

No _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY BRIAN BEVAN PETITIONER

Vs.

STATE OF FLORIDA RESPONDANTS

ON PETITION FOR A WRIT OF CERTIORARI TO

FLORIDA SUPREME COURT

:LAST COURT TO RULE ON MERITS OF THE CASE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was the Petitioner denied Due Process, in violation of the Fourteenth Amendment Due Process Clause, and/or in violation of U.S.C Code # 242. and/or in violation of his civil rights and/or was the *Stare Decisis Doctrine* wrongfully ignored, as evidenced by the Governmental Misconduct in the Spoilage of Evidence?
2. Was the Petitioner denied Due Process, in violation of the (14th) Fourteenth Amendment Due Process Clause and/or in violation of his civil rights, and/or was the *Stare Decisis Doctrine* wrongfully ignored, as evidenced by a violation of 18 U.S.C. Code # 242 with a written bribe to a Government Official, to bring about a false arrest?
3. Was the Petitioner denied Due Process when Governmental Misconduct Occurred that denied his 6th Amendment guarantee of counsel and the 14th Amendment Clause of Due Process, and/or in violation of 18 U.S.C. code # 242, and/or in violation of his civil rights, and/or was the *Stare Decisis Doctrine* wrongfully ignored, especially in respect to his lack of representation by counsel at a Deposition of the arresting officer?
4. Was the Petitioner denied Due Process, in violation of the Fourteenth Amendment Clause of Due Process, and/or in violation of 18 U.S.C. code # 242, and/or in violation of his civil rights, especially in respect to the fact that he was wrongfully incarcerated for (3) three years after his New Law Case was Nolle Prossed and dismissed?
5. Was the Petitioner represented by Ineffective Counsel whose ineffectiveness and misrepresentation that the Petitioner was not subject to deportation, resulted in the Petitioner's agreement to Plead Guilty, which Pleas have now subjected him to deportation in Immigrations Removal Hearings?

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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OPINIONS

On September 4, 2018, the Supreme Court of Florida responded to the Petitioner's Supplemental Petitions for Discretionary Review filed on August 31, 2018 and September 4, 2018 and treated the Petitions as "motions for reinstatement pursuant to this Court's order dated August 17, 2018, said motions are hereby stricken as unauthorized.(App. A).

The Supreme Court of Florida dismissed the Petitioner's case No: SC18-1373 on August 17, 2018 stating "This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without an or explanation or that merely cites to an authority that is not a case pending review in or reversed or quashed by this Court. (App.B)

The Florida Second District Court of Appeal issued a Mandate on July 31, 2018. (App.C)

The Florida Second District Court of Appeal issued a PER CURIAM Affirmed on the Post Conviction Appeal # 2D17-533 on June 6, 2018. (App.D)

The Florida Second District Court of Appeal issued a PER CURIAM , Affirmed Opinion in the Petitioner's First appeal, Case No. 2D13-4892, on August 26, 2015. (App.E)

JURISDICTION

The date on which the highest state court decided my case: September 4, 2018. This Court has jurisdiction pursuant to 28 U.S.C. #1257(a)

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides in relevant part : "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated".

The Sixth Amendment to the United States Constitution provides in relevant part" In all criminal proceedings, the accused shall enjoy the right...to have Assistance of Counsel for his defense".

The Fourteenth Amendment to the United States Constitutions provides In relevant part Due Process Rights in a criminal prosecution.

OTHER RELEVANT PROVISIONS

Stare Decisis is a legal doctrine that obligates the Court to follow historical cases when making a ruling on a similar current or a future case. This Doctrine is sacred to the integrity and sanctity of the Justice System. It binds the Court to follow legal precedent set by previous decisions. Notably, the landmark cases cited for this Petition include the following: Brady v. Maryland 3737 US (1963), Gideon v. Wainright 372 US 335 (1963), Padilla v. Kentucky No. 08008051 (2010)

18 U.S. Codes # 241-242: Deprivation of rights under color of law states "It is a crime for one or more persons acting under color of law, willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States."

STATEMENT OF THE CASE.

The Petitioner, Anthony Brian Bevan, is a native citizen of Great Britain, the United Kingdom, He was born on May 30th, 1935 (age 83). He has medical Melanoma Cancer and is currently under medical care for ongoing removals of skin cancers. He has been a legal permanent resident of the United States since December 21, 2962 (56 years) and has been married to an American citizen for fifty years and together they have had two children, who were born and raised in the United States. The Petitioner, has worked responsibly, having small manufacturing companies and has held positions in sales. He has several Patents, issued in the United States Patent Office. He has been a volunteer Advocate for many years, providing service for those unlawfully charged with crimes. He has won several appeals in the Florida Second District Court of Appeals to include enforcing the rights of citizens to obtain public records.(App.F.) The Petitioner is currently preparing a presentation on possible causes of Sudden Infant Death Syndrome (SIDS).

Petitioner, Anthony Brian Bevan was initially arrested on 11/1/11, when he drove his wife's auto on his own driveway easement . while waiting for the Code Enforcement Agent, in order to prevent a neighbor , Claudia Cowart, from constructing a 20 foot high wall on part of his legal easement. There was a construction crew who began the demolition of the existing wall and an off duty Lee County Sheriff Deputy hiding on the neighbor's property. The Petitioner was originally charged with disobeying an officer but the charges were changed to Aggravated assault with a deadly weapon (the auto) without intent to kill and resisting/obstructing an officer without violence. The Petitioner used his wife's camera and recorder to record the ongoing incident in order to use for his defense. These items were confiscated by the Sheriff and were placed into evidence. It was only years

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held position is sales. He has several U.S. Patents. He has been a volunteer Advocate for many years providing service to those unfortunate people who have been wrongfully convicted of crimes. He has won several appeals in the Florida Second District Court of Appeals to include Case no 86-1999 enforcing the rights of citizens to obtain public records. (App.F).. The Petitioner is currently preparing a presentation on possible causes of Sudden Infant Death Syndrome (SIDS).

Petitioner Anthony Brian Bevan was initially arrested on 11/1/11, when he drove his wife's auto onto his own narrow driveway easement while waiting for the Code Enforcement Agent, in order to prevent neighbor, Claudia Cowart from constructing a 20 ft. high wall (App.G). There was a construction crew demolishing a pre-existing small wall and an off duty Lee County Sheriff Deputy James Butler, hired by Cowart, was hiding on the neighbor's property> Deputy Butler jumped out and onto the Petitioner's vehicle, stating the Petitioner was disobeying an Officer. The actual charges against the Petitioner were Aggravated assault with a deadly weapon (the auto) without intent to kill and resisting /obstructing an officer without violence.. The Petitioner used his wife's camera and voice recorder to record the ongoing incident in order to use for his defense. These items were confiscated by the Sheriff. It was only years

later that a copy of the Extra Duty Request Document was discovered which identified that Claudia Cowart paid the Sheriff's Department for the extra duty service of Deputy Butler. There was a handwritten note which states "*Detail will be paid entirely to Deputy, if it occurs*" (App. H.). It was further discovered that the Sony digital camera and the Phillips voice recorder were placed into evidence at the Lee County Sheriff's Evidence Center and the Property Receipt listed that Deputy Butler, ID no: 05024 took possession of the Camera and the voice recorder on 11/1/11 and then released the items which then obtained from the home of Claudia Cowart on 11/2/11 and returned to evidence.(App.I). Another Property Receipt was obtained which identified that the Phillips voice recorder was DESTROYED on 6/27/14 without notification to the Petitioner and/or his wife. (App. J). An Order to Preserve Evidence was issued by Judge Volz on September 30, 2014, to Preserve the Evidence after a Motion to Preserve the Evidence was requested. (App. K).

The Petitioner discovered that his Counsel, Attorney Thomas Busatta was an ex investigator for the Lee County Sheriff's Office and that he and the State Prosecutor, Christine Cummins, planned to hold a deposition of

Deputy Butler without any input from the Petitioner., Attorney Bussatta was fired on February 7, 2012 for this and other factors in failing to protect his client and he was also scheduled to be on temporary suspension from the Florida Bar in another case. Depsite his being fired and asked not to proceed with Deposition, Attorney Busatta and the State Prosecutor still proceeded with Deputy Butler's deposition, even though other attempts were made to stop the deposition. The deposition transcripts revealed that many vital questions were not posed to Deputy Butler, who called Attorney Busatta, "my friend" at one point. The Petitioner had no representation and both Attorney Busatta and Attorney Cummins completed the deposition which was later placed into the file by the Petitioner. (App. L).

The Petitioner remained being held without Bond in the Lee County Jail where he was denied his medications many times, and subjected to being sent to seclusion despite requests made for Humanizing treatment by family and friends. This jail has had a sordid history of several deaths in recent years, some of which were litigated by the deceased families. (App M). A Hearing was held before Judge Andrew Swett on March 4, 2013.

The Petitioner had a new Counsel with Criminal Attorney Thomas Whitney and the Petitioner Pled " Guilty". He was released on Probation.

At the Hearing, Judge Swett asked the Petitioner.: "Do you understand that if you are not a U.S. Citizen that this plea may subject you to deportation?" The answer by the Petitioner, with his Counsel, Attorney Christopher Whitney standing "Mute" by his side was "I understand that Mr. Whitney explained that it would not be applicable in my case" (App.N)

There was a new arrest on May 10, 2013 at the safe house, where the Petitioner was temporarily living to keep away from the "victims" following the Plea Hearing. The Petitioner was charged with pushing a pregnant female, who was the adopted daughter of the family where he was temporarily living. The family had moved the daughter and two of her children into a small home next door to their home as problems had arisen with her and her then current boyfriend where they were living..

A verbal confrontation occurred between the Petitioner and the daughter over a mailbox issue on the morning of May 10th, 2013.. After the encounter, the Petitioner returned to his temporary home. At 2 PM in the afternoon, suddenly a Sheriff Deputy burst open the front door. The Petitioner was arrested and charged with resisting an officer without violence . There was no warrant issued. He was then charged with pushing the pregnant female. The Petitioner was sent to the Lee County Jail and held without bond.

A Violation of Probation Hearing was held on June 24, 2013 before Judge Volz,. Judge Volz convicted the Petitioner who pled Not Guilty and even though the testimony of the witnesses were inconsistent with time of the so called occurrence and the time the Sheriff was called and other factors. The Judge used a civil standard in determining the guilty verdict rather than a criminal standard of being a reasonable belief. The Petitioner was sentenced on September 9, 2013 to thirty six (36) months of imprisonment (App.O)

It was much later that the Petitioner discovered that Judge Volz had been the Chief Investigator for the State Attorney Office when the Investigation was reopened 10 years after the death, and there was a Grand Jury Trial, on the so called " suicide death " of Brad Jackman, who was a young man shot at the Sheriff's Hunting Ground at the Babcock Ranch. Some notable people involved in the death, included the Sheriff at the time and the State Attorney at the time. This case that the Petitioner and others became involved in included a major newspaper, This much publicized case ultimately went to a Florida Grand Jury. Some newspaper articles are attached to this Writ for the court's reference which outline the social climate in this 20th Judicial Circuit at the time. The articles include references to the Petitioner and his Advocating for others to include the suicide Death investigations in the 1980's and the along with the information on the Delbert Tibbs case, a man who the Petitioner assisted in gaining his freedom who wrongfully accused and convicted and was on Florida's Death Row in the 1970's. (App P). It should be noted that the Petitioner is still investigating the Jackman " suicide" as he was given the actual so called suicide note in open court and this note is to this date at a University Forensic Lab .

There were errors in the documents on revocation of probation to include that the Petitioner did not plead guilty but that he pled that

he was innocent of the charges against him. The errors were discovered by the Petitioner's Public Defender Appeal Attorney who filed a Motion to Amend the Order, with this being granted on 2/18/15 (App. Q). The New law violation of 5/10/13 pushing incident, in case No. 13 CF 16047 was DISMISSED by Judge Margaret Steinbeck in a 12/16/13 Hearing, after the State asked that the case be Nolle Prossed. Judge Steinbeck stated "*So the charges in the 13CF 16047 case are dismissed, and that takes care of that*" (App. R).

The Petitioner remained incarcerated and served the remainder of the thirty six months in a Florida State Prison with ongoing attempts being made to vindicate him. The Appeal at the Florida Second District Court of Appeals was lost as the Court issues an Order on 8/26/15 in Case No: 2D13-4892 of PER CURIUM AFFIRMED (App. E) The Petitioner next filed a Post Conviction Motion 3.850, as a pro se in the Lower Court which was denied. He then filed as a Pro Se in the Florida Second District Court of Appeals and lost when the Appellate Court issued another PER CURIUM AFFIRMED on 6/6/18 in Case No: 2D17-533. (App.D). A Rehearing En Banc was also denied by that Court and on 7/31/18 the Court issued a Mandate reiterating their position. (App.C). The Petitioner then filed a Motion for Discretionary Review with the Supreme Court of Florida, The Clerk of Court issued an opinion dismissing the case on

8/17/18, No. SC18-1373 for “lack of jurisdiction to review an unelaborated decision for a district court of appeal that is issued without an opinion or explanation or that merely cites to an authority that is not a case pending review” . (App.B). The Petitioners Supplemental Petitions for Discretionary Review were also denied the Clerk of the Florida Supreme Court who on 9/4/18 entered an Opinion stating “Petitioners Supplemental Petitions for Discretionary Review were filed on August 31, 2018 and September 4, 2018 have been treated as motions for reinstatement. Pursuant to this Court’s Order dated August 17, 2018 said motions are hereby stricken as unauthorized .(App.A).

The Petitioner has researched the authority of the Florida Supreme Court to see why it can so severely restrict the peoples right to the Court. On jurisdiction and found that the dramatic denial of accepting cases from the citizens of Florida was the change made in the Florida Constitution in Amendment Article V, Section 3. This Amendment change was placed on the Special Election Presidential Preference Primary Ballot on 3/11/1980. The wording on the ballot consisted of only one sentence to describe the severe changes was “Proposing an amendment of the State Constitution to modify the jurisdiction of the Supreme Court” .

The "voters were not provided with any details of what the modification of the jurisdiction of the Supreme Court and therefore had no knowledge of the rights which would be taken away from them and that their access to the Florida Supreme Court would become so stringent that justice would be denied. .The amendment proposal of one sentence was allowed to stand on the ballot was passed by the small number of voters who voted in the Off Year special election. (App.S)

The Petitioners has provided Newly Discovered Evidence to the Appellate Court and the Florida Supreme Court in his briefs. with the discovery and then the Affidavits filed by 2 key witnesses in the Violation of Probation and the new Case of pushing/ resisting. Larry Cowan in his Affidavit dated 12/1/2015 stated that his stepdaughter (the victim) *"Made up the story that Brian pushed her and that she asked Tiffany to lie for her"....."I am sad that I discovered that Savannah was a drug dealer and drug used. Her drug abuse could account for her bizarre accusations against Brian Bevan"*. Patricia Cowan, in her affidavit of 1/10/2016 stated *"After Brian Bevan went to jail my stepdaughter, Savannah Vasquez told me and my husband Larry Cowan that she had made up the story that Brian pushed her and that she asked Tiffany to lie for her"*. (App.T)

The U.S. Immigration and Customs Enforcement Removal Proceedings began once the Petition was released from incarceration with

Case No: AO13-681-533. On 6/21/2016 a Motion for Continuance of the Master Hearing was granted. Subsequent Hearings have been cancelled with the next Master Hearing now scheduled to be held on 1/16/2019. (App. U).

REASONS FOR GRANTING PETITION

The issues presented for review are of great and national importance and will no doubt have a significant impact on not only the Petitioner but citizens and residents of Florida and of the United States. and therefore will have tremendous practical consequences. The Court has the authority and the obligation to render Opinions where uniformity counts as per the Historical cases where Precedent is set, when making a ruling on a similar current or a future case. It is stated in the *Stare Decisis Doctrine* that the Court is bound to follow legal precedent set by previous decisions. The newly appointed U.S. Supreme Court Justice, Judge Brett Kavanaugh, during his confirmation hearings before the U.S. Congress in September of 2018, referred to the *Stare Decisis Doctrine* as the foundation of Democracy in Article 3. He further stated that Precedent established by the U.S. Supreme Court are the Law of the Land and unless they are overturned cannot be ignored. The Petitioners Writ

of Certiorari addresses several Historical, Landmark Cases which have set Precedent and qualify for review for the *Stare Decisis Doctrine*. The Doctrine and the cases were also documented in the Petitioners Petition for Discretionary Review to the Florida Supreme Court who declined to accept his case. This Court has the authority to render Opinions where there are Deprivation of Rights Under Color of Law as in 18 U.S.C. Codes #241-242 which states “*It is a crime for one or more persons acting under color of law, willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States*”. This Court can review Constitutional Provisions of the 4th Amendment which provides in relevant part “*The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.*” And in the 6th Amendment which provides that in all criminal proceedings, the accused shall enjoy the right...to have assistance of Counsel And in the 14th Amendment which provide in relevant part Due Process Rights.

Wherefore, the Petitioner respectfully demonstrates to this Honorable Court that decisions made with the prior courts conflict with the decisions of the Federal Courts and the rulings made by the U.S. Supreme Court and meet the standards for *Stare Decisis*

QUESTION 1: Was the Petitioner denied Due Process, in violation of the Fourteenth Amendment Due Process Clause, and/or in violation of 18 U.S. Code -242 . and/or in violation of his civil rights and/ or was the *Stare Decisis Doctrine* wrongfully ignored, as evidenced by the Governmental Misconduct of the Spoilage and destruction of the evidence? .

The Indisputable Facts that necessitate the posing of Question 1 are as follows: Two vital pieces of evidence no longer exist. The original SIM card in the Sony Digital Camera that had captured over 100 images of the Petitioner's arrest, has been removed, from the Sony Digital Camera and replaced with a "False" SIM Card , according to the Sheriff's Forensic Expert (App J) . Only a fraction of the captured images remain on the False SIM card, of which many have been altered, manipulated and spoiled. : The Phillips voice recorder was wrongfully DESTROYED on 6/27/14 as per the Sheriffs Property Receipt (App J) . The trail of spoilage and destruction of evidence began when the Petitioner was arrested on 11/1/11 when he drove from his home to park his wife's car to a location on his easement driveway in an attempt to block the illegal construction of 20 ft high wall by his neighbor Ms. Cowart, on his easement (App. G) and to await there, the arrival of a Code Enforcement Agent who had been summoned to the scene. Before the Petitioner had time to switch off

the ignition, Deputy Butler appeared from behind a wooden fence, where he had been hiding and jumped on the hood of the car. A Sony digital camera and a Phillips voice recorder were used throughout the entire incident by the Petitioner to record what took place within and outside the car and the conversations that took place with the arresting officer, who at one time was sprawled across the hood of the car banging his huge weapon against the windshield, where the Petitioner was mere inches away staring down the barrel of the gun. This terrifying image, along with the Deputies threat to blow Petitioner's head off have been eliminated with the destruction of the voice recorder . and the removal of the original SIM card. The 76 year old Petitioner was handcuffed and taken to the hospital with chest pains after being tear gassed for over 45 minutes and thence removed through a broken side window of his wife's car which was parked in his driveway, alongside of his garage. The charges levied against the Petitioner were increased from disobeying an Officer, an order to exit the car, was altered to Aggravated assault with a deadly weapon (his wife's car) without intent to kill and resisting an Officer with obstruction without violence and became Case No: 11 CF 019491.

It was only years later , after reviewing the Property Receipt from the Sheriff 's Department that the Petitioner became aware of the flagrant

destruction and spoilage of evidence in that the Property Receipt document revealed that the Phillips Voice Recorder was marked as "DESTROYED" on 6/27/14 and that the Sheriff's Forensic Unit noted that the SIM card installed in the Sony Camera was a "FALSE" card and most of the photographs were missing as only blank spaces were left. (app J") A Motion to preserve the Evidence was filed once the destruction and spoilage of evidence was discovered and was granted on 9/30/14. (App. K).

The Petitioner refers to the following in his Writ to this U.S. Supreme Court: U.S. Code 242 states "*Whoever, under color of law, statute, ordinance, regulation or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to difference punishments, pains, or penalties, on account of such person being an alien, or by reason of color or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned nor more than one year, or both.*" Likewise in the U.S. Supreme Court Case *U.S. v. Russell* 411 US 423 (1973), the court held "*Due Process defense based on governmental misconduct is... where the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial*

processes to obtain a conviction....Government misconduct which violates the constitutional due process right of a defendant requires dismissal of criminal charges. LIKEWISE, ALL CHARGES IN THE CASE AT BAR SHOULD BE DISMISSED WITH PREJUDICE. Supreme Court Justice J. Rehnquist stated: *"There was an intolerable degree of government participation."* And in Brady v. Maryland 3737 USLED 3D 216(1963), the standard was set in this landmark US Supreme Court case which is considered a *Stare Decisis doctrine*, when the Court ruled "*the suppression by prosecution of evidence favorable to an accused.. violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution*" and in U.S. v. Classic 313 US 299 61 1368(1941) it was held that elected officials who altered ballots were acting under color of law because they committed the acts in the course of their employment. Color of Law has been treated as the same thing as "state action" and is a violation of the 14th Amendment.

In Burton v.

Wilmington Parking 365 US 715 81 S. ct 856 LED 2d 45(1961) which held "*There is a state action whenever the State has so far insinuates itself into a position of interdependence with the otherwise person whose conduct is said to violate the 14th Amendment...*

that it must be recognized as a joint participation in the challenged activity.”.

In light of the above and foregoing, the Petitioner respectfully requests this U.S. Supreme Court to accept his Writ of Certiorari in respect to Question # 1 which has been written by a Pro Se in Good Faith.

QUESTION # 2. Was the Petitioner denied Due Process, in violation of the Fourteenth Amendment Due Process Clause, . and/or in violation of his civil rights and/ or was the *Stare Decisis Doctrine* wrongfully ignored, as evidenced by violation of 18 U.S. Code 242 with a written bribe to a Government Official, to bring about a false arrest? .

(App H) delineates that Deputy James Butler ID # 05024, the off duty Sheriff deputy hired by Ms. Cowart; was bribed to effect the arrest of the Petitioner Anthony Brian Bevan, The bribe is explicit in that The Extra Duty Request Document had a stipulation added on in cursive hand writing, that the “*Detail will be paid entirely to the Deputy if it occurs.*” It did occur. . . the Petitioner was arrested on 11/1/11... Within 24 hours of the arrest on 11/1/11, Ms. Cowart completed the bribery transaction by issuing a second check for \$195, that had a notation “remainder of 11/1

to 11/2 . (App.H). The Petitioner refers to the following in his Writ to this Court: U.S. Code 242 states "*Whoever, under color of law, statute, ordinance, regulation or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to difference punishments, pains, or penalties, on account of such person being an alien, or by reason of color or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned nor more than one year, or both.*", Likewise in the U.S.

Supreme Court Case *U.S. v. Russell* 411 US 423 (1973), the court held "*Due Process defense based on governmental misconduct is... where the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.... Government misconduct which violates the constitutional due process right of a defendant requires dismissal of criminal charges.* Supreme Court Justice J. Rehnquist stated: "*There was an intolerable degree of government participation.*" In *U.S. v. Classic* 313 US 299 61 1368(1941) it was held that elected officials who altered ballots were acting under color of law because they committed the acts in the course of their employment. Color of Law has been treated as the same thing as "state action" and is a violation of the 14th Amendment.

In Burton v. Wilmington Parking 365 US 715 81 S. ct 856 LED 2d 45(1961) which held “*There is a state action whenever the State has so far insinuates itself into a position of interdependence with the otherwise person whose conduct is said to violate the 14th Amendment... that it must be recognized as a joint participation in the challenged activity.*”.

In light of the above and foregoing, the Petitioner respectfully requests this U.S. Supreme Court to accept his Writ of Certiorari in respect to Question # 2 which has been written by a Pro Se in Good Faith.

QUESTION 3: Was the Petitioner denied Due Process, when Governmental Misconduct occurred that denied his 6th Amendment guarantee of counsel and the 14th Amendment Clause of Due process, and/or in violation of 18 U.S. Code 242 . and/or in violation of his civil rights and/ or was the *Stare Decisis Doctrine* wrongfully ignored, especially in respect to *Gideon v. Wainright* 373 us 335 (1963)? .

The Petitioner discovered that his Counsel, Attorney Thomas Busatta was an ex investigator for the Lee County Sheriff's Office and that he and the State Prosecutor, Christine Cummins, planned to hold a deposition of Deputy Butler without any input from the Petitioner., who was

incarcerated at the time. Attorney Bussatta who was fired on February 7, 2012 by the Petitioner and his wife, Jane Bevan who had been paying the legal fees submitted by Attorney Busatta; for this and other factors in failing to protect his client and for his failure to inform the Petitioner that he was about to be suspended to practice law by the Florida Bar. The record shows that he was indeed suspended. Attorney Busatta and State Prosecutor Christine Cummins were informed in writing and in person and in the court record, that Attorney Busatta had been fired and the Petitioner requested that the Deposition be delayed until other Legal Counsel could be found to represent the Petitioner's interest. In spite of the situation , Attorney Busatta and the State Prosecutor still proceeded with Deputy Butler's deposition. The deposition transcripts revealed that many vital questions were not posed to Deputy Butler, who called Attorney Busatta, "my friend" at one point. The Petitioner had no representation and both Attorney Busatta and Attorney Cummins completed the illegal deposition, the transcript of which was later placed into the file by the Petitioner. (App. L).. The Petitioner refers to the following facts in his Writ to this Court: and references : Gideon v. Wainright 372 US 335 (1963)which is a landmark and historical U.S. Supreme Court Case and meets the criteria established under the *Stare Decisis Doctrine*, which held that the 6th Amendment guarantee

of counsel in a criminal case is a fundamental right essential to a fair trial and as such applies to the States through the Due Process Clause of the 14th Amendment. The Petitioner was deprived of Counsel by two supposed opposing counsels, the State Attorney, Christine Cummins and the fired Counsel, Attorney Busatta who had no right to represent the Petitioner. The transcript of the Deposition shows that on page 1, Attorney Busatta opened the direct examination of Detective James Butler by stating "*Good afternoon Detective. I'm Attorney Tom Busatta. I represent the Defendant in this case, Anthony Bevan also known as Brian Bevan*". The cross examination was conducted by Governmental Agent, Prosecutor Christine Cummins. The illegal deposition was taken over the personal objections of Jane Bevan, Trustee for the Petitioner Anthony Brian Bevan. The vocal objections of Jane Bevan, in front of witnesses and Parties to the Deposition, and other employees from the State Attorneys Office. Trustee, Jane Bevan asked both Attorneys Busatta and State Attorney Cummins not to proceed. Two male persons from the State Attorneys Office threatened to arrest Jane Bevan if she did not leave the State Attorneys Deposition room located at the office of the State Attorney. The illegal deposition was conducted and completed without the Petitioner being represented by counsel in violation of Gideon v. Wainright 372 US 335 (1963) which held that the 6th Amendment which

held that the 6th Amendment guarantee of counsel in a criminal case is a fundamental right essential to a fair trial and as such applies to the States through the Due Process Clause of the 14th Amendment.

Christine Cummins, as an agent of the Government, committed Governmental misconduct in violation of USC Coe 242 when she was complicit in conducting an illegal deposition.. Florida Rules of Evidence: under Discovery 3.220(2) state: "*at any time during the taking of a deposition.. upon a showing that the examination is being conducted in bad faith... the court in which the action is pending may terminate the deposition*". In a Florida Supreme Court case, *The Florida Bar v. Karen Schmidt Cox* SC 96217, 2001, the court stated: "*The Public clearly deserves protection from a Prosecutor who determines on her own when and how to follow the rules.... The Public expects and deserves fairness and candor, especially for a Prosecutor who has the power and responsibility derived from representing the government*" The Petitioner states that the State Courts were appraised of the situation on the deposition of Deputy Butler but the Petitioner still was denied a fair hearing despite the ruling by the Florida Supreme Court in the above cited case of *The Florida Bar v. Karen Schmidt* C U.S. Code 242 states "*Whoever, under color of law, statute, ordinance, regulation or custom, willfully subjects any person in any State, Territory, Commonwealth,*

Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to difference punishments, pains, or penalties, on account of such person being an alien, or by reason of color or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned nor more than one year, or both.”, Likewise in the U.S. Supreme Court Case *U.S. v. Russell* 411 US 423 (1973), the court held “*Due Process defense based on governmental misconduct is... where the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.... Government misconduct which violates the constitutional due process right of a defendant requires dismissal of criminal charges.*

Supreme Court Justice J. Rehnquist stated: “*There was an intolerable degree of government participation.*”

In light of the above and foregoing, the Petitioner respectfully requests this U.S. Supreme Court to accept his Writ of Certiorari in respect to Question # 3 which has been written by a Pro Se in Good Faith.

QUESTION 4: Was the Petitioner denied Due Process, in violation of the 14th Amendment Clause of Due process, and/or in violation

**of 18 U.S. Code 242 , and/or in violation of his civil rights,
Especially in respect to the fact that he was wrongfully
incarcerated for 3 years after his New Law case had been Nolle
Prossed and Dismissed?**

The Petitioner temporarily resided in what was thought a " safe house". After his release on Probation on 3/4/13. He was arrested again on 5/10/13, a new law case, for pushing a pregnant female, whose stepfather referred to her as a Drug Dealer and User, A second charge was resisting an officer without violence. The alleged "victim", Savannah Vasquez was provided temporary housing along with two of her other young children in a small house next door to her stepparents where the Petitioner was residing. Issues and concerns began which included her then boyfriend and following a verbal confrontation with the Petitioner, , Ms Vasquez called the Sheriff and reported the Petitioner pushed her by touching her on the shoulder when they were both in the front yards of each home. . Her childhood friend, who was in the back yard of the small home collaborated the story. There were inconsistencies of time lines between Ms. Vasquez and her childhood friend, and the stepparents along with the time line of when the Sheriff was called, all of which was stated and documented in the Violation of Probation Hearing which was held on 6/24/13 where The Petitioner pled his innocence.. Judge Edward Volz

presided and found the Petitioner Guilty of the Violation of Probation and on 9/9/13 sentenced the Petitioner to 36 months incarceration with the State Department of Corrections. (App. O). Judge Volz did not use the Proof beyond a Reasonable Doubt standard which is used in most criminal cases in Florida, stating there was probable cause to find the Petitioner guilty. . In Nixon v. Singletary 758 S 2d 618 (Fl 2000) which noted that the Due Process Clause of the 14th Amendment protect the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which the defendant is charged. The Re Winshp 397 US 358 90 S Ct case has come to stand for a broader proposition in criminal prosecution in that every essential element of the offense must be proven beyond a reasonable doubt and is noted in Apprendi v. New Jersey 530 US 466(2000) and in Sullivan v. Louisiana 508 US 275 (1993). In Bernhard v. State of Florida No 43335 decided on 1/9/74 Justice Roberts wrote: "*I am compelled to find that the lower court erred in revoking Appellant's probation...In arriving to this conclusion, I have the benefit of hindsight which the trial judge did not have in noting that all the charges on which Appellant was initially arrested on or with which he was later charged were nolle prossed subsequent to probation revocation and re-sentencing on on his prior plea of guilty. ..Appellant's probation, was not later reciprocally reinstated*

*and Appellant remains in *504 prison despite the lack of a subsequent conviction arising from the facts herein for violation of the law, the very condition of probation he was alleged to have violated. I cannot help but think revocation would not have occurred had all of the above requirements of due process been observed, had Appellant been afforded a preliminary hearing and had his final hearing been delayed until until disposition of the charges pending before him as in Morrissey and Gagnon."*

The Petitioner contends that these Violation of Probation Hearings are conducted with a Rush to Judgment as evidenced in the case at bar where Judge Volz sentenced the Petitioner before the New Law Case was scheduled to be heard before another Judge, Margaret Steinbeck, where it was Nolle Prossed and Dismissed.

At the 12/16/13 Hearing before Judge Margaret Steinbeck in the new law case, the State Prosecutor stated "*The State has considered many things, and at this point is entering a nol pros on this case. Mr Bevan is sentenced to a DOC sentence in another case and we are happy for him to be on his way to the Department of Corrections*". Judge Steinbeck then stated "*So, the charges in 13CF16047 are dismissed and that takes care of that...so this case is done*" (App. R) . Governmental Misconduct occurred when the Prosecutor misled the Court to believe that the other case was

a completely different case from the one that Judge Steinbeck was hearing. One could readily infer that maybe the other case a bank robbery. However, the charges were identical to the charges being heard by Judge Steinbeck which were the pushing of a pregnant female and resisting arrest without violence.

However, It was not until 2015 that the Petitioner was told by 2 key witnesses who had appeared at the VOP Hearing that they found out that their Stepdaughter, "victim" and the victims friend had lied and given false testimony at the VOP Hearing. The two witnesses , Larry Cowan and Patricia Cowan, the Stepparents of the alleged victim told and gave Affidavits.. Larry Cowan in his Affidavit dated 12/1/2015 stated that his stepdaughter (the alleged victim) "*Made up the story that Brian pushed her and that she asked Tiffany to lie for her*"..... "*I am sad that I discovered that Savannah was a drug dealer and drug user. Her drug abuse could account for her bizarre accusations against Brian Bevan*". Patricia Cowan, in her affidavit of 1/10/2016 stated "*After Brian Bevan went to jail my stepdaughter, Savannah Vasquez told me and my husband Larry Cowan that she had made up the story that Brian pushed her and that she asked Tiffany to lie for her*". (App.T) The Petitioner, included the Affidavits in his briefs to the Second District Court of Appeal as well as in the lower court

brief in his Post Conviction 3.850 Request with his asking for relief from the charges brought against him. Both courts were aware of the Newly Discovered evidence.

.It appears that Judge Volz had an ulterior motive in his rush to judgment and his banishment of the Petitioner into the Prison System. It was some time after the Petitioner was incarcerated that it was discovered that Judge Volz had been the Chief Investigator for the State Attorney's Office when an Investigation was reopened 10 years after the so called suicide death of a young man, Brad Jackman, who was found shot at the Sheriff's Hunting Preserve at the Babcock Ranch in Charlotte County Florida. Some notable people involved in the death, included the Sheriff at the time and the State Attorney at the time. This case that the Petitioner and others became involved in, was followed by a major newspaper and became a much publicized case which ultimately went to a Florida Grand Jury. Some newspaper articles are attached to this Writ for the court's reference which outline the social climate in this 20th Judicial Circuit at the time. The articles include references to the Petitioner and his Advocating for others to include the suicide Death investigations in the 1980's, along with the information on the Delbert Tibbs case, a man who the Petitioner assisted in gaining his freedom who wrongfully accused and convicted and was on Florida's

Death Row in the 1970's. by the very same State Attorney who was involved in the "suicide" death of Brad Jackman. (App P). It should be noted that the Petitioner is still investigating the Jackman "suicide" as was given the actual so called suicide note in open court and this note is to date at a University Forensic Lab.

In light of the above and foregoing, the Petitioner respectfully requests this U.A. Supreme Court to accept his Writ of Certiorari in respect to Question # 4 which has been written by a Pro Se in Good Faith.

QUESTION 5: Was the Petitioner represented by Ineffective Counsel whose ineffectiveness and misrepresentation that the Petitioner was not subject to deportation, resulted in the Petitioner's Agreement to Plead Guilty, which Plea has now subjected him to Deportation in Immigration Removal Hearings?.

Petitioner now references the following exchange that took place before Judge Andrew Swett on 3/4/12: The Petitioner was represented by Counsel with Criminal Attorney Christopher Whitney who stood by his side throughout the Hearing and stood "Mute" Judge Swett asked the Petitioner "*Do you understand that if you are not a U.S. Citizen that this*

plea may subject you to deportation?. The Petitioner responded "I understand that Mr. Whitney explained that it would not be applicable in my case. "(App.N)

Counsel, Attorney Christopher Whitney's explanation and advise was not merely ineffective, it was devastating in that the Petitioner is scheduled for a Master Deportation Hearing before an Immigration Judge on January 16, 2019.

The Petitioner has been a legal immigrant to the United States since December of 1962, over 53 years. He has been married to an American citizen for 50 years, and together they have had two children who were born and raised in the United States. He has owned several small manufacturing facilities, employing Americans, holds Patents in England and America, and is currently involved in a project on Sudden Infant Death Syndrome (SIDS).

On 5/10/13, some two months after the Plea Hearing with release on Probation, the Petitioner was arrested and charged with a New Law Case of pushing a pregnant female and resisting . arrest and after a Violation of Probation Hearing, on 9/9/13, he was sentenced to serve 36 months incarceration in the Florida State Prison. where he continued to fight in court for his exoneration. His New Law case was dismissed on

12/16/13 after the State filed a Nolle Prossse however his appeal was denied with only a PER CURIUM AFFIRMED opinion. The Petitioner began to file Post Conviction Motion 3.850. These too have been denied with only a PER CURIUM AFFIRMED by the Florida Second District Court of Appeal. The Florida Supreme Court denied to accept his Request for Discretionary Review, by stating they had no Jurisdiction. The Petitioner was released after serving his time and at his release, he was noticed to appear before the Immigration authorities. He is now in the Immigration Court of the United States Department of Justice for removal proceedings in Case No" A#013-681-533. His next hearing date is scheduled for 1/16/19 for a Master Hearing. Before Miami Florida Immigration Judge, Denise Lane who has allowed him to appear by phone due to his current age of 83 and his medical issues.

This Petitioner now cites Historical and Landmark cases that have set precedent on ineffective counsel relative to deportation and other issues. Professional norms for years have required criminal attorneys to discuss the immigration consequences of a plea agreement with the clients prior to the plea hearing. In 2010 , the U.S. Supreme Court heard and rendered a decision in what has become a Landmark case which meets the criteria of *Stare Decisis* in Padilla v. Kentucky # 0800800(2010). The Court determined that the counsel's misadvise regarding immigration

consequences of a guilty plea fell below the constitutionally required level of effective assistance of counsel. There are many other significant and historical cases In INS v. St. Cyr 533 US 289,322(2001), the court recognized that the severity of deportation and its importance to an alien's decision whether to plead guilty to a crime cannot be understated.

In Bridges v. Wixon, 326 US 135(1945) 326 AT 164, the court stated that the impact of deportation upon the life of an alien is often as great if not greater than the imposition of a criminal sentence.

Recognizing that removal of a resident alien can be as severe a punishment as criminal banishment, James Madison argued in opposition to the Alien and Sedition Act.: "*If the banishment of an alien..be not a punishment and among the severest of punishments, it will be difficult to imagine a doom to which the names can be applied.*" See: James Madison Report on the Virginia Resolution of 1799.from the Debates in the several State Constitutions on the Adoption of Federal Constitution 555 (1836)

Although this James Madison Report was not a legal case per se, it certainly is a Historical Document that has set precedent since the writings of the U.S. Constitution. In *Bridges v Wixon* the court echoed Madison : "*Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right*

to stay and work in this land of freedom....Meticulous care must be exercised lest the procedure by which is deprived of that liberty not meet the essential standard of fairness.” It is noted that the 6th Amendment’s guarantee to the right to assistance of counsel is plainly not limited to citizens but rather provides protection to the broader category of the accused. The Amendment requires investigation and preparation, not only to exonerate, but to secure and protect the rights of the accused and failure to investigate and file appropriate actions is ineffectiveness.. In another landmark and historical case that has set precedent, Kimmelman v. Morrison 477 11 S. 365 LED 2d 405 S. Ct 2574(1986) the court held that the 14th Amendment, which applied the 6th Amendment to the States and was thus the constitutional backdrop to both *Strickland* and *Padilla*. Established the Constitution’s protections for non-citizens. in our nation’s criminal justice system by requiring states to provide the protections of equality and fundamental fairness to aliens as well as to citizens.. This U.S. Supreme Court has long recognized that the right to counsel is “the right to the effective assistance of counsel as noted in McMann v. Richardson 397 U.S. 759, 771 N.14 (1970). And that right applies at trial as well as during plea negotiations. See Hill v. Lockhart 474 US 52(1985). And in Strickland v. Washington 466 us 688, 104 s.Ct. 2051 (1984) this

U.S. Supreme Court articulated a two prong test for assessing counsel's assistance: First, the defendant must show that counsel's performance was deficient. Second, the Defendant must show that he suffered prejudice. This Petitioner states that he has met the standard set in *Strickland*.in that the counsel's performance was deficient as noted in the court transcripts of the 3/4/12 Plea hearing and he has now suffered prejudice with his being in Immigration Court in Removal Proceedings even though the New Law case where he was found guilty was dismissed by the Court and Nolle Prossed by the State. Another historical case that has set precedent on the matter is *Downs-Morgan v. United States* 765 F2d 1534(11th Cir. 1985) where the Court states the defense counsel's misrepresentation of the risk of deportation may constitute ineffective counsel. The Petitioner categorically states that if he had been fully informed of the consequences of deportation when he Pled No Contest on 3/4/11, that he would not have done so but would have chosen to rather go to trial on this case, which in his opinion, he could have won. See *Hill v. Lockhart* 474 US 52(1985) where the Court stated "*That there is a reasonable probability that, but for counsel's errors, (the defendant) would not have pleaded guilty and would have insisted on going to trial*". The Petitioner may now be forced from the country he has called home for over 50 years, so the consequences are undisputed.

In light of the above and foregoing, the Petitioner respectfully requests this U.S. Supreme Court to accept his Writ of Certiorari in respect to Question # 5 which has been written by a Pro Se in Good Faith.

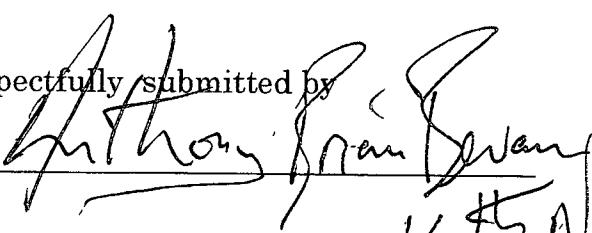
CONCLUSION

In light of the above and foregoing, especially in regard to the *Stare Decisis Doctrine* which must be upheld in all lower courts, which makes this case of National Importance in as much as contained within this Writ of Certiorari is the inherent advise to the lower courts of America, "You are obligated to issue judgments in compliance with the *Stare Decisis Doctrine*. dare not be in conflict for to do so will result in reversal of Judgments by this Supreme Court of America."

RELIEF SOUGHT

Petitioner respectfully requests the United States Supreme Court to accept the Petitioners Writ of Certiorari.

Respectfully submitted by


14th November 2018

Anthony

Brian Bevan