NO. 18-7042

In The

Supreme Court of the United States

Robert Tracy Warterfield,

Petitioner

V.

The State of Texas,

Respondent

On Petition for a Writ of Certiorari to the

Court of Criminal Appeals for Texas

PETITION FOR A WRIT OF CERTIORARI

Robert Tracy Warterfield
TDCJ-CID No. 01829999
William P. Clements, Jr. Unit
9601 Spur 591
Amarillo, Texas 79107-9606

Petitioner, Pro Se

QUESTIONS PRESENTED

1.) What is the proper application, if any, of the Contracts Clause to a plea agreement contract, and did Texas misapply the Federal Contracts Clause to Petitioner Warterfield's April 18, 1994 plea agreement contract?

2.) Since there is currently a deepening split on the proper application of the Contracts Clause among the United States Courts of Appeals, and possibly between the States, should the Court address the split at this time and issue a uniform Contracts Clause standard applicable to contracts ranging from socio-economic to plea agreements, and from private to public? Else wise, should a seperate Contracts Clause standard applicable soley to plea agreement contracts be now established by the Court?

3.) Does the retroactive application to a plea agreement contract of legislation enacted subsequent to the time of contract violate the Federal Due Process Clause as interpreted by Supreme Court precedent such as INS v. St. Cyr, 533 U.S. 289 (2001), Santobello v. New York, 404 U.S. 257 (1971), and et cetera apply as well to State plea agreements, or else is a new precedent required whereby the States are clearly confined to the status of the law at contract formation in making performances else the Due Process Clause be thereby violated?

TABLE OF CONTENTS

(*): Judgement for which a Writ of Certiorari is now sought.

PARTIES TO THE PROCEEDING

All parties to the proceeding appear in the caption of the case on the cover page.

Petitioner Robert Tracy Warterfield is a Texas State prisoner, who was sentenced to life with the possibility of parole after fifteen years following a jury trial in January 2012 in Dallas County.

Respondent State of Texas is a sovereign who is represented by her Attorney General, Honorable Ken Paxton.

TABLE OF AUTHORITIES

CASES:

STATUTES:

OTHER AUTHORITIES:

IN THE UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Petitioner Robert Tracy Warterfield with the uptmost respect, petitions for a writ of certiorari to review the judgement of the Court of Criminal Appeals of Texas, denying Petitioner's writ of habeas corpus.

OPINIONS BELOW

The Opinion for direct appeal appears at Appendix A, and is unpublished.

The Petition for Discretionary Review appears at Appendix B, and was summarily refused, said refusal appears at Appendix C.

The Application for Writ of Habeas Corpus appears at Appendix D, with its Memorandum of Law in Support of Application appearing at Appendix E. The Amendment to Application adding "Ground Six" appears at Appendix F. "Applicant's Notice to the Court of Important Constitutional Issues" appears at Appendix G, and the "Trial Court's Findings of Fact and Conclusions of Law" appears at Appendix H. Finally, The Court of Criminal Appeals of Texas' summary denial based on the findings of trial court appears at Appendix I.

Additionally is a journal article about the Circuit split appearing at Appendix J, and the April 18, 1994 plea agreement contract appears at Appendix K.

JURISDICTION

The Court of Criminal Appeals of Texas issued its decision on September 12, 2018, and constitutes a final judgement. A copy of the summary denial without written order based on the findings of the trial court is attached as Appendix I. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a). This Petition is being filed under the "Mailbox Rule for Prisoners" on the 7th day of December 2018, which is within 90 days of September 12, 2018.

PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES

1. "No State shall... pass any... law impairing the obligation of contracts..." Article One, Section Ten, Clause One -The Contracts Clause.

2. "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 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." Amendment XIV., Section One.

STATE OF TEXAS STATUTORY PROVISIONS

1. Texas Code of Criminal Procedure, Article 18.01(d):

As existed on April 18, 1994 (date of contract):

Act of May 25, 1977, 65th Leg., R.S., Ch. 237, 1977 Tex. Gen. Laws 640, 641 stated inrelevant part"

> Subsequent search warrants may not be issued pursuant to Subdivision (10) of Article 18.02 of this Code to search the same person, place, or thing subjected to a prior search under Subdivision (10) of Article 18.02 of this Code.

Article 18.02(10) stated:

> A search warrant may be issued to search for and seize:
>
> (10) Property of items, except personal writings by the accused, constituting evidence tending to show that a particular person committed an offense.

In 1995, this statutory provision was amended by:

Acts 1995, 74th Leg., Ch. 670, §1, eff. Sept. 1, 1995 stated in relevant part:

> A subsequent search warrant may be issued pursuant to Subdivision (10) of Article 18.02 of this Code to search the same person, place, or thing subject to a prior search under Subdivision (10) of Article 18.02 of this Code only if the

subsequent search warrant is issued by a judge of a district court, court of appeals, the court of criminal appeals, or the supreme court.

2. Texas Code of Criminal Procedure, Article 12.01:

As existed on April 18, 1994 (date of contract):

Acts 1987, 70th Leg., Ch. 716, §1, eff. Sept. 1, 1987 stated in relevant part:

> Art. 12.01. Felonies. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:
> (2) ten years from the date of the commission of the offense:
> (D) sexual assault under Section 22.011(a)(2) of the Penal Code; indecency with a child;
> (4) five years from the date of the commission of the offense:
> (C) sexual assault, except as provided in Subsection (2)(D) of this article;

In 1997, this statutory provision was amended by:

Acts 1997, 74th Leg., Ch. 740, §1, eff. Sept. 1, 1997 stated in relevant part:

> Section 1. Article 12.01, Code of Criminal Procedure is amended to read as follows:
> Art. 12.01. Felonies. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:
> (5) ten years from the 18th birthday of the victim

of the oofense:

(B) sexual assault under Section 22.011(a)(2), Penal Code;

(C) aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

In 2001, the 1997 promulgation of this provision was amended by:

Acts 2001, 77th Leg., Ch. 12, §1, eff. Sept. 1, 2001, states in relevant part:

Section 1. Article 12.01, Code of Criminal Procedure is amended as follows:

Art. 12.01. Felonies. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(B) sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained;

(5) ten years from the 18th birthday of the victim of the offense:

(B) except as provided in Subdivision (1) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021 (a)(1)(B), Penal Code;

In 2007, this statutory provision was amended again by one of the following:

Acts 2007, 80th Leg., Ch. 285, §6, eff. Sept. 1 2007, or Ch. 593, §1, eff. Sept. 1, 2007, or Ch. 640, §1, eff. Sept. 1, 2007, or

Ch. 841, §1, eff. Sept. 1, 2007.

Under one of those amendments, in 2007 §12.01 was amended to eliminate any limitations for, inter alia, Section 22.021(a)(1)(B), Penal Code.

(Petitioner has been unable to resolve: Did 22.021 even exist in 1989 for this crime, or did it fall under 22.011(a)(2)? If it was only .011 in 1989 with .021 added to the Penal Code later, did the limitations get extended for the 1989 version?)

STATEMENT OF THE CASE

Petitioner Robert Tracy Warterfield was convicted by a jury in Dallas County, Texas of aggravated sexual assault of a child, Texas Penal Code, Section 22.021(a)(1)(B) on January 19, 2012. The conviction arose out of the sexual assault of Kelly Gibson (pseudonym), then a seven year girl. The offense date is October 1, 1989, the Dallas Police Department (DPD) Agency number is #691635-X, and the trial court cause number is F10-61655-Y being indicted on October 21, 2010 and tried in the 7th Criminal Judicial District Court, Dallas.

On April 18, 1994, Texas and Petitioner entered into a binding plea agreement contract (Appendix K) in resolution of a different case. The DPD Agency number for the plea agreement case is #681460-A, and the cause number is F93-43772-RV. The Complainant in that case was a fifteen year old girl, and the sentence was ten years probated. Incorporated into the contract was this case #691635-X. (Appendix, p. K-4).

In accordance with S.Ct.R. 14(1)(g)(i), it will now be discussed when and where the federal questions sought to be addressed in this Petition were raised and passed on in Texas' Courts. Simply

the claims were not raised through derelict trial and appellate attorneys. Please do not give up on me yet. Such is being alleged in the current writ of habeas corpus, Civil Action No. 3:18-cv-3154 filed pursuant to 28 U.S.C. §2254 in the United States District Court, Northern District of Texas, Dallas Division. It was not until Petitioner began litigating pro se did the Federal Contracts Clause as it relates to his 1994 plea agreement contract and that it is alternately and additionally a vested right to receive performances governed by the status of the laws as formation else the Federal Due Process Clause be thereby infringed can said to clearly brought into focus for Texas' courts.

The litigating pro se began with, in this case #691635-X, the Petition for Discretionary Review (PDR) No. PD-1370-15. (Appendix B). As stated in that PDR at page B-15, pro se representation was chosen so that Petitioner could finally have claims presented that his derelict and stonewalling attorneys ignored and neglected.

Thus, starting with the PDR at pages B-24 to B-29 has the federal question of how to correctly apply the Contracts Clause to the 1994 plea agreement contract and the laws in existence at formation are a source of vested rights subject to neither alteration nor non-performance, has been fairly and squarely raised to Texas' courts. It was also asserted in the PDR that the failure to raise the issues earlier was excusable due to the fundamental nature of the claim. See pages B-14 to B-15. Such has been reasserted and elaborated in "Notice" at Appendix G. There is cause and prejudice for the failure to raise the Contracts Clause claim, and thus is excusable, due to trial and appellate attroneys' neglect, conflict of interest, or abandonment. See claims in 3:18-cv-3154. Alternately

to all of that, this state writ of habeas corpus is a completely collateral proceeding in which these Federal questions, except the intercircuit split, have been raised and pressed since inception of Cause No. W10-61655-Y(B) in the 7th Criminal District Court in Dallas. As such, the Federal questions have been raised and pressed in the first instance.

After the PDR was refused by the Court of Criminal Appeals of Texas on Febuary 10, 2016 (Appendix C), an application for a state writ of habeas corpus was filed on Febuary 14, 2017 (Mailbox)/ Febuary 27, 2017 (File stamped) pursuant to Texas Code of Criminal Procedure, Article 11.07. (Appendix D). In Texas, this procedure starts in the trial court and is a wholly collateral proceeding. In the writ (Appendix D at pages D-7, 9, 11, 14, & 16) and Memo (Appendix E, pages E-16-19, 24-25, & 32-33) it is fairly raised before the trial court in the first instance; that is, how the status of the laws in existence at formation on April 18, 1994 are BOTH vested rights and obligations of contract with the former having to be performed and the latter not subject to impairment. Also, as may come into consideration for mixed questions of state and federal law, due to the laws in existence being incorporated into the contract at formation, that status of the laws included not only statutory but also state constitutional provisions. As provisions of the contract, their performance and interpetations fall under the auspices of the Federal Due Process Clause. For instance, the Texas Contracts Clause (Art. I, §16) as existed in 1994 is a vested plea agreement right. Whats more, the federal questions of this Petition were further clarified directly to the habeas trial court in anticipation of this current Petition for a

for a Writ of Certiorari with "Applicant's Notice to the Court of Important Constitutional Issues." (Appendix G). This "Notice" was acknowledged as considered by the habeas trial court in its "Trial Court's Findings of Fact and Conclusions of Law." (Appendix H, page H-1). On September 12, 2018, Court of Criminal Appeals of Texas denied the Application of WR-82,182-05 with: This is to advise that the Court has denied without written order on the findings of the trial court after hearing the application for writ of habeas corpus. (Appendix I). It is this very summary denial to which it is now being sought a grant of a writ of certiorari by this Court.

Consequently, the Federal questions as to how the Constitution of the United States Contracts Clause (Art. I., §10, cl. 1) is applied to a plea agreement contract, as well as how the Due Process Clause (Amendmt. XIV) guarantees performances in strict conformity to the status of the laws at formation was not raised until Petitioner rid himself of derelict attorneys and started raising the claims pro se at the PDR stage. It was in fact their refusal or inability to recognize and advance these legal interests that such a perilous course was set upon. That ~~It~~, however, being the lesser of follies.

Therefore, it is respectfully requested that this Honorable Court in its consideration of whether to grant certiorari to weigh the role of Patitioner's counsel in not bringing these Federal questions up earlier despite being urged to do so. Also on the scale, in Texas the right to have the obligations of a plea agreement contract be not impaired by state laws should be considered an absolute, systemic right that MUST be implemented. See Marin v.

State, 851 S.W.2d 275 (Tex.Crim.App. 1993). Alternately and additionally, in Texas the rights to performances of a plea agreement are Marin Category 2 rights that are not subject to default or forfeiture, but may be expressly and knowingly waived. These are novel questions of State law that relate to the enforcement of a plea agreement contract subject to the Federal Due Process Clause. Petitioner pressed them before the State courts, but there was no direct answer other than a summary denial.

Essentially, procedural bars are NOT apllicable to these fundamental rights. See "Notice," Appendix G. The Federal Contracts Clause should be considered on par with the Federal Ex Post Facto Clause which is also an absolute, systemic right under Marin that is not subject to either forfeiture or even waiver. Thus, the Federal questions were adequately and properly raised and pressed in the State courts, and after consideration summarily denied. These Federal claims are cognizable ~~of~~ on a Texas habeas corpus writ. The result is that the challenging of §§ 12.01 and 18.01(d) as being repugnant and unconstitutional to the Federal Contracts and Due Process Clauses was turned aside and said laws and their applications upheld as not violating said Clauses of the Federal Constitution. Texas is in error for doing such.

Perhaps a broader picture in the litigation of these Federal questions can provide the Court the information necessary in its consideration of whether to grant or deny this Petition for Writ of Certiorari. As mentioned previously, the Court of Criminal Appeals of Texas' denial of habeas corpus for this case #691635-X is also being litigated pursuant to a Federal writ of habeas corpus in the Northern District of Texas. See 3:18-cv-3154 filed under the "Mailbox Rule for Prisoners" on November 20, 2018. However, there

were two relevant prosecutions in 2012 of two seperate cases in two different counties. The one at bar is DPD Agency #691635-X prosecuted in Dallas County in Janury of 2012. The second case is DPD Agency #867045-X prosecuted in Collin County in December 2012 under cause no. 416-80757-2011, direct appeal no. 05-13-00017-CR, PDR no. PD-1314-14, and Writ no. WR-82,182-02. The Complainants are different, but both cases use the same warrants, plea agreement contract (Appendix K), and et cetera. After being ignored and stonewalled during the prosecution of #691635-X on these Federal claims, Petitioner became more active in the defense of #867045-X. In fact, the 416th Judicial District Court appointed a second chair, Mr. Joshua Andor, to help with Petitioner's contract related arguments. Mr. Andor's motions in that case are at CR: 162 to 176 in cause no. 416-80757-2011. Therein, Mr. Andor argued Blaisdell, 290 U.S. 398 (1934) as I had requested, and that the State is confined to the status of the laws at formation in making their contractual performances under the 1994 plea agreement.

Then on direct for the case #867045-X NOT AT BAR, Mr. Derk A. Wadas took Mr. Andor's work and included them in Appellant's Brief at pages 7-9 in appeal no. 05-13-00017-CR. This appeal's Opinion is perhaps the only Texas court to expressly lock horns with the Contracts Clause issue. See Warterfield v. State, 05-13-00017-CR, 2014 WL 4217837 (Tex.App.-Dallas Aug.27,2014), pages 4-5. That intermediate court concluded that laws could be retroactively applied to alter the contract's provisions and impair its obligations.

Following that direct appeal was the PDR for case #867045-X written by attorney Mr. Bruce Anton. Despite agreeing to continue raising the Contracts Clause claim during the PDR proceedings

(PD-1314-14), he did not. Whats more, this highly skilled lawyer who is a member of this Court's Bar, did not "federalize" ANY of Petitioner's claims in that PDR except one "daisy chained" to Ricketts v. Adamson, 483 U.S. 1 on page 12 of that PDR; which of course federalizes nothing. Disgusted with this performance which destroyed any chance to advance a writ of certiorari at that stage for that case #867045-X, Petitioner elected the unenviable position of representing himself. Due to Mr. Anton's obtuseness and disregard for Petitioner's legal interests, Petitioner composed and submitted his pro se "Appellant's Motion for Rehearing of Petition for Discretionary Review" in an almost certain to fail attempt to 1.) federalize his claims for case #867045-X and 2.) present to the Court of Criminal Appeals of Texas his arguments that the Contracts Clause prohibits laws impairing his 1994 contract and that the Due Process Clause confines the State's performances to the laws in existence at formation which are vested rights not subject to alteration, non-performance, nor forfeiture. Though a hurried and imperfect submission as all seem to be, it was nonetheless presented to the State's highest court these Federal questions; despite Mr. Anton's seeming attempt to forfeit them!

Being pro se on that case #867045-X state writ of habeas corpus, the claims were of course raised and passed on in the first instance of the trial court to the State's highest court. For that case, the claims are currently being litigated in USDC, EDTX, Sherman Div., Civil Action No. 4:17-cv-00330-ALM-CAN. Additionally, in appealing the construement and denial of an attempt at injunctive relief (Dkt. #22), there is an interlocutory appeal pursuant to

28 U.S.C. §1292(a)(1) in the Fifth Circuit under Cause No. 18-40936 wherein these Federal questions are being raised. Simply, Petitioner has been and is currently pressing these questions in every way conceivable.

The point of all this, I reckon, is that Petitioner is having to pull himself up by his bootstraps, and build his wagon as he rides in it. This multiplicity of litigation reveals that justice and the use of scarce resources would be better served by granting certiorari than denying it. First of all, in this Petition is presented how the Contracts Clause standard in existence today is divisive, unworkable, and insufficient to guide courts throughout the land. Moreover, the application of the Contracts Clause to plea agreement contracts presents a novel, so far as Petitioner can tell, area of law not yet decided, but needs to be. Certainly a guiding standard is needed to resolve Petitioner's case(s). It being that plea agreements are a very ubiquitous form of contract, the abscence of precedent is troubling to Petitioner's efforts to have his contractual rights vindicated. Furthermore, it seems highly logical that the State should be confined to making their performances in accord with the laws in existence at formation, but to date the closest case to be found is INS v. St. Cyr, 533 U.S. 289 (2001). No court, State or Federal seems to agree with this logic. To do nothing at this time is to let both State and Federal courts wonder around the laboratory in the dark. Experiment indeed, but not blindly. Finally, the alternate scenario for Petitioner involves filing a motion to compel specific performance in the 1994 trial court or some other writ, and then to wind his way back, over many a hurdle, up this point. It is humbly asserted that these questions are ripe

for answering at this time and by this Court, both for Petitioner's sake as well as systemically. The answers to these questions have the potential for huge ramifications, there is a Circuit split, and Texas is plainly wrong on this Federal Constitutional issue and will likely continue that course.

In summation, these fundamental questions of Federal law did not receive the attention they deserved from counsel in the beginning. They have been presented as best as possible by Petitioner pro se. In the collateral proceeding to which this Petition follows, the Federal questions were raised from inception and throughout. Texas has clearly avoided directly answering these questions fairly presented to their courts, and by their summary denial has upheld the constitutionality of the challenged laws. This is an error of Federal Constitutional law of great import to both Petitioner and the System of Justice. The resolution by granting certiorari would be most beneficial to the system as a whole, and the correction of grave error by the State of Texas in Petitioner's case. The administration and enforcement of plea agreements is on the line, and as discussed in "Reason Part II." infra, the current Circuit split ought to now be resolved for the uniform application of the Contracts Clause for all forms of contracts. Thus, whether a narrow, plea agreement specific Contracts Clause Standard needs to be developed, or instead a far reaching standard dealing with contracts of every variety tweeked from the present standard, the granting of certiorari for this case is the correct choice. Lastly, Petitioner Warterfield respectfully asks the Court to appoint an attorney to zealously and professionally advocate his cause to the Court; such would be sincerely and greatly appreciated.

REASONS FOR GRANTING PETITION - PART I.

THIS COURT SHOULD GRANT CERTIORARI IN ORDER TO DECIDE HOW STATE COURTS SHOULD, IF AT ALL, APPLY THE FEDERAL CONTRACTS CLAUSE TO A PLEA AGREEMENT CONTRACT. TEXAS HAS MISAPPLIED THE CONTRACTS CLAUSE CAUSING IT TO UPHOLD AS CONSTITUTIONAL SEVERAL OF ITS LAWS THAT HAVE SUBSTANTIALLY IMPAIRED WITHOUT JUSTIFICATION THE OBLIGATIONS OF PETITIONER'S 1994 PLEA AGREEMENT CONTRACT THAT TEXAS AND HE FORMED.

The Contracts Clause of Article One, Section Ten, Clause One of the Constitution of the United States is among the several foundational prohibitions directed to States. It provides that "No State shall... pass any... law impairing the obligations of contract..." Despite its commanding language, the prohibition must not be read so as to remove the essential attributes of sovereignty. As recognized by this Court, "literalism in the construction of the Contracts Clause... would make it destructive of the public interest by depriving the State of its prerogative of self protection. W.B. Worthen Co. v. Thomas, 292 U.S. 426, 433, 54 S.Ct. 816, 818 [78 L.ed. 1344 (1934)]." Allied Structural Steel Co. v. Spannus, 438 U.S. 234, 241, 98 S.Ct. 2716, 2721, 57 L.Ed.2d 727 (1978). However, remaining a constitutional provision, the Contracts Clause must be given effect. The Court has acknowledged that, "If the Contracts Clause is to retain any meaning at all, however, it must be understood to impose some limit upon the power of a State to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power." Allied Structural Steel Co., 438 U.S. at 242, 98 S.Ct. at 2721.

The testing of the constitutionality of legislation challenged pursuant to the Contracts Clause begins with a determination of whether or not state legislation has substantially impaired the obligations of a contract. See Id., 438 U.S. at 244, 98 S.Ct. at 2722. "The obligation of contract is 'the law which binds the parties to perform their agreement.' Sturges v. Crownshield, 4 Wheat 122, 197, 4 L.Ed. 529, 549." Home Building & Loan Assoc. v. Blaisdell, 290 U.S. 398, 429, 54 S.Ct. 231, 236, 78 L.Ed. 413 (1934). "This Court has said that 'the laws which subsist at the time and place of making of a contract, and where it [430] is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated into its terms." Blaisedell, 290 U.S. 398, 429-430 (1934).

In the instant case, on April 18, 1994, the date of contract, then and there did exist two laws relevant to the plea agreement that did in fact become obligations of contract; obligations that have been substantially impaired. The first relevant law was the statute of limitations; Acts 1987, 70th Leg., Ch. 716, §1, eff. Sept. 1, 1987; Codified as Texas Code of Criminal Procedure, Article 12.01. Included in the plea agreement was a list created by the State of criminal cases ranging from misdeameanors to felonies to which it was agreed that the conviction in F93-43772-RV could not be used to prosecute. (Appendix K). The instant case #691635-X with an offense date of October 1, 1989, and a seperate (Collin County) case #867045-X with an offense date of December 9, 1989, were among those listed in the agreement. The #691635-X case was prosecuted in Dallas County in January of 2012, and the #867045-X case was prosecuted in Collin County in December of 2012. Pursuant

to the statute of limitations in effect at the time the contract was entered into, these two cases each had a ten-year limitations from their respectfive offense dates. Thus, the limits were set to expire on October 1, 1999 for #691635-X, and December 9, 1989 for case #867045-X. It was thus agreed to and understood when entering the guilty plea/contract that after these limitations were up, amnesty would become a perfected contractual right and prosecution thereafter foreclosed. Essentially, it is the extending of the length of the period required without prosecution in order to receive this grant of amnesty which has been impaired by subsequent legislation. Under the unimpaired obligations, such was perfected. "A party is, therefore, always estopped by his own grant." Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 137 (1810).

The second relevant law in existence at formation of contract was the prohibition against subsequent search warrants: Acts May 25, 1977, 65th Leg., R.S., Ch. 237, 1977, Tex. Gen. Laws 640, 641; codified as Texas Code of Criminal Procedure, Article 18.01(d). Pursuant to this law at formation, since the State had executed a DNA warrant and collection on September 2, 1992, the State was thereafter confined to the use of that collection. At contract formation, it became an obligation of contract AND a vested right. See also Reason to Grant Petition - Part III., infra. The State being confined to the 1992 collection becomes relevant to both #691635-X and #867045-X because the probable cause affidavit was never signed for the September 1992 DNA warrant, and the record is elsewise devoid of ANY oath or affirmation by which to issue the warrant. See Page ID#: 105 in 4:17-cv-00330. The State had to get another DNA sample in order to prosecute in 2010. However, the plea

agreement was struck with the understanding that further challenges to this warrant and any other evidence in case #681460-A would be discontinued in exchange for the express promise from the Prosecutor: "2. Prosecutor agrees this conviction will not be used as an extraneous offense or act against the Defendant in any subsequent case of which the prosecution has knowledge. (Exhibit "A")." See Appendix K, page K-3. Included in Exhibit "A" of the 1994 plea agreement was this case #691635-X. See page K-4. Thus, the agreement as understood by then Defendant, now Petitioner when pleading guilty in #681460-A, was that anything that was used or went into that 1994 conviction could not be used to prosecute any of the listed cases. The trial court presented with this reading of paragraph two called it "plausible," but declined to enforce it as such. That violates contra proferentem. See 5RR: 15-25 in F10-61655-Y; 3-18-cv-3154 exhibits submitted/mailed on November 20, 2018, but have not been posted.

To use part of the 1994 conviction is a fortiori to use that conviction. Yet in 2010, in order to initiate prosecution of both #691635-X and #867045-X, a 2010 DNA warrant had to be obtained. In order to obtain the 2010 warrant, it ~~was~~ required as its indispensable "probable cause" the use of the 1992 sample "92P2389, #1." That sample was originally obtained for case #681460-A; the plea agreement conviction agreed to not be used in this case #691635-X. Whats more, and just a link in a series of official malfeasances occurring in these cases, the Affiant for the 2010 DNA warrant, Detective Christine Ramirez, #7386, and her Dallas Police Department, questions the 1992 collection of "92P2389, #1" so much that it is why they went and obtained the 2010 DNA sample. See Appendix E, page E-60; Page ID#: 89 in 4:17-cv-00330. In order to get the

2010 DNA sample that was needed because the 1992 sample is questionable, they use the 1992 sample; a fabrication of probable cause. See PageID#: 109, ¶s 1 and 3 in 4:17-cv-00330. Moreover, in arguendo the 2010 DNA warrant is deemed legitimate and the "probable cause" was not fabricated, it is only by way of legislation impairing the obligations of contract in 1995 that amended the subsequent search warrant prohibition could such a subsequent DNA warrant have been contemplated and obtained. See Acts 1995, 74th Leg., Ch. 670. §1, eff. Sept. 1, 1995. Thus the 2010 warrant for DNA was obtained by:

1. Impairing the obligations of contract;
2. Breaching the plea agreement, for to use a constituent of the 1994 conviction is a fortiori to use the conviction and Texas is estopped by contract from doing so; and,
3. Fabricating probable cause in order to obtain the 2010 DNA warrant; to wit, Affiant and DPD questions the foundational evidence of the probable cause affidavit.

One of the Federal questions presented in this Petition, however, is if, and if so, how is the Federal Contracts Clause applied to plea agreement contracts, and did Texas misapply the Clause in the interpretation, performance, and enforcement of Mr. Warterfield's 1994 plea agreement? Even under present Contracts Clause jurisprudence encompassing commercial, social, and economic contexts, Texas, a party to the contract, has indeed misapplied the Contracts Clause. Whats more, much of the present standard is not only ambiguous with too broad of latitude causing an intercircuit split (Addressed in Reason to Grant Petition - Part II., infra), it is often in conflict with other Constitutional mandates associated with plea agreements. Is it possible to develop and implement a uniform standard that can deal with contract contexts ranging from private-economic to

public-plea agreements? Or is it possible and instead necessary to develop a seperate Contracts Clause standard applicable to just plea agreements? Petitioner respectfully requests the Court to grant him the assistance of an attorney in answering such profound questions of public concern.

From Petitioner's humble, pro se legal understanding, yes, Texas has misapplied the Contracts Clause to the 1994 plea agreement contract in upholding the challenged retroactive application of legislation that has substantially and unjustifiably impaired the obligations of said contract, thereby being repugnant to the Fedral Contracts Clause.

The laws have been listed previously in the section titled, "State of Texas Statutory Provisions." It is alleged that the 1997, 2001, and 2007 amendments to Texas Code of Criminal Procedure, §12.01 singularly or in conjunction have substantially impaired the 1987 promulgation in existence at formation, and that the 1995 amendment to §18.01(d) substantially impairs the 1997 promulgation in existence at formation of the contract on April 18, 1994.

In short, under either §12.01 or §18.01(d) in existence at formation, the prosecutions pursued in 2010 of #691635-X or #867045-X would have been impossible. It is <u>only</u> when conducted pursuant to the impairing legislation of <u>both</u> of these obligations of contract can said prosecution ever have been contemplated. The impairments are substantial. Even if one of the impairments passes constitutional muster but the other one does not, then both of the 2012 prosecutions were conducted pursuant to law unconstitutionally impairing the obligations of the 1994 plea agreement contract.

In the Fifth Circuit:

> To determine whether a state law has impaired its own contractual obligations for the purposes of the Clause, we apply the Supreme Court's three-step analysis. First, we must determine whether the law substantially impaired a contractual relationship with the State.[6] Allied Structureal Steel Co. v. Spannus, 438 U.S. 234, 244, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978). Second, if so, we examine the State's asserted justification for the impairment, which must be a significant and legitimate public purpose. Third, if the public purpose is adequate, we ask whether the challenged law was 'reasonably necessary' to achieve the purpose. Id. at 412-13, 98 S.Ct. 2716. We do not defer completely to the legislature's judgement because of the possibility that the State is acting in its own self-interest regarding the contract. U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 25-26, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977).

United Healthcare Ins. Co. v. Davis, 602 F.3d 618, 627 (5th Cir. 2010).

It appears that this Fifth Circuit's rendering of "the Supreme Court's three-step analysis" is flawed. First is: "Id. at 412-13, 98 S.Ct. 2716." That case is Allied Structural Steel Co., which ranges from 438 U.S. 234 to 264. Thus pages "412-13" is a reference error. Second, the Fifth's "reasonably necessary" appears to be a conflation. There is found "neither reasonable nor necessary" in Allied at 438 U.S. at 244, which itself refers to U.S. Trust's "... an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose." 431 U.S. at 25. The Fifth's apparent conflating of "reasonable and necessary" into

"reasonably necessary" has the effect of making U.S. Trust's standard more state-friendly than it actually is with an unitelligable citation.

Texas has decided in summarily denying the writ of habeas corpus that its amendments to §§12.01 and 18.01(d) enacted after contract formation do not infringe the Federal Contracts Clause and thus pass constitutional muster. This was in error. Perhaps Texas requires a pellucid Contracts Clause standard tailored specifically to plea agreement contracts in order to render a correct decision, or else simply misapplied the Court's present standard. Either way, Texas has erroneously passed on the Federal Constitutional question raised and pressed since inception of this collateral proceeding. The impairments are substantial, and it is doubtful, in Petitioner's understanding, if ANY substantial impairment of a plea agreement contract can ever be considered a reasonable and necessary exercise of a State's police power; and yet the essential attributes of a State's sovereignty must be given some effect. A plea agreement, itself an exercise of police power which induces a defendant to change their position in reasonable reliance, must be entered into knowingly, voluntarily, and intelligently. Plainly, future legislation is unknown at the time of pleading guilty. Any reservation implied into the contract must be exercised under truly exceptional, limited, unforseeable, and exigent circumstances over and above Blaisdell's. None of these can be said to exist to a sufficient degree in order to justify the impairments as they relate to §§12.01 and 18.01(d). The impairments, even if reasonable, are not necessary, and if necessary not reasonable. For example, the 18.01(d) amendment occurred in 1995, but was not exercised until 2010. The §12.01 was first impaired in 1997 was also not exercised until

2010Additionally, there are little if any limitations imposed on the impairments. They are essentially open ended, substantial, and unjustifiable; unconstitutional and repugnant to the existing Contracts Clause standard, yet upheld by Texas. Whats more, the issues addressed by the impairments were forseeable by the State/ Drafter at the time of contract. If the State had wanted more time to prosecute, they should have negotiated for that. If the Petitioner wanted less time, he could have held out for that. As it is, the contract was formed under and is a result of the laws. Thus, only those laws are to govern performance; as was the intent of the parties.

Invoking "public welfare" is not a panacea for every substantial impairment. The law must be "precisely and reasonably designed to meet a grave temporary emergency in the interest of the general welfare. W.B. Worthen v. Thomas, 292 U.S. 426." Allied Structural Steel Co., 438 U.S. 234, 243 (1978). Else it will be deemed unconstitutional. "Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose adopting its adoption. Id., at 22." Allied Structural Steel Co., 438 U.S. 234, 244; quoting U.S. Trust Co. of New York, 431 U.S. at 22. That has been the standard for justifying impairments for private, socio-economic contracts. The standard for public, plea agreement contracts should have the lowest to possibly no deference to the legislature's intent.

" 'Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power.' Blaisdell, 290 U.S. at 439. Moreover, the [22] scope

of the State's reserved power depends on the nature of the contractual relationship with which the challenged law conflicts." U.S. Trust Co. of New York, 431 U.S. at 21-22. When the State is a party, scrutiny is heightened. "Evaluating with particular scrutiny a modification of a contract to which the State itself was a party, the Court in that case held that legislative alteration of the rights and remedies of Port Authority bondholders violated the Contract[s] Clause because the legislation was neither necessary nor reasonable." Allied Structural Steel Co., 438 U.S. 234, 244, n.15 (U.S. Trust Co, 431 U.S. at 22-23). Thus, with Texas being a party to this contract, any impairing legislation faces heightened scrutiny as conducted in U.S. Trust. That is "the scope of the State's reserved power ... depends on the nature of the contractual relationship." Id. 431 U.S. at 22.

Then, going into uncharted territory, a contractual relationship involving a constitutional, plea agreement contract where the State possesses inordinate bargaining power, is usually the Drafter, there exists a plethora of other Constitutional concerns over and above almost any other form of contract mostly involving Due Process and a Fair Trial, and by definition the State is a party, all of which and more, begs the question: Just what is the scope of police power that can be constitutionally exercised to substantially impair the obligations of a plea agreement contract? Petitioner respectfully posits that almost any impairment of a plea agreement contract approaches categorically, or per se, unconstitutional. Conversely, for the sake of giving effect to the essential attributes of sovereignty, some situations must exist in order to

justify the exercise of reserved police power. Petitioner respectfully asks the Court to grant certiorari in order to determine how these concerns can be balanced so that the States can use the Court's holding in the negotiation, formation, and enforcement of plea agreement contracts essential and indispensable to the modern justice system.

REASONS FOR GRANTING THE PETITION - PART II.

THE COURT SHOULD GRANT THE WRIT TO RESOLVE, ONCE AND FOR ALL, THE INTERCIRCUIT SPLIT ON THE APPLICATION OF THE CONTRACTS CLAUSE.

One would likely be hard pressed to overstate the importance of contracts of all kinds to society. Plea agreements contracts, just one variety, are among the bedrock of our justice system. Contracts MUST have uniform and workable standards of construement and enforcement. Their integrity maintained is of critical importance. That does not describe the current situation. At present, there is a longstanding, ongoing, and deepening intractible split among the United States Courts of Appeals on how and when the Fedral Contracts Clause (Art. I., §10, cl. 1) prohibits States from interferring with contractual obligations. This Court should grant the writ of certiorari this Petition seeks becuase this divided application of the Contracts Clause prevents the even handed and uniform rule of law. Why this case? In addition to ironing out the current Contracts Clause standard applicable to private and public, social and economic contracts, this case affords the Court

the opportunity to set the much needed standard for the ubiquitous and critical to society form of contract not heretofore encompassed by such a standard; plea agreement contracts. Simply, Petitioner's case likely cannot be correctly resolved without a workable standard, and its application will be decisive. Whats more, it is hard to fathom the importance to all plea agreements past, present, and future. For example, just in Texas, there are at least two categories of plea agreements likely to be impacted; to wit, DWIs and sex offender registration. In 2005, the Texas Legislature removed the ten year limt for using a misdemeanor DWI to enhance to a third, felony DWI. All of those misdemeanor DWI cases before 2005 settled by plea agreement (the vast majority) were impaired if they were used after a period ~~of~~ greater than ten years based on the 2005 amendment to enahnce to a felony. Those defendants entered the agreement with the statutory assurance that such use would not occur. As for sex offender registration, those requirements are amended every session and retroactively applied to settled plea agreements with regularity. A defendant pleads guilty under one law, then performances have to made under another; impairment. What effect does the Contracts Clause have on all settled plea agreements? To Petitioner, the answer is an obvious one; to wit, their obligations cannot be impaired with subsequent legislation. Simply, the States, Texas included, <u>should</u> be confined to the laws in existence at formation when making their contractual performances related to a plea agreement. <u>IF</u> Texas did that in this case, the outcome would have certainly been different. Nationwide? It may be too disruptive.

Nonetheless, the administration and integrity of plea agreements and how they must be performed pursuant to the Contracts

Clause requires a uniform rule. Due to Petitioner's unskilled, pro se, and incarcerated limitations, he is unable at this time to determine, or if discerned adequately address, if there exists a split between the States on the Clause's proper application. Such an interstate split, however, is suspected based on the Federal intercircuit split.

For ~~beginners' sake~~ starters, please see: Michael Cataldo (2015) "Revival or Revolution: U.S. Trust's Role in the Contracts Clause Circuit Split," St. John's Law Review, Vol. 87: No. 4, Article 9. (Appendix J). While Petitioner does not adopt all of the arguments and suggestions in this article, it does explicate well several aspects of the present and ongoing intercircuit split on the application of the Contracts Clause and is thus adopted for that purpose to this Petition. One specific disagreement with the author, however, is his advocation of equal deference for private and public contracts. Petitioner supports and sides with the Court's current position that contracts to which the State is a party should indeed receive heightened scrutiny. Petitioner has felt acutely the sting of unfairness firsthand with State solemnly plighting her faith pursuant to then existing laws and unilaterally long, long, long after contractually settling expectations between the parties be able (purportedly) to exercise her sovereignty in such a self-serving manner. Those plea agreement PROMISES, made under and influenced by the laws then and there in existence, were paid for in a coin that cannot be returned. Petitioner's resumption of freedom in 2004 was highly esteemed, for it was not easily obtained. Then, in 2010, after starting and operating a modestly successful

tree trimming business and being two classes shy of an MBA in accounting during those $6\frac{1}{2}$ years of freedom, Texas chooses to exercise legislation up to fifteen years old impairing the obligations of a plea agreement contract. Petitioner does not see the Founding Fathers tolerating State "discretion" in such a form and effect; thus the prohibitions to the States in Article One, Section Ten. The point being made by these facts is, Texas' impairing the obligations of a plea agreement contract to which she is a party and to her advantage should receive, arguendo even permissible, the uptmost scrutiny.

In the aforementioned article, the conflict pivots on how to determine whether or not a substantial impairment is constitutional or unconstitutional. The split according to the article is thus: 1st, 2nd, and 4th Circuits implement a "state-friendly" interpretation of the Clause, while the 6th and 9th are "clallenger-friendly." The following Circuits are thus not included: 3rd, 5th, 8th, 10th, 11th, and DC Circuits. There are many cases yet to be fully analyzed in a comparative analysis by Petitioner due to time constraints and other ongoing litigation. Those Circuit cases are as follows:

* 599 F.2d 283 (1979) 8th
* 613 F.2d 675 (1980) 7th
* 621 F.2d 1301 (1980) 5th
* 652 F.2d 842 (1981) 9th
* 696 F.2d 692 (1983) 9th
* 742 F.2d 442 (1984) 8th
* 824 F.2d 754 (1987) 9th
* 844 F.2d 1007 (1988) 3rd
* 909 F.2d 608 (1990) 1st

* 919 F.2d 1041 (1990 5th
* 922 F.2d 197 (1990) 4th
* 48 F.3d 800 (1995) 4th
* 88 F.3d 12 (1996) 1st
* 110 F.3d 547 (1997) 8th
* 125 F.3d 9 (1997) 1st
* 141 F.3d 46 (1998) 2nd
* 149 F.3d 1151 (1998) 10th
* 160 F.3d 310 (1998) 6th
* 183 F.3d 762 (1999) 8th
* 210 F.3d 999 (2000) 9th
* 257 F.3d 67 (2001) 1st
* 269 F.3d 494 (2001) 5th
* 336 F.3d 885 (2003) 9th
* 430 F.3d 30 (2005) 1st
* 552 F.3d 253 (2009) 2nd
* 588 F.3d 1 (2009) 1st
* 602 F.3d 618 (2010) 5th
* 635 F.3d 634 (2011) 4th
* 669 F.3d 374 (2012) 3rd
* 679 F.3d 627 (2012) 7th
* 703 F.3d 262 (2012) 5th
* 762 F.3d 366 (2014) 4th
* 767 F.3d 1124 (2014) 11th
* 806 F.3d 1146 (2015) 8th

Petitioner will continue the analysis of the intercircuit split on the application of the Contracts Clause in hopeful ~~antic~~-

anticipation that this Petition and writ will be granted in order that he may be of whatever limited assistance to his appointed attorney and the Honorable Court. Petitioner regrets being unable to elaborate further at this time. It is now December 2018, and the deadline looms. Petitioner has taken heed of the admonition at the end of S.Ct.R. 13.5 and does not seek an extension in order to elaborate the Circuit split and investigate the possible split among the States. Whats more, it is asked that the Court take judicial notice of Petitioner Warterfield's currently active cause numbers to which he is presently consumed in litigating:

- 4:17-cv-00330-ALM-CAN (EDTX, Sherman Div.)
- 18-40936 (Fifth Cir.)
- 3:18-cv-3154 (NDTX, Dallas Div.)

Simply, Petitioner has given all that he can to this Petition for now, and sincerely hopes and prays it is granted so that experts can thereafter more fully address the questions which, in Petitioner's humble opinion, so richly deserve answering.

In sum, the split is an important matter regarding the proper application of the Federal Constitution, is recurring in nature, is a well-developed and live conflict whose resolution is absolutely relevant to the outcome of Petitioner's case and likely incalculable others.

REASONS FOR GRANTING THE PETITION - PART III.

THE COURT SHOULD GRANT THE WRIT TO DETERMINE WHETHER OR NOT INS V. ST. CYR AND OTHER SUPREME COURT PRECEDNTS APPLY TO STATE PLEA AGREEMENTS IN A WAY SO AS TO PRECLUDE RETROACTIVE APPLICATION

OF LAWS THAT DISTURB VESTED RIGHTS AND SETTLED EXPECTATIONS OBTAINED UNDER LAWS IN EXISTENCE WHEN FORMING A PLEA AGREEMENT CONTRACT.

To start off, INS v. St. Cyr, 533 U.S. 289 (2001) may well be inapposite to Petitioner's case. It is, however, the closest to be found. In St. Cyr, the Congressional law did not specifically address retroactivity, whereas Texas Code of Criminal Procedure, Articles 12.01 and 18.01(d) covered in Part I., supra, does address the statutes' retroactivity; just not towards settled plea agreements, and thus those savings clauses should be considered insufficient. It is respectfully asserted that this difference between St. Cyr and Warterfield's case is not determinative. Simply, pursuant to Substantive Due Process, the State should be wholly estopped by contract from altering the agreement on a unilateral basis by any means; even through laws ostensibly labled "retroactive." Though the intent of the Texas legislature in the amendment of §18.01(d) in 1995 and §12.01 in 1997, 2001, and 2007 was to permit retroactive effect, it is nonetheless impermissable and unconstitutional pursuant to the United States Constitution's Due Process Clause to do so where the rights vested under a plea agreement contract are thereby disturbed. That has happened here.

As with St. Cyr's reliance on immigration law existing when pleading guilty, Warterfield plead guilty knowing that pursuant to the statute of limitations then effect, that the State had ten years AND NO MORE in order to prosecute any cases under Section 22.011(a)(2) of the Texas Penal Code listed in the agreement. The laws in existence at formation were reasonably relied on, created expectations, induced the guilty plea, are vested rights, and were

the only legislation upon which to knowingly, intelligently, and voluntarily enter into the plea agreement contract. Future laws, even those purportedly retroactive, were unknown. The laws themselves became part of the quid pro quo, and performances governed by any subsequent legislation would be, and actually was, a breach of the plea agreement as interpreted by Santobello v. New York, 404 U.S. 257 (1971).

If the laws had been different, the contract would have been different. It is currently not settled law (or is it?), but should be, that the State is confined to the status of the laws at the time that the plea agreement contract is formed as she makes her performances. The application of any subsequently enacted legislation to govern those performances under the contract infringes the Federal Due Process Clause. It is respectfully asked that the Court here and now use this case to establish a clear and unequivocal standard that States are confined to the status of the laws at formation of a plea agreement contract,

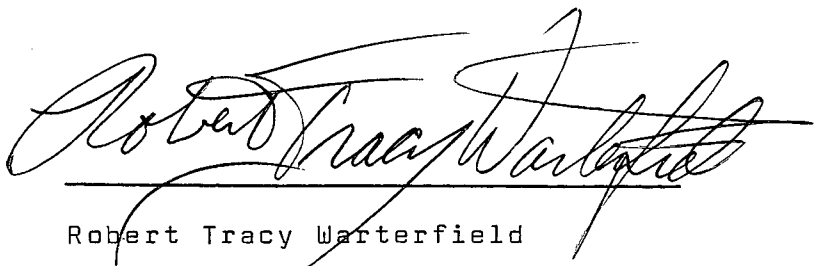
The importance of plea agreements to our system of justice cannot be overstated; they are indispensable. Is the State bound to perform the agreement prusuant to the status of the laws at formation, or else is it allowable for the State to unilaterally, post hoc alter the agreement at will, as many times as desired, and to whatever degree simply by enacting and applying retroactive legislation?

CONCLUSION

The Petition for Writ of Certiorari should be GRANTED for any or all of the foregoing questions presented, and Petitioner

Warterfield, pro se, appointed an attorney.

Respectfully submitted this 7th day of December, 2018.



Robert Tracy Warterfield
Petitioner Pro Se
TDCJ No. 01829999
William P. Clements, Jr. Unit
TDCJ-CID
9601 Spur 591
Amarillo, Texas 79107-9606