

No. _____

IN THE
UNITED STATES SUPRE COURT

ILICH VARGAS - PETITIONER
VS.

JOHN MCMAHON - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE NINTH CIRCUIT COURT OF APPEALS FOR THE CENTRAL
DISTRICT OF CALIFORNIA SEPTEMBER 6, 2017 JUDGMENT
IN CASE NO 17-55324

PETITION FOR WRIT OF CERTIORARI

ILICH VARGAS 1212341370
9500 N. ETIWANDA AVE.
RANCHO CUCAMONGA, CA. 91739
IN PRO-SE

QUESTIONS PRESENTED

1. WHETHER, A DISTRICT COURT MAGISTRATE ACTS IN EXCESS OF HER DISCRETION AND OUTSIDE THE BOUNDS OF REASON DURING THE INITIAL SCREENING OF THE PLEADING FOR A PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 IF, WITHOUT CONDUCTING AN EVIDENTIARY HEARING THE MAGISTRATE ENTERS FINDINGS OF FACT THAT ARE NOT SUPPORTED BY THE RECORD, NOR ANYTHING THE MAGISTRATE COULD HAVE LEARNED DURING THE PROCEEDINGS. BUT, RATHER THE FINDINGS ARE BASED ON WHAT CLEARLY AND OBJECTIVELY APPEAR TO BE PERSONAL EXTRAJUDICIAL FIXED BELIEFS, IDEALS AND/OR CONJECTURES THAT HAVE NO SUPPORT FROM NEITHER THE PETITIONER'S PLEADING NOR THE RESPONDENT'S ANSWER.?
2. WHETHER A DISTRICT COURT MAGISTRATE ACTS IN AN EXCESS OF HER DISCRETION AND OUTSIDE THE BOUNDS OF REASON DURING THE INITIAL SCREENING OF A PRO-SE PLEADING TO A PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 IF, SHE WERE TO ENGAGE IN A DELIBERATE PATTERN AND/OR PRACTICE OF REPEATEDLY MISCONSTRUING, MISREPRESENTING AND MISSTATING THE PRO-SE PETITIONER'S STATEMENTS AND IN A DECEITFUL MANNER IN ORDER TO THEN RECOMMEND THAT THE SUFFICIENTLY STATED CLAIMS OF VIOLATION OF FEDERAL CIVIL RIGHTS MERITING HABEAS CORPUS RELIEF TO BE UNFAIRLY DENIED AND DISMISSED?

IF THE ANSWER TO THE ABOVE QUESTIONS IS YES THEN,

3. WHETHER, THOSE ACTIONS, PATTERNS, METHODS AND/OR PRACTICES DESCRIBED ABOVE, IN (QUESTION 1 AND 2), IF THEY WERE TO BE OBJECTIVELY SHOWN TO HAVE TAKEN PLACE ON BEHALF OF A MAGISTRATE, JUDGE AND/OR TRIBUNAL IN A WRIT OF HABEAS CORPUS AND/OR JUDICIAL PROCEEDING (I.E. ENTERING FINDINGS OF FACT BASED ON EXTRAJUDICIAL PERSONAL FIXED BELIEFS, IDEALS OR CONJECTURES THAT ARE UNSUPPORTED BY THE RECORDS (OR) MISREPRESENTING, MISSTATING, AND/MISCONSTRUING FACTS IN A DECEITFUL MANNER) WOULD IT BE STRONG EVIDENCE OF BIAS, PARTIALITY AND PREJUDICE THAT WOULD REQUIRE JUDICIAL DISQUALIFICATION AND RECUSAL FROM A CASE, SPECIALLY IF IN EVERY INSTANCE THAT SUCH CONDUCTS OCCUR IT CLEARLY APPEARS TO ONLY BE IN FAVOR OF THE RESPONDENT AND PREJUDICIAL OR ANTAGONISTIC TOWARDS A PRO-SE INDIGENT PETITIONER?

IF THE ANSWER TO QUESTION 3 ABOVE IS YES THEN?

4. WHETHER, THE MAGISTRATE THAT CONDUCTED THE INITIAL SCREENING OF THE PRO-SE PETITION FOR WRIT OF HABEAS CORPUS IN THE DISTRICT COURT APPEARS TO HAVE ENGAGED AND USED SUCH ACTIONS, PATTERNS, METHODS AND/OR PRACTICES DESCRIBED ABOVE IN (QUESTIONS 1 THROUGH 3) AND THAT WOULD HAVE REASONABLY REQUIRED JUDICIAL RECUSAL AND DISQUALIFICATION FROM THE CASE?

5. WHETHER EXTRAORDINARY CIRCUMSTANCES OF GREAT, IMMEDIATE, IRREPARABLE DAMAGES WITHIN THE MEANING OF *YOUNGER V. HARRIS* 401 U.S. 279 (1985), THAT MERITS EXEMPTION FROM THE GENERAL APPLICATION OF THE RULE OF ABSTENTION, MAY BE DEMONSTRATED IF AND WHEN A PRESENTENCED / PRE-CONVICTION STATE INMATE HAS ALLEGED AND SHOWN IN A 28 U.S.C. § 2241 PETITION FOR WRIT OF HABEAS CORPUS THAT HE HAS BEEN AND WILL LIKELY CONTINUE TO BE PREVENTED AND DEPRIVED FROM AN OBJECTIVELY MEANINGFUL OPPORTUNITY TO SET UP, PREPARE, PRESENT AND RELY ON A COMPLETE AND EFFECTIVE CRIMINAL DEFENSE, INCLUDING BEING DEPRIVED AND PREVENTED FROM RAISING AND PRESENTING FEDERAL CONSTITUTIONAL CIVIL RIGHTS VIOLATION CLAIMS IN THE TRIAL COURT OF THE STATE IN ORDER TO PRESERVE SUCH CLAIMS FOR A DIRECT APPEAL AND TO EXHAUST ADMINISTRATIVE REMEDIES AS REQUIRED BY THE RULES OF COMITY, AND AS THE DIRECT RESULT OF WIDESPREAD SYSTEMIC, STRUCTURAL, AND INSTITUTIONAL VIOLATIONS AND DEPRIVATION OF FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION THAT HAVE BEEN TAKING PLACE DURING MORE THAN FIVE YEARS DURING THE PENDING STATE PROSECUTION ?

6. WHETHER BAD FAITH AND HARASSMENT OFFICIAL LAWLESSNESS THAT WOULD MERIT EXEMPTION FROM THE GENERAL APPLICATION OF THE RULE OF ABSTENTION WITHIN THE MEANING OF *YOUNGER V. HARRIS* 401 U.S. 279 (1985)

1 MAY BE DEMONSTRATED WHEN A PRE-SENTENCED - PRECONVICTED
2 DETAINEE AWAITING TRIAL IN A PENDING STATE PROSECUTION HAS ALLEGED
3 AND DEMONSTRATED IN A 28 U.S.C § 2241 PETITION FOR WRIT OF
4 HABEAS CORPUS THAT THE FOLLOWING EXTRAORDINARY CIRCUMSTANCES
5 AND CONDITIONS EXIST IN HIS CASE AND THAT THE STATE COURTS
6 OF LAST RESORT HAVE DEMONSTRATED AN OBJECTIVE MANIFESTATION
7 OF INABILITY, UNWILLINGNESS AND/OR FUTILITY TO CORRECT,
8 PREVENT NOR EVEN ADEQUATELY ADDRESS DURING THE
9 PENDENCY OF THE STATE PROSECUTION AND WHERE THE
10 CRIMINAL DEFENDANT IS LEFT WITH NO OTHER PLAIN, ADEQUATE
11 AND SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW TO
12 CORRECT AND PREVENT THE GREAT IMMEDIATE IRREPARABLE
13 DAMAGES BEING CAUSED BY:

14 (a) BAD FAITH, INTENTIONAL AND/OR RECKLESS POLICE AND
15 PROSECUTION MISCONDUCT RESULTING IN THE SUPPRESSION, LOSS AND
16 DESTRUCTION OF CRITICAL KNOWN, INFORMED, INDICATED AND
17 REQUESTED MATERIAL EXCULPATORY AND POTENTIALLY EXCULPATORY
18 EVIDENCE THAT FORMED THE APPARENT BASIS TO EXONERATE OR
19 EXCULPATE THE DEFENDANT AT TRIAL.?

20
21 (b) BAD FAITH INTENTIONAL AND RECKLESS OUTRAGEOUS
22 PROSECUTORIAL MISCONDUCT INTENDED TO, AND THAT EFFECTIVELY
23 SUBVERTED, INTERFERED AND OBSTRUCTED WITH THE CRIMINAL
24 DEFENDANT'S ABILITY TO EXERCISE CIVIL RIGHTS TO EFFECTIVE
25 SELF-REPRESENTATION AND BY BLATANT INTENTIONAL USE
26 OF FRAUDULENT MISREPRESENTATION AND DISHONEST METHODS
27 THAT CAUSED DEPRIVATION OF FUNDAMENTAL PRO-PR RIGHTS AND
28 PRIVILEGES?

1 (C) BAD FAITH INTENTIONAL AND RECKLESS OUTRAGEOUS
2 PROSECUTORIAL MISCONDUCT BY PROSECUTOR CONSPIRING WITH AN
3 UNRELIABLE CRIMINAL JAILHOUSE INFORMANT THAT THE STATE
4 PROSECUTOR KNEW AND/OR SHOULD HAVE KNOWN WAS LYING AND
5 PROVIDING FALSIFIED INFORMATION. BUT, THAT THE PROSECUTION
6 INTENTIONALLY AND RECKLESSLY USED TO OBTAIN SEARCH WARRANT
7 FROM A COURT JUDGE IN ORDER TO INFILTRATE THE CRIMINAL
8 DEFENDANTS' CONFIDENTIAL AND PRIVILEGED LEGAL FILES AND
9 DOCUMENTS AND IN ORDER TO INVADE, INTERCEPT, CONFISCATE,
10 WITHHOLD AND/OR DESTROY DISCOVERIES, WORK PRODUCT, DEFENSE
11 STRATEGIES AND TACTICAL PLANS OF DEFENSE AND IN ORDER TO
12 EFFECTIVELY OBSTRUCT AND SUBVERT THE PREPARATION OF AN
13 EFFECTIVE CRIMINAL DEFENSE OF THE PRE-CONVICTED DEFENDANT?

14
15 (d) BAD FAITH, DISCRIMINATION, BIAS AND PREJUDICE
16 ON BEHALF OF STATE MUNICIPAL AND SUPERIOR COURT JUDGES
17 THAT CAUSED OBJECTIVELY DEMONSTRATIVE PREJUDICE AND
18 GREAT IMMEDIATE IRREVERSIBLE PREJUDICE AS THE RESULT OF:

19 (i) ARBITRARY AND CAPRICIOUS DEPRIVATION OF MERITED
20 SUBSTITUTION OF COUNSEL RELIEF AND BY THE IMPLEMENTATION
21 OF WIDESPREAD CUSTOM, COMMON PRACTICE AND USAGE OF
22 SUBJECTIVE STANDARDS OF PERSONAL PREDISPOSED BIAS AND
23 PARTIAL FIXED BELIEFS THAT PUBLIC DEFENDER WAS PROVIDING
24 EFFECTIVE REPRESENTATION. BUT, THAT IN REALITY, OBJECTIVELY,
25 PUBLIC DEFENDER WAS DEFICIENT AND INEFFECTIVE
26 AND AN IRRECONCILABLE DIFFERENCE EXISTED IN THE ATTORNEY-CLIENT
27 RELATIONSHIP THAT WAS APPARENT AFTER FIVE REQUESTS TO SUBSTITUTE
28 DURING ELEVEN MONTHS OF THE MOST CRITICAL INITIAL

Vi.

STAGES FOR AN EFFECTIVE CRIMINAL DEFENSE PREPARATION AND THAT ULTIMATELY FORCED AND COERCED THE CRIMINAL DEFENDANT TO REPRESENT HIMSELF IN ORDER TO ESCAPE AND AVOID BEING FORCED INEFFECTIVE AND INSUFFICIENT PUBLIC DEFENDER REPRESENTATION IN A COMPLICATED CASE IN WHICH THE PETITIONER IS BEING WRONGLY ACCUSED OF MURDER?

(ii) MALICIOUS, VINDICTIVE AND ARBITRARY RETALIATION AND PUNISHMENT AGAINST THE CRIMINAL DEFENDANT BECAUSE HE CHOSE TO EXERCISE CIVIL RIGHTS TO SELF-REPRESENTATION. AND BY THE FLAGRANT AND RECKLESS DEPRIVATION OF SELF-REPRESENTATION, INDIGENT DEFENDANT BASIC, REASONABLE, NECESSARY AND AVAILABLE PRO-PER TOOLS AND RESOURCES. AND IN ORDER TO PREVENT PETITIONER FROM SETTING UP, PREPARING AND RELYING ON AN EFFECTIVE CRIMINAL DEFENSE?

(iii) MALICIOUS, VINDICTIVE AND ARBITRARY DEPRIVATION OF PROCEDURAL DUE PROCESS OF LAW TO ADEQUATE AND MEANINGFUL HEARINGS FOR PRESENTATION OF CONSTITUTIONAL CIVIL RIGHTS VIOLATIONS. INCLUDING, FLAGRANT AND DELIBERATE DEPRIVATION OF EVIDENTIARY HEARINGS; COMPULSORY PROCESS; PRESENTATION OF EVIDENCE; FAIR AND WELL REASONED DECISIONS AND DEPRIVATION FROM ESTABLISHING AN ADEQUATE AND APPROPRIATE RECORD IN THE TRIAL COURT FOR ANY MEANINGFUL APPEAL OR REVIEW BY A HIGHER COURT?

(iv) RECKLESSLY YET SYSTEMATICALLY CAUSING FIVE YEARS OF PREJUDICIAL AND UNCONSTITUTIONAL DELAYS IN VIOLATION OF SPEEDY TRIAL RIGHTS AND CAUSED BY DELIBERATE

IMPLEMENTATION, CONCERNING AND/OR ASSISTING
IN THE UNCONSTITUTIONAL CONDUCTS, ACTIONS, METHODS
AND/OR PRACTICES AS ENUMERATED ABOVE. ??? 4

7. WHETHER A CIVIL RIGHTS LAW SUIT UNDER 42 U.S.C.
§1983 BECOMES THE ONLY APPROPRIATE AVAILABLE REMEDY
TO THE PETITIONER TO OBTAIN AN ADEQUATE REMEDY
EITHER BY . . .EQUITABLE, DECLARATORY, INJUNCTIVE
AND/OR DAMAGES RELIEF TO CORRECT, ELIMINATE AND
PREVENT ANY FURTHER OPPRESSION AND VIOLATION OF FEDERAL
CONSTITUTIONAL CIVIL RIGHTS AS THOSE DESCRIBED ABOVE
(QUESTIONS 5-6) IN THE CASE THAT A FEDERAL PETITION
FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C § 2241
IS FORCLOSED OR UNAVAILABLE FOR THE PRESENTENCED
PRESUMPTIVELY INNOCENT, PRO-SE, INDIGENT CRIMINAL
DEFENDANT IN COUNTY JAIL AWAITING TRIAL SUFFERING
THROUGH THE EXTRAORDINARY CIRCUMSTANCES THAT EXIST
AND ARE BEING PRESENTED IN THIS CASE. AND IN ORDER
FOR THE PETITIONER/DEFENDANT TO OVERCOME THE UNFAIR
AND UNCONSTITUTIONAL ROAD BLOCKS AND OBSTACLES THAT
ARE OBSTRUCTING AND PREVENTING JUSTICE TO BE SERVED ???

PETITION FOR WRIT OF CERTIORARI

PETITIONER ILICH VARGAS RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENTS BELLOW.

LIST OF PARTIES

1. ILICH VARGAS, PETITIONER, IS THE PRE-SENTENCED INDIGENT PRO-SE IN CUSTODY OF RESPONDENT WHILE AWAITING TRIAL IN THE STATE COURT.
2. JOHN MCMAHON RESPONDENT IS THE SAN BERNARDINO COUNTY SHERIFF WHO HOLDS THE PETITIONER IN CUSTODY BY ORDERS OF THE SUPERIOR COURT OF CALIFORNIA.
3. THE PEOPLE OF THE STATE OF CALIFORNIA IS A REAL PARTY OF INTERES.

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IV. STATEMENT OF THE CASE.	3
V. REASONS FOR GRANTING THE PETITION.	9
-A- THE LOWER COURT HAS DEPARTED SO FAR FROM THE ACCEPTABLE AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED SUCH DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF SUPREME COURTS SUPERVISORY POWER AND IN ORDER TO SAFEGUARD AND SECURE INDISPENSABLE CIVIL RIGHTS OF THE PUBLIC.	
-1- A PRO-SE PLEADING IS HELD TO LESS STRINGENT STANDARDS AND HIS ACTION CANNOT BE DISMISSED UNLESS THERE IS NO DOUBT THAT HE CANNOT PROVE ANY SET OF FACTS IN SUPPORT OF HIS CLAIMS TO ENTITLE HIM TO RELIEF	9
-2- FAIR IMPARTIAL AND COMPLETE READING OF THE PETITION AND SUPPORTING DOCUMENTS FOR THE PETITION OF WRIT OF HABEAS CORPUS WOULD REASONABLY DEMONSTRATE THAT IT IS DEBATABLE WHETHER THE PETITIONER HAS STATED VALID CLAIMS OF THE DENIAL OF FEDERAL CONSTITUTIONAL CIVIL RIGHTS AND WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING THEREFORE MERETING CERTIFICATION OF APPEALABILITY.	12
-3- THE DISTRICT COURT MAGISTRATE THAT CONDUCTED THE INITIAL SCREENING OF THE PETITION FOR WRIT OF HABEAS CORPUS SHOULD HAVE BEEN DISQUALIFIED FROM THE PROCEEDINGS DUE TO THE EXISTANCE OF OBJECTIVELY APPARENT ACTUAL BIAS AND PREJUDICE AGAINST THE PETITIONER.	13
-4- PETITIONER HAS STATED SUFFICIENT FACTUAL ALLEGATIONS TO STATE VALID COGNIZABLE CLAIMS OF VIOLATIONS OF FEDERAL CONSTITUTIONAL CIVIL RIGHTS IN HIS 28 U.S.C. § 2241 PETITION FOR WRIT OF HABEAS CORPUS THAT HAVE BEEN WELL RECOGNIZED BY THE UNITED STATES SUPREME COURT AND THE UNITED STATES CIRCUIT COURTS INCLUDING THE NINTH CIRCUIT.	16

-A- THE UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF LAW THAT HAS NOT BEEN BUT SHOULD BE SETTLED BY THE SUPREME COURT BECAUSE IT AFFECTS EXCEPTIONAL PUBLIC INTEREST FOR SWIFT EFFICACIOUS AND EFFECTIVE VINDICATION AND PROTECTION OF CHERISHED CONSTITUTIONAL CIVIL RIGHTS AND LIBERTIES 24

-1- THE YOUNGER V. HARRIS 401 U.S. 37 (1971) RULE OF ABSTENTION WAS NOT INTENDED AS A SWORD FOR THE STATE AND ITS OFFICIALS TO TRAMPLE AND PILLAGE THE CIVIL RIGHTS OF PUBLIC CITIZENS AND TO DEPRIVE THEM EFFECTIVE ADEQUATE AND SPEEDY REMEDY AT LAW FOR VINDICATION AND PROTECTION SIMPLY BECAUSE A PERSON HAS BEEN ACCUSED OF COMMITTING A CRIMINAL OFFENSE 24

a. IN THIS CASE THE PETITIONER HAS ALLEGED AND SHOWN HOW THE STATE IS SYSTEMATICALLY DEPRIVING HIM OF A MEANINGFUL AND EFFECTIVE OPPORTUNITY TO SET UP PREPARE PRESENT AND RELY ON A COMPLETE CRIMINAL DEFENSE IN THE STATE COURT INCLUDING AIRING HIS FEDERAL CONSTITUTIONAL CIVIL RIGHTS VIOLATION CLAIMS 25

b. THIS CASE ALSO MEETS THE BAD FAITH AND HARASSMENT ELEMENTS TO INVOKE THE EXEMPTION CLAUSE FROM THE RULE OF ABSTENTION AND BY THE SHOWING OF PARTICULAR BAD-FAITH OUTRAGEOUS MISCONDUCT BY STATE LAW ENFORCEMENT PROSECUTORS AND COURT JUDGES THAT HAS TAKEN PLACE IN THIS CASE. 28

(i) BAD FAITH ON BEHALF OF POLICE AND PROSECUTORS MAY BE SHOWN BY THE LOSS AND DESTRUCTION OF KNOWN INFORMED INDICATED AND REQUESTED MATERIAL EXCULPATORY AND POTENTIALLY EXCULPATORY EVIDENCE CAUSED BY THE DELIBERATE AND/OR RECKLESS BAD FAITH FAILURE BY POLICE AND PROSECUTORS TO COLLECT AND PRESERVE 30

(ii) BAD FAITH ON BEHALF OF STATE PROSECUTORS MAY BE SHOWN WHEN A PROSECUTOR ACTS WITH FLAGRANT OR RECKLESS DISREGARD TOWARDS THEIR OFFICIAL AND CONSTITUTIONAL OBLIGATIONS OR WHEN ENGAGED IN FLAGRANT OR RECKLESS TACTICS TO OBSTRUCT AND SUBVERT WITH A CRIMINAL DEFENDANTS CONSTITUTIONAL CIVIL RIGHTS TO PRESENT A DEFENSE. 31

(iii) BAD FAITH IS SHOWN BY THE OBJECTIVE APPEARANCE OF BIAS DISCRIMINATORY ANIMUS OR PREDISPOSED FIXED BELIEFS OF A BENT MIND THAT DEMONSTRATES THE LIKELIHOOD OF DEEP-SEATED ANTAGONISM TOWARDS A CRIMINAL DEFENDANT AND FAVORITISM TOWARDS THE STATE PROSECUTORS OR BY THE PROBABILITY OF A REAL CONFLICT OF INTEREST ON BEHALF OF A COURT JUDGE.

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-2- UNABRIDGED ACCESS TO FEDERAL HABEAS CORPUS RELIEF IS A CONSTITUTIONAL RIGHT THAT PROMOTES ADHERANCE AND COMPLIANCE BY STATES TO CONSTITUTIONAL COMMANDS AND MUST REMAIN REASONABLY AVAILABLE EVEN FOR INDIGENT PRECONVICTED PRISONERS PENDING TRIAL IN STATE COURTS WHEN STATES ARE UNABLE TO PROVIDE SWIFT EFFICACIOUS VINDICATION OF CHERISHED CONSTITUTIONAL CIVIL RIGHTS

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VI. CONCLUSION

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APPENDIX B: FEBRUARY 22, 2017 JUDGMENT AND OPINION BY THE CALIFORNIA DISTRICT COURT FOR THE CENTRAL DISTRICT TO DISMISS PETITION WITH PREJUDICE

APPENDIX C: NOVEMBER 9, 2017 JUDGMENT BY THE NINTH CIRCUIT COURT OF APPEALS TO DENY PETITION FOR REHEARING AND REHEARING EN BANC.

APPENDIX D: APRIL 18 2018 AND JULY 26 2018 LETTERS FROM U.S. SUPREME COURT PROVIDING SIXTY DAY EXTENSIONS TO CORRECT DEFECTS OF RETURNED PETITION

OPINION BELOW

THE SEPTEMBER 06, 2017 JUDGMENT BY THE NINTH CIRCUIT COURT OF APPEALS SOUGHT TO BE REVIEWED HAS NOT BEEN CERTIFIED FOR PUBLICATION AND IS HEREBY INCORPORATED IN THIS PETITION AS (APPENDIX-A-)

THE UNDERLYING FEBRUARY 22, 2017 JUDGMENT AND OPINION BY THE CALIFORNIA DISTRICT COURT FOR THE CENTRAL DISTRICT SOUGHT TO BE REVIEWED HAS NOT BEEN CERTIFIED FOR PUBLICATION AND IT IS HEREIN INCORPORATED IN THIS PETITION AS (APPENDIX-B-)

THE NOVEMBER 8, 2017 JUDGMENT BY THE NINTH CIRCUIT COURT OF APPEALS DENYING PETITION FOR REHEARING AND REHEARING EN BANC THAT THE COURT CONSIDERED AS PETITION FOR RECONSIDERATION AND RECONSIDERATION EN BANC WAS NOT CERTIFIED FOR PUBLICATION AND IT IS HEREIN INCORPORATED INTO THIS PETITION AS (APPENDIX-C-)

JURISDICTION

THE NINTH CIRCUIT COURT OF APPEALS ENTERED ITS DECISION ON SEPTEMBER 6, 2017 (APPENDIX-A-) ON SEPTEMBER 28, 2017 THE PETITIONER PETITIONED FOR REHEARING AND REHEARING EN BANC TO THE NINTH CIRCUIT COURT OF APPEALS AND THAT WAS DENIED ON NOVEMBER 8, 2017 (APPENDIX-C-)

THE PETITIONER'S ORIGINAL DECEMBER 3, 2017 POST-MARKED PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT WAS RETURNED TO PETITIONER ON JANUARY 8, 2018

AND AGAIN ON APRIL 18 2018 WITH SIXTY DAYS EXTENSIONS
TO ALLOW THE PETITIONER TO CORRECT PETITION DEFECTS. THE
LETTERS ARE INCORPORATED TO THIS PETITION AS (APPENDIX - D -)
ON JULY 26 2018 THE PETITION WAS RETURNED WITH A SIXTY
DAY EXTENSION TO CORRECT OTHER DEFECTS. (APPENDIX - D.2 -)

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28
U.S.C. § 1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISIONS

THIS CASE INVOLVES ARTICLE I § 9 AND ARTICLE III; THE FIRST,
FIFTH SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION.
FEDERAL RULES OF CIVIL PROCEDURES RULE 8; 72-3.1 TO 72-3.3
28 U.S.C § 2241 AND § 2243; 28 U.S.C § 2253 (c) (1)
(CERTIFICATE OF APPEALABILITY) 28 U.S.C. § 144 AND § 455;
42 U.S.C. § 1983

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2 ON THE MORNING OF DECEMBER 8, 2012 THE PETITIONER ILICH
3 VARGAS WAS ARRESTED BY CALIFORNIA HIGHWAY PATROL AT THE SCENE
4 OF A TRAFFIC ACCIDENT BETWEEN TWO VEHICLES ON THE 15 FREEWAY
5 IN THE CITY OF VICTORVILLE CA. THE VEHICLE PETITIONER WAS DRIVING WAS
6 HEADING ON THE WRONG WAY OF THE 15 FWY HEADING NORTH ON THE
7 SOUTHBOUND SIDE OF THE FREEWAY. THE WHITE JEEP CHEROKEE PETITIONER
8 WAS DRIVING THAT BELONGED TO MS. KELLIE HUGHES WAS REPORTED TO HAVE BEEN
9 HEADING NORTH BOUND ON THE OUTSIDE SHOULDER-EMERGENCY LANE-OF
10 THE SOUTHBOUND 15 FREEWAY BEFORE THE JEEP UNEXPECTEDLY LOST
11 CONTROL AND CROSSED OVER INTO ON-COMING TRAFFIC. WHEN MS. HUGHES,
12 WHOM WAS THE PASSANGER AT THAT TIME "PULLED" ON THE STEERING WHEEL
13 AS SHE ATTEMPTED TO THROW HER PURSE AND ITEMS OUT THE DRIVER'S
14 SIDE WINDOW IN AN ATTEMPT TO GET RID OF DRUGS SHE HAD WITH HER
15 PRIOR TO HAVING MADE CONTACT WITH LAW ENFORCEMENT AS THE
16 MR. VARGAS WAS ATTEMPTING TO DO TO REPORT AN EMERGENCY.
17 ONCE THE JEEP LOST CONTROL AND "CROSSED OVER" FROM THE RELATIVELY
18 SAFE AREA WITHIN THE OUTSIDE SHOULDER EMERGENCY LANE AND INTO
19 ON-COMING TRAFFIC. A HEAD TO HEAD COLLISION OCCURRED WITH THE OTHER
20 VEHICLE AND RESULTING IN MS. HUGHES DEATH ON IMPACT. MR. VARGAS
21 WAS ARRESTED AT THE SCENE ON SUSPICION OF MURDER AND
22 GROSS VEHICULAR MANSLAUGHTER DUI, TRACES OF MARIJUANA AND METHA-
23 MPHETAMINE WERE FOUND IN MR. VARGAS' BLOOD (PETITION AT P 10-28)
24
25 PETITIONER WAS TRANSPORTED FROM THE SCENE OF THE INCIDENT TO THE
26 LOCAL HOSPITAL TO RECEIVE MEDICAL TREATMENT AND WHERE HE THEN
27 REMAINED IN CONSTRUCTIVE CUSTODY ON BEHALF OF THE HOSPITAL AND
28 ITS PERSONEL UNDER EXPLICIT DIRECTIONS AND ORDERS FROM THE

1 CALIFORNIA HIGHWAY PATROL (CHP) NOT TO DISCHARGE MR. VARGAS.
2 ON 12/13/2012 TWO CHP INVESTIGATORS ARRIVED AT THE HOSPITAL,
3 AT 11:45 AM AND CONDUCTED IN-CUSTODY INTERROGATIONS ON
4 MR. VARGAS AND QUESTIONED MR. VARGAS' MOTHER MARIA ROMERO.
5 THE INTERROGATION LASTED UNTIL APPROX 5:15 PM (ID)

6
7 DURING THE 12/13/2012 INTERROGATION THE CHP INVESTIGATORS WERE
8 SPECIFICALLY INFORMED THAT ON 12/8/2012 AT THE TIME THAT THE
9 INCIDENT TOOK PLACE, AND THE DAYS PRIOR TO THE TRAGIC INCIDENT,
10 ON 12/06/2012 AND 12/07/2012 MR. VARGAS HAD EXPERIENCED
11 PERSECUTIONS AND ATTEMPTS AGAINST HIS LIFE AND SAFETY ON BEHALF
12 OF A LARGE GROUP OF INDIVIDUALS THAT HAD BEEN FOLLOWING MR. VARGAS;
13 AT ONE POINT ATTEMPTED TO ROB HIM AND CONTINUED TO PERSECUTE AND
14 ATTEMPT TO RUN MR. VARGAS OFF THE ROAD OR BLOCK HIS ESCAPE WHILE MR.
15 VARGAS WAS DRIVING. FURTHERMORE, THAT AT THE TIME OF THE TRAGIC
16 VEHICLE ACCIDENT MR. VARGAS WAS ATTEMPTING TO ESCAPE IMMINENT
17 AND SUDDEN DANGER CAUSED BY THESE SAME PERSECUTORS AND THAT
18 CAUSED MR. VARGAS TO ENTER THE WRONG WAY ON THE FREEWAY WHEN
19 HIS ESCAPE WAS BLOCKED OFF AND IN DESPERATION TO CONTACT POLICE. (ID)

20
21 MR. VARGAS INFORMED CHP DETECTIVES OF SPECIFIC TIMES AND THE
22 LOCATIONS WHERE SURVEILLANCE VIDEOS EXISTED THAT WOULD HAVE
23 SUPPORTED HIS ACCOUNTS AND HELPED TO IDENTIFY THE UNKNOWN
24 PERSECUTORS AT THE DIFFERENT LOCATIONS WHERE THE PETITIONER, MR.
25 VARGAS SPECIFICALLY REQUESTS THE CHP INVESTIGATORS TO "GO LOOK"
26 AND "GET THE SURVEILLANCE VIDEOS" AND OTHER EVIDENCE THAT FORMED
27 THE SOLID BASIS FOR EXONERATION OR EXCULPATION OF MR. VARGAS
28 AT TRIAL AND WOULD HAVE ESTABLISHED THE TRUTH (ID)

1 MR VARGAS ALSO INFORMES THE CHP INVESTIGATORS THAT HIS WIFE
2 AND HER FAMILY HAD A TROUBLED HISTORY OF KIDNAPPINGS AND
3 MURDERS BECAUSE MS. BLANCA GONZALEZ, THE PETITIONER'S WIFE,
4 AND HER FAMILY WERE THE TARGET OF AN INTERNATIONAL
5 CRIMINAL ORGANIZATION THAT HAD MADE ATTEMPTS AGAINST HER
6 LIFE AND HAD KIDNAPPED AND MURDERED HER BROTHERS. MR.
7 VARGAS INFORMED DETECTIVES OF HIS BELIEFS THAT THE PERSECUTIONS
8 AND ATTEMPTS AGAINST HIS LIFE AND SAFETY ON 12/06/2012; 12/07/2012
9 AND ON THE DAY OF THE TRAGIC INCIDENT ON 12/08/2012 WERE
10 CONNECTED TO HIS WIFE, BLANCA GONZALEZ'S, TROUBLED FAMILY
11 HISTORY AND SUSPICIOUS INTERACTIONS THAT MR. VARGAS HAD
12 DISCOVERED, THAT MS. GONZALEZ WAS HAVING WITH UNKNOWN
13 PERSONS THROUGH SECRET ROGUE INTERNET ACCOUNTS (ID)

14
15 NEVERTHELESS, IT HAS BEEN ALLEGED AND SHOWN THAT THE CHP
16 INVESTIGATORS AND STATE PROSECUTORS IN THIS CASE HAVE ENGAGED IN
17 BAD FAITH, DELIBERATE AND RECKLESS SUPPRESSION; CONCEALMENT;
18 OMITTING AND WITHHOLDING FROM ANY AND ALL INVESTIGATION POLICE
19 REPORTS AND INVESTIGATIONS ANY AND ALL INDICATED, KNOWN, INFORMED,
20 AND REQUESTED MATERIAL EXCULPATORY AND POTENTIALLY EXCULPATORY
21 EVIDENCE THAT WOULD HAVE FORMED THE BASIS FOR EXONERATION OR
22 EXCULPATION OF MR. VARGAS AT TRIAL. AND THAT ULTIMATELY, RESULTED
23 IN BAD FAITH LOSS AND DESTRUCTION OF THAT EVIDENCE. (PETITION AT P. 2-29)

24
25 THE PETITIONER WAS NOT ARRAIGNED WITHIN THE 48 HOURS MANDATED
26 BY LAW AND HE WAS DEPRIVED OF AN OPPORTUNITY TO PERSONABLY
27 LOCATE AND CONSULT WITH PRIVATE CRIMINAL DEFENSE ATTORNEYS
28 AND TO ARRANGE FOR THE COLLECTION AND PRESERVATION OF

1 CRITICAL MATERIAL EXCULPATORY AND POTENTIALLY EXCULPATORY
2 EVIDENCE DURING A PERIOD OF OVER 24 HOURS WHILE MR. VARGAS.
3 WAS UNLAWFULLY DEPRIVED OF LIBERTY AND THAT INTERFERED
4 WITH THE PREPARATION OF HIS CRIMINAL DEFENSE (ID AT P. 33-
5 34)

6
7 MR. VARGAS'S MOTHER RETAINED A PRIVATE CRIMINAL DEFENSE ATTORNEY
8 DAVID S. CHESLEY ON 1/02/2013 WHOM MR. VARGAS WAS FORCED
9 TO FIRE FROM THE CASE ON 3/26/2013 IN ORDER TO PREVENT
10 AND/OR CORRECT POTENTIAL IRREVERSIBLE DAMAGES BECAUSE
11 THE ATTORNEY RECKLESSLY FAILED TO CONDUCT ANY CRIMINAL
12 DEFENSE INVESTIGATIONS AND /OR TO COLLECT THE CRITICAL
13 EXCULPATORY EVIDENCE BEFORE ITS LOSS AND DESTRUCTION, AND
14 BECAUSE THE ATTORNEY'S LAW FIRM WAS PROVIDING CONSTITUTIONALLY
15 DEFICIENT CRIMINAL DEFENSE REPRESENTATION (ID AT P. 35-39)

16
17 ON 4/04/2013 PUBLIC DEFENDER JOSHUA CASTRO WAS APPOINTED
18 AS DEFENSE COUNSEL. HOWEVER AFTER FIVE UNAVAILING ATTEMPTS
19 AND REQUESTS TO HAVE COUNSEL REMOVED AND SUBSTITUTED THROUGH
20 "SUBSTITUTION OF COUNSEL HEARINGS," MR. VARGAS WAS PLACED INTO
21 A POSITION WHERE HIS ONLY OPTIONS WERE TO BE FORCED
22 THE OBJECTIVELY INEFFECTIVE AND INSUFFICIENT ASSISTANCE OF
23 COUNSEL (OR) NO COUNSEL AT ALL; AND DUE TO WHAT IS
24 ALLEGED TO BE A WIDESPREAD IMPLEMENTATION OF A CUSTOM,
25 COMMON PRACTICE AND USAGE OF ARBITRARY, WHIMSICAL AND
26 UNFAIR DEPRIVATION OF MERITED SUBSTITUTION OF COUNSEL
27 RELIEF AT THE HANDS OF MUNICIPAL AND SUPERIOR COURT JUDGES
28 AND PURSUANT TO A COMMON PRACTICE OF IMPLEMENTATION OF

1 SUBJECTIVE STANDARDS OF MEASURES BASED ON PERSONAL,
2 PREDISPOSED FIXED BELIEFS OF THE JUDGES, THAT PUBLIC DEFENSE
3 COUNSEL WAS EFFECTIVE. BUT, THAT IN REALITY, OBJECTIVELY, PUBLIC
4 COUNSEL WAS CONSTITUTIONALLY DEFICIENT (ID AT P. 35-76)

5
6 IT HAS BEEN ALLEGED THAT ULTIMATELY MR. VARGAS HAS BEEN
7 CAUSED GREAT, IMMEDIATE IRREPARABLE DAMAGES AS THE RESULT
8 OF WHAT IS ALLEGED TO BE A CONSPIRACY BETWEEN A MUNICIPAL COURT
9 JUDGE THAT WAS MARRIED TO THE PUBLIC DEFENDERS' OFFICE
10 SUPERVISOR; THE PUBLIC DEFENDER JOSHUA CASTRO; AND THE
11 DISTRICT ATTORNEY SHANNON FAHERTY, AND THAT WAS INTENDED TO
12 FORCE INEFFECTIVE ASSISTANCE OF COUNSEL ON MR. VARGAS AND
13 AGAINST HIS WILL, AND IN ORDER TO SUBVERT AND SABOTAGE MR.
14 VARGAS ABILITY TO PREPARE AND PRESENT AN EFFECTIVE CRIMINAL
15 DEFENSE AT, AND FOR THE CRITICAL STAGES OF THE DEFENSE.
16 INCLUDING, AT THE PRELIMINARY EXAMINATION AND BY CONSCIENCE
17 SHOCKING UNETHICAL CONDUCTS. (ID AT P. 39-76; 100-107; 127-
18 137; 140-144)

19
20 TO MAKE MATTERS WORST AFTER MR. VARGAS WAS FORCED TO
21 INVOKE SELF-REPRESENTATION RIGHTS IN HIS CASE, AND IN ORDER
22 TO PROTECT AND PRESERVE HIS CONSTITUTIONAL CIVIL RIGHTS, HE
23 THEN BECAME THE SUBJECT OF UNCONSTITUTIONAL AND MALICIOUS
24 RETALIATION AND PUNISHMENT AT HANDS OF SUPERIOR COURT
25 JUDGES. BECAUSE, MR. VARGAS CHOSE TO EXERCISE HIS CIVIL RIGHTS
26 TO SELF-REPRESENTATION, AND HE WAS VINDICTIVELY, ARBITRARILY
27 AND PREJUDICIALLY DENIED AND DEPRIVED OF REASONABLY
28 AVAILABLE AND NECESSARY PRO-PEA PRIVILEGES BY COURT

JUDGES AND AS CRUEL METHODS OR RETALIATION AND PUNISHMENT.

MOREOVER, THAT EFFECTIVELY CHILLED AND DEPRIVED MR. VARGAS OF A MEANINGFUL OBJECTIVE ABILITY TO ACCESS JUSTICE AND THE COURTS OF LAW, AND DEPRIVED MR. VARGAS OF A MEANINGFUL OPPORTUNITY TO SET-UP, PREPARE, PRESENT AND RELY ON AN EFFECTIVE CRIMINAL DEFENSE FOR OVER TWO YEARS AS AN INDIGENT PRO-PER DEFENDANT IN CUSTODY AFTER BEING FORCED TO REPRESENT HIMSELF IN A VERY COMPLICATED MURDER CASE. (ID AT P. 113-190)

AFTER TWENTY MONTHS OF BEING SUBJECT TO INVIDIOUS MALICIOUS FORMS OF RETALIATION AND PUNISHMENT FOR INVOKING CIVIL RIGHTS TO PRO-PER, AND AT HANDS OF SUPERIOR COURT JUDGE, JOHN TOMBERLIN, BETWEEN MARCH 7, 2014 AND OCTOBER 16, 2015; MR VARGAS' CASE WAS TRANSFERED TO JUDGE LISA ROGAN'S COURTROOM. BUT, ONLY TO CONTINUE BEING THE SUBJECT OF THE SAME FORMS AND PRACTICES OF RETALIATION. AND IN ADDITION TO BEING DEPRIVED OF BASIC PRO-PER RESOURCES, MR VARGAS WAS ALSO DEPRIVED COMPULSORY PROCESS; EVIDENTIARY HEARINGS; MEANINGFUL OPPORTUNITY TO PRESENT EVIDENCE; AND AN OPPORTUNITY TO CREATE AND ESTABLISH AN ADEQUATE RECORD OVER FEDERAL CONSTITUTIONAL CIVIL RIGHTS VIOLATION CLAIMS AND DUE PROCESS VIOLATIONS. THUS, ALSO INFRINGING ON CIVIL RIGHTS TO A MEANINGFUL AND EFFECTIVE APPEAL OR REVIEW BY ANY HIGHER COURTS. (ID AT P. 151-189)

PETITIONER IS WITHOUT ANY PLAIN, ADEQUATE AND SPEEDY REMEDY AT LAW EXCEPT BY THIS ACTION, AFTER HAVING PRESENTED HIS CLAIMS TO THE COURT OF LAST RESORT OF THE STATE AND THAT HAS DEMONSTRATED MANIFESTED INABILITY, UNWILLINGNESS AND/OR FUTILITY TO RECOGNIZE, VINDICATE AND PROTECT MR. VARGAS' CIVIL RIGHTS. (ID AT P. 4-9)

REASONS FOR GRANTING THE PETITION

- A -

A. THE COURT OF APPEALS HAS DEPARTED SO FAR FROM THE
ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS
AND SANCTIONED SUCH DEPARTURE BY THE LOWER COURT
AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S
SUPERVISORY POWER AND IN ORDER TO SAFEGUARD AND
SECURE INDISPENSABLE CIVIL RIGHTS OF THE PUBLIC

- 1 -

1. A PRO-SE PLEADING MUST BE HELD TO LESS STRINGENT STANDARDS
AND HIS LEGAL ACTION CANNOT BE DISMISSED UNLESS THERE IS NO
DOUBT THAT HE CANNOT PROVE ANY SET OF FACTS IN SUPPORT OF HIS
CLAIM TO ENTITLE HIM TO RELIEF

THE SUPREME COURT AND THE CIRCUIT COURTS, INCLUDING THE NINTH
CIRCUIT HAVE REPEATEDLY RECOGNIZED THAT A PRO-SE PLEADING
CANNOT BE HELD TO STRINGENT STANDARDS AS THOSE OF A
PROFESSIONAL ATTORNEY AND A PRO-SE ACTION SHOULD NOT BE
DISMISSED UNLESS THERE IS NO DOUBT THAT FAIR-MINDED JURISTS
ARE LEFT WITH NO DOUBT THAT THE PRO-SE LITIGANT CAN
PROVE NO SET OF FACTS THAT WOULD ENTITLE HIM OR HER TO
RELIEF. WILBORN V. ESCALDERON 789 F.2d 1328 (9TH CIR 1986)
HAINES V. KERNER 404 U.S. 519 (1972)

HIGHTENED PLEADING STANDARDS CANNOT JUST BE IMPLEMENTED
AT MERE WHIM. LEATHERMAN V. TARRAT NARCOTICS INTELLIGENCE
507 U.S. 163 (1993) SEE, ALSO CRONIN V. BRADLEY 795 F.3d 310

1 (3RD CIR 1986) AND FED. R. CIV. P. 8(a)

2
3 IN THE HABEAS CORPUS CONTEXT A COURT JUSTICE OR JUDGE
4 ENTERTAINING AN APPLICATION FOR A WRIT OF HABEAS CORPUS MUST
5 PROMPTLY AWARD THE WRIT OR ISSUE AN ORDER DIRECTING THE
6 RESPONDENT TO SHOW CAUSE WHY THE WRIT SHOULD NOT BE
7 GRANTED UNLESS IT APPEARS FROM THE APPLICATION THAT THE
8 APPLICANT IS NOT ENTITLED TO RELIEF. 28 U.S.C. A § 2243

9 IN THE INSTANT MATTER WE PRESENT PARTICULAR QUESTIONABLE
10 EVENTS WHERE THE DISTRICT COURT MAGISTRATE DID NOT
11 DISMISS THE PETITIONERS 28 U.S.C. § 2241 PETITION FOR
12 WRIT OF HABEAS CORPUS AFTER ACCEPTING THE PETITION. BUT,
13 INSTEAD ISSUED AN ORDER TO THE RESPONDENT TO ANSWER TO
14 THE ALLEGATIONS AND THAT WOULD REASONABLY INFER THE
15 CONCLUSION THAT THE MAGISTRATE JUDGE THAT SCREENED THE
16 PETITION FOUND MERIT TO THE PETITIONERS CLAIMS. SEE
17 (CA. C.D. 15216-CV-01931-R-KES HERE AFTER "HABEAS CORPUS
18 PETITION", AT DKT 10-11)

19
20 THE CALIFORNIA ATTORNEY GENERAL IN ITS ANSWER TO THE
21 PETITION DID NOT CONTEST THE FACTS OR THE UNDERLYING
22 FACTUAL ALLEGATIONS IN THE HABEAS CORPUS PETITION, SEE (ID
23 AT DKT 12) BUT, INSTEAD MOVED TO DISMISS THE PETITION
24 EXCLUSIVELY ON YOUNGER V. HARRIS 401 U.S. 37 (1971)
25 "ABSTENTION GROUNDS" THAT MR. VARGAS, THE PETITIONER,
26 IMMEDIATELY OBJECTED TO ON THE EXPLICIT "EXEMPTION"
27 CLAUSES OF "EXTRAORDINARY CIRCUMSTANCES" WITHIN THE

1 MEANING OF THE HOLDING OF YOUNGER V. HARRIS. IN
2 PARTICULAR THE FACT THAT IN THIS CASE THE FOUR
3 FACTORS THAT WOULD REQUIRE ABSTENTION ARE NOT PRESENT
4 IN THIS CASE; AND EXTRAORDINARY CIRCUMSTANCES OF
5 GREAT, IMMEDIATE, IRREPARABLE DAMAGES; AND BAD FAITH AND
6 HARASSMENT; AND JUDICIAL BIAS HAVE BEEN, IN FACT,
7 SUFFICIENTLY PLEAD AND SHOWN TO EXIST, THAT WOULD MERIT
8 EXEMPTION FROM THE GENERAL APPLICATION OF YOUNGER V.
9 HARRIS RULES OF ABSTENTION. SEE (ID AT DKT 19)

10
11 HOWEVER, THE DISTRICT COURT MAGISTRATE THEN MADE HER
12 RECOMMENDATIONS WITHOUT CONDUCTING ANY TYPE OF AN
13 ADVERSARIAL EVIDENTIARY HEARING AND ENTERED FINDINGS OF FACT
14 THAT ARE NOT SUPPORTED BY THE ACTUAL RECORDS NOR ANYTHING
15 THAT THE LOWER COURT COULD HAVE REASONABLY LEARNED IN
16 THE PROCEEDINGS. BUT, THAT RATHER, APPEARS TO BE BASED OF HER
17 OWN PERSONAL EXTRAJUDICIAL, PREDISPOSED INCLINATIONS AND/
18 OR FIXED BELIEFS, IDEALS OR CONJECTURES AND THAT IN EVERY
19 INSTANCE DISPLAY AN OBJECTIVE DEEP-SEATED FAVORITISM TOWARDS
20 THE RESPONDENT AND ANTAGONISM TOWARDS THE PRO-SE, INDIGENT
21 PRESENTENCED. CRIMINAL DEFENDANT IN CUSTODY WHO IS SUFFERING
22 CLEARLY DEMONSTRATIVE FEDERAL CONSTITUTIONAL CIVIL RIGHTS
23 VIOLATIONS, SEE (DKT 7) AND (DKT 1, 2, 19, 27) AND COMPARE TO
24 (DKT 26) AND THAT ULTIMATELY RESULTED IN THE DERIVATION
25 OF ACCESS TO EFFECTIVE JUDICIAL PROCESS TO AFFORD
26 PROTECTIONS AND VINDICATION OF CIVIL RIGHTS OF PETITIONER
27 WHEN THE DISTRICT COURT NOT ONLY DENIED THE PETITION FOR

1 WRIT OF HABEAS CORPUS BUT ALSO DENIED THE PETITIONER'S
2 CERTIFICATE OF APPEALABILITY BASED ON WHAT CLEARLY
3 AND OBJECTIVELY APPEARS TO BE UNFAIR MISREPRESENTATIONS,
4 MISINTERPRETATIONS AND MISSTATEMENTS OF THE PLAIN LANGUAGE
5 AND STATEMENTS OF THE PETITIONER'S PLEADING.
6

7
8 -2-

9 2. FAIR, IMPARTIAL AND COMPLETE READING OF THE PETITION
10 AND SUPPORTING DOCUMENTS FOR THE PETITION FOR WRIT OF
11 HABEAS CORPUS WOULD REASONABLY DEMONSTRATE THAT
12 IT IS DEBATABLE WHETHER THE PETITIONER HAS STATED
13 VALID CLAIMS OF THE DENIAL OF FEDERAL CONSTITUTIONAL
14 CIVIL RIGHTS AND WOULD ALSO FIND IT DEBATABLE WHETHER
15 THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING,
16 THEREFORE MERETING CERTIFICATION OF APPEALABILITY

17 THE UNITED STATES COURT HAS EXPLICITLY HELD THAT COA
18 RELIEF CANNOT BE DECLINED SIMPLY BECAUSE A LOWER COURT
19 MERELY BELIEVES THE APPLICANT WILL NOT DEMONSTRATE AN
20 ENTITLEMENT TO RELIEF. MILLER-EL V. COCKRELL 537 U.S. 322,
21 337 (2003). THUS THE STANDARDS FOR OBTAINING COA IS
22 NOT A PARTICULARLY EXACTING ONE. SLACK V. MCDANIEL 529
23 U.S. 413, 479 (2000) SEE ALSO WILSON V. BELLEQUE 554
24 F.3d 816 826 (9TH CIR 2009) (APPLYING THESE STANDARDS IN
25 42 U.S.C. § 2241 CONTEXT)

1 IN THE INSTANT MATTER REVIEW DE NOVO IS NECESSARY TO
2 DETERMINE IF THE LOWER COURT'S RULING IS REASONABLE AND
3 CORRECT. SEE ANGULO - DOMINGUEZ V. ASHCROFT 290 F.3d
4 1147, 1149 (9TH CIRCUIT 2002). AT THIS POINT IT IS UNCLEAR
5 WHETHER THE NINTH CIRCUIT CONDUCTED AN INDEPENDENT REVIEW
6 OF THE ACTUAL PLEADING WHEN ISSUING WHAT APPEARS TO BE
7 A SHORT SUMMARY DENIAL WITHOUT A SUBSTANTIVE OPINION.
8 SEE (APPENDIX - A - AT DK 5). IT IS QUESTIONABLE WHETHER AN
9 IMPARTIAL, FAIR AND COMPLETE READING OF THE PETITION HAS EVEN
10 TAKEN PLACE BY A REVIEWING COURT IN WHICH THE PRO-SE
11 INDIGENT PRE-SENTENCED PETITIONER'S STATEMENTS HAVE BEEN
12 TAKEN IN A LIGHT FAVORABLE TO MR. VARGAS AND CONSTRUING THE
13 STATEMENTS AS TRUE. BECAUSE, HAD SUCH FAIR REVIEW HAD BEEN
14 CONDUCTED IT WOULD REASONABLY DEMONSTRATE THAT A FAIR
15 MINDED JURIST WOULD IN FACT FIND IT DEBATABLE WHETHER
16 MR. VARGAS HAS STATED VALID JUDICABLE CLAIMS OF FEDERAL
17 CONSTITUTIONAL CIVIL RIGHTS THAT IF PROVEN TRUE WOULD
18 ENTITLE THE PETITIONER TO RELIEF AND/OR CERTIFICATE OF
19 APPEALABILITY. SLACK V. MC DANIEL 529 U.S 173, 184
20 (2000)

21
22 -3-

23 3. THE DISTRICT COURT MAGISTRATE THAT CONDUCTED THE INITIAL
24 SCREENING OF THE PETITION FOR WRIT OF HABEAS CORPUS SHOULD
25 HAVE BEEN DISQUALIFIED FROM THE PROCEEDINGS DUE TO THE
26 EXISTANCE OF OBJECTIVELY APPARENT ACTUAL BIAS AND
27 PREJUDICE AGAINST THE PETITIONER

13 OF 40
~~16 OF 44~~

1 THE UNITED STATES SUPREME COURTS AND OUR AMERICAN COURTS
2 HAVE TRADITIONALLY RECOGNIZED THAT IMPARTIALITY OF OUR
3 COURT JUDGES GOES TO THE VERY INTEGRITY OF OUR JUSTICE SYSTEM.
4 SEE, GOMEZ V. U.S. 490 U.S. 858, 876 (1989) AS FAR AS
5 U.S. V. GRINNELL 389 U.S. 563 (1966) THE SUPREME COURT
6 RECOGNIZES THAT THE INCLINATION AND PREDISPOSITION ON THE
7 PART OF A JUDGE TOWARDS A FIXED BELIEF OR IDEAL THAT
8 PREVENTS IMPARTIALITY AND NEUTRALITY - AN OPEN MIND, IS
9 EVIDENCE THAT WOULD DEMONSTRATE BIAS AND PREJUDICE THAT
10 WOULD CONSTITUTE THE BASIS FOR DISQUALIFICATION OF A JUDGE
11 FROM A CASE. (ID AT 583). SUCH FIXED BELIEFS AND
12 PARTIAL PREDISPOSITION CAN BE EVIDENT BY A PATTERN ON
13 BEHALF OF A JUDGE OF ENTERING FINDING OF FACTS THAT ARE NOT
14 SUPPORTED BY THE RECORD (OR) BASED ON EXTRA JUDICIAL SOURCES
15 THAT THE JUDGE LEARNED OUTSIDE OF THE CASE; NOT FROM THE
16 FACTS AND INFORMATION PRESENTED IN THE CASE. SEE PEACOCK
17 RECORDS INC. V. CHECKER RECORDS INC. 430 F.2d 85, 89 (7TH
18 CIR. 1970)

19
20
21 THE SUPREME COURT HAS SAID THAT "IT IS WRONG IN THEORY
22 THOUGH IT MAY NOT BE TOO FAR OFF THE MARK AS A PRACTICAL
23 MATTER TO SUGGEST, AS MANY OPINIONS HAVE, THAT 'EXTRA-
24 JUDICIAL SOURCES' IS THE ONLY BASIS FOR ESTABLISHING
25 DISQUALIFYING BIAS OR PREJUDICE. IT IS THE ONLY COMMON
26 BASIS, BUT NOT THE EXCLUSIVE ONE SINCE IT IS NOT THE
27 EXCLUSIVE REASON A PREDISPOSITION CAN BE WRONGFUL OR
28 INAPPROPRIATE. A FAVORABLE OR UNFAVORABLE PRE-DISPOSITION

1 CAN BE CHARACTERIZED AS 'BIAS' OR 'PREJUDICE'
2 BECAUSE EVEN THOUGH IT SPRINGS FROM THE FACTS ADDUCED
3 OR EVENTS OCCURING AT TRIAL IT IS SO EXTREME AS TO
4 DISPLAY CLEAR INABILITY TO RENDER FAIR JUDGMENT?
5 LITERK V. U.S. 510 U.S. 540, 551 (1994) SEE ALSO U.S.
6 V. HOLLAND 519 F.3d 909 (9th CIR 2008) THE SUPREME
7 COURT HAS FURTHER REASONABLY EMPHASIZED THAT
8 GENERALLY JUDICIAL RULINGS ALONE ALMOST NEVER CONSTITUTE
9 A VALID BASIS FOR DISQUALIFICATION. BUT, IN THE RAREST
10 INSTANCES WHERE CIRCUMSTANCES EVINCE A DEEP-SEATED
11 FAVORITISM OR ANTAGONISM WHEN NO EXTRAJUDICIAL
12 SOURCE IS INVOLVED THEN DISQUALIFICATION MAY BE
13 NECESSARY, AND ITS REQUIRED WHERE EXTRAJUDICIAL SOURCES EXIST.

14
15 IN THE INSTANT MATTER A FAIR AND COMPLETE REVIEW
16 OF THE RECORD WILL DEMONSTRATE THAT THE LOWER DISTRICT
17 COURT ENTERED NUMEROUS FINDINGS OF FACTS WITHOUT HAVING
18 CONDUCTED AN EVIDENTIARY HEARING, BUT THAT ARE NOT
19 SUPPORTED BY THE PLEADINGS, NOR ANY OF THE RECORD FILED
20 WITH THE COURT IN THE HABEAS CORPUS PROCEEDINGS.

21 SEE, (CA. C.D. 5:16-CV-01931-R-KES DKT 1, 2 AND 7
22 BUT COMPARE TO DKT 26) FURTHERMORE, IT CLEARLY
23 APPEARS THAT THE FINDINGS OF FACT THE DISTRICT COURT RELIED ON
24 TO RECOMMEND DISMISSAL OF THE PETITION AND DENIAL
25 OF COA APPLICATION ARE NOT SUPPORTED BY ANY FACTS
26 THAT THE MAGISTRATE OR JUDGE COULD HAVE LEARNED IN
27 THIS PARTICULAR MATTER. BUT, WHAT IS MOST TROUBLELING
28 HOWEVER, IS THAT IN EVERY OF THE NUMEROUS INSTANCES OF

1 MISREPRESENTATIONS; THE MISINTERPRETATIONS AND THE
2 MISSTATEMENTS OF MR. VARGAS' ACTUAL PLEADING THAT OCCURED.
3 IN THIS CASE; THEY ARE ONLY FAVORABLE AND BENEFICIAL TOWARD
4 THE RESPONDENT. AND ANTAGONISTIC TOWARDS MR. VARGAS,
5 THE PRO-SE INDIGENT PETITIONER. THUS, CREATING THE REAL
6 OBJECTIVE APPEARANCE OF ACTUAL BIAS, PARTIALITY AND
7 PREJUDICE ON BEHALF OF THE DISTRICT COURT MAGISTRATE
8 THAT WOULD HAVE REASONABLY REQUIRED HER RECUSAL AND
9 DISQUALIFICATION FOR CAUSE FROM THIS CASE. UPON MR.
10 VARGAS' FORMAL AND MERITED MOTION FOR DISQUALIFICATION
11 FOR CAUSE UNDER SECTION 28 U.S.C. § 144 AND/OR
12 § 455. SEE ALSO (9TH CIRCUIT CASE NO: 16-13419 THAT
13 WAS SUMMARILY DENIED AND THUS ESCAPED AN EFFECTIVE AND
14 ADEQUATE REVIEW) AND (CA D.C. 5:16-CV-01931-R-KES DKT 7)

15
16 -4-

17 4. PETITIONER HAS STATED SUFFICIENT FACTUAL
18 ALLEGATIONS TO STATE VALID AND COGNIZABLE CLAIMS
19 OF VIOLATIONS OF FEDERAL CONSTITUTIONAL CIVIL RIGHTS
20 IN HIS 28 U.S.D. § 2241 PETITION FOR WRIT OF HABEAS
21 CORPUS THAT HAVE BEEN WELL RECOGNIZED BY THE
22 UNITED STATES SUPREME COURT AND THE UNITED STATE
23 CIRCUIT COURTS INCLUDING THE NINTH CIRCUIT

24
25 IN THE SEMINAL CASE OF STRICKLAND V. WASHINGTON
26 466 U.S. 668 (1984) THE UNITED STATES SUPREME COURT
27 WISELY RECOGNIZED THAT ACTUAL OR CONSTRUCTIVE
28 DEPRIVATION OF THE RIGHT TO ASSISTANCE OF COUNSEL UNDER

1 THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION
2 MAY OCCUR WHEN A STATE INTERFERES IN CERTAIN
3 WAYS WITH THE ABILITY OF A CRIMINAL DEFENDANT TO
4 SET UP AND PRESENT HIS OR HER DEFENSE. (ID AT
5 P. 692). THIS IS NO NOVEL CONCEPT. SEE ALSO POWELL
6 V. ALABAMA 287 U.S. 45 (1932); JOHNSON V. ZERBST
7 304 U.S. 458 (1938); SMITH V. COUGHLIN 748 F.2d 783
8 (2d cir 1981); HURRELL-HARRINGTON V. STATE OF NEW
9 YORK 15 N.Y. 3d 8 (2d cir 2010).

11 THE UNITED STATES SUPREME COURT HAS SAID IN CUYLER V.
12 SULLIVAN 446 U.S. 335 (1980) THAT: "A DEFENDANT
13 WHO MUST FACE FELONY CHARGES IN STATE COURTS WITHOUT
14 ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT
15 HAS BEEN DENIED DUE PROCESS OF LAW. UNLESS DEFENDANT
16 CHARGED WITH SERIOUS OFFENSES... [IS] ABLE TO INVOKE THE
17 PROCEDURAL AND SUBSTANTIVE SAFEGUARDS THAT DISTINGUISH
18 OUR SYSTEM OF JUSTICE SERIOUS RISK OF INJUSTICE INFECTS
19 THE TRIAL. [CITATION] WHEN A STATE OBTAINS A CRIMINAL
20 CONVICTION THROUGH SUCH TRIAL IT IS THE STATE THAT
21 UNCONSTITUTIONALLY DEPRIVES THE DEFENDANT OF HIS LIBERTY
22 (ID AT P. 343) [EMPHASIS ADDED]

24 "ALSO 'CRITICAL' FOR SIX AMENDMENT PURPOSES IS THE
25 PERIOD BETWEEN ARRAIGNMENT AND TRIAL WHEN A CASE
26 MUST BE FACTUALLY DEVELOPED AND RESEARCHED... AND
27 PRETRIAL MOTIONS FILED. INDEED IT IS CLEAR THAT "TO DEPRIVE
28 A PERSON OF COUNSEL DURING THE PERIOD PRIOR TO TRIAL MAY

1 BE MORE DAMAGING THAN DENIAL OF COUNSEL DURING TRIAL
2 ITSELF." HURREL - HARRING V. STATE OF NEW YORK 15 N.Y.
3 3d 8 21-22 (RELYING ON MAINE V. MOULTON 474 U.S.
4 159 (1985))

5
6 IN THE LANDMARK CASE OF FARETTA V. CALIFORNIA 422 U.S.
7 806, 818-820 (1975) THE SUPREME COURT SAID: "IN
8 ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE
9 RIGHT ... TO BE INFORMED OF THE NATURE AND CAUSE OF THE
10 ACCUSATION, TO BE CONFRONTED WITH WITNESSES AGAINST HIM,
11 TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES, AND
12 TO HAVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE." BECAUSE
13 THESE RIGHTS ARE BASIC TO OUR ADVERSARIAL SYSTEM OF
14 CRIMINAL JUSTICE THEY ARE PART OF THE 'DUE PROCESS OF LAW'
15 THAT IS GUARANTEED BY THE FOURTEENTH AMENDMENT TO
16 DEFENDANTS IN CRIMINAL COURTS OF THE STATE. THE RIGHT
17 TO NOTICE, CONFRONTATION, AND COMPULSORY PROCESS,
18 WHEN TAKEN TOGETHER, GUARANTEE THAT A CRIMINAL CHARGE
19 MAY BE ANSWERED IN A MANNER NOW CONSIDERED FUNDAMENTAL
20 TO THE FAIR ADMINISTRATION OF AMERICAN JUSTICE, THROUGH
21 THE CALLING AND INTERROGATION OF FAVORABLE WITNESSES,
22 THE CROSS EXAMINATION OF ADVERSE WITNESSES AND ORDERLY
23 INTRODUCTION OF EVIDENCE."

24
25 THE SUPREME COURT RECOGNIZES THAT "THE GOVERNMENT
26 VIOLATES THE RIGHT TO EFFECTIVE ASSISTANCE WHEN IT
27 INTERFERES IN CERTAIN WAYS WITH THE ABILITY OF [THE
28 DEFENDANT] TO CONDUCT A DEFENSE." STRICKLAND V.

1 WASHINGTON 466 U.S. 685-686 (1984) [EMPHASIS
2 ADDED], THE SAME APPLIES TO THE RIGHT OF SELF-REPRESENTATION.
3 THE CALIFORNIA SUPREME COURT AND THE 9TH CIRCUIT RECOGNIZE
4 "THE RIGHT TO SELF-REPRESENTATION GUARANTEED BY THE
5 SIXTH AMENDMENT 'INCLUDES AND INDEED PRESUMES THE
6 RIGHT TO EFFECTIVE COUNSEL AND THUS ALSO INCLUDES THE
7 RIGHT TO REASONABLY NECESSARY DEFENSE
8 SERVICES. THUS, 'IT IS CERTAINLY TRUE THAT A DEFENDANT
9 MAY NOT BE PLACED IN THE POSITION TO PRESENT A DEFENSE
10 WITHOUT ACCESS TO TELEPHONE, LAW LIBRARY, RUNNER,
11 INVESTIGATOR, ADVISORY COUNSEL OR ANY OTHER MEANS TO
12 DEVELOPING A DEFENSE.'" PEOPLE V. JAMES 202 CAL
13 APP4TH 323 334 (2011) AND SEE MILTON V. MORRIS 767
14 F.2d 1143 (9TH CIR 1985); TAYLOR V. LIST 880 F.2d 1040
15 (9TH CIR 1989); BRIBIESCA V GALAZA 215 F.3d 1015 (9TH CIR
16 2000)

17
18 THE UNITED STATES SUPREME COURT HAS ALSO SAID THAT THE
19 SPIRIT OF "THE SIXTH AMENDMENT DOES NOT PROVIDE MERELY
20 THAT A DEFENSE BE MADE FOR THE ACCUSED IT GRANTS TO THE
21 ACCUSED THE RIGHT TO MAKE HIS DEFENSE... THE LANGUAGE
22 AND SPIRIT OF THE SIXTH AMENDMENT CONTEMPLATES THAT
23 COUNSEL LIKE THE OTHER DEFENSE TOOLS GUARANTEED BY THE
24 AMENDMENT SHALL BE AN AID TO A WILLING DEFENDANT, NOT
25 AN ORGAN OF THE STATE INTERPOSED BETWEEN AN UNWILLING
26 DEFENDANT AND HIS RIGHT TO DEFEND HIMSELF PERSONALLY."
27 FARETTA V. CALIFORNIA 412 U.S. 806 (1975)

1 THE NINTH CIRCUIT RECOGNIZES THAT A CRIMINAL DEFENDANT
2 CANNOT BE FORCED INTO A POSITION WHERE HE HAS TO CHOOSE
3 BETWEEN INCOMPETENT COUNSEL OR NO COUNSEL AT ALL.
4 SEE, CRANDELL V. BUNELL 144 F.3d 1213, 1216 (9TH CIR 1998)

5
6 "IT IS SETTLED THAT A [] COURT MAY NOT DENY A
7 SUBSTITUTION MOTION SIMPLY BECAUSE THE COURT THINKS
8 CURRENT COUNSEL'S REPRESENTATION IS ADEQUATE. [CITATION]
9 EVEN IF DEFENDANT'S COUNSEL IS COMPETENT A SERIOUS
10 DRAGGEDOWN IN COMMUNICATION CAN RESULT IN INADEQUATE
11 DEFENSE" U.S. V. MUSA 222 F.3d 1096 1103 (9TH CIR
12 2000)

13
14 "ABUSE OF DISCRETION BY STATE COURTS MAY AMOUNT
15 ALSO TO A VIOLATION OF THE CONSTITUTION." SCHELL V.
16 WITEK 218 F.3d 1017 1025 (9TH CIR 2000)

17
18 FURTHERMORE, IN THE CONTEXT OF THE SIXTH AMENDMENT
19 RIGHT TO SPEEDY TRIAL THE COURTS HAVE RECOGNIZED THAT
20 UNJUSTIFIED, UNNECESSARY AND PREJUDICIAL DELAYS
21 EITHER DURING THE PRE-ARRAIGNMENT STAGES AFTER
22 A PERSON HAS BEEN ARRESTED (SEE COUNTY OF RIVERSIDE
23 V. MC. LAUGHIN 500 U.S. 44, 56 (1991)) AND ALSO
24 DELAYS FROM ARREST TO TRIAL MAY, IN SOME CASES
25 VIOLATE A DEFENDANT'S DUE PROCESS RIGHTS. SEE ALSO
26 VERMONT V. BRILLON 556 U.S. 81 94 (2009) AND
27 MC. NEELY V. BLANAS 336 F.3d 822 (9TH CIR 2003)

1 AS THE CALIFORNIAN SUPREME COURT HAS ALSO RECOGNIZED:
2 "IT IS THE DEPRIVATION OF AN OPPORTUNITY TO OBTAIN
3 EVIDENCE BY THE DEFENDANT FOR HIS DEFENSE THAT MAKES THE
4 DELAY IN ARRAIGNMENT IN THE INSTANT CASE A DENIAL
5 TO DEFENDANTS' DUE PROCESS TO A FAIR TRIAL AND OF HIS
6 RIGHT TO SPEEDY TRIAL." JONES V. SUPERIOR COURT 3
7 CAL.3d 734 (1970) IN RE NEWBERN 175 CAL APP 2d 862 (1959)

8
9 "WHILE A DEFENDANT IS BEING UNLAWFULLY RESTRAINED
10 FROM LIBERTY AND DEPRIVES HIM OF AN OPPORTUNITY TO
11 OBTAIN EVIDENCE THAT MIGHT ESTABLISH HIS INNOCENCE THEN
12 THE STATE IS SUPPRESSING IT JUST AS EFFECTIVELY AS IF IT
13 DID EXIST AND WITHHELD IT." IN RE NEWBERG AT P. 865.

14
15 IN THIS CASE THE LOWER DISTRICT COURT ULTIMATELY REASONED
16 THAT MR. VARGAS HAS FAILED TO STATE VALID CLAIMS OF FEDERAL
17 CONSTITUTION CIVIL RIGHTS VIOLATIONS AND DENIED COA
18 ON THOSE GROUNDS. MOREOVER, THE NINTH CIRCUIT SIMPLY
19 SUMMARILY AFFIRMED THE LOWER COURTS DECISION, BUT IT
20 IS QUESTIONABLE WHETHER THE REVIEWING COURT ACTUALLY
21 CONDUCTED A COMPLETE AND FAIR READING OF THE ORIGINAL
22 PETITION FOR WRIT OF HABEAS CORPUS WHEN AFFIRMING THE
23 DISTRICT COURTS DECISION, BECAUSE HAD SUCH A FAIR AND
24 COMPLETE READING BEEN CONDUCTED IT WOULD HAVE BEEN
25 REASONABLY CLEAR THAT PETITIONER HAS IN FACT PLEAD
26 SUFFICIENT FACTS TO STATE THE FOLLOWING CIVIL RIGHTS
27 VIOLATION CLAIMS AS SHOWN ON THE FACE OF THE PLEADING:

1 a.) SYSTEMIC, STRUCTURAL, INSTITUTIONAL DEPRIVATION OF
2 EFFECTIVE ASSISTANCE OF COUNSEL, INCLUDING THE ARBITRARY
3 DEPRIVATION OF MERITED SUBSTITUTION OF COUNSEL RELIEF
4 DURING ELEVEN MONTHS OF THE MOST CRITICAL INITIAL
5 STAGES OF CRIMINAL DEFENSE PREPARATION THAT ULTIMATELY
6 FORCED AND COERCED THE PETITIONER TO REPRESENT HIMSELF IN
7 A VERY COMPLICATED MURDER CASE AND THAT HAS RESULTED IN
8 IRREPARABLE DAMAGES. SEE (CA. C.D. 5:16-CV-01931 DKT 1
9 AT P. 29-83)
10

11 b.) PRE-ARRAIGNMENT DELAYS THAT STRUCTURALLY INTERFERED
12 WITH THE DEFENSE PREPARATION AND CAUSED LOSS AND
13 DESTRUCTION OF EXCULPATORY AND POTENTIALLY EXCULPATORY
14 EVIDENCE. (ID AT P. 4-29)
15

16 c.) BAD FAITH LOSS AND DESTRUCTION OF CRITICALLY KNOWN,
17 APPARENT, INDICATED AND REQUESTED EXCULPATORY AND POTENTIALLY
18 EXCULPATORY EVIDENCE CAUSED BY BAD FAITH FAILURE AND
19 RECKLESS DISREGARD BY POLICE AND PROSECUTORS TO COLLECT AND
20 PRESERVE. (ID AT P. 1-29)
21

22 d.) SYSTEMIC, STRUCTURAL, INSTITUTIONAL DEPRIVATION OF
23 FUNDAMENTALLY NECESSARY AND REASONABLY AVAILABLE BASIC
24 PRO-PER TOOLS AND RESOURCES REQUIRED FOR EFFECTIVE
25 PREPARATION OF A CRIMINAL DEFENSE. (ID AT P. 87-187)
26

27 e.) BAD FAITH INTENTIONAL SUBVERSION AND INTERFERENCE
28 WITH THE DEFENSE PREPARATION AND CIVIL RIGHTS OF SELF-

1 REPRESENTATION BY THE STATE PROSECUTOR(S) AND BY USE
2 OF FLAGRANTLY DECEITFUL METHODS. (ID AT P. 41-48 ; 98-107)

3
4 F.) DELIBERATE AND REPEATED BAD FAITH TACTICAL SUPPRESSION
5 AND CONCEALMENT OF MATERIAL EXCULPATORY EVIDENCE
6 THAT DISCREDITED CRIMINAL JAILHOUSE INFORMANT THAT THE
7 PROSECUTOR RECKLESSLY USED AND CONSPIRED WITH IN ORDER
8 TO ORCHESTRATE AND CARRY OUT INFILTRATION, INVASION
9 INTERCEPTION, CONFISCATION, LOSS AND/OR DESTRUCTION OF
10 CONFIDENTIAL AND PRIVILEGED DEFENSE FILES, DOCUMENTS,
11 DISCOVERIES STRATEGIES AND EVIDENCE AND AS METHODS OF
12 INTENTIONAL AND PLANNED SUBVERSION OF THE DEFENSE
13 PREPARATIONS. (ID AT P. 73-75 ; 127-144)

14
15 9.) JUDICIAL BIAS, ANIMUS, PREJUDICE AND/OR RETALIATION
16 THAT CAUSED SYSTEMIC, STRUCTURAL, INSTITUTIONAL AND
17 INTENTIONAL OBSTRUCTION WITH-AND DEPRIVATION OF-
18 PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW FOR
19 MORE THAN THREE YEARS IN THE PETITIONERS CRIMINAL
20 PROCEEDINGS (ID AT P. 137-190)

21
22 ALTHOUGH THE CALIFORNIA ATTORNEY GENERAL NEVER CONTESTED
23 THE FACTUAL ALLEGATIONS TO MR VARGAS CLAIMS BUT RATHER
24 MOVED TO DISMISS ON ABSTENTION GROUNDS, CONTRARY TO THE
25 LOWER COURTS ANALYSIS WE POINT TO THE SPECIFIC PORTIONS
26 OF THE RECORD WERE VALID CLAIMS OF VIOLATIONS OF FEDERAL
27 CONSTITUTIONAL CIVIL RIGHTS HAVE BEEN ALLEGED AND SHOWN

-B-

THE UNITED STATES COURT OF APPEALS HAS DECIDED AN
IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN,
BUT SHOULD BE SETTLED BY THE SUPREME COURT BECAUSE
IT AFFECTS EXCEPTIONAL PUBLIC INTEREST FOR THE SWIFT,
EFFICACIOUS AND EFFECTIVE VINDICATION AND PROTECTION OF
CHERISHED CONSTITUTIONAL CIVIL RIGHTS AND LIBERTY.

-1-

THE YOUNGER V. HARRIS 401 U.S. 37 (1971) RULE OF ABSTENTION
WAS NOT INTENDED TO BE USED AS A SWORD FOR THE STATE
AND ITS OFFICIALS TO TRAMPLE AND PILLAGE THE CIVIL RIGHTS
OF PUBLIC CITIZENS AND TO DEPRIVE THEM OF EFFECTIVE,
ADEQUATE AND SPEEDY REMEDY AT LAW FOR VINDICATION AND
PROTECTION SIMPLY BECAUSE A PERSON HAS BEEN ACCUSED
OF COMMITTING A CRIMINAL OFFENCE. (ID AT P. 45-46)

IN HARRIS V. YOUNGER THE SUPREME COURT CLEARLY HELD THAT
EX PARTE YOUNG 209 U.S. 123 AND FOLLOWING CASES HAVE
ESTABLISHED THE RULE THAT WHEN ABSOLUTELY NECESSARY FOR
PROTECTION OF CONSTITUTIONAL RIGHTS COURTS OF THE UNITED
STATES HAVE POWER TO ENJOIN STATE OFFICERS FROM
INSTITUTING CRIMINAL ACTIONS, BUT THIS MAY NOT BE DONE
EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES, WHERE
THE DANGER OF IRREPARABLE LOSS IS BOTH GREAT AND IMMEDIATE
... THE ACCUSED SHOULD FIRST SET UP AND RELY UPON HIS
DEFENSE IN THE STATE COURT ... UNLESS IT PLAINLY APPEARS
THAT THIS COURSE WOULD NOT AFFORD ADEQUATE PROTECTION. (ID)

(a)

IN THIS CASE THE PETITIONER HAS ALLEGED AND SHOWN HOW THE STATE IS SYSTEMATICALLY DEPRIVING HIM OF A MEANINGFUL AND EFFECTIVE OPPORTUNITY TO SET UP, PREPARE, PRESENT AND RELY ON A COMPLETE CRIMINAL DEFENSE IN THE STATE COURT INCLUDING AIRING HIS FEDERAL CONSTITUTIONAL CIVIL RIGHTS VIOLATION CLAIMS.

IN GIBSON V. BERRYHILL 411 U.S. 564 577 (1973) THE SUPREME COURT EXPLAINED THAT "YOUNGER V. HARRIS CONTEMPLATES THE OUTRIGHT DISMISSAL OF THE FEDERAL SUIT, AND THE PRESENTATION OF ALL CLAIMS BOTH STATE AND FEDERAL... SUCH A COURSE NATURALLY PRESUPPOSES THE OPPORTUNITY TO RAISE AND HAVE TIMELY DECIDED BY A COMPETENT STATE TRIBUNAL THE FEDERAL ISSUES INVOLVED."

THE SUPREME COURT HAS REASONABLY RECOGNIZED THAT THE OPPORTUNITY TO RAISE AND HAVE TIMELY DECISIONS OVER IMPORTANT CLAIMS AND ISSUES OF FEDERAL CONSTITUTIONAL DIMENSION INVOLVES MUCH MORE THAN MERELY FILING PAPERS IN A COURT OF LAW (OR) MERE PRO-FORMA HEARINGS. THE SUPREME COURT IN GRAY V. NEITHERLAND 518 U.S. 152, 181 (1999) UPHELD THE WELL SETTLED PRINCIPLE THAT:

"COMMON JUSTICE REQUIRES THAT NO MAN SHALL BE CONDEMNED IN HIS PERSON OR PROPERTY WITHOUT... AN OPPORTUNITY TO MAKE HIS DEFENSE." [CITATION] A PRO-FORMA OPPORTUNITY WILL NOT DO. DUE PROCESS DEMANDS AN OPPORTUNITY TO BE HEARD AT A MEANINGFUL TIME AND IN A

1 MEANINGFUL MANNER.³ [CITATION] ... [THE RIGHT TO A HEAR-
2 ING EMBRACES NOT ONLY THE RIGHT TO PRESENT EVIDENCE, BUT
3 ALSO A REASONABLE OPPORTUNITY TO KNOW THE CLAIMS OF THE
4 OPPOSING PARTY AND TO MEET THEM.]³ (ID AT P. 181)

5
6 IN 1965 THE SUPREME COURT SAID:⁵ "THE PROCEDURES
7 SHOULD BE SWIFT AND COMPREHENSIVE TO EMBRACE ALL
8 FEDERAL CONSTITUTIONAL CLAIMS. IN LIGHT OF FAY V. NOIA
9 SUPRA, IT SHOULD ESCHEW RIGID AND TECHNICAL DOCTRINES OF
10 FORFEITURE, WAIVER OR DEFAULT ... IT SHOULD PROVIDE FOR
11 FULL FACT HEARING TO RESOLVE DISPUTED FACTUAL ISSUES
12 AND FOR COMPILATION OF A RECORD TO ENABLE FEDERAL
13 COURTS TO DETERMINE THE SUFFICIENCY OF THOSE HEARINGS."³
14 CASE V. STATE OF NEBRASKA 381 U.S. 336, 337 (1965)

15
16 THE 9TH CIRCUIT ALSO RECOGNIZES THESE BASIC PRINCIPLES
17 IN FACT IT HAS RECENTLY SAID:⁶ "WE HAVE HELD REPEATEDLY
18 THAT WHERE A STATE COURT MAKES FACTUAL FINDINGS WITHOUT
19 AN EVIDENTIARY HEARING OR OTHER OPPORTUNITY FOR PETITIONER
20 TO PRESENT EVIDENCE 'THE FACT FINDING PROCESS ITSELF
21 IS DEFICIENT' AND NOT ENTITLED TO DEFERENCE. [CITATION]
22 IF FOR EXAMPLE A STATE COURT MAKES EVIDENTIARY FINDINGS
23 WITHOUT HOLDING A HEARING AND GIVING PETITIONER AN
24 OPPORTUNITY TO PRESENT EVIDENCE, SUCH FINDING CLEARLY
25 RESULTS IN UNREASONABLE DETERMINATION OF FACTS."³

26 HURLES V. RYAN 706 F.3d 1021, 1038-1039 (9TH CIR 2013)

1 IN THIS CASE THE PETITIONER HAS SUFFICIENTLY AND OBJECTIVELY
2 SHOWN HOW THE SYSTEMIC, STRUCTURAL AND INSTITUTIONAL
3 ENCROACHMENT, OBSTRUCTIONS AND VIOLATIONS OF CIVIL RIGHTS
4 TO SET UP, PREPARE AND PRESENT HIS DEFENSE IN THE TRIAL
5 COURT OF THE STATE, IN CONJUNCTION WITH THE STATE'S APPELLATE,
6 AND SUPREME COURTS' FAILURE AND/OR INABILITY TO PROVIDE
7 PLAIN, SPEEDY AND EFFECTIVE VINDICATION AND CORRECTION FROM
8 THE HARM AND INJURIES BEING CAUSED TO MR. VARGAS DURING
9 THE ACTUAL CRIMINAL PROCEEDING RESULTING FROM VIOLATION OF
10 FEDERAL CONSTITUTIONAL CIVIL RIGHTS VIOLATIONS, IS WHAT IS
11 CAUSING A SYSTEMATIC DEFECT AND CORRUPTION THAT RENDERS
12 THE APPELLATE AND/OR REVIEW PROCESS BY HIGHER COURTS
13 OBJECTIVELY DISFUNCTIONAL, INEFFECTIVE AND OBJECTIVELY
14 INADEQUATE TO PROVIDE ADEQUATE REMEDY. BECAUSE OF THE
15 INHERENTLY CHILLING EFFECT THAT THE VIOLATIONS CAUSE TO
16 THE "EXHAUSTION OF ADMINISTRATIVE REMEDIES" THAT ARE
17 REQUIRED BY LAW. SEE (CA.D.C. 5:16-CV-01931 DKT 1 P. 87-187)

18
19 FOR INSTANCE, CALIFORNIA STRICTLY REQUIRE THAT ANY
20 ALLEGATIONS FACTS AND EVIDENCE THAT SUPPORT CONSTITUTIONAL
21 CLAIMS MUST BE ALWAYS RAISED AND PRESENTED TO THE
22 TRIAL COURT IN ORDER TO CREATE AN APPROPRIATE RECORD
23 AND TO PRESERVE THE ISSUES FOR AN APPEAL. IF A PERSON
24 FAILS TO DO SO, THE CALIFORNIA APPELLATE COURTS WILL
25 REJECT, DISMISS AND/OR DISREGARD ANY CLAIMS INCLUDING
26 THE FACTS AND EVIDENCE THAT WERE NOT FIRST PRESENTED
27 TO THE TRIAL COURT AND ESTABLISHED IN THE TRIAL COURT
28 RECORDS. SEE IN RE HOCHBERG 2 CAL. 3D 870 (1970)

(b)

THIS CASE ALSO MEETS THE BAD FAITH AND HARASSMENT ELEMENTS TO INVOKE THE EXEMPTION CLAUSE FROM THE RULE OF ABSTENTION AND BY THE SHOWING OF PARTICULAR BAD-FAITH, OUTRAGEOUS MISCONDUCTS BY THE STATE LAW ENFORCEMENT, PROSECUTORS AND COURT JUDGES THAT HAS TAKEN PLACE IN THIS CASE

THE UNITED STATES SUPREME COURT HAS NOT SPECIFICALLY ANSWERED THE QUESTION OF WHAT EXACTLY "BAD FAITH AND HARASSMENT" MEANS NOR ESTABLISHED DEFINITE LIMITATIONS TO THE INTERPRETATION OF SUCH CLAUSE WITHIN THE MEANING OF YOUNGER V. HARRIS.

IN MIDDLESEX COUNTY ETHICS COMMITTEE V. GARDEN STATE BAR ASS'N 457 U.S. 423, 435 (1982) THE SUPREME COURT SAID: "THE IMPORTANCE OF THE STATE INTEREST IN THE PENDING STATE JUDICIAL PROCEEDINGS AND THE FEDERAL CASE CALLS YOUNGER ABSTENTION INTO PLAY. SO LONG AS THE CONSTITUTIONAL CLAIMS OF [APPELLANT] CAN BE DETERMINED IN THE STATE PROCEEDINGS AND SO LONG AS THERE IS NO SHOWING OF BAD FAITH, HARASSMENT OR SOME OTHER EXTRAORDINARY CIRCUMSTANCES THAT WOULD MAKE ABSTENTION INAPPROPRIATE THE FEDERAL COURT SHOULD ABSTAIN" [EMPHASIS ADDED]

THE COURT SAID IN YOUNGER V. HARRIS 401 U.S. AT P. 54: "OTHER UNUSUAL SITUATIONS CALLING FOR FEDERAL INTERVENTION MIGHT ALSO

1 ARISE. BUT THERE IS NO POINT IN OUR ATTEMPT NOW TO SPECIFY
2 WHAT THEY MIGHT BE."

3
4 JUSTICE STEWART IN HIS CONCURRING OPINION IN YOUNGER,
5 WITH WHOM JUSTICE HARLAN JOINED, HAVE PROVIDED US
6 AN IDEA OF WHAT "BAD FAITH OR HARASSMENT" MAY MEAN:

7
8 "A THREAT OF THIS NATURE MIGHT BE SHOWN IF THE STATE
9 CRIMINAL STATUTE IN QUESTION WERE PATENTLY AND FLAGRANTLY
10 UNCONSTITUTIONAL ON ITS FACE, OR IF THERE HAS BEEN BAD
11 FAITH AND HARASSMENT-- OFFICIAL LAWLESSNESS-- IN
12 A STATUTE'S ENFORCEMENT. IN SUCH CIRCUMSTANCES THE REASON
13 OF POLICY FOR DEFERRING TO STATE ADJUDICATION ARE OUTWEIGH-
14 ED BY THE INJURY FLOWING FROM THE VERY BRINGING OF THE
15 STATE PROCEEDINGS, BY PERVERSION OF THE VERY PROCESS THAT
16 IS SUPPOSED TO PROVIDE VINDICATION AND BY THE NEED FOR
17 SPEEDY AND EFFECTIVE ACTION TO PROTECT FEDERAL RIGHTS."
18 (ID AT P. 36) [EMPHASIS ADDED]

19
20 THE SUPREME COURT HAS ALSO RECOGNIZED THAT THIS
21 "OFFICIAL LAWLESSNESS" MAY BE MANIFESTED NOT ONLY IN
22 THE WAY THAT A STATE MAY ATTEMPT TO ENACT UNCONSTITUTIONAL
23 LAWS. "OFFICIAL LAWLESSNESS" MAY ALSO BE MANIFESTED BY
24 THE PARTICULAR METHODS THAT INDIVIDUALS OR THE STATE TAKE
25 IN ORDER TO ENFORCE THE LAW (OR) NOT ENFORCE THE LAW.
26 AS THE SUPREME COURT IN ZINERMON V. BURCH 494 U.S.
27 113, 125 (1990) EXPLAINED:

28

(i)

(i) BAD FAITH ON BEHALF OF POLICE AND PROSECUTORS MAY BE SHOWN BY THE LOSS AND DESTRUCTION OF KNOWN, INFORMED, INDICATED AND REQUESTED MATERIAL EXCULPATORY AND POTENTIALLY EXCULPATORY EVIDENCE CAUSED BY THE DELIBERATE AND/OR RECKLESS BAD FAITH FAILURE BY POLICE AND PROSECUTORS TO COLLECT AND PRESERVE.

ALTHOUGH THE SUPREME COURT HAS NOT SQUARELY DECIDED THE ISSUE, THE NINTH CIRCUIT AND OTHER CIRCUIT COURTS HAVE RECOGNIZED "BAD FAITH" IN FAILURE TO COLLECT AND TO PRESERVE EXCULPATORY AND POTENTIALLY EXCULPATORY EVIDENCE THAT POLICE OR PROSECUTORS INDICATE, BY THEIR OWN CONDUCT, OF HAVING BECOME INFORMED AND REASONABLY AWARE COULD FORM THE FOUNDATION AND PLAY AN IMPORTANT PART AT TRIAL THAT COULD BE FAVORABLE IN EXCULPATING OR EXONERATING AN ACCUSED FROM CHARGES. SEE, MILLER V. VASQUEZ 868 F.2d 1116, 1120-1121 (9TH CIR 1989); COMMONWEALTH OF NORTHERN MARIANA ISLANDS V. BOWIE 243 F.3d 1109, 1117 (9TH CIR 2001); TENNISON V. CITY AND COUNTY OF SAN FRANCISCO 570 F.3d 1078 (9TH CIR 2008); BAPTISTE V. JC. PENNY CO. 197 F.3d 1252 (10TH CIR 1998); WILSON V. LAWRENCE COUNTY 280 F.3d 996 (8TH CIR 2001); KINGSLAND V. CITY OF MIAMI 369 F.3d 1212 (11TH CIR 2009); LOGSDON V. HAINS 492 F.3d 334 (6TH CIR 2007); BEVIER V. HUCAL 806 F.2d 123 (7TH CIR 1986) AND COMPARE TO (CA.C.D. 5:16-cv-01931-DKT 1 AT P. 10-29) THE PETITIONERE CLEARLY SHOWS "BAD FAITH" ON BEHALF OF POLICE. THAT SHOULD QUALIFY FOR EXCEMPTION FROM ABSTENTION RULES.

(ii)

(ii)

BAD FAITH ON BEHALF OF STATE PROSECUTORS MAY BE SHOWN WHEN A PROSECUTOR ACTS WITH FLAGRANT OR RECKLESS DISREGARD TOWARDS THEIR OFFICIAL AND CONSTITUTIONAL OBLIGATIONS; OR WHEN ENGAGED IN FLAGRANT OR RECKLESS TACTICS TO OBSTRUCT AND SUBVERT WITH A CRIMINAL DEFENDANT'S CONSTITUTIONAL CIVIL RIGHTS TO PRESENT A CRIMINAL DEFENCE:

IN MAINE V. MOULTON 474 U.S. 159 (1985) THE UNITED STATES SUPREME COURT SAID THAT: "WE HAVE ON SEVERAL OCCASIONS... MADE CLEAR THAT AT THE VERY LEAST THE PROSECUTOR AND POLICE HAVE AN AFFIRMATIVE OBLIGATION NOT TO ACT IN A MANNER THAT CIRCUMVENTS AND THEREBY DILUTES THE PROTECTION AFFORDED BY THE RIGHT TO COUNSEL."

"WHILE DISTRICT ATTORNEYS ARE EXPECTED TO PROSECUTE THEIR CASES WITH CONSIDERABLE VIGOR AND DISPATCH, THEY 'MAY STRIKE HARD BLOWS BUT ARE NOT AT LIBERTY TO STRIKE FOUL ONES' (BERGER V. UNITED STATES 295 U.S. 78, 88...) [CITATION] BY CONSPIRING TO VIOLATE PETITIONERS' CONSTITUTIONAL RIGHTS THE PROSECUTION STRUCK A FOUL BLOW."

MORROW V. SUPERIOR COURT 30 CAL. APP. 4TH 1252, 1262 (1994)

THE UNITED STATES AND CALIFORNIA SUPREME COURTS HAVE RECOGNIZED THAT THERE ARE INSTANCES WHERE A STATE PROSECUTOR'S ACTIONS MAY BE SO OUTRAGEOUS AND

1 OFFENSIVE AS TO INTERFERE WITH THE RIGHTS IMPLICIT IN THE
2 CONCEPT OF ORDERED LIBERTY AND RISING TO LEVELS OF
3 CONSCIENCE SHOCKING AND BAD FAITH THAT RESULTS FROM
4 PROSECUTORIAL FLAGRANT MISBEHAVIOR. SEE PEOPLE V. URIBE
5 199 CAL. APP 4TH 839 (2011)

6
7 IN UNITED STATES V. CHAPMAN 524 F.3d 1073, 1086 (9TH
8 CIR 2008) THE COURT RECOGNIZED THAT BAD FAITH MAY BE PROVEN
9 WHERE A PROSECUTOR ENGAGES IN REPEATED SUPPRESSION AND
10 CONCEALMENT OF MATERIAL EXCULPATORY EVIDENCE AND WHEN
11 IT AFFIRMATIVE MISINTERPRETS FACTS AND INFORMATION TO THE
12 COURT REGARDING DISCOVERY OBLIGATIONS.

13
14 IN UPHOLDING THE DISTRICT COURT'S ORDER TO DISMISS THE
15 ACTION, THE COURT RELIED ON THE REASONING THAT "IN
16 DETERMINING THE PROPER REMEDY FOR PROSECUTORIAL MISCONDUCT
17 WE MUST CONSIDER THE GOVERNMENT'S WILLFULNESS IN
18 COMMITTING THE MISCONDUCT AND ITS WILLINGNESS TO OWN
19 UP TO IT" [CITATION] AS DESCRIBED ABOVE THE DISTRICT
20 COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE
21 GOVERNMENT ACTED "FLAGRANTLY AND IN BAD FAITH" IN
22 MISREPRESENTING ITS COMPLIANCE WITH ITS DISCOVERY
23 OBLIGATIONS." (ID AT P. 1087-1088) SEE ALSO UNITED
24 STATES V. BERNAL-OBESO 989 F.2d 331 (9TH CIR 1993)
25 MOREOVER, A PROSECUTOR ACTS WITH "BAD FAITH" WHEN IT
26 VIOLATES ETHICAL DUTIES AND FAILS TO CORRECT KNOWN FALSE
27 EVIDENCE. SEE, COMMON WEALTH OF NORTHERN MARIANA ISLANDS
28 243 F.3d 1109 SUPRA AT P. 1117.

1 IN THIS INSTANT MATTER A FAIR REVIEW OF THE PLEADING AND
2 SUPPORTING DOCUMENTS WILL DEMONSTRATE THAT THE APPELLANT
3 HAS SUFFICIENTLY STATED NUMEROUS CLAIM(S) OF FLAGRANT
4 BAD FAITH PROSECUTORIAL MISCONDUCTS THAT THE PROSECUTING
5 ATTORNEY(S) HAVE RESORTED TO AS TACTICAL METHODS
6 THAT EFFECTIVELY SUBVERTED INFRINGED AND VIOLATED
7 THE APPELLANT'S FEDERAL CIVIL RIGHTS:

8
9 (a) PROSECUTORIAL TACTICS OF SUPPRESSION AND
10 CONCEALMENT OF MATERIAL EXCULPATORY AND FAVORABLE
11 EVIDENCE THAT HAMPERED AND INTERFERED WITH PREPARATION
12 OF THE DEFENSE. SEE (EDCV-01931-RKES DKT 1 AT P.
13 10-29; 73-77; 137-144 AND CORRESPONDING EXHIBITS)

14
15 (b) PROSECUTORIAL DELIBERATE SUBVERSION OF APPELLANTS
16 INVOCATION OF CIVIL RIGHTS TO SELF REPRESENTATION DURING
17 CRITICAL PRE-TRIAL PRELIMINARY EXAMINATION STAGES OF THE
18 DEFENSE AND BY LODGING BAD FAITH OBJECTIONS AND
19 MISREPRESENTATION OF MATERIAL FACTS TO THE COURT IN
20 ORDER TO MANIPULATE AND INFLUENCE ADVERSE COURT DECIS-
21 IONS OVER APPELLANTS "FARETTA HEARING" OF 2/18/2019.
22 SEE (IA AT P. 44-47)

23
24 (c) PROSECUTORIAL DELIBERATE SUBVERSION OF APPELLANTS
25 PETITION FOR WRIT OF MANDATE TO CALIFORNIA 4TH DISTRICT COURT
26 OF APPEAL CASE NO: E061909. AND BY MAKING FRAUDULENT
27 MISREPRESENTATIONS OF MATERIAL FACTS TO THE COURT AND
28 BY CERTIFYING THAT APPELLANT HAD BEEN GRANTED BASIC AND

1 FUNDAMENTALLY NECESSARY PRO-PER TOOLS BY THE TRIAL COURT
2 JUDGE, (i.e., TELEPHONE DEBIT CARD TO ALLOW INDIGENT PRO-PER
3 LEGAL CALLS AND LEGAL RUNNER TO ASSIST WITH PROMPT ACCESS
4 TO PHOTO-COPIES OF LEGAL DOCUMENTS). BUT THAT IN REALITY
5 THE TRIAL COURT JUDGE DID NOT GRANT NOR PROVIDE FOR THE
6 APPELLANT. NONETHELESS, THE APPELLATE COURT RELIED ON THE
7 DISTRICT ATTORNEYS' FRAUDULENT MISINFORMATION AND DENIED
8 WRIT OF MANDATE RELIEF AND THAT ULTIMATELY INTERFERED
9 PREVENTED AND CHILLED THE MEANINGFUL PREPARATION OF THE
10 DEFENSE FOR OVER TWO YEARS. WHILE APPELLANT ACTED IN PRO-
11 -PER STATUS. SEE (ID AT P.95-107)

12
13 (d) PROSECUTORIAL FLAGRANT, RECKLESS, BAD FAITH TACTICS
14 OF USING A CORRUPT CRIMINAL JAIL HOUSE INFORMANT THAT
15 THE PROSECUTOR KNEW AND/OR SHOULD HAVE KNOWN WAS PROVID-
16 ING CLEARLY FALSE, FABRICATED AND UNRELIABLE EVIDENCE
17 TO THE PROSECUTOR, BUT THAT THE PROSECUTOR KNOWINGLY
18 DISREGARDED TO CORRECT. SEE (ID AT P.51-53; 137-141)

19
20 (e) PROSECUTORIAL FLAGRANT, RECKLESS, BAD FAITH TACTICS
21 OF KNOWINGLY USING A CORRUPT LYING CRIMINAL JAIL HOUSE
22 INFORMANT IN ORDER TO ORCHESTRATE AND CARRY OUT A
23 PLANNED AND CONCERTED INVASION, INFILTRATION, INTERCEPTION,
24 CONFISCATION, WITHHOLDING, LOSS AND/OR DESTRUCTION OF THE
25 APPELLANTS' PRIVILEGED AND CONFIDENTIAL CRIMINAL DEFENSE
26 FILE, EVIDENCE, DOCUMENTS, WRITINGS AND DISCOVERIES IN ORDER
27 TO GAIN KNOWLEDGE AND/OR TO SUBVERT THE APPELLANTS'
28 PRIVILEGED TACTICS AND STRATEGIES OF DEFENSE PRESENTATION.

1 AND BY MANIPULATING THE COURTS OF LAW INTO ISSUING A SEARCH
2 WARRANT BASED ON FABRICATED AND UNRELIABLE STATEMENT AND
3 EVIDENCE PROVIDED BY THE KNOWN LYING CRIMINAL INFORMANT. SEE
4 (ID AT P. 51-53; 127-141)

5
6 (F) PROSECUTORIAL FLAGRANT, RECKLESS BAD FAITH TACTICS OF
7 REPEATED FORMS OF LYING, MISINFORMING AND ACTIVELY, FABRICATING
8 FALSE AND FRAUDULENT MATERIAL MISINFORMATION IN THE COURTS
9 OF LAW IN EFFECTIVE ATTEMPTS TO MANIPULATE AND INFLUENCE
10 THE JUDGMENTS ADVERSELY AGAINST APPELLANT, AND RECKLESS
11 FLAGRANT DISREGARD TOWARDS FAILURE TO CORRECT THE FALSE
12 MISREPRESENTATIONS AND MISINFORMATIONS. (ID AT P. 10-144)

13
14 "FEW THINGS ARE MORE REPUGNANT TO THE CONSTITUTIONAL EXPECT-
15 ATIONS OF OUR CRIMINAL JUSTICE SYSTEM THAN COVERT PERJURY
16 AND SPECIALLY PERJURY THAT FLOWS FROM A CONCERTED EFFORT BY
17 REWARDED CRIMINALS TO FRAME A DEFENDANT. THE ULTIMATE
18 MISSION OF THE SYSTEM UPON WHICH WE RELY TO PROTECT THE LIBERTY
19 OF THE ACCUSED AS WELL AS THE WELFARE OF SOCIETY IS TO ASCERTAIN
20 THE FACTUAL TRUTH, AND TO DO SO IN A MANNER THAT COMPORTS
21 WITH DUE PROCESS OF LAW AS DEFINED BY OUR CONSTITUTION. THIS
22 MISSION IS UTTERLY DERAILED BY UNCHECKED LYING WITNESSES,
23 AND ANY LAW ENFORCEMENT OFFICER OR PROSECUTOR WHO FINDS
24 IT TACTICALLY ADVANTAGEOUS TO TURN A BLIND EYE TO THE
25 MANIFESTED POTENTIAL FOR MALEVOLENT DISINFORMATION."
26 COMMONWEALTH OF NORTHERN MARIANA ISLANDS 243 F.3d ATP.
27 1115

(iii)

(iii) BAD FAITH IS SHOWN BY THE OBJECTIVE APPEARANCE OF BIAS, DISCRIMINATORY ANIMUS OR PREDISPOSED FIXED BELIEFS OF A BENT MIND THAT DEMONSTRATE THE LIKELIHOOD OF DEEP-SEATED ANTAGONISM TOWARDS A CRIMINAL DEFENDANT AND FAVORITISM TOWARDS THE STATE PROSECUTORS; OR BY THE PROBABILITY OF A REAL CONFLICT OF INTEREST ON BEHALF OF A COURT JUDGE

THE UNITED STATES SUPREME COURT RECOGNIZED THAT "THE PREDICATE FOR A YOUNGER V. HARRIS DISMISSAL WAS LACKING FOR THE [APPELLANT] ALLEGED AND THE DISTRICT COURT CONCLUDED THAT THE STATE [TRIBUNALS] ... WERE INCOMPETANT BY REASON OF BIAS." GIBSON V. BERRYHILL 711 U.S. 564, 579 (1973) SEE ALSO HIRST V. JUSTICES OF SUPREME COURT OF STATE OF CALIFORNIA 67 F.3d 708, 713 (9TH CIR 1995) [IN RECOGNIZING JUDICIAL BIAS AS BASIS FOR YOUNGER V HARRIS EXEMPTION CLAUSE TO ABSTENTION RULE] [EMPHASIS ADDED]

THE NINTH CIRCUIT HAS HELD "A FAIR TRIAL IN A FAIR TRIBUNAL IS A BASIC REQUIREMENT OF DUE PROCESS" [CITATION] "FAIRNESS OF COURSE, REQUIRES AN ABSENCE OF ACTUAL BIAS IN THE TRIAL OF CASES. BUT OUR JUSTICE SYSTEM OF LAW HAS ALWAYS ENDEAVORED TO PREVENT EVEN THE PROBABILITY OF UNFAIRNESS ... WE DO NOT ASK WHETHER ... [A JUDGE] ACTUALLY HARBORED SUBJECTIVE BIAS. RATHER WE ASK WHETHER THE AVERAGE JUDGE IN HER POSITION WAS LIKELY TO BE NEUTRAL OR WHETHER THERE EXISTED AN UNCONSTITUTIONAL POTENTIAL FOR BIAS." [CITATION] HURLES V. RYAN 706 F.3d 1021, 1036-1037 (9TH

1 CIR. 2013)

2
3 THE UNITED STATES SUPREME COURT IN LETEKY V. U.S. SID U.S.
4 540, 555 (1994) SAID THAT: "OPINION FORMED BY THE JUDGE
5 ON THE BASIS OF FACTS INTRODUCED OR EVENTS OCCURING IN
6 THE COURSE OF THE CURRENT PROCEEDINGS OR OF PRIOR
7 PROCEEDINGS DO NOT CONSTITUTE A BASIS FOR A BIAS OR
8 PARTIALITY MOTION UNLESS THEY DISPLAY A DEEP-SEATED
9 FAVORITISM OR ANTAGONISM THAT WOULD MAKE FAIR JUDGMENT
10 IMPOSSIBLE. THUS JUDICIAL REMARKS... ORDINARILY DO NOT
11 SUPPORT BIAS OR PARTIALITY CHALLENGES. THEY MAY DO SO IF
12 THEY REVEAL AN OPINION THAT DERIVES FROM EXTRAJUDICIAL
13 SOURCE AND THEY WILL DO IF THEY REVEAL SUCH HIGH DEGREE
14 OF FAVORITISM OR ANTAGONISM AS TO MAKE FAIR JUDGMENT
15 IMPOSSIBLE." SEE ALSO U.S. V. HOLLAND 519 F.3d 909 (9TH CIR 2008)

16
17 "FINDING BY A TRIAL JUDGE UNSUPPORTED BY THE RECORD ARE
18 EVIDENCE THAT THE JUDGE HAS RELIED ON EXTRAJUDICIAL
19 SOURCES IN MAKING SUCH DETERMINATIONS INDICATING PERSONAL
20 BIAS AND PREJUDICE." PEACOCK RECORDS INC. V. CHECKER
21 RECORDS INC 430 F.2d 858 88 89 (7TH CIR 1970) AND
22 UNITED STATES V. GRINNELL 384 U.S. 563; 583 (1966)

23
24 "THE OBJECTIONABLE INCLINATION OR DISPOSITION" OF A JUDGE
25 "OF A BENT MIND THAT MAY PREVENT OR IMPEDE IMPARTIALITY OF
26 JUDGMENT" ARE GROUNDS FOR DISQUALIFICATION AND EVIDENCE
27 OF BIAS AND PARTIALITY. BERGER V. UNITED STATES 255 U.S.
28 22; 33-35 (1921)

1 IN THE INSTANT MATTER THE PETITIONER HAS SUFFICIENTLY STATED
2 AND SHOWN WITH DETAIL NUMEROUS INSTANCES OF OBJECTIVELY
3 APPARENT ACTUAL BIAS ON BEHALF OF JUDGES DURING THIS CASE
4 THAT MERIT INVOCATION OF THE EXEMPTIONS TO THE APPLICATION
5 OF ABSTENTION IN THIS INSTANT MATTER;

6
7 a.) WIDESPREAD CUSTOM COMMON PRACTICE AND USAGE OF
8 PREDISPOSED, ARBITRARY DEPRIVATION OF MERITED SUBSTITUTION OF
9 COUNSEL RELIEF BASED ON PERSONAL BELIEFS AND INCLINATIONS,
10 NOT ON OBJECTIVE STANDARDS. (CA. C. D 5:16-CV-01931 DKT 1 AT P.
11 32-83)

12
13 b.) MAGISTRATE DELIBERATE FAILURE TO RECUSE HER SELF DURING
14 2/18/2014 MOTION FOR SUBSTITUTION FOR COUNSEL AND
15 SELF-REPRESENTATION HEARINGS DUE TO EXTRAJUDICIAL MARRIAGE TO
16 PUBLIC DEFENDER SUPERVISOR (ID AT P. 39-78)

17
18 c.) EXPRESSED AND APPARENT BIAS, DISCRIMINATORY ANIMUS AND
19 PREJUDICE AGAINST THE PETITIONER IN RETALIATION FOR HIS EXERCISE
20 OF SELF-REPRESENTATION CIVIL RIGHTS (ID AT P. 85-137)

21
22 d.) PREDISPOSED FIXED INCLINATION TO DEPRIVE PETITIONER A FAIR
23 AND MEANINGFUL OPPORTUNITY TO SET UP AND PRESENT CLAIMS
24 AFFECTING FEDERAL CONSTITUTIONAL CIVIL RIGHTS (ID AT P. 123-127)

25
26 e.) BAD FAITH, DISHONEST AND RECKLESS DEPRIVATION OF DUE
27 PROCESS SAFEGUARDS DURING THE PRESENTATION OF CLAIMS
28 THAT AFFECTED FEDERAL CONSTITUTIONAL CIVIL RIGHTS (ID AT P. 137-189)

UNABRIDGED ACCESS TO FEDERAL HABEAS CORPUS RELIEF IS A CONSTITUTIONAL RIGHT THAT PROMOTES ADHERENCE AND COMPLIANCE BY STATES TO CONSTITUTIONAL COMMANDS AND MUST REMAIN REASONABLY AVAILABLE EVEN FOR INDIGENT PRE-CONVICTED PERSONS PENDING TRIALS IN STATE COURTS WHEN STATES ARE UNABLE TO PROVIDE SWIFT EFFICACIOUS VINDICATION AND PROTECTION OF CHERISHED CONSTITUTIONAL CIVIL RIGHTS

“THE FUNDAMENTAL BELIEF THAT ADEQUATE PROTECTION OF CONSTITUTIONAL RIGHTS RELATING TO CRIMINAL TRIAL PROCESS REQUIRE CONTINUING AVAILABLE MECHANISMS FOR RELIEF. [CITATION]. . . . THE THREAT OF HABEAS SERVES AS A NECESSARY ADDITIONAL INCENTIVE FOR TRIAL AND APPELLATE COURTS THROUGHOUT THE LAND TO CONDUCT THEIR PROCEEDINGS IN A MANNER CONSISTENT WITH ESTABLISHED CONSTITUTIONAL STANDARDS” [CITATION] THE AVAILABILITY OF COLLATERAL REVIEW ASSURES THAT THE LOWER FEDERAL AND STATE COURTS TOE THE CONSTITUTIONAL LINE. ”” STONE V. POWELL 128 U.S. 465 520-521 (1976) [JUSTICE BRENNAN WITH JUSTICE MARSHAL ON DISSENT]

“ABSTENTION CANNOT BE ORDERED SIMPLY TO GIVE STATE COURTS THE FIRST OPPORTUNITY TO VINDICATE FEDERAL CLAIMS. . . . WE WOULD DEFEAT THOSE PURPOSES IF WE HELD THAT ASSERTION OF A FEDERAL CLAIM IN A FEDERAL COURT MUST AWAIT AN ATTEMPT TO VINDICATE THE SAME CLAIM IN THE STATE COURT . . . IN SUCH A CASE TO FORCE THE [PETITIONER] TO SUFFER THE DELAY OF

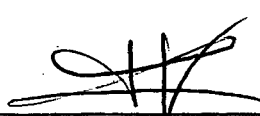
1 STATE COURT PROCEEDING MIGHT ITSELF EFFECT THE IMPERMISSIBLE
2 CHILLING OF THE VERY CONSTITUTIONAL RIGHT HE SEEKS TO PROTECT.³⁰
3 ZWICKLER V. KOOTA 389 U.S. 241 251- 252 (1967) [EMPHASIS ADDED]
4 SEE ALSO DOWNBROSKI V. PFISTER 380 U.S. 479 (1965)
5

6 THIS CASE PRESENTS A PROBLEM AND QUESTIONS OF EXCEPTIONAL
7 PUBLIC IMPORTANCE BECAUSE IT DEMONSTRATES WHAT LACK AND
8 ABSENCE OF INCENTIVES FOR STATE COURTS TO PROMPTLY AND EFFECTIVELY
9 CORRECT VIOLATIONS OF FEDERAL CONSTITUTIONAL CIVIL RIGHTS MEANT TO
10 PROTECT THE SPIRIT OF LIBERTY AND THE INTEGRITY OF JUSTICE DURING
11 A PENDING CRIMINAL PROSECUTION, IS AND WILL CAUSE TO THE PUBLIC AND
12 COST OUR JUSTICE SYSTEM BY THE UNNECESSARY PROLONGING A RESOLUTION.
13 MOREOVER, THIS CASE DEMONSTRATES HOW THE LOWER FEDERAL COURTS
14 MAY BE ABROGATING AND DOING AWAY WITH HISTORIC AND TRADITIONAL
15 CIVIL RIGHTS SAFEGUARDS ENACTED BY CONGRESS UNDER 42 U.S.C.
16 §1983 AND 28 U.S.C. §2241 AND BY THE UNFAIR AND UNCONSTITUTIONAL
17 IMPLEMENTATION OF "HIGHTENED PLEADING STANDARDS" AND "ABSTENTION
18 DOCTRINES" TO FORCLOSE AND PREVENT PUBLIC ACCESS TO JUSTICE. AND
19 THAT RATHER THAN CORRECT AND PREVENT ARE RATHER PERMITTING AND
20 PROMOTING THE VIOLATION OF FEDERAL CIVIL RIGHTS ON BEHALF OF
21 LAWLESS STATE OFFICIALS AND WITH IMPUNITY TOWARDS THE REAL
22 HARM, AND DAMAGES CAUSED TO INNOCENT PUBLIC CITIZENS
23

24 CONCLUSION

25 WHEREFORE FOR THE FOREGOING REASONS PETITIONER PLAYS THAT THE
26 COURT WOULD GRANT THE WRIT AND REVIEW THIS CASE.
27

28 8/10/2018


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