was denied the right to Due Process under the Fourteenth Amendment by the Texas courts' separation of powers violation, when those courts created law by deeming 22.011 a strict liability crime when they suspended the culpable mental state of intentionally or knowingly, 6.02, 2.01, and 8.02 from applying to 22.011, despite legislative intent that clearly says 22.011 in conjunction with 6.02, 2.01, and 8.02 cannot be strict liability. Had the separation of powers violation not occured, Morrison would have gone to jury trial in 2004 and been acquitted since the

prosecutor could not prove beyond a reasonable doubt that he intentionally or knowingly caused the penetration of the sexual organ of a child by any means.

Ground 3: 22.011 in unconstitutional on its face and as-applied to Morrison since the statute violates the Equal Protection Clause by subjecting every adult who engages in the prohibited conduct and chooses not to marry the 14 to 16 year old minor to 20 years imprisonment and a lifetime of sex offender registration; while allowing the same prohibited conduct to be legal to adults who choose to marry the 14 to 16 year old minor. This disparity of treatment does not wholly relate to the objectives of the statute and is underinclusive. Since the right to choose to marry or not to marry is protected by the First Amendment and infringed upon by 22.011, the equal protection grounds are subject to strict scrutiny analysis.

Ground 4: This ground is an Equal Protection Clause violation that is applied to Morrison's specific situation since he was arrested, convicted, and sentenced to 16 years prison and a lifetime of sex offender registration for doing the exact same acts to the same minor, at the same time as his 18 year old cousin who was never charged or sentenced to prison because he was within three years of the minor's age. The affirmative defense of 22.011(e)(2) does not negate the evil as perceived by the state in this situation to justify the disparity of the treatment that put Morrison in prison for 16 years and allowed his cousin to do the same acts to the same minor at the same time, especially when his cousin compelled the offense to happen by bringing the girl to Morrison's home to party and telling the Morrisons she was 21.

Ground 5: The strict liability interpretation of 22.011 violates the Equal Protection Clause because it treats violators of 22.011 differently from violators of all other felonies, obsenity laws, and common laws by subjecting people to a felony statute that imposes a severe sentence of incarceration while not requiring the

presumption of a mens rea to the facts that make otherwise innocent conduct illegal. 22.011 is the only felony statute that has a prescribed culpable mental state and does not dispense with any mental element, yet is nevertheless, considered by the Texas courts and prosecutors as being strict liability, in spite of 6.02(b), and Supreme Court holdings of proper statutory construction cases that say otherwise. Morrison's right to equal protection of the laws under 6.02, 2.01, and federal law determined by the Supreme Court[1] that have held that statutes written like 22.011 cannot be strict liability crimes have been denied to him in violation of the Equal Protection Clause of the Fourteenth Amendment. Everyone in Texas must have the protections that those laws give. According to the Fourteenth Amendment it is constitutionally impermissible to deny the protection of those laws to Morrison and other offenders of 22.011.

Ground 6: Because 22.011 has been interpreted to be absolutely strict liability, and even a fake identity card presented to a defendant that showed the complainant was an adult, would not save him from a conviction or prison sentence, Morrison and others' fundamental First Amendment right to copulate and freedom of intimate association with the 18 to 25 year age group (who are a lot of times indistinguishable from the 14 to 16 year age group) have been and will continue to be chilled in fear that they will go to prison for seemingly engaging in constitutionally protected, legal conduct with an adult, but turned out to be a promiscuous and precocious 14 to 16 year old minor, causing people to steer far wide of the unlawful zone in order to be completely sure they will not be ensnared by a 14 to 16 year old minor claiming to be an adult. As long as 22.011 is strict liability, Morrison cannot chance having a dating relationship or sexual relationship with anyone from 18 to 25 who may be a 14 to 16 year old minor. He has been burned once and learned his lesson. He knows that even if he had proof the minor showed him a fake i.d., he according

1. Flores-Figueroa v. United States 173 LEd. 2d 853 (2009); United States v. Williams 170 L.Ed 2d 650 (2008); United States v. X-Citement Video 115 S.Ct 464 (1994); Staples v. United States 114 S.Ct 1973 (1994); and Liaporota v. United States 105 S.Ct 2084 (1985)

to the Texas courts would be guilty of statutory rape if he had sex with her and she again turned out to be minor. This violates the Overbreadth Doctrine because the unconstitutional strict liability interpretation of 22.011 has inhibited Morrison's right to an inimate relationship with anyone 18 to 25. The 18 to 25 year old potential partner's rights are inhibited as well.

Ground 7: 22.011 being interpreted as being strict liabilty has caused it to become unconstitutionally vague and ambiguous. Because 22.011 on its face does not have any strict liability indicators in it or in any other statute, people of ordinary intelligence have not been properly notified about the forbidden "strict liability" conduct. The arbitrary strict liability interpretation has also not established determinate guidelines for law enforcement, and can be and will continue to impermissibly deligate basic policy matters to policemen, judges, and juries on a subjective basis, and has and will continue to cause arbitrary and discriminatory applications by causing selective enforcement of 22.011 as was done in the **Johnson v. State 967 S.W.2d 848,** 858 case. In criminal law it is a requirement that the masses are well informed about what is prohibited. Criminal statutes cannot leave it up to judges, police, or juries to arbitrarily guess what the law means, then make up their minds based on their own predilections, then use those predilections to decide who, when, and how a person breaks the law. That is what happened with 22.011. Because 22.011's language in conjunction with 6.02, and 2.01, make it clear that 22.011 is not a strict liability offense, the Texas courts' strict liability interpretation has caused people of ordinary intelligence to not be properly notified that they can go to prison for having sexual relations with a 14 to 16 year old minor who looked like an adult, acted like an adult, and presented themselves as an adult. If 22.011 did specifically say that, like required by law for a statute to be strict liability (see note 1 on page 14, and 6.02(b)), then people of ordinary intelligence would know to be more vigilant in whom they had sex with, i.e. checking i.d.'s, inquiring

birthdates from friends and family, running background checks, or choosing not to seek an intimate relationship with anyone who could be a minor, as Morrison will have to do. Morrison also proved that by him relying on the **Johnson v. State** case and the plain language of 22.011 to reject a seven year plea bargain in 2011, the vagueness caused by the strict liability interpretation caused him to be senteced to 16 years instead of seven. He asserts that the Rule of Lenity should be invoked in his favor and he be acquitted, or at the least, have his sentence corrected to seven years.

Ground 8: The 2011 trial judge would not allow Morrison to file his preconviction writ properly, nor would she allow him a hearing on the pro se preconviction writ he did file since he filed it while having court appointed counsel, who admitted to reading the writ, but not filing it for Morrison because he was not appointed to file any 11.07 writs. The abuse of discretion by the court made it impossible for him to file a writ of habeas corpus before he was convicted of the 22.011 charge. putting him in a catch-22: He could not exercise his right to writ of habeas corpus pro se while having court appointed counsel, and his court appointed counsel would not help him with his preconviction writ issues either because that was out of his scope of appointment, as he told the court, essentially suspending Morrison's right to writ of habeas corpus in the trial court. This caused Morrison to be senteced to 16 years prison instead of at least seven had he known the judge was not going to hear his writ issues.

Grounds 9 and 10: Morrison abandoned these grounds.

Ground 11: 2011 appellate counsel, David Rogers was ineffective for failing to appeal the trial judge's err in suspending Morrison's right to writ of habeas corpus, by not granting the Motion for Continuance, and saying Morrison could not file a writ of habeas corpus pro se while having counsel.

Grounds 12 and 13: Both of Morrison's counsels: Rogers in 2011, and Cantacuzene in 2004 were ineffective because they failed to properly research, investigate, object, and do the due diligence in discovering that 22.011 is not by the language of the law, a strict liability offense. Despite the plain language of the statutes in 6.02, 2.01, and 22.011 along with clearly established federal law as determined by the Supreme Court regarding proper statutory construction analysis, strict liability, and mens rea issues, they failed to recognize that the strict liability interpretation was predicated from pre-1983/22.011 law and is unconstitutional as Morrison has since discovered and proved in his grounds 2-7. If counsel in 2004 or 2011 would have properly investigated and researched these relevant laws, as Morrison has done, then the issues that Morrison has now presented, but has not been addressed because of the § 2244(d)(1)(A) time bar, those issues would have then been properly objected to and preserved for direct appeal where Morrison could have received relief at trial or on appeal. Ground 12 was erroneously time barred even after Morrison cited to **Trevino v. Thaler 133 S.Ct 1911 (2011)** to get that ground to bypass the time bar since it was impossible to raise this IAC claim from 2004 to 2005 since he could not appeal.

Ground 14: This ground proves that had it not been for the separation of powers violation as proved in Ground 2, or the Equal Protection of the Law violation as discussed in Ground 5, or the IAC claims in Grounds 12 and 13, there is no way any reasonable juror would have voted to convict Morrison of **intentionally** or **knowingly** causing the penetration of the sexual organ **of a child** by any means since there was evidence in 2004 that proved Morrison did not intentionally or knowingly have sexual intercourse with a child because he reasonably believed the female was 21 years old. This ground was used in the § 2254 Petition as a **McQuiggin v. Perkins** actual innocence claim to bypass the alleged time bar on grounds 2-7, and 12. The district court erroneously denied the **Perkins** actual innocence claim by saying

since Morrison did not present one of the three specific types of reliable new evidence listed in **Schlup v. Delo 513 U.S. 298 at 324** i.e. excuplatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence then he did not qualify for a **McQuiggin v. Perkins** actual innocence claim. The err from the district court is what spurred Question #1 of the Writ of Certiorari.

DISTRICT COURT'S DETERMINATION OF § 2254 PETITION

Grounds 2, 3, 4, 5, 6, 7, and 12 were all time barred by the district court claiming that since these grounds all challenged or undermined the 2004 guilty plea that led to the deferred adjudication probation, those claims should have been raised when the time for seeking direct review expired on the order that placed Morrison on probation. The district court relied on **Tharp v. Thaler 628 F.3d 719 (5th Cir. 2010)** and **Caldwell v. Dretke 429 F.3d 521 (5th Cir. 2005)** (which were cases that made these holdings after Morrison's deferred probation order in 2004, therefore, Morrison asserts it violates ex post facto laws to apply them to him) to say the § 2244(d)(1)(A) expiration for time for seeking direct review started on June 5, 2004, 30 days after the deferred probation order was given on May 6, 2004, resulting in the § 2244(d)(1)(A) 1-year limitation period expiring a year after that date on June 5, 2005. The district court and the Fifth Circuit in **Tharp** and **Caldwell** got the expiration of time for seeking direct review date from Tex. Rules of Appellate Procedure (**"TRAP"**) Rule 26.2, but erroneously applied it to Morrison since TRAP Rule 25.2 and Tex. Code of Criminal Procedure (**"TCCP"**) Article 44.02 specifically demand that since Morrison pled guilty and his attorney did not raise the issue by written order before trial, then he could not do a direct appeal on these issues. Therefore according to state law, Morrison could not seek direct review, nor did he have an expiration date for seeking the conclusion of direct review since he could not even begin one. Therefore, he surely could not have qualified for a § 2244(d)(1)(A) trigger date starting on June 5, 2004 and expiring on June 5, 2005 as the district court asserted, relying on **Tharp** and

Caldwell. Morrison raised this issue numerous times in the district court and in the Fifth Circuit. Not one judge addressed the fact that deferred adjudication probationers who plead guilty cannot appeal the order and therefore should not have a §2244(d)(1)(A) trigger date applied until they are revoked and had the opportunity to seek direct review. This issue will be argued in Question ~~#2, and~~ 3 of this Writ of Certiorari.

The IAC claims in Grounds 1, 11, and 13 were ruled on the merits but unreasonably denied by the district court by claiming 22.011 is a strict liability offense. That was an unreasonable determination because the district court erroneously based its determination on pre-22.011 statutes like 21.11 and 21.09 that were superceded by 22.011 and do not contain a mens rea as does 22.011. (See Appendix 3 pp.14, 17-18, 28)

On October 16, 2017 Morrison presented 16 questions of law to the Fifth Circuit in his Certificate of Appealability and its Brief in Support (**"Brief/COA"**), which proved a COA should have issued since he did satisfy the requirements as mandated in 28 U.S.C. § 2253(c)(2) and **Slack v. McDaniel 529 U.S. 473 (2000)** as shown below.

MORRISON'S SHOWING THAT A COA SHOULD HAVE BEEN GRANTED

Morrison did make a 2253(c)(2) substantial showing of the denial of a constitutional right. (See Brief/COA at pp.6-10, 25-31, 31-34, and 34-43).

Morrison proved six different ways the district court's decision to time bar his Grounds 2-7, and 12 via **Tharp** and **Caldwell** was unreasonably and erroneously applied to his grounds since his case was distinguishable from **Tharp** and **Caldwell.** Morrison also proved those two cases were made in err since it is unconstitutional to start the § 2244(d)(1)(A) 1-year limitation period trigger date to 30 days after the deferred probation order was given or when time for seeking direct review became final since deferred probationers have no conviction, sentence, or are being held in a jail or prison. Morrison proved in his Brief/COA and other pleadings filed in the district court (i.e. Reply to the Respondant's Answer (**"Reply"**), and Objections to the Report and Recommendation of the U.S. Magistrate Judge (**"objections"**) that the

§ 2244(d)(1)(A) trigger date cannot start 30 days after a deferred probation order.

Question #1 of the COA will be reasserted as Qustion #7 in the Writ of Certiorari. This question involves Grounds 2, 3, 5, 6, and 7 being timebarred since they are perpetual constitutional violations that not only affect Morrison's First Amendment rights but others' rights aswell.[2] MORRISON RAN OUT OF PAGES TO ARGUE THIS, BUT IT IS ARGUED IN COA IN GROUND 1

Question #2 of the COA will be reasserted as Question #1 in the Writ of Certiorari. This Question proves the district court's determination of denying Morrison's **McQuiggin v. Perkins** actual innocent claim was unreasonable and contrary to this Court and other Circuit Court's decisions regarding the same issue.

Question #3 of the COA will be reasserted as Question #5 in the Writ of Certiorari. This Question deals with the 2011 trial court suspending Morrison's Article 1 §9 Clause 2 right to writ of habeas corpus before he was convicted.

Question #4 of the COA will be reasserted as Question #4 in the Writ of Certiorari. This Question proves that Morrison was denied the right to effective counsel when he was not appointed counsel to help with his 2011 habeas corpus constitutional issues before he was convicted and sentenced to prison. It goes hand in hand with the question #3 above.

Question #5 of the COA will be reasserted as Question #6 in the Writ of Certiorari. This Question deals with the state court's unreasonable determination of the facts of the IAC claims in light of the evidence Morrison presented in his Exhibits "A"-"S", and Motion to disqualify the affidavit of David Rogers which proved the affidavit as untrue. The courts so far have ignored the evidence Morrison presented and based their decision to deny only from counsel's unsupported by the record affidavit.

Question #6 of the COA will be reasserted as Question #6 in the Writ of Certiorari, as well. This Question deals with the "Contrary to" prong of § 2254(d)(1) and whether the state court's decision was contrary to **Strickland** and **Cooper** by the state court refusing to address any of this Courts prongs in those two cases and denying relief by soley relying on what counsel said in his unsupported by the record affidavit. MORRISON AND RAN OUT OF ROOM TO ARGUE QUESTION # 6, BUT IT IS ARGUED IN COA IN QUESTIONS 5, AND 6.

2. BROADWICK V. OKLAHOMA 93 S.CT 2908, 2916 (1973)
BIBELOW V. VIRGINA 421 U.S 809 (1975)
CALDWELL V. ORETKE 429 F3d 521, 530 n.24

Question #7 of the COA goes with Questions 5 and 6 of the COA because it addresses the District Court not addressing Morrison's "contrary to" § 2254(d)(1) argument.

Question #8 of the COA deals with the vagueness and ambiguity of the strict liability interpretation of 22.011 and whether Morrison should have the Rule of Lenity invoked in his favor since the vagueness caused him to be sentenced to 16 years instead of seven. This issue will not be reasserted in the Writ of Certiorari.

Questions #9, and 10 deals with trial and appellate counsel's ineffectiveness for failing to investigate and do the due diligence required to discover the easily obtainable constitutional issues that Morrison has raised, when it is clear that the plain language of 22.011 cannot be strict liability, and it was clear err for the courts to continue to rely on past recodified statutes like 21.11 and 21.09 which predate 22.011 and have no mens rea to say 22.011 is strict liability. These Questions will not be reasserted in the Writ of Certiorari, but will be used to support other questions.

Question #11 of COA will not be reasserted.

Question #12 of COA will not be reasserted in the Writ of Certiorari. It proved that Morrison should have been granted equitable tolling since he did show several external factors did prevent him from asserting his issues prior to the alleged time limitation default, and he did remain diligent in asserting his rights after he discovered them in 2011.

Question #13 of the COA will be reasserted as Question #2 and 3 in the writ of Certiorari. This Question deal with whether a deferred adjudication probationer who has not been convicted, sentenced or is in a jail or prison can even file a § 2254 Petition at that time to invoke jurisdiction in the federal courts.

Question #14 of the COA will be reasserted with Question #2 ~~and 3~~ in the Writ of Certiorari. This Question Proves that since a deferred adjudication probationer cannot appeal or do post conviction writ to exhaust state remedies without having a conviction, then he should not be time barred from not raising his claims while not being able to exhaust state court remedies.

Question #15 of the COA will not be reasserted in the Writ of Certiorari. It however, proved that the later dates of the 1-year limitation period should have been the trigger dates as according to § 2244(d)(1)(B) and (D) when Morrison showed that the unconstitutional state created impediments came off and when he discovered the factual predicate of his claims in 2011, resulting in the district courts alleged 2244(d)(1)(A) trigger date being wrongly applied to Morrison.

Question #16 of the COA will not be reasserted in the Writ of Certiorari. It however, proved that Morrison's IAC claim against 2004 trial counsel should not have been time barred in light of this Court's decision in **Trevino v. Thaler 133 S.Ct 1911 (2013)** since Morriosn could not appeal this issue from 2004 to 2005.

If this Court wishes to rule on any of these claims sua sponte feel free. Morrison has chosen not to address some of these issues because of page limitations, and there are just too many issues to put into this already longwinded Writ of Certiorari. Morrison will now show the reasons for granting the Writ of Certiorari.

REASONS FOR GRANTING THE WRIT OF CERTIORARI (Rule 14(h); Rule 10)

Question #1 (Summarized): Whether a district court errs when denying a **McQuiggin v. Perkins** Actual innocence claim by saying since the petitioner failed to present one of the three types of reliable new evidence listed in **Schlup v. Delo 513 U.S. at 324**, then he failed to present a **McQuiggin v. Perkins** actual innocence claim, even though the petitoner did present reliable new evidence that proved a miscarriage of justice/actual innocence claim.

Rule 10(a),(c): The United States Court of Appeals has entered a decision that is in conflict with the decision of another U.S. Court of Appeals on the same important matter, when the Fifth Circuit denied Morrison's COA and Petition for Panel Rehearing/Reconsideration in regards to Question #1. The Fifth Circuit in its conclusory denial of the COA, also decided an important Federal Question in a way that conflicts with the relevant decisions of this court in **McQuiggins v. Perkins**

133 S.Ct 1924 (2013), and **House v. Bell 126 S.Ct 2064, 2077 (2005).**

On October 16, 2017 Morrison mail filed in the United States Court of Appeals for the Fifth Circuit his COA and its Brief in Support. Morrison asked the Court of Appeals:

> "Whether jurists of reason would find the district court's assessment debatable or wrong when it denied Morrison's **McQuiggin v. Perkins** Actual innocence claim by stating that Morrison did not present any new evidence since the new evidence he presented was not one of the three listed examples in **Schlup v. Delo**; i.e. exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence." (See Page 1 of Brief/COA, pp.12-13 of Appendix 3 the Report).

On pages 20-25 of the Brief /COA Morrison explained the reliable new evidence he discovered in 2011 that proved had the constitutional violations that were time barred in Grounds 2-7, and 12 not occurred, then no reasonable juror would have been able to find him guilty, beyond a reasonable doubt, of all the elements of 22.011.

Morrison also proved to the Fifth Circuit that jurists of reason from another court of appeals, and the Supreme Court have decided cases differently that what the district court decided in denying Morrison's actual innocence claim, satisfying the requirements of a COA to issue as this Court held in **Slack v. McDaniel 529 U.S. 473 (2000).**

Morrison cited to the following cases:

1) **Munchinski v. Wilson 694 F.3d 308, 337-338 (3rd Cir. 2012)** (Where they said that that the three catagories listed in **Schlup** are not an exhaustive list of evidence that can be reliable.)

2) **House v. Bell 126 S.Ct 2064, 2077 (2005)** (Where this Court said: "The habeas court's analysis is not limited to such evidence. There is no dispute in this case that House presented some reliable new evidence.")

3) **Bousley v. United States 118 S.Ct 1604 (1998)** (Where this Court allowed Bousley to bypass a procedural bar through an actual innocence claim if he could prove he did not "use" a firearm as defined in **Bailey v. United States 116 S.Ct 501, 506 (1995).** The proper definition of "use" that was discovered by Bousley when the decision came out in Bailey was new evidence that was accepted which was not one of the three examples in **Schlup**, but was allowed as an actual innocence claim to bypass the default).

Like Bousley, Morrison's plea of guilty in 2004 was involuntary and not made intelligently since Morrison did not receive "real notice of the true nature of the charges against him, the first and most universally recognized requirement of Due Process." **Smith v. O'Grady 312 U.S. 329, 334 (1941).** Also like in Bousley, Morrison's plea was unintelligent because the trial court, trial counsel, and the A.D.A. misinformed Morrison as to the true elements of 22.011(a)(2), and because of their lack of understanding of a proper statutory construction of 22.011 regarding the intentionally or knowingly mens rea requirement, Morrison's guilty plea was constitutionally invalid, resulting in Morrison ultimately being wrongfully convicted and imprisoned for 16 years.

Morrison found new evidence in 2011 that was withheld from him at trial in 2004 which called into question the strict liability interpretation of 22.011 that was used to coerce his plea of guilty in 2004. He showed with the new evidence that if a proper statutory construction analysis of 22.011's plain language would be done using Texas Penal Code 6.02, 2.01, and 8.02, along with Government Code § 311.011, and 311.002, and the Supreme Court's statutory construction analysis model that deal with mens rea issues like: **Flores-Figueroa v. United States 173 L.Ed 2d 853 (2009), U.S. v. Williams 170 L.Ed 2d 650 (2008), U.S. v. X-Citement Video 115 S.Ct 464 (1994), Staples v. U.S. 114 S.Ct 1973 (1994),** and **Liaparota v. U.S. 105 S.Ct 2084 (1985),** then 22.011 could not be considered a strict liability offense because it contains a prescribed mens rea requirement of intentionally or knowingly that does not dispense with any mental element pursuant to 6.02(b) and **X-Citement Video, and Staples,** therefore the required mens rea must modify all the subsequent elements of the offense that make otherwise innocent conduct illegal i.e. "of a child", making it an element of 22.011 that the person commits the offense only if the person "intentionally" or "Knowingly" causes the penetration of the sexual organ "of a child" by any means. Therefore, Morrison contends that the new evidence he found in 2011 that proves 22.011 cannot be strict liability because the plain language and legislative intent does not allow it to be strict liability is reliable new evidence that satisfies a

McQuiggin v. Perkins actual innocence claim. Had the new evidence been given to him at the time of trial, Morrison surely would not have pled guilty because no juror acting reasonably would have voted to find him guilty while considering the new evidence with the evidence that was available in 2004 that proved he did not intentionally or knowingly have sex with a child since the minor looked 21, acted 21, and presented herself as being 21.

Also, Morrison asserts that since this Court in **Perkins** never even mentioned the three examples of reliable new evidence that were listed in **Schlup**, but instead cited to **House v. Bell**, along with **schlup** to say:

> "[A] petitioner does not meet the threshold requirement unless he persuades the district court that in light of the new evidence no juror acting reasonably, would have voted to find him guilty beyond a reasonable doubt." (Citing **Schlup at 329** and **House at 538**),

then the district court erred by using dicta from another case not discussed in the holding of **McQuiggin v. Perkins** to deny Morrison's actual innocence claim. Had the Supreme Court intended for the three examples of new evidence listed in **Schlup** to be the only types of reliable new evidence allowed to be used in a **McQuiggin v. Perkins** actual innocence claim, surely this Court would have expressly state so, and definately would not have cited to **House v. Bell** in the above citation where House used reliable new evidence that was not one of the three listed in **Schlup** so to bypass a procedural default through a **Schlup** claim.

CONCLUSION

Morrison has shown that he has presented new evidence that qualifies as a **McQuiggin v. Perkins** actual innocence claim to bypass the alleged § 2244(d)(1)(A) 1-year limitation period default, and the Fifth Circuit's decision to deny his actual innocence claim by its conclusory denial of his COA was a decision that is in conflict with another U.S. Court of Appeals, and the Supreme Court, therefore, Morrison respectfully requests that this Writ of Certiorari be granted and the Fifth Circuit's decision be vacated and remanded back with orders to grant COA and order the district court to answer Morrison's constitutional claims in Grounds 2,3,4,5,6,7, and 12 on the merits.

Question #2 (Summarized): Whether it is constitutionally permissible to time bar a § 2254 Petition by requiring a prisoner who was on deferred adjudication probation without a conviction or sentence to raise his issues in a § 2254 Petition before he was "in custody" pursuant to the judgment of a State court, when the federal courts lacked jurisdiction to hear the § 2254 Petition in the first place.

Rule 10(a),(c): The Fifth Circuit Court of appeals has decided an important question of Federal law in a way that conflicts with the relevant decisions of the Supreme Court, when they decided **Tharp v. Thaler 628 F.3d 719 (2010)**, and **Calwell v. Dretke 429 F.3d 521 (2005).** Those two decisions are also in conflict with decisions of other U.S. Courts of Appeals on the same important matter regarding what constitutes 'in custody', and whether deferred adjudication probationers are in custody for the purposes of 2244(d) is a decision that has not been, but should be settled by this Court since over 90% of cases dealing with first time law breakers lead to a deferred adjudication probation. Morrison asserts that if left undone, the deferred adjudication probation option for for first time law breakers who usually do not know much about the law or thier rights can easily be devised into a sandbagging scheme where the State puts a heavy burden or risk on going to trial by giving the defendant an option of 15 to 20, or more years in prison if they plead not guilty and go to jury trial and lose. Or plead guilty and be placed on deferred adjudication probation where they can have no conviction and win by staying out of prison. Then when the defendant takes the bait and accepts the deferred probation, the State also requires him to waive his right to appeal the order that placed him on deferred probation. Then after a year of probation when the person discovers he suffered a constitutional violation or he is actually innocent, or he did not complete his probation and was sentenced to prison, the State can then essentially silence him by sandbagging him with the AEDPA's statute of limitation defense by saying he should have raised the claims within a year after he could have appealed the order.

Because of the plain language of the questions asked in the § 2254 Petition, along with the language of § 2244, at the time Morrison filed his § 2254 Petition, he did not

even fathom the possibility that he could be time barred through § 2244(d)(1)'s trigger date starting 30 days after his deferred probation order, since that order was not a "sentence", nor was it a "judgment of conviction", and he was not "held" or confined in a jail or prison at that time from June 5, 2004 to June 5, 2005 to even qualify to file for habeas relief in the Federal courts as the § 2254 Petition requires. (See pp.18-23 of Morrison's Reply to the Respondant's Answer where Morrison fully breaks down the § 2254 Petition's questions and shows how by the plain language of those questions it would be impossible for a person on deferred probation to answer those questions without having a conviction, sentence, or being held in a jail or prison.)

Many Federal courts, as well as Congress have concluded that a writ of habeas corpus § 2254 is reserved only for petitioners who have been convicted, sentenced, or held in a jail or prison as a result of a state court's judgment that was finalized upon the conclusion of direct review or the opportunity to seek direct review. Even though a § 2254 Petition is reserved for a person with a conviction, sentence, or held in a jail or prison, the Fifth Circuit in **Caldwell v. Dretke**, and **Tharp v. Thaler supra** have held that if a person on deferred adjudication probation, who does not have a conviction, sentence, or held in a jail or prison does not file their constitutional claims regarding the deferred adjudication probation order in a § 2254 Petition within a year after that order becomes final, then they are timebarred.

Morrison's question is how can that person even file a § 2254 petition during that time without them being convicted, sentenced, or imprisoned? And since they could not file one during that time, is it fair and right to prevent that person from raising credible constitutional claims in the Federal courts after they are convicted, and sentenced to prison, and had the opportunity to seek direct review? To answer this question Morrison cites to many cases from the Supreme Court and other courts of appeals who have held or said that "in custody" for the purposes of § 2254 and § 2244 means they must have a conviction and sentence and/or be imprisoned.

In **Maleng v. Cook 109 S.Ct 1923 (1989)** this Court defined "in custody" for the purposes of 2254(a) to mean: "that a habeas petitioner must be 'in custody' under

the **conviction or sentence** under attack at the time his petition is filed." (Emphasis added to show that since Morrison had no conviction or sentence from June 5, 2004 to June 5, 2005 he could not have filed his Grounds 2-7, and 12 during that time to avoid being time barred as the district court, relying on **Tharp** and **Caldwell** said he must have done).

In **Yellowbear v. Wyoming Att. Gen. 525 F.3d 921, 924** this Court of Appeals said § 2254 is a habeas procedure applicable to state prisoners who have been **convicted** and want to challenge the legitimacy of the **conviction.**

In **Carter v. Procunier 755 F.2d 1126 (1985)** the Fifth Circuit said a habeas corpus petitioner meets statutory 'in custody' requirements when at the time he files his petition he is in custody pursuant to a **conviction** he attacks.

In **Finklestien v. Spitzer 455 F.3d 131 (2006)** the 2nd Circuit said the petitioner must be in custody under the **conviction or sentence** under attack at the time his petition is filed.

In **Skinner v. Switzer 131 S.Ct 1289, 1231 (2011), and Wilkinson v. Dotson 544 U.S. 74, 82 (2005)** the Supreme Court said habeas relief is the "exclusive remedy" for **prisoners** seeking immediate or speedier release from **confinement.**

In **MedBerry v. Crosby 351 F.3d 1049 (2003)** the 11th Circuit did an excellent job of breaking down the history of a writ of habeas corpus, and the common element for a person filing a writ of habeas corpus from its inception was the requirement that the person be in prison. See page 1059 where they say the writ of habeas corpus is a single post-conviction remedy principally governed by two different statutes: § 2241(a) and § 2254(a). Further down on pages 1060 and 1062 the court said a § 2254 is limited to state prisoners "in custody pursuant to the judgment", and state pretrial detention, for example, might violate the constitution, yet a person held in pretrial detention (or a prisoner who is in prison pursuant to something other that a judgment of a State court p.1062) would not be in custody pursuant to the judgment of a State court, such a prisoner would file an application for writ of habeas corpus governed by § 2241 only, and not subject to 2254.

In **Martinez v. Caldwell 644 F.3d 388 (2011)** the Fifth Circuit said as a pretrial detainee, However Martinez's habeas petition is governed by § 2241.

In **Thomas v. Crosby 371 F.3d 782, 803** Judge Tjofiat said, based on the language of § 2254, 2254 applies only to petitioners brought by **convicted** state prisoners, while 2241 applies to any State prisoner whether or not they have been convicted.

See **Dickerson v. State of LA 816 F.2d 220 (5th Cir. 1987)**, and **Klien v Luis 548 F.3d 425, 430 (6th Cir. 2007)** where these two courts suggested that whether a petition is characterized as either a § 2241 or § 2254 is based on when the petition was filed, pre- or post-conviction.

All of these courts, plus many others not mentioned, prove that Morrison's Grounds 2-7 and 12 of his § 2254 Petiton should not be time barred by expecting him to raise those claims before he was even "in custody" and unable to raise them in the Federal courts. The district court using the Fifth Circuit's decisions in **Tharp** and **Caldwell** to determine the erroneous time bar is contrary to the decisions of this Court and other courts of appeals as cited to above. As a matter of fact, the Fifth Circuit in **Tharp** and **Caldwell** would even agree that the Federal courts lacked jurisdiction to hear Morrison's § 2254 Petition from June 5, 2004 to June 5, 2005, when they said:

> "The plain language of AEDPA, as well as its underlying purpose requires that we treat a deferred adjudication probation order as a 'judgment' under this provision as well as under 28 U.S.C. § 2254(a) which confers habeas jurisdiction on Federal courts for State **prisoners**, only if they are 'in custody' pursuant to the judgment of a State court."

A would be petitioner of a § 2254 Petition who is on deferred probation is not a State **prisoner**, so according to that statement he cannot be 'in custody' by meaning of § 2254(a). Therefore, the probationers in **Tharp**, **Caldwell**, and Morrison could not even qualify for a § 2254 Petition even if they wanted to while on deferred probation without being convicted, sentenced, or being in prison. Still the Fifth Circuit held that the 1-year time limitation starts at a deferred probation order?

Furthermore, it would not make sence to time bar a deferred probationer's claims when he could not have exhausted his state court remedies pursuant to § 2254(b)(1)(A) since he could not do a direct appeal pursuant to TRAP 25.2, nor could he do a state

post-conviction writ of habeas corpus without being convicted. Had Morrison filed a § 2254 Petition without allowing the state's highest court a chance to resolve the issues he would have been procedurally defaulted pursuant to § 2254(b).

CONCLUSION

The **Tharp** and **Caldwell** holdings from the Fifth Circuit have done a huge injustice to the entire deferred adjudication probation scheme, which involves millions of cases a year. Those holdings prevent people whom are normally first time law breakers, and normally do not know much about their rights or the law from ever raising constitutional issues or procedural errors of their arrest and confinement, in the Federal courts, after a year of being on probation, when most people, while free from imprisonment and only on probation, busy with their kids and working, would not seek relief until all aspects of their liberty were lost. The reasons behind the AEDPA's 1-year limitation period were originally suppose to be to streamline death penalty cases so those cases would not continue to bog the courts down with writ after writ, while the petitioner was only trying to extend his life. It was also intended to fight the spread of terrorism both at home and abroad, hense the title: Antiterrorism and Effective Death Penalty Act of 1996. Congress surely did not enact it to prevent a first time breaker of the law who is not a terrorist or sentenced to death from exercising their right to writ of habeas corpus in the Federal courts for the first time after they are unconstitutionally convicted, sentenced, and imprisoned, then after seeking relief in the State courts, the State courts unreasonably deny relief.

Morrison avers that the district court's decision to time bar his first opportunity to raise Grounds 2-7, and 12 in the Federal courts by relying on **Tharp** and **Caldwell** is contrary to the purposes of the Constitution, AEDPA, and Federal law as determined by this Court, and this Court must nip it in the bud before any other citizen of this great country has their right to writ of habeas corpus suspended in the Federal courts for not raising their constitutional claims when it would have been impossible for them to do.

See **House v. Bell** 126 S.Ct 2064, 2078 where this court said:

> "Dismissal of a first Federal habeas Petition is a particular serious matter. For the dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." Quoting **Lonchar v. Thomas 116 s.Ct 1993, 1999 (1996).**

So far, as Morrison's research has led him to believe, the Fifth Circuit is the only circuit court that allows this type of ridgid suspension of a petitioner's first opportunity to exercise their right to writ of habeas corpus in the Federal courts. It is very important that this issue be addressed before it spreads to other courts, and this Court is then beat up with thousands of constitutional issues raised in Writs of Certiorari that should have been handled in the district courts. That is exactly what will happen if this unjust suspension of the Great Writ is allowed to continue in the Fifth Circuit, especially considering the growing number of deferred adjudication probation defendants throughout the country. Is this Honorable and already extreamly busy Court prepared for that kind of caseload? Or would it be better to, like was intended when Congress established the different tier of courts, for all the courts to share the caseload by justly resolving the issues at the lowest possible court. Had the district court in Morrison's case not erroneously time barred his claims, this Court surely would not be having to waste its precious time and resources reading and going over all of these issues, therefore, Morrison hopes this Court will grant this Writ of Certiorari and put an end to the nonsensical holdings of **Tharp v. Thaler** and **Caldwell v. Dretke.**

Question #3 (Summarized): Whether the phrase "judgment of a state court" or "final judgment" can refer to an "order" that places a person on deferred probation without that person being convicted, senteced, or imprisoned, and unable to seek direct review or post-conviction relief to meet the requirements of § 2244(d)(1)(a) and (d)(2).

Rule 10(c): The Fifth Circuit has decided an important question of Federal law in a way that conflicts with the relevant decisions of the Supreme Court, when they decided **Tharp v. Thaler** and **Caldwell v. Dretke supra.** Those two decisions are in conflict with this Court's decision on the same important matter regarding a deferred

probation order being considered a final judgment for the purposes of 2244(d)(1) and § 2254. Through Morrison's research by shepardizing **Tharp** and **Caldwell**, and reading other sources having to do with the treatment of deferred probation orders being considered judgments, Morrison has not found any other Circuit Court that treats a deferred probation order as a final judgment and starts the one year limitation period before a person is convicted, sentenced, imprisoned, or had the opportunity to seek direct review or post-conviction relief in the state court. **Tharp** and **Caldwell** were used by the district court to time bar Morrison's Grounds 2-7, and 12 by saying those grounds should have been raised one year after Morrison's deferred probation order became final.

Morrison was placed on deferred probation by the May 6, 2004 order, which was by way of an unintelligent plea of guilty, as previously explained. Part of the plea agreement (as is with all deferred probation pleas) was that he would have no conviction, sentence, or be held in a jail or prison, and he would remain on probation for 9 years, as long as he obeyed the conditions of probation. If he completed the probation, he would never have a conviction or sentence, and the 22.011 offense would only reflect as an arrest. Also part of the plea agreement was that he had to waive his right to direct appeal pursuant to TRAP 25.2, and TCCP 44.02. However, the district court, like the Fifth Circuit did to Tharp and Caldwell, erroneously applied TRAP 26.2 to Morrison's case saying he had 30 days to appeal the deferred probation order. That erroneous application of the law is what caused the trigger date for the 1-year limitation period in § 2244(d)(1)(A) to start on June 5, 2004 and expire on June 5, 2005. This was done even though Morrison could not seek direct review as mandated by law as a condition of his involuntary and unintelligent guilty plea. Morrison made the district court and the Fifth Circuit aware of their error in numerous pleadings. (See Reply at 14-16, 23, 35; Objections at pp.3-5, 9, 16-17; Brief/COA at pp.3, 44-45).

The Fifth Circuit in **Tharp** and **Caldwell,** along with the district court in Morrison's case have essentially held that since those § 2254 petitioners failed to file their constitutional grounds through a § 2254 Petition while on deferred Probation, or one

year after the order became final, then they were time barred for filing credible constitutional claims even after they were convicted, sentenced, imprisoned, and had the opportunity to seek direct review and post conviction relief to satisfy 2244(d)(1)(A), in spite of the fact those petitioners could not seek direct review or post-conviction relief.

Morrison contends that the deferred probation order that placed him on probation on May 6, 2004 cannot be construed as a "judgment of a State court" for the purposes of § 2254(a),(b)(1), or as a "final judgment" for the purposes of § 2244(d)(1)(A) since the order was not an order to convict, or sentence him to probation or prison, but it was an order that placed him on probation until he either completed it or did not. If he did not, then he would be convicted and sentenced as happened on April 28, 2011, seven years after the order, where Morrison was then able to seek direct review for the purposes of 2244(d)(1)(A), and was imprisoned losing all sense of liberty. Had Morrison completed his probation, he would have never received a conviction or sentence.

Morrison avers that his question about whether the deferred probation order can be construed as a final judgment can be easily answered by looking at only one case from this Court. That case is: **Burton v. Stewart 127 S.Ct 793, 166 LEd 2d 628 (2007)**, where this Court defined what constitutes a final judgment for the purposes of 2244(d)(1)(A):

> "Final judgment in a criminal case means **sentence**, the **sentence** is the judgment. (Inside citations omitted. Emphasis added to show the final judgment has to be a sentence). Accordingly Burton's limitation period did not begin until both his conviction and sentence became final by the conclusion of direct review or the expiration of time for seeking such review."

After **Burton** came out, the above definition of "final judgment" cast doubt on the Fifth Circuit's holdings in **Caldwell v. Dretke**, so in **Tharp v. Thaler** they addressed how the definition of final judgment, as explained in **Burton**, as having to be a sentence, affected the rationale they had in **Caldwell** about a deferred probation order, which is not a sentence, could still be considered a final judgment. During the discussion and after considering **Burton's** simple and clear definition of what a final judgment is, they still erred in saying a deferred probation order is a final judgment

by claiming:

says

1) That TRAP 26.2 when the order became final, when TRAP 26.2 cannot be applied to to people who are on deferred adjudication who pleaded guilty. (See TRAP 25.2).

2) That "the plain language of AEDPA, as well as its underlying purpose require that we treat a deferred adjudication order as a 'judgment' under the provision as well as under 28 U.S.C. § 2254(a), which confers habeas jurisdiction on Federal courts for State prisoners only if they are 'in custody pursuant to the judgment of a State court'". (See Question #2 for how deferred probationers are not 'in custody' to invoke jurisdiction to file § 2254 Petition in the first place).

3) That a deferred probation order is a final judgment even though it is not a sentence. The Fifth Circuit completely misapprehended the Supreme Court's definition of final judgment by rationalizing away what the Supreme Court said about the final judgment meaning a sentence, and the sentence is the judgment by saying: "since we are dealing with two entirely separate and distinct judgments- one a deferred adjudication order and the other a judgment of conviction and sentence, we are dealing with two separate and distinct limitation periods under the AEDPA."

WAIT A MINUTE..... WHAT HAPPENED TO THE FINAL JUDGMENT BEING THE SENTENCE?

If that is true, how can we have two separate and distinct judgments? Deferred adjudication probationers do not get sentenced twice. Morrison was not sentenced to 9 years probation with the May 6, 2004 deferred probation order. There was no sentence because there was no conviction. Morrison was convicted on April 28, 2011, then sentenced to 16 years prison, where he then had the opportunity to appeal the conviction and sentence. Since the order that placed Morrison on deferred probation was not a sentence, as determined by the Supreme Court in **Burton v. Stewart**, that order could not be a final judgment by meaning of the 1-year limitationperiod set out in 2244(d). The final judgment was where both of Morrison's conviction and sentence became final by the conclusion of direct review or the expiration of time for seeking such Review. That date was January 21, 2014, 90 days after his P.D.R. was refused on October 23, 2013, to allow time to seek the conclusion of direct review by a writ of Certiorari. That is the proper date that triggered the 1-year limitation period as according to 2244(d)'s plain language, and **Burton v. Stewart.** It was also the date Morrison was relying on when he challenged his unconstitutional conviction and 16 year prison sentence in his state and federal writs.

ALSO see GONZALEZ V. THALER 132 S.CT 641, 653 (2012), where the supreme court gave the two 2254(d)(1)(A) prongs a narrow reading that supports the fact that since morrison could not direct Review he could not satisfy the two prongs discussed in Gonzalez Regarding: 1) the conclusion of direct Review, or 2) the Expiration of time for seeking such Review. Since Morrison could not Appeal his deferred adjudication order, he [redacted] surely does not Fit into the "conclusion of direct Review" prong. And he also could not seek Direct Review to have an Expiration Date to satisfy the second prong of "Expiration of time For seeking such Review." In order for something to have an expiration Date, it must have a start Date. Texas Law TRAP 25.2 Disallowed Morrison and every other Deferred Adjudication probationer who pleads Guilty and Accepts the probation From Appealing that order. Therefore, 2244(d)(1)(A) cannot be Applied to their deferred probation orders, Proving Tharp, Caldwell, and the district court erred in Relying on TRAP 26.2 To start the 2244(d)(1)(A) triggs date. (see objections to the U.S. Magistrate Judge's Report PP. 3-5 where Morrison Explains this Argument Further). This Argument Also went unaddressed by the district court and Fifth circuit.

THE issues of whether a [redacted] deferred probation order can be considered A Final Judgment For the purposes of 2244(d)(1) has been Hotly debated in the district courts for the Fifth circuit. Morrison's count after Researching different cases like Wilkerson v Cockrell 240 F.Supp.2d 617 (2002), Tharp v Thaler, and Caldwell v Oretke supra is 19 Judges concluding that an order of deferred probation is not a Final Judgment and therefore does not trigger the 1-year limitation period. These Judges/Magistrate Judges have Rightly Held that the Judgment Adjudicating Guilt is the Relevant state court Judgment For purposes of 2244(d)(1). In those instances the courts have Reasoned that either: i) An order of deferred adjudication is

NOT A FINAL JUDGMENT because IT IS NOT a JUDGMENT OR 2) IT IS NOT A FINAL JUDGMENT because there HAS been NO adjudication OF guilt.

AS FAR AS the Judges who HAVE determined that A deferred ADJUDICATION PROBATION ORDER IS A JUDGMENT, THAT COUNT IS 9. (see APPENDIX 6 FOR the CASE breakdown OF the 19 TO 9 split). Despite the LOPSIDED 19 TO 9 SPLIT, the FIFTH CIRCUIT STILL decided TO UNJUSTLY TIME BAR SEVERAL § 2254 PETITIONER'S CLAIMS by ERRONEOUSLY CLAIMING THAT the deferred PROBATION order IS A FINAL JUDGMENT FOR STARTING the 1-year LIMITATION PERIOD TRIGGER DATE.

THE PLAIN LANGUAGE OF The § 2254 PETITION, ITSELF, lends CREDENCE TO the FACT THAT AN order THAT PLACES A person ON deferred PROBATION WITHOUT THEM HAVING A CONVICTION, SENTENCE, OR being held IN A JAIL OR PRISON does NOT QUALIFY AS A FINAL JUDGMENT FOR the PURPOSES OF 2244(d)(1). LOOK AT QUESTION #26. IT SPECIFICALLY RELATES TO 2244(d)(1)'s 1-year TIME LIMITATION, AND IS very precise IN ADDRESSING WHAT TYPE OF "JUDGMENT" IS SUBJECT TO 2254(d)'s LIMITATION PERIOD. IT STATES, "IF your JUDGMENT OF CONVICTION, PAROLE REVOCATION, OR DISCIPLINARY ~~HEARING~~ PROCEEDING BECAME FINAL OVER ONE YEAR AGO, YOU MUST EXPLAIN WHY THE ONE YEAR STATUTE OF LIMITATIONS CONTAINED IN 28 USC § 2254(d) does NOT BAR your PETITION."

MORRISON ANSWERED THAT QUESTION WITH A N/A SINCE IT WAS NOT APPLICABLE TO HIS SITUATION because WITH the § 2244(d)(2) TOLLING OF his STATE WRIT, HIS "JUDGMENT OF CONVICTION" did NOT become FINAL OVER A YEAR before he FILED HIS § 2254 PETITION. HAD CONGRESS OR the COURTS INTENDED the AEDPA'S 1-year LIMITATION PERIOD TO START COUNTING FROM A PETITIONER'S DEFERRED ADJUDICATION PROBATION ORDER, SURELY they WOULD HAVE SPECIFICALLY MENTIONED the FINALITY OF the deferred PROBATION ORDER IN QUESTION 26 AS they did the OTHER ITEMIZED JUDGMENTS, AND ALLOWED the PETITIONER

To attack the deferred probation order without it being a "Judgment of conviction". Since Morrison was not convicted at his deferred probation Hearing in 2004, that order was not a Judgment of conviction, therefore, it could not have been a final judgment as asked in Question 26 of the § 2254 Petition, nor could his 2004 deferred probation order be considered: "or two entirely separate and distinct judgments - one a deferred adjudication order and the other a Judgment of conviction and sentence that deal with two separate and distinct limitation periods under AEDPA," as stated in Tharp v. Thaler at 628 F.3d at 724.

Morrison contends that since he was not convicted, sentenced, or "in custody" in 2004 to 2005 as the § 2254 Petition questions ask, and defined for purposes of 2254(a), he could not have invoked jurisdiction in in the federal court for habeas relief via a § 2254 Petition in 2004 without having a conviction, sentence, or held in Jail or Prison. Therefore the Deferred probation order could not have been a final judgment for triggering the AEDPA's 1-year limitation period as held by the district court, and the Fifth circuit in Tharp and Caldwell. This argument has also went unaddressed by the district court and Fifth circuit, and their decision to not answer this question of law has rendered the entire § 2254 Petition void for vagueness because that Petition only applies to Petitioners who have a conviction, sentence, or are being held in a Jail or prison, or Petitioners who are challenging a Parole Revocation Hearing or Prison Disciplinary Hearing or Proceeding. All three listed Groups of able Petitioners involve people who have been convicted or are in prison. A person on deferred probation does not have a conviction sentence, or imprisoned; so to time bar that person who does not even qualify to file a 2254 Petition, as mandated by the § 2254's plain language, would be an impediment for much deserved relief to a prisoner who timely filed his 2254 Petition to complain about his unconstitutional imprisonment

After his Judgment of conviction did Become Final

CONCLUSION

This Court has made it clear that a Judgment means the sentence, and therefore, a deferred probation order that does not sentence anyone to anything cannot be a final judgment. Morrison urges this court to grant this writ of certiorari to resolve this issue so the Fifth circuit and other courts do not continue to deem a deferred adjudication probation order that is unappealable and does not convict or sentence people to prison as a final judgment for the purposes of 2244(d)(1)(A). If that is allowed to continue, what is to stop that court from eventually deeming a civil commitment order, or even an indictment or complaint as a final judgment, resulting in the 2244(d)(1)(A) limitation period being a stop block for the § 2254 writ of habeas corpus in those instances, as it has been for Morrison's credible constitutional claims. The Fifth circuits decision to treat a deferred adjudication probation order as a final judgment is contrary to the congressional intent of the AEDPA, and to federal law as determined by this court, therefore this writ of certiorari should be granted and Morrison's Grounds 2-7 and 12 should be remanded back to the district court to be ruled on the merits.

Question #4 (summarized): whether a person facing a revocation of deferred probation who has not been convicted, sentenced, as is facing 20 years prison has a sixth amendment right to the effective assistance of counsel to file their credible preconviction writ of habeas corpus issues in the trial court before he is found guilty and sentenced to prison at the [redacted] Revocation of his deferred probation Hearing.

Question #5 (Summarized): Whether a Trial Court can suspend a defendants Right to File A Preconviction writ of habeas corpus through the No Right To Hybrid counsel law when it was Filed pro se while having court Appointed counsel who told the court he would not File it Because it was out of his scope of Appointment.

Rule 10(c): The Fifth circuit has decided an important Question of Federal law that conflicts with Relevant decisions of this court by its conclusory denial of Morrison's COA Regarding Questions #4 and 5, essentially agreeing with the district courts decision that was in conflict with this Courts decisions in Scott v. Illinois 99, S.Ct 1158, 1162 (1978); Lassiter v. Dept. of Soc. Ser. of Durham City 101 S.Ct 2153, 2159 (1981); Argersinger v. Hamlin 92 S.Ct 2006 (1972); Mempa v. Rhay 389 U.S. 128, 134 (1967); Strickland v. Washington 104 S.Ct 2052 (1984); Rothgery v. Gillespie County TX. 128 S.Ct 2578 (2008), among others that have held that a Defendant has the Sixth Amendment Right to the Effective assistance of counsel at every critical stage of the criminal proceeding or whenever his substantial Rights are affected, especially if he is indigent and facing the deprivation of his liberty by being sentenced to even a short term in prison.

In the 2011 revocation of probation Hearing, counsel would not properly file nor help Morrison properly file his credible Preconviction Habeas Issues because he was not appointed to do so. This resulted in Morrison's Right to habeas corpus being denied since the court did not entertain his pro se preconviction writ while having counsel.

Despite Morrison being entitled to an inquiry into the lawfulness of his restraint and the removal thereof if unlawful through the suspension clause of the Constitution and this courts Holdings in Boumediene v Bush 128 S.Ct 2229, 2246-47 (2008) and I.N.S. v St. Cyr 121 S.Ct 2271, 2279-80 (2001), the district court denied Morrison's Ground 8 Regarding his Right to writ of habeas corpus being suspended in a way that conflicts with this courts Decisions in the above cases, by saying Morrison has no Right to File documents with the court while Represented by counsel, as no Right of Hybrid Representation exists in Texas. See Appendix 3 at p.17. Also, on page 19-20, the district court said Morrison has no Right to the appointment of counsel to pursue writ of habeas corpus, Referring to only postconviction writs, in spite of what he said on page 18 where he admits that the letter Morrison Filed was a preconviction writ where according to the above cited to cases, Morrison did have the Right to appointed counsel since he was not convicted, and was facing 20 years imprisonment.

Conclusion

CAN THE CONSTITUTIONAL Right TO WRIT OF HABEAS corpus be suspended by A NO Right TO Hybrid counsel LAW? THE CASES this COURT HAS ~~[illegible]~~ Ruled ON THAT Deal with suspension of the Great WRIT, HAVE Proven THAT The Great WRIT IS Given TO Even enemy combatants, AND Foriegners. SEE BOUMediene, AND ST CYR SUPRA. Plus IT IS well ESTABLISHED THAT MORRISON DID HAVE The Right TO EFFective counsel AT his PROBATION REVOCATION Hearing Proceedings, AND THAT COUNSEL should Help The ACCUSED IN COPING with Legal PROBLEMS, Rothgery SUPRA AT 554 U.S. 191, 212 n.16, AND TO LOOK OUT FOR THE defendants BEST INTEREST, which MORRISON CONTENDS INCLUDES Filing PRECONVICTION CONSTITUTIONAL ISSUES THAT CALLS INTO QUESTION The LEGITIMACY OF HIS RESTRAINT by The STATE. MORRISON COULD NOT Exercise HIS Right TO HABEAS corpus Because HIS PRO SE PRECONVICTION WRIT WAS NOT considered A WRIT OF HABEAS corpus SINCE IT WAS Filed Pro se while MORRISON HAD COUNSEL. ALSO COUNSEL KNEW ABOUT The WRIT, AND WOULD NOT File IT Properly FOR MORRISON SINCE He WAS NOT APPOINTED TO File THE WRIT. ATTORNEYS Are suppose TO Help The defendant, ~~NOT~~ They ARE NOT suppose TO HAMPER THE Defendants Progress OF ABILITY TO File THINGS IN COURT. SINCE MORRISON WAS NOT APPOINTED COUNSEL TO Help HIM File THIS PRECONVICTION WRIT ISSUES. THE COUNSEL He DID HAVE Refused TO Help HIM Properly File HIS Pro se WRIT, AND The TRIAL Judge would NOT Hear The Pro se WRIT Because OF APPOINTED COUNSEL, MORRISON HAD NO WAY OF Filing A PRECONVICTION WRIT IN The TRIAL COURT. Surely SINCE ENEMY COMBATANTS AND Foriegners HAVE The Right TO HABEAS CORPUS, SO CAN MORRISON who IS A CITIZEN OF This Great COUNTRY AND FOUGHT IN The U.S. NAVY TO Protect RIGHTS Like Filing WRIT OF HABEAS CORPUS, AND HAVING The EFFECTIVE ASSISTANCE OF COUNSEL. Considering This COURTS PAST Precident ON WRIT OF HABEAS CORPUS AND Right TO EFFECTIVE COUNSEL, IT IS MORRISONS PRAYER THAT This COURT GRANTS This WRIT OF CERTIORARI SO other Peoples Right TO EFFECTIVE COUNSEL AND Right TO HABEAS CORPUS Do NOT Get VIOLATED AT A Deferred ADJUDICATION PROBATION REVOCATION HEARING AS WAS DONE IN MORRISON'S CASE. (See PAGES 27-31 of Brief/COA FOR A more Detailed Argument for These TWO QUESTIONS, IF Needed).