

18-8149
No. _____

Supreme Court, U.S.
FILED

JAN 25 2018

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Mr. Michael Fries — PETITIONER
(Your Name)

vs.

Mr. Kernan, CDCR Dir, etc. — RESPONDENT(S)
(KERNAN)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Michael Fries.
(Your Name)

Kern Valley State Prison
(Address)

P.O. Box 5103, Delano, Cal. 93216.
(City, State, Zip Code)

415-388-9257; Family.
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- * Does the State have a Constitutional duty to bear the burden of proving that an error is harmless in predatory policing by law enforcement in order to obtain a conviction, and/or a fair use of comity and fair and full proceedings; And did that have an inpropos effect upon the jury's verdict in violation of the U.S.C.A. 1st, 4th, 6th, and 14th, Constitutionally secured rights?
- * Should the lower Courts squarely apply a different standard in reviewing fundamentally flawed proceedings; And did the Ninth Circuit err in deferring to the lower Courts finding in Habeas Corpus, that Petitioner procedurally defaulted, in lieu of affirming his U.S.C.A. 1st, 4th, 6th, and 14th, Constitutionally secured rights?

LIST OF PARTIES

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

California Attorney General, Mr. X. Becerra,
1300 "I" Street, Suite 125, Sacramento,
California, 94244-2550; or

Office of the State Attorney General
P.O. Box 944255, Sacramento, Calif., 94244-2550.

As represented by: Director of CDCR, Mr.
Kernan; And, Warden (K.V.S.P.) Pfeiffer:
3000 W. Cecil Ave, Delano, Calif., 93216.

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APPENDIX A : *An Episode of Predatory Policing.*

APPENDIX B : *Chronology of Pre/Post Conviction Proceedings.*

APPENDIX C : *Ninth Circuit Denial of En Banc/Reconsideration, etc.*

APPENDIX D : *Federal Habeas ; Contents/Authorities/Appendices.*

APPENDIX E : *Current, C.D.C.B. Form 225, re law library (cont).*

APPENDIX F : *(Unable to provide re lack of access to librx eq.)*

* A Table of "Appendices to Writ of Certiorari," is also attached to the Appendices sent to this Court on January 11, 2018, concurrent with Rule 32.1; And, herein; i.e. detailed and specific. See also, Petitioner's Federal Habeas Corpus (FHC).

* TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

* See, attached: Table of Authorities;

STATUTES AND RULES

See, attached: Table of Authorities;

OTHER

See, attached: Table of Authorities.

Table of Authorities:

*

Case law;

Pages:

Bonds v. Smith, 430 U.S. 817, 826 (1977)	38.
Brady v. Maryland, 373 U.S. 83 (1963)	36.
Brecht v. Abrahamson, 507 U.S. 685, 642 (1993)	27, 30.
Brown v. Allan, 344 U.S. 443, 499-500 (1953)	32.
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Payton v. New York, 445 U.S. 573 (1980)	37.
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United States v. Agurs, 427 U.S. 97 (1976)	37.
Wong Sun v. U.S., 371 U.S. 471 (1963)	37.

Statutes and Rules:

U.S. Const. Amend. I.	3, 29.
U.S. Const. Amend. IV.	3, 22, 29, 31, 32.
U.S. Const. Amend. V.	23, 29, 32.
U.S. Const. Amend. VI.	3, 4, 24, 27, 29, 31-32, 34.
U.S. Const. Amend. XIV.	4, 25, 29, 32.

28 U.S.C. § 2253(c)(2)	5, 27, 30.
28 U.S.C. § 2254, et al.	5, 6, 7, 8.
28 U.S.C. § 2403(b)	32.

Supreme Court Rule, 10(a)(b)(c)	32.
Supreme Court Rule, 32.1	9.

California Constitution, Article I, § 28(f)(2); (5)	12, 32.
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California Penal Code, §§ 995 and 1538.5.	16.
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California Evidence Code, § 402	18.
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Constitution of the United States, Art. III, Sec. 2.	26.
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW *

☒ For cases from **federal courts**:

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

☒ reported at No. 17-55585; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☒ reported at No. 8:16-cv-01687-R-DFM; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

☒ reported at No. 5228057; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Fourth Appellate Court court appears at Appendix B to the petition and is

☒ reported at G051843; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

1.

* See also, Page 67, of F.H.C., as filed Sept. 12, 2016.
Too, that the Opinions of each Court were sent
to each subsequent Court due to no have library.

JURISDICTION *

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 3, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 8, 2017, and a copy of the order denying rehearing appears at Appendix C.

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

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

* 28 USC 333: 1331; 1651; 1915; 2111; 2254;
i.e. The U.S. Constitutional Amendments,
1st, 4th, 5th, 6th, and 14th; USC Art. III.(2).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Nov. 10, 2015.
A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date:
Dec. 4, 2015, and a copy of the order denying rehearing
appears at Appendix B.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

* The following statutory and constitutional provisions are involved in this case:

- U.S. Const., Amend. I:

Congress shall make no law... abridging the freedom of speech, or of the press; or the right... to peaceably... assemble, and to petition the Government for a redress of grievances.

- U.S. Const. Amend. IV:

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 no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

- U.S. Const. Amend. VI:

In all criminal proceedings, the accused shall enjoy the right to a speedy and

public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

• U.S. Const. Amend. XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of 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.

Federal Habeas Statutes:

- 28 U.S.C. § 2253(2); (exhaustive): § 2253(c)(2);

A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

- 28 U.S.C. § 2254:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(3) A state shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-

(1) resulted in a decision that was based on and contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(2) IF the applicant has failed to develop the factual basis of a claim in State Court proceedings, the court shall hold an evidentiary hearing on the claim unless the applicant shows that - (A) the claim relies on -

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

(f) IF the applicant challenges that sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a deter-

mination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal Court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the Court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

- Constitution of the United States, Art. III, sec. 2:
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States...

- California Constitution, Art. I, sec. 28:
(f)(2) "... relevant evidence shall not be excluded in any criminal proceeding, including pretrial..."
(5) "... cases shall be carried out in compliance with the court's sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities."

STATEMENT OF THE CASE

On April 11, 1995, I was arrested within my home by Newport Beach Police (N.B.P.D.) Detectives, O'Sullivan, and Prooty, among others; In that, after "six months" of unwarranted predatory policing by officers of said department; For an example of many, please see Appendix (Appx. "A") of my Federal Habeas Corpus (F.H.C.); and Appx. "A", of this Petition, submitted to this Court some two weeks before this Certiorari is due in accordance with Rule 32, i.e. Jan. 11, 2018. Any delay is due entirely to State machinations, i.e., abuse of authority and lack of accountability.

Detectives, O'Sullivan, and Prooty, gained entry into my home under pretext via my housemates, and my paid private domain with an "arrest warrant" from a Parking Ticket, paid by myself (in person) four months prior. I was interrogated in handcuffs as my bedroom was searched and seized, including the videotape of my conviction from a [locked] filing cabinet, i.e. the [only] means of my conviction, while I sat on my bed and was adamant in requesting, and demanding legal representation. I

9.

1 also told the officers that I had paid that
2 ticket, and had the receipt. This was
3 ignored by the officers while the search
4 continued; to this day. I was then trans-
5 ported across the street to the N.B.P.D.
6 for "several" hours of interrogations. The
7 interrogations were videotaped, wherein,
8 Detective, O'Sullivan, made certain admis-
9 sions as to the illegality of the arrest,
10 the search and seizure, and the inad-
11 missability of any "statements", etc. This
12 was drawn out of the officer by myself,
13 in that I was aware the interrogations
14 were being videotaped. Said videotape at
15 the N.B.P.D. has never surfaced.

17
18 Petitioner was alleged to have molested
19 the children of Mr. and Mrs. May, [on the
20 previous day] of April 10, 1995, and in which
21 the children were examined by a Physician
22 and interviewed by C.A.S.T. (Child Services);
23 and in which no penetration had occurred,
24 nor was found. On the contrary, the
25 primary child alleged to have been molest-
26 ed, was not cognizant any molestation
27 occurred, stating: "Michael did nothing to
28 me; he is a nice man", etc. as told to

me by [Defense] Attorney, Ms. Gail Shifman. Detectives, O'Sullivan, and Prooty, then, sought a search warrant from a Judge, and were denied on the merits. None of the above was brought before the court's by Defense Attorneys, nor argued. Too, that Petitioner's roommates/housemates could hear the entire conversation in said "arrest" and could have attested to my having installed a lock on my bedroom door when having moved in; And thus denied that right of confrontation.

Petitioner was made to spend the night in the N.B.P.D., wherein, I was also; the next morning "booked" and assaulted nude, by whom I presume to be Detective, Mc Broom; And then transported to the Orange County Jail, for additional "booking" and forensics.

Petitioner had no previous record to speak of that he had not paid a fine for or done community service for; And despite, no physical harm to any alleged victim, Petitioner was convicted on June 14, 1996; and sentenced to 96 years to life, without

1 the possibility of parole, on July 12, 1996,
2 in the Orange County Superior Court; Case
3 No. 95HF0333. See below and Cal. Const. Art. I, § 28(f).
4

5 On approx. Sept. 28, 2017, during a request-
6 ed (custody) "Olsen" Review, a Counselor,
7 Mr. R. Sherrill, told me I had only life,
8 and that parole was a "possibility." *Supra*(f)(5).
9

10 When I tried to convey the [many]
11 instances of police misconduct to my
12 (second) Defense Attorney, Mr. David
13 Zimmerman, he stated: "No one will
14 believe you," and "no one will care." In
15 that, petitioner's family hired attorneys
16 whose only answers were: "I don't know;
17 I'll have to check; I'll get back to you
18 on that;" And, "Take the deal" of twenty-
19 one years to life. All (several) attorneys
20 said the same; including Appellate Counsel.
21 Petitioner did in fact plead: "Not Guilty."
22
23
24

25 For a further description of pre-conviction
26 proceedings, see my (F.H.C.), pages 24 to 36;
27 See also, Appx. "B", before this U.S. Supreme
28 Court, being a "Pre/Post Conviction Proceed-
ings", i.e. the continuation (F.H.C. Chronology).

1 Briefly, and concisely, to the best of
2 my ability and knowledge, I summarize
3 the pre-conviction proceedings below:
4

5 On April 15, 1995 (approx.), Defense Attorney,
6 Mr. Lawrence Merryman, was hired after
7 coming to the Orange County Jail (seeking)
8 to represent me. After disappearing with
9 letter(s) to my family; My "Summary" of the
10 arrest - the first one; And, a no-show at
11 [first court appearance], said attorney is
12 fired. Transcripts were not provided and
13 are missing; (See below enumeration); As
14 well as (any) and all police reports.
15
16

17 On April 24, 1995 (approx.), Defense Attorney,
18 Mr. David Zimmerman, is hired after going
19 to my girlfriend Ms. Mary Youman's work,
20 seeking to represent me.
21
22

23 On April 27, 1995 (approx.), A Preliminary
24 Hearing, some two weeks after arrest,
25 is held at Harbor Municipal Court, Newport
26 Beach; and heard over by Judge, Gray,
27 sitting in and who is astonished that
28 attorney Zimmerman, has not sought
dismissal of warrant and charges.

On April 30, 1995 (approx.), Transportation, of myself to South County Municipal Court, Laguna Hills, wherein, I explain the Pre-Paid Ticket "warrant", and request an attorney to the judge: which is denied. The Judge then dismisses the warrant as "Stale" and pre-paid. Despite the assurances by Mr. Zimmerman, that he is fully aware of the facts, and that he will be present for said hearing, he is [not, and a no-show].

On May 8, 1995 (approx.), Arraignment, before Judge, Strople, at Harbor Municipal Court, Newport Beach, is bound over to Superior Court.

On July 12, 1995, A Preliminary Hearing (Second one) is held; No "Probable Cause" was established here or previously.

On July 25, 1995, An Arraignment (Second one) before Judge, J.H. Rheinheimer; Continued to July 31, 1995.

On October 20, 1995, an Appointment of Doctor, Parish, by Judge, Anthony Rackauckas,

of Superior Court; Bond over for trial.

On January 5, 1996, A "Marsden Motion", by myself (See, People v. Marsden, 2 Cal. 118, 123, 84 CR 156, 159 (1970)), to dismiss Defense Attorney, Mr. David Zimmerman, after continued harassment by him to take a "deal" of 21 years to life, etc; i.e. refusal to Contest.

On January 26, 1996, There is a first Appearance, of Defense Attorney, Ms. Gail Shufman, and a Mr. Gary Pohlson, despite my protests to Ms. Shufman (who was just hired for the purpose of Habeas Corpus and for counsel outside of Orange County) and to Judge, Rackawckas, of not wanting Attorney Pohlson's, representation.

On March 18, 1996; Continued to March 20, Petitioner continues additional protests of Defense Attorney's Ms. Shufman; and Mr. Pohlson, misrepresenting the case by far.

On March 20, 1996, a "Marsden Motion", by myself, is held to dismiss Defense Attorney's Ms. Shufman; and Mr. Pohlson, who was never hired. Now, run out of money (a paper),

1 a Defense Attorney, Ms. Judith Fouladi, by
2 court appointment, begins making appearan-
3 ces for me.

4
5 On March 22, 1996, a Notice of Motion, to
6 Disqualify, Judge, Rackauckas, (upon my
7 done insistence) is submitted by Defense
8 Attorney, Ms. Fouladi, who misrepresents
9 the facts without merit; of which, is
10 denied by Judge, Rackauckas, as untimely.
11

12
13 On May 3, 1996, an Informal Request For
14 Discovery, and Declaration in Support of
15 Motion to Disqualify Judge, Rackauckas,
16 is submitted by Defense Attorney, Ms.
17 Fouladi, misrepresenting the facts. A
18 "Marsden Motion", to dismiss Ms. Fouladi,
19 by myself, is denied. My attempt(s) at
20 demanding pro se status (to represent
21 myself, since no one will) and a conti-
22 nation to enforce my rights, is denied.
23

24
25 On May 24, 1996, Motions, Penal Code Sec.
26 995, and 1538.5, are denied by Judge,
27 Rackauckas. I request/demand submis-
28 sion of Petition For Writ of Habeas Corpus
(since no attorneys will do so) by myself,

1 of which is denied by Judge, Rackauckas;
2 a Writ of Mandate is also denied submis-
3 sion; Right to proceed pro se, is also
4 denied (again). Judge, Rackauckas, makes
5 an ambiguous statement when asked
6 by the prosecution, whether he has re-
7 viewed the [NBPD Interrogation video].
8 Defense Attorney, Ms. Fouladi, requests
9 Motion to [Exclude Witnesses] not other-
10 wise Testifying; Granted.
11

12
13 On June 7, 1996, Jury Selection, begins.
14 I attempt to again, submit a Writ of
15 Habeas Corpus; which is denied. I state
16 [objection to the process] as Defense
17 Attorney, Ms. Fouladi, keeps dismiss-
18 ing the jurors that I want to keep;
19 intentionally.
20

21 On June 11, 1996, Jury Selection, cont-
22 inues and concludes. I request submission
23 of a couple of letters to the Court; i.e.,
24 my "Summary" of arrest re 5/15/95 (The
25 Second one written), and letter of 5/16/95;
26 Both are denied. However, eventually
27 granted, after my persistence; See,
28 Appx. "B", of (F.H.C.).

1 Evidence Code Sec. 402, (re "Miranda"
2 violations) Motion is submitted by Ms.
3 Fouladi, misrepresenting the case,
4 and in contrast to the facts; Denied,
5 by Judge, Rackawkas. (See, Miranda
6 v. Arizona, 384 U.S. 436 (1966)).
7

8 My request to speak for the record
9 to the Court, seeking reasonable judgment,
10 is denied. (At some point previously (See,
11 Missing Transcripts, below)) I was granted
12 to speak, and in which I began to
13 clarify my position, and [Constitutional]
14 violations, at which point, Judge, Rack-
15 awkas, cut me off, and (struck from
16 the record, what I had just calmly
17 stated; I was then threatened not
18 to speak again). The trial then, began
19 with Defense Attorney, Ms. Fouladi's,
20 Opening Statement. Exhibit 1 (videotape
21 of Prosecution) is [played for the Jury],
22 due to second, Defense Attorney, Mr.
23 Zimmerman's submission of admission
24 of unconstitutionally/illegally seized
25 evidence, at my mysterious second
26 Preliminary Hearing, on July 12, 1995.
27
28

Prosecutorial testimony begins of N.B.P.D. Detective, P. O'Sullivan. After repeatedly requesting, and then demanding an Objection from Defense Attorney, Ms. Foulad, in regards to Detective, O'Sullivan's lying, I stand and state: "Excuse me, I don't mean to be rude, but he's lying about that. I never gave him consent to search or nodded my head or anything. I only say so because my defense attorney won't defend me," i.e. (Interrog. Video).

Judge, Rackavakas, dismisses the jury, and clears the courtroom; At which time my hands, legs, and mouth are Duct-taped shut, and without any resistance from myself. Moreover, Judge, Rackavakas, suddenly directs a speech toward the Court Reporter, that I am "jumping up and down and struggling to free myself," himself; while I look on passively. I am then removed from the Court for the remainder of the trial. It is the same way I resisted ten years of predatory policing before my arrest, and now, twenty years after it.

On June 12, 1996, an Admonishment of the Jury, by Judge, Rakawickas, begins, regarding the statements by myself the previous day. I am in a holding cell, adjacent to the Courtroom, in which I'm unable to hear any further proceedings. (See, (F.H.C.) Appx. "D," re 3/1/99, i.e., March 1, 1999; re Appellate Attorney, Mr. Marten Buchanan, providing only certain transcripts.) The Bailiff, tries to accommodate me by moving the microphones in the Courtroom, and returning, but it is of no use, neither he or I can hear anything. He throws up his hands, after the third try, and leaves. Detective, O'Sullivan, continues and concludes (his) testimony. Detective, Prooty, testifies. Defense Attorney, Ms. Fouladi, rests the case. Closing Argument, ensues.

On June 14, 1996, Jury Deliberations, continue and conclude. I am found guilty on all. Jury is discharged.

On July 12, 1996, Sentencing Briefs by Defense Attorney and Prosecution are filed; As well as a Probation Report by Judge Rakawickas. Sentenced to 96 years to life, without.

* See also, 3/31/97; Motion 20,
For Substitution of Appellate Counsel.

1 All, N.B.P.D. Police Report(s); Warrant(s);
2 C.A.S.T. Interviews(s); Physician's Report(s);
3 N.B.P.D. Video of my Interrogation(s); and
4 Telephonic Recordings of myself within,
5 or without the N.B.P.D.; Interviews(s) in
6 regard to Witnesses; Any and all judicial
7 determinations, State proceedings, including
8 any proceedings that have not
9 been recorded or transcribed in the
10 case, are missing or never provided,
11 in order to bring forth to this Court,
12 accurate and complete documents as
13 originally filed or recorded relating
14 to the Petitioner's conviction. That is,
15 Orange County Superior Court, Case No. 95HF0333.
16
17

18 Missing Transcripts (re above Appellate Attorney),
19 are listed/enumerated within Petitioner's
20 (F.H.C.) pages: 37 to 39, and are no doubt
21 intrinsic to the Court's adjudication;
22 or not. As the Constitutional violations
23 above and below, are clear brightline
24 enumerations offensive to the Supreme
25 law of the land, and this Court's
26 precedent for fair and full proceedings.
27 Please see below, transcripts that (were)
28 provided by Appellate Attorney, Buchanan.

1 The following Transcripts can be found in
2 the Petitioner's First California Supreme
3 Court, Habeas Corpus, Filed: Feb. 3, 1999;
4 And, in which, [The Honorable, Justice Mr.
5 Stanley Mosk, found that an Order To
6 Show Cause, should issue].

7
8 Please see, May 24, 1996; Page 71, Lines 4 to 9;
9 72: 4-6; 84: 17-26; 85: 1-7. In conjunction
10 with unlawful entry, pretext, threats and
11 coercion, i.e. denial of counsel amongst
12 search and seizure in violation of The
13 Constitution of the United States Fourth
14 Amendment (U.S.C.A.), e.g. Please see the
15 following example:
16

17
18 District Attorney, McKinnon: "And what was
19 the nature of the warrant?"

20 Detective, O'Sullivan: "It was driving on
21 a suspended license warrant, \$10,000, bail."

22 D.A. McKinnon: "All right. And did you go
23 there for the purpose of serving and execut-
24 ing that arrest warrant?"

25 Det. O'Sullivan: "Yes."
26

27
28 Please see, May 24, 1996; 95: 1-11; 96: 8-26;
97: 1-2. And, June 12, 1996; 317: 11-19. In

conjunction with denial of counsel after
Petitioner had invoked "Miranda" rights,
in violation of the Fifth U.S.C.A. Please see
the following example:

Defense Attorney, Mr. Fowladi: "... Miranda?"

Det. O'Sullivan: "No, I did not."

Def. Atty. Fowladi: And at no time at his
home did you, that's fair; correct?"

Det. O'Sullivan: "That is correct."

Def. Atty. Fowladi: "The only time you did
was eventually at the station?"

Det. O'Sullivan: "Correct."

Def. Atty. Fowladi: "And that would have been
some hours ago... I mean, some hours later?"

Det. O'Sullivan: "Yes."

Please see, July 12, 1995; 44: 4-6, 16-24;
47: 15-19; 55; 1-4; 68: 14-18; re Defense
Attorney, Mr. David Zimmerman, and C.A.S.T.
Interviews withheld; See, March 20, 1996;
30: 22-26; 31: 21-26. And, June 11, 1996; 177:
9-15; 171: 1-24; 214: 5-13; 293: 8-13; re the
Petitioner's "Summary" of arrest, written for
the second time on May 15, 1995, and "To
Whom It May Concern" letter of May 16, 1996.
See, May 24, 1996; 72: 4-25; 73: 1-16; 85: 10-14;

re omission of co-occupants corroborating testimony. See, June 11, 1996; 260: 3-7; re corroborating testimony of an overnight stay within the N.B.P.D. See, May 3, 1996; 53: 7-14. And, May 24, 1996; 100: 14-18. See also, June 11, 1996; 208: 25-26; 211: 18-20; re omission of corroborating interrogation video, in violation of the Sixth U.S.C.A., re; Please see the following example:

Judge, Toohay: "Any evidence on behalf of the defendant?"

Def. Atty. Mr. Zimmerman: "No affirmative defense."

Judge: "No evidence?"

Def. Atty. Zimmerman: "No evidence."

Please see, July 12, 1995; 3: 11-23; 54: 21-23; 55: 1-4; And, July 13, 1995; 3: 1-11; re Defense Attorney, Mr. Zimmerman's, submission of seized tapes, and the judge's decisions not dependent on that of the arresting officer. See, June 11, 1996; 173: 8-11; 175: 2-6; 211: 18-23; re Prosecutor's statement that "Meranda", was read before interrogation, in contrast to the facts, and the judge's decision based on that statement. See, June 11, 1996; 209: 3-25;

211: 7-23; 214: 14-21; re Petitioner's appeal
to the Court for reasonable judgement. See,
June 11, 1996; 284: 23-26; 285: 1-13; re
Prosecutor's omission of initial arrest, before
the Jury. See, May 3, 1996; 57-58; And,
May 24, 1996; 66: 21-26; 67: 1-3; re denial
to proceed Prose, and the judge cutting Peti-
tioner off in mid-"argument". See, May 24,
1996; 67: 4-17. And, June 7, 1996; 1: 21-24;
2: 5-6; re judges refusal to accept Petition
For Writ of Habeas Corpus into the record.
See, June 11, 1996; 293: 8-23; 294: 20-22;
And, June 12, 1996; 304: 10-13; re Petitioner
being Duct-taped, and removed from the
trial court, in Petitioner's search for
ascertainment of the truth from the arrest-
ing officer, in violation of the Fourteenth
USCA. i.e., Please see the following example:

Defendant, Mr. Fries: "Excuse me, I don't
mean to be rude, but he's lying about
that. I never gave him consent to search
or... or... nodded my head or anything."

Judge, Rackawickas: "All right. I'm going to...
I'm going to excuse the jury one more time."

Def. Fries: "I asked my attorney to say
something." Etc, etc. (See, Missing, Interq. Video.)

REASONS FOR GRANTING THE PETITION

In a squeeze, I went through a [first round] of HABEAS appeal(s), wherein, at the USDC-Central Calif. Case No. CV-99-07425-MMJ(RNB), I was told I must go back to the lower court; And of which I had appealed to this Court, Case No. 01-8715, Filed Aug. 22, 2001 (DoKoted, Mar. 1, 2002; Denied, Apr. 29, 2002). I then began a "[Second round]" of Habeas appeal(s); See, California Supreme Court, Case No. S228057; USDC-Central Calif. Case No. 8:16-CV-01637-R-DFM; See (inter alia.) therein pages: 66-103; Also, Appx. D, thereof page 14-18, i.e. 3/22/00, to 11/27/00. And thus, resulting in a denial of Certificate of Appealability (COA); See, below, Appx. B, page 91-98, i.e. 9/20/16, to 3/27/17. Encompassing then the Ninth Circuit; See below, Appx. B, page 104, re 10/6/17; Page 107, re 11/14/17. Hence, my current Appeal, in which the lower court's focus on "Timely/COA" issues; See below pages 29-33; etc. See, Appx. A, C, D; U.S.C. Art. III, § 2. And, Rule 10.

Incontestably, I had to conjure, plead, persuade, command, demand, and compel, four of the seven (Three appointed), "Defense" Attorneys, through "Marsden" Motions to get each individual to provide the Court [these] claims (In relation to children, no less.), of

1 Constitutional magnitude; And[is] an abandon-
2 ment and abdication of sworn duty, the
3 very precepts of Habeas Corpus proceedings.

4
5 The (9th Cir.), has authored decisions in
6 conflict with its own rulings, and of this Court
7 in sanctioning such departures from these
8 maxims, let alone that of other Circuits,
9 that an exercise of this Courts Supervisory
10 power is certainly called for; and warrants
11 intervention by this Court; See, Appx. "B," *;
12 re [Pretext / IAC] inter alia. Also, 28 USC 33
13 2253(c)(2), 2254; And, USC Sixth Amendment.
14 See also, Ortiz-Sandoval v. Gomez, 81 F.3d 891,
15 899 (9th Cir. 1996); Stone v. Powell, 428 US at 494,
16 (1976); Brecht v. Abrahamson, 507 US at 642-43,
17 (1993); O'Neal v. Mc Aninch, 513 US at 442 (1995).

18
19
20 Accordingly, Petitioner's claims encompass;
21 (By the Grace of this Court, by way of "Proxy");
22 • Failure of Prosecution and Defense Attor-

23
24 * Due to any meaningful access to the law library
25 (See, Rule 27.3, [option] Petition For Writ of Certiorari #2,
26 submitted to this Court on Aug. 19, 2018), I have had
27 to cannibalize prior Petitions in order to obtain the
28 "Chronology of Proceedings" i.e. Appendix "B." As well as
Opinions, sent to each subsequent court; Appx. "D."
+ See also, page 37, below.

neys to litigate in, or expose in a meaningful manner, Pretext in arrest; supra. P. 22; 24; F.H.C. P. 52.

- Failure of Prosecution and Defense Attorneys to litigate or expose in a meaningful manner the dismissal of the "State", and pre-paid "Warrant" used to enter the petitioner's paid private domain, by way of the South County Municipal Court; supra. P. 14, 22; F.H.C. P. 50.

- Failure of Defense Attorneys to subpoena corroborating witness testimony; supra. P. 11, 15, 17, 24; F.H.C. 51.

- Failure of Prosecution and Def. Attorneys to litigate in a meaningful manner, C.A.S.T. Interviews/Exams; supra. P. 10, 13, 16, 23, 25; F.H.C. P. 53.

- Failure of Prosecution and Def. Attorneys to litigate or expose in a meaningful manner, the N.B.P.D. Interrogation(s) or video thereof; supra. P. 10, 17, 19, 22, 24; F.H.C. P. 54.

- Failure of Prosecution and Def. Attorneys to impeach Det. O'Sullivan's testimony; supra. P. 11, 14, 18-22; F.H.C. 55.

- Failure of Defense Attorneys to litigate in a meaningful manner, the recusal of the trial judge, in striking from the record (twice) my testimony of Constitutional violations, i.e. the Pretext, as then known; supra. Page, 15-16, 18-19, 25-26; F.H.C. Page, 34, 64-65; 69-70.

- Failure of Defense Attorneys to suppress the video's seized from a locked Poling

Cabinet (easily opened by force) and played before the Jury; *Supra.* P. 9-11, 17-19, 22, 25; (F.H.C.) P. 19 and 56.

- Failure of Def. Attorney to Object to Prosecutor's closing arguments, that there was no more evidence to present; *Supra.* P. 22-26; F.H.C. P. 57.

- Failure of Appellate Attorney to file, but for omission, a substantive Appeal; *Supra.* P. 12, 20, 26; F.H.C. P. 57.

- Failure of Appellate Attorney to confer with his Client/Petitioner, before filing the "Opening Brief" amongst pleading letters that he do so; *Supra.* P. 20; F.H.C. P. 57-58.

- Failure of Appellate Attorney to recuse himself after Petitioner filed a Motion For Substitution of Appellate Counsel; *Supra.* P. 20; F.H.C. P. 57-58. See, USC. 1st, 4th, 5th, 6th, and 14th, re above.

* In attempts to overcome ommissions, and IAC. (Not including: Petitions for Writ of Mandate, and 42 USC. § 1983's;) I have filed the following Habeas Corpus Appeals listed below:

* Orange County Superior Court, Case Numbers # :
Habeas Corpus (HC), # ; Filed: 6/23/98; Denied: 6/29/98 (Stamped upon return; 6/29/97); See below; (HC), # M16149; Filed: 2/9/15; Denied: 3/27/15.

* Court of Appeal, Fourth Appellate Dist. Div. Three: (HC), # G020110; Filed: 2/2/97; Denied: 2/24/97. (HC), # G051843; Filed: 4/23/15; Denied: 6/19/15.

* California Supreme Court:

(HC), #S076352; Filed: 2/3/99; Denied: 5/26/99.

(HC), #S224057; Filed: 10/2/15; (# Error by Clerk?).

(HC-Same as above), #S228057; Filed: 7/24/15;

Denied: 11/10/15. (Habeas Conditions of Confinement - HC-Cond.), #S238278; Filed: 11/8/16; Denied: 1/24/17.

* United States Dist. Court (Central California):

(HC), #99-07425-MMM(RNB); Filed: 7/20/99; Denied:

11/20/00. (HC), #8:16-CV-01687-R-DFM; Filed:

9/12/16; Denied: 3/22/17. /#SA-CV-16-01687-R-

(DFM); Filed: 9/20/16; Denied: 3/22/17.

* Ninth Circuit Court of Appeals:

(HC), #00-71653; Filed: 11/14/00; Denied: 1/11/01.

(NOA/COA), #01-55370; Filed: 3/2/01; Denied: 7/23/01.

(NOA), #03-55390; Filed: 3/7/03; Denial: 9/11/03.

(HC/COA), #17-55585; Filed: 4/26/17; Denied: 10/3/17.

* Supreme Court of the United States:

(HC), #01-8715; Filed: 8/22/01; Denied: 4/29/02.

My claims of any meaningful manner of adjudication of Pretext/IAC. [inter alia] (Appx. "A"), to deprive this Defendant/Petitioner of Federally protected rights, thereby shifting the burden, is a grievous wrong against all. See, Brecht (id). 567 U.S. at 635 (1993); Murry v. Carrier, 477 U.S. 478, at 488 (1986). Stone v. Powell, 428 U.S. 465, 489-496 (1976); Mapp v. Ohio, 387 U.S. 643 (1961). Respectfully: The Cause

1 and prejudice requirement", we have said
2 "shows due regard for State's finality, and
3 comity interests while ensuring that fundamental
4 fairness [remains] the central concern of the
5 writ of habeas corpus." *Dretke v. Haley*, 541
6 U.S. 386, 393 (2004) (quoting, *Strickland v.*
7 *Washington*, 466 U.S. 668, 697 (1984)). However,
8 the State's failure to provide effective assist-
9 ance of counsel makes the attorney's error
10 chargeable to the State, and hence [external
11 to the defense]. See, *Murry*, *supra*, at 488;
12 Sixth USCA; etc.

14
15 Cause for procedural default exists where
16 "something [external] to the petitioner, some-
17 thing that cannot fairly be attributed to
18 him... 'impeded [his] efforts to comply with
19 the State's procedural rule.'" *Coleman v.*
20 *Thompson*, 501 U.S. at 753 (1991) (quoting,
21 *Murry*, *id.*).

23 Too, that USCA Fourth, violations are
24 not even cognizable in California. [T]he
25 prior State determination of a claim under
26 the United States Constitution cannot foreclose
27 consideration of such a claim, else the
28 State court would have the final say which

1 the Congress, ... provided it should not have.
2 Brown v. Allen, 344 U.S. 443, 499-500 (1953).
3 See also, Supreme Court Rule 10(a)(b)(c).

4 Indisputably, Defense Counsel (all) failed
5 to present exculpatory and mitigating
6 evidence in support of petitioners' Motion
7 To Suppress, i.e. the videotapes of Prosecution
8 Seized on April 11, 1995, in the search
9 of my bedroom and locked filing cabinet
10 within the totality of circumstances of
11 facts and law; And wherein, I was told
12 by my (2d Defense Attorney) Mr. Zimmerman,
13 that I was subject to; The California Consti-
14 tution's, Article I, Sec. 28 (f)(2); See also, (f)(5),
15 "Truth-in-Evidence, and Sentencing", wherein
16 28 USC. § 2403(b) may apply; And, in contra-
17 st to the Constitution's, Due Process and
18 Equal Protection, i.e. USCA. 4th, 5th, 6th,
19 and 14th. And wherein, the State court
20 apparently, could not consider or even ad-
21 judicate my claims under the 4th USCA.;
22 Further, counsel's ineffectiveness in failing
23 to properly preserve [Petitioners'] claims
24 for review, i.e. the first place a prisoner
25 can present a challenge to his conviction;
26 i.e. the procedural default in Federal proceedings,
27
28

no court then, will or has within the totality of circumstances, reviewed the prisoner's claims; See, *Martinez v. Ryan*, 132 S.Ct. 1309, at 1316, 1324 (2012). The Court a year later reaffirmed "Martinez", in *Trevino v. Thaler*, 133 S.Ct. 1911 (2013), to allow finding of cause where it is highly unlikely that I.A.C. can be raised on direct appeal; at 1921.

A defendant has a valid ineffective assistance claim when ever he has been denied the opportunity to contest the charges against him, regardless of the law on which counsel's error is based; See, *Kimmelman v. Morrison*, 477 U.S. 365, at 393 (1986). And as held, the right to effective assistance of counsel is not confined to trial, but extends also to the first appeal as of right; *Evitts v. Lucey*, 469 U.S. 387 (1985). See, above, pages: 20-29; 31-33. And of which all lower courts were well aware of, and in which petitioner was predictably due to procedurally default.

Indeed, this Petitioner has shown,

1 within the lower courts, that any procedural
2 default and/or unconstitutional conver-
3 tion resulted from the lower courts not
4 adjudicating fairly, petitioner's claims
5 on the merits; That the lower courts
6 fact findings were not made following
7 an evidentiary hearing within the
8 totality of circumstances of facts and
9 law; That the lower courts fact finding
10 was not made in a fair or full manner,
11 and is erroneous; That diligent investi-
12 gation by the petitioner of the unavailable
13 facts would not have been uncovered and
14 could not have been uncovered for presenta-
15 tion in lower court proceedings due to
16 Ineffective Assistance of Counsel; That
17 the legal rule subsequently recognized
18 by The Court and retroactively applica-
19 ble to the case was unavailable; That
20 the lower courts decisions were contrary
21 to clearly established Federal law, as
22 determined by the United States Supreme
23 Court, of which had substantial and
24 injurious effects and influence in de-
25 termining the jury's verdict; i.e. (see USCA).

26 I, am no attorney. I've never graduated from

any form of formal education, and not for lack of want. I've not the life skills and social graces of others and admit none of this is pretty; At length, what brawl, confrontation, and struggle, in light of abuse of authority and lack of accountability is; certainly not this one. Yet, the crimes by law enforcement certainly unwittingly, [are by far] greater than any I (could have) committed and (did not commit), even in manipulation and in light of predatory policing. Having the unique experience of having (lived) through such a thing, still, and unwarranted in its inception some thirty years ago, of which the ramifications the Court has seen the results of over and over in much lesser time, have been attenuated by the lower courts' decisions of which cannot be supported even under "Stones" (supra) own terms. The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on Federal habeas corpus is plenary.

If the Court should decline to grant Cert-

iorari - that is Habeas Corpus - I would think I would be glad that I have done my best in attempting to provoke people of more wisdom and gifts to the general edification. Should then the Court Grant Habeas Corpus, with prejudice, I would be content to be forgotten.

State sovereignty is one thing, disregard for The Constitution of the United States, and social costs, quite another.

Quoting the Court: "We have explained that evidence is material within the meaning of "Brady" (infra.) when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Cone v. Bell*, 556 U.S. 449, 469-470 (2009), i.e. *Smith v. Cain*, 132 S.Ct. 627, at 630 (2012), i.e. "... the only evidence linking" the petitioner "... to the crime." See also, *Brady v. Maryland*, 373 U.S. 83 (1963).

A reasonable probability does not mean that the defendant "would more likely than not have received a different verdict with

the evidence," only that the likelihood of a different result is great enough to "undermine confidence in the outcome of the trial." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). That materiality determination must be made "in the context of the entire record." *United States v. Agurs*, 427 U.S. 97, 112 (1976); and "turns on the cumulative effect of all such evidence suppressed by the government." *Kyles*, at 421 (id. *supra*), 435, 437. See also, *Hathorn v. Lovorn*, 457 U.S. 255, 263 (1982); And, *Payton v. New York*, 445 U.S. 573, 586, 590 (1980); *Wong Sun v. U.S.*, 371 U.S. 471 (1963).

As to additional State interference, Petitioner provides: Appx. "B", below, regarding page 100, therein re August 20, 2017; In that, my "Response", to the U.S. Dist Court, Eastern District of California (Fresno); See, Appx "B", re Oct. 17, 2017, re 135 pages of having [no meaningful, if any, access] to the institution(s) law library (Appx. "E"); i.e. "In Re Michael Fries, Case No. 1:17-mc-00064-SAB; (*) With a correct "Notice of Appeal" before the Ninth Cir.-(+) Court. Further, my correspondences to the USDC therein of

* Now, Case No. # 1:18-cv-00652-LJO-SKO (PL).

37.

+ Now, Petition for Certiorari #2, Sent to SCOTUS, Aug. 19, 2018.

Sept. 7, 2017, and Dec. 3, 2017, are responsive to this Court's inquiry. "If a lawyer must perform such preliminary research, it is no less vital for a pro se prisoner;" See, *Boonels v. Smith*, 430 U.S. 817, at 826 (1977); "A source of correct legal information would be particularly important so that prisoners could learn whether they have claims at all, as where new court decisions might apply retroactively to invalidate convictions"; n. 14. (id. supra.). And should the Court wish to see additional machinations of State interference, i.e. liberty interests; See, (FHC) pages: 71-74; 76-78; 81-82; 101-102. In that, the Court's failure to question, investigate, address my claims...

As to "laches", please see, FHC. pages: 96-99. As to Exhaustion/Timeliness, see, FHC. pages: 68, 70, 77, 84, wherein, the State did in fact waive exhaustion; And a "second round" of habeas is unreasonable. See, (FHC) Appx. D, re "Post-Conviction Chronology," re 10/18/99, i.e. (tt); Of a layman. See too, my "Response To Order To Show Cause," U.S.D.C. Case No. 8:16-cv-01687-R-DFM, (Central), (Habeas) as Filed: 10/24/16; "Objection to Report and Recommendation," Case No. SA-cv-16-01687-R-(DFM), as Filed: Feb. 27, 2017. (Santa Ana, Calif.) tt. My "Chrono." (FHC) is pages: 1 to 85. SCOTUS, Appx. B, 86 to 111. See above pages: 27, 37.

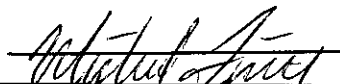
The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary. That the facts presented are enough in themselves.

For the above and below reasons, a Writ of Certiorari should issue to review the judgement and opinion of the lower Court, and concurrent with The Constitution of the United States. Bless us all.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Michael A. Smith

Date: ~~January 25, 2018~~
January 7, 2019.