

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVIE ANDRE' ROBERSON — PETITIONER
(Your Name)

VS.

LORIE DAVIS; T.D.C.J.-C.I.D. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEVIE ANDRE' ROBERSON #1877155
(Your Name)

200 SPUR 113 BOYD UNIT
(Address)

TEAGUE, TEXAS 75860
(City, State, Zip Code)

254. 739. 5555
(Phone Number)

QUESTION(S) PRESENTED

- 1) WHETHER DISTRICT COURT'S DECISION TO DENY PETITIONER'S HABEAS PETITION AS BARRED BY STATUTE OF LIMITATION OF THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) DEBATABLE OR WRONG?
- 2) WHETHER THE REQUIREMENTS TO THE CHARGES LISTED IN THE INDICTMENT 114-0760-13 FAILURE TO REGISTER VIOLATES PETITIONER'S EX POST FACTO LAW RIGHTS?
- 3) WHETHER PETITIONER'S EQUAL PROTECTION OF THE LAW CLAIM IS PROPERLY BEFORE THE COURT?
- 4) WHETHER TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.002 TX. C. Cr. PROC. IS APPLIED EQUALLY AMONGST ALL SEX OFFENDERS IN THE STATE?
- 5) WHETHER SEX OFFENDERS WITH CONVICTIONS PRIOR TO SEPT. 1, 1970 ARE SIMILARLY SITUATED AS SEX OFFENDERS WITH CONVICTIONS ON OR AFTER SEPT. 1, 1970?
- 6) WHETHER THE DISTRICT COURT'S DECISIONS IS "CONTRARY TO" CLEAR AND ESTABLISHED FEDERAL LAWS AND/OR "UNREASONABLY APPLIED SUPREME COURT PRECEDENTS TO PETITIONER'S CASE?"
- 7) WHETHER PETITIONER'S STATE COURT COUNSEL'S PERFORMANCE SO DEFICIENT AS TO CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL?

QUESTION(S) PRESENTED CONT.

- 8) WHETHER PETITIONER'S INDICTMENT CAUSE NO. 114-0760-13 FAILURE TO REGISTER IS FUNDAMENTALLY INVALID?
- 9) WHETHER PETITIONER'S CONVICTION WAS BASED ON A CONSTITUTIONALLY INVALID STATUTE ART. 62.002 TX. C. CR. PROC. ?
- 10) WHETHER JURISTS OF REASON WOULD FIND PETITIONER'S HABEAS CLAIM MAKE A "SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT?
- 11) WHETHER TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.002 TX. C. CR. PROC. DENY PETITIONER AND SEX OFFENDERS LIKE HIM EQUAL PROTECTION OF THE LAW ?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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 judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was APRIL 10, 2018.

[] No petition for rehearing was timely filed in my case.

[☒] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: APRIL 10, 2018, and a copy of the order denying rehearing appears at Appendix A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) **AMENDMENT V;** NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE ~~TRIAL~~ PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION. (APPENDIX B PG 9)
- 2.) **AMENDMENT VI;** IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESS AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE. (NO RETRIBUTABLE)
- 3.) **AMENDMENT VIII;** EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES, IMPOSED, NOR CRUEL AND UNUSAL PUNISHMENT INFLICTED. (APPENDIX B PG 9)

4.) AMENDMENT XIV, SECTION 1.; ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF THE CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN IT'S JURISDICTION THE EQUAL PROTECTION OF LAWS. (APPENDIX B PG 6-7)

5.) DUE PROCESS CLAUSE (1890); THE CONSTITUTIONAL PROVISION THAT PROHIBITS THE GOVERNMENT FROM UNFAIRLY OR ARBITRARILY DEPRIVING A PERSON OF LIFE, LIBERTY OR PROPERTY. THERE ARE TWO DUE PROCESS CLAUSE IN THE UNITED STATES CONSTITUTION, ONE IN THE 5TH AMENDMENT APPLY TO THE FEDERAL GOVERNMENT AND ONE IN THE 14TH AMENDMENT APPLYING TO THE STATES (ALTHOUGH THE 5TH AMENDMENT'S DUE PROCESS CLAUSE ALSO APPLIES TO THE STATES UNDER THE INCORPORATION DOCTRINE) OR EQUAL PROTECTION CLAUSE. (APPENDIX B PG 7)

6.) EX POST FACTO LAW; A STATUTE THAT CRIMINALIZES AN ACTION AND SIMULTANEOUSLY PROVIDES FOR PUNISHMENT OF THOSE WHO TOOK THE ACTION BEFORE IT HAD LEGALLY BECOME A CRIME; SPECIF, A LAW THAT IMPERMISSABLY APPLIES RETROACTIVELY, ESP. IN A WAY THAT NEGATIVELY AFFECTS A PERSON'S RIGHTS

AS BY MAKING INTO A CRIME AN ACTION THAT WAS LEGAL WHEN IT WAS COMMITTED

OR INCREASING THE PUNISHMENT FOR PAST CONDUCT. • EX POST FACTO CRIMINAL

LAWS ARE PROHIBITED BY THE UNITED STATES CONSTITUTION, BUT RETROSPECTIVE

CIVIL LAWS MAY BE ALLOWED. (APPENDIX B pg 8-9)

7.) AUTTERORISM, EFFECTIVE DEATH PENALTY ACT (AEDPA) OF 1996, PROVIDES FOR
STATUTE OF

A ONE YEAR LIMITATION IN HABEAS PROCEEDINGS. (APPENDIX B pg 2.)

8.) "MEGAN'S LAW" TITLED SEX OFFENDER REGISTRATION ACT OF 1996 (SORA), MEGAN

KAWKA A 7 YEAR OLD NEW JERSEY GIRL WHO WAS SEXUALLY ASSAULTED AND MURD-

ERED IN 1994 BY A NEIGHBOR WHO UNKNOWN TO THE VICTIM'S FAMILY HAD RICK

CONVICTIONS FOR SEX OFFENSES AGAINST CHILDREN. THE CRIME CAUSE IMPETUS
TO LAWS FOR THE "MANDATORY REGISTRATION OF ALL SEX OFFENDERS, AND

"PUBLIC NOTIFICATION". IN 1996 CONGRESS PASSED THE "MEGAN'S REGISTRY

LAW" REQUESTS "MANDATORY REGISTRATION OF ANY CONVICTED SEX OFFENDER"

AND "PUBLIC NOTIFICATION". (APPENDIX B pg 7)

9) UNITED STATES DEPT OF JUSTICE RULE 28 C.R.S. 72.3, MANDATORY

REGISTRATION APPLY TO ALL SEX OFFENDERS, INCLUDING SEX OFFENDERS CON-

VICTED OF THE OFFENSE FOR WHICH REGISTRATION IS REQUIRED PRIOR TO THE

ENACTMENT OF THAT ACT. (BAGGS FOR PETITIONERS' EQUAL PROTECTION OF THE LAW

CLAIM)

10.) ART. 62.001 TEXAS CODE OF CRIMINAL PROCEDURAL; (5) "REPORTABLE CONVICTION"

OR "ADJUDICATION" MEANS A CONVICTION OR ADJUDICATION, INCLUDING AN ADJUDICATION OF DELINQUENT CONDUCT OR A DEFERRED ADJUDICATION, THAT REGARDLESS OF THE PENDING OF AN APPEAL IS A CONVICTION FOR OR AN ADJUDICATION FOR OR BASED ON; (SEXUAL OFFENSES LISTED IN (5) A-L & (6) A-E); IS REQUIRED TO REGISTER AS A SEX OFFENDER. (APPENDIX B PG 6)

11.) ART. 62.002 TEXAS CODE OF CRIMINAL PROCEDURAL; "APPLICABILITY OF CHAPTER"

THIS CHAPTER APPLIES ONLY TO A "REPORTABLE CONVICTION" OR "ADJUDICATION" OCCURRING ON OR AFTER SEPT. 1, 1970. (APPENDIX B PG 6)

12.) FEDERAL ~~CODE~~ 34 § 20911 "RELEVANT DEFINITIONS"; THE TERM "SEX

OFFENDER" MEANS AN INDIVIDUAL WHO WAS CONVICTED OF A SEX OFFENSE, (APPENDIX B PG 6-7)

13.) ART. 62.102 TX.C. CR. PROC. "FAILURE TO COMPLY WITH REGISTRATION REQUIRE-

MENTS"; (2) A PERSON COMMITTED AN OFFENSE IF THE PERSON IS REQUIRED TO REGISTER AND FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER

(62) (APPENDIX B PG 8)

STATEMENT OF THE CASE

DEC. 9, 2009 PETITIONER WAS PAROLED FROM TEXAS DEPT. OF CRIMINAL JUSTICE - CORRECTION INSTITUTION DIVISION (T.D.C.J.- C.I.D.) FOR THE OFFENSE MANUFACTURE/ DELIVERY OF A CONTROLLED SUBSTANCE CAUSE NO. 114-1462-03 WITH THE STIPULATION TO REGISTER AS A SEX OFFENDER PURSUANT TO TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.062 TX. C. CR. PROC. BECAUSE OF HIS PRIOR DISCHARGED RAPE CONVICTION CAUSE NO. 7-82-416 (APPENDIX E pg 3) AS A CONDITION OF PAROLE. PETITIONER MADE THESE PERIODIC IN-PERSON OFFICE VISIT ON OR BEFORE HIS BIRTHDAY (6-24-1961) AS REQUIRED BY THE PROVISIONS OF TEXAS SEX OFFENDER REGISTRATION PROGRAM ART. 62.102 TX. C. CR. PROC. (APPENDIX D pg 25)

HOWEVER LATE FEB/2013 THE SMITH COUNTY SHERIFF DEPT. MADE UNSUCCESSFUL RESIDENT AND EMPLOYMENT CHECKS TO ARREST PETITIONER ON A PAROLE VIOLATION WARRANT (APPENDIX D pg 24 para 2 ; 27 para 1). MARCH 26, 2013 PETITIONER WAS ARRESTED FOR VIOLATION OF PAROLE IN SMITH COUNTY, TEXAS ^{COUNTY} THE^T IN WHICH HIS REGISTRY FILES WAS UP TO DATE. NEVERTHELESS ON MARCH 28, 2013 A WARRANT WAS ISSUED FOR PETITIONER'S ON THE CHARGE OF FAILURE TO COMPLY WITH THE PROVISIONS OF THE SEX OFFENDER REGISTRATION PROGRAM ART. 62.102 TX. C. CR. PROC. PETITIONER WAS INDICTED BY A SMITH COUNTY GRAND JURY ON THAT 3RD DEGREE CHARGE AND THE PUNISHMENT RANGE WAS ENHANCED TO 25 YEARS TO

LIFE CONFINEMENT IN THE TEXAS DEPT. OF CRIMINAL JUSTICE - CORRECTIONAL INSTITUTION DIVISION (T.D.C.J.-C.I.D.) AUG. 1, 2013 PETITIONER WAS SENTENCE TO 25 YEARS CONFINEMENT IN TEXAS DEPT. OF CRIMINAL JUSTICE - PRISON

ON THE ADVICE OF HIS STATE COURT COUNSEL PETITIONER PLEAD GUILTY TO AVOID A LIFE SENTENCE (APPENDIX D Pg 26 PARA 3) AND RECEIVED 25 YEARS IN T.D.C.J.-C.I.D., PETITIONER AT THE TIME OF PLEA WAIVED HIS RIGHTS TO APPEAL.

NOV. 6, 2014 PETITIONER FILED AN APPLICATION FOR WRIT OF HABEAS CORPUS ART. 11.07 TX. C. CR. PROC. CLAIMING (1) WRONGFULLY CONVICTED BASED UPON A VOID INDICTMENT; (2) CONVICTION VIOLATED HIS EX POST FACTO RIGHTS; (3) HIS CONVICTION VIOLATED DOUBLE JEOPARDY; (4) HIS CONVICTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND (5) HE RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. THE TEXAS COURT OF CRIMINAL APPEALS DENIED PETITIONER'S HABEAS CORPUS ART. 11.07 TX. C. CR. PROC. APPLICATION WITHOUT A WRITTEN ORDER 6-24-2015.

PETITIONER THEN FILED HIS FEDERAL HABEAS CLAIM FEB. 26, 2016. THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS (TYLER) ADOPTED THE REPORT AND RECOMMENDATION OF THE MAGISTRATE TO OVERRULE PETITIONER'S OBJECTIONS, ISSUED AN ORDER DENYING HIS HABEAS CLAIM AS TIME-BARRED APPLYING THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) WITH PREJUDICE AND ORDERED AN INSURANCE FOR CERTIFICATE OF APPEALABILITY BE DENIED SUA SPONTE 6-13-2017 (APPENDIX B Pg 10) THE DISTRICT COURT DID NOT MAKE A DECISION

ON PETITIONER'S INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM NEITHER DID THE THE MAGISTRATE'S REPORT AND RECOMMENDATION (APPENDIX C pg 1-9) ISSUE AN OPINION. PETITIONER THEN FILED A PETITION FOR INSURANCE OF CERTIFICATE OF APPEALABILITY IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT APPEALING THE DECISION OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS (TYLER) MAKING THE FOLLOWING ARGUMENTS;

THAT THE DISTRICT COURT "UNREASONABLY APPLIED" THE ONE YEAR STATUTE OF LIMITATION FOR FILING FOR HABEAS RELIEF CLAIMS PURSUANT THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) TO DENY PETITIONER'S HABEAS CLAIM, ALTHOUGH PETITIONER FILED HIS APPLICATION FOR WRIT OF HABEAS CORPUS PETITION IN COMPLIANCE WITH TEXAS APPLICABLE PROCEDURE FILING REQUIREMENTS

FOR OUT OF TIME POST CONVICTION APPEALS, ART. 11.07 TX. C. CL. PROC.; SEE VILLEGAS V. JOHNSON, 184 F.3d 467 (5TH CIR 1999) 1. HABEAS CORPUS. 603

PETITIONER ARGUES THAT HIS CONVICTION WAS BASED ON A FUNDAMENTALLY INVALID AND VOID INDICTMENT CAUSE NO. 114-0760-13 FAILURE TO REGISTER AS A SEX OFFENDER BECAUSE, THE REQUIREMENTS TO THE CHARGES LISTED IN THE INDICTMENT (APPENDIX E pg 1-2) IMPOSED AN "AFFIRMATIVE DISABILITY" AND "RESTRAINT" AS APPLIED TO THE PETITIONER, PURSUANT A PRIOR DISCHARGED RAPE CONVICTION CASE NO. 7-82-414 (APPENDIX E pg 3) AND THAT HIS CONVICTION WAS BASED ON AN UNCONSTITUTIONAL STATUTE ART. 62.002 TX C. CL. PROC., PETITIONER ARGUES, ALTHOUGH HE IS REQUIRED

TO REGISTER AS A SEX OFFENDER UNDER "MELAN'S LAW" TITLED SEX OFFENDER
REGISTRATION ACT OF 1996 AND UNITED STATES DEPT. OF JUSTICE RULE 28 C.F.R. 72.3
REQUIRES MANDATORY REGISTRATION AND PUBLIC NOTIFICATION OF ALL SEX OFFEN-
DERS, REGARDLESS TO WHEN THEIR CONVICTION OCCURRED. UNLIKE TEXAS SEX OF-
FENDER REGISTRATION STATUTE ART. 62.002 TX. C. CR. PROC. WHICH APPLIES ONLY TO
SEX OFFENDERS WITH CONVICTIONS OR ADJUDICATION ON OR AFTER SEPT. 1, 1970. THE
STATUTE EXEMPTS SEX OFFENDERS SIMILARLY SITUATED WITH CONVICTION PRIOR TO
SEPT. 1, 1970. THE UNEQUAL APPLICATION OF ART. 62.002 TX. C. CR. PROC. AS APPLIED
TO PETITIONER AND SEX OFFENDERS WITH CONVICTIONS ON OR AFTER SEPT. 1, 1970
DENIES THEM "EQUAL PROTECTION OF THE LAW" OF THE 14TH AMENDMENT, RENDER-
ING THE JUDGEMENT IN CAUSE NO. 114-0760-13 FAILURE TO REGISTER VOID.

THE DISTRICT COURT FAILED TO DECIDE OR ISSUE AN OPINION TO PETITIONER'S 6TH
AMENDMENT'S "EFFECTIVE ASSISTANCE OF COUNSEL CLAIM (APPENDIX B PG 1-10)
NEITHER DID THE MAGISTRATE'S REPORT & RECOMMENDATIONS (APPENDIX C PG 1-9)

PETITIONER ARGUES THAT HIS STATE COURT COUNSEL FAILED TO EXPAND THE
PRETRIAL INVESTIGATION BEYOND THE PROVISIONS OF THE TEXAS SEX OFFENDER
REGISTRATION PROGRAM ART. 62.102 TX. C. CR. PROC. FOR MITIGATING FEDERAL
LAW AND UNITED STATES CONSTITUTIONAL VIOLATIONS OF TEXAS SEX OFFENDER
REGISTRATION STATUTE ART. 62.002 TX. C. CR. PROC. AS APPLIED TO PETITIONER'S

CASE, INSTEAD ADVISED HIM TO PLEAD GUILTY TO AVOID A LIFE SENTENCE (APPENDIX D pg 26 para 2-3). THE FAILURE TO CONDUCT AN IN-DEPTH PRETRIAL INVESTIGATION DEPRIVED PETITIONER OF A DEFENSE AND A FAIR TRIAL.

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENIED PETITIONER'S PETITION FOR INSURANCE OF CERTIFICATE OF APPEALABILITY ON APRIL 10, 2018 (APPENDIX A pg 1-2)

REASONS FOR GRANTING THE PETITION

PETITIONER MOVES FOR THE HONORABLE JUSTICES OF THE SUPREME COURT TO REVIEW HIS PETITION FOR WRIT OF CERTIORARI PURSUANT MILLER-EL V COCK-RELL, 123 S. Ct. 1029 (2003)... CERT GRANTED THAT CLEARLY MAKES A "SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT" THAT JURISTS OF REASON WOULD FIND THE DISTRICT COURT'S ASSESSMENT OF HIS CONSTITUTIONAL CLAIMS DEBATABLE AND/OR WRONG.

THE CERTIFICATE OF APPEALABILITY UNDER 28 U.S.C. § 2253 REQUIRES AN OVERVIEW OF THE CLAIMS IN THE HABEAS PETITION AND A GENERAL ASSESSMENT OF THEIR MERITS. THE SUPREME COURT THEN LOOK TO THE DISTRICT COURT'S APPLICATION OF THE ANTI-TERRORISM & EFFECTIVE DEATH PENALTY ACT (AEDPA) TO PETITIONER'S CLAIMS AND ASK WHETHER THAT RESOLUTION WAS DEBATABLE AMONGST JURISTS OF REASON. (QUESTION #1 FOR REVIEW)

PETITIONER MOVES THE SUPREME COURT TO APPLY LOCKYER V. ANDRADE TO HIS CASE, LOCKYER V. ANDRADE, 123 S.Ct. 1166 (2003) HABEAS CORPUS 450.1, 452

"ANTI-TERRORISM & EFFECTIVE DEATH PENALTY ACT (AEDPA) DOES NOT REQUIRE A FEDERAL HABEAS COURT TO ADOPT ANY ONE METHODOLOGY IN DECIDING THE ONLY QUESTION THAT MATTERS, WHETHER A DISTRICT (STATE) COURT'S DECISION IS "CONTRARY TO" OR INVOLVED AN "UNREASONABLE APPLICATION OF" CLEARLY ESTABLISHED FEDERAL LAW." 28 U.S.C. 2254 (2)(1)

PETITIONER ARGUES THAT THE DISTRICT COURT "UNREASONABLY APPLIED" THE SUPREME COURT'S PRECEDENT IN SMITH V. DOE, 123 S.Ct. 1140 (2003), "THAT THE REQUIREMENTS OF THE PROVISIONS TO THE SEX OFFENDER REGISTRATION PROGRAM ART. 62.102 TX. C. CR. PROC. IN THE INDICTMENT CAUSE NO. 114-0760-13 FAILURE TO REGISTER OF (1) FAILURE TO COMPLY WITH CHANGE OF ADDRESS PROVISIONS (2) FAILURE TO COMPLY WITH CHANGE/VISITATION PROVISIONS AND (3) FAILURE TO COMPLY WITH EMPLOYMENT STATUS CHANGE PROVISIONS (APPENDIX E pg 1-2), "REQUIRED THE PETITIONER TO MAKE PERIODIC IN-PERSON OFFICE VISITS TO UPDATE HIS REGISTRY FILES AND TO BE PHYSICALLY PRESENT DURING UNANNOUNCED RESIDENT AND EMPLOYMENT CHECKS." SEE (APPENDIX D pg 25 para 2-3) THESE REQUIREMENTS RESEMBLES THE PUNISHMENT OF IMPRISONMENT AN "AFFIRMATIVE DISABILITY" AND "RESTRAINT." SEE SMITH V. DOE, 123 S.Ct. 1140 AT 1151 (2003) THE SUPREME COURT HAS CONSIDERED THE SEX OFFENDER REGISTRATION

ACT EX POST FACTO CHALLENGE AND FOUND IT TO BE NON-PUNITIVE AND DID NOT VIOLATE EX POST FACTO LAW PROVIDED THE ACT IMPOSES NO PHYSICAL RESTRAINTS THAT RESEMBLES THE PUNISHMENT OF IMPRISONMENT, WHICH IS THE PARADIGMATIC OF AN "AFFIRMATIVE DISABILITY AND RESTRAINT" CITING HUDSON, 522 U.S. 93, 99 (1997)

THE DISTRICT COURT'S DECISION IN REGARDS TO PETITIONER'S EX POST FACTO ARGUMENT IS "CONTARY TO" THE SUPREME COURT'S REJECTION OF THE NINTH CIRCUIT'S ARGUMENT BY DECIDING THAT, "WHILE IT MAY BE TRUE, AS ROBERSON CONTENDS, THAT THE NINTH CIRCUIT HELD THAT THE REQUIREMENTS OF PERIODIC UPDATES IMPOSED AN AFFIRMATIVE DISABILITY AND THAT THE REGISTRATION OBLIGATIONS WERE RETRIBUTIVE, THE REVERSAL OF THE NINTH CIRCUIT'S DECISION BY THE SUPREME COURT WIPE THESE HOLDINGS AWAY AND RENDERED THEM OF NO LEGAL EFFECT." (APPENDIX B AT P 8 8 PARA 2-3)

THE SUPREME COURT RULING TO THIS SPECIFIC ORAL ARGUMENT IN SMITH V. DOE, 123 S. CL 1140 AT 1151-52 (2003) THE COURT HELD, "THAT THE ALASKA'S REGISTRY ACT, "FAIR ON IT'S FACE" REQUIRES NO PERIODIC IN-PERSON OFFICE VISIT/APPEARANCE TO UPDATE REGISTRY FILES BY ANY SEX OFFENDER SUBJECTED TO THE ACT, THE SEX OFFENDER IS FREE TO MOVE WHERE THEY WISH AND TO LIVE & WORK AS OTHER CITIZENS WITH NO

SUPERVISION. THIS SUPREME COURT PRECEDENT SUPPORT PETITIONER'S EX POST FACTO
HABEAS ARGUMENT, THAT REQUIRING HIM TO MAKE PERIODIC IN-PERSON OFFICE VISITS TO
UPDATE HIS REGISTRY FILES AND TO BE PHYSICALLY PRESENT DURING UNANNOUNCED
RESIDENT AND EMPLOYMENT CHECKS IS PUNITIVE MEASURES FORBIDDEN BY THE
EX POST FACTO CLAUSE. SEE CALIFORNIA DEPT. OF CORRECTION V. MORALES, 514 U.S. 499,
505; 115 S.Ct. 1597, 1601; 131 L.Ed. 2d 588 (1995) THE EX POST FACTO CLAUSE,
"FORBIDS THE APPLICATION OF ANY NEW PUNITIVE MEASURES TO A
CRIME ALREADY CONSUMMATED." PETITIONER DISCHARGED/CONSUMMATED CAUSE
NO. 7-82-416 RAPE ON 3-16-1986 SEE APPENDIX E pg 3. THE "UNREASONABLE
APPLICATION PRONG" OF HABEAS STATUTE PERMITS FEDERAL HABEAS COURTS TO
GRANT WRIT IF DISTRICT COURT IDENTIFIES CORRECT GOVERNING LEGAL PRINCIPLES
FROM SUPREME COURT PRECEDENTS BUT UNREASONABLY APPLIES THAT PRINCIPLE
TO FACTS OF THE PETITIONER'S CASE. SEE WIGGINS V. SMITH, 123 S.Ct. 2527 (2003)
1. HABEAS CORPUS 450.1 "28 U.S.C. § 2254(d)(1)" THIS IS EXACTLY WHAT
THE DISTRICT COURT HAS DONE REGARDING PETITIONER'S EX POST FACTO
CLAIM, PETITIONER MOVES THE COURT TO CONSIDER, "WHETHER THE REQUIREMENTS TO
THE CHARGES LISTED IN THE INDICTMENT CAUSE NO. 114-0760-13 FAILURE TO
REGISTER DENY PETITIONER OF HIS RIGHTS TO EX POST FACTO LAW?" PETITIONER
ARGUES, "IT DOES," RENDERING THE INDICTMENT FUNDAMENTALLY INVALID, VOID.

NEXT PETITIONER ARGUES, THAT HIS "EQUAL PROTECTION OF THE LAW CLAIM" IS PROPERLY BEFORE THE COURT AND NOT BARRED BY THE STATUTE OF LIMITATION AS IN THE DISTRICT COURT'S DECISION (APPENDIX B pg 7) SEE UNITED STATES V. COTTON, 122 S. CT. 1781 (2002) CRIMINAL LAW 105; 1033.1 "DEFECTS IN SUBJECT MATTER JURISDICTION CAN NEVER BE FORFEITED OR WAIVED AND REQUIRE CORRECTION, REGARDLESS OF WHETHER ERROR WAS RAISED IN DISTRICT COURT." ALSO SEE SIBRON V. NEW YORK, 392 U.S. 40 (1968) "A CHALLENGE TO JURISDICTION CAN BE RAISED AT ANY TIME, EVEN DURING ORAL ARGUMENTS IN THE SUPREME COURT."

PETITIONER ARGUES, THAT HIS CONVICTION WAS BASED ON THE UNEQUAL APPLICATION OF ART. 62.002 TX. C. CR. PROC. THAT EXEMPTS SEX OFFENDERS WITH CONVICTION PRIOR TO SEPT. 1, 1970 FROM REGISTERING. SEX OFFENDERS ARE NOT A DIVIDED CLASS, THE CLASSIFICATION OF ALL SEX OFFENDERS SIMILARLY SITUATED AS A CLASS HAS RATIONAL BASIS FOR THE LEGITIMATE GOVERNMENTAL OBJECTIVE OF THE SEX OFFENDER REGISTRATION ACT, WHICH IS NON PUNITIVE AND NOT AN AFTER THE FACT CRIMINAL SANCTION ON ANY CONVICTED SEX OFFENDER. SEE SMITH V. DOE, 123 S. CT. 1140, 1153 (2003) "LEGISLATURE'S FINDINGS ARE CONSISTANT WITH THE GRAVE CONCERN OF CONVICTED SEX OFFENDERS HIGH RATE OF RECIDIVISM AND THEIR DANGEROUSNESS AS A CLASS. ALSO SEE MEKUNE V. DILE, 122 S. CT.

2017, 2024 (2002) THE SUPREME COURT HELD, "THAT ALL CONVICTED SEX

OFFENDERS ARE A SERIOUS THREAT IN THIS NATION." THE SEX OFFENDER

REGISTRATION & NOTIFICATION ACT 34 § 20911 "RELEVANT DEFINITION"

(1) THE TERM "SEX OFFENDER" MEANS AN INDIVIDUAL WHO WAS

CONVICTED OF A SEX OFFENSE, REGARDLESS TO WHEN THEY WERE CONVICTED.

TO SUBJECT TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.002, TX. C.

CR. PROC. TO RATIONAL BASIS REVIEW, PETITIONER MUST ESTABLISH DISCRIMA-

TORY INTENT. THE DISCRIMINATORY IMPACT ELEMENT OF AN "EQUAL PROTECTION

CLAIM" MAY BE SATISFIED WITH STATISTICAL EVIDENCE. SEE EG. CHAVEZ V

STATE, 251 F.3d 612, 638 (7TH CIR 2001) THE COURTS HAS REPEATEDLY RELIED

ON STATISTICS TO DO JUST THAT, CITING YICK WO V. HOPKINS, 118 U.S. 356 AT 374

(1886) AND HUNTER V. UNDERWOOD, 471 U.S. 222 AT 227 (1985) THE STATISTIC

PROFFERED MUST ADDRESS THE CRUCIAL QUESTION OF WHETHER ONE CLASS

IS BEING TREATED DIFFERENTLY FROM ANOTHER CLASS THAT IS OTHERWISE

SIMILARLY SITUATED.

THE UNITED STATES JUSTICE BUREAU'S REPORT AND THE NATIONAL INSTITUTE

OF JUSTICE DEPT. RESEARCH (1997) ON SEX OFFENSES, SEX OFFENDERS AND

CHILD MOLESTERS STATES; SEX OFFENDERS ARE MORE LIKELY TO BE RE-

ARRESTED FOR A NEW RAPE/SEXUAL AFTER RELEASE THAN ANY OTHER

OFFENDER" AND "THAT CHILD MOLESTERS WAIT AS LONG AS 20 YEARS AFTER THEY'RE RELEASED TO REOFFEND. SEE SMITH V. DOE, 123 S. Ct 1140 at 1153 (2003) CITING STATISTIC REPORT IN MEKUNE V. LILE, 122 S. Ct 2017 at 2024 (2002)

PETITIONER ARGUES, "THAT THERE IS NO DIFFERENCE NOR DISTINCTION BETWEEN A SEX OFFENDER CONVICTED OF CHILD MOLESTATION ON AUGUST 31, 1970 AND SENTENCE TO 30 YEARS CONFINEMENT IN PRISON AND A SEX OFFENDER CONVICTED OF RAPE ON SEPT. 1, 1970 AND SENTENCE TO 30 YEARS IN PRISON. BOTH HAS A REPORTABLE CONVICTION THAT DEFINES THEM AS SEX OFFENDERS (34 § 20911) FOR THE LEGITIMATE GOVERNMENTAL OBJECTIVE OF REGISTERING. ACCORDING TO FEDERAL LAW "MEGAN'S LAW" MEGAN KANKA A 7 YEAR OLD NEW JERSEY GIRL WHO WAS SEXUALLY ASSAULTED AND MURDERED IN 1994 BY A NEIGHBOR WHO UNKNOWN TO THE VICTIM'S FAMILY HAD PRIOR CONVICTIONS FOR SEX OFFENSES AGAINST CHILDREN. IN 1996 CONGRESS PASSED "MEGAN'S LAW" TITLED SEX OFFENDER REGISTRATION ACT OF 1996 (SORA) "REQUIRING MANDATORY REGISTRATION OF ANY SEX OFFENDER" AND U.S. DEPT OF JUSTICE RULE 28CFR § 723 STATES, "MANDATORY REGISTRATION APPLY TO ALL SEX OFFENDERS, INCLUDING SEX OFFENDERS CONVICTED OF THE OFFENSE FOR WHICH REGISTRATION IS REQUIRED PRIOR TO THE ENACTMENT OF THAT ACT"

PETITIONER ARGUES, ALTHOUGH HE IS SUBJECTED TO REGISTERING UNDER FEDERAL

LAW, HE DO NOT CHALLENGE THE CONSTITUTIONALITY OF TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.002 TX. C. CR. PROC. AS A WHOLE, JUST THE VALIDITY OF "EQUAL PROTECTION OF THE LAW", BECAUSE THE STATUTE ONLY APPLY TO SEX OFFENDERS WITH CONVICTIONS OR ADJUDICATION ON OR AFTER SEPT 1, 1970. THE STATUTE EXEMPTS SEX OFFENDERS SIMILARLY SITUATED WITH CONVICTIONS PRIOR TO SEPT. 1, 1970 FROM REGISTERING. IT WOULD APPEAR THAT THE REGISTERING REQUIREMENTS OF ART. 62.002 TX. C. CR. PROC. PASSES CONSTITUTIONAL MUSTER AS IT IS RATIONALLY RELATED TO A LEGITIMATE GOVERNMENTAL OBJECTIVE, PROTECTING THE PUBLIC AND NOTIFYING THE COMMUNITY OF SEX OFFENDERS IN THE AREA. HOWEVER THE ESSENCE OF THE "EQUAL PROTECTION OF THE LAW REQUIREMENT" IS THAT THE STATE TREAT ALL THOSE SIMILARLY SITUATED THE SAME. SEE

CLEBURNE TEXAS V. CLEBURNE LIVING CR., 105 S. CT. 3249 (1995). CONST. LAW 211

"EQUAL PROTECTION CLAUSE'S COMMAND THAT NO STATE SHALL DENY

TO ANY PERSON WITHIN IT'S JURISDICTION THE EQUAL PROTECTION OF

THE LAWS [U.S.C.A. CONST. AMEND. 14]; IS ESSENTIALLY A DIRECTION

THAT ALL PERSONS SIMILARLY SITUATED SHOULD BE TREATED ALIKE."

PETITIONER ARGUES, THAT HE HAS RAISED A SUBSTANTIAL DENIED CONSTITUTIONAL RIGHT CLAIM REGARDING THE UNEQUAL APPLICATION OF TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.002 TX. C. CR. PROC. VIOLATING THE UNITED STATES CONSTITUTION 14TH AMENDMENT'S EQUAL PROTECTION GUARANTEE BECAUSE,

THE DISTRICT COURT OFFER NO RATIONAL BASIS EXPLANATION FOR THE EXEMPTION OF SEX OFFENDERS WITH CONVICTION 27 YEARS OLD WHO ARE OTHERWISE SIMILARLY SITUATED AS SEX OFFENDERS WITH CONVICTIONS ON OR AFTER SEPT. 1, 1970 WHEN BOTH CLASSES OF SEX OFFENDER'S CRIMES ARE THE SAME OR IS SIMILAR IN NATURE FOR THE LEGITIMATE GOVERNMENT OBJECTIVE OF REGISTERING. SEE;

ZEIGLER V. JACKSON, 638 F.2d 776 (5TH CIR 1981) "APPELLEES"

"APPLICATION OF A STATUTORY CHARACTER REQUIREMENT VIOLATED

APPELLANT'S RIGHT TO EQUAL PROTECTION BECAUSE APPELLEES

HAD WAIVED THE REQUIREMENT FOR INDIVIDUALS CONVICTED OF

SIMILAR OR MORE SERIOUS CRIMES," AND "WHERE WAIVERS OF

A RULE ARE NOT GRANTED WITH CONSISTENCY AND NO EXPLAIN-

ATION IS GIVEN FOR THE DISPARITY OF TREATMENT, A FINDING

OF DENIAL OF EQUAL PROTECTION MAY BE APPROPRIATED." Id. 780

NEXT ARGUMENT IS WHETHER TEXAS HAS APPLIED ITS SEX OFFENDER REGIST-

RATION STATUTE ART. 62.002 TX. C. CR. PROC. EQUALLY AMONGST ALL SEX OFFENDERS

IN THE STATE? PETITIONER ARGUES, THAT THE DISTRICT COURT'S DECISION, "THAT THE

1997 AMENDMENTS TO THE SEX OFFENDER REGISTRATION STATUTE TEX. CRIM. PROC.

ART. 62.002 EXPANDED THE CLASS OF PERSON REQUIRED TO REGISTER TO APPLY

TO THOSE INDIVIDUALS WHO HAD A REPORTABLE CONVICTION OR ADJUDICATION

OCCURRED ON OR AFTER SEPT. 1, 1970, IS NOT UNCONSTITUTIONAL (ART. 8A 6) IS

"CONTRARY TO" THE 14TH AMENDMENT'S "EQUAL PROTECTION OF THE LAW CLAUSE"

BECAUSE THE STATUTE ART. 62.002 TX. C. CRIM PROC. EXEMPTS SEX OFFENDERS WITH CONVICTIONS PRIOR TO SEPT 1, 1970 FROM REGISTERING WHO ARE SIMILARLY SITUATED AS THE PETITIONER. THE DISTRICT COURT OFFERS NO RATIONAL EXPLANATION FOR THE UNEQUAL TREATMENT. SEE MAHONES V. ADDICKS UT. DIST., 836

F.2d 921, 933-34 (5TH CIR 1988) "THE UNEQUAL APPLICATION OF A STATE LAW," THE SUPREME COURT HELD, "REQUIRES NOT ONLY THAT LAWS BE EQUAL ON THEIR FACE," BUT ALSO, "THAT THEY BE EXECUTED SO AS NOT TO

DENY EQUALITY." YICK WO V. HOPKINS, 118 U.S. 356; 6 S.Ct. 1064; 30 L.Ed.

220 (1886) ACCORDED ZEIGLER V. JACKSON, 638 F.2d 776, 779-80 (5TH CIR. 1981) "THE UNEQUAL APPLICATION OF A STATE LAW, 'FAIR ON ITS FACE,' MAY NOT AS A DENIAL OF EQUAL PROTECTION OF THE LAW" 14TH AMEND.

PETITIONER NOW ARGUES, WHETHER TEXAS SEX OFFENDER REGISTRATION STATUTE ARE, 62.002 TX. C. CR. PROC. IS A CONSTITUTIONALLY INVALID STATUTE?

THE DISTRICT COURT'S DECISION THAT, "THE FACT THAT PERSONS WITH CONVICTIONS OVER 27 YEARS OLD ARE NOT REQUIRED TO REGISTER DOES NOT RENDER THE STATUTE UNCONSTITUTIONAL EVEN WERE THIS CLAIM WAS PROPERLY BEFORE THE COURT (APPENDIX B pg 6 PARA 2) IS "CONTRARY TO" CLEAR AND ESTABLISHED FEDERAL LAW, "MEGAN'S LAW" TITLED SEX OFFENDER REGISTRATION ACT OF 1996 WHICH REQUIRES, "MANDATORY REGISTRATION OF ALL SEX OFFENDERS AND PUBLIC NOTIFICATION" AND

THE UNITED STATES DEPT. OF JUSTICE RULE 28 C.F.R. § 72.3 STATES, "MANDATORY REGISTRATION APPLY TO ALL SEX OFFENDERS, INCLUDING SEX OFFENDERS CONVICTED OF THE OFFENSE FOR WHICH REGISTRATION IS REQUIRED PRIOR TO THE ENACTMENT OF THAT ACT." THE DISTRICT COURT ALSO, "UNREASONABLY APPLIED" THE SUPREME COURT'S PRECEDENT TO PETITIONER'S EQUAL PROTECTION OF THE LAW CLAIM IN ITS DECISION BY, "OBSERVING THAT IN CONNECTICUT DEPT. OF PUBLIC SAFETY V. DOE, 538 U.S. 1, 7-8; 123 S. Ct. 1160; 155 L. Ed. 2d 98 (2003), THE SUPREME COURT HELD THAT CONNECTICUT'S SEX OFFENDER LAW, WHICH WAS "REMARKABLY SIMILAR" TO THE LAW IN TEXAS, WAS NOT UNCONSTITUTIONAL. (APPENDIX B PG 7 PARA 1)

PETITIONER ARGUES, IT IS TRUE, THE CONNECTICUT SEX OFFENDER LAW "IS NOT UNCONSTITUTIONAL" BECAUSE, CONNECTICUT'S "MEGAN'S REGISTRY LAW" REQUIRES ANY PERSONS CONVICTED OF SEXUAL OFFENSES AND CRIMES AGAINST CHILDREN TO REGISTER. CONNECTICUT, 123 S. Ct. 1160 AT 1161; 1164 (2003) UNLIKE TEXAS SEX OFFENDERS REGISTRATION STATUTE ART. 62.002 TX. C. CR. PROC. THAT APPLY ONLY TO SEX OFFENDERS WITH CONVICTIONS OR ADJUDICATIONS ON OR AFTER SEPT. 1, 1970. THE STATUTE EXEMPTS SEX OFFENDERS WITH CONVICTIONS PRIOR TO SEPT. 1, 1970

TO SURVIVE AN "EQUAL PROTECTION OF THE LAW CLAIM" TEXAS MUST APPLY ITS SEX OFFENDER REGISTRATION STATUTE TO INCLUDE ANY AND ALL CONVICTED SEX OFFENDERS IN THE STATE REGARDLESS OF WHEN THEIR CONVICTIONS OCCURRED. SEE

SMITH V. DOE, 123 S. Ct. 1140 (2003) THE ALASKA'S, "MEGAN'S REGISTRY LAW"

REQUIRES, "ANY & ALL "SEX OFFENDERS" OR "CHILD KIDNAPPERS" WHO IS PHYSICALLY PRESENT IN THE STATE TO REGISTER." MAT 1148, 1153 ALSO SEE CONNECTICUT DEPT. OF

PUBLIC SAFETY V. DOE, 123 S. CT. 1160, 1161, 1164 (2003) CONNECTICUT'S "MEGAN'S

REGISTRY LAW" REQUIRES ANY & ALL PERSONS CONVICTED OF SEX OFFENSES & "OFFENSE" AGAINST CHILDREN TO REGISTER."

THE SUPREME COURT EXPLAINED, "THE FACT THAT ALL THOSE NOT BENEFITED BY THE CHALLENGED EXEMPTION ARE TREATED EQUALLY HAS NO BEARING ON THE LEGITIMACY OF THAT CLASSIFICATION IN THE FIRST PLACE. A STATE CAN NOT DEFLECT AN EQUAL PROTECTION CHALLENGE BY OBSERVING IN LIGHT OF THE STATUTORY CLASSIFICATION ALL THOSE WITHIN THE BURDEN CLASS ARE SIMILARLY SITUATED. THE CLASSIFICATION MUST REFLECT PRE-EXISTING DIFFERENCES, IT CAN NOT CREATE NEW ONES THAT ARE SUPPORTED BY THEIR OWN BOOTSTRAPS. THE "EQUAL PROTECTION CLAUSE" REQUIRES MORE OF A STATE THAN NON DISCRIMINATORY APPLICATION WITHIN THE CLASS IT ESTABLISHED. WILLIAM V. VERMONT, 472 U.S. 14, 27; 105 S. CT. 2465; 86 L. ED. 2d 11 (1985) QUOTING RANDI V. YEAGER, 384 U.S. 305, 308; 86 S. CT. 1497; 16 L. ED 2d 577 (1966) SEE MAHONES V. ADDICKS UTL. DIST, 836 F.2d 921, 933-34 (5TH CIR 1988) FOOTNOTE # 11

PETITIONER ARGUES, THAT HIS CONVICTION IS VOID BECAUSE, AS A MATTER OF LAW HE HAS A SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHT TO NOT BE CONVICTED BASED ON A CONSTITUTIONALLY INVALID STATUTE AND FUNDAMENTALLY

INVALID/VOID INDICTMENT. SEE NORTH CAROLINA V. PEARCE, 395 U.S. 711, 739 (1969) JUSTICE BLACK, "DUE PROCESS IS A GUARANTEE THAT A MAN SHOULD BE TRIED AND CONVICTED IN ACCORDANCE WITH VALID LAWS OF THE LAND". THE UNEQUAL APPLICATION OF AR. 62.002 TX. C. CR. PROC. AS APPLIED TO PETITIONER'S PRIOR DIS-CHARGED RAPE CONVICTION CAUSE NO. 7-82-416 AND NOT TO CONVICTED SEX OFFENDERS WITH CONVICTION SIMILARLY SITUATED IS UNCONSTITUTIONAL AND IS THE CAUSE OF HIS CONVICTION. THE SUPREME COURT RULED LONG AGO IN; EX PARTE SIEBOLD, 100 U.S. 371, 376; 25 L. Ed. 717 (1880) "AN OFFENSE CREATE BY AN UNCONSTITUTIONAL LAW," THE COURT HELD, "IS NOT A CRIME." A CONVICTION UNDER SUCH A LAW, IS NOT MERELY ERRONEOUS, BUT IS ILLEGAL AND VOID AND CAN NOT BE A LEGAL CAUSE OF IMPRISONMENT" ID. AT 376-77. "IF THE LAW IS INVALID AS APPLIED TO CRIMINAL DEFENDANT'S CONDUCT, THE DEFENDANT IS ENTITLED TO GO FREE."

PETITIONER IS FACTUALLY INNOCENT OF FAILURE TO REGISTER CAUSE NO. 114-07 60-13 BECAUSE HIS CONVICTION WAS BASED ON A CONSTITUTIONALLY INVALID STATUTE AR. 62.002 TX. C. CR. PROC. RENDERING THE INDICTMENT FUNDAMENTALLY INVALID AND THE JUDGEMENT VOID. SEE YICK WO V. HOPKINS, 118 U.S. 356, 373-74; 6 S. Ct. 1073; 30 L. Ed. 220, 227 (1886) "FINDING IMPRISONMENT ILLEGAL BECAUSE, THE ORDINANCE UPON WHICH

CONVICTION WAS BASED ON VIOLATED THE "EQUAL PROTECTION OF THE LAW" CLAUSE OF THE 14TH AMENDMENT AS APPLIED TO THE CRIMINAL DEFENDANT'S CONDUCT." ALSO SEE WELSH V. UNITED STATES, 398 U.S. 333, 361-62 (1970) HARLAN, J. CONCURRING IN RESULT, "REVERSAL REQUIRED EVEN IF, GOING FORWARD, CONGRESS WOULD CURE THE UNEQUAL TREATMENT BY EXTENDING RATHER THAN INVALIDATING THE CRIMINAL PROSCRIPTION."

NEXT PETITIONER ARGUES, HE WAS DENIED OF THE SIXTH AMENDMENT'S "EFFECTIVE ASSISTANCE OF TRAIL COUNSEL." THE DISTRICT COURT'S MEMORANDUM (APPENDIX B, P. 1-10) OR THE MAGISTRATE'S REPORT AND RECOMMENDATION MAKE A REBUTAL TO PETITIONER'S "INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM (APPENDIX C, P. 1-9)

SINCE PETITIONER CANNOT MAKE A CLAIM OF ACTUAL INNOCENCE, HE MUST SHOW BOTH CAUSE AND PREJUDICE TO OVERCOME A PROCEDURAL BAR. COLEMAN, 501 U.S. 750; 111 S. Ct. 2546. THE TWO PRONG TEST OF CAUSE AND PREJUDICE WAS LAID OUT IN STRICKLAND V. WASHINGTON, 466 U.S. 668; 104 S. Ct. 2052; 80 L. Ed. 2d 674 (1984) TO SHOW CAUSE, A HABEAS PETITIONER MUST SHOW THAT THE ERRORS BY COUNSEL ARE SO GRAVE THAT COUNSEL WAS NOT FUNCTIONING AS AN "EFFECTIVE COUNSEL" GUARANTEED THE PETITIONER/DEFENDANT BY THE SIXTH AMENDMENT. Id. AT 688; 104 S. Ct. 2052. FOR PREJUDICE PETITIONER MUST SHOW THAT COUNSEL'S ERRORS PREJUDICED THE DEFENSE

AND SUCH ERRORS DEPRIVED THE DEFENDANT OF A FAIR TRIAL.

TO SHOW CAUSE; PETITIONER ARGUES, THAT HIS STATE TRIAL COUNSEL FAILED TO EXPAND THE PRETRIAL INVESTIGATION BEYOND THE PROVISIONS OF THE TEXAS SEX OFFENDER REGISTRATION PROGRAM ART. 62.102 TX. C. CR. PROC. FOR MITIGATING FEDERAL LAW AND CONSTITUTIONAL VIOLATIONS OF THE TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.102 TX. C. CR. PROC. AS APPLIED TO HIS CASE PURSUANT A PRIOR DISCHARGED RAPE CONVICTION CAUSE NO. 7-82-416 (APPENDIX E PG 3)

THE STATE COURT COUNSEL STATES IN ~~THE~~ SWORN AFFIDAVIT TO PETITIONER'S "INEFFECTIVE ASSISTANCE OF COUNSEL" CLAIM, "CONTRARY TO WHAT APPLICANT WOULD HAVE ONE BELIEVE, "NO AMOUNT OF RESEARCH OF THE SEX OFFENDER REGISTRATION PROGRAM WOULD HAVE CHANGED THE FACTS OF APPLICANT'S CASE." THE UNDERSIGNED IS ILL EQUIPPED TO MANUFACTURE FACTS TO SUPPORT A DEFENSE (APPENDIX D PG 26. PARA 2)

TO SHOW PREJUDICE; PETITIONER ARGUES, THAT HAD HIS STATE COURT COUNSEL EXPANDED THE PRETRIAL INVESTIGATIONS BEYOND THE PROVISIONS OF ART. 62.102 TX. C. CR. PROC. FOR MITIGATING FEDERAL LAW & CONSTITUTIONAL VIOLATIONS, THE INVESTIGATION WOULD HAVE DISCOVERED THE ABOVE ARGUED REQUIREMENTS TO THE PROVISIONS CHARGED IN THE INDICTMENT CAUSE NO. 114-0760-13 FAILURE TO REGISTER (APPENDIX E PG 4) VIOLATED EX POST FACTO LAW RENDERING THE INDICTMENT FUNDAMENTALLY

INVALID/VIO. PETITIONER FURTHER ARGUES, HAD THE STATE COURT COUNSEL EXPANDED THE INVESTIGATION BEYOND THE PROVISIONS OF ART. 62.102 TX. C. CR. PROC. FOR MITIGATING CONSTITUTIONAL AND FEDERAL LAW VIOLATIONS. THE INVESTIGATION WOULD HAVE DISCOVERED THAT TEXAS SEX OFFENDER REGISTRATION STATUTE ART. 62.002 TX. C. CR. PROC. TO WHICH PETITIONER'S CONVICTION WAS BASED ON VIOLATES CLEAR AND ESTABLISHED FEDERAL LAW "MELAN'S LAW" TITLED SEX OFFENDER REGISTRATION ACT OF 1996 "THAT REQUIRE MANDATORY REGISTRATION OF ALL SEX OFFENDER" AND THE U.S. DEPT. OF JUSTICE RULE 28 C.F.R. § 72.3 WHICH STATES, "MANDATORY REGISTRATION APPLY TO ALL SEX OFFENDERS, INCLUDING SEX OFFENDER CONVICTED OF THE OFFENSE FOR WHICH REGISTRATION IS REQUIRED PRIOR TO THE ENACTMENT OF THAT ACT." THE UNEQUAL APPLICATION OF ART. 62.002 TX. C. CR. PROC WHICH EXEMPTS SEX OFFENDERS SIMILARLY SITUATED AS PETITIONER IS A CONSTITUTIONALLY INVALID STATUTE AND DENIES PETITIONER OF "EQUAL PROTECTION OF THE LAW" OF THE 14TH AMENDMENT, RENDERING CASE NO. 114-0760-13 FAILURE TO REGISTER FUNDAMENTALLY INVALID & VIO.

THE FAILURE OF PETITIONER'S STATE COURT COUNSEL'S INABILITY TO MANUFACTURE THE ABOVE ARGUED MITIGATING FACTS OF FEDERAL LAW & CONSTITUTIONAL VIOLATIONS TO SUPPORT A DEFENSE AND ADVISED PETITIONER TO PLEAD GUILTY TO AVOID A LIFE SENTENCE (APPENDIX D pg 26 para 3) DEPRIVED HIM OF A FAIR TRIAL. SEE

1
WIGGINS V. SMITH, 539 U.S. 510, 535-38; 123 S.Ct. 2527, 2542-42; 156 L. Ed. 471, 493-95 (2003) "FINDING DECISION OF COUNSEL NOT TO EXPAND INVESTIGATION OF PETITIONER'S LIFE HISTORY FOR MITIGATING EVIDENCE BEYOND PRESENTENCE INVESTIGATION REPORT AND DEPT. OF SOCIAL SERVICE RECORDS, FELL SHORT OF PREVAILING PROFESSIONAL STANDARDS AND AMOUNTS TO INEFFECTIVE ASSISTANCE."

PETITIONER CONSTITUTIONALLY GUARANTEED RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WAS CLEARLY ESTABLISHED AT THE TIME HIS STATE COURT CONVICTION BECAME FINAL AND THEREFORE HE ~~IS~~ ENTITLED TO HABEAS RELIEF UNDER ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) IF HIS TRIAL LAWYER'S FAILURE TO INVESTIGATE AND PRESENT SUBSTANTIAL MITIGATING EVIDENCE TO THE COURT WAS EITHER "CONTRARY TO" OR INVOLVED AN "UNREASONABLE APPLICATION OF" THAT ESTABLISHED LAW. U.S.C.A. CONST. AMEND 6 SEE WILLIAM V. TAYLOR, 120 S.Ct. 1495 (2000) 1. HABEAS CORPUS 486(5) §2254

THE VALIDITY OF PETITIONER'S 5TH AMENDMENT'S DOUBLE JEOPARDY CLAIM AS TO HIS CONVICTION FOR FAILURE TO REGISTER CAUSE NO. 114-DT60-13 (APPENDIX E pg 1-2) DEPENDS ON WHETHER THE SUPREME COURT FIND THAT THE REQUIREMENT OF PERIODIC INPERSON OFFICE VISITS TO UPDATE REGISTRY FILES IMPOSES AN AFFIRMATIVE DISABILITY AND FOR PETITIONER TO BE PHYSICALLY PRESENT DURING UN-

ANNOUNCED RESIDENT AND EMPLOYMENT CHECKS WERE RETRIBUTIVE PURSUANT A
PRIOR DISCHARGED RAPE CONVICTION CASE NO. 7-82-416 (APPENDIX E, p. 3) AS
APPLIED TO PETITIONER CASE. SEE HALPER V. UNITED STATES, 109 S. CL 1892-93 (1989)

"WE HOLD UNDER THE DOUBLE JEOPARDY CLAUSE A DEFENDANT WHO

ALREADY HAS BEEN PUNISHED IN A CRIMINAL PROSECUTION MAY NOT

BE SUBJECTED TO AN ADDITIONAL CIVIL SANCTION TO THE EXTENT THAT

THE SECOND SANCTION MAY NOT FAIRLY BE CHARACTERIZED AS

REMEDIAL, BUT AS DETERENT AND/OR RETRIBUTIVE," IT ALSO IMPOSES

CRUEL AND UNUSUAL PUNISHMENT OF THE 8TH AMENDMENT. SEE

HUDSON, 522 U.S. 93, 99 (1997) "HAVING DETERMINED THAT THE INTENT

OF THE 1997 AR. 62.11 R.C. CL. P. AMENDMENTS WAS CIVIL AND REMEDIAL

AND NOT CRIMINAL OR PUNITIVE, WE MUST NOW CONSIDER WHETHER

THE AMENDMENTS ARE SO PUNITIVE IN PURPOSE OR EFFECT AS TO

TRANSFORM WHAT WAS CLEARLY INTENDED AS A CIVIL REGULATION

INTO A CRIMINAL PENALTY."

FINAL QUESTION, WHETHER JURIST OF REASON WOULD FIND IT DEBATABLE IF
DISTRICT COURT WAS CORRECT IN IT'S PROCEDURAL RULING? PETITIONER ARGUES,
THAT THE DISTRICT COURT'S DENIAL OF HIS HABEAS PETITION AS TIME-BARRIED
WITH PREJUDICE APPLYING THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT

(AEDPA) AND IT'S DECISION BEING "CONTRARY TO" CLEAR & ESTABLISHED FEDERAL LAW AND "UNREASONABLY APPLIED" SUPREME COURT PRECEDENTS TO THE PETITIONER'S CASE MAY ACT AS A MISCARRIAGE OF JUSTICE IF PETITIONER'S UNDERLYING DENIED CONSTITUTIONAL RIGHTS ARE NOT CONSIDERED FOR FURTHER REVIEW, WHERE CONSTITUTIONAL VIOLATIONS HAS "PROBABLY RESULTED" IN THE CONVICTION OF THE PETITIONER WHO IS "FACTUALLY INNOCENT" AS A MATTER OF LAW. SEE DRETKE V. HALEY, 541 U.S. 386; 124 S.Ct. 1841; 158 L.Ed. 2d 659 (2004) 28 U.S.A. §2254(D)(1)&(2)

CONCLUSION

PETITIONER MOVES FOR THE HONORABLE JUSTICES OF THE SUPREME COURT TO REVISIT THE AUG./2018 HIDDEN TRUTH OF CHILD MOLESTATION & SEXUAL ABUSE IN THE ROMAN CATHOLIC DIOCESES DATING BACK SOME 70 YEARS BY 300 PLUS PRIEST OF OVER 1,000 VICTIMS IN THE STATE OF PENNSYLVANIA ALONG WITH PRIESTS IN TEXAS BEING ACCUSED AND CHARGED ALSO. THE CRUCIAL QUESTION IS WHETHER TEXAS CAN ACCOMPLISH IT'S LEGITIMATE GOVERNMENTAL OBJECTIVE TO PROTECT THE PUBLIC AND NOTIFY THE COMMUNITY OF SEX OFFENDERS IN THE AREA BY EXEMPTING SEX OFFENDERS WITH CONVICTIONS 21 YEARS OLD FROM REGISTERING AS IT HAS WITH THE UNEQUAL APPLICATION OF ARC. 62.002

TX. C. CR. PROC. (APPENDIX B pg 6 para 2)

PETITIONER FURTHER MOVES FOR THE REVERSAL OF HIS WRONGFUL CONVICTION
IN CAUSE No. 114-0760-13 FAILURE TO REGISTER AND ISSUE AN ORDER FOR
THE RESPONDENT TO RELEASE HIM IMMEDIATELY

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED BY,

Steve A. Roberson

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DATE: AUGUST 22, 2018