NO. =

IN THE

SUPREME COURT OF THE UNITED STATES

PEDRO RODRIGUEZ

PETITIONER - APPELLANT

V.

WILLIAM GORE

RESPONDENT - APPELLEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PEDRO RODRIGUEZ BC 6583

IN PRO SE
VALLEY STATE PRISON
PO BOX 96
CHOWCHILLA, CA 93610
C4-24-1-Low

QUESTIONS PRESENTED

1. Whether the district court erred in failing to consider Petitioner's claim under the Abstention Doctrine, **YOUNGER V HARRIS** 401 US 37 (1971), Prosecution was taken in bad faith without hope of obtaining a valid conviction, **PEREZ V LEDESMA** 401 US 82(1971); Explained in **PAREDES V ATHERTON** (2000, CA10 Colo) 224 F3rd 1160.

2. Whether the district court erred that petitioner has not exhausted remedy per **Title 28 USC §2254 (b)(1),(B)(i)-(ii)** and whether extraordinary circumstances exist which would require interference per **PHILLIPS V WOODFORD** (2001) 267 F3rd 966.

PARTIES TO THE PROCEEDING

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

Petitioner Pedro Rodriguez is a California State Prisoner, who was sentenced to a Prison term of 13 years 4 months following a jury trial in San Diego County.

Respondent William Gore Is the Sheriff for San Diego County where Rodriguez was being incarcerated at the relevant times.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner PEDRO RODRIGUEZ respectfully petitions for a writ of certiorari to review the judgment of th United States Court of Appeals for the Ninth Circuit, denying Petitioner's appeal from the denial of his Petition for Writ of Habeas Corpus by the District Court for the Southern District of California.

OPINIONS BELOW

The decisions of the United States Court Of Appeals for the 9th Circuit is believed reported.A copy of the Nov 28, 2017 decision is attached as Appendix A.1 to this petition (A.1). A copy of the May 31,2018 Decision is attached as Appendix A.2 to this petition (A.2). The order of the United States District Court for the Southern District San Diego is believed reported and a copy attached as A.3 (A.3).

JURISDICTION

Thed judgment of the United States Court of Appeals for the 9th Circuit was entered November 28,2017 and an order denying a petition for rehearing was entered May 31,2018 both are attached as Appendix A.1, A.2. Jurisdicttion is conferred by Title 28 USC §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

> Section1. 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 privleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Similarly the V Amendment also provides:

No person shall be held to answer for a capital, or otherwise infamouse crime...nor be deprived of life, liberty, or property, without due process of law...

The VI Amendment provides;

(the accused)... To have compulsory process for obtaining witnesses in his favor...

This case also involves the gaurantee of the I Amendment that the petitioner has the right to petition the goverment for redress of grievance.

The Amendments herein are enforced by Title 28 USC §2254 et seq,

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudictaed on the merits in state court proceedings unless the adjudication of the claim;
(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court Of The United States;or
(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state courts proceeding.

(e)(1)(A)(ii) A factual predicate that could not have been previously discovered through the exercise of due diligence; and
(B) the facts underlying the claim would be sufficent to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

STATEMENT OF THE CASE

The petitioner's complaint alleges that he was denied his freedom through evidence fabrication and misrepresenation of evidence to the jury and then Trial counsel. Abstention by the Federal court is incorrect and unacceptable. MELENDEZ V ARNOLD 15-CV-03753-EMC decided March 10, 2016 explains California Decision PEOPLE V MENDOZA TELLO 15 Ca 4th 264 (1997) California law requires an IAC claim be brought as a habeas petition of which the petitioner has complied and exhausted to the State Supreme Court twice.

Per Appendix A.4 attached Memorandum of Points and Authorities in support of oppositions Motion to Dismiss Page 3 Line 18 the Attorney General deputy Jennifer Jadovitz acknowledges the petitioner has exhausted to the State Supreme Court through habeas corpus. The Petitioner claims prosecution was not taken in good faith, PEREZ V LEDESMA 401 US 82 (1971) and per PAREDES V ATHERTON (2000 CA10 Colo) 224 F3rd 1160 the district court denied the petition on procedural grounds without developing its factual or legal basis through full briefing nor following the example of other circuit courts and "simply take a quick look" at the face of the complaint to determine whether the petitioner has facially alleged the denial of a constitutional right, LAMBRIGHT V STEWART 220 F3rd 1022 @1026 (2000)

Reffering to appendix A.7 Forensic report of cell phones by CTF Data Pro expert and owner Robert Aguero pg 6,

> "What I can say definitvely regarding the above three is that they all contain data that came from the same source, the victim's Iphone This could have occurred one of two ways. First is for someone to use the victim's Apple ID and Password and restored the phone with the user name "Pedro's iphone". This phone with the restored data containing essentially a duplicate of the victim's phone was then plugged into the computer and a backup file was created on the computer. The other possible option is that someone copie the backup from the victim's computer and placed those backup files on this computer, then used the backup files to restore data onto "pedro's iphone."

The petitioner accuses that someone of being the prosecution and suppressing proof of those bad acts.

The prosecution took images as well as associated texts and messages altered the Meta data (time, location and date) then saved this information to the alleged victim's Icloud. This altered fabricated evidence was then saved downloaded from the Icloud to whatever electronics were necessary to prove the states case including the petitioner's brother's electronics. Finally the prosectuion claimed forensic archives where proof of these bad acts were stored did not exist.

Please see attachment/appendix A.5 motion for new trial readiness hearing Sept 25, 2015 pg 12 line 18 where assistant DA Matt Greco explains why forensic archives did not exist 1 year after specifically requested by the petitioner.

> "Sorry. That Ms. Ingraham was correct when she said we were telling her that those hard drives don't exist-- because they didn't exist. We didn't have them in our discovery-- we had to go out and create them-- or ask that they be duplicated. So in the sense--perhaps there's a miscommunication -- I don't know is that those hard drives are specifically requested-- because Mr. Rodriguez requested them-- and we've turned them over exactly as he requested."

This testimonial explaination coupled with Appendix A.6 Pg 4451 line 22 forward Motion For New Trial Greco explains at pg 4452 line 13, "It has been known and available for the whole Period of time." (forensic archives)

The non-existent forensic archives have been available the whole time they just didn't exist even though they were specifically requested.

Taking note of Appendix A.8 correspondence from Sheila O' Connor assigned appellate counsel per August 11, 2017 correspondence will not raise meritous Brady Violation intentionally procedurally defaulting petitioner on meritous issue that can be brought on direct appeal but Sheila O' Connor won't.

This case is the exact behavior prophetically forwarned in RILEY V CALIFORNIA (2014) US 134 S. Ct 2437,2491 qouting NEW YORK V BELTON 353 US 454 (1981), "treating a cell phone as a container whose contents may

be searched incident to arrest is a bit strained as an initial matter. But the analogy crumbles entirely when a cellphone is used to access data located elsewhere at the tap of a screen. This is what cell phone(s), with increasing frequency are designed to do by taking advantage of "cloud computing."" This is what has occurred here exactly.

BASIS FOR FEDERAL JURISDICTION

This case raised a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred By Title 28 USC §1331.

REASONS FOR GRANTING THE WRIT

A.Conflicts with Decisions of Other Courts

LAMBRIGHT V STEWART 220 F3rd 1022@ 1026(2000) even though a question may be well-settled in a particular circuit, the petitioner meets the modest CPC standard where another circuit has reached as conflicting view ... the fact that another circuit had decided the issue in a different manner, in other words, rendered a seemingly well-established issue in our circuit debatable for meeting Barefoot standard. Similar decision with similar circumstances to this case, PAREDES V ATHERTON (2000 CA10 Colo) 224 F3rd 1160 United States court of appeals for the tenth circuit,"... In this case we believe that jurists of reason would find it debatable whether the district court was correct in ruling there were no unusual circumstances justifying an excuse of the exhaustion requirement. We must therefore make a determination on whether "jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right" "Where as here, the district court denied the petition on procedural grounds without developing its factual or legal basis through full briefing we will follow the example of other circuit courts

and 'simply take a 'quick look' at the face of the complaint to determine whether the petitioner has facially alleged the denial of a constitutional right."

The district court refused to consider the petitioner's habeas corpus under Younger Abstention and that the petitioner still had remedy under direct appeal. This is incorrect as the petitioner has exhausted to the state supreme court twice. The tenth circuit court of appeals addressed Younger abstention in PAREDES V ATHERTON ID. The district court does not acknowledge or afford the petitioner the "facial allegation" test mandated by LAMBRIGHT V STEWART 220 F3rd 1022, 1026 (9th Cir 2000), PETROCELLI V ANGELONE 248 F3rd 877 (9th Cir 2001) and VALERIO V CRAWFORD 306 F3rd 742 (9th Cir 2002). By failing to take the allegations in the petition as true, and by focusing instead on abstention the district court ignores the claims on their merits. The district court's analysis is flawed. It is abundantly clear that each of the claims alleged in the habeas corpus petition satisfy the constitutional component test of SLACK V MCDANIEL 529 US 473, 484, 120 S Ct 1595 (2000). NARDI V STEWART 354 F3rd 1134, 1139-1140 (2004) it is implied that a dissenting opinion in the same district court may be enough to establish jurists of reason may differ.

B. Importance of the Questions Presented

The petitioner may apply for Certiorari following the denial of a COA application, HOHN V UNITED STATES 524 US 236 (1998)

The question presented is of great public importance because it affects the procedural and common law rights of all prisoner's pre-trial, trial, post remedy right not to be convicted and suffer a conviction with false fabricated evidence. The district court erred in failing to grant an evidentiary hearing on petitioner's habeas under YOUNGER V HARRIS 401 US 37 (1971). To the district court the petitioner referenced HURLES V RYAN 752

F3rd 768 (2014) in that the petitioner repeatedly was intentionally frustrated from making a complete record under Title 28USC §2254(b)(1)(B) (i)-(ii) and (c) there is an absence of available state corrective process plus remedy is unavailable in state court due to suppressed evidence as described in TOWNSEND V SAINE 372 US 293 (1963). All evidence of the prosecutions bad acts are outside the appellate record.

Further the district attorney's bad acts and suppression of proof of those bad acts denied the petitioner a defense under CRANE V KENTUCKY (1986) 476 US 683; HOLMES V SOUTH CAROLINA (2006) 547 US 319.

Petitioner further made clear as in TOTTEN V MERCKLE 136 F3rd 1172, 1176 (9th Cir 1998) "in habeas corpus proceedings an evidentiary hearing is required when the petitioner's allegation(s) if proven would establish the right to relief.

Petitioner exhausted to the state supreme court multiple times per PICARD V CONNOR 404 US 270 (1971); PHILLIPS V WOODFORD (9th Cir 2001) 267 F3rd 966.

It was unreasonable to expect a different result after petitioner repeatedly exhausted petition for writ of habeas to make record of facts which were intentionally kept from record. HARRIS V REED (1989) 489 US 255, 263 @ 268-269.

The petitioner further made argument that similarly per PHILLIPS V ORNOSKI 673 F3rd 1168 (2012) @ 1184,1188 the alleged victim was induced to lie on the stand thereby infecting the whole process with dishonesty and negatively influencing the jury per DONELLY V DECHRISTFORO 416 US 637 (1974) ,BRECHT V ABRAHMSON (1993) 507 US 619, DOW V VIRGA (9th Cir 2013) 729 F3rd 1041. The petitioner made declaration of factual innocence under SCHLUP V DELO 513 US 295 (1995) and that the shocks the conscience standard was met with this declaration under SACRAMENTO V LEWIS 523 US 833 (1998) and TATUM

VMOODY 768 F3rd 806 (2014) where law enforcement and members of the prosecution team intentionally suppressed exculpatory evidence. The Prosecution was taken in bad faith without hope of securing a valid conviction, PEREZ V LEDESMA 401 US 82 (1971).

The goverment was given fair warning their conduct (state prosecutors) was unlawful under UNITED STATES V LANIER 520 US 529 (1997) and PYLE V KANSAS 317 US 213 (1942). The abstention doctrine is inapplicable in that extrinsic fraud was used and pursuant to IN reCLARK 5 Cal 4th 750 (1993) disposition footnote 2 habeas corpus permits collateral attack on matters involved not shown in the appellate record, elaborated on by the 9th circuit in MELENDEZ V ARNOLD (3/10/2016) case #15-CV- 03753-EMC explaining PEOPLE V MENDOZA TELLO 15 Cal 4th 264 (1997), California Law requires matters outside the appellate record be brought on habeas. The petitioner's appellate remedy has been and continues to be inadequate, as the record is incomplete and misleading, if not false. ENGLE V ISAAC (1982) 456 US 107; PANETTI V QUARTERMAN (2007) 511 US 930 non-compliance with federal laws has rendered petitioner's conviction susceptible to collateral attack, WILSON V CORCORAN 562 US 1 (2010). These are the very circumstances addressed in the Tenth Circuit Court of Appeals PAREDES V ATHERTON (2000 CA10 colo) 224 F3rd 1160. "Anyone who acts on behalf of the goverment should know that a person has a constitutional right not to be 'framed'", DEVEREAUX V ABBEY 263 F3rd 1070 (2001) @ 1084.

Denying the petitioner his freedom with fabricated evidence is the ultimate act of despotism and unfortunately is not isolated to this instance. As the rift between technology and the everday common man's understanding of how new and improved tech actually operates the gray areas are far to exploitable and the temptation of altering tech forensic evidence is too tempting. The exonerative evidence is easily discoverable and the petitioner

has correctly complied with the procedural exhaustion requirements to be allowed a evidentiary hearing in federal district court. The court has erred in not granting an evidentiary hearing on procedural grounds when the petitioner has correctly exhausted.

CONCLUSION

For the foregoing reasons, certorari should be granted in this case

RESPECTFULLY SUBMITTED,

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C4-24-1-LOW

8/12/18

Pursuant to Title 28USC §1746 I declare under penalty of perjury that the foregoing is true and correct.

8/12/18

PEDRO RODRIGUEZ BC6583

VERIFICATION

FORM No. 2

Verification of Pleading (Code Civ. Proc., § 446)
Declaration under Penalty of Perjury Form (Code Civ. Proc., §§ 446, 2015.5)

by Party

CASE TITLE RODRIGUEZ V GORE

I, PEDRO RODRIGUEZ, declare:
(Name)

I am the PETITIONER in the above-entitled matter.

I have read the foregoing PETITION FOR CERTIORARI (pleading, e.g., complaint) and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on AUGUST 12, 2018, at VALLEY STATE PRISON, MADERA County, California.

I declare (or certify) under penalty of perjury that the foregoing is true and correct.

(Signature of Party)

8/12/18